Choctaw Nation of Oklahoma

# Choctaw Nation Code of Criminal Procedure

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## Chapter 1. General Provisions

### Section 1. Title of code

This code shall be known as the Code of Criminal Procedure of the Choctaw Nation of Oklahoma.

### Section 2. Information necessary, except when

Every public offense must be prosecuted by information.

### Section 3. Code not retroactive

No part of this code is retroactive unless expressly so declared.

### Section 4. Construction of words

A. Unless when otherwise provided, words used in this code in the present tense include the future as well as the present. Words used in the masculine comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. And the word person includes a corporation as well as a natural person.

B. This Code shall be construed so as to protect and ensure the political integrity, the economic security, and the health and welfare of the tribe.

### Section 4A. “Court”, “courts of the Choctaw Nation”, “courts in the Choctaw Nation” and “court clerk” defined

As used in this title, the term “court” or “courts of the Choctaw Nation” or “courts in the Choctaw Nation” shall mean the district court of the Choctaw Nation of Oklahoma, and the term “court clerk” shall mean the clerk of the district court, except where a contrary intention plainly appears.

### Section 5. Writing includes printing

The term writing includes printing.

### Section 6. Oath includes affirmation

The term oath includes an affirmation.

**Section 7. Signature**

The term “signature” includes a mark when the person cannot write, the name being written near it, and the mark being witnessed by a person who writes their name as a witness, except to an affidavit or deposition, or a paper executed before a judicial officer, in which case the attestation of the officer is sufficient. The term “signature” also includes a digital or electronic signature in any case involving a misdemeanor.

“Digital signature” means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer’s public key can accurately determine whether:

(A) The transformation was created using the private key that corresponds to the signer’s public key; and

(B) The initial message has not been altered since the transformation was made.

“Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**Section 8. Application of statutes**

This title applies to criminal actions and to all other proceedings in criminal cases which are herein provided for.

**Section 9. Common law prevails, when**

The procedure, practice and pleadings in the courts of record of the Choctaw Nation of Oklahoma, in criminal actions or in matters of criminal nature, not specifically provided for in this code, shall be in accordance with the procedure, practice and pleadings of the common law.

**Section 10. Criminal action defined**

The proceeding, by which a party charged with a public offense is accused and brought to trial and punishment, is known as a criminal action.

**Section 11. Prosecution is by the Choctaw Nation of Oklahoma against person charged**

A criminal action is prosecuted in the name of the Choctaw Nation of Oklahoma as a party, against the person charged with the offense.

**Section 12. Party defendant**

The party prosecuted in a criminal action is designated in this title as the defendant.

**Section 13. Right to speedy trial, counsel and witnesses**

In a criminal action the defendant is entitled:

1. To a speedy and public trial.

2. To be allowed counsel, or to appear and defend in person and with counsel; and,

3. To produce witnesses on his behalf, and to be confronted with the witnesses against him in the presence of the court.

**Section 14. Former jeopardy**

No person can be subjected to a second prosecution for a public offense for which he has once been prosecuted and duly convicted or acquitted, except as hereinafter provided for new trials.

**Section 15. Testimony against one's self—Restraint during trial and prior to conviction**

No person can be compelled in a criminal action to be witness against himself; nor can a person charged with a public offense be subjected before conviction to any more restraint than is necessary for his detention to answer the charge, and in no event shall he be tried before a jury while in chains or shackles.

**Section 16. Jury trial—Exceptions**

No person can be convicted of a public offense, unless by the verdict of a jury, accepted and recorded by the court, or upon a plea of guilty or nolo contendere, or upon final judgment for or against him upon a demurrer to the information.

**Section 17. Custody and distribution of proceeds from sale of rights arising from criminal act**

A. Every defendant who has been charged, convicted, has pled guilty or has pled nolo contendere to any crime, or any other person with the cooperation of the defendant, who contracts to receive, or have any other person or entity receive, any proceeds or profits from any source, as a direct or indirect result of the crime or sentence, or the notoriety which the crime or sentence has conferred upon the defendant, shall forfeit the proceeds or profits as provided in this section; provided, however, proceeds or profits from a contract relating to the depiction or discussion of the defendant's crime shall not be subject to forfeiture unless an integral part of the work is a

depiction or discussion of the defendant's crime or an impression of the defendant's thoughts, opinions, or emotions regarding the crime. All parties to a contract described in this section are required to pay to the district court any proceeds or thing of value which pursuant to the contract is to be paid to the defendant or to another person or entity. The district court shall make deposit of proceeds received pursuant to this section and direct the court clerk to make the deposit of those funds in an escrow account for the benefit of and payable to victims of the crime or the legal representative of any victim of the crime committed by the defendant or to repay a public defender office for legal representation during a criminal proceeding. There is hereby created a lien upon any sum of money or other thing of value payable to anyone pursuant to any contract described in this section, for the purpose of enforcing the forfeiture obligation established herein, which lien may be foreclosed upon. Any person who contracts without fully providing for such forfeiture in compliance with the provisions of this section shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars ($10,000.00) and not to exceed three times the value of the proceeds of the contract, or by imprisonment not exceeding three (3) years, or both such fine and imprisonment.

B. Payments from the escrow account shall be used, in the following order of priority, to satisfy any judgment rendered in favor of a victim or a victim's legal representative, to pay restitution, fines, court costs, and other payments, reparations or reimbursements ordered by the court at the time of sentencing including repayments to a public defender office for legal representation of the defendant and to pay every cost and expense of incarceration and treatment authorized by law as a cost of the defendant.

C. A victim or the legal representative of a victim must file a civil action, in the district court, to recover money against the defendant or the defendant's legal representative within seven (7) years of the filing of the criminal charges against the defendant. The victims and the legal representative of a victim of the crime shall have a priority interest in any proceeds or profits received pursuant to the provisions of this section. If no victim or legal representative of a victim has filed a civil suit within seven (7) years from the filing of the criminal charges against the defendant, any money in the escrow account shall be paid over in the following order of priority:

1. For restitution;

2. For any fine and court costs;

3. For other payments ordered in the sentence;

4. For the costs and expenses of incarceration; and

any remaining money to the Victims' Compensation Revolving Fund. Upon disposition of charges favorable to the defendant, any money in the escrow account shall be paid over to the defendant.

**Section 18. Expungement of records—Persons authorized**

Persons authorized to file a motion for expungement, as provided herein, must be within one of the following categories:

1. The person has been acquitted;

2. The conviction was reversed with instructions to dismiss by an appellate court of competent jurisdiction, or an appellate court of competent jurisdiction reversed the conviction and the prosecuting attorney subsequently dismissed the charge;

3. The factual innocence of the person was established by the use of deoxyribonucleic acid (DNA) evidence subsequent to conviction, including a person who has been released from prison at the time innocence was established;

4. The person has received a full pardon on the basis of a written finding by the Chief of the Choctaw Nation of Oklahoma of actual innocence for the crime for which the claimant was sentenced;

5. The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested are filed and the statute of limitations has expired or the prosecuting agency has declined to file charges;

6. The person was under eighteen (18) years of age at the time the offense was committed and the person has received a full pardon for the offense;

7. The person was charged with one or more misdemeanor or felony crimes, all charges have been dismissed, the person has never been convicted of a felony, no misdemeanor or felony charges are pending against the person, and the statute of limitations for refiling the charge or charges has expired or the prosecuting agency confirms that the charge or charges will not be refiled; provided, however, this category shall not apply to charges that have been dismissed following the completion of a deferred judgment or delayed sentence;

8. The person was charged with a misdemeanor, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a misdemeanor or felony, no misdemeanor or felony charges are pending against the person, and at least two (2) years have passed since the charge was dismissed;

9. The person was charged with a nonviolent felony offense, as set forth in Section 571 of Title 57 of the Oklahoma Statutes, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a misdemeanor or felony, no misdemeanor or felony charges are pending against the person, and at least ten (10) years have passed since the charge was dismissed;

10. The person was convicted of a misdemeanor offense, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the conviction;

11. The person was convicted of a nonviolent felony offense, as defined in Section 571 of Title 57 of the Oklahoma Statutes, the person has received a full pardon for the offense, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the conviction; or

12. The person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the person's name or other identification without the person's consent or authorization.

For purposes of Section 18 and 19 of this title, "expungement" shall mean the sealing of criminal records. Records expunged pursuant to paragraphs 8, 9, 10, 11 and 12 of this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes. Records expunged pursuant to paragraphs 8, 9, 10 and 11 of this section shall be admissible in any subsequent criminal prosecution to prove the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of said records.

**Section 19. Sealing and unsealing of records—Procedure**

A. Any person qualified under Section 18 of this title may petition the district court for the sealing of all or any part of the record, except basic identification information.

B. Upon the filing of a petition or entering of a court order, the court shall set a date for a hearing and shall provide thirty (30) days of notice of the hearing to the prosecuting attorney, the arresting agency, the Oklahoma State Bureau of Investigation, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of such record.

C. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

Any order entered under this subsection shall specify those agencies to which such order shall apply. Any order entered pursuant to this subsection may be appealed by the petitioner, the prosecuting attorney, the arresting agency, or the Oklahoma State Bureau of Investigation to the Choctaw Nation Court of Appeals in accordance with the rules of the Choctaw Nation Court of Appeals. In all such appeals, the Oklahoma State Bureau of Investigation is a necessary party and must be given notice of the appellate proceedings.

D. Upon the entry of an order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person.

E. Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of such records, the Attorney General, or by the prosecuting attorney and only to those persons and for such purposes named in such petition.

F. Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records provide information that has been sealed, including any reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

G. All arrest and criminal records information existing prior to the effective date of this section, except basic identification information, is also subject to sealing in accordance with subsection C of this section.

H. Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

I. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

J. For the purposes of Sections 18 and 19 of this title, district court index reference of sealed material shall be destroyed, removed or obliterated.

K. Any record ordered to be sealed pursuant to this section, if not unsealed within ten (10) years of the expungement order, may be obliterated or destroyed at the end of the ten-year period.

L. Subsequent to records being sealed as provided herein, the prosecuting attorney, the arresting agency, the Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing said records. Upon filing of a petition the court shall set a date for hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

M. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to Section 2608 of the Choctaw Nation Evidence Code.

**Section 19a. Arrest or charge as result of identity theft—Expungement on motion of court, prosecuting attorney or defendant**

Notwithstanding any provision of Section 18 or 19 of The Choctaw Nation Code of Criminal Procedure, when a charge is dismissed because the court finds that the defendant has been arrested or charged as a result of the defendant's name or other identification having been appropriated or used without the defendant's consent or authorization by another person, the court dismissing the charge may, upon motion of the prosecuting attorney or the defendant or upon the court's own motion, enter an order for expungement of law enforcement and court records relating to the charge. The order shall contain a statement that the dismissal and expungement are ordered pursuant to this section. An order entered pursuant to this section shall be subject to the provisions of subsections D through M of Section 19 of this title.

### Section 20. Incarceration of single custodial parents—Child placement

When any person is convicted of an offense against the laws of the Choctaw Nation of Oklahoma and is sentenced to imprisonment, the judge of the district court shall inquire whether such person is a single custodial parent of any minor child. If such person is a single custodial parent, the judge shall inquire into the arrangements that have been made for the care and custody of the child during the period of incarceration of the custodial parent. If the judge finds that no arrangements have been made or such arrangements pose a safety threat to the child, the court shall make a referral to the Department of Children and Family Services, indicating that the defendant has been sentenced to incarceration and that the defendant has sole custody of a minor child or children and has not made appropriate arrangements for the care of the child or children during the period of incarceration.

## Chapter 2. Prevention of Public Offenses

### General Provisions

### Section 31. Who may resist

Lawful resistance to the commission of a public offense may be made:

1. By the party about to be injured.

2. By other parties.

### Section 32. Resistance by party to be injured

Resistance sufficient to prevent the offense may be made by the party about to be injured:

1. To prevent an offense against his person or his family, or some member thereof.

2. To prevent an illegal attempt, by force, to take or injure property in his lawful possession.

**Section 33. Resistance by other person**

Any other person, in aid or defense of the person about to be injured, may make resistance sufficient to prevent the offense.

**Section 34. Intervention by officers**

Public offenses may be prevented by the intervention of the officers of justice:

1. By requiring security to keep the peace.

2. By forming a police in cities and towns, and by requiring their attendance in exposed places.

3. By suppressing riots.

**Section 34.1. Peace officers using excessive force—Definition—Adoption of policies and guidelines**

A. Any peace officer, as defined in Section 648 of the Choctaw Nation Criminal Code, who uses excessive force in pursuance of such officer's law enforcement duties shall be subject to the criminal laws of the Choctaw Nation of Oklahoma to the same degree as any other citizen.

B. As used in Sections 34.1 and 34.2 of this title, "excessive force" means physical force which exceeds the degree of physical force permitted by law or the policies and guidelines of the law enforcement entity. The use of excessive force shall be presumed when a peace officer continues to apply physical force in excess of the force permitted by law or said policies and guidelines to a person who has been rendered incapable of resisting arrest.

C. Each law enforcement entity which employs any peace officer shall adopt policies or guidelines concerning the use of force by peace officers which shall be complied with by peace officers in carrying out the duties of such officers within the jurisdiction of the law enforcement entity.

**Section 34.2. Reporting incidents of excessive force—Contents of report—Failure to report or making materially false statements**

A. Any peace officer, except a newly employed officer during such officer's probationary period, who, in pursuance of such officer's law enforcement duties, witnesses another peace officer, in pursuance of such other peace officer's law enforcement duties in carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd control or riot control, use physical force which exceeds the degree of physical force permitted by law or by the policies and guidelines of the law enforcement entity, shall report such use of excessive force to such officer's immediate supervisor.

B. At a minimum, the report required by this section shall include:

1. The date, time, and place of the occurrence;

2. The identity, if known, and description of the participants;

3. A description of the events and the force used.

C. A copy of an arrest report or other similar report required as a part of a peace officer's duties can be substituted for the report required by this section, as long as it includes the information specified in subsection B of this section. The report shall be made in writing within ten (10) days of the occurrence of the use of such force.

D. Any peace officer who fails to report such use of excessive force in the manner prescribed in this section, or who knowingly makes a materially false statement which the officer does not believe to be true in any report made pursuant to this section, upon conviction, shall be guilty of a misdemeanor.

**Section 35. Persons assisting officers**

When peace officers are authorized to act in the prevention of public offenses, other persons, who, by their command, act in their aid, are justified in so doing.

**Section 36. Civil and criminal immunity for private citizens aiding police officers—Federal law enforcement officers**

Private citizens aiding a peace officer, or other officers of the law in the performance of their duties as peace officers or officers of the law, shall have the same civil and criminal immunity as a peace officer, as a result of any act or commission for aiding or attempting to aid a peace officer or other officer of the law, when such officer is in imminent danger of loss of life or grave bodily injury or when such officer requests such assistance and when such action was taken under emergency conditions and in good faith.

Every federal law enforcement officer, as defined in Section 99 of the Choctaw Nation Criminal Code, while engaged in the performance of official duties as a federal law enforcement officer or when serving as a peace officer for the Choctaw Nation of Oklahoma shall have the same immunity from civil and criminal actions as any other peace officer performing official duties within the Choctaw Nation of Oklahoma. The Choctaw Nation of Oklahoma shall not assume the liability for or provide the legal representation for any federal law enforcement officer serving as peace officers of the Choctaw Nation of Oklahoma.

**Section 36.1. Police dog handlers—Civil liability**

Any dog handler as defined by Section 648 of The Choctaw Nation Criminal Code who uses a police dog in the line of duty in accordance with the policies or standards established by the law enforcement agency for which he is employed shall not be civilly liable for any damages arising from the use of said dog.

**Section 37. Distinctive uniforms for police officers—Exceptions**

The Choctaw Nation may furnish distinctive uniforms for all peace officers and other officers whose duty is to preserve and enforce public peace. When uniforms are furnished to said officers; they are required to wear the same while on duty. This section shall not apply to detectives and other officers required or permitted to wear street apparel.

**Section 37.1. Off-duty law enforcement officers—Powers and duties—Liability**

An "off-duty" law enforcement officer in official uniform in attendance at a public function, event or assemblage of people shall have the same powers and obligations as when he is "on-duty".

Nothing herein shall impose liability upon the Choctaw Nation, by whom the law enforcement officer is employed, for actions of the said officer in the course of his employment by a nongovernmental entity.

**Victim of Rape, Forcible Sodomy or Domestic Abuse**

**Section 40. Definitions**

As used in Sections 40 through 40.3 of this title:

1. "Rape" means an act of sexual intercourse accomplished with a person pursuant to Sections 1111, 1111.1 and 1114 of the Choctaw Nation Criminal Code; and

2. "Forcible sodomy" means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to Sections 886 and 887 of the Choctaw Nation Criminal Code that is punishable under Section 888 of the Choctaw Nation Criminal Code.

**Section 40.2. Victim protection order—Victims not to be discouraged from pressing charges—Rape or forcible sodomy**

A victim protection order for any victim of rape or forcible sodomy shall be substantially similar to a protective order in domestic abuse cases pursuant to Section 60 et seq. of this title. No peace officer shall discourage a victim of rape or forcible sodomy from pressing charges against any assailant of the victim.

**Section 40.3. Emergency temporary order of protection—Domestic violence, stalking, harassment, rape or forcible sodomy**

A. When the court is not open for business, the victim of domestic violence, stalking, harassment, rape or forcible sodomy may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.2 of this title for a petition for protective order in domestic abuse cases;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection; and

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest, or upon identification of the assailant notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person.

B. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 60.2 of this title.

**Section 40.3A. Reporting of rape, sodomy, or sexual assault incidents—Referral of victim to services programs—Production of records to law enforcement officers**

A. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be or is reported by the victim to be rape, rape by instrumentation or forcible sodomy, as defined in Section 1111, 1111.1 or 888 of the Choctaw Nation Criminal Code or any form of sexual assault, shall not be required to report any incident of what appears to be or is reported to be such crimes if:

1. Committed upon a person who is over the age of eighteen (18) years; and

2. The person is not an incapacitated adult.

B. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating a victim shall be required to report any incident of what appears to be or is reported to be rape, rape by instrumentation, forcible sodomy or any form of sexual assault, if requested to do so either orally or in writing by the victim and shall be required to inform the victim of the victim's right to have a report made. A requested report of any incident shall be promptly made orally or by telephone to the nearest law enforcement agency wherein the sexual assault occurred or, if the location where the sexual assault occurred is unknown, the report shall be made to the law enforcement agency nearest to the location where the injury is treated.

C. In all cases of what appears to be or is reported to be rape, rape by instrumentation, forcible sodomy or any form of sexual assault, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be such crimes, shall clearly and legibly document the incident and injuries observed and reported, as well as any treatment provided or prescribed.

D. In all cases of what appears to be or is reported to be rape, rape by instrumentation, forcible sodomy or any form of sexual assault, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be rape, rape by instrumentation, forcible sodomy or any form of sexual assault, shall refer the victim to sexual assault and victim services programs.

E. Every physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional making a report of rape, rape by instrumentation, forcible sodomy or any form of sexual assault pursuant to this section or examining such victims to determine the likelihood of such crimes, and every hospital or related institution in which the victims were examined or treated shall, upon the request of a law enforcement officer conducting a criminal investigation into the case, provide to the officer copies of the results of the examination or copies of the examination on which the report was based, and any other clinical notes, X-rays, photographs, and other previous or current records relevant to the case.

**Reporting by Health Care Professionals of Domestic Abuse**

**Section 58. Mandatory reporting of domestic abuse—Exceptions**

A. Criminally injurious conduct, as defined by the Choctaw Nation Crime Victims Compensation Act, which appears to be or is reported by the victim to be domestic abuse, as defined in Section 60.1 of this title, or domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, as defined in Section 644 of the Choctaw Nation Criminal Code, shall be reported according to the standards for reporting as set forth in subsection B of this section.

B. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse or is reported by the victim to be domestic abuse, as defined in Section 60.1 of

this title, or domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, as defined in Section 644 of the Choctaw Nation Criminal Code, shall not be required to report any incident of what appears to be or is reported to be domestic abuse, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child if:

1. Committed upon the person of an adult who is over the age of eighteen (18) years; and

2. The person is not an incapacitated adult.

C. Any physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating a victim shall be required to report any incident of what appears to be or is reported to be domestic abuse, domestic abuse by strangulation, domestic abuse resulting in great bodily harm, or domestic abuse in the presence of a child, if requested to do so either orally or in writing by the victim. A report of any incident shall be promptly made orally or by telephone to the nearest law enforcement agency wherein the domestic abuse occurred or, if the location where the conduct occurred is unknown, the report shall be made to the law enforcement agency nearest to the location where the injury is treated.

D. In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse shall clearly and legibly document the incident and injuries observed and reported, as well as any treatment provided or prescribed.

E. In all cases of what appears to be or is reported to be domestic abuse, the physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional examining, attending or treating the victim of what appears to be domestic abuse shall refer the victim to domestic violence and victim services programs.

F. Every physician, surgeon, resident, intern, physician assistant, registered nurse, or any other health care professional making a report of domestic abuse pursuant to this section or examining a victim of domestic abuse to determine the likelihood of domestic abuse, and every hospital or related institution in which the victim of domestic abuse was examined or treated shall, upon the request of a law enforcement officer conducting a criminal investigation into the case, provide copies of the results of the examination or copies of the examination on which the report was based, and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to the investigating law enforcement officer.

**Section 59. Immunity from liability—Presumption of good faith**

A. Any physician, surgeon, resident, intern, physician's assistant, registered nurse, or any other health care professional examining, attending, or treating the victim of what appears to be domestic abuse or is reported by the victim to be domestic abuse, participating in good faith and exercising due care in the making of a report shall have immunity from any liability, civil or

criminal, that might otherwise be incurred or imposed. Any participant shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

B. No physician, surgeon, resident, intern, physician's assistant, registered nurse, or any other health care professional examining, attending, or treating any victim who is over the age of eighteen (18) years and is not an incapacitated adult of what appears to be domestic abuse or is reported by the victim to be domestic abuse, shall not be required to make a report of the criminally injurious conduct unless requested by the victim to do so and shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed for not making the report. Any participant shall have the same immunity with respect to participation in any judicial proceeding resulting from the report.

C. For purposes of any proceeding, civil or criminal, the good faith of any physician, surgeon, intern, physician's assistant, registered nurse, or any other health care professional in making a report pursuant to the provisions of Section 58 of this title shall be presumed.

**Protection from Domestic Abuse Act**

**Section 60. Short title**

This act shall be known and may be cited as the "Protection from Domestic Abuse Act".

**Section 60.1. Policy and Purpose**

A. It is the policy of the Choctaw Nation to demonstrate respect for members of the Choctaw Nation and for all people. Respect has long been a tradition of the Choctaw people and is reflected throughout our history and culture. Abuse against persons in a domestic setting has a lasting and detrimental effect on: (1) the individuals who directly experience the abuse; (2) the entire family, as members indirectly experience the abuse; and (3) the Choctaw Nation, as the victims and abusers carry the adverse effects of domestic abuse out of the family and into society itself. It is in the best interest of the Choctaw Nation to protect family members from abuse. Accordingly, the Choctaw Nation will not tolerate domestic abuse perpetrated against any person.

B. It is the intent of the Tribal Council of the Choctaw Nation to exercise the special domestic violence criminal jurisdiction granted to Indian tribes pursuant to 25 U.S.C. 1304 (effective: March 7, 2013) over the Indian Country of the Choctaw Nation of Oklahoma.

C. The purpose of this Act is to protect all persons: men, women, children, elders, disabled persons, and other vulnerable persons, who are within the jurisdiction of the Choctaw Nation, from all forms of domestic abuse as defined by this Act and by Choctaw Nation law. The Act shall be liberally construed and interpreted in order to achieve its purposes.

D. The Act embodies the intent of the Tribal Council to promote the following goals:

1. To recognize the illegal nature of domestic abuse;

2. To provide victims of domestic abuse with the maximum protection from abuse that can be made available under the law;

3. To establish an efficient and flexible remedy that discourages violence against and harassment of persons within a family setting, or others with whom the abuser has continuing contact;

4. To expand the ability of law enforcement officers to assist victims, to enforce existing laws, and to prevent subsequent incidents of abuse;

5. To facilitate the reporting of domestic abuse;

6. To develop a greater understanding of the incidence and causes of domestic abuse by encouraging data collection and evaluation; and

7. To reduce the incidence of domestic abuse, which has a detrimental and lasting effect on the individual, the family, culture, and society.

E. Nothing in this Act shall be construed to alter or diminish the existing authority of the courts of the Choctaw Nation to provide remedies to address domestic abuse and prevent tortious conduct.

**Section 60.2 Definitions**

As used in the Protection from Domestic Abuse Act:

A. “Domestic abuse” means the infliction of any of the following acts upon a victim by an abuser:

1. “Assault”—an attempt to cause bodily harm to another through the use of force, or the creation in another of a reasonable fear of imminent bodily harm;

2. “Battery”—application of force to the person of another resulting in bodily harm or an offensive touching;

3. “Threatening”—words or conduct which place another in fear of bodily harm or property damage;

4. “Coercion”—compelling an unwilling person, through force or threat of force, to:

a. Engage in conduct which the person has a right to abstain from; or

b. Abstain from conduct which the person has a right to engage in;

5. “Confinement”—compelling a person to go where the person does not wish to go or to remain where the person does not wish to remain;

6. “Damage to property”—damaging the property of another;

7. “Emotional abuse”—using threats, intimidation, or extreme ridicule to inflict humiliation and emotional suffering upon another;

8. “Harassment”—conduct which causes emotional alarm and distress to another by shaming, degrading, humiliating, placing in fear, or otherwise abusing personal dignity. Examples of harassing conduct include, but are not limited to the following:

a. Unwelcome visiting or following of a person;

b. Unwelcome sexual propositioning, reference to body functions or attributes, or other comments of a sexual nature;

c. Unwelcome communications, made by phone or by other methods, containing intimidating, taunting, insulting, berating, humiliating, offensive, threatening, or violent language; or

d. Unwelcome lingering around the home, school, or work place of a person.

9. “Sexual abuse”—any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without that person’s consent. Consent cannot be obtained through means such as force, intimidation, duress, fraud, or from a minor under any circumstance;

10. “Stalking” means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

a. following or appearing within the sight of that individual,

b. approaching or confronting that individual in a public place or on private property,

c. appearing at the workplace or residence of that individual,

d. entering onto or remaining on property owned, leased, or occupied by that individual,

e. contacting that individual by telephone,

f. sending mail or electronic communications to that individual, or

g. placing an object on, or delivering an object to, property owned, leased or occupied by that individual;

11. “Other conduct”—any other conduct that constitutes an offense or a tort under the law of the Choctaw Nation.

B. Domestic abuse does not mean a victim’s act of self-defense made in reasonable response to an abuser’s act of domestic abuse.

C. “Victim” means any of the following persons who have been directly affected by domestic abuse as defined in paragraph A of this Section:

1. Any member or former member of the abuser’s household or immediate residence areas;

2. Any person involved in, or formerly involved in, a dating relationship with the abuser;

3. Any person who interacts with the abuser in an employment, academic, recreational, religious, social or other setting;

4. Any child of the abuser;

5. Any relative of the abuser;

6. Any elderly person; or

7. Any vulnerable person. Examples of vulnerability which give rise to the protection of this Act include, but are not limited to, emotional and physical disabilities and impairments.

D. “Abuser” means any person who engages in conduct defined as domestic abuse under paragraph A of this Section against any of the persons defined as victims under paragraph C of this Section.

1. “Any person” includes any non-Indian who:

a. resides in the Indian country of the Choctaw Nation of Oklahoma;

b. is employed in the Indian country of the Choctaw Nation of Oklahoma; or

c. is a spouse, intimate partner, or dating partner of—

i. a member of the Choctaw Nation of Oklahoma; or

ii. an Indian who resides in the Indian country of the Choctaw Nation of Oklahoma.

E. “Protective order” means a court order that restrains the abuser from doing certain acts upon threat of penalty or sanction. Such an order may contain requirements to adjust the relationship of the parties and prevent further abuse. The term includes any emergency, temporary or domestic abuse protective orders issued by the Court.

F. “Dating relationship” means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;

G. “Foreign protective order” means any valid order of protection issued by a court of another tribal or state court;

H. “Victim support person” means a person affiliated with a domestic violence or sexual assault program who provides support and assistance for a person who files a petition under the Protection from Domestic Violence Act; and

I. “Mutual protective order” means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff’s petition restraining the parties from committing domestic abuse against each other. If both parties allege domestic abuse against each other the parties shall do so by separate petition.

**Section 60.3. Protective order—Petition—Complaint requirement for certain stalking victims—Fees**

A. A person may seek a protection order:

1. For herself or himself;

2. On behalf of a minor child;

3. On behalf of any person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order;

4. On behalf of a client in the case of social service, housing, health, legal or law enforcement personnel; or

5. As a next friend of a victim.

B. The person seeking relief may file a petition for a protective order with the district court. If the person seeking relief is a victim of stalking but is not a family or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file a complaint against the defendant with the proper law enforcement agency before filing a petition for a protective order with the district court. The person seeking relief shall provide a copy of the complaint that was filed with the law enforcement agency at the full

hearing if the complaint is not available from the law enforcement agency. Failure to provide a copy of the complaint filed with the law enforcement agency shall constitute a frivolous filing and the court may assess attorney fees and court costs against the plaintiff pursuant to paragraph 2 of subsection C of this section. The filing of a petition for a protective order shall not require jurisdiction or venue of the criminal offense if either the plaintiff or defendant resides in the Choctaw Nation of Oklahoma. If a petition has been filed in an action for divorce or separate maintenance in the District Court of the Choctaw Nation of Oklahoma and either party to the action files a petition for a protective order in the District Court of the Choctaw Nation of Oklahoma, the petition for the protective order may be heard by the court hearing the divorce or separate maintenance action if the court finds that, in the interest of judicial economy, both actions may be heard together; provided, however, the petition for a protective order, including, but not limited to, a petition in which children are named as petitioners, shall remain a separate action and a separate order shall be entered in the protective order action. Protective orders may be dismissed in favor of restraining orders in the divorce or separate maintenance action if the court specifically finds, upon hearing, that such dismissal is in the best interests of the parties and does not compromise the safety of any petitioner.

If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.

2. When the abuse occurs when the court is not open for business, such person may request an emergency temporary order of protection as authorized by Section 60.4 of this title.

B. The petition forms shall be provided by the clerk of the court. The Court of Appeals shall develop a standard form for the petition.

C. 1. Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.

2. If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.

D. The person seeking relief shall prepare the petition or, at the request of the plaintiff, the court clerk or the victim-witness coordinator, victim support person, and court case manager shall prepare or assist the plaintiff in preparing the petition.

E. The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either: the petitioner, defendant, or minor child residing in the residence of the petitioner or defendant. The court may order the defendant to make no contact with the animal and forbid the defendant from taking, transferring,

encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.

F. A court may not require the victim to seek legal sanctions against the defendant including, but not limited to, divorce, separation, paternity or criminal proceedings prior to hearing a petition for protective order.

**Section 60.4 Emergency Temporary Order of Protection—Preliminary Investigation**

A. When the court is not open for business, a victim of domestic abuse may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.3 of this title for a petition for protective order in domestic abuse cases;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection; and

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order, if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest, or upon identification of the assailant notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person.

B. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 60.3 of this title.

**Section 60.5. Emergency ex parte order and hearing—Emergency temporary ex parte order of protection**

A. If a plaintiff requests an emergency ex parte order of protection; the court shall hold an ex parte hearing on the same day the petition is filed, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it

finds necessary to protect the victim from immediate and present danger of domestic abuse. The emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order.

B. An emergency ex parte protective order authorized by this section shall include the name, sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.

C. If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 60.4 of this title, the judge who is notified of the request by a peace officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the close of business on the next day the court is open for business after the order is issued.

**Section 60.6. Service of emergency ex parte order, petition for protective order and notice of hearing—Full hearing—Final protective order**

A. 1. A copy of a petition for a protective order, notice of hearing and a copy of any emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant; however, the court clerk may issue service to any law enforcement agency by facsimile or other electronic transmission for service by any law enforcement agency. Any fee for service of a petition for protective order, notice of hearing, and emergency ex parte order shall only be charged pursuant to subsection C of Section 60.3 of this title.

2. Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. Service may be made upon the defendant by any law enforcement officer, a private investigator, or a private process server.

3. An emergency ex parte order, a petition for protective order, and a notice of hearing shall be valid anywhere within the United States and may be transferred to any law enforcement jurisdiction to effect service upon the defendant.

4. The return of service shall be filed in the office of the court clerk for the District Court of the Choctaw Nation of Oklahoma.

5. When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken pursuant to Section 2-2-101 of the Choctaw Nation Juvenile Code.

B. 1. Within fourteen (14) days of the filing of the petition for a protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of the Protection from Domestic Abuse Act stated in the petition to hold such a hearing, regardless of whether an emergency ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence pursuant to Section 2-2-101 of the Choctaw Nation Juvenile Code, the court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency ex parte order has been previously issued, requested or denied.

2. The court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threat of abuse.

3. If service has not been made on the defendant at the time of the hearing, the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.

4. A petition for a protective order shall, upon the request of the petitioner, renew every fourteen (14) days with a new hearing date assigned until the defendant is served. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time; however, a protective order may be dismissed by court order.

5. Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.

C. 1. At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or the immediate family of the victim but shall not impose any term and condition that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions. The court may order the defendant to obtain domestic abuse counseling or treatment.

2. If the court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Choctaw Nation Juvenile Code should be taken against a juvenile defendant.

D. Final protective orders authorized by this section shall be on a standard form developed by the Choctaw Nation Court of Appeals.

E. 1. After notice and hearing, protective orders authorized by this section may require the defendant to undergo treatment or participate in the court-approved counseling services necessary to bring about cessation of domestic abuse against the victim, but shall not order any treatment or counseling that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions.

2. The defendant may be required to pay all or any part of the cost of such treatment or counseling services. The court shall not be responsible for such cost.

3. Should the plaintiff choose to undergo treatment or participate in court-approved counseling services for victims of domestic abuse, the court may order the defendant to pay all or any part of the cost of such treatment or counseling services if the court determines that payment by the defendant is appropriate.

F. When necessary to protect the victim and when authorized by the court, protective orders granted pursuant to the provisions of this section may be served upon the defendant by any peace officer, sheriff, constable, or policeman or other officer whose duty it is to preserve the peace or by a licensed process server.

G. 1. Any protective order issued pursuant to subsection C of this section shall be:

a. for a fixed period not to exceed a period of five (5) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant; provided, if the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration. The period of incarceration, in any jurisdiction, shall not be included in the calculation of the five-year time limitation, or

b. continuous upon a specific finding by the court of one of the following:

(1) the person has a history of violating the orders of any court or governmental entity,

(2) the person has previously been convicted of a violent felony offense,

(3) the person has a previous felony conviction for stalking, or

(4) a court order for a final Victim Protection Order has previously been issued against the person by any court.

Further, the court may take into consideration whether the person has a history of domestic violence or a history of other violent acts. The protective order shall remain in effect until modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant. If the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration.

2. The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

3. Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.

4. If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence unless, upon further consideration by the court in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

H. 1. It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Protection from Domestic Abuse Act for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.

2. The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment for a period not exceeding one (1) year or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment.

3. A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment for a period not to exceed two (2) years, or by a fine not to exceed Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

I. 1. A protective order issued under the Protection from Domestic Abuse Act shall not in any manner affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation or visitation schedules, child support or division of property or any other like relief, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.

2. When granting any protective order for the protection of a minor child from violence or threats of abuse, the court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

J. 1. A court shall not issue any mutual protective orders.

2. If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.

3. The court may only consolidate a hearing if:

a. the court makes specific findings that:

(1) sufficient evidence exists of domestic abuse against each party, and

(2) each party acted primarily as aggressors, and

b. the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

c. the defendant had no less than forty-eight (48) hours of notice prior to the full hearing on the petition filed by the plaintiff.

K. The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments; however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

**Section 60.7. Access to protective orders by law enforcement agencies**

A. Within twenty-four (24) hours of the return of service of any ex parte or final protective order, the court clerk shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protective order shall be sent within twenty-four (24) hours by the court clerk to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.

B. Any law enforcement agency receiving copies of the documents listed in subsection A of this section shall be required to ensure that other law enforcement agencies have access twenty-four (24) hours a day to the information contained in the documents which may include entry of information about the ex parte or final protective order in the National Crime Information Center database.

**Section 60.8. Violation of ex parte or final protective order or foreign protective order—Penalties**

A. Except as otherwise provided by this section, any person who:

1. Has been served with an ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by a term of imprisonment of not more than one (1) year, or by both such fine and imprisonment; and

2. After a previous conviction of a violation of a protective order, is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be guilty of a felony and shall be punished by a term of imprisonment for not less than one (1) year nor more

than three (3) years, or by a fine of not less than Two Thousand Dollars ($2,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

B. 1. Any person who has been served with an ex parte or final protective order or foreign protective order who violates the protective order and causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars ($5,000.00).

2. Any person who is convicted of a second or subsequent violation of a protective order which causes physical injury or physical impairment to a plaintiff or to any other person named in the protective order shall be guilty of a felony and shall be punished by a term of imprisonment for not less than one (1) year nor more than three (3) years, or by a fine of not less than Three Thousand Dollars ($3,000.00) nor more than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment.

3. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

4. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of the Choctaw Nation Criminal Code.

C. The minimum sentence of imprisonment issued pursuant to the provisions of paragraph 2 of subsection A and paragraph 1 of subsection B of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. In addition to any other penalty specified by this section, the court shall specifically order and require as a condition of a suspended sentence, deferred sentence, or probation that a defendant undergo treatment or participate in counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:

1. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.

2. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of

domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

E. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

F. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

G. In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence.

The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

**Section 60.9. Nationwide validity of orders**

All orders issued pursuant to the provisions of the Protection from Domestic Abuse Act, Section 60 et seq. of this title, shall have validity in all parts of the United States, unless specifically modified or terminated by the court.

**Section 60.10. Seizure and forfeiture of weapons used to commit act of domestic abuse**

A. Each peace officer in the Choctaw Nation of Oklahoma shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by Section 60.1 of this title, provided an arrest is made, if possible, at the same time.

B. After any such seizure, the prosecuting attorney may file a notice of seizure and forfeiture as provided in this section within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.

C. No weapon or instrument seized pursuant to this section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection B of this section, unless authorized by this section. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves

justification, the seized property shall be returned to the owner. Any proceeds gained from this seizure shall be placed in the Crime Victims Compensation Revolving Fund.

**Section 60.11. Warrantless arrest**

A. A peace officer, without a warrant, may arrest and take into custody a person if the peace officer has reasonable cause to believe that:

1. An emergency ex parte or final protective order has been issued and served upon the person, pursuant to the Protection from Domestic Abuse Act;

2. A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides or a certified copy of the order and proof of service is presented to the peace officer as provided in subsection D of this section;

3. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and

4. The person named in the order has violated the order or is then acting in violation of the order.

B. A peace officer, without a warrant, shall arrest and take into custody a person if the following conditions have been met:

1. The peace officer has reasonable cause to believe that a foreign protective order has been issued, pursuant to the law of the state or tribal court where the foreign protective order was issued;

2. A certified copy of the foreign protective order has been presented to the peace officer that appears valid on its face; and

3. The peace officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order.

C. The court shall set a reasonable bail within forty-eight (48) hours after arrest to answer to a charge for violation of the protective order pursuant to Section 60.8 of this title, and shall set a time certain for a hearing on the alleged violation of the order.

D. A copy of a protective order shall be prima facie evidence that such order is valid in the Choctaw Nation of Oklahoma when such documentation is presented to a law enforcement officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the defendant has violated or is then acting in violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.

E. Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a felony punishable by imprisonment for a period not to exceed two (2) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00) and shall, in addition, be liable for any civil damages to the defendant.

**Section 60.12. Protective order—Statement required—Validity**

In addition to any other provisions required by the Protection from Domestic Abuse Act, or otherwise required by law, each ex parte or final protective order issued pursuant to the Protection from Domestic Abuse Act shall have a statement printed in bold-faced type or in capital letters containing the following information:

1. The filing or non-filing of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the prosecutor;

2. No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which the order is valid, every provision of the order shall be in full force and effect unless a court changes the order;

3. The order shall be in effect for a fixed period of five (5) years unless extended, modified, vacated or rescinded by the court or shall be continuous upon a specific finding by the court as provided in subparagraph b of paragraph 1 of subsection G of Section 60.6 of this title unless modified, vacated or rescinded by the court;

4. A violation of the order is punishable by a fine of up to One Thousand Dollars ($1,000.00) or imprisonment for up to one (1) year, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment for twenty (20) days to one (1) year or a fine of up to Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment; and

5. Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition.

**Section 60.13. Foreign protective orders—Presumption of validity—Peace officers immune from liability**

A. It is the intent of the Tribal Council that all foreign protective orders shall have the rebuttable presumption of validity, even if the foreign protective order contains provisions which could not be contained in a protective order issued by a court of the Choctaw Nation of Oklahoma. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared invalid by a court of competent

jurisdiction it shall be given full faith and credit by all peace officers and courts in the Choctaw Nation of Oklahoma.

B. A peace officer of the Choctaw Nation of Oklahoma shall be immune from liability for enforcing provisions of a foreign protective order.

**Section 60.14. Reserved**

**Section 60.15. Domestic abuse victims not to be discouraged from pressing charges—Warrantless arrests of certain persons—Emergency temporary order of protection**

A. A peace officer shall not discourage a victim of domestic abuse from pressing charges against the assailant of the victim.

B. 1. A peace officer may arrest without a warrant a person anywhere, including a place of residence, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 60.2 of this title, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim.

2. An arrest, when made pursuant to this section, shall be based on an investigation by the peace officer of the circumstances surrounding the incident, past history of violence between the parties, statements of any children present in the residence, and any other relevant factors. A determination by the peace officer shall be made pursuant to the investigation as to which party is the dominant aggressor in the situation. A peace officer may arrest the dominant aggressor.

C. When the court is not open for business, the victim of domestic abuse may request a petition for an emergency temporary order of protection. The peace officer making the preliminary investigation shall:

1. Provide the victim with a petition for an emergency temporary order of protection and, if necessary, assist the victim in completing the petition form. The petition shall be in substantially the same form as provided by Section 60.3 of this title for a petition for protective order;

2. Immediately notify, by telephone or otherwise, a judge of the district court of the request for an emergency temporary order of protection and describe the circumstances. The judge shall inform the peace officer of the decision to approve or disapprove the emergency temporary order;

3. Inform the victim whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection and notify the victim that the emergency temporary

order shall be effective only until the close of business on the next day that the court is open for business;

4. Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order. Notification pursuant to this paragraph may be made personally by the officer or in writing. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to such person; and

5. File a copy of the petition and the statement of the officer with the district court immediately upon the opening of the court on the next day the court is open for business.

D. The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 60.3 of this title.

**Section 60.16. Consideration of certain victims' safety prior to release of defendant on bail—Emergency protective and restraining orders—GPS monitoring**

The court shall consider the safety of any and all alleged victims of domestic abuse where the defendant is alleged to have violated a protective order or committed an act of domestic abuse against the alleged victim or victims prior to the release of the alleged defendant from custody on bail. The court, after consideration and to ensure the safety of the alleged victim or victims, may issue an emergency protective order pursuant to the Protection from Domestic Abuse Act. The court may also issue to the alleged victim or victims, an order restraining the alleged defendant from any activity or action from which they may be restrained under the Protection from Domestic Abuse Act. The protective order shall remain in effect until either a plea has been accepted, sentencing has occurred in the case, the case has been dismissed, or until further order of the court dismissing the protective order.

In conjunction with any protective order or restraining order authorized by this section, the court may order the defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device for such term as the court deems appropriate. Upon application of the victim, the court may authorize the victim to monitor the location of the defendant. Such monitoring by the victim shall be limited to the ability of the victim to make computer or cellular inquiries to determine if the defendant is within a specified distance of locations, excluding the residence or workplace of the defendant, or to receive a computer- or a cellular-generated signal if the defendant comes within a specified distance of the victim. The court shall conduct an annual review of the monitoring order to determine if such order to monitor the location of the defendant is still necessary. Before the court orders the use of a GPS device, the court shall find that the defendant has a history that demonstrates an intent to commit violence against the victim, including, but not limited to, prior conviction for an offense under the Protection from Domestic Abuse Act or any other violent offense, or any other evidence that shows by a preponderance of the evidence that the defendant is likely to commit violence against the victim. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

**Section 60.17. Expungement of victim protective orders**

A. Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to the Protection from Domestic Abuse Act in the Choctaw Nation of Oklahoma must be within one of the following categories:

1. An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;

2. The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;

3. The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or

4. The plaintiff or defendant is deceased.

B. For purposes of this section:

1. “Expungement” means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, the court or the prosecuting attorney;

2. “Plaintiff” means the person or persons who sought the original victim protective order (VPO) for cause; and

3. “Defendant” means the person or persons to whom the victim protective order (VPO) was directed.

C. 1. Any person qualified under subsection A of this section may petition the district for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in the Choctaw Nation of Oklahoma or any other tribal or state court for a violation or alleged violation of the protective order that is sought to be expunged.

The petition shall further state the authority pursuant to subsection A of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by certified mail within ten (10) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

2. Upon the filing of a petition, the court shall set a date for a hearing and shall provide at least a thirty-day notice of the hearing to all parties to the protective order, the prosecuting attorney, and

any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.

3. Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, the prosecuting attorney or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order or by the prosecuting attorney to the Choctaw Nation Court of Appeals in accordance with the rules of the Choctaw Nation Court of Appeals.

4. Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.

5. Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of the records or without petition by the prosecuting attorney or a law enforcement agency in the due course of investigation of a crime.

6. Employers, educational institutions, governmental agencies, officials, and employees shall not require, in any application or interview or otherwise, an applicant to disclose any information contained in sealed protective order court records. An applicant need not, in answer to any question concerning the records, provide information that has been sealed, including any reference to or information concerning the sealed information and may state that no such action has ever occurred. The application may not be denied solely because of the refusal of the applicant to disclose protective order court records information that has been sealed.

7. The provisions of this section shall apply to all protective order court records existing in the district court of the Choctaw Nation of Oklahoma on, before and after the effective date of this section.

8. Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court.

9. For the purposes of this section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

10. For the purposes of this act, district court index reference of sealed material shall be destroyed, removed or obliterated.

11. Any record ordered to be sealed pursuant to this section may be obliterated or destroyed at the end of the ten-year period.

12. Nothing herein shall prohibit the introduction of evidence regarding actions sealed pursuant to the provisions of this section at any hearing or trial for purposes of impeaching the credibility of a witness or as evidence of character testimony pursuant to Section 2608 of the Choctaw Nation Evidence Code.

**Section 60.18. Emergency protective order—Confidentiality**

In proceedings before the court pursuant to the Choctaw Nation Children's Code in which a child is alleged to be deprived, the court, after consideration and to ensure the safety of any child brought into tribal custody, may issue against the alleged perpetrator of abuse an emergency protective order pursuant to the Protection from Domestic Abuse Act at the emergency custody hearing or after a petition has been filed alleging that a child has been physically or sexually abused. The protective order shall remain in effect until the case has been dismissed or until further order of the court. All emergency protective orders issued by the court pursuant to this section shall remain confidential and shall not be open to the general public; provided, however, copies of the emergency protective order shall be provided to any law enforcement agency designated by the court to effect service upon the defendant.

**Uniform Interstate Enforcement of Domestic Violence Protection Orders Act**

**Section 60.21. Short title**

This act shall be known and may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act".

**Section 60.22. Definitions**

As used in the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act:

1. "Foreign protection order" means a protection order issued by a tribunal of another state;

2. "Issuing state" means the state whose tribunal issues a protection order;

3. "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent;

4. "Protected individual" means an individual protected by a protection order;

5. "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or anti-stalking laws of the issuing state, to prevent an individual from

engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual;

6. “Respondent” means the individual against whom enforcement of a protection order is sought;

7. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders; and

8. “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

**Section 60.23. Judicial enforcement of foreign protection order**

A. A person authorized by the law of the Choctaw Nation of Oklahoma to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of the Choctaw Nation of Oklahoma. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of the Choctaw Nation of Oklahoma would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of the Choctaw Nation of Oklahoma for the enforcement of protection orders.

B. A tribunal of the Choctaw Nation of Oklahoma may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

C. A tribunal of the Choctaw Nation of Oklahoma shall enforce the provisions of a valid foreign protection order which govern custody and visitation, if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

D. A foreign protection order is valid if it:

1. Identifies the protected individual and the respondent;

2. Is currently in effect;

3. Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

4. Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was

given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

E. A foreign protection order valid on its face is prima facie evidence of its validity.

F. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

G. A tribunal of the Choctaw Nation of Oklahoma may enforce provisions of a mutual foreign protection order which favor a respondent only if:

1. The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

2. The tribunal of the issuing state made specific findings in favor of the respondent.

**Section 60.24. Non-judicial enforcement of foreign protection order**

A. A law enforcement officer of the Choctaw Nation of Oklahoma, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of the Choctaw Nation of Oklahoma. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

B. If a foreign protection order is not presented, a law enforcement officer of the Choctaw Nation of Oklahoma may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

C. If a law enforcement officer of the Choctaw Nation of Oklahoma determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

D. Registration or filing of an order in the Choctaw Nation of Oklahoma is not required for the enforcement of a valid foreign protection order pursuant to this act.

**Section 60.25. Registration of foreign orders—Certified copy—Inaccurate orders—Affidavits—Fee**

A. Any individual may register a foreign protection order in the Choctaw Nation of Oklahoma. To register a foreign protection order, an individual shall:

1. Present a certified copy of the order to the district court clerk; or

2. Present a certified copy of the order to a law enforcement officer and request that the order be registered with the district court clerk.

B. Upon receipt of a foreign protection order, the district court clerk shall register the order in accordance with this section. After the order is registered, the district court clerk shall furnish to the individual registering the order a certified copy of the registered order.

C. The district court clerk shall register an order upon presentation of a copy of a protection order which has been certified by the issuing state. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of the Choctaw Nation of Oklahoma.

D. An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

E. A foreign protection order registered under this act may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

F. A fee may not be charged for the registration of a foreign protection order.

**Section 60.26. Immunity from liability**

The Choctaw Nation of Oklahoma, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this act.

**Section 60.27. Remedies**

A protected individual who pursues remedies under this act is not precluded from pursuing other legal or equitable remedies against the respondent.

**Section 60.28. Uniformity of application and construction**

In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

### Section 60.29. Application to orders issued before effective date of this act

This act applies to protection orders issued before the effective date of this act and to continuing actions for enforcement of foreign protection orders commenced before the effective date of this act. A request for enforcement of a foreign protection order made on or after the effective date of this act, for violations of a foreign protection order occurring before the effective date of this act is governed by this act.

## Chapter 3. Jurisdiction and Commitment

### Limitations

### Section 152. Statute of limitations

A. Prosecutions for criminal violations of any Choctaw Nation laws shall be commenced within three (3) years after the commission of such violation or the discovery of the violation.

B. The discovery of the violation is the date at which a reasonable person knew or should have known that an offense had been committed.

### Magistrates

### Section 161. Magistrate defined

A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.

### Section 162. Who are magistrates

The following persons are magistrates:

1. Judges of the Choctaw Nation Court of Appeals;

2. Judges of the Choctaw Nation District Court.

### Arrest and Taking Before Magistrate

### Section 171. Complaint—Issuance of warrant of arrest

When a complaint, verified by oath or affirmation, is laid before a magistrate, of the commission of a public offense, he or she must, if satisfied therefrom that the offense complained of has been

committed, and that there is reasonable ground to believe that the defendant has committed it, issue a warrant of arrest.

**Section 172. Form of warrant**

A warrant of arrest is an order in writing, in the name of the Choctaw Nation, signed by a magistrate, commanding the arrest of the defendant, and may be substantially in the following form:

The Choctaw Nation of Oklahoma

Warrant of Arrest

To any law enforcement officer, constable, marshal or policeman:

Complaint upon oath having been this day made before me that the crime of (designating it) has been committed, and accusing C. D. thereof, you are therefore commanded forthwith to arrest the above named C. D. and bring him/her before me at (naming the place), or, in case of my absence or inability to act, before the nearest or most accessible magistrate of the Choctaw Nation of Oklahoma or if a magistrate is not available to confine the above named C. D. in a suitable jail or other detention facility.

Dated at ..... this ..... day of ..... 20....

E. F., Judge of the District Court (or as the case may be).

**Section 173. Requisites of warrant**

The warrant must specify the name of the defendant, or if it is unknown to the magistrate, the defendant may be designated therein by any name. It must also state an offense in respect to which the magistrate has authority to issue the warrant, and the time of issuing it, and if the offense charged is bailable, shall fix the amount of bail and an endorsement shall be made on the warrant, to the following effect: “The defendant is to be admitted to bail in the sum of $_____.” and be signed by the magistrate with his or her name of office.

**Section 174. Warrant directed to whom**

The warrant must be directed to and executed by a peace officer.

**Section 175. Where warrant may be served—Who may serve**

All warrants may be served in any geographical part within or without the Choctaw Nation of Oklahoma; and may be served by any peace officer to whom they may be directed or delivered.

**Section 176. Taking defendant before magistrate—Alternative methods**

The officer making an arrest must take the defendant before the magistrate who issued the warrant, or if the magistrate is not available the defendant may be confined in a suitable jail or other detention facility to await appearance before a magistrate. Alternative methods for taking a defendant before a magistrate are permitted as long as the electronic device allows for two-way voice communications between the defendant and the magistrate. Other alternative methods such as a closed circuit television system, telephones, or other electronic devices may also be used as long as any such device allows for two-way voice communications between the defendant and the magistrate.

**Section 177. Reserved**

**Section 178. Proceedings when bail is taken**

On taking bail, the magistrate must certify that fact on the warrant, and deliver the warrant and undertaking of bail to the officer having charge of the defendant. The officer must then discharge the defendant from arrest, and must, without delay, deliver the warrant and undertaking to the clerk of the court at which the defendant is required to appear.

**Section 179. When bail is not given**

If, on the admission of the defendant to bail, bail be not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, or some other magistrate of the Choctaw Nation, as provided in the next section.

**Section 180. Magistrate absent—Taking defendant before another**

When the defendant is required to be taken before the magistrate who issued the warrant, he or she may, if the magistrate be absent or unable to act, be taken before the nearest or most accessible magistrate of the Choctaw Nation or confined in any suitable jail or detention facility until such time as a magistrate of the Choctaw Nation is able to act. The officer must, at the same time, deliver to the magistrate the warrant, with the return endorsed and subscribed by the officer, or deliver the same to the clerk of the court.

**Section 181. Delay in taking before magistrate not permitted**

The defendant must, in all cases, be taken before the magistrate without unnecessary delay.

**Section 182. Reserved**

**Section 183. Reserved**

**Section 184. Reserved**

**Section 185. Reserved**

**Section 186. Arrest defined**

Arrest is the taking of a person into custody, that he may be held to answer for a public offense.

**Section 187. Arrest made by whom**

An arrest may be made:

1. By a peace officer with an arrest warrant,

2. By a peace officer without an arrest warrant; or,

3. By a private person without an arrest warrant.

**Section 188. Aid to officer**

Every person must aid an officer in the execution of a warrant, if the officer requires his or her aid.

**Section 189. Arrest, when made**

If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest may be made only during the hours of six o'clock a.m. to ten o'clock p.m., inclusive, except as otherwise may be directed by the magistrate endorsed upon the warrant. Provided, an arrest on a warrant which charges a misdemeanor offense may be made at any time of the day or night if the defendant is in a public place or on a public roadway.

**Section 190. Arrest, how made**

An arrest is made by an actual restraint of the person of the defendant, or by his or her submission to the custody of the officer.

**Section 190.1. Custody of person arrested without warrant for non-bailable offense**

The person, when arrested without a warrant for an offense not bailable, shall be held in the custody of a jail or other suitable detention facility.

**Section 191. Restraint which is permissible**

The defendant is not to be subjected to any more restraint than is necessary for his arrest and detention.

**Section 192. Officer must show warrant**

The officer must inform the defendant that he or she acts under the authority of the warrant, and must also show the warrant within a reasonable time under the circumstances, if requested.

**Section 193. Resistance, means to overcome**

If, after notice of intention to arrest the defendant, he or she either flee or forcibly resist, the officer may use all necessary means to effect the arrest.

**Section 194. Officer may break open door or window, when**

The officer may break open an outer or inner door or window of a dwelling house, to execute the warrant, if, after notice of his authority and purpose, he be refused admittance.

**Section 195. Officer may break open door or window to liberate self or another arrester**

An officer may break open an outer or inner door or window of a dwelling house for the purposes of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his or her own liberation.

**Section 196. Arrest without warrant by officer**

A peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in the officer's presence;

2. When the person arrested has committed a felony, although not in the officer's presence;

3. When a felony has in fact been committed, and the officer has reasonable cause to believe the person arrested to have committed it;

4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested;

5. When the officer has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident upon the public highways, streets or turnpikes and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act, Sections 2-101 et seq. of the Public Health and Safety Code of the Choctaw Nation of Oklahoma;

6. Anywhere, including a place of residence of the person, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 60.1 of this title, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim; or

7. When a peace officer, in accordance with the provisions of Section 60.11 of this title, is acting on a violation of a protective order offense.

**Section 197. Arrest without warrant, breaking door or window**

To make an arrest, as provided in the last section, the officer may break open an outer or inner door or window of a dwelling house, if, after notice of his office and purpose, he be refused admittance.

**Section 198. Nighttime, arrest of suspected felon**

A peace officer may also at night, without a warrant, arrest any person whom the officer has reasonable cause for believing to have committed a felony, and is justified in making the arrest though it afterward appear that the felony had not been committed.

**Section 199. Authority must be stated on arrest without warrant, when**

When arresting a person without a warrant, the officer must inform the person arrested of the officer's authority and the cause of the arrest, except when the person arrested is in actual commission of a public offense, or is pursued immediately after an escape.

**Section 200. Arrest by bystander—Officer may take defendant before magistrate**

A peace officer may take before a magistrate, a person, who being engaged in a breach of the peace, is arrested by a bystander and delivered to the officer.

**Section 201. Offense committed in presence of magistrate**

When a public offense is committed in the presence of a magistrate, the magistrate may, by a verbal or written order, command any person to arrest the offender, and may thereupon proceed as if the offender had been brought before the magistrate on a warrant of arrest.

**Section 202. Arrest by private person**

A private person may arrest another:

1. For a public offense committed or attempted in his or her presence.

2. When the person arrested has committed a felony although not in his or her presence.

3. When a felony has been in fact committed, and he or she has reasonable cause for believing the person arrested to have committed it.

**Section 203. Private person must inform person of cause of arrest**

A private person must, before making the arrest, inform the person to be arrested of the cause thereof, and require him or her to submit, except when he or she is in actual commission of the offense or when he or she is arrested on pursuit immediately after its commission.

**Section 204. Private person may break door or window**

If the person to be arrested has committed a felony, and a private person, after notice of the intention to make the arrest, be refused admittance, the private person may break open an outer or inner door or window of the dwelling house of the person to be arrested, for the purpose of making the arrest.

**Section 205. Private person making arrest must take defendant to magistrate or officer**

A private person who has arrested another for the commission of a public offense, must, without unnecessary delay, take the person arrested before a magistrate or deliver the person to a peace officer.

**Section 206. Disarming person arrested**

Any person making an arrest must take from the person arrested all offensive weapons which he or she may have about his or her person, and must deliver them to the magistrate before whom the person arrested is taken.

**Section 207. Pursuit and arrest of escaped prisoner**

If a person who has been arrested escapes or is rescued, the person from whose custody the arrested person escaped or was rescued, may immediately pursue and retake the arrested person, at any time, and in any place in the Choctaw Nation of Oklahoma.

**Section 208. Breaking door or window to arrest person escaping**

To take the person escaping or rescued, the person pursuing may, after notice of his or her intention and refusal of admittance, break open an outer or inner door or window of a dwelling house.

**Section 209. Citation to appear—Issuance—Summons—Failure to appear**

A. A law enforcement officer who has arrested a person on a misdemeanor charge without a warrant may issue a citation to such person to appear in court.

B. In issuing a citation hereunder the officer shall proceed as follows:

1. The officer shall prepare a written citation to appear in court, containing the name and address of the cited person and the offense charged, and stating when the person shall appear in court. The time specified in the citation to appear shall be at least five (5) days after the issuance of the citation.

2. One copy of the citation to appear shall be delivered to the person cited, and such person shall sign a duplicate written citation which shall be retained by the officer.

3. The officer shall thereupon release the cited person from any custody.

4. As soon as practicable, the officer shall deliver the duplicate citation to the court clerk.

5. The court clerk shall record the citation and then deliver the duplicate citation to the prosecuting attorney who shall endorse the back of the original and the duplicate copy of the citation and return the same to the court clerk with an indication of whether or not the citation is to be filed or declined.

C. In any case in which the judicial officer finds sufficient grounds for issuing a warrant, he may issue a summons commanding the defendant to appear in lieu of a warrant.

D. If a person summoned fails to appear in response to the summons, a warrant for his arrest shall issue, and any person who willfully fails to appear in response to a summons is guilty of a misdemeanor.

**Uniform Act on Fresh Pursuit**

**Section 221. Authority of officers of another jurisdiction**

Any member of a duly-organized federally recognized Indian tribal law enforcement agency or a state, county, or municipal peace unit of a state of the United States who enters the Choctaw Nation of Oklahoma in fresh pursuit, and continues within the Choctaw Nation of Oklahoma in such fresh pursuit, of a person in order to arrest him on the ground that he is believed to have committed a felony in such other state, shall have the same authority to arrest and hold such

person in custody, as has any member of any duly-organized peace unit of the Choctaw Nation of Oklahoma, to arrest and hold in custody a person on the ground that he is believed to have committed a felony in the Choctaw Nation of Oklahoma.

**Section 222. Taking prisoner before magistrate**

If an arrest is made in the Choctaw Nation of Oklahoma by an officer of another jurisdiction in accordance with the provisions of Section 221 of this title, he shall without unnecessary delay take the person arrested before a magistrate of the Choctaw Nation of Oklahoma, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate be absent or unable to act, the arrested person shall be taken before the nearest or most accessible magistrate of the Choctaw Nation or confined in any suitable jail or detention facility until such time as a magistrate of the Choctaw Nation is able to act.

If the magistrate determines that the arrest was lawful the magistrate shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Chief of the Choctaw Nation of Oklahoma or admit the arrested person to bail for such purpose. If the magistrate determines that the arrest was unlawful the magistrate shall discharge the person arrested.

**Section 223. Arrests otherwise lawful**

Section 221 of this act shall not be construed so as to make unlawful any arrest in the Choctaw Nation of Oklahoma which would otherwise be lawful.

**Section 224. State includes District of Columbia**

For the purpose of this act the word “state” shall include the District of Columbia.

**Section 225. Fresh pursuit defined**

The term “fresh pursuit” as used in this act shall include fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony. It shall also include the pursuit of a person suspected of having committed a supposed felony, though no felony has actually been committed, if there is a reasonable ground for believing that felony has been committed. Fresh pursuit as used herein shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

**Section 226. Reserved**

**Section 227. Partial invalidity**

If any part of this act is for any reason declared void, it is declared to be the intent of this act that such invalidity shall not affect the validity of the remaining portions of this act.

**Section 228. Short title**

This act may be cited as the Uniform Act on Fresh Pursuit.

**Examination and Commitment**

**Section 251. Magistrate must inform defendant of charge and rights**

When the defendant is brought before a magistrate upon an arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform the defendant of the charge against him or her, and of his or her right to the aid of counsel in every stage of the proceedings.

**Section 252. Defendant allowed retained counsel or appointed counsel if indigent**

The magistrate must also allow to the defendant a reasonable time to retain counsel of his or her choosing, and adjourn the proceedings for that purpose. In the event that the defendant is indigent, the court shall appoint counsel for the defendant.

**Section 253. Defendant to be examined**

The magistrate must without a jury, immediately after the appearance of counsel, or if none appear at the request of the defendant, proceed to examine the case. The defendant may be sworn and testify in his own behalf as in civil cases.

**Section 254. Adjournment of examination**

The examination must be completed at one session unless the magistrate for good cause adjourns it.

**Section 255. Disposition of defendant on adjournment**

If an adjournment be had for any cause, the magistrate must commit the defendant to custody to await further proceedings, or discharge the defendant from custody upon sufficient bail, or upon the deposit of money as provided in this code, as security for his or her appearance at the time to which the proceedings are adjourned.

**Section 256. Commitment for further proceedings**

The commitment is by an order signed by the magistrate to the following effect:

The within named A B, having been brought before me and having failed to give bail for his appearance, is committed to the Director of the Department of Public Safety (or to the lawful custodian of inmates for the Choctaw Nation of Oklahoma, as the case may be), to await examination on the ..... day of ....., 20....., at ..... o'clock, at which time you will have his or her body before me at my office.

**Section 257. Duty of magistrate on examination—Subpoenas for witnesses**

Before the preliminary hearing the magistrate must, after the commencement of the prosecution, issue subpoenas for any witnesses required by the prosecutor or the defendant.

**Section 258. Preliminary hearings and proceedings thereon**

First: The witnesses must be examined in the presence of the defendant, and may be cross-examined by the defendant or his or her counsel. On the request of the prosecuting attorney, or the defendant, all the testimony must be taken in shorthand by a court reporter. The prosecuting attorney or the defendant may cause the court reporter to transcribe the proceedings upon payment of the costs. If transcribed, the transcript shall thereafter be filed with the clerk of the district court by the court reporter. In no case shall the court fund be liable for the expense of such transcript, unless ordered by the judge.

Second: The prosecuting attorney may, on approval of the district judge, issue subpoenas in felony cases. A refusal to obey such subpoena or to be sworn or to testify may be punished as contempt on complaint and showing to the district court, or the judges thereof that proper cause exists therefor.

Third: There shall be no preliminary hearings in misdemeanor cases.

Fourth: A magistrate shall have the authority to limit the evidence presented at the preliminary hearing to that which is relevant to the issues of: (1) whether the crime was committed, and (2) whether there is probable cause to believe the defendant committed the crime. Once a showing of probable cause is made the magistrate may terminate the preliminary hearing and enter a bind over order; provided, however, that the preliminary hearing shall be terminated only if the Choctaw Nation made available for inspection law enforcement reports within the prosecuting attorney's knowledge or possession at the time to the defendant five (5) working days prior to the date of the preliminary hearing. The prosecuting attorney shall determine whether or not to make law enforcement reports available prior to the preliminary hearing. If reports are made available, the prosecuting attorney shall be required to provide those law enforcement reports that the prosecuting attorney knows to exist at the time of providing the reports, but this does not include any physical evidence which may exist in the case. This provision does not require the prosecuting attorney to provide copies for the defendant, but only to make them available for

inspection by defense counsel. In the alternative, upon agreement of the Choctaw Nation and the defendant, the court may terminate the preliminary hearing once a showing of probable cause is made.

Fifth: A magistrate shall accept into evidence as proof of prior convictions a noncertified copy of a Judgment and Sentence when the copy appears to the magistrate to be patently accurate. The prosecuting attorney shall make a noncertified copy of the Judgment and Sentence available to the defendant no fewer than five (5) days prior to the hearing. If such copy is not made available five (5) days prior to the hearing, the court shall continue the portion of the hearing to which the copy is relevant for such time as the defendant requests, not to exceed five (5) days subsequent to the receipt of the copy.

Sixth: The purpose of the preliminary hearing is to establish probable cause that a crime was committed and probable cause that the defendant committed the crime.

**Section 259. Order of witnesses**

When the examination of the witnesses on the part of the Choctaw Nation is closed, any witnesses the defendant may produce may be sworn and examined upon proper offer of proof made by defendant and if such offer of proof shows that additional testimony is relevant to the issues of a preliminary hearing.

**Section 260. Court reporter to keep shorthand notes of testimony**

The court reporter must keep the shorthand notes and any recordings taken of the preliminary hearing, if any have been taken, and the statement of the defendant, if any, until they are transcribed and filed with the court clerk. The court reporter must not permit the notes or the recordings to be inspected by any person except a judge of a court having jurisdiction of the offense, the prosecuting attorney, and the attorney for the defendant.

**Section 261. Shorthand notes and recordings, violation of provisions regarding**

A violation of the provisions of the last section is punishable as a misdemeanor.

**Section 262. Discharge of defendant, when**

After hearing the evidence and the statement of the defendant, if the defendant have one, or his testimony if the defendant testifies, if it appears either that a public offense has not been committed, or that a public offense has been committed, but there is not sufficient cause to believe the defendant guilty thereof, the magistrate must order the defendant to be discharged, by an endorsement on the complaint over his signature to the following effect:

There being no sufficient cause to believe the within named A. B. guilty of the offense within mentioned, I order him to be discharged.

**Section 263. Reserved**

**Section 264. Defendant held to answer**

If, however, it appear from the preliminary hearing that any public offense has been committed, and that there is sufficient cause to believe the defendant guilty thereof, the magistrate must in like manner endorse on the complaint an order signed by the magistrate to the following effect:

It appearing to me that the offense named in the within complaint mentioned (or any other offense, according to the fact, stating generally the nature thereof), has been committed, and that there is sufficient cause to believe the within named A. B. guilty thereof. I order that the the defendant be held to answer the same.

**Section 265. Commitment when offense is not bailable**

If the offense be not bailable, the following words or words to the same effect, must be added to the endorsement:

And that the defendant is hereby committed to the Director of the Department of Public Safety (or to the lawful custodian of inmates for the Choctaw Nation of Oklahoma, as the case may be).

**Section 266. When offense is bailable**

If the offense is bailable, and bail is set by the magistrate, the following words, or words to the same effect, must be added to the endorsement mentioned in the second preceding section:

And I have admitted the defendant to bail, to answer, by the undertaking hereto annexed.

**Section 267. If bail is not taken**

If the offense is bailable, and the defendant is admitted to bail, but the bail have not been taken, the following words, or words to the same effect, must be added to such endorsement:

And that the defendant is admitted to bail in the sum of ..... dollars, and be committed to the Director of the Department of Public Safety (or to the lawful custodian of inmates for the Choctaw Nation of Oklahoma, as the case may be), until said bail be given.

**Section 268. Commitment**

If the magistrate order the defendant to be committed as provided in the three preceding sections, he must make out a commitment, signed by the magistrate, with the name of his or her office, and deliver it, with the defendant, to the officer, to whom he is committed, or if that officer be

not present, to a peace officer, who must immediately deliver the defendant into the proper custody, together with the commitment.

**Section 269. Form of commitment**

The commitment must be to the following effect:

The Choctaw Nation of Oklahoma.

Order of Commitment

To the Director of the Department of Public Safety (or to the lawful custodian of inmates for the Choctaw Nation of Oklahoma, as the case may be):

An order having been this day made by me, that A. B. be held to answer upon a charge of (stating briefly the nature of the offense, with time and place as near as may be), you are commanded to receive the defendant into your custody, and detain the defendant until he/she is legally discharged.

Dated at ....., this ..... day of ....., 20....

C ....., D .....

Judge of the District Court (or as the case may be).

**Section 270. Witnesses to give undertaking**

The magistrate may take from each of the material witnesses on the part of the Choctaw Nation, a written undertaking, without surety, to the effect that the witness will appear and testify at the court proceedings to which the complaint is pending. The witnesses will forfeit such sum as the magistrate may fix and determine if he or she fails to appear and testify.

**Section 271. Sureties may be required for witnesses**

When the magistrate is satisfied, by proof on oath, that there is reason to believe that any such witness will not appear and testify, unless security is required, the magistrate may order the witness to enter into a written undertaking, with such sureties and in such sum as the magistrate may deem proper, for his or her appearance, as specified in the last section.

**Section 272. Reserved**

**Section 273. Witness not giving undertaking committed, when**

If a witness, required to enter into an undertaking to appear and testify, either with or without sureties, refuses to comply with the order for that purpose, the magistrate must commit him or her to custody until he or she complies, or is legally discharged.

### Section 274. Subsequent security may be demanded—Arrest of witness

When, however, any material witness on the part of the Choctaw Nation has been discharged on his or her undertaking, without surety, if afterwards, on the sworn application of the prosecuting attorney or other person on behalf of the Choctaw Nation, made to the magistrate or to any judge, it satisfactorily appears that the presence of such witness or any other person on the part of the Choctaw Nation is material or necessary on the trial in court, such magistrate or judge may compel such witness, or any other material witness on the part of the Choctaw Nation, to give an undertaking with sureties, to appear on the said trial and give his or her testimony therein; and, for that purpose, the said magistrate or judge may issue a warrant against such person, under his or her hand, with or without seal, directed to a peace officer, to arrest such person and bring him or her before such magistrate or judge.

### Section 275. Arrested witness may be confined

In case the person so arrested shall neglect or refuse to give said undertaking in the manner required by said magistrate or judge, he or she may issue a warrant of commitment against such person, which shall be delivered to said peace officer, whose duty it shall be to convey such person to the jail mentioned in said warrant, and the said person shall remain in confinement until he or she shall be removed to the court, for the purpose of giving his or her testimony, or until he or she shall have given the undertaking required by said magistrate or judge.

### Section 276. Magistrate discharging or holding defendant must return papers and record to court

When a magistrate has discharged a defendant, or has held the defendant to answer, the magistrate must return immediately to the clerk of the district court, all papers, records, transcripts and recordings of the proceedings.

## Chapter 4. Proceedings After Commitment

### General Provisions

### Section 301. Manner of prosecution of offenses

Every felony must be prosecuted by information in the district court. Misdemeanors must be prosecuted by information, except as otherwise provided by law.

**Section 302. Reserved**

**Section 303. Subscription, endorsement and verification of information—Excusing endorsement**

A. The prosecuting attorney shall subscribe his or her name to informations filed in the district court and endorse thereon the names and last-known addresses of all the witnesses known to the prosecuting attorney at the time of filing the same, if intended to be called by the prosecuting attorney at a preliminary hearing or at trial.

Thereafter, the prosecuting attorney shall also endorse thereon the names and last-known addresses of such other witnesses as may afterwards become known to the prosecuting attorney, if they are intended to be called as witnesses at a preliminary hearing or at trial, at such time as the court may by rule prescribe.

Upon filing of an application by the prosecuting attorney, notice to defense counsel, and hearing establishing need for witness protection or preservation of the integrity of evidence, the district court may excuse witness endorsement, or some part thereof. Such proceedings shall be conducted in camera, and the record shall be sealed and filed in the office of the district court clerk, and shall not be opened except by order of the district court or the court of appeals.

B. Notwithstanding other provisions of law, when a law enforcement officer issues a citation or ticket as the basis for a complaint or information, for a violation of law declared to be a misdemeanor, the citation or ticket shall be properly verified if:

1. The issuing officer subscribes the officer's signature on the citation, ticket or complaint to the following statement:

"I, the undersigned issuing officer, hereby certify and swear that I have read the foregoing information and know the facts and contents thereof and that the facts supporting the criminal charge stated therein are true."

Such a subscription by an issuing officer, in all respects, shall constitute a sworn statement, as if sworn to upon an oath administered by an official authorized by law to administer oaths; and

2. The citation or ticket states the specific facts supporting the criminal charge and the ordinance or statute alleged to be violated; or

3. A complainant verifies by oath, subscribed on the citation, ticket or complaint, that the complainant has read the information, knows the facts and contents thereof and that the facts supporting the criminal charge stated therein are true. For purpose of such an oath and subscription, any law enforcement officer of the Choctaw Nation issuing the citation, ticket or complaint shall be authorized to administer the oath to the complainant.

C. As used in this section, the term "signature" shall include a digital or electronic signature. For the purposes of this subsection:

1. “Digital signature” means a type of electronic signature consisting of a transformation of an electronic message using an asymmetric crypto system such that a person having the initial message and the signer’s public key can accurately determine whether:

(a) The transformation was created using the private key that corresponds to the signer’s public key; and

(b) The initial message has not been altered since the transformation was made.

2. “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

**Section 304. Information may be amended**

An information may be amended in matter of substance or form at any time before the defendant pleads, without leave, and may be amended after plea on order of the court where the same can be done without material prejudice to the right of the defendant; no amendment shall cause any delay of the trial, unless for good cause shown by affidavit.

## Chapter 5. Information

### Requisites and Sufficiency of Information

**Section 400. Information is first pleading**

The first pleading on the part of the Choctaw Nation is the information.

**Section 401. Requisites of information**

The information must contain:

1. The title of the action, specifying the name of the court to which the information is presented, and the names of the parties.

2. A statement of the acts constituting the offense, in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended.

**Section 402. Information must be certain and direct**

The information must be direct and certain as it regards:

1. The party charged.

2. The offense charged.

3. The particular circumstances of the offense charged, when they are necessary to constitute a complete offense.

**Section 403. Designation of defendant by fictitious name**

When a defendant is prosecuted by a fictitious or erroneous name, and in any stage of the proceedings his or her true name is discovered, it must be inserted in the subsequent proceedings, referring to the fact of his or her being charged by the fictitious name mentioned in the information.

**Section 404. Offenses to be charged—Different counts**

The information may charge more than one offense if the offenses are a continuing transaction. Likewise, where the same acts may constitute different offenses, or the proof may be uncertain as to which of two or more offenses the accused may be guilty of, the different offenses may be set forth in separate counts in the same information and the accused may be convicted of either offense, and the court or jury trying the cause may find all or either of the persons guilty of either of the offenses charged, and the same offense may be set forth in different forms or degrees under different counts; and where the offense may be committed by the use of different means, the means may be alleged in the alternative in the same count.

**Section 405. Allegation of time**

The precise time at which the offense was committed need not be stated in the information; but it may be alleged to have been committed at any time before the finding thereof, except where the time is a material ingredient in the offense.

**Section 406. Misdescription of person injured or intended to be injured**

When an offense involves the commission of, or an attempt to commit a private injury, and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured, or intended to be injured, is not material.

**Section 407. Words, how construed**

The words used in an information must be construed in their usual acceptation, in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

**Section 408. Statute not strictly pursued**

Words used in a statute to define a public offense, need not be strictly pursued in the information; but other words conveying the same meaning may be used.

**Section 409. Information, when sufficient**

The information is sufficient if it can be understood therefrom:

1. That it is entitled in a court having authority to receive it, though the name of the court be not stated.

2. That it was presented by a prosecuting attorney of the Choctaw Nation.

3. That the defendant is named, or if his or her name cannot be discovered, that the defendant is described by a fictitious name, with the statement that his or her true name is unknown.

4. That the offense was committed at some place within the jurisdiction of the court, except where the act, though done without the local jurisdiction of the Choctaw Nation, is triable therein.

5. That the offense was committed at some time prior to the time of filing the information.

6. That the act or omission charged as the offense is clearly and distinctly set forth in ordinary and concise language, without repetition, and in such a manner as to enable a person of common understanding to know what is intended.

7. That the act or omission charged as the offense, is stated with such a degree of certainty, as to enable the court to pronounce judgment upon a conviction according to the right of the case.

8. The purpose of the information is to provide notice to the defendant what he or she is to defend against and the information need not list every element of the crime charged for the information to be deemed sufficient. The court may look to the probable cause affidavit; the reports, statements and other evidence provided to the defendant through discover; and to the language of the information itself in order to determine whether or not the information is sufficient to provide the defendant with notice of what he or she is to defend against.

**Section 410. Immaterial informalities to be disregarded**

No information is insufficient, nor can the trial, judgment, or other proceedings thereon be affected, by reason of a defect or imperfection in the matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

**Section 411. Matters which need not be stated**

Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an information.

### Section 412. Pleading a judgment

In pleading a judgment or other determination of, or proceeding before a court or officer of special jurisdiction it is not necessary to state the facts conferring jurisdiction; but the judgment or determination may be stated to have been duly given or made. The facts constituting jurisdiction, however, must be established on the trial.

### Section 413. Pleading private statute

In pleading a private statute, or a right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage, and the court must thereupon take judicial notice thereof.

## Informations for Particular Offenses

### Section 421. Arson—Omission or error in designating owner or occupant

An omission to designate, or error in designating in an information for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the defendant to prepare his or her defense.

### Section 422. Libel, information for

An information for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the information is founded, but it is sufficient to state generally that the same was published concerning him, and the fact that it was so published must be established on the trial.

### Section 423. Forgery, misdescription of forged instrument immaterial, when

When an instrument, which is the subject of an information for forgery, has been destroyed or withheld by the act or procurement of the defendant, and the fact of the destruction or withholding is alleged in the information and established on the trial, the misdescription of the instrument is immaterial.

### Section 424. Perjury, information for

In an information for perjury, or subornation of perjury, it is sufficient to set forth the substance of the controversy or matter in respect to which the offense was committed, and in what court or

before whom the oath alleged to be false was taken; and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the information need not set forth the pleadings, record, or proceedings with which the oath is connected, nor the commission or authority of the court or person before whom the perjury was committed.

### Section 425. Larceny or embezzlement, information for

In an information for the larceny or embezzlement of money, bank notes, certificates of stock or valuable securities, or for a conspiracy to cheat and defraud a person of any such property, it is sufficient to allege the larceny or embezzlement, or the conspiracy to cheat and defraud, to be of money, bank notes, certificates of stock or valuable securities, without specifying the coin, number, denomination or kind thereof.

### Section 426. Obscene literature, information for handling

An information for exhibiting, publishing, passing, selling or offering to sell, or having in possession with such intent, any lewd or obscene book, pamphlet, picture, print, card, paper or writing, need not set forth any portion of the language used or figures shown upon such book, pamphlet, picture, print, card, paper or writing, but it is sufficient to state generally the fact of the lewdness or obscenity thereof.

## Parties Prosecuted

### Section 431. Several defendants

Upon an information against several defendants, any one or more may be convicted or acquitted.

### Section 432. Accessories and principals in felony

The distinction between an accessory before the fact and a principal, and between principals in the first and second degree, in cases of felony, is abrogated, and all persons concerned in the commission of a felony, whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, must be prosecuted, tried and punished as principals, and no additional facts need be alleged in any information against such an accessory than are required in an information against his principal.

### Section 433. Accessory tried independently of principal

An accessory to the commission of a felony may be prosecuted, tried and punished, though the principal felon be neither prosecuted nor tried, and though the principal may have been acquitted.

**Section 434. Compounding a crime—Separate prosecution**

A person may be prosecuted for having, with the knowledge of the commission of a public offense, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon the agreement or understanding, express or implied, to compound or conceal the offense, or to abstain from a prosecution therefor, or to withhold any evidence thereof, though the person guilty of the original offense have not been indicted or tried.

**Joinder of Offenses and of Defendants**

**Section 436. Charging of two or more defendants in same information—Counts**

Two or more defendants may be charged in the same information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, provided that all of the defendants charged together in the same information are alleged to have participated in all of the same acts or transactions charged.

**Section 437. Singular to include the plural**

All laws in this chapter wherein the singular of words is used are hereby amended to include the plural of such words to give effect to the purpose of this act. [FN1]

**Section 438. Trial of two or more informations**

The court may order two or more informations or both to be tried together if the offenses and the defendants, if there is more than one, could have been joined in a single information. The procedure shall be the same as if the prosecution was under such single information.

**Section 439. Relief from prejudicial joinder**

If it appears that a defendant or the Choctaw Nation is prejudiced by joinder of offenses or of defendants in an information or by such joinder for trial together, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide whatever other relief justice requires.

## Chapter 6. Reserved

## Chapter 7. Proceedings Before Trial

### Arraignment and Appearance

#### Section 451. Arraignment

When the information is filed, the defendant must be arraigned thereon before the court in which it is triable.

#### Section 452. Defendant must appear personally

The defendant must be personally present at the arraignment.

#### Section 453. Officer to bring defendant before court

If the defendant be in custody, the court may direct the officer in whose custody he or she is to bring the defendant before it to be arraigned, and the officer must do so accordingly.

#### Section 454. Bench warrant to issue, when

If the defendant has been discharged on bail, or have deposited money instead thereof, and does not appear to be arraigned, the court in addition to the forfeiture of the undertaking of bail or of the money deposited, may direct the clerk to issue a bench warrant for his or her arrest.

#### Section 455. Bench warrant shall issue

The clerk shall issue the bench warrant as directed in the last section.

#### Section 456. Bench warrant, form of, in case of felony

The bench warrant must, if the offense is a felony, be substantially in the following form:

Choctaw Nation of Oklahoma

Bench Warrant

To any sheriff, constable, marshal or policeman:

An information having been filed on the ..... day of ....., 20 ..., in the district court of the Choctaw Nation of Oklahoma, charging C. D. with the crime of ....., (designating it generally)

you are therefore commanded forthwith to arrest the above named C. D., and bring him or her before the court to answer said information; or if the court have adjourned for the term, that you deliver him into the custody of any jail or suitable detention facility.

Given under my hand, with the seal of said court affixed this ..... day of ....., 20 ....

By order of the court.

(Seal) E. F., Clerk.

**Section 457. Bench warrant, fee for issuance of**

For the issuance of each bench warrant for a defendant's failure to pay court costs, fines, fees, or assessments in felony, misdemeanor, or traffic cases, the court clerk shall charge and collect a fee of Five Dollars ($5.00). The fee shall be included in the execution bond amount on the face of the bench warrant which is issued for the defendant's failure to pay and shall be in addition to the delinquent amount owed by the defendant. This fee shall be deposited in the court fund.

**Section 458. Court to fix amount of bail—Endorsement**

If the offense charged is bailable the court, upon directing the bench warrant to issue, must fix the amount of bail and an endorsement must be made on the bench warrant and signed by the clerk, to the following effect:

The defendant is to be admitted to bail in the sum of ..... dollars.

**Section 459. Defendant held when offense not bailable**

The defendant, when arrested under a warrant for an offense not bailable, shall be held in custody by the Director of the Department of Public Safety or the lawful custodian of inmates of the Choctaw Nation of Oklahoma. If the Choctaw Nation or the Director of the Department of Public Safety has contracted for the custody of prisoners in the Choctaw Nation, such contractor shall be required to hold in custody any prisoner delivered to the contractor pursuant to this section.

**Section 460. Bench warrant served nationwide**

The bench warrant may be served in any part of the United States in the same manner as a warrant of arrest.

**Section 461. Reserved**

**Section 462. Defendant committed or bail increased after information**

When the information is for a felony, and the defendant, before the finding thereof, has given bail for his appearance to answer the charge, the court to which the information is presented, or sent or removed for trial, may order the defendant to be committed to actual custody, either without bail, or unless he give bail in an increased amount, to be specified in the order.

**Section 463. Commitment order, execution of**

If the defendant is present when the order is made he must be forthwith committed accordingly. If he is not present, a bench warrant must be issued and proceeded upon in the manner provided in this title.

**Section 464. Reserved**

**Section 465. Arraignment made, how**

The arraignment must be made by the court, or by the clerk or prosecuting attorney, under its direction, and consists in reading the information to the defendant, and asking the defendant whether he or she pleads guilty or not guilty thereto.

**Section 466. Name of defendant**

When the defendant is arraigned he or she must be informed that if the name by which he or she is prosecuted be not his or her true name, he or she must then declare his or her true name or be proceeded against by the name in the information. A defendant may be prosecuted for perjury, false personation, or any other offense of which there is sufficient proof for providing false information regarding his or her name to the court.

**Section 467. Proceedings when defendant gives no other name**

If he gives no other name, the court may proceed accordingly.

**Section 468. Proceedings where another name given**

If the defendant alleges that another name is his or her true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the information may be had against him or her by that name, referring also to the name by which he or she is informed against.

**Section 469. Necessity for filing information after preliminary hearing**

It shall not be necessary to file an information after the preliminary hearing where the complaint or original information satisfies the requirements for an information.

**Section 470. Time for arraignment upon charge of felony**

The arraignment of the defendant in district court after the preliminary hearing shall be held within thirty (30) days after the defendant is ordered held for trial upon the commission of a felony; provided, for good cause, the court may set a later date.

**Pleadings and Motions**

**Section 491. Time to answer information**

If, on the arraignment, the defendant require it, he must be allowed until the next day, or such further time may be allowed him as the court may deem reasonable, to answer the information.

**Section 492. Pleading to information**

If the defendant does not require time, as provided in the last section, or if he or she does, then on the next day, or at such further day as the court may have allowed the defendant, he or she may, in answer to the arraignment, either move the court to set aside the information or he may demur or plead thereto.

**Section 493. Grounds for Setting Aside Information**

The information must be set aside by the court, in which the defendant is arraigned, and upon his motion when it is not endorsed, presented or filed, as prescribed by the statutes, and that fact is known to the defendant at or before the time the jury is sworn to try the cause: Provided, that the defendant shall be conclusively presumed to know matters of record.

**Section 494. Setting Aside the Information—Application and Procedure**

To enable the defendant to make proof of the matter set up as grounds for setting aside the information, the defendant may file his application before the district court setting out and alleging that he is being proceeded against and setting out a copy of his motion and alleging, all under oath, that he is acting in good faith, and praying for an order to examine witnesses in support thereof. The court shall thereupon issue subpoenas to compel any or all witnesses desired to appear before the court at the time named, and shall compel the witnesses to testify fully in regard to the matter and reduce the examination to writing, and certify to the same, and it may be used to support the motion. The mover shall pay the costs of the proceeding. He shall notify the prosecuting attorney at least ten days before he proceeds, of the time and place of taking such testimony, and the prosecuting attorney may be present and cross-examine the witnesses and if need be the case in the district court must be adjourned for that purpose.

**Section 495. Privilege of Witnesses**

All witnesses shall be bound to answer fully, and shall not be answerable for the testimony so given in any way, except for the crime of perjury committed in giving such evidence.

**Section 496. Defendant Precluded from Taking Objections**

If the motion to set aside the information be not made the defendant is precluded from afterwards taking the objections mentioned in the last section.

**Section 497. Hearing on the Motion**

The motion must be heard at the time it is made unless for good cause the court postpones the hearing to another time.

**Section 498. Duty to Immediately Answer Information if Motion is Denied**

If the motion be denied, the defendant must immediately answer to the information, either by demurring or pleading thereto.

**Section 499. Discharge or Exoneration of Bail if Motion is Granted**

If the motion be granted the court must order that the defendant, if in custody, be discharged therefrom, or if admitted to bail, that his bail be exonerated, or if he have deposited money instead of bail, that the money be refunded to him.

**Section 500. Reserved**

**Section 501. Setting Aside Information Does Not Bar Further Prosecution**

An order to set aside an information as provided in this article is no bar to a further prosecution for the same offense.

**Section 502. Defendant's pleadings**

The only pleading on the part of the defendant is either a demurrer or a plea.

**Section 503. Defendant to plead in open court**

Both the demurrer and the plea must be made in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

**Section 504. Demurrer to information**

The defendant may demur to the information when it appears upon the face thereof either:

1. That it does not substantially conform to the requirements of this title.

2. That the facts stated do not constitute a public offense.

3. That the information contains any matter which, if true, would constitute a legal justification or excuse of the offense charged, or other legal bar to the prosecution.

**Section 504.1. Motion to quash for insufficient evidence—Proof—Setting aside of information—Double jeopardy—Denial of motion**

A. In addition to a demurrer to the information, as provided in Section 504 of this title, the defendant may file a motion to quash for insufficient evidence in felony cases after preliminary hearing. The defendant must establish beyond the face of the information that there is insufficient evidence to prove any one of the necessary elements of the offense for which the defendant is charged.

B. The motion to quash for insufficient evidence must be set for hearing on a day certain at the time it is made and notice shall be provided to all parties.

C. The information must be set aside by the court, in which the defendant is formally arraigned, if judgment for the defendant on a motion to quash for insufficient evidence beyond the face of the information is granted.

D. An order to set aside an information on judgment for the defendant on a motion to quash for insufficient evidence, as provided in this section, shall not be a bar to a further prosecution for the same offense. A denial of the motion to quash is not a final order from which a defendant may appeal.

**Section 505. Demurrer to information, requisites of**

The demurrer must be in writing, signed either by the defendant or his counsel, and filed. It must distinctly specify the grounds of the objection to the information, or it must be disregarded.

**Section 506. Hearing on demurrer**

Upon the demurrer being filed, the objections presented thereby must be heard, either immediately or at such time as the court may appoint.

**Section 507. Ruling on demurrer**

Upon considering the demurrer, the court must give judgment either sustaining or overruling it, and an order to that effect must be entered upon the minutes.

**Section 508. Demurrer sustained, effect of**

If the demurrer is sustained, the judgment is final upon the information demurred to, and is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection on which the demurrer is sustained may be avoided in a new information and may direct that a new information be filed.

**Section 509. Demurrer sustained—Defendant discharged or bail exonerated, when**

If the court does not direct the case to be further prosecuted, the defendant, if in custody, must be discharged, or if admitted to bail, his or her bail is exonerated, or if the defendant has deposited money instead of bail, the money must be refunded to him or her.

**Section 510. Proceedings if case resubmitted**

If the court direct that the case be further prosecuted, the same proceedings must be had thereon as are prescribed in this title.

**Section 511. Demurrer overruled, defendant to plead**

If the demurrer be overruled, the court must permit the defendant, at his or her election, to plead, which he or she must do forthwith, or at such time as the court may allow. If the defendant does not plead, judgment may be pronounced against him or her.

**Section 512. Certain objections, how taken**

When the objections mentioned in Section 504 appear upon the face of the information, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the information, or that the facts stated do not constitute a public offense, may be taken after the arraignment of the defendant, or may be taken at the trial, under the plea of not guilty, and in arrest of judgment.

**Section 513. Pleas to information**

There are four kinds of pleas to an information. A plea of:

First, Guilty.

Second, Not guilty.

Third, Nolo contendere, subject to the approval of the court. The legal effect of such plea shall be the same as that of a plea of guilty, but the plea may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based.

Fourth, A former judgment of conviction or acquittal of the offense charged, which must be specially pleaded, either with or without the plea of not guilty.

**Section 514. Pleas to be oral—Entry**

Every plea must be oral and must be entered upon the minutes of the court.

**Section 515. Form of plea**

The plea must be entered in substantially the following form:

1. If the defendant pleads guilty:

The defendant pleads that he or she is guilty of the offense charged in this information.

2. If the defendant pleads not guilty:

The defendant pleads that he or she is not guilty of the offense charged in this information.

3. If the defendant pleads a former conviction or acquittal:

The defendant pleads that he of she has already been convicted (or acquitted, as the case may be), of the offense charged in this information, by the judgment of the court of ..... (naming it), rendered at....(naming the place), on the ..... day of .....

**Section 516. Plea of guilty**

A plea of guilty can in no case be entered, except by the defendant himself or herself, in open court, unless upon an information against a corporation, in which case it can be put in by counsel.

**Section 517. Plea of guilty may be withdrawn**

The court may, at any time before judgment, upon a plea of guilty, permit it to be withdrawn, and a plea of not guilty substituted.

**Section 518. Plea of not guilty, issues on**

The plea of not guilty puts in issue every material allegation in the information.

**Section 519. Plea of not guilty, evidence under**

All matters of fact tending to establish a defense other than specified in the third subdivision of Section 513 may be given in evidence under the plea of not guilty.

**Section 520. Acquittal, what does not constitute**

If the defendant was formally acquitted on the ground of variance between the information and proof, or the information was dismissed upon an objection to its form or substance, or in order to hold the defendant for a higher offense, without a judgment of acquittal, it is not an acquittal of the same offense.

**Section 521. Acquittal, what constitutes**

When, however, the defendant was acquitted on the merits, the defendant is deemed acquitted of the same offense, notwithstanding a defect in form or substance in the information on which he or she was acquitted.

**Section 522. Former acquittal or conviction as bar**

When the defendant shall have been convicted or acquitted upon an information, the conviction or acquittal is a bar to another information for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which the defendant might have been convicted under that information.

**Section 523. Refusal to plead**

If the defendant refuses to answer the information by demurrer or plea, a plea of not guilty must be entered.

**Section 524. Reserved**

**Section 561. Reserved**

**Section 562. Reserved**

**Section 563. Reserved**

**Section 564. Reserved**

**Section 565. Reserved**

**Section 566. Reserved**

**Miscellaneous Provisions**

**Section 581. Issue of fact arises, when**

An issue of fact arises,

1st, upon a plea of not guilty, or,

2nd, upon a plea of a former conviction or acquittal of the same offense.

**Section 582. Issue of fact, how tried**

Issues of fact must be tried by a jury.

**Section 583. Defendant must be present, when**

The defendant must be personally present at the trial, except a trial may be had in abstention when the defendant fails to appear for trial.

**Section 584. Postponement for cause**

When an information is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party, as in civil cases, direct the trial to be postponed to another day in the same or next term.

**Section 585. Postponement for investigation of claimed alibi**

Whenever testimony to establish an alibi on behalf of the defendant shall be offered in evidence in any criminal case in any court of record of the Choctaw Nation of Oklahoma, and notice of the intention of the defendant to claim such alibi, which notice shall include specific information as to the place at which the defendant claims to have been at the time of the alleged offense, shall not have been served upon the prosecuting attorney at or before twenty (20) days prior to the trial of the case, upon motion of the prosecuting attorney, the court may grant a postponement for such time as it may deem necessary to make an investigation of the facts in relation to such evidence.

**Chapter 8. Jury—Formation**

**General Provisions**

**Section 591. Reserved**

**Section 592. Reserved**

**Section 593. Clerk to prepare and deposit ballots**

At the opening of court, the clerk must prepare separate ballots, containing the names of the persons returned as jurors, which must be folded as nearly alike as possible, and so that the same cannot be seen, and must deposit them in a sufficient box.

**Section 594. Names of panel called, when—Attachment for absent jurors**

When the case is called for trial, and before drawing the jury, either party may require the names of all the jurors in the panel to be called, and the court in its discretion may order that an attachment issue against those who are absent; but the court may, in its discretion, wait or not for the return of the attachment.

**Section 595. Manner of drawing jury from box**

Before the name of any juror is drawn, the box must be closed and shaken, so as to intermingle the ballots therein. The clerk must then, without looking at the ballots, draw them from the box.

**Section 596. Disposition of ballots**

When the jury is completed, the ballots containing the names of the jurors sworn must be laid aside and kept apart from the ballots containing the names of the other jurors, until the jury so sworn is discharged.

**Section 597. Disposition of ballots—After jury discharged**

After the jury is so discharged, the ballots containing their names must be again folded and returned to the box, and so on, as often as a trial is had.

**Section 598. Disposition of ballot—When juror is absent or excused**

If a juror be absent when his or her name is drawn or be set aside, or excused from serving on the trial, the ballot containing his or her name must be folded and returned to the box as soon as the jury is sworn.

**Section 599. Jurors summoned to complete jury—Treated as original panel**

The names of persons summoned to complete the jury must be written on distinct pieces of paper, folded each as nearly alike as possible, and so that the name cannot be seen, and must be deposited in the box before mentioned.

**Section 600. Drawing the jury**

The clerk must thereupon, under the direction of the court, publicly draw out of the box so many of the ballots, one after another, as are sufficient to form the jury.

**Section 601. Number of jurors—Oaths—Fines not exceeding One Thousand Dollars**

The jury consists of six persons, chosen as prescribed by law, and sworn or affirmed well and truly to try and true deliverance to make between the Choctaw Nation of Oklahoma and the defendant whom they shall have in charge, and a true verdict to give according to the evidence. Criminal cases wherein the punishment for the offense charged is by a fine only not exceeding One Thousand Dollars ($1,000.00) shall be tried to the court without a jury.

**Section 601a. Alternate jurors—Challenges—Oath or affirmation—Attendance upon trial**

Whenever in the opinion of the court the trial of a cause is likely to be a protracted one, the court may, immediately after the jury is impaneled and sworn, direct the calling of as many as two additional jurors to be known as “alternate juror.” Such alternate jurors shall be drawn from the same source, and in the same manner, and have the same qualifications as regular jurors, and be subject to examination and challenge as such jurors, except that the Choctaw Nation shall be allowed one peremptory challenge to each alternate juror, and all parties defendant shall together, or any one party defendant for and on behalf and by the consent of all parties defendant, be allowed one peremptory challenge to each alternate juror.

The alternate jurors shall be sworn (or affirmed) to well and truly try and true deliverance make of all issues finally submitted to them as jurors in said cause, if any such issue shall be so finally submitted to them, and shall be seated near the regular jurors with equal facilities for seeing and hearing the proceedings in the cause, shall attend at all times upon the trial of the cause in company with the regular jurors and shall obey all orders and admonitions of the court; and if the regular jurors are ordered to be kept in the custody of an officer during the trial of the cause, the alternate jurors shall also be kept with the other jurors, and, except as hereinafter provided, shall be discharged upon the final submission of the cause to the jury.

If, before the final submission of the cause to the jury, a regular juror, or two regular jurors, shall be discharged because of illness, or shall die, the court shall order one or both alternate jurors, as circumstances may require, to take their places in the jury box. After an alternate juror is in the jury box, he shall be subject to the same regulations and requirements as other regular jurors.

**Section 601b. Protracted deliberations—Sequestration of alternate jurors**

If, upon final submission of the cause, the court is of the opinion that the deliberations may be protracted, the court may order the alternate juror or jurors to remain sequestered physically or by admonition not to discuss the case with any person or allow any person to discuss the case with a juror. In such event said alternate or alternates shall remain apart from the jury and not take part in its deliberations, but shall await the call of the court at some place designated by the court until such time as said alternate may be needed. In the event one or two of the jurors shall, during the course of deliberations, be discharged because of illness, or die, the court shall order one or both alternate jurors to take their places in the jury room and deliberations shall then continue.

In the event the cause is a bifurcated, two-stage proceeding, the "final submission of the cause" shall occur when the jury retires to deliberate upon the sentence in the punishment or second stage of the proceedings. In such a trial the alternates shall not be excused prior to commencement of deliberations in the second stage.

**Section 602. Affirmation**

Any juror who is conscientiously scrupulous of taking the oath above described, shall be allowed to make affirmation, substituting for the words "so help you God," at the end of the oath, the following: "This you do affirm under the pains and penalties of perjury."

**Challenges Generally**

**Section 621. Challenges classed**

A challenge is an objection made to the trial jurors, and is of two kinds:

1. To the panel.

2. To an individual juror.

**Section 622. Several defendants—Challenges**

When several defendants are tried together they cannot sever their challenges, but must join therein.

**Challenges to Panel**

**Section 631. Panel defined**

The panel is a list of jurors returned by a peace officer or process server, to serve at a particular court or for the trial of a particular action.

**Section 632. Challenge to panel**

A challenge to the panel is an objection made to all the trial jurors returned, and may be taken by either party.

**Section 633. Challenge to panel, causes for**

A challenge to the panel can be founded only on a material departure from the forms prescribed by law, in respect to the drawing and return of the jury, or on the intentional omission of a peace officer or process server to summon one or more of the jurors drawn, from which the defendant has suffered material prejudice.

**Section 634. When taken—Form and requisites**

A challenge to the panel must be taken before a jury is sworn, and must be in writing, specifying plainly and distinctly the facts constituting the ground of challenge.

**Section 635. Issue on the challenge—Trying sufficiency**

If the sufficiency of the facts alleged as a ground of challenge be denied, the adverse party may except to the challenge. The exception need not be in writing, but must be entered upon the minutes of the court, and thereupon the court must proceed to try the sufficiency of the challenge, assuming the facts alleged therein to be true.

**Section 636. Challenge and exception may be amended or withdrawn**

If, on the exception, the court deems the challenge sufficient, it may, if justice require it, permit the party excepting to withdraw his or her exception, and to deny the facts alleged in the challenge. If the exception be allowed, the court may in like manner, permit an amendment of the challenge.

**Section 637. Denial of challenge—Trial of fact questions**

If the challenge is denied the denial may, in like manner, be oral and must be entered upon the minutes of the court, and the court must proceed to try the questions of fact.

**Section 638. Trial of challenge**

Upon the trial of the challenge, the officers, whether judicial or ministerial, whose irregularity is complained of, as well as any other persons, may be examined to prove or disprove the facts alleged as the ground of challenge.

**Section 639. Bias of officer, challenge for**

When the panel is formed from persons whose names are not drawn as jurors, a challenge may be taken to the panel on account of any bias of the officer who summoned them, which would be good ground of challenge to a juror. Such challenge must be made in the same form, and determined in the same manner as if made to a juror.

**Section 640. Procedure after decision of challenge**

If, upon an exception to the challenge, or a denial of the facts, the challenge be allowed, the court must discharge the jury, and another jury can be summoned for the same term forthwith from the body of the Choctaw Nation or subdivision thereof; or the judge may order a jury to be drawn and summoned in the regular manner. If it be disallowed, the court must direct the jury to be impaneled.

**Challenges to Individual Jurors**

**Section 651. Defendant to be informed of right to challenge**

When veniremen are called as jurors, the defendant must be informed by the court or under its direction, of his right to challenge the jurors, and that he must do so before the jury is sworn to try the cause.

**Section 652. Classes of challenge to individual**

A challenge to an individual juror is either:

First, Peremptory; or,

Second, For cause.

**Section 653. When challenge taken**

It must be taken when the jury is full, and as soon as one person is removed by challenge, another must be put in his or her place, until the challenges are exhausted or waived. The court for good cause shown may permit a juror to be challenged after he is sworn to try the cause, but not after the testimony has been partially heard.

**Section 654. Peremptory challenge defined**

A peremptory challenge may be taken by either party, and may be oral. It is an objection to a potential juror for which no reason need be given, but upon which the court must excuse him or her.

**Section 655. Peremptory challenges—Number allowed**

In all criminal cases the prosecution and the defendant are each entitled to three peremptory challenges:

Provided, that if two or more defendants are tried jointly they shall join in their challenges; provided, that when two or more defendants have inconsistent defenses they shall be granted separate challenges for each defendant as hereinafter set forth.

**Section 656. Challenge for cause**

A challenge for cause may be taken either by the Choctaw Nation or the defendant.

**Section 657. Challenges for cause classified**

It is an objection to a particular juror and is either:

1. General, that the juror is disqualified from serving in any case on trial; or,

2. Particular, that he is disqualified from serving in the case on trial.

**Section 658. Causes for challenge, in general**

General causes of challenges are:

1. A conviction for a felony.

2. A want of any of the qualifications prescribed by law, to render a person a competent juror, including a want of knowledge of the English language as used in the courts.

3. Unsoundness of mind, or such defect in the faculties of the mind or organs of the body as renders him or her incapable of performing the duties of a juror.

**Section 659. Particular causes—Implied bias—Actual bias**

Particular causes of challenge are of two kinds:

1. For such a bias as when the existence of the facts is ascertained, in judgment of law disqualifies the juror, and which is known in this title as implied bias.

2. For the existence of a state of mind on the part of the juror, in reference to the case, or to either party, which satisfies the court, in the exercise of a sound discretion, that he or she cannot try the issue impartially, without prejudice to the substantial rights of the party challenging, and which is known in this title as actual bias.

**Section 660. Implied bias, challenge for**

A challenge for implied bias may be taken for all or any of the following cases, and for no other:

1. Consanguinity or affinity within the fourth degree, inclusive, to the person alleged to be injured by the offense charged or on whose complaint the prosecution was instituted, or to the defendant.

2. Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his or her employment on wages.

3. Being a party adverse to the defendant in a civil action, or having complained against, or been accused by him or her in a criminal prosecution.

4. Having served on a trial jury which has tried another person for the offense charged in the information.

5. Having been one of the jury formerly sworn to try the information and whose verdict was set aside, or which was discharged without a verdict, after the cause was submitted to it.

6. Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

7. Having served on a trial jury which has previously tried the defendant presently on trial for another offense.

**Section 661. Right of exemption from service not cause for challenge**

An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

**Section 662. Cause for challenge must be stated—Form and entry of challenge—Juror not disqualified for having formed opinion, when**

In a challenge for implied bias, one or more of the causes stated in Section 660 of this title must be alleged. In a challenge for actual bias, the cause stated in the second subdivision of Section 659 must be alleged; but no person shall be disqualified as a juror by reason of having formed or expressed an opinion upon the matter or cause to be submitted to such jury, founded upon rumor, statements in public journals, or common notoriety, provided it appears to the court, upon his or her declaration, under oath or otherwise, that the juror can and will, notwithstanding such opinion, act impartially and fairly upon the matters to be submitted to him or her.

The challenge may be oral, but must be entered upon the minutes of the court.

**Section 663. Exception to the challenge**

The adverse party may except to the challenge in the same manner as to a challenge to the panel, and the same proceedings must be had thereon, except that if the exception be allowed the juror must be excluded. The adverse party may also orally deny the facts alleged as the grounds of challenge.

**Section 664. Trial of challenges**

All challenges, whether to the panel or to individual jurors shall be tried by the court, without the aid of triers.

**Section 665. Trial of challenge—Examining jurors**

Upon the trial of a challenge to an individual juror, the juror challenged may be examined as a witness to prove or disprove the challenge, and is bound to answer every question pertinent to the inquiry therein.

**Section 666. Other witnesses**

Other witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of testimony, on the trial of the challenges.

**Section 667. Ruling on challenge**

On the trial of a challenge the court must either allow or disallow the challenge and direct an entry accordingly upon the minutes.

**Section 691. Challenges to individual jurors**

All challenges to individual jurors must be taken, first by the Choctaw Nation and then by the defendant alternately.

**Section 692. Order of challenges for cause**

The challenges of either party for cause need not all be taken at once, but they must be taken separately, in the following order, including in each challenge all the causes of challenge belonging to the same class:

1. To the panel.

2. To an individual juror for a general disqualification.

3. To an individual juror for implied bias.

4. To an individual juror for actual bias.

**Section 693. Peremptory challenges**

If all challenges on both sides are disallowed, either party, first the Choctaw Nation and then the defendant, may take a peremptory challenge, unless the peremptory challenges are exhausted.

## Chapter 9. Witnesses

### General Provisions

**Section 701. Defendant a competent witness—Comment on failure to testify—Presumptions**

In the trial of all informations, complaints and other proceedings against persons charged with the commission of a crime, offense or misdemeanor before any court or committing magistrate in the Choctaw Nation of Oklahoma, the person charged shall at his own request, but not otherwise, be a competent witness, and his failure to make such request shall not create any presumption against him nor be mentioned on the trial; if commented upon by counsel it shall be ground for a new trial.

**Section 702. Reserved**

**Section 703. Subpoena defined**

The process by which the attendance of a witness before a court or magistrate is required, is a subpoena.

**Section 704. Magistrate may issue subpoena**

A magistrate before whom a complaint is laid, or to whom an information is sent, may issue subpoenas, subscribed by the magistrate, for witnesses within the Choctaw Nation, either on behalf of the Choctaw Nation or of the defendant.

**Section 705. Reserved**

**Section 706. Issuing subpoenas for trial**

The prosecuting attorney may issue subpoenas for witnesses within the Choctaw Nation, in support of an information, to appear before the court at which it is to be tried.

**Section 707. Defendant's subpoenas**

The clerk of the court at which an information is to be tried, must, at all times, upon the application of the defendant, and without charge, issue as many blank subpoenas, under the seal of the court and subscribed by the clerk, for witnesses within the Choctaw Nation, as may be required by the defendant.

**Section 708. Form of subpoena**

A subpoena must be substantially in the following form:

THE CHOCTAW NATION OF OKLAHOMA.

SUBPOENA

To .....,

Greetings: You are commanded to appear before C. D., a Judge of the District Court at ..... (or as the case may be), on the ..... (stating day and hour), and remain in attendance on and call of said ..... from day to day and term to term until lawfully discharged, as a witness in a criminal action prosecuted by the Choctaw Nation of Oklahoma against E. F. (or to testify as the case may be).

**Section 709. Continuances, witnesses must take notice of**

Every witness summoned in a criminal action pending in the district court shall take notice of the postponements and continuances and when once summoned in such action shall, without further notice or summons, be in attendance upon such action, as such witness, until discharged by the court.

**Section 710. Subpoena duces tecum**

If the books, papers or documents be required, a direction to the following effect must be continued in the subpoena:

And you are required also to bring with you the following: (Describe intelligently the books, papers or documents required).

**Section 711. Service of subpoena by whom—Return**

A peace officer of the Choctaw Nation must serve any subpoena delivered to him or her for service, either on the part of the Choctaw Nation or of the defendant, and must make a written return of the service, subscribed by the peace officer, stating the time and place of service without delay. A subpoena may, however, be served by any other person.

**Section 712. Service, manner of—Cost**

A. Service of subpoenas for witnesses in criminal actions in the District Court of the Choctaw Nation of Oklahoma shall be made in the same manner as in civil actions pursuant to Section 2004.1 of the Choctaw Nation Code of Civil Procedure.

B. The cost of service of subpoenas shall be borne by the parties unless otherwise ordered by the court.

**Section 713. Reserved**

**Section 714. Reserved**

**Section 715. Subpoena of court clerk**

A court clerk, or deputy court clerk, of the Choctaw Nation of Oklahoma shall not be subject to subpoena unless the court makes a specific finding that appearance and testimony are both material and necessary because of a written objection to the introduction of certified documents made by the defendant or other party prior to trial.

**Section 716. Disobedience to subpoena**

Disobedience to a subpoena, or a refusal to be sworn or to testify, may be punished by the court or magistrate, as for a criminal contempt, in the manner provided in civil procedure.

**Section 717. Disobeying defendant's subpoena—Forfeiture**

A witness disobeying a subpoena issued on the part of the defendant, also forfeits to the defendant the sum of Fifty Dollars ($50.00), which may be recovered in a civil action.

**Section 718. Witnesses—Fees and mileage**

A witness who appears from another state to testify in the Choctaw Nation of Oklahoma in a criminal case or proceeding pursuant to a subpoena issued in accordance with the provisions of the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, Section 721 et seq. of this title, shall be reimbursed for travel and expenses. Such witnesses shall receive the same fees as witnesses who appear from the Choctaw Nation of Oklahoma. If the witness is under eighteen (18) years of age, or requires the assistance of a guardian due to age or infirmity, the travel expenses of one parent or guardian may be reimbursed also. The parent or guardian shall not be entitled to a witness fee. Upon conviction, such fees and mileage shall be taxed as costs, collected and deposited as other costs in the case.

**Section 719. Persons held as material witnesses to be informed of constitutional rights—Fees**

Whenever any person shall be taken into custody by any law enforcement officer to be held as a material witness in any criminal investigation or proceeding, the material witness shall, if not sooner released, be taken before a judge of the district court without unnecessary delay and said judge of the district court shall immediately inform the material witness of the reason he or she is being held in custody, his or her right to the aid of counsel in every stage of the proceedings, and of his or her right to be released from custody upon entering into a written undertaking in the manner provided by law. A witness who is held in custody pursuant to the provisions hereof shall be kept separately and apart from any person, or persons, being held in custody because of being accused of committing a crime. A witness who desires aid of counsel and is unable to obtain aid of counsel by reason of poverty shall be by the court provided counsel at the expense of the court fund. During the time a witness is in custody he or she shall receive the witness fee provided by law for witnesses in criminal cases.

**Section 720. Detainment of person as material witness**

A. If a law enforcement officer has probable cause to believe that a person is a necessary and material witness to a felony and that there is probable cause to believe that the person would be unwilling to accept service of a subpoena or may otherwise refuse to appear in any criminal proceeding, the officer may detain the person as a material witness with or without an arrest warrant; provided, no person may be detained as a material witness to a crime for more than forty-eight (48) hours without being taken before a judge as required by Section 719 of this title; and provided further, no person may be detained as a material witness to a crime who is a victim of such crime.

B. At the time of the detainment, the law enforcement officer shall inform the person:

1. Of the identity of the officer as a law enforcement officer; and

2. That the person is being detained because the officer has probable cause to believe the person:

a. is a material witness to an identified felony, and

b. would be unwilling to accept service of a subpoena or may otherwise refuse to appear in any criminal proceeding.

C. If a material witness is taken into custody pursuant to this section, the provisions of Section 719 of this title shall apply.

## Uniform Act to Secure Attendance of Witnesses from Without a State in Criminal Proceedings

### Section 721. Definitions

"Witness" as used in this act shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding.

The word "state" shall include any territory of the United States and the District of Columbia and any federally recognized Indian tribe.

The word "summons" shall include a subpoena, order or other notice requiring the appearance of a witness.

### Section 722. Summoning witness in the Choctaw Nation of Oklahoma to testify in a state other than Oklahoma

A. If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in the Choctaw Nation of Oklahoma certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within the Choctaw Nation of Oklahoma is a material witness in such prosecution, or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the Choctaw Nation of Oklahoma, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

B. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a

grand jury investigation in the other state, and that the laws of the Choctaw Nation in which the prosecution is pending, or grand jury investigation has commenced or is about to commence, (and of any other state through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

C. If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

D. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the greater of the sum authorized by the law of the Choctaw Nation to which the witness must travel or the sum of fifteen cents ($0.15) a mile for each mile by the ordinary traveled route to and from the court where the prosecution is pending and Twelve Dollars ($12.00) for each day, that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in the Choctaw Nation of Oklahoma.

**Section 723. Witness from another state summoned to testify in the Choctaw Nation of Oklahoma**

A. If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions commenced or about to commence in the Choctaw Nation of Oklahoma or is a material witness in a prosecution pending in a court of record in the Choctaw Nation of Oklahoma, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. Said certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of the Choctaw Nation of Oklahoma to assure his attendance in the courts of the Choctaw Nation of Oklahoma. This certificate shall be presented to a judge of the Choctaw Nation.

B. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the Choctaw Nation of Oklahoma for a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into the Choctaw Nation of Oklahoma, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in the Choctaw Nation of Oklahoma.

C. If the witness is summoned to attend and testify in the Choctaw Nation of Oklahoma he shall be tendered, at the time he is ordered to appear, travel and expenses pursuant to Section 718 of this title for each day he is required to travel and attend as a witness. A judge of a court of record in the Choctaw Nation of Oklahoma may approve travel and expenses pursuant to Section 718 of this title for witnesses who voluntarily appear and testify in a criminal prosecution or grand jury investigation upon proper affidavit and showing.

**Section 724. Exemption from arrest and service of process**

If a person comes into the Choctaw Nation of Oklahoma in obedience to a summons directing him to attend and testify in the Choctaw Nation of Oklahoma, he shall not while in the Choctaw Nation of Oklahoma pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into the Choctaw Nation of Oklahoma under the summons.

If a person passes through the Choctaw Nation of Oklahoma while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, he shall not while so passing through the Choctaw Nation of Oklahoma be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

**Section 725. Uniformity of interpretation**

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

**Section 726. Short title**

This act may be cited as “Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings.”

**Section 727. Constitutionality**

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable.

## Uniform Act to Secure Rendition of Prisoners in Criminal Proceedings

### Section 728. Short title

This act shall be known and may be cited as the “Uniform Act to Secure Rendition of Prisoners in Criminal Proceedings”.

### Section 729. Definitions

As used in this act:

1. “Penal institution” means a jail, prison, penitentiary, house of correction, or other place of penal detention or place where the prisoner is required to reside or report in lieu of penal detention, including, but not limited to house arrest, half-way houses, community or treatment centers;

2. “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory of the United States, or any federally recognized Indian tribe;

3. “Witness” means a person who is confined in a penal institution in a state and whose testimony is desired in another state by a grand jury or other criminal proceeding before a court.

### Section 730. Certificate from another state to compel witness to appear and testify—Notice, order and hearing

A. A judge of a state court of record in another state, which by its laws has made provision for commanding persons confined in penal institutions within that state to attend and testify in the Choctaw Nation of Oklahoma, may certify as follows:

1. There is a criminal proceeding or investigation by a grand jury or other criminal proceeding pending in the court;

2. A person who is confined in a penal institution in the Choctaw Nation of Oklahoma may be a material witness in the proceeding; and

3. His presence will be required during a specified time.

B. Upon presentation of the certificate to any judge having jurisdiction over the person confined and on notice to the prosecuting, the judge in the Choctaw Nation of Oklahoma shall:

1. Fix a time and place for a hearing; and

2. Enter an order directing the person having custody of the prisoner to produce the prisoner at the hearing.

**Section 731. Transfer order—Determinations necessary—Copy of certificate attached—Directions and prescriptions—Responsibilities of requesting jurisdiction**

A. A judge may issue a transfer order if, at the hearing, the judge determines as follows:

1. The witness may be material and necessary to the proceeding;

2. His attendance and testimony are not adverse to the interest of the Choctaw Nation of Oklahoma or to the health or legal rights of the witness;

3. The laws of the state in which he is requested to testify will give him protection from arrest and the service of civil and criminal process due to any act committed prior to his arrival in the state under the order; and

4. The possibility is negligible that the witness may be subject to arrest or to the service of civil or criminal process in any state through which he will be required to pass.

B. If a judge issues an order under subsection A of this section, the judge shall attach to the order a copy of the certificate presented pursuant to Section 730 of this title. The order shall:

1. Direct the witness to attend and testify;

2. Except as provided by subsection C of this section, direct the person having custody of the witness to produce him in the court where the criminal proceeding is pending or where the grand jury is sitting at a time and place specified in the order; and

3. Prescribe such other conditions as the judge shall determine.

C. The judge, in lieu of directing the person having custody of the witness to produce him in the requesting jurisdiction's court, may direct and require in the order as follows:

1. An officer of the requesting jurisdiction to come to the penal institution where the inmate is being confined on behalf of the Choctaw Nation of Oklahoma to accept custody of the witness for physical transfer to the requesting jurisdiction;

2. The requesting jurisdiction provide proper safeguards for his custody while in transit;

3. The requesting jurisdiction be liable for and pay all expense incurred in producing and returning the witness, including but not limited to food, lodging, clothing, and medical care; and

4. The requesting jurisdiction promptly deliver the witness back to the same or another penal institution as specified by the Choctaw Nation of Oklahoma at the conclusion of his testimony.

**Section 732. Transfer order—Additional conditions—Expenses of return of witness—Effective date**

A. An order to a witness and to a person having custody of the witness shall provide for the return of the witness at the conclusion of his testimony, proper safeguards for his custody, and reimbursement or prepayment by the requesting jurisdiction for all expenses incurred in the production and return of the witness.

B. The order may prescribe any other condition the judge determines to be proper or necessary.

C. The judge shall not require prepayment of expenses if the judge directs and requires the requesting jurisdiction to accept custody of the witness at the penal institution of the Choctaw Nation of Oklahoma in which the witness is confined and to deliver the witness back to the same or another penal institution of the Choctaw Nation of Oklahoma as specified by the Choctaw Nation Director of Public Safety at the conclusion of his testimony.

D. An order does not become effective until the judge of the state requesting the witness enters an order directing compliance with the conditions prescribed.

**Section 733. Act inapplicable to certain persons**

This act does not apply to a person in the Choctaw Nation of Oklahoma who is confined due to mental illness.

**Section 734. Certificate from the Choctaw Nation of Oklahoma to another state to compel prisoner to appear and testify—Contents—Presentation—Notice to attorney general of other state**

A. If a person confined in a penal institution in any other state may be a material witness in a criminal proceeding pending in a court of record in the Choctaw Nation of Oklahoma, a judge of the court may certify as follows:

1. There is a criminal proceeding pending in this court;

2. A person who is confined in a penal institution in the other state may be a material witness in the proceeding or investigation; and

3. His presence will be required during a specified time.

B. The judge of the court in the Choctaw Nation of Oklahoma shall:

1. Present the certificate to a judge of a court of record in the other state having jurisdiction over the prisoner confined; and

2. Give notice to the attorney general of the state in which the prisoner is confined, that the prisoner’s presence will be required.

### Section 735. Order directing compliance with terms and conditions of order from another state

A judge of the court in the Choctaw Nation of Oklahoma may enter an order directing compliance with the terms and conditions of an order specified in a certificate pursuant to Section 730 of this title and entered by the judge of the state in which the witness is confined.

### Section 736. Immunity from arrest and civil or criminal process

If a witness from another state comes into or passes through the Choctaw Nation of Oklahoma under an order directing him to attend and testify in this or any other state, while in the Choctaw Nation of Oklahoma pursuant to the order, he shall not be subject to arrest or the service of civil or criminal process because of any act committed prior to his arrival in the Choctaw Nation of Oklahoma under the order.

### Section 737. Construction of act

This act shall be so construed as to effect its general purpose to make uniform the laws of those states which enact it.

## Chapter 10. Evidence and Depositions

### Evidence Generally

### Section 741. Overt act in conspiracy

Upon a trial for conspiracy, in a case where an overt act is necessary to constitute the offense, the defendant cannot be convicted unless one or more overt acts be expressly alleged in the information, nor unless one or more of the acts alleged be proved; but any other overt act, not alleged in the information may be given in evidence.

### Section 742. Accomplice, testimony of

A conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendant with the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

### Section 743. False pretenses, evidence of

Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person to a written instrument, or having obtained from any person any money, personal property or valuable thing, the defendant cannot be convicted if the false pretense was expressed in language unaccompanied by a false token or writing, unless the pretense, or some note or memorandum thereof, be in writing either subscribed by, or in the handwriting of the defendant, or unless the pretense be proven by the testimony of two witnesses, or that of one witness and corroborating circumstances. But this section does not apply to prosecution for falsely representing or personating another, and in such assumed character, marrying or receiving money or property.

**Section 744. Reserved**

**Section 745. Reserved**

**Section 746. Bigamy, proof on trial for**

Upon a trial for bigamy, it is not necessary to prove either of the marriages by the register, certificate or other record evidence thereof, but the same may be proved by such evidence as is admissible to prove a marriage in other cases, and when the second marriage took place out of the Choctaw Nation, proof of that fact accompanied with proof of cohabitation thereafter in the Choctaw Nation of Oklahoma, is sufficient to sustain the charge.

**Section 747. Forgery of bill or note of corporation or bank, proof on trial for**

Upon a trial for forgery any bill or note purporting to be a bill or note of an incorporated company or bank, or for passing or attempting to pass, or having in possession with intent to pass, any such forged bill or note, it is not necessary to prove the incorporation of such bank or company by the charter or act of incorporation, but it may be proved by general reputation, and persons of skill are competent witnesses to prove that such bill or note is forged or counterfeited.

**Section 748. Perjury in court, evidence as to**

In cases of perjury, where the perjury is charged to have been committed in a court, it shall be sufficient to show that the oath was administered by any officer of the court authorized so to do, or that the defendant testified and gave his testimony as under oath, or if the question be in doubt as to what particular officer administered the oath, it may be shown that it was administered by any officer authorized so to do.

**Section 749. Sworn statements taken by prosecuting attorney or peace officer of persons having knowledge of criminal offense—Use**

A. In the investigation of a criminal offense, the prosecuting attorney or any peace officer may take the sworn statement of any person having knowledge of such criminal offense. Any person

charged with a crime shall be entitled to a copy of any such sworn statement upon the same being obtained.

B. If a witness in a criminal proceeding gives testimony upon a material issue of the case contradictory to his previous sworn statement, evidence may be introduced that such witness has previously made a statement under oath contradictory to such testimony.

**Section 750. Reserved**

**Section 751. Admission of findings—Laboratory and medical examiner's reports—Release of controlled dangerous substances—Compelled attendance in court of report preparers**

A. At any hearing prior to trial or at a forfeiture hearing:

1. A report of the findings of the laboratory of the Oklahoma State Bureau of Investigation;

2. The report of investigation or autopsy report of a medical examiner;

3. A laboratory report from a forensic laboratory operated or contracted by the Choctaw Nation of Oklahoma, or from a laboratory performing analysis at the request of a forensic laboratory operated by the Choctaw Nation of Oklahoma;

4. A report from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or a electronic methamphetamine precursor tracking service provider as to the existence or status of any license or permit to sell, transfer, or possess precursor substances or any report containing data collected or submitted to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Central Repository; or

5. A report from the Department of Public Safety as to the handling and storage of evidence, which has been made available to the accused by the office of the prosecuting attorney at least five (5) days prior to the hearing, with reference to all or any part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If a report is deemed relevant by the Choctaw Nation or the accused, the court shall admit the report without the testimony of the person making the report, unless the court, pursuant to subsection C of this section, orders the person making the report to appear. If the accused is not served with a report, by the prosecuting attorney, within five (5) days prior to a hearing, the accused may be allowed a continuance of the portion of the hearing to which the report is relevant, to allow at least five (5) days' preparation subsequent to the prosecuting attorney's furnishing of the report.

B. When any alleged controlled dangerous substance has been submitted to a laboratory for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of the Choctaw Nation of Oklahoma, no portion of such substance shall be released to any other person or laboratory without an order of a district court. The defendant shall additionally be required to submit to the

court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

C. For purposes of the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated or contracted by the Choctaw Nation of Oklahoma or a report from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control as to the existence or status of any license or permit to sell, transfer, or possess precursor substances:

1. The court, upon motion of the Choctaw Nation or the accused, shall order the attendance of any person preparing a report submitted as evidence in any hearing prior to trial or forfeiture hearing, when it appears there is a substantial likelihood that material evidence not contained in such report may be produced by the testimony of the person having prepared the report;

2. The motion shall be filed and notice of the hearing on the motion to order the attendance of the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision or control shall be given to the medical examiner's office. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required; and

3. If within five (5) days prior to the hearing or during a hearing a motion is made pursuant to this subsection requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the medical examiner's office, the motion is heard, and, if sustained, testimony ordered can be given.

**Section 752. DNA profile—Use as evidence—Notification of defendant**

A. As used in this section:

1. "Deoxyribonucleic Acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual; and

2. "DNA Profile" means an analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information.

B. 1. At any hearing prior to trial or at a forfeiture hearing, a report of the findings of a laboratory report from a forensic laboratory operated or contracted by the Choctaw Nation of Oklahoma, or from a laboratory performing analysis at the request of a forensic laboratory operated by the Choctaw Nation of Oklahoma, regarding DNA Profile, which has been made available to the accused by the office of the prosecuting attorney at least five (5) days prior to the hearing, when certified as correct by the persons making the report, shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If a report is deemed relevant by the Choctaw Nation or the accused, the court shall admit the report without the testimony of the person making the report, unless the court, pursuant to this section, orders the person making the report to appear. If the accused is not served with a report, by the

prosecuting attorney, at least five (5) days prior to a hearing, the accused may be allowed a continuance of the portion of the hearing to which the report is relevant, to allow at least five (5) days' preparation subsequent to the furnishing of the report by the prosecuting attorney.

2. The court, upon motion of the Choctaw Nation or accused, shall order the attendance of any person preparing such a report submitted as evidence in any hearing prior to trial or forfeiture hearing, when it appears there is a substantial likelihood that material evidence not contained in the report may be produced by the testimony of the person having prepared the report. The motion shall be filed and notice given of the hearing on the motion to order the attendance of the person having prepared the report. A hearing shall be held and, if the motion is sustained, an order issued giving not less than five (5) days' prior notice to the time when the testimony shall be required. If, within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this subsection requiring a person having prepared a report to testify, the court may hear the report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person having prepared the report, the motion is heard, and, if sustained, testimony ordered can be given.

C. If the Choctaw Nation decides to offer evidence of a DNA profile in any trial on the merits, the Choctaw Nation shall, at least fifteen (15) days before the criminal proceeding, notify in writing the defendant or the defendant's attorney and mail, deliver, or make available to the defendant or the defendant's attorney a copy of any report or statement to be introduced that has not previously been made available to the defendant or the defendant's attorney pursuant to subsection B of this section.

**Conditional Examination of Witnesses**

**Section 761. Conditional examination of witnesses**

When a defendant has been held to answer a charge for a public offense, the defendant or the Choctaw Nation of Oklahoma may, either before or after an information is filed, have witnesses examined conditionally on his behalf as prescribed in this act, and not otherwise.

**Section 762. Conditional examinations in certain cases**

When a material witness in any criminal case is about to leave the Choctaw Nation, or is so sick or infirm as to afford reasonable grounds for apprehending that he will be unable to attend the trial, the defendant or the Choctaw Nation of Oklahoma may apply for an order that the witness be examined conditionally.

**Section 763. Affidavit on application for conditional examination**

The application must be made upon affidavit stating:

First. The nature of the offense charged.

Second. The status of the proceedings in the action.

Third. The name and residence of the witness, and that his testimony is material to the defense of the action.

Fourth. That the witness is about to leave the Choctaw Nation, or is so sick or infirm as to afford reasonable grounds for believing that he will not be able to attend the trial.

**Section 764. Application made to court or judge—Notice**

The application may be made to the court or to a judge thereof, and must be made upon fifteen (15) days' notice to the counsel for the opposing party.

**Section 765. Order for examination—Testimony by alternative method**

If the court or judge is satisfied after a hearing that the examination of the witness is necessary an order must be made that the witness be examined conditionally at a specified time and place. If the witness is a child or a vulnerable adult, the court can allow the witness to testify through an alternative method pursuant to the provisions of Section 2611.2 of the Choctaw Nation Code of Civil Procedure.

1. "Child" as used in this section shall mean a witness under thirteen (13) years of age.

2. "Vulnerable adult" as used in this section shall mean an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

**Section 766. Examination before magistrate or certified court reporter**

The order must direct that the examination be taken before a magistrate named therein or upon agreement of both the Choctaw Nation and defendant before a certified court reporter. The defendant must be present for the examination to proceed, unless the presence of the defendant is waived by both parties. The opposing party shall have the right to cross examine any witness conditionally examined.

**Section 767. When examination shall not proceed**

If the prosecuting attorney or other counsel appear on behalf of the people, and it is shown to the satisfaction of the magistrate by affidavit or other proof, or on examination of the witness, that he is not about to leave the Choctaw Nation, or is not sick or infirm, or that the application was

made to avoid the examination of the witness on trial, the examination cannot take place; otherwise, it must proceed.

**Section 768. Attendance of witness enforced, how**

The attendance of the witness may be enforced by subpoena issued by the magistrate before whom the examination is to be taken, or from the court where the trial is to be had.

**Section 769. Taking and authentication of testimony**

The testimony given by the witness must be taken down by a certified court reporter, and for that purpose he may appoint a court reporter. The testimony of the witness must be authenticated in the following form:

1. It must state the name of the witness, his place of residence and his business or profession.

2. It must contain the questions put to the witness and his answers thereto.

3. If the witness declines answering a question, that fact with the ground on which the answer was declined must be stated.

5. The reporter shall within thirty (30) days, unless an extension be granted for good cause shown, after the close of such examination transcribe such examination, and certify and deliver the same to the clerk of the court in which the action is pending or may come for trial.

**Section 770. Transcript read into evidence, when—Objections to questions therein**

The transcript of the examination or a certified copy thereof may be read into evidence by either party on the trial if it appears that the witness is unable to attend by reason of his death, insanity, sickness, or infirmity, or of his continued absence from the Choctaw Nation. Upon reading the transcript into evidence, the same objections may be taken to a question or answer contained therein as if the witness had been examined orally in court.

**Section 771. Prisoner, examination of—Oath**

When a material witness for a defendant under a criminal charge is a prisoner in a prison or jail other than one of the Choctaw Nation, his examination may be taken in the same manner as a witness who is so sick or infirm as to afford reasonable grounds for believing that he will not be able to attend the trial; and the foregoing provisions of this act, so far as they are applicable, govern in the application for, and in the taking and use of such examinations, such examination may be taken before any magistrate of the Choctaw Nation of Oklahoma, or of a court of record in the county in which the jail or prison is situated. Every officer before whom testimony shall be taken by virtue hereof, shall have authority to administer, and shall administer an oath to the witness, that his testimony shall be the truth, the whole truth and nothing but the truth.

## Chapter 11. Dismissal of Prosecution

### Section 812. Right to speedy trial—Time limits

A. If any person charged with a crime and held in jail solely by reason thereof is not brought to trial within one (1) year after arrest; the court shall set the case for immediate review as provided in the next section to determine if the right of the accused to a speedy trial is being protected.

B. If any person charged with a felony crime who is held to answer on an appearance bond is not brought to trial within eighteen (18) months after arrest; the court shall set the case for immediate review as provided in the next section to determine if the right of the accused to a speedy trial is being protected.

C. In the event a mistrial is declared or a conviction is reversed on appeal, the time limitations provided for in this section shall commence to run from the date the mistrial is declared or the date of the mandate of the Court of Appeals.

### Section 813. Right to speedy trial—Review process

A. Whenever the court finds that a case should be reviewed to determine if the right of an accused to a speedy trial is being protected, the court shall:

1. Issue notice to the prosecuting attorney, the accused, and the attorney for the accused that the case will be reviewed by the court at a date and time which is not less than ten (10) days nor more than twenty (20) days from the date of the notice. Each party shall have the opportunity to present evidence or legal authority in support of its position; and

2. Take evidence from both parties regarding the appropriateness of the cause for the delay. At the hearing, the court shall consider whether the delay has occurred for any of the following reasons:

a. the delay is the result of the application of the accused or an attorney on behalf of the accused,

b. the delay is the result of the fault of the accused or the attorney for the accused,

c. the accused is incompetent to stand trial,

d. a proceeding to determine the competency of the accused to stand trial is pending and a determination cannot be completed within the time limitations fixed for trial,

e. there is material evidence or a material witness which is unavailable and that reasonable efforts have been made to procure such evidence or witness, and there are reasonable grounds to

believe that such evidence or witness can be obtained and trial commenced within a reasonable time,

f. the accused is charged as a codefendant or coconspirator and the court has determined that the codefendants or coconspirators must be tried before separate juries taken from separate jury panels,

g. the court has other cases pending for trial that are for persons incarcerated prior to the case in question, and the court does not have sufficient time to commence the trial of the case within the time limitation fixed for trial,

h. the court, the prosecuting attorney, accused, or the attorney for the accused is incapable of proceeding to trial due to illness or other reason and it is unreasonable to reassign the case, and

i. due to other reasonable grounds the court does not have sufficient time to commence the trial of the case within the time limit fixed for trial.

B. If, after hearing all the evidence and the legal arguments properly submitted, the court finds by a preponderance of the evidence that the Choctaw Nation is not proceeding with due diligence, that none of the exceptions set out in paragraph 2 of subsection A of this section justify additional delay and the right of the accused to a speedy trial has been violated, the court shall dismiss the case.

C. If a preliminary hearing has been held, the case may be re-filed, unless the applicable statute of limitations has expired, upon a showing of newly discovered evidence which could not have been discovered prior to trial.

D. If a preliminary hearing has not been held, the case may be re-filed, upon good cause shown, unless any applicable statute of limitations has expired.

E. If, after hearing all the evidence and the legal arguments properly submitted, the court finds that the right of the accused to a speedy trial has not been violated, the court shall set the case for review in four (4) months. If the case is still pending after the four-month period, the court shall conduct another review. The four-month review of pending cases shall be a continuing responsibility of the court until final disposition of the case.

**Section 814. Effect of dismissing action**

If the court direct the action to be dismissed, the defendant must, if in custody, be discharged therefrom, or if admitted to bail, his bail is exonerated, or money deposited instead of bail must be refunded to him.

**Section 815. Dismissal by court or on prosecuting attorney's application**

The court may, either of its own motion or upon the application of the prosecuting attorney, and in the furtherance of justice, order an action to be dismissed; but in that case the reasons of the dismissal must be set forth in the order, which must be entered upon the minutes.

### Section 816. Nolle prosequi abolished

The entry of a nolle prosequi is abolished, and the prosecuting attorney cannot discontinue or abandon a prosecution for a public offense, except as provided in the last section.

### Section 817. Dismissal not a bar to another prosecution

An order for the dismissal of the action, as provided in this chapter, is not a bar to any other prosecution for the same offense.

## Chapter 12. Trial

### Section 831. Order of trial proceedings

The jury having been impaneled and sworn, the trial must proceed in the following order:

1. If the information is for a felony, the prosecuting attorney must read it, and state the plea of the defendant to the jury. In other cases this formality may be dispensed with.

2. The prosecuting attorney must open the case and offer the evidence in support of the information.

3. The defendant or defendant's counsel shall give an opening statement immediately after the opening statement of the prosecuting attorney unless the defendant affirmatively reserves the opening statement until the prosecuting attorney has rested the Choctaw Nation's case. The defense may offer evidence after the close of the Choctaw Nation's case.

4. The parties may then, respectively, offer rebutting testimony only, unless the court for good reason, in furtherance of justice, or to correct an evident oversight, permit them to offer evidence upon their original case.

5. When the evidence is concluded, the attorneys for the prosecution may submit to the court written instructions. If the questions of law involved in the instructions are to be argued, the court shall direct the jury to withdraw during the argument, and after the argument, must settle the instructions, and may give or refuse any instructions asked, or may modify the same as he deems the law to be. Instructions refused shall be marked in writing by the judge, if modified; modification shall be shown in the instruction. When the instructions are thus settled, the jury, if sent out, shall be recalled and the court shall thereupon read the instructions to the jury.

6. Thereupon, unless the case is submitted to the jury without argument, the counsel for the Choctaw Nation shall commence, and the defendant or his counsel shall follow, then the counsel

for the Choctaw Nation shall conclude the argument to the jury. During the argument the attorneys shall be permitted to read and comment upon the instructions as applied to the evidence given, but shall not argue to the jury the correctness or incorrectness of the propositions of law therein contained. The court may permit one or more counsel to address the jury on the same side, and may arrange the order in which they shall speak, but shall not without the consent of the attorneys limit the time of their arguments. When the arguments are concluded, if the court be of the opinion that the jury might be misled by the arguments of counsel, he may to prevent the same further instruct the jury. All instructions given shall be in writing unless waived by both parties, and shall be filed and become a part of the record in the case.

**Section 832. Court to decide the law**

The court must decide all questions of law which arise in the course of the trial.

**Section 833. Province of jury in libel case**

On the trial of an information for libel, the jury shall determine the facts under the instructions of the court as in other cases.

**Section 834. Jury limited to questions of fact**

On the trial of an information, questions of law are to be decided by the court, and the questions of fact are to be decided by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive the law which is laid down as such by the court.

**Section 835. Restriction of argument—Number of counsel**

The court may, in its discretion, restrict the argument to one counsel on each side.

**Section 836. Defendant presumed innocent—Reasonable doubt of guilt requires acquittal**

A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

**Section 837. Doubt as to degree of guilt**

When it appears that a defendant has committed a public offense and there is reasonable ground of doubt in which of two or more degrees he is guilty, he can be convicted of the lowest of such degree only.

**Section 838. Reserved**

**Section 839. Discharge of defendant that he may testify for the Choctaw Nation**

When two or more persons are included in the same information, the court may, at any time before the defendants have gone into their defense, on the application of the prosecuting attorney, direct any defendant to be discharged from the information, that he may be compelled to be a witness for the Choctaw Nation.

**Section 840. Discharge of defendant that he may testify for codefendant**

When two or more persons are included in the same information, and the court is of opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must, before the evidence is closed, in order that he may be compelled to be a witness for his codefendant, submit its opinion to the jury, who, if they so find, may acquit the particular defendant for the purpose aforesaid.

**Section 841. Higher offense than charged, existence of—Jury discharged**

If it appear by the testimony that the facts proved constitute an offense of a higher nature than that charged in the information, the court may direct the jury to be discharged, and all proceedings on the information to be suspended, and may order the defendant to be committed or continued on, or admitted to bail, to answer any new information which may be filed against him for the higher offense.

**Section 842. Discharge of jury not a former acquittal**

If an information for the higher offense is filed within a year next thereafter, he must be tried thereon, and a plea of former acquittal to such last prosecution is not sustained by the fact of the discharge of the jury on the first information.

**Section 843. Trial on original information, when**

If a new information is not filed for a higher offense within a year, as aforesaid, the court shall again proceed to try the defendant on the original information.

**Section 844. Jury may be discharged, when**

The court may direct the jury to be discharged where it appears that it has no jurisdiction of the offense, or that the facts as charged in the information do not constitute an offense punishable by law.

**Section 845. Disposition of prisoner on discharge of jury**

If the jury is discharged because the court has no jurisdiction of the offense charged in the information, and it appears that it was committed out of the jurisdiction of the Choctaw Nation of Oklahoma, the court may order the defendant to be discharged, or to be detained for a reasonable time specified in the order, until a communication can be sent by the prosecuting attorney to the chief executive officer of the tribe, state, territory or district where the offense was committed.

**Section 846. Reserved**

**Section 847. Reserved**

**Section 848. Reserved**

**Section 849. Duty of court where no offense charged**

If the jury be discharged because the facts as charged do not constitute an offense punishable by law, the court must order that the defendant, if in custody, be discharged therefrom, or, if admitted to bail, that the bail be exonerated, or if he have deposited money instead of bail, that the money deposited be refunded to him, unless in its opinion a new information can be framed, upon which the defendant can be legally convicted, in which case it may direct that a new information filed.

**Section 850. Court may advise jury to acquit**

If, at any time after the evidence on either side is closed, the court deems it insufficient to warrant a conviction, it may advise the jury to acquit the defendant. But the jury is not bound by the advice, nor can the court, for any cause, prevent the jury from giving a verdict.

**Section 851. Jury may view place—Custody of sworn officer**

When, in the opinion of the court, it is proper that the jury should view the place in which the offense was charged to have been committed, or in which any other material fact occurred, it may order the jury to be conducted in a body, in the custody of proper officers, to the place, which must be shown to them by a person appointed by the court for that purpose, and the officers must be sworn to suffer no person to speak to or communicate with the jury, nor to do so themselves, on any subject connected with the trial, and to return them into court without unnecessary delay, or at a specified time.

**Section 852. Juror must declare knowledge of case**

If a juror has any personal knowledge respecting a fact in controversy in a cause he must declare it in open court during the trial. If, during the retirement of a jury, a juror declares a fact, which could be evidence in the cause, as of his own knowledge, the jury must return into court. In

either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties.

**Section 853. Custody and conduct of jury before submission—Separation—Sworn officer**

The jurors sworn to try an information, may, at any time before the submission of the cause to the jury, in the discretion of the court, be permitted to separate, or to be kept in charge of proper officers. The officers must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to or communicate with them, nor to do so themselves, on any subject connected with the trial, and to return them into court at the next meeting thereof. Such officer or officers having once been duly sworn, it is not necessary that they be re-sworn at each recess or adjournment. An admonition to the officer and the jury shall be sufficient.

**Section 854. Jurors—Protective orders**

The court, for good cause shown, upon motion of either party or any affected person or upon its own initiative, may issue a protective order for a stated period regulating disclosure of the identity and the business or residential address of any prospective or sworn juror to any person or persons, other than to counsel for either party. Such good cause shall exist in civil or criminal proceedings where the court determines that there is a likelihood of bribery, jury tampering, or of physical injury or harassment of the juror.

**Section 855. Court must admonish jury as to conduct**

The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

**Section 856. Sickness or death of juror—New juror sworn**

If, before the conclusion of a trial, a juror becomes sick, so as to be unable to perform his duty, the court may order him to be discharged. In that case or in the event of the death of a juror a new juror may be sworn, and the trial begin anew, or the jury may be discharged, and a new jury then or afterwards impaneled.

**Section 857. Requisites of charge of court—Presentation of written charge—Request to charge—Endorsement of disposition on charge presented—Partial refusal**

In charging the jury, the court must state to them all matters of law which it thinks necessary for their information in giving their verdict, and if it states the testimony of the case, it must in addition inform the jury that they are the exclusive judges of all questions of fact. Either party may present to the court any written charge and request that it be given. If the court thinks it

correct and pertinent, it must be given; if not, it must be refused. Upon each charge presented and given or refused the court must endorse or sign its decision. If part of any written charge be given and part refused the court must distinguish, showing by the endorsement or answer what part of each charge was given and what part refused.

**Section 858. Jury after the charge**

After hearing the charge, the jury may either decide in court, or may retire for deliberation. If they do not agree without retiring, one or more officers must be sworn to keep them together in some private and convenient place, and not to permit any person to speak to or communicate with them, nor do so themselves, unless it be by order of the court, or to ask them whether they have agreed upon a verdict, and to return them into court when they have so agreed, or when ordered by the court.

**Section 859. Defendant admitted to bail may be committed during trial**

When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial order him to be committed to the custody of the proper officer to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

**Section 860. Substitute for prosecuting attorney failing or unable to attend trial or disqualified**

If the prosecuting attorney fails, or is unable to attend at the trial or is disqualified, the court must appoint some attorney-at-law to perform the duties of the prosecuting attorney on such trial.

**Section 861. Second or subsequent offenses—Trial procedure**

In all cases in which the defendant is prosecuted for a second or subsequent offense, except in those cases in which former conviction is an element of the offense, the procedure shall be as follows:

1. The trial shall proceed initially as though the offense charged was the first offense; when the information is read all reference to prior offenses shall be omitted; during the trial of the case no reference shall be made nor evidence received of prior offenses except as permitted by the rules of evidence; the judge shall instruct the jury only on the offense charged; the jury shall be further instructed to determine only the guilt or innocence on the offense charged; and

2. If the verdict be guilty of the offense charged, that portion of the information relating to prior offenses shall be read to the jury and evidence of prior offenses shall be received. The court shall then instruct the jury on the law relating to second and subsequent offenses, and the jury shall then retire to determine the fact of former conviction.

### Section 862. Formal exceptions to rulings or orders unnecessary

Formal exceptions to rulings or orders of the court in criminal proceedings shall not be necessary. It shall be sufficient that a party, at the time the ruling or order of the court has been made or sought, makes known to the court the action which he desires the court to take or his objection to the action of the court with his general grounds therefor.

## Chapter 13. Jury—Deliberations and Conduct

### Section 891. Jury room

A room must be provided for the use of the jury, upon their retirement for deliberation, with suitable furniture, lights and stationery.

### Section 892. Jury may have written instructions, forms of verdict and documents in jury room—Copies of public or private documents

On retiring for deliberation the jury may take with them the written instructions given by the court; the forms of verdict approved by the court, and all papers which have been received as evidence in the cause, except that they shall take copies of such parts of public records or private documents as ought not, in the opinion of the court, to be taken from the person having them in possession.

### Section 893. Jury brought into court for information—Presence of, or notice to, parties

After the jury has retired for deliberation, if there be a disagreement between them as to any part of the testimony or if they desire to be informed on a point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required must be given in the presence of, or after notice to the prosecuting attorney and the defendant or his counsel, or after they have been called.

### Section 894. Illness of juror after retirement—Accident or cause preventing keeping together—Discharge

If, after the retirement of the jury, one of them become so sick as to prevent the continuance of his duty, or any other accident or cause occur to prevent their being kept together for deliberation, the jury may be discharged.

### Section 895. Discharge after agreement on verdict or showing of inability to agree

Except as provided in the last section, the jury cannot be discharged after the cause is submitted to them until they have agreed upon their verdict, and rendered it in open court, unless by the

consent of both parties entered upon the minutes, or unless at the expiration of such time as the court deems proper, it satisfactorily appear that there is no reasonable probability that the jury can agree.

### Section 896. Retrial after discharge at same or other term

In all cases where a jury is discharged or prevented from giving a verdict, by reason of an accident or other cause, except where the defendant is discharged from the information during the progress of the trial, or after the cause is submitted to them, the cause may be again tried at the same or another term, as the court may direct.

### Section 897. Court during jury's retirement—Sealed verdicts—Final adjournment for term discharges jury

While the jury is absent the court may adjourn from time to time as to other business, but it is nevertheless deemed open for any purpose connected with the cause submitted to them until verdict is rendered or the jury discharged. If the jury agrees on a verdict during a temporary adjournment or recess of the court, they may, upon the direction of the court, sign the verdict by their foreman, securely seal the same in an envelope, and deliver the same to the foreman, when they may separate until the next convening of the court, at which time they shall reassemble in the jury room and return their verdict in open court, when the same proceedings shall be had as in case of other verdicts. A final adjournment of the court for the term discharges the jury.

## Chapter 14. Verdict

### Section 911. Return of jury into court upon agreement—Discharge on failure of some jurors to appear

When the jury has agreed upon their verdict, they may be conducted into court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict. In that case the cause must be again tried, at the same or another term.

### Section 912. Presence of defendant required

The defendant must, before the verdict is received, appear in person.

### Section 913. Proceedings when jury appear

When the jury appear, they must be asked, by the court or the clerk, whether they have agreed upon their verdict, and if the foreman answers in the affirmative, they must, on being required, declare the same.

**Section 914. Form of verdict**

A general verdict upon a plea of not guilty, is either “guilty,” or “not guilty,” which imports a conviction or acquittal of the offense charged. Upon a plea of a former conviction or acquittal of the same offense, it is either “for the Choctaw Nation,” or “for the defendant.” When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be “not guilty by reason of insanity.” When the defendant is acquitted on the ground of variance between the charge and the proof, the verdict must be “not guilty by reason of variance between charge and proof.”

**Section 915. Degree of crime must be found**

Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

**Section 916. Included offense or attempt may be found**

The jury may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense.

**Section 917. Several defendants—Verdict as to part—Retrial as to defendants not agreed on**

On an information against several, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

**Section 918. Jury may reconsider verdict of conviction for mistake of law—Return of same verdict**

When there is a verdict of conviction in which it appears to the court that the jury has mistaken the law, the court may explain the reason for that opinion, and direct the jury to reconsider their verdict, and if, after the reconsideration, they return the same verdict, it must be entered. But when there is a verdict of acquittal, the court cannot require the jury to reconsider it.

**Section 919. Informal verdict to be reconsidered**

If the jury renders a verdict not in form, the court may, with proper instructions as to the law, direct them to reconsider it, and it cannot be recorded until it be rendered in some form from which it can be clearly understood what is the intent of the jury.

**Section 920. Judgment when jury persist in informal verdict**

If the jury persists in finding an informal verdict, from which, however, it can be clearly understood that their intention is to find in favor of the defendant upon the issue, it must be entered in the terms in which it is found, and the court must give judgment of acquittal. But no judgment of conviction can be given unless the jury expressly find against the defendant, upon the issue, or judgment be given against him on a special verdict.

**Section 921. Polling jury**

When a verdict is rendered, and before it is recorded, the jury may be polled on the requirement of either party, in which case they must be severally asked whether it is their verdict, and if any one answer in the negative, the jury must be sent out for further deliberation.

**Section 922. Recording and reading verdict—Disagreement of jurors entered upon minutes—Discharge if no disagreement**

When the verdict is given, and is such as the court may receive, the clerk must immediately record it in full upon the minutes, and the judge or the clerk must read it to the jury and inquire of them whether it is their verdict. If any juror disagrees, the fact must be entered upon the minutes, and the jury again sent out; but if no disagreement is expressed, the verdict is complete, and the jury must be discharged from the case.

**Section 923. Defendant discharged on acquittal—Variance resulting in acquittal may authorize new charges**

If a judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as judgment is given, except that when the acquittal is for a variance between the proof and the information which may be obviated by a new information the court may order his detention to the end that a new information may be preferred in the same manner and with like effect as provided in cases where the jury is discharged.

**Section 924. Commitment upon conviction**

If a general verdict is rendered against the defendant he must be remanded if in custody, or if on bail he may be committed to the proper officer to await the judgment of the court upon the verdict. When committed his bail is exonerated, or if money is deposited instead of bail it must be refunded to the defendant.

**Section 925. Claim of insanity—Duty of court and jury—Commitment to institution**

When it is contended on behalf of the defendant in any criminal prosecution that such defendant is at the time of the trial a person who is impaired by reason of mental retardation, a mentally ill person, an insane person, or a person of unsound mind, the court shall submit to the jury a proper form of verdict, and if the jury finds the defendant not guilty on account of such insanity, mental illness, or unsoundness of mind, they shall so state in their verdict, and the court shall thereupon order the defendant committed to a hospital for the mentally ill, or other institution provided for the care and treatment of cases such as the one before the court, until the sanity and soundness of mind of the defendant be judicially determined, and such person be discharged from the institution according to law.

**Section 926. Assessment of punishment upon conviction**

In all cases of a verdict of conviction for any offense against any of the laws of the Choctaw Nation of Oklahoma, it shall be the duty of the judge to assess and declare the punishment within the limitations fixed by law and render the judgment accordingly.

**Section 927. Reserved**

**Section 928. Reserved**

**Section 929. Remand for vacation of sentence—New sentencing proceeding**

Upon any appeal of a conviction by the defendant, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence rendered and remand the case to the trial court for resentencing. No error in the sentencing proceeding shall result in the reversal of the conviction in a criminal case unless the error directly affected the determination of guilt.

## Chapter 15. New Trial—Arrest of Judgment

**Section 951. New trial defined—Proceedings on new trial—Former verdict no bar**

A new trial is a reexamination of the issue in the same court, before another jury, after a verdict has been given. The granting of a new trial places the parties in the same position as if no trial had been had. All the testimony must be produced anew except of witnesses who are absent from the Choctaw Nation or dead, in which event the evidence of such witnesses on the former trial may be presented; and the former verdict cannot be used or referred to either in evidence or in argument, or be pleaded in bar of any conviction which might have been had under the information.

**Section 952. Grounds for new trial—Affidavits and testimony**

A court in which a trial has been had upon an issue of fact has power to grant a new trial when a verdict has been rendered against a defendant by which his substantial rights have been prejudiced, upon his application in the following cases only:

First. When the trial has been in his absence, if the charge is for a felony.

Second. When the jury have received any evidence out of court, other than that resulting from a view of the premises.

Third. When the jury has separated without leave of the court, after retiring to deliberate on their verdict, and before delivering or sealing the same, if it be sealed, or have been guilty of any misconduct by which a fair and due consideration of the case has been prevented.

Fourth. When the verdict has been decided by lot, or by any means other than a fair expression of opinion on the part of the jury.

Fifth. When the court has misdirected the jury in a matter of law, or has erred in the decision of any question of law arising during the course of the trial.

Sixth. When the verdict is contrary to law or evidence.

Seventh. When new evidence is discovered that is material to the defendant and which he could not with reasonable diligence have discovered before the trial, and that the facts in relation thereto were unknown to the defendant or his attorney until after the trial jury in the case was sworn and were not of record. When a motion for a new trial is made on the ground of newly discovered evidence, the defendant must produce at the hearing in support thereof affidavits of witnesses, or he may take testimony in support thereof as provided in Section 494 of this title, and if time is required by the defendant to procure such affidavits or testimony, the court may postpone the hearing of the motion for such length of time as under all the circumstances of the case may seem reasonable.

**Section 953. Time for applying for new trial—Limitations**

The application for a new trial must be made before judgment is entered; but the court or judge thereof may for good cause shown allow such application to be made at any time within thirty (30) days after the rendition of the judgment. A motion for a new trial on the ground of newly discovered evidence may be made within three (3) months after such evidence is discovered but no such motion may be filed more than one (1) year after judgment is rendered.

**Section 954. Motion in arrest of judgment—Definition—Grounds—Time for**

A motion in arrest of judgment is an application on the part of the defendant that no judgment be rendered on plea or verdict of guilty, or on a verdict against the defendant on a plea of former

conviction or acquittal. It may be founded on any of the defects in the information mentioned as grounds of demurrer unless such objection has been waived by a failure to demur, and must be before or at the time the defendant is called for judgment.

### Section 955. Court may arrest on its own motion—Effect of allowing motion

The court may also on its own view of any of these defects, arrest the judgment without motion. The effect of allowing a motion in arrest of judgment is to place the defendant in the same situation in which he was before the information was filed, and in no case of arrest of judgment is the verdict a bar to another prosecution.

### Section 956. Proceedings after motion for arrest of judgment sustained

If, from the evidence on the trial, there is reasonable ground to believe the defendant guilty, and a new information can be framed upon which he may be convicted, the court may order him to be recommitted to the proper officer of the Choctaw Nation, or admitted to bail anew to answer the new information. If the evidence shows him guilty of another offense, he must be committed or held thereon; but if no evidence appears sufficient to charge him with any offense, he must, if in custody, be discharged, or, if admitted to bail, his bail is exonerated, or if money has been deposited instead of bail, it must be refunded to the defendant, and the arrest of judgment operates as an acquittal of the charge upon which the information was founded.

## Chapter 16. Judgment and Execution

### General Provisions

### Section 961. Court appoints time for pronouncing judgment

After a plea or verdict of guilty, or after a verdict against the defendant on a plea of a former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court must appoint a time for pronouncing judgment.

### Section 962. Appointed time

The time appointed must be at least two (2) days after the verdict, if the court intend to remain in session so long; or, if not, at as remote a time as can reasonably be allowed.

### Section 963. Defendant must be present, when

For the purpose of judgment, the defendant must be present unless he has been notified of the time and date of imposition of judgment and fails to appear.

**Section 964. Officer may be directed to produce prisoner**

When the defendant is in custody, the court may direct the officer in whose custody he is to bring him before it for judgment, and the officer must do so accordingly.

**Section 965. Warrant for defendant not appearing—Forfeiture of bond or bail money**

If the defendant has been discharged on bail, or has deposited money instead thereof, and does not appear for judgment when his personal attendance is necessary, the court, in addition to the forfeiture of the undertaking of bail or of money deposited, may direct the clerk to issue a bench warrant for his arrest.

**Section 966. Clerk to issue bench warrant**

The clerk shall after the order, whether the court be sitting or not, issue a bench warrant.

**Section 966A. Bench warrant, fee for issuance of**

For the issuance of each bench warrant for a defendant's failure to pay court costs, fines, fees, or assessments in felony, misdemeanor, or traffic cases, the court clerk shall charge and collect a fee of Five Dollars ($5.00). The fee shall be included in the execution bond amount on the face of the bench warrant which is issued for the defendant's failure to pay and shall be in addition to the delinquent amount owed by the defendant. This fee shall be deposited into the court fund.

**Section 967. Form of bench warrant**

The bench warrant must be substantially in the following form:

Choctaw Nation of Oklahoma.

To any law enforcement officer, constable, marshal or policeman in the Choctaw Nation of Oklahoma:

A B having been, on the ..... day of ..... A. D., 20..., duly convicted in the District Court of the Choctaw Nation of Oklahoma of the crime of (designating it generally), you are therefore commanded forthwith to arrest the above named A B and bring him before the court for judgment, or if the court has adjourned, you are to deliver him into the custody of a suitable jail or other such institution to await instructions from the court (as the case may be).

Given under my hand, with the seal of said court affixed, this ..... day of ..... A. D., 20...

By order of the court.

(Seal.) E.F., Clerk.

**Section 968. Service of bench warrant, mode of**

The bench warrant may be served in the same manner as a warrant of arrest.

**Section 969. Defendant to be arrested**

The officer must arrest the defendant and bring him before the court, or commit him to the officer mentioned in the warrant, according to the command thereof.

**Section 970. Defendant informed of proceedings**

When the defendant appears for judgment, he must be informed by the court, or by the clerk under its direction, of the nature of the information, and his plea and the verdict, if any thereon, and must be asked whether he has any legal cause to show why judgment should not be pronounced against him.

**Section 971. Defendant may show cause against judgment—Grounds—Proceedings**

The defendant may show for cause against the judgment:

1. That the defendant is insane; and if, in the opinion of the court, there is reasonable ground for believing the defendant to be insane, the question of the defendant's insanity must be tried as hereinafter in this chapter. If upon the trial of that question the jury finds that the defendant is sane, judgment must be pronounced. If the jury finds the defendant insane, the defendant may be committed to an institution or hospital for the mentally ill, until the defendant becomes sane, or be otherwise committed according to law. When notice is given of that fact, as hereinafter provided, the defendant must be brought before the court for judgment.

2. That the defendant has good cause to offer, either in arrest of judgment, or for a new trial, in which case the court may order the judgment to be deferred, and proceed to decide upon the motion in arrest of judgment, or for a new trial.

**Section 972. Rendition of judgment where cause against it not shown**

If no sufficient cause be alleged or appear to the court why judgment should not be pronounced it must thereupon be rendered.

**Section 973. Court may hear further evidence, when**

After a plea or verdict of guilty in a case where the extent of the punishment is left with the court, the court, upon the suggestion of either party that there are circumstances which may be properly taken into view, either in aggravation or mitigation of the punishment, may in its discretion hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

**Section 974. Testimony—How presented—Deposition of sick or infirm witness**

The circumstances must be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his examination may be taken by a magistrate, at a specified time and place, upon such notice to the adverse party as the court may direct.

**Section 975. Other evidence in aggravation or mitigation of punishment prohibited**

No affidavit or testimony, or representation of any kind, verbal or written, can be offered to or received by the court or member thereof in aggravation or mitigation of the punishment, except as provided in the last two sections.

**Section 976. Concurrent sentences**

If the defendant has been convicted of two or more offenses, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses. Provided, that the sentencing judge shall, at all times, have the discretion to enter a sentence concurrent with any other sentence.

**Section 977. Entry of judgment of conviction—Papers to be filed by clerk—Obtaining date of birth and social security number of defendant**

A. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together and file the following papers, which constitute a record of the action:

1. The information and a copy of the minutes of the plea or demurrer;

2. A copy of the minutes of the trial;

3. The charges given or refused, and the endorsements, if any, thereon; and

4. A copy of the judgment, which shall include a notation of the date of birth of the defendant and the social security number of the defendant. The judgment shall also contain the statutory reference to the crime the defendant was convicted of and the date of the offense.

B. The court shall obtain the date of birth of the defendant and the social security number of the defendant.

**Section 978. Certified copy of judgment furnished to officer—Officer authorized to execute judgment**

When a judgment has been pronounced, a certified copy of the entry thereof, upon the minutes, must be forthwith furnished to the officer, whose duty it is to execute the judgment, and no other warrant or authority is necessary to justify or require its execution.

**Section 979. Execution of judgment by sheriff in certain cases—Delivery to proper officer in other cases**

When the judgment is imprisonment in a jail, or a fine, and that the defendant be imprisoned until it be paid, the judgment must be executed by the officer who has control of the jail where the defendant is confined. In all other cases when the sentence is imprisonment, the proper officer of the Choctaw Nation must deliver the defendant to the proper officer, in execution of the judgment.

**Section 980. Duty of sheriff when defendant sentenced to prison**

If the judgment is for imprisonment in a jail or prison, the officer of the Choctaw Nation delivering the inmate to said jail or prison must, upon receipt of a certified copy thereof or authorized notification thereof, take and deliver the defendant to the said jail or prison.

The officer must also deliver to the jail or prison:

1. A certified copy of the judgment and sentence, unless the judgment and sentence has previously been sent electronically by an authorized clerk of the court;

2. A copy of any medical, dental, or mental health records of the defendant for conditions reviewed or treated while in the custody of the Choctaw Nation;

3. Any medication or medical or dental device prescribed for the defendant while in the custody of the Choctaw Nation or for a pre-existing condition;

4. Any forms required to be filed pursuant to the rules of the Court of Appeals at the time of the formal sentencing; and

5. Any forms of identification of the defendant that were in the possession of the defendant at the time of sentencing. Upon delivery of the defendant with the required judgment, records and medication or devices, the officer must take from the jail or prison a receipt for the defendant, and make return thereof to the court.

**Section 981. Authority of officer while conveying prisoner—Assistance of citizens—Penalty for refusing assistance**

The law enforcement officer of the Choctaw Nation, while conveying the defendant to the proper jail or prison in execution of a judgment of imprisonment has the same authority to require the assistance of any person in securing the defendant and in retaking him if he escape.

**Section 982. Reserved**

**Section 982a. Judicial review**

A. Any time within twelve (12) months after the initial sentence is imposed or within twelve (12) months after probation has been revoked, the court imposing sentence or revocation of probation may modify such sentence or revocation by directing that another sentence be imposed, if the court is satisfied that the best interests of the public will not be jeopardized; provided, however, the court shall not impose a deferred sentence.

Any application for sentence modification that is filed and ruled upon must be approved by the prosecuting attorney who shall provide written notice to any victims in the case which is being considered for modification. This section shall not apply to convicted felons who have been in confinement in any tribal, state, or federal prison system for any previous felony conviction during the ten-year period preceding the date that the sentence this section applies to was imposed. Further, without the consent of the prosecuting attorney, this section shall not apply to sentences imposed pursuant to a plea agreement or jury verdict.

B. If the court considers modification of the sentence or revocation of probation, a hearing shall be made in open court. The clerk of the court imposing sentence or revocation of probation shall give notice of the judicial review hearing to the inmate, the inmate's legal counsel, and the prosecuting attorney. Such notice shall be mailed at least twenty-one (21) days prior to the hearing date and shall include any written information to be considered at the judicial review hearing.

D. If an appeal is taken from the original sentence or from a revocation of probation which results in a modification of the sentence or modification to the revocation of probation of the defendant, such sentence may be further modified in the manner described in subsection A of this section within twelve (12) months after the receipt by the clerk of the district court of the mandate from the Court of Appeals.

**Section 983. Imprisonment or recommendation of suspension of driving privileges for failure to pay fines, costs, fees, or assessments—Hearing—Installments**

A. Any defendant found guilty of an offense in any court of the Choctaw Nation of Oklahoma may be imprisoned for nonpayment of the fine, cost, fee, or assessment when the trial court finds after notice and hearing that the defendant is financially able but refuses or neglects to pay the fine, cost, fee, or assessment. A sentence to pay a fine, cost, fee, or assessment may be converted

into a jail sentence only after a hearing and a judicial determination, memorialized of record, that the defendant is able to satisfy the fine, cost, fee, or assessment by payment, but refuses or neglects so to do.

B. After a judicial determination that the defendant is able to pay the fine, cost, fee, or assessment in installments, the court may order the fine, cost, fee, or assessment to be paid in installments and shall set the amount and date for each installment.

C. The Court of Appeals shall implement procedures and rules for methods of payment of fines, costs, fees, and assessments by indigents, which procedures and rules shall be provided to the district court by the clerk of the Court of Appeals.

**Suspension of Judgment and Sentence**

**Section 991a-1. Sentencing powers of court—Alcohol and drug assessment and evaluation—Restitution, fines, or incarceration—Probation and monitoring—DNA samples**

A. When a defendant is convicted of a crime, the court shall:

1. Commit such person for confinement as provided for by law;

2. Place such person on probation by suspending the execution of sentence in whole or in part, with or without supervision; or

3. Impose a fine prescribed by law for the offense.

B. 1. When a defendant is committed for confinement or placed on probation, the court may also require a defendant to pay a fine as prescribed by law for the offense.

2. When a defendant is granted probation, the court may require as a condition of that probation that a defendant serve up to six (6) months of incarceration or a period of nights and weekends of incarceration.

C. The court may also order a defendant who has been convicted of a crime to:

1. Pay restitution together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum;

3. Repair or restore property damaged by the defendant’s conduct, if the court determines the defendant possesses sufficient skill to repair or restore the property and the victim consents to the repairing or restoring of the property;

4. Restore damaged property in kind or payment of out-of-pocket expenses to the victim, if the court is able to determine the actual out-of-pocket expenses suffered by the victim,

5. Attend a victim-offender reconciliation program if the victim agrees to participate and the offender is deemed appropriate for participation;

6. Pay a reasonable sum into any trust fund, and which provides restitution payments by convicted defendants to victims of crimes committed within the Choctaw Nation of Oklahoma wherein such victim has incurred a financial loss;

7. Reimburse any government agency for amounts paid by the government agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the government agency, with interest accruing thereon at the rate of twelve percent (12%) per annum;

8. Perform community service;

9. Reimburse the Department of Public Safety for costs incurred by that agency during its investigation of the crime for which the defendant pleaded guilty, nolo contendere or was convicted, including compensation for laboratory, technical, or investigation services performed or contracted by the department if, in the opinion of the court, the defendant is able to pay without imposing manifest hardship on the defendant, and if the costs incurred by the department during the investigation of the defendant's case may be determined with reasonable certainty;

10. Reimburse any authorized agency for all costs incurred by that agency for cleaning up an illegal drug laboratory site for which the defendant pleaded guilty, nolo contendere or was convicted. The court clerk shall collect the amount and may retain five percent (5%) of such monies to be deposited in the court fund to cover administrative costs and shall remit the remainder to the agency;

11. Participate in an assessment and evaluation by a mental health agency and, as determined by the assessment, participate in an alcohol and drug substance abuse course or treatment program or both, or as ordered by the court;

12. Complete a victims impact panel program or similar program approved by the district court and pay a fee to the program of not more than Fifty Dollars ($50.00) as set by the governing authority of the program to offset the cost of participation by the defendant;

13. Participate in the alcohol and drug substance abuse course or treatment program;

14. Install upon every motor vehicle operated by the defendant, at the expense of the defendant, an ignition interlock device approved by the Oklahoma Board of Tests for Alcohol and Drug Influence. The court shall require that the court clerk provide notice of the requirement of an ignition interlock device to any state agency issuing a driver license to the defendant;

15. Submit to periodic testing for alcohol, intoxicating substances, or controlled dangerous substances by a qualified laboratory,

16. Submit to electronically monitored home detention, at the expense of the defendant, if in the opinion of the court the defendant has the ability to pay such fee;

17. Participate in counseling or treatment, at the expense of the defendant, in areas including but not limited to alcohol and substance abuse, sexual behavior problems, domestic abuse cessation counseling or child abuse problems;

18. Perform one or more courses of treatment, education or rehabilitation for any conditions, behaviors, deficiencies or disorders which may contribute to criminal conduct, including but not limited to alcohol and substance abuse, mental health, emotional health, physical health, propensity for violence, antisocial behavior, personality or attitudes, deviant sexual behavior, child development, parenting assistance, job skills, vocational-technical skills, domestic relations, literacy, education, or any other identifiable deficiency which may be treated appropriately in the community and for which a certified provider or a program recognized by the court as having significant positive impact exists in the community. Any treatment, education or rehabilitation provider required to be certified pursuant to law or rule shall be certified by the appropriate governmental agency or a national organization;

19. Obtain positive behavior modeling by a trained mentor;

20. Pay a fee, costs for treatment, education, supervision, participation in a program, or any combination thereof as determined by the court, based upon the defendant's ability to pay the fees or costs;

21. Be supervised by the Choctaw Nation, a private supervision provider, or other person designated by the court;

22. Serve a term of confinement in a restrictive housing facility available in the community;

23. Serve a term of confinement in jail at night or during weekends pursuant to Section 991a-2 of this title or for work release;

24. Obtain employment or participate in employment-related activities;

25. Participate in mandatory day reporting to facilities or persons for services, payments, duties or person-to-person contacts as specified by the court;

26. Pay day fines not to exceed fifty percent (50%) of the net wages earned. For purposes of this paragraph, "day fine" means the offender is ordered to pay an amount calculated as a percentage of net daily wages earned. The day fine shall be paid to the local community sentencing system as reparation to the community. Day fines shall be used to support the local system;

27. Submit to blood or saliva testing as required by subsection I of this section;

28. Participate in a drug court program, if available. If a drug court program is not available, the defendant may be required in the discretion of the court to participate in some other program designed to bring about the cessation of drug usage, if available;

29. Register as a sex offender pursuant to the Sex Offenders Registration Act, comply with sex offender specific rules and conditions of supervision and may require the person to participate in a treatment program designed specifically for the treatment of sex offenders, if available. The treatment program may include polygraph examinations specifically designed for use with sex offenders for the purpose of supervision and treatment compliance, provided the examination is administered by a certified licensed polygraph examiner. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay;

30. Refrain from accessing or using any Internet social networking web site that has the potential or likelihood of allowing a sex offender to have contact with any child who is under the age of eighteen (18) years; or

31. Register any electronic mail address information, instant message, chat or other Internet communication name or identity information that the person uses or intends to use while accessing the Internet or used for other purposes of social networking or other similar Internet communication; and

32. Any other provision specifically ordered by the court.

Any such order for restitution, community service, payment to a local crime stoppers program, or confinement in jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence;

D. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or Section 11-902 of the Choctaw Nation Traffic Code or any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be ordered to participate in, either prior to or after sentencing, an alcohol and drug assessment and evaluation by an assessment agency or assessment personnel for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the agency or assessor for the evaluation. The fee shall be paid by the defendant. The evaluation shall be conducted at a certified assessment agency, the office of a certified assessor or at another location as ordered by the court. The agency or assessor shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court. No person, agency or facility operating an alcohol and drug substance abuse evaluation program shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to

prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection.

E. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 2 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony or, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of the Choctaw Nation Traffic Code, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of the Choctaw Nation Traffic Code, the court may sentence the person pursuant to the provisions of paragraph 2 of subsection A of this section if the court orders the person to submit to electronically monitored home detention. Provided, the court may waive these prohibitions upon written application of the prosecuting attorney. Both the application and the waiver shall be made part of the record of the case.

F. Probation, for purposes of this section, is a procedure by which a defendant found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Public Safety. Such supervision shall be initiated upon an order of probation from the court.

G. The court clerk and the Department of Public Safety, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and community service programs as provided for in this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

H. As used in this section:

1. “Ignition interlock device” means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of two-hundredths (0.02) or greater; and

2. “Electronically monitored home detention” means incarceration of the defendant within a specified location or locations with monitoring by means of a device approved by the Department of Public Safety that detects if the person leaves the confines of any specified location.

I. A person convicted of a felony or misdemeanor offense or receiving any form of probation for an offense in which registration is required pursuant to the Sex Offenders Registration Act, shall submit to deoxyribonucleic acid DNA testing for law enforcement identification purposes. Any defendant sentenced to probation shall be required to submit to testing within thirty (30) days of sentencing either to the Department of Public Safety or other peace officer as directed by the court. Defendants who are sentenced to a term of incarceration shall also submit to testing as required by the Department of Public Safety. Convicted individuals who have previously submitted to DNA testing and for whom a valid sample is on file in the Oklahoma State Bureau

of Investigation Combined DNA Index System (CODIS) Database at the time of sentencing shall not be required to submit to additional testing. Except as required by the Sex Offenders Registration Act, a deferred judgment does not require submission to deoxyribonucleic acid testing. Every person subject to DNA testing after January 1, 2014, whose sentence does not include a term of confinement shall submit a blood or saliva sample.

J. Samples of blood or saliva for DNA testing required by subsection I of this section shall be taken by employees or contractors of the Department of Public Safety, peace officers, or employees or contractors of the Department of Public Safety. The individuals shall be properly trained to collect blood or saliva samples. Persons collecting blood or saliva for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity. All collectors of DNA samples shall ensure the collection of samples are mailed to the Oklahoma State Bureau of Investigation (OSBI) within ten (10) days of the time the subject appears for testing or within ten (10) days of the date the subject comes into physical custody to serve a term of incarceration. All collectors of DNA samples shall use sample kits provided by the OSBI and procedures promulgated by the OSBI. Persons subject to DNA testing shall be required to pay a fee of Fifteen Dollars ($15.00) to the agency collecting the sample for submission to the OSBI Combined DNA Index System (CODIS) Database. Any fees collected pursuant to this subsection shall be remitted to and for the benefit of the collection agency or department.

K. When sentencing a person who has been convicted of a crime that would subject that person to the provisions of the Sex Offenders Registration Act, neither the court nor the prosecuting attorney shall be allowed to waive or exempt such person from the registration requirements of the Sex Offenders Registration Act.

**Section 991a-2. Nonviolent felony offenders—Jail imprisonment—Fines and costs**

A. Any person who has been convicted of a nonviolent felony offense in the Choctaw Nation of Oklahoma may be sentenced, at the discretion of the judge, to incarceration in jail for a period of one or more nights or weekends with the remaining portion of each week being spent under supervision. Imprisonment in a jail pursuant to the provisions of this section for felony offenders shall be:

1. Prescribed by law for the particular felony; or

2. A condition of a suspended sentence.

B. In addition to incarceration, the court may impose any fine, cost assessment, or other punishment provision allowed by law; provided, however, the punishment when taken in its entirety with the jail term shall not impose a greater punishment than allowed by law for the offense.

C. Any person incarcerated in jail pursuant to the provisions of this section may be assigned work duties as ordered or approved by the judge. The sentencing court may require a person incarcerated pursuant to the provisions of this section to pay the costs of incarceration for food and maintenance for each day of incarceration.

D. Any person incarcerated pursuant to the provisions of this section shall be deemed to be in the custody of the Department of Public Safety.

E. When the court sentences a person to incarceration pursuant to the provisions of this section in conjunction with a suspended sentence, the court shall have the authority to revoke any un-served portion of the suspended sentence as provided by law.

F. For the purposes of subsection A of this section, weekend incarceration shall commence at 6 p.m. on Friday and continue until 8 a.m. on the following Monday, and incarceration overnight shall commence at 6 p.m. on one day and continue until 8 a.m. of the next day. Provided, that the sentencing judge may modify the incarceration times if the circumstances of the particular case require such action.

**Section 991a-3. Restitution to buyer of property unlawfully obtained**

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere for an offense in which any property is unlawfully obtained and the property is sold, traded, bartered, pledged or pawned, the court may order the defendant to provide restitution to the buyer, recipient or pledgee of the property for the value of any consideration paid, loaned or given for the property. Such restitution shall be in addition to any restitution to the victim and shall be in addition to any other penalties provided by law. Restitution to the buyer, recipient or pledgee shall be ordered pursuant to the provisions of paragraph 1 of subsection C of Section 991a-1 of this title.

B. The buyer of any property which has been unlawfully obtained and which is lawfully returned to its rightful owner shall have the right to bring a civil action against the person who sold, traded, bartered, pledged or pawned the property for the value of any consideration paid, loaned or given for the property unless the buyer violated a criminal action in acquiring the property.

**Section 991b. Revocation of suspended sentence—Intermediate sanction process**

A. Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended sentence of the person may not be revoked, in whole or part, for any cause unless a petition setting forth the grounds for such revocation is filed by the prosecuting attorney with the clerk of the sentencing court and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose within twenty (20) days after the entry of the plea of not guilty to the petition, unless waived by both the Choctaw Nation and the defendant. The Choctaw Nation of Oklahoma may dismiss the petition without prejudice one time upon good cause shown to the court, provided that any successor petition for the same violations must be filed within forty-five (45) days of the date of the dismissal of the petition.

B. 1. Where one of the grounds for revocation is the failure of the defendant to make restitution as ordered, the Department of Public Safety and the court clerk shall forward to the prosecuting attorney all information pertaining to the failure of the defendant to make timely restitution as

ordered by the court, and the prosecuting attorney shall file a petition setting forth the grounds for revocation.

2. The defendant ordered to make restitution can petition the court at any time for remission or a change in the terms of the order of restitution if the defendant undergoes a change of condition which materially affects the ability of the defendant to comply with the order of the court.

3. At the hearing, if one of the grounds for the petition for revocation is the failure of the defendant to make timely restitution as ordered by the court, the court will hear evidence and if it appears to the satisfaction of the court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or the immediate family of the defendant, the court may cancel all or any part of the amount still due, or modify the terms or method of payment.

C. The court may revoke a portion of the sentence and leave the remaining part not revoked, but suspended for the remainder of the term of the sentence, and under the provisions applying to it. The person whose suspended sentence is being considered for revocation at the hearing shall have the right to be represented by counsel, to present competent evidence in his or her own behalf and to be confronted by the witnesses against the defendant. Any order of the court revoking the suspended sentence, in whole or in part, shall be subject to review on appeal, as in other appeals of criminal cases. Provided, however, that if the crime for which the suspended sentence is given was a felony, the defendant may be allowed bail pending appeal. If the reason for revocation be that the defendant committed a felony, the defendant shall not be allowed bail pending appeal.

**Section 991c. Deferred sentence**

A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a period of three (3) years. The court shall first consider restitution among the various conditions it may prescribe. The court may also consider ordering the defendant to:

1. Pay court costs;

2. Pay an assessment in lieu of any fine authorized by law for the offense;

3. Pay any other assessment or cost authorized by law;

4. Engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant;

5. Jail confinement for a period not to exceed ninety (90) days or the maximum amount of jail time provided for the offense, if it is less than ninety (90) days;

6. Pay an amount as reimbursement for reasonable attorney fees, to be paid into the court fund, if a court appointed attorney has been provided to defendant;

7. Be supervised on probation for a period not to exceed two (2) years. As a condition of any supervision, the defendant shall be required to pay a supervision fee of Forty Dollars ($40.00) per month. The supervision fee shall be waived in whole or part by the supervisory agency when the accused is indigent. No person shall be denied supervision based solely on the inability of the person to pay a fee;

8. Make other reparations to the community or victim as required and deemed appropriate by the court;

9. Order any conditions which can be imposed for a suspended sentence pursuant to subsection C of Section 991a-1 of this title; or

10. Any combination of the above provisions.

B. Upon completion of the conditions of the deferred judgment, and upon a finding by the court that the conditions have been met and all fines, fees, and monetary assessments have been paid as ordered, the defendant shall be discharged without a court judgment of guilt, and the court shall order the verdict or plea of guilty or plea of nolo contendere to be expunged from the record and the charge shall be dismissed with prejudice to any further action. The procedure to expunge the record of the defendant shall be as follows:

1. All references to the name of the defendant shall be deleted from the docket sheet;

2. The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration;

3. Upon expungement, the court clerk shall keep a separate confidential index of case numbers and names of defendants which have been obliterated pursuant to the provisions of this section;

4. No information concerning the confidential file shall be revealed or released, except upon written order of a judge of the district court or upon written request by the named defendant to the court clerk for the purpose of updating the criminal history record of the defendant with the Oklahoma State Bureau of Investigation; and

5. Defendants qualifying under Section 18 of this title may petition the court to have the filing of the information and the dismissal expunged from the public index and docket sheet. This section shall not be mutually exclusive of Section 18 of this title.

C. Upon violation of any condition of the deferred judgment, the court may enter a judgment of guilt and proceed as provided in Section 991a-1 of this title or may modify any condition imposed. Provided, however, if the deferred judgment is for a felony offense, and the defendant commits another felony offense, the defendant shall not be allowed bail pending appeal.

D. The deferred judgment procedure described in this section shall apply only to defendants who have not been previously convicted of a felony offense and have not received a deferred judgment for a felony offense within the ten (10) years previous to the commission of the pending offense.

Provided, the court may waive this prohibition upon written application of the prosecuting attorney. Both the application and the waiver shall be made a part of the record of the case.

E. The deferred judgment procedure described in this section shall not apply to defendants found guilty or who plead guilty or nolo contendere to a sex offense required by law to register pursuant to the Sex Offenders Registration Act.

**Section 991d. Supervision fee**

A. 1. When the court orders supervision by the Department of Public Safety, the person shall be required to pay a supervision fee of Forty Dollars ($40.00) per month during the supervision period, unless the fee would impose an unnecessary hardship on the person. In hardship cases, the Department shall expressly waive all or part of the fee. The court shall make payment of the fee a condition of the sentence which shall be imposed whether the supervision is incident to the suspending of execution of a sentence or incident to the deferral of proceedings after a verdict or plea of guilty. The Department is required to report to the sentencing court any failure of the person to pay supervision fees and to report immediately if the person violates any condition of the sentence.

2. If restitution is ordered by the court in conjunction with supervision, the supervision fee will be paid in addition to the restitution ordered.

B. Except as provided in subsection A and this subsection, all fees collected pursuant to this section shall be deposited in a revolving fund for the benefit of the Department of Public Safety.

**Section 991f. Restitution**

A. For the purposes of any provision of this title relating to sentencing in a criminal case and restitution orders:

1. “Restitution” means the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant;

2. “Victim” means any person, partnership, corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person;

3. “Economic loss” means actual financial detriment suffered by the victim consisting of medical expenses actually incurred, damage to or loss of real and personal property and any other out-of-pocket expenses, including loss of earnings, reasonably incurred as the direct result of the

criminal act of the defendant. No other elements of damage shall be included as an economic loss for purposes of this section.

B. In all criminal prosecutions and juvenile proceedings in the Choctaw Nation of Oklahoma, when the court enters an order directing the offender to pay restitution to any victim for economic loss or to pay to the Choctaw Nation any fines, fees or assessments, the order, for purposes of validity and collection, shall not be limited to the maximum term of imprisonment for which the offender could have been sentenced, nor limited to any term of probation, parole, or extension thereof, nor expire until fully satisfied. The court order for restitution, fines, fees or assessments shall remain a continuing obligation of the offender until fully satisfied, and the obligation shall not be considered a debt, nor shall the obligation be dischargeable in any bankruptcy proceeding. The court order shall continue in full force and effect with the supervision of the Choctaw Nation until fully satisfied, and the Choctaw Nation shall use all methods of collection authorized by law.

C. 1. Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution. Restitution may be ordered in addition to the punishments prescribed by law.

2. The court shall order full restitution based upon the following considerations:

a. the nature and amount of restitution shall be sufficient to restore the crime victim to the equivalent economic status existing prior to the losses sustained as a direct result of the crime, and may allow the crime victim to receive payment in excess of the losses sustained; provided, the excess amount of restitution shall not be more than treble the actual economic loss incurred, and

b. the amount of restitution shall be established regardless of the financial resources of the offender.

3. The court:

a. may direct the return of property to be made as soon as practicable and make an award of restitution in the amount of the loss of value to the property itself as a direct result of the crime, including out-of-pocket expenses and loss of earnings incurred as a result of damage to or loss of use of the property, the cost to return the property to the victim or to restore the property to its pre-crime condition whichever may be appropriate under the circumstances,

b. may order restitution in a lump sum or by such schedules as may be established and thereafter adjusted by agreement consistent with the order of the court,

c. shall have the authority to amend or alter any order of restitution made pursuant to this section providing that the court shall state its reasons and conclusions as a matter of record for any change or amendment to any previous order,

d. may order interest upon any ordered restitution sum to accrue at the rate of twelve percent (12%) per annum until the restitution is paid in full. The court may further order such interest to be paid to the victims of the crime or proportion of the interest payment between the victims and the court fund in the discretion of the court, and

e. shall consider any pre-existing orders imposed on the defendant, including, but not limited to, orders imposed under civil and criminal proceedings.

D. If restitution to more than one person, agency or entity is set at the same time, the court shall establish the following priorities of payment:

1. The crime victim or victims; and

2. Any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct.

E. 1. The prosecuting attorney's office shall present the crime victim's restitution claim to the court at the time of the conviction of the offender or the restitution provisions shall be included in the written plea agreement presented to the court, in which case, the restitution claim shall be reviewed by the judge prior to acceptance of the plea agreement.

2. At the initiation of the prosecution of the defendant, the prosecuting attorney's office shall provide all identifiable crime victims with written and oral information explaining their rights and responsibilities to receive restitution established under this section.

3. The prosecuting attorney's office shall provide all crime victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. This form shall be filed with any victim impact statement to be included in the judgment and sentence. Every crime victim receiving the restitution claim form shall be provided assistance and direction to properly complete the form.

4. The official restitution request form shall be presented in all cases regardless of whether the case is brought to trial. In a plea bargain, the prosecuting attorney in every case where the victim has suffered economic loss, shall, as a part of the plea bargain, require that the offender pay restitution to the crime victim. The court clerk shall be authorized to act as a clearing house for collection and disbursement of restitution payments made pursuant to this section, and may assess a fee of One Dollar ($1.00) per payment received from the defendant, except when the defendant is sentenced to incarceration.

F. The crime victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of the Choctaw Nation of Oklahoma, of any state of the United States, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.

G. The court shall, upon motion by the crime victim, redact from the submitted documentation all personal information relating to the crime victim that does not directly and necessarily establish the authenticity of any document or substantiate the asserted amount of the restitution claim.

H. The unexcused failure or refusal of the crime victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information. The court shall order the offender to submit in advance of the sentencing proceeding such information as the court may direct and finds necessary to be disclosed for the purpose of ascertaining the type and manner of restitution to be ordered.

I. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court shall not deprive the court of the authority to set restitution or set the schedule of payment. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information. The willful failure or refusal of the offender to provide all or part of the requisite information prior to sentencing, unless disclosure is deferred by the court, shall constitute an act of contempt.

J. The court shall conduct such hearings or proceedings as it deems necessary to set restitution and payment schedules at the time of sentencing or may bifurcate the sentencing and defer the hearing or proceedings relating to the imposition of restitution as justice may require. Amendments or alterations to the restitution order may be made upon the court's own motion, petition by the crime victim or petition by the offender.

K. An offender who files a meritless or frivolous petition for amendment or alteration to the restitution order shall pay the costs of the proceeding on the petition and shall have added to the existing restitution order the additional loss of earnings and out-of-pocket loss incurred by the crime victim in responding to the petition.

L. The restitution request form shall be promulgated by the Court of Appeals and provided to the prosecuting attorney.

M. If a defendant who is financially able refuses or neglects to pay restitution as ordered by this section, payment may be enforced:

1. By contempt of court as provided in Section 567 of the Choctaw Nation Criminal Code with imprisonment or fine or both;

2. In the same manner as prescribed in subsection N of this section for a defendant who is without means to make such restitution payment; or

3. Revocation of the criminal sentence if the sentence imposed was a suspended or deferred sentence.

N. If the defendant is without means to pay the restitution, the judge may direct the total amount due, or any portion thereof, to be entered upon the court minutes where it shall then be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment in a civil case. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to enforce other judgments; provided, however, the judgment herein prescribed shall not be considered a debt nor dischargeable in any bankruptcy proceeding.

O. Nothing in subsections M and N of this section shall be construed to be additions to the original criminal penalty, but shall be used by the court as sanctions and means of collection for criminal restitution orders and restitution orders that have been reduced to judgment.

## Chapter 17. Reserved

## Chapter 18. Appeals

### Section 1051. Right of appeal—Review—Corrective jurisdiction—Procedure—Scope of review on certiorari

A. An appeal to the Court of Appeals may be taken by the defendant, as a matter of right from any judgment against him or her, which shall be taken as herein provided; and, upon the appeal, any decision of the court or intermediate order made in the progress of the case may be reviewed; provided further, all appeals taken from any conviction on a plea of guilty shall be taken by petition for writ of certiorari to the Court of Appeals, as provided in paragraph B of this section, provided, such petition must be filed within ninety (90) days from the date of said conviction. The Court of Appeals may take jurisdiction of any case for the purpose of correcting the appeal records when the same do not disclose judgment and sentence; such jurisdiction shall be for the sole purpose of correcting such defect or defects.

B. The procedure for the filing of an appeal in the Court of Appeals shall be as provided in the Rules of the Court of Appeals; and the Court of Appeals shall provide by court rules, which will have the force of statute, and be in furtherance of this method of appeal: (1) The procedure to be followed by the trial courts in the preparation and authentication of transcripts and records in cases appealed under this act; (2) the procedure to be followed for the completion and submission of the appeal taken hereunder; and (3) the procedure to be followed for filing a petition for and the issuance of a writ of certiorari.

C. The scope of review to be afforded on certiorari shall be prescribed by the Court of Appeals.

### Section 1052. How governed

An appeal from a judgment in a criminal action may be taken in the manner and in the cases prescribed in Section 1051 et seq.

**Section 1053. Appeals taken by the Choctaw Nation—Allowable cases**

Appeals to the Court of Appeals may be taken by the Choctaw Nation in the following cases and no other:

1. Upon judgment for the defendant on quashing or setting aside an information;

2. Upon an order of the court arresting the judgment;

3. Upon a question reserved by the Choctaw Nation;

4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a felony matter; and

5. Upon a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice.

Priority shall be given to appeals taken pursuant to paragraph 5 of this section, and an order staying proceedings shall be entered pending the outcome of the appeal.

**Section 1054. Automatic appeal of judgments holding statutes unconstitutional in criminal actions**

Any final judgment entered by the district court in a criminal action rendering an act of the Choctaw Nation Tribal Council to be unconstitutional shall be automatically appealed to the Court of Appeals, unless said act has been previously declared unconstitutional by said Court of Appeals. Such appeals shall be by the prosecuting attorney upon a reserved question of law.

**Section 1055. Time for perfecting appeal—Record and transcript—Notice to transmit—Indigent defendants**

A. In misdemeanor and felony cases the appeal must be perfected within ninety (90) days from the date of the pronouncement of the judgment and sentence. A transcript in both felony and misdemeanor cases must be filed as hereinafter directed.

B. It shall be the duty of the clerk of the court from which notice of appeal has been given, and in which the original record and transcript are to be filed, to notify the clerk of the Court of Appeals when the certified copies of the original record and transcripts are assembled for transmission to the Court of Appeals, and the parties, or their counsel, have been advised to that effect. The clerk of the Court of Appeals shall, within ten (10) days after the receipt of the district court clerk's notice of the completion of the record, issue a notice to transmit the certified copies of the original record to the clerk of the Court of Appeals and one certified copy of the original records and transcripts to either the retained or appointed counsel of record on appeal.

**Section 1056. Perfecting appeal without filing motion for new trial**

The right of a party to perfect an appeal from a judgment, order or decree of the trial court to the Court of Appeals shall not be conditioned upon his or her having filed in the trial court a motion for a new trial, but in the event a motion for a new trial is filed in the trial court by a party adversely affected by the judgment, order or decree, no appeal to the Court of Appeals may be taken until subsequent to the ruling by the trial court on the motion for a new trial.

**Section 1057. Appeal by the Choctaw Nation does not affect judgment**

An appeal taken by the Choctaw Nation in no case stays or affects the operation of the judgment in favor of the defendant, until the judgment is reversed.

**Section 1058. Conditions of bond—Surrender by sureties—Stay of execution—Confinement of defendant when crime not bailable**

If an appeal is taken and the appeal bond given, said bond shall be conditioned that the defendant will appear, submit to and perform any judgment rendered by the Court of Appeals or the court in which the original judgment was rendered in the further progress of the cause, and will not depart without leave of the court. After the determination of the appeal in the Court of Appeals, or if the appeal is not perfected as provided by law, the defendant may be surrendered by the sureties to the proper authorities for the execution of the sentence. If the defendant be adjudged to be incarcerated in any penal institution and/or to pay a fine, said sureties shall be relieved of liability for such fine and costs upon surrender of the defendant to the proper authorities for incarceration pursuant to the judgment and prior to forfeiture of the bond. If no bond be given the appeal shall not stay execution of the judgment. If pending the appeal the bond be given, a further execution of the judgment shall be stayed and the defendant released pending the determination of the appeal. In all cases where the sentence is for a crime not bailable the defendant shall be confined in the penitentiary pending the appeal.

**Section 1059. Reserved**

**Section 1060. Reserved**

**Section 1061. Reserved**

**Section 1062. Exceptions**

The exceptions stated in the case shall have the same effect as if they had been reduced to writing, allowed and signed by the judge at the time they were taken.

**Section 1063. Reserved**

**Section 1064. Reserved.**

**Section 1065. Defendants may appeal jointly or severally**

When several defendants are tried jointly, any one or more of them may take an appeal, but those who do not join in the appeal shall not be affected thereby.

**Section 1066. Power of Court of Appeals—Return by clerk of district court when new trial granted**

The Court of Appeals may reverse, affirm or modify the judgment or sentence appealed from, and may, if necessary or proper, order a new trial or resentencing. In either case, the cause must be remanded to the court below, with proper instructions, and the opinion of the court, within the time, and in the manner, to be prescribed by rule of the court.

If the case is reversed for a new trial, the clerk of the district court is required to make return showing that said case was specifically called to the attention of the trial court at the time of the setting of the docket following receipt of mandate, and showing the court's action in placing said cause on the docket for trial, said return to be made immediately after the trial and entry of judgment, or earlier disposal.

Should the case not be retried and should it be dismissed by the court, return shall be made, giving the reasons stated by the court in his minutes justifying such dismissal.

**Section 1067. Order when no offense committed—When information defective**

When a judgment against the defendant is reversed, and it appears that no offense whatever has been committed, the Court of Appeals must direct that the defendant be discharged; but if it appears that the defendant is guilty of an offense although defectively charged in the information, the Court of Appeals must direct the prisoner to be returned and delivered over to the jailer, there to abide the order of the court in which he was convicted.

**Section 1068. Reserved**

**Section 1069. Appeal not dismissed for informality**

An appeal shall not be dismissed for any informality or defect in the taking thereof. If the same be corrected in a reasonable time after an appeal has been dismissed, another appeal may be taken.

**Section 1070. Judgment to be executed on affirmance**

On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court may direct.

**Section 1071. Opinions to be recorded**

All opinions of the Court of Appeals must be given in writing and recorded in the journal.

**Section 1072. Record and enforcement of mandate or order in district court—Return by clerk of district court to Clerk of Court of Appeals**

It is hereby made the duty of the district court clerk, upon receipt from the Clerk of the Court of Appeals of any mandate or order of the Court of Appeals, to immediately and without any order from the court, or judge thereof, to spread said mandate or order of record in the proper court, and to issue and place in the hands of the proper officer appropriate process for carrying out such mandate or order.

That it shall be the duty of any such court clerk to immediately upon return being made by the officer to whom process is delivered, to thereafter make return to the Clerk of the Court of Appeals, showing the date that mandate was received, date filed and recorded, the date process was issued to the officer, and the date the process was served and whether the convicted person was incarcerated. If incarceration of the prisoner is delayed by reason of flight, or for any other cause for a period of more than fifteen (15) days after receipt of mandate, the return, under any such circumstance causing delay, must be immediately made to the Clerk of the Court of Appeals; and upon later apprehension of prisoner and incarceration, a further return must be made to the Clerk of the Court of Appeals, reporting the facts, within ten (10) days after such incarceration.

**Section 1073. Reserved**

**Section 1074. Reserved**

**Section 1075. Reserved**

**Section 1076. Notice to defendant of his right to appeal—Stay of execution of judgment**

The court shall at the time of entering judgment and sentence notify the defendant of his right to appeal. An appeal from a judgment of conviction does not stay the execution of the judgment unless the trial or appellate court shall so order.

**Section 1077. Bail allowable**

Bail on appeal shall be allowed on appeal from a judgment of conviction of a misdemeanor, or in felony cases where the punishment is a fine only, and when made and approved shall stay the execution of such judgment.

Bail on appeal shall not be allowed after conviction of any of the following offenses:

1. Kidnapping;

2. Robbery;

3. Arson in the first degree;

4. Shooting with intent to kill;

5. Forcible sodomy;

6. Any felony conviction for which the evidence shows that the defendant used or was in possession of a firearm or other dangerous or deadly weapon during the commission of the offense;

7. Trafficking in illegal drugs;

8. Manufacturing a controlled dangerous substance;

9. Sexual abuse of a child; or

10. Any other felony after former conviction of a felony.

The granting or refusal of bail after judgment of conviction in all other felony cases shall rest in the discretion of the court; however, if bail is allowed, the trial court shall state the reason therefor.

**Section 1078. Amount of bond—Time to make appeal bond—Stay pending appeal—Additional bond**

When bail is allowed, the court shall fix the amount of the appeal bond and the time in which the bond shall be given in order to stay the execution of the judgment pending the filing of the appeal in the appellate court, and until such bond is made shall hold the defendant in custody. If the bond be given in the time fixed by the court, the execution of the judgment shall be stayed during the time fixed by law for the filing of the appeal in the appellate court. If the appeal is filed within the time provided by law, then the bond shall stay the execution of the sentence during the pendency of the appeal, subject to the power of the court to require a new or additional bond when the same is by the court deemed necessary. If the bond is not given within the time fixed, or if given and the appeal not be filed in the appellate court within the time provided by law, the judgment of the court shall immediately be carried into execution.

**Section 1079. Denial of bail—Review by habeas corpus**

If bail on appeal be denied, or the amount fixed be excessive, the defendant shall be entitled to a review of the action of the trial court and its reasons for refusing bail, by habeas corpus proceedings before the appellate court, or if the court be not in session, then by some judge of said court.

**Uniform Post-Conviction Procedure Act**

**Section 1080. Post-Conviction Procedure Act—Right to challenge conviction or sentence**

Any person who has been convicted of, or sentenced for, a crime and who claims:

(a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of the Choctaw Nation of Oklahoma;

(b) that the court was without jurisdiction to impose sentence;

(c) that the sentence exceeds the maximum authorized by law;

(d) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

(e) that his or her sentence has expired, his or her suspended sentence, probation, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

**Section 1081. Commencement of proceeding**

A proceeding is commenced by filing a verified "application for post-conviction relief" with the clerk of the district court if an appeal is not pending. When such a proceeding arises from the revocation of conditional release, the proceeding shall be commenced by filing a verified "application for post-conviction relief" with the clerk of the district court. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The Court of Criminal Appeals may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the prosecuting attorney.

**Section 1082. Court costs and expenses of representation**

If the applicant is unable to pay court costs and expenses of representation, he shall include an affidavit to that effect with the application, which shall then be filed without costs. Counsel necessary in representation shall be made available to the applicant after filing the application on a finding by the court that such assistance is necessary to provide a fair determination of meritorious claims. If an attorney is appointed to represent such an applicant then the fees and expenses of such attorney shall be paid from the court fund.

**Section 1083. Response by state—Disposition of application**

(a) Within thirty (30) days after the docketing of the application, or within any further time the court may fix, the Choctaw Nation shall respond by answer or by motion which may be supported by affidavits. In considering the application, the court shall take account of substance, regardless of defects of form. If the application is not accompanied by the record of the proceedings challenged therein, the respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application; or such records may be ordered by the court. The court may also allow depositions and affidavits for good cause shown.

(b) When a court is satisfied, on the basis of the application, the answer or motion of respondent, and the record, that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may order the application dismissed or grant leave to file an amended application. Disposition on the pleadings and record is not proper if there exists a material issue of fact. The judge assigned to the case should not dispose of it on the basis of information within his personal knowledge not made a part of the record.

(c) The court may grant a motion by either party for summary disposition of the application when it appears from the response and pleadings that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. An order disposing of an application without a hearing shall state the court's findings and conclusions regarding the issues presented.

**Section 1084. Evidentiary hearing—Findings of fact and conclusions of law**

If the application cannot be disposed of on the pleadings and record, or there exists a material issue of fact, the court shall conduct an evidentiary hearing at which time a record shall be made and preserved. The court may receive proof by affidavits, depositions, oral testimony, or other evidence and may order the applicant brought before it for the hearing. A judge should not preside at such a hearing if his or her testimony is material. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

**Section 1085. Finding in favor of applicant**

If the court finds in favor of the applicant, it shall vacate and set aside the judgment and sentence and discharge or resentence him or her, or grant a new trial, or correct or modify the judgment and sentence as may appear appropriate. The court shall enter any supplementary orders as to re-arraignment, retrial, custody, bail, discharge, or other matters that may be necessary and proper.

**Section 1086. Subsequent application**

All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.

**Section 1087. Appeal to Court of Appeals**

A final judgment entered under this act may be appealed to the Court of Appeals on petition in error filed either by the applicant or the Choctaw Nation within thirty (30) days from the entry of the judgment. Upon motion of either party on filing of notice of intent to appeal, within ten (10) days of entering the judgment, the district court may stay the execution of the judgment pending disposition on appeal; provided, the Court of Appeals may direct the vacation of the order staying the execution prior to final disposition of the appeal.

**Section 1088. Short title**

This act may be cited as the “Post-Conviction Procedure Act.”

**Section 1088.1. Post-conviction relief applications—Reasonable inquiry—Sanctions**

A. By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, written motion or other papers regarding an application for post-conviction relief an

attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

1. It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

2. The claims and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; and

3. The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

B. If, after notice and a reasonable opportunity to respond, the Court of Appeals determines that this section has been violated, the court may impose an appropriate sanction upon the attorneys, law firms, or parties that have violated this section. The Court of Appeals may adopt and publish rules to implement this section.

**Section 1089. Post-conviction relief—Grounds for appeal**

A. The only issues that may be raised in an application for post-conviction relief are those that:

1. Were not and could not have been raised in a direct appeal; and

2. Support a conclusion either that the outcome of the trial would have been different but for the errors or that the defendant is factually innocent.

The applicant shall state in the application specific facts explaining as to each claim why it was not or could not have been raised in a direct appeal and how it supports a conclusion that the outcome of the trial would have been different but for the errors or that the defendant is factually innocent.

B. 1. The application for post-conviction relief shall be filed in the Court of Appeals within ninety (90) days from the date the appellee's brief on direct appeal is filed or, if a reply brief is filed, ninety (90) days from the filing of that reply brief with the Court of Appeals on the direct appeal.

2. All grounds for relief that were available to the applicant before the last date on which an application could be timely filed not included in a timely application shall be deemed waived. No application may be amended or supplemented after the time specified under this section. Any amended or supplemental application filed after the time specified under this section shall be treated by the Court of Appeals as a subsequent application.

3. Subject to the specific limitations of this section, the Court of Appeals may issue any orders as to discovery or any other orders necessary to facilitate post-conviction review.

4. a. The Court of Appeals shall review the application to determine:

(1) whether controverted, previously unresolved factual issues material to the legality of the applicant's confinement exist,

(2) whether the applicant's grounds were or could have been previously raised, and

(3) whether relief may be granted under this act.

b. For purposes of this subsection, a ground could not have been previously raised if:

(1) it is a claim of ineffective assistance of trial counsel involving a factual basis that was not ascertainable through the exercise of reasonable diligence on or before the time of the direct appeal, or

(2) it is a claim contained in an original timely application for post-conviction relief relating to ineffective assistance of appellate counsel.

All claims of ineffective assistance of counsel shall be governed by clearly established law as determined by the United States Supreme Court.

If the Court of Appeals determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement do not exist, or that the claims were or could have been previously raised, or that relief may not be granted under this act and enters an order to that effect, the Court shall make findings of fact and conclusions of law or may order the parties to file proposed findings of fact and conclusions of law for the Court to consider on or before a date set by the Court that is not later than thirty (30) days after the date the order is issued. The Court of Appeals shall make appropriate written findings of fact and conclusions of law not later than fifteen (15) days after the date the parties filed proposed findings.

5. If the Court of Appeals determines that controverted, previously unresolved factual issues material to the legality of the applicant's confinement do exist, and that the application meets the other requirements of paragraph 4 of this subsection, the Court shall enter an order to the district court designating the issues of fact to be resolved and the method by which the issues shall be resolved.

The district court shall not permit any amendments or supplements to the issues remanded by the Court of Appeals except upon motion to and order of the Court of Appeals subject to the limitations of this section. The Court of Appeals shall retain jurisdiction of all cases remanded pursuant to this act.

6. The prosecuting attorney's office shall have twenty (20) days after the issues are remanded to the district court within which to file a response. The district court may grant one extension of twenty (20) days for good cause shown and may issue any orders necessary to facilitate post-conviction review pursuant to the remand order of the Court of Appeals. Any applications for

extension beyond the twenty (20) days shall be presented to the Court of Appeals. If the district court determines that an evidentiary hearing should be held, that hearing shall be held within thirty (30) days from the date that the Choctaw Nation filed its response. The district court shall file its decision together with findings of fact and conclusions of law with the Court of Appeals within forty-five (45) days from the date that the Choctaw Nation filed its response or within forty-five (45) days from the date of the conclusion of the evidentiary hearing.

7. Either party may seek review by the Court of Appeals of the district court's determination of the issues remanded by the Court of Appeals within ten (10) days from the entry of judgment. Such party shall file a notice of intent to seek review and a designation of record in the district court within ten (10) days from the entry of judgment. A copy of the notice of intent to seek review and the designation of the record shall be served on the court reporter, the petitioner, the prosecuting attorney, and shall be filed with the Court of Appeals. A petition in error shall be filed with the Court of Appeals by the party seeking review within thirty (30) days from the entry of judgment. If an evidentiary hearing was held, the court reporter shall prepare and file all transcripts necessary for the appeal within sixty (60) days from the date the notice and designation of record are filed. The petitioner's brief-in-chief shall be filed within forty-five (45) days from the date the transcript is filed in the Court of Appeals or, if no evidentiary hearing was held, within forty-five (45) days from the date of the filing of the notice. The respondent shall have twenty (20) days thereafter to file a response brief. The district court clerk shall file the records on appeal with the Court of Appeals on or before the date the petitioner's brief-in-chief is due. The Court of Appeals shall issue an opinion in the case within one hundred twenty (120) days of the filing of the response brief or at the time the direct appeal is decided. If no review is sought within the time specified in this section, the Court of Appeals may adopt the findings of the district court and enter an order within fifteen (15) days of the time specified for seeking review or may order additional briefing by the parties. In no event shall the Court of Appeals grant post-conviction relief before giving the Choctaw Nation an opportunity to respond to any and all claims raised to the Court.

8. If an original application for post-conviction relief is untimely or if a subsequent application for post-conviction relief is filed after filing an original application, the Court of Appeals may not consider the merits of or grant relief based on the subsequent or untimely original application unless:

a. the application contains claims and issues that have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this section, because the legal basis for the claim was unavailable, or

b. (1) the application contains sufficient specific facts establishing that the current claims and issues have not and could not have been presented previously in a timely original application or in a previously considered application filed under this section, because the factual basis for the claim was unavailable as it was not ascertainable through the exercise of reasonable diligence on or before that date, and

(2) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the alleged error,

no reasonable fact finder would have found the applicant guilty of the underlying offense or would have rendered the penalty of death.

9. For purposes of this act, a legal basis of a claim is unavailable on or before a date described by this subsection if the legal basis:

a. was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or the Choctaw Nation Court of Appeals on or before that date, or

b. is a new rule of constitutional law that was given retroactive effect by the United States Supreme Court or the Choctaw Nation Court of Appeals and had not been announced on or before that date.

C. All matters not specifically governed by the provisions of this section shall be subject to the provisions of the Post-Conviction Procedure Act. If the provisions of this act conflict with the provisions of the Post-Conviction Procedure Act, the provisions of this act shall govern.

**Appeal by the Choctaw Nation**

**Section 1089.1. Choctaw Nation may appeal certain adverse rulings or orders**

The Choctaw Nation of Oklahoma, by and through the prosecuting attorney, shall have the right to appeal an adverse ruling or order of a magistrate sustaining a motion to suppress evidence, quashing an information, sustaining a plea to the jurisdiction of the court, failing to find prosecutive merit in a hearing pursuant to the Choctaw Nation Juvenile Code, sustaining a demurrer to the information, binding the defendant over for trial on a charge other than the charge for the original offense, or discharging a defendant at the preliminary examination because of insufficiency of the evidence to establish either that a crime has been committed or that there is probable cause to believe that the accused has committed a felony. Such an appeal shall be taken in accordance with the procedures provided in this act.

**Section 1089.2. Notice of intent to appeal—Application to appeal**

A. If in open court at the time the adverse ruling or order is made by the magistrate, the Choctaw Nation shall give notice of its intention to appeal the decision. The magistrate shall then enter the notice in the proper court docket, continue the preliminary hearing and retain the accused on the present bond or if the person is in custody, return the accused to custody. The Choctaw Nation shall file with the court clerk a written application to appeal from the adverse ruling or order of the magistrate within five (5) days from the date of the adverse ruling or order.

B. If not in open court at the time the adverse ruling or order is made by the magistrate, within five (5) days from the date of the adverse ruling or order, the Choctaw Nation shall file with the court clerk a written application to appeal from the adverse ruling or order of the magistrate.

C. The application to appeal shall immediately be presented by the district court clerk to the Chief Judge or Vice-Chief Judge of the Court of Appeals. The Chief Judge or Vice-Chief Judge shall assign the application to a judge of the Court of Appeals, and shall order the assigned judge to set said matter for hearing and decision within twenty (20) days from the filing of the written application to appeal and shall provide at least three (3) days' notice to all parties of the time and place of the hearing.

**Section 1089.3. Waiver of right to appeal**

In the event the Choctaw Nation does not file the application to appeal as provided in Section 1089.2 of this act, the Choctaw Nation shall have waived any right to appeal from the magistrate's adverse decision. The magistrate's order shall then be final.

**Section 1089.4. Review of record**

The judge assigned to the Choctaw Nation's application to appeal shall review all relevant portions of the record of the case before the magistrate, including, but not limited to, partial or complete transcripts of the preliminary hearing; affidavits for a search warrant; search warrants; electronic recording tapes; written stipulations of facts; or any evidence which was presented at the preliminary hearing.

**Section 1089.5. Preliminary hearing—Review of record in light most favorable to the Choctaw Nation**

In the event that the Choctaw Nation appeals the ruling of the preliminary hearing magistrate ordering a defendant discharged based upon a finding of insufficiency of the evidence to establish that a felony has been committed or insufficiency of the evidence to show that there is probable cause to believe that the accused has committed a felony, the assigned judge shall determine, based upon the entire record developed before the magistrate, whether the evidence, taken in the light most favorable to the Choctaw Nation, is sufficient to find that a felony crime has been committed and that the defendant probably committed said crime.

**Section 1089.6. Erroneous ruling or order—Remand**

In the event the assigned judge finds, based upon the record developed before the magistrate, that the magistrate's ruling or order was in error, the assigned judge shall enter an order finding that the ruling or order entered by the magistrate was erroneous and shall remand the cause to the magistrate with directions to enter a proper ruling or order.

**Section 1089.7. Appeal to Court of Appeals—Bail—Review**

In the event the Choctaw Nation's application to appeal is denied and the assigned judge affirms the magistrate's ruling or order, that ruling or order shall be appealable to the Court of Appeals. The assigned judge may also sit as part of the appeal to the Court of Appeals. During the pendency of any such appeal, the assigned judge may admit the defendant to bail upon his or her own recognizance. The Court of Appeals shall affirm, reverse or modify the magistrate's order and remand the cause for further proceedings consistent with its ruling.

## Adult Offender Supervision

### Section 1090. Offender Supervision outside the Choctaw Nation

The Chief of the Choctaw Nation, or his or her designee, is hereby authorized to execute an agreement on behalf of the Choctaw Nation of Oklahoma with any other federally recognized Indian Tribe or with any state or states of the United States for the supervision of defendants outside the geographical bounds of the Choctaw Nation of Oklahoma when said defendants are convicted of a crime and placed on probation under the laws of the Choctaw Nation of Oklahoma.

## Appendix. Rules of the Court of Appeals in Criminal Cases

### Section I. General Rules of the Court and Definitions

### Rule 1.0. Scope of rules

A. The Rules of the Court of Appeals shall apply to all appeals and proceedings in this Court. See Section 1051 of the Choctaw Nation Code of Criminal Procedure.

B. The Rules set forth in Sections I, II and III shall apply in all appeals, unless a specific provision to the contrary appears in the Sections governing specific appeals.

C. All references to statutes are to Choctaw Nation Statutes unless otherwise noted.

D. Citation to the Rules of the Court of Appeals in Criminal Cases shall be in the following format: Rule _____, Rules of the Choctaw Nation Court of Appeals—Criminal, (year).

E. These Rules reference the District Court Clerk, also known as the trial court clerk, and a separate Clerk of the Court of Appeals; however, both of these positions are currently held by the same clerk who exercises the functions and duties of each office from a single location. Great care should be exercised by parties having business before either the District Court or the Court of Appeals to ensure that documents and other pleadings are presented for filing in the proper case in either the District Court or the Court of Appeals. It is not the duty of the court clerk to advise parties regarding whether particular documents or pleadings should be filed in cases pending before the District Court or the Court of Appeals.

**Rule 1.1. Time of convening**

The Court of Appeals will be open for the transaction of business at any time on the call of the Chief Judge or by any two judges of the Court of Appeals.

**Rule 1.2. Methods for bringing appeals and original actions**

A. Regular Appeals.

(1) Felony and Misdemeanor Appeals. Sections II, and III of these Rules. PROVIDED HOWEVER, the specific provisions of Section VII shall control in Juvenile cases over the general provisions of Sections II and III.

(2) Certiorari Appeals. Section IV of these Rules.

(3) Choctaw Nation Appeals.

(a) Appeals from Adverse Ruling of Magistrate. See Sections VI and XI of these Rules; Sections 1053, 1089.1 through 1089.7 of the Choctaw Nation Code of Criminal Procedure.

(b) Appeals in Juvenile. See Sections VII and XI of these Rules.

(c) Other Choctaw Nation appeals. See Sections II and III of these Rules; Sections 1053 and 1053.1 of The Choctaw Nation Code of Criminal Procedure.

(4) Juvenile Appeals. Sections VII and XI of these Rules.

(5) Resentencing Appeals. Sections II and III of these Rules for appeals pursuant to Section 929 of the Choctaw Nation Code of Criminal Procedure.

(6) Expungement of Records.

B. Original Proceedings. Section X of these Rules.

C. Post-conviction Appeals. Section V of these Rules. See Sections 1087, 1088.1 and 1089 of the Choctaw Nation Code of Criminal Procedure.

D. All Other Appeals

(1) Bail Pending Trial or Appeal. Excessive bail or denial of bail is governed by habeas corpus proceedings pursuant to Section 1079 of the Choctaw Nation Code of Criminal Procedure and Section X of these Rules.

(2) Disqualification of Judges. Review of failure to disqualify by a judge in a criminal case is governed by Section X of these Rules.

(3) Revocation of Suspended Sentence. Review of an order revoking a suspended sentence is governed by the same procedure as perfection of a regular misdemeanor or felony appeal. See Section 991(b) of the Choctaw Nation Code of Criminal Procedure, and Sections II, and III of these Rules. However, the scope of review is limited to the validity of the revocation order.

The appropriate appeal time commences upon imposition of the order revoking suspended sentence. The validity of the predicate conviction can only be appealed through a separate appeal pursuant to the felony and misdemeanor procedures of these Rules, Sections II and III, or the certiorari procedure, Section IV of these Rules.

(4) Deferred Judgment and Sentence.

(a) Appeal of Imposition of Order Deferring Judgment and Sentence.

(i) A defendant may appeal the terms of probation imposed as a part of the Order Deferring Imposition of Judgment and Sentence, separate from or together with the validity of the plea entered at the time the order is entered. Failure to appeal the terms of the Order Deferring Imposition of Judgment and Sentence does not preclude a defendant's right to a certiorari review of the validity of the plea in accordance with this Rule if the order deferring is accelerated at a future date with Judgment and Sentence imposed.

(ii) A defendant who seeks to only appeal the terms imposed by the trial court as a condition for deferral of Judgment and Sentence may appeal under the Rules for regular misdemeanor or felony appeals. See Sections 1051 and 991c of the Choctaw Nation Code of Criminal Procedure; and Sections II, and III of these Rules. The scope of review will be limited to the validity of the conditions of probation set out in the Order Deferring Imposition of Judgment and Sentence.

(iii) A defendant who receives a deferral of Judgment and Sentence after pleading guilty or nolo contendere may challenge the terms of the deferral, seek to withdraw his or her plea, or challenge both such terms and plea, pursuant to the provisions of a regular appeal. Any person wishing to challenge the validity of the plea of guilty must comply with the provisions of Rule 4.1. PROVIDED HOWEVER, failure to challenge the validity of the plea at the same time a defendant appeals the terms of probation imposed by the deferral will constitute a waiver of the right to challenge the plea's validity in any future proceeding.

(iv) The appeal time commences upon the imposition of the order deferring Judgment and Sentence.

(b) Acceleration Proceeding. A defendant who wishes to challenge only errors in the acceleration proceeding shall perfect an appeal in accordance with Sections II, and III of these Rules. The appeal time commences upon the imposition of Judgment and Sentence after acceleration of sentencing. The scope of review will be limited to the validity of the acceleration order.

(c) Withdrawal of Plea After Acceleration. In addition to appealing the validity of the acceleration order, a defendant who pled guilty or nolo contendere and seeks to withdraw his plea shall appeal by certiorari pursuant to Section IV of these Rules as a part of the appeal of the

validity of the acceleration order; PROVIDED HOWEVER, a defendant who appealed after the order deferring sentence pursuant to Subsection (a) of this Section shall not have the right to challenge the validity of the plea after the order deferring has been accelerated and the Judgment and Sentence has been imposed.

(6) Judgment and Sentence in Contempt Cases Within the Jurisdiction of the Court of Appeals. Review of the Judgment and Sentence in contempt cases within the jurisdiction of this Court is governed by the Misdemeanor Rules of Sections II, and III of these Rules. See Sections 565-568 of the Choctaw Nation Criminal Code.

(7) Order of Detention for Non-Payment of Fines or Costs. Review of a final order of detention for a defendant's non-payment of fines, costs, or other assessments ordered paid as part of judgment and sentence is governed by Section VIII of these Rules.

**Rule 1.3. Records—Withdrawal**

A. Prohibited. The Clerk of this Court shall not permit any of the following to be taken from the Clerk's office without an order from this Court:

(1) The certified copy of the original record;

(2) The original of the transcript of proceedings designated on appeal; or

(3) Any physical evidence filed on appeal.

B. Request to Inspect and/or Copy Records. A party may request to inspect and/or copy the items listed in Paragraph (A) of this Section. Such request shall be made to the Clerk of this Court. The Clerk shall designate a day and time for the inspection and/or copying, which shall take place at the office of the Clerk of the Court of Appeals. All such inspections and/or copying shall be done in the presence of the Clerk and at the expense of the party requesting the copies.

C. Request to Inspect Juror Questionnaires. When juror questionnaires are used during a criminal trial, access to the questionnaires by the parties must be balanced against the juror's right to privacy and to the confidentiality of the information in the questionnaires. Copies of the questionnaires shall be made available only for use during voir dire to the attorneys for the prosecution and defense, and to the trial court. All copies shall be destroyed at the conclusion of voir dire. The original questionnaires of all impaneled or questioned jurors shall be sealed by the trial court and retained, but not made part of the public record. The original questionnaires of jurors not questioned during voir dire shall be destroyed at the conclusion of the juror's service.

On appeal, if appellate counsel designates the questionnaires of all impaneled or questioned jurors, the Clerk of the District Court shall transmit the sealed original questionnaires to the Clerk of the Court of Appeals along with the rest of the appeal record. The attorneys of record on appeal may only view the juror questionnaires at this Court and shall not take the juror questionnaires out of the custody of the Court. The attorneys of record on appeal may contact the Clerk of the Court of Appeals to set a date and time when the questionnaires may be viewed at

this Court. When the appeal has been decided and mandated, all juror questionnaires shall be destroyed by the Clerk of this Court.

**Rule 1.4. Computation of time for appeal**

The computation of the time period for perfecting an appeal commences to run on the date the judgment and sentence is pronounced or, in the case of a resentencing appeal, when the new sentence is pronounced in open court. In computing a time limit prescribed in these Rules, the first day shall be excluded and the last included to complete the time period, as follows:

A. Misdemeanor and Felony Appeals. An appeal from any misdemeanor or felony conviction must be perfected by the filing of the petition in error, original record, transcripts and evidence within ninety (90) days from the date the Judgment and Sentence is pronounced. See Section 1055 of the Choctaw Nation Code of Criminal Procedure.

B. Other Regular Appeals.

(1) Choctaw Nation appeals, except for juvenile cases, must be perfected within the time limits as set out in Subdivision A, commencing from the date of the order entered by the trial court.

(2) Resentencing appeals must be perfected as set out in Subdivision A for misdemeanor and felony appeals, and Subdivision B for capital appeals.

(3) Certiorari appeals must be perfected as set out in Section IV.

(4) Juvenile appeals must be perfected as set out in Sections VII and XI.

**Rule 1.5. Clerk's office closed**

When any filing deadline falls on a day when the Clerk's office is closed, the filing due date will be on the next day that the Clerk's office is open for the performance of public business.

**Rule 1.6. Attorneys not admitted to practice in the Choctaw Nation; Recognition**

A. An attorney-at-law having professional business in this Court, must be licensed in the Choctaw Nation before appearing professionally before the Court of Appeals.

B. Only pro se Appellants/Petitioners and licensed attorneys may sign and file pleadings with the Clerk of this Court. See also Rule 1.16.

**Rule 1.7. Communication to be addressed to clerk**

All communications and inquiries regarding causes pending or other Court matters shall be addressed to the Clerk of the Court of Appeals, 306 Church Street, Talihina, Oklahoma, or P.O.

Box 702, Talihina, OK 74571-0702. Dockets reflecting case filings and status can be viewed at www.odcr.com.

**Rule 1.8. Notice; Sufficiency**

Notice required by orders of the Court or these Rules shall be given by the Clerk of this Court to all parties. Such notice shall be by mail and addressed to the party or the attorney of record at the address shown by the record or at the address furnished to the Clerk. PROVIDED HOWEVER, the Clerk shall be allowed to transmit notices and orders to mail folders in the Clerk's office established for any entity requesting delivery by posting to those folders for courier pick-up. Delivery is effective upon posting.

**Rule 1.9. Required number of copies; Pleadings and motions; Service**

The following must be filed in this Court:

A. All pleadings and motions: original and four (4) copies.

B. No pleadings, briefs or motions will be considered by this Court without proof of service to adverse party. The attorney of record or pro se applicant shall be responsible for service on the adverse party, except that service on the prosecuting attorney will be made by the Clerk of this Court.

**Rule 1.10. Filing fees**

In all cases filed in the Court of Appeals, and at the time of filing same, there shall be deposited with said Clerk as costs in said cause, Fifty Dollars ($50.00). Said sum shall cover all Court costs in said case and no rebate of any part thereof shall be made.

**Rule 1.11. Application in Forma Pauperis**

Any person who asserts indigency and an inability to pay the filing fees required under these Rules must execute and file with the Clerk of this Court an "Affidavit in Forma Pauperis", verified before a notary public or other person authorized to administer oaths, or as specified in Rule 1.13(L). Any false statement of a material fact therein may serve as the basis for prosecution for perjury. PROVIDED HOWEVER, a certified copy of Form 13.4 of these Rules determining indigency for the filing being submitted may be substituted. See Form 13.2.

A pleading shall not be considered filed in this Court until such time as the filing fee is paid or an "Affidavit in Forma Pauperis" is properly filed. This Rule shall not apply to filings of writs of habeas corpus.

**Rule 1.12. Form of affidavit in forma pauperis**

See Section XIII, Form 13.2 of these Rules.

**Rule 1.13. Definitions**

A. Judgment and Sentence. The formal instrument which reflects the Judgment and Sentence of the trial court and the date it was pronounced. See Rule 2.1(B)(4).

B. Original Record. All instruments filed with the clerk of the trial court during the trial proceedings, in chronological order, preceded by an index, as designated.

C. Transcript of Evidence. The reported transcript of all proceedings designated on appeal, together with required copies or photos of all exhibits attached, prepared by a certified or licensed shorthand reporter or a reporter otherwise appointed by the trial court. But see Rule 2.2(B)(4).

D. Notice of Intent to Appeal. A written instrument in the form prescribed by this Court filed by trial counsel serving notice to the trial court of the appealing party's intent to appeal the conviction or order, and filed with the clerk of the trial court, and a certified copy filed with the Clerk of the Court of Appeals. See Rule 1.14(C).

E. Designation of Record. The instrument filed by trial counsel with the clerk of the trial court and the Clerk of the Court of Appeals designating the records to be filed on appeal. It shall include that portion of the original record and that portion of the transcript of evidence which the appealing party requests in order to perfect the appeal. It shall list in specific terms the items to be included on appeal. Use of terms such as "All proceedings where a court reporter was present" are not sufficiently specific for the purpose of requiring transcripts to be prepared. Transcripts shall be requested by date and type of hearing to be transcribed.

F. Record on Appeal. The record on appeal consists of the Petition in Error, four (4) certified copies of the original record and, the original and two certified copies of the transcript of evidence and the exhibits incorporated therein, if any portions of the proceedings or evidence were designated for inclusion.

G. Certiorari on Plea of Guilty or Nolo Contendere. The only method of appeal from a conviction on a plea of guilty or nolo contendere entered in the trial court. See Section IV of these Rules.

H. Post-Conviction Remedies. Remedies available after the regular appeal period has lapsed or mandate issued. Sections 1080 to 1089 of the Choctaw Nation Code of Criminal Procedure. See Section V of these Rules. PROVIDED HOWEVER, capital cases are subject to specific remedies set out in Rule 9.7.

I. Resentencing Appeal. An appeal from a resentencing proceeding conducted by the trial court. See Section 929 of the Choctaw Nation Code of Criminal Procedure.

J. Tendered for Filing. Any document, other than the record on appeal and briefs filed as a matter of right pursuant to Rule 3.4, offered by a party, which that party seeks to have admitted into the

record before the Court of Appeals shall be presented to the Clerk of this Court, who shall stamp it tendered for filing, enter it on the docket as tendered, and submit to the Court for a decision whether to grant or deny the tendered document. Documents tendered for filing shall not be a part of the record of the pending appeal unless an order granting the acceptance of the document is entered by the Court.

K. Verification/Notary Public. For the purpose of these Rules when a Rule or Form requires that a document be verified before a Notary Public or other person authorized to administer oaths, it shall be sufficient if the person required to verify the document or form complies with the provisions of Section 426 of the Choctaw Nation Code of Civil Procedure, and verifies utilizing the statutory verification as follows: "I state under penalty of perjury under the laws of the Choctaw Nation of Oklahoma that the foregoing is true and correct. (Date and place) (Signature)" with the date and place printed on the line and the name printed under the signature.

**Rule 1.14. Qualification rule for determination of indigency; Notification; Trial counsel responsibility**

A. Qualifications.

(1) The qualifications for a defendant to have court-appointed counsel and/or a transcript at Choctaw Nation expense in a criminal trial or on direct appeal include, but are not limited to: ability of the defendant to make an appeal bond, and his decision to do so; availability and convertibility of any personal or real property owned; outstanding debts and liabilities; past and present financial history, earning capacity and living expenses; the accused's credit standing in the community; and the number in the defendant's family and dependents and their history of willingness and ability to assist the defendant with attorney fees and litigation expenses. When a defendant makes a request for court-appointed counsel or a transcript at Choctaw Nation expense, a Pauper's Affidavit shall be completed and signed under oath. The initial determination of indigency shall be made by the District Judge or any designee thereof, and shall be made based on the defendant's application and the criteria provided in these Rules.

(2) A status of indigency being ever subject to change, the determination of indigency shall be continually subject to review by the District Judge or his/her designee as established by an administrative order.

(3) Before the court appoints an attorney or grants any relief available under this Section based on the application set forth in Subsection (4) of this Section, the court shall ensure the application is in the form prescribed in Subsection (4) and the person or, if applicable, his parent or a legal guardian, understands the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The Court hearing the application may direct a copy of the application be sent to the prosecuting attorney for review; and upon request, the court shall hold a hearing on the issue of eligibility for appointment of the attorney or preparation of transcript at Choctaw Nation expense. See Section 1355A (C) of the Choctaw Nation Code of Criminal Procedure.

(4) The completed form shall be filed of record and be in compliance with the form set out in Section XIII, Form 13.3.

B. Payment of Costs of Representation. The court may order any person represented by a trial public defender or a defense attorney who contracts or volunteers to represent indigents pursuant to Sections 1355 through 1355.14 of the Choctaw Nation Code of Criminal Procedure to pay the costs for representation in full or in installments pursuant to the procedure set forth in Section 1355.14 of the Choctaw Nation Code of Criminal Procedure, after a judicial determination that the person is financially able to pay such costs. The trial court shall enter an order for the payment of cost of representation and determine eligibility of right to appointed counsel on appeal at the time of entering the Judgment and Sentence.

C. Notification. In all cases the uniform Notice of Intent to Appeal form adopted by this Subsection shall be utilized. If the court appoints an appellate public defender to represent the defendant on appeal, the clerk of the trial court shall notify the public defender of the appointment. PROVIDED HOWEVER, the court shall not order the appointment of an appellate public defender or notify the appellate public defender until the defendant's trial counsel files the Notice of Intent to Appeal and Designation of Record in a timely manner. In so doing, the Court shall use the form set out in Section XIII, Form 13.4.

D. Trial Counsel Responsibility.

The trial attorney in all cases shall be responsible for completing and filing the Notice of Intent to Appeal and Designation of Record required by Rule 1.14(C). If a defendant does not direct the trial attorney to initiate an appeal, the attorney shall prepare and file the form set out in Section XIII, Form 13.5, stating the defendant has been fully advised of his/her appeal rights and does not want to appeal the conviction.

**Rule 1.15. Use of court reporter's transcripts and recordings by appellate public defender**

In order to expedite the criminal appeal process and to prevent unnecessary expense to local court funds, in indigent criminal appeals assigned to an appellate public defender in accordance with Section 1051 of the Choctaw Nation Code of Criminal Procedure, the following provisions are made:

A. When the court reporter transcribes the trial transcript of testimony for an indigent defendant, an original and two (2) copies are to be filed in the trial court clerk's office in accordance with Rule 3.2(C).

B. An appellate public defender is required to review the statement of appealable issues attached as Exhibit B to the notice of intent to appeal and discuss the viability of issues for appeal with trial counsel prior to filing a supplemental designation of record, if supplementation is required. Any supplemental designation of record shall set forth why the additional record is required and include only those portions of the record necessary to address the propositions to be raised. Any supplemental designation of record shall include a signed acknowledgement of receipt of the additional designation from each court reporter responsible for preparing the record. The

acknowledgement may be a part of the designation of record filed or a signed certified mail return receipt card acknowledged by the reporter with an affidavit of mailing executed by the attorney requesting the additional record attached to it.

C. In the event some portion of the trial proceeding was not transcribed and was not included in trial counsel's designation of record and the appellate public defender feels that portion should be provided, as an alternative, the court reporter may make available to the appellate public defender the electronic recording, or a copy of that recording. The appellate public defender may review it to determine what portion of the record should be transcribed.

D. In the event partial transcripts have been prepared during trial, at the time Judgment and Sentence is imposed those transcripts must be filed with the trial court clerk, together with all transcripts of pre-trial motions and preliminary hearings. See Rule 3.2(E).

### Rule 1.16. Application of appellant to proceed with appeal pro se

A. An Appellant desiring to represent himself or herself in a direct appeal to this Court, or desiring to dismiss appellate counsel and further proceed to represent himself or herself in this Court, shall be required to present to the District Court an affidavit and request in the form set forth in Section XIII, Form 13.6. If the Appellant is free on appeal bond or incarcerated, the affidavit and request shall be filed with that District Court. The court clerk shall file the application in the original case. Appellant shall ensure that notice is provided to appellate counsel, who may appear or otherwise respond, but who shall not be required to do so. A judge of the district court shall conduct a hearing and after the judge's order is filed, the court clerk SHALL prepare one (1) certified copy of all pleadings and orders and mail to this Court for filing in the original and appellate case files.

See Section XIII, Form 13.6.

B. When presented with an affidavit and request, the District Court shall make appropriate findings of fact and enter an order similar in form and content to the order form shown in Section XIII, Form 13.7.

## Section II. Initiating an Appeal from the Trial Court

### Rule 2.1. Initiating an appeal (motion for new trial, commencement of appeal, filing of appeal records, appeals by the Choctaw Nation, appeals out of time)

A. Motion for New Trial. A motion for new trial based on newly discovered evidence is governed by Sections 952 and 953 of the Choctaw Nation Code of Criminal Procedure, and in the Post-Conviction Procedure Act, Sections 1080 through 1089 of the Choctaw Nation Code of Criminal Procedure.

(1) In the event a motion for new trial based on newly discovered evidence is filed after the Judgment and Sentence is pronounced by the trial court, but before an appeal has been perfected by the filing of the Petition in Error in this Court, the motion must be filed with the clerk of the District Court, accompanied by affidavits in support, and a copy must be served on the trial judge and the prosecuting attorney. The motion shall also request a hearing date be set within twenty (20) days, with postponement only at the trial judge's discretion. If the motion has not been ruled on within the time in which an appeal has been perfected to this Court, the trial court shall have continuing jurisdiction to rule on the motion, but in no event shall the ruling be delayed more than thirty (30) days after the appeal has been perfected. The filing of the motion in the trial court shall not stay proceedings or absolve the defendant from the duty to file the appeal in this Court within the time provided by law.

(2) PROVIDED HOWEVER, if the motion for new trial is filed within ten (10) days of the date the Judgment and Sentence is imposed in open court, the filing of the Notice of Intent to Appeal and Designation of Record (Form 13.4) shall be stayed until the trial court rules on the pending motion. If a motion for new trial is filed within ten (10) days from the imposition of Judgment and Sentence in open court, the trial court shall hold a hearing on the motion and enter its order granting or denying the motion within thirty (30) days from the date the motion is filed. If the motion is denied, the defendant shall then file, within ten (10) days of the order denying the motion, the Notice of Intent to Appeal and Designation of Record pursuant to Rule 2.1(B). If the trial court fails to hold the hearing within thirty (30) days, the defendant may seek extraordinary relief with this Court. See Section 1054.1 of the Choctaw Nation Code of Criminal Procedure.

(3) If a motion for a new trial on newly discovered evidence is filed after an appeal has been perfected in this Court and prior to the expiration of one (1) year from the date that the Judgment and Sentence is pronounced, the motion shall be filed with the Clerk of this Court. See Section 953 of the Choctaw Nation Code of Criminal Procedure. The motion shall contain all the allegations required in the trial court and must be accompanied by affidavits and a supporting brief at the time of filing. This Court may dispose of the motion on the pleadings and the accompanying affidavits of the respective parties, by separate order or in the opinion on the appeal, may direct a response, or may remand for an evidentiary hearing in the trial court; PROVIDED HOWEVER, no motion may be filed in this Court after a decision has been rendered and the mandate is issued.

(4) If the appeal has been decided, the opinion has been rendered and the mandate has been issued by this Court, then in all other cases of newly discovered evidence, a petitioner must proceed under the provisions of the Post-Conviction Procedure Act, Sections 1080 to 1089 of the Choctaw Nation Code of Criminal Procedure.

B. Commencement of Appeal. An appeal is commenced by the trial counsel's filing with the trial court a written notice of intent to appeal and a designation of record as prescribed in Rule 1.14(C) within ten (10) days from the date the Judgment and Sentence is imposed in open court. The filing of the Notice of Intent to Appeal and Designation of Record in the District Court is jurisdictional and failure to timely file constitutes waiver of the right to appeal. A certified copy of the Notice of Intent to Appeal and Designation of Record shall also be filed by trial counsel with the Clerk of this Court within ten (10) days from the date the Notice is filed in the trial

court. See Rule 2.5 and Form 13.4. In addition to the above notice and designation of record, the attorney of record shall submit to the Clerk of this Court the appropriate filing fee, pauper's affidavit or the trial court's determination of indigency for the appeal filed. The Clerk of this Court shall then issue a Certificate of Appeal, containing the due date for the filing of the Petition in Error and the Original Record together with the Transcripts of the Trial Proceedings.

(1) A motion for new trial is not required in order to commence an appeal in this Court. See Section 1054.1 of the Choctaw Nation Code of Criminal Procedure.

(2) The notice of intent to appeal must include specific authority under which the party seeks to perfect the appeal.

(3) Any supplemental designation of record pursuant to Section 1362 of the Choctaw Nation Code of Criminal Procedure must be filed, with acknowledgement of service on court reporters, within thirty (30) days of date of appointment. See Rule 1.15(B). Otherwise any request to supplement the record shall be pursuant to Rule 3.11.

(4) The Judgment and Sentence shall be in the form prescribed in Section XIII, Form 13.8; appropriate addenda may be added as attachments to address local requirements. The trial court shall develop and utilize an Order Deferring Imposition of Judgment when judgment is deferred pursuant to Section 991c of the Choctaw Nation Code of Criminal Procedure. In addition, the trial court shall develop and utilize an Order of Revocation of Suspended Sentence pursuant to Section 991b of the Choctaw Nation Code of Criminal Procedure. PROVIDED HOWEVER, when a sentence in motor vehicle traffic cases prosecuted by Uniform Citation Complaint, the Judgment and Sentence may be set forth on the abstract of the court's action contained on the Uniform Citation Complaint Form or other form approved by the District Court.

C. Filing of Appeal Records. The records for appeal in all misdemeanor and felony cases, including the petition in error, must be filed with the Clerk of this Court within ninety (90) days from the date the Judgment and Sentence is imposed. See Section 1054 of the Choctaw Nation Code of Criminal Procedure. See Rule 7.3(C) for time requirements in juvenile cases. Excluding the Notice of Intent to Appeal and the Designation of Record, which must be filed by trial counsel within ten (10) days after Judgment and Sentence is imposed, appellate counsel is responsible to ensure all records necessary to complete the appeal are filed. Where the transcript cannot be completed and filed within the time provided for filing appeals, the appellant must file his petition in error within ninety (90) days from the date the Judgment and Sentence is imposed and then proceed in accordance with Rule 3.2(C)(2).

D. Appeals by the Choctaw Nation. The Choctaw Nation must give notice in open court of the intent to appeal, and must state the specific authority under which the appeal will be taken in the written notice which must be filed in the trial court within ten (10) days of the District Court's order sought to be appealed. See Rule 1.2(A)(3). The prosecutor shall also file with the trial court clerk a written notice of intent to appeal and a designation of record as prescribed in Rule 1.14(C) within ten (10) days from the date the Judgment and Sentence is imposed or the order being appealed is entered. The filing of the notice of Intent to Appeal and Designation of Record in the District Court is jurisdictional and failure to timely file constitutes waiver of the right to

appeal. A certified copy of the Notice of Intent to Appeal and Designation of Record shall also be filed by the prosecutor with the Clerk of this Court within ten (10) days from the date the Notice is filed in the Trial Court. See Rule 2.5 and Form 13.4.

E. Appeal Out of Time

(1) General Procedures for Obtaining an Out-of-Time Appeal. If petitioner seeks an appeal out of time, the proper procedure is to file an Application for Post-Conviction Relief requesting an appeal out of time. The Application must be filed in the trial court where the judgment and sentence on conviction or the final order denying relief was imposed. A petitioner's right to appeal is dependent upon the ability to prove he/she was denied an appeal through no fault of his/her own. If the trial court recommends an appeal out of time, then petitioner shall file a petition for an appeal out of time in this Court within thirty (30) days from the date the trial court's ruling was filed with the trial court clerk. The petitioner must attach to the petition a copy of the post-conviction application for the out-of-time appeal that was filed in the trial court and a certified copy of the trial court's ruling upon that application. This Court will consider the trial court's recommendation and issue an order granting or denying an appeal out of time. If the trial court denies the request, then Petitioner should attach a certified copy of the order denying relief to the petition for appeal to this Court and shall otherwise comply with those procedures for perfecting a post-conviction appeal. See Section V of this Court's Rules.

(2) Out-of-Time Direct Appeals. When an appeal out of time is granted by this Court in a direct appeal, a Notice of Intent to Appeal and Designation of Record in the form prescribed by Rule 1.14(C), and as set forth in Section XIII, Form 13.4, shall be filed with the clerk of the trial court and the Clerk of this Court within ten (10) days of the date of this Court's order allowing an appeal out of time. The procedure set forth in Sections II and III of this Court's Rules shall then be followed. The clerk of the trial court shall timely file a Notice of Completion or Non-Completion as set out in Rule 2.3. If the appeal record is already on file with the Court of Criminal Appeals, this should be noted in the Notice of Completion or Non-Completion.

(3) Out-of-Time Post-Conviction Appeals. When this Court grants an appeal out of time from a final judgment entered under the Post-Conviction Procedure Act, the documents required to be filed in this Court for perfecting that post-conviction appeal shall be filed by the petitioner within thirty (30) days of the order granting an appeal out of time in accordance with Rule 5.2(C).

(4) Out of Time Certiorari Appeals. When an appeal out of time is granted by this Court for a certiorari appeal arising from a plea of guilty or nolo contendere, an Application to Withdraw the Plea must be filed with the clerk of the trial court within ten (10) days from the date of this Court's order with a request for an evidentiary hearing pursuant to Rule 4.2; provided however, if prior to the request for the out of time appeal, the defendant timely filed an application to withdraw the plea and received a decision thereon, then the defendant will file a Notice of Intent to Appeal and Designation of Record within ten (10) days from the date of this Court's order granting an appeal out of time.

**Rule 2.2. Form and contents of record**

A. Duties of Clerk to Assemble Record. After a designation of the record is made, the trial court clerk shall promptly assemble, in chronological sequence, all of the instruments on file, together with transcripts as required by subpart B of this Rule, which have been designated for inclusion in the record on appeal. The instruments, numbered consecutively, indexed and bound in volumes which shall not exceed two hundred (200) pages each, shall be certified under the seal of the clerk of the trial court. All designations of record and a certified copy of all the appearance docket sheets, as well as the Judgment and Sentence AND/OR final order, shall be included. In accordance with Rule 3.2, four (4) certified copies shall be prepared for transmission to this Court and appellant's attorney. See Rule 4.3 for duties in certiorari appeals.

B. Duties of Court Reporter to Assemble Exhibits.
(1) The court reporter shall ensure trial exhibits are indexed and incorporated into the transcript by physical attachment. In the event the exhibit cannot be physically attached, the court reporter shall attach a clear and viewable photograph or photocopy accurately depicting the exhibit to both the original transcript (or separate volume if necessary) and copies as required below. All copies of exhibits, including photographs, provided pursuant to this Rule shall be in color unless the original exhibit was in black and white. Black and white photocopies of color exhibits are not acceptable. If the exhibit is an audio or video tape or other electronically reproduced medium, the reporter shall be responsible for ensuring that the original and four (4) copies of the item are filed with the transcripts. In each instance, as a condition to the admissibility of the exhibit for consideration on appeal, the trial court shall ensure the party introducing the exhibit shall be responsible for both its reproduction in the same quality as the original, including delivery to the court reporter, and the cost of reproduction. If a party fails to comply with a reporter's request to provide copies of exhibits in accordance with this Rule, the court reporter, after completion of the transcripts, shall file a notice of non-completion with the clerk of the District Court and the Clerk of this Court setting out with specificity the items that have not been provided, when the request was made and the party who has failed to comply with this Rule.

(2) The original transcript, indexed and certified as correct, together with four (4) certified copies and attached exhibits or photos or copies of exhibits, in volumes not to exceed three hundred (300) pages of text per volume, shall be filed with the court clerk in the trial court by the court reporter within sufficient time to allow the trial court clerk to file the notice required by Rule 2.3(A) within ninety (90) days of Judgment and Sentence in misdemeanor and felony appeals.

(3) Upon the filing of the transcript, the court reporter is required to notify in writing the defendant's appellate attorney, the prosecuting attorney, the trial court clerk and the Clerk of this Court that the transcripts have been filed with the trial court clerk. This notice shall be specific, itemizing and describing with particularity all transcripts (by volume number or date of hearing) and exhibits (by number/letter and description) filed with the court clerk. If more than one court reporter was involved in the proceedings at issue, each court reporter shall be responsible for filing a separate specific, itemized list. The clerk of the trial court shall file the notice with the record.

(4) No exhibits other than documentary, photographic or electronically recorded evidence, as required by subpart (B)(1) of this Rule, shall be incorporated into the record on appeal or transmitted to the Clerk of the Court of; PROVIDED HOWEVER, this Court may direct

supplementation of the record for any exhibit necessary for the determination of the appeal. Under no circumstances will controlled or dangerous substances, weapons, or ammunition, or body fluids or tissues be included in the record.

C. Transcript Not Available. If no transcript has been previously prepared and no tape recording is available for any portion of the trial proceedings, the trial attorneys may stipulate or submit affidavits as to what transpired during the proceeding not transcribed or recorded. The trial judge shall enter an order adjudicating any matters upon which the attorneys cannot agree regarding what transpired during the unrecorded or un-transcribed proceedings.

D. Transcript Available. The transcript prepared by the court reporter shall constitute the record of the proceedings from which it was transcribed. When such transcript is made, tape recordings made by the court reporter as a supplementary backup to the stenographic record to the completed transcript of proceedings shall not constitute a part of the official record unless such proceedings were recorded in accordance with Section 1223.1 of the Choctaw Nation Code of Criminal Procedure. This Rule does not preclude findings of extreme necessity by the trial court that such recordings, if they exist, are necessary to supplement inadequate transcripts.

E. Form of Certification for Original Record in Trial Court. The original record to be filed in this Court must be certified by the clerk of the trial court utilizing the form set out in Section XIII, Form 13.9.

**Rule 2.3. Time for completion of record**

A. Ready for Transmission. The record on appeal in both felony and misdemeanor cases must be made ready for transmission in sufficient time to assure the notice of completion of record reaches the office of the Clerk of this Court within ninety (90) days from the date the Judgment and Sentence is imposed.

B. Duties of Trial Court Clerk on Completion of Record. The clerk of the trial court shall:
(1) Notification of Parties. Notify all parties or their counsel (appellate counsel and the prosecuting attorney) in writing when the record on appeal has been completed and is ready for transmission. This Notice/transmittal letter shall include an index of the record to be submitted on appeal together with the notifications required by Rule 2.2; and

(2) Notification of Clerk of Court of Appeals. Notify in writing the Clerk of this Court, within ninety (90) days in misdemeanor or felony cases from the date of the Judgment and Sentence, when the record on appeal has been completed for transmission and that all the parties to the action, or their counsel, have been advised in writing to that effect. This Notice shall include an index of the record to be submitted on appeal together with the notifications required by Rule 2.2; or

(3) When Record Incomplete. If the record is not prepared within ninety (90) days as required by Section 1055 of the Choctaw Nation Code of Criminal Procedure, the trial court clerk shall file with the Clerk of this Court a report stating what portion of the record is assembled and ready for transmission. The clerk of the trial court shall also report what portions of the record are not yet

complete, and why. This notice must be filed within five (5) days after the date the records were due to be complete and ready for transmission to this Court, and copies of the notice must be sent to the appellate attorney and the prosecuting attorney. The trial court clerk shall subsequently file with the clerk of this Court a notice of completion of record within five (5) days of the completion of the record on appeal.

(4) Applicability. The requirements of this Section are applicable in all appeals except applications for extraordinary relief, Section X, wherein the Rules specifically require the petitioner to file the record with the Petition.

C. Duty of Clerk of Court of Appeals. The Clerk of this Court shall, within ten (10) days after the receipt of the trial court clerk's notification of the completion of record, issue a notice to transmit four (4) certified copies of the original record and the original and three (3) certified copies of the transcripts to the Clerk of the Court of Appeals and one certified copy of the original record and transcripts, to include copies of exhibits, to either the retained or other appointed counsel of record on appeal. The Clerk of this Court shall send copies of the Notice to Transmit to all parties or their counsel (the appellate attorney and the prosecuting attorney). See Section 1055 of the Choctaw Nation Code of Criminal Procedure. Upon receipt of the records and transcripts, the Clerk of this Court shall deliver one (1) certified copy of the record and transcripts to the prosecuting attorney, or attorney representing the Choctaw Nation.

**Rule 2.4. Filing of record**

A. After Notification Received. Within five (5) days from the date the trial court clerk receives notice from the Clerk of this Court to transmit the appeal records, the trial court clerk shall transmit the appeal records to the Clerk of this Court and appellant's attorney.

B. Responsibility of Appellate Attorney. The provisions of these rules do not abrogate the ultimate responsibility of the appellate attorney from the time of employment or appointment to represent the appellant to ensure the records necessary for commencing the appeal are complete and filed in a timely manner. The attorney shall utilize an application for writ of mandamus or other appropriate means to ensure the timely filing of all records necessary to complete the appeal.

C. Trial Court Clerk's Docket Entry. The trial court clerk shall make appropriate entries on the docket to reflect the transmission of the appeal records to this Court.

**Rule 2.5. Notice of intent to appeal; Designation of record**

A. Ten-Day Requirement. Within ten (10) days from the date the Judgment and Sentence is imposed in open court or an order grants an appeal out of time, the defendant must file with the trial court clerk a notice of intent to appeal and designation of record in the form prescribed in Rule 1.14(C). The filing of the Notice of Intent to Appeal and Designation of Record in the District Court is jurisdictional and failure to timely file constitutes waiver of the right to appeal. A certified copy of the Notice of Intent to Appeal and Designation of Record shall also be filed

by trial counsel with the Clerk of this Court within ten (10) days from the date the Notice is filed in the trial court. A copy of the designation of record must be served on the trial judge and the prosecuting attorney. An additional copy must be served on, and receipt acknowledged by, the court reporter at the time of filing or immediately thereafter. See Rule 2.1(B) and Form 13.4.

(1) Original Record. The designation of the original record shall specify those records filed in the trial court which are to be included in the original record for appeal. The Judgment and Sentence MUST BE INCLUDED in the designation of record.

(2) Transcript of Evidence. The designation of record for the transcript of evidence must specify that part of the record transcribed by the court reporter to be included in the record on appeal. If the defendant requests the entire proceedings to be included, the designation of record must so state. The certification of the transcript shall be made by the court reporter and be in substantially the same form as prescribed in Form 13.9.

(3) Court Reporter's Costs. At the time the designation of record is served on the court reporter, arrangements for preparing the transcripts of evidence shall be reached between the attorney and the court reporter, unless the court directs the appeal to be at the expense of the court fund, and certified in accordance with the form prescribed in Rule 1.14(C). See Form 13.4. In all cases, arrangements for the payment of costs for preparation of the transcripts shall be made to ensure transcripts are prepared within the time allotted by these rules.

B. Counter-Designation of Record. If the appealing party's designation of record does not specify preparation of the entire record, the opposing party or trial judge may file a counter-designation of record with the clerk of the trial court within thirty (30) days after being served with a copy of the appealing party's brief in chief. See Rule 3.11(B)(2).

C. Cost for Counter-Designation. Unless otherwise ordered by the trial court, the cost for the counter-designation of record shall be borne by the appealing party. Portions of the counter-designated record, shown at a hearing before the trial court to be unnecessary, may be ordered at the opposing party's expense when inclusion is demanded.

## Section III. Perfecting an Appeal in the Court of Appeals

### Rule 3.1. Contents of petition in error; Filing

A. Petition in Error. The appellant's petition in error must contain the following:

(1) The trial court case number from which the appeal is being lodged;

(2) The crime, together with a citation to the statute of which the appellant was convicted;

(3) The Judgment and Sentence imposed and the date of pronouncement together with a copy of the Judgment and Sentence attached;

(4) If a motion for new trial was filed, the date the motion was filed and the date it was denied;

(5) The amount of bail and whether the appellant is free on bail or incarcerated;

(6) The statutory authority and type of appeal the party is filing; and,

(7) The nature of the relief the appellant seeks. PROVIDED HOWEVER, recitation of the specific errors of law alleged to have been committed at trial is not required.

B. Style of Petition in Error. The party filing the petition in error shall be known as the appellant. The party against whom the appeal is taken shall be known as the appellee.

C. Filing of Petition in Error. The petition in error shall be filed with the Clerk of this Court within ninety (90) days of the date judgment and sentence is imposed or the order being appealed is entered in misdemeanor and felony appeals and sixty (60) days in juvenile cases (See Rule 7.3). The Clerk of this Court shall affix the original of the petition in error to the records for appeal when they are filed. The filing of the Petition in Error is jurisdictional and failure to timely file constitutes waiver of right to appeal.

D. Amendment of Petition in Error. Before an amendment to the petition in error may be filed, the appellant must obtain leave of this Court by filing a motion to amend, which sets forth with specificity the basis for the requested amendment. The granting of a motion to file an amended petition in error shall not serve as the basis for filing additional propositions of error after the brief in chief has been filed.

**Rule 3.2. Instruments to be filed to complete the appeal**

A. Petition in Error. An original and ten (10) copies.

B. Original Record. Four (4) certified copies, three (3) to be sent to the Clerk of the Court of Appeals and one (1) to either the retained or other appointed counsel of record on appeal.

C. Transcript of Evidence.
(1) An original and three (3) certified copies of all designated transcripts, the original and two (2) certified copies to be sent to the Clerk of the Court of Appeals and one (1) certified copy to either the retained or other appointed counsel of record on appeal.

(2) In the event the petition in error is timely filed but the designated transcripts have not been completed and cannot be filed, the court reporter who transcribed the trial, or other proceeding, must submit an affidavit to this Court showing why the transcripts have not been completed and requesting an extension of time not exceeding thirty (30) days. A copy of the affidavit and request for extension of time shall be mailed to the trial judge, trial court clerk and appellate counsel. The affidavit must be submitted by the court reporter to this Court and must show good cause why the additional time is needed. An affidavit from an appellant's attorney, the attorney's assistant or any person other than the court reporter shall not suffice. For purposes of this Section, "good cause shown" shall not include press of business. If the reason the transcripts have not been timely filed is due to the fault of the appellant, the court reporter shall set out with

specificity the facts constituting appellant's fault. The Chief Judge or Vice-Chief Judge may grant requests for extensions. The clerk of this Court shall send a copy of the order granting or denying the extension request to the trial judge, trial court clerk and appellate counsel in addition to the court reporter. After filing an affidavit and request for extension out of time pursuant to this subsection, any request for an extension beyond sixty (60) days from the original due date will require the court reporter to contact the Chief Judge or Vice-Chief Judge who shall, subject to the approval of the Court at conference, make a determination of whether additional time can be granted or whether the court reporter must appear in person before the Chief Judge or Vice-Chief Judge of the Court of Appeals, or the Court en banc to show cause as to why any additional time is required. See also Rule 9.2(C). If the Court determines the failure to timely file the transcripts is due to the fault of appellant, the appeal may be dismissed after notice and opportunity to be heard.

(3) The appellate counsel is required to constantly monitor the preparation of the records for appeal and is ultimately responsible for the timely filing of the appeal records. Requests for assistance in the timely preparation of the records may be submitted to this Court for appropriate action, to include applications for writ of mandamus.

D. Transmission of Records. The Clerk of this Court shall transmit copies of records and transcripts to appellee as necessary.

E. Trial Court's Duty to Preserve Records. When during the course of trial proceedings a transcript is prepared at the expense of the court fund, it shall be the duty of the trial court to enter an appropriate order defining access to those transcripts during the trial proceedings; and after completion of the trial proceedings to order the timely return of all transcripts to the trial court clerk so they may be filed on appeal. At the time the trial court approves transcripts of preliminary hearings or pretrial proceedings to be prepared at the expense of the court fund, the order entered shall require the court reporter to file the transcripts with the trial court clerk and provide access to the parties for trial preparation with the requirement all transcripts shall be returned to the clerk of the trial court within ten (10) days of the sentencing. The order shall also direct that a party granted access to the transcripts for purpose of appeal shall return all transcripts to the clerk of the trial court within twenty (20) days from the date the mandate of the decision on appeal is entered by this Court. This order shall ensure notice of requirements is directed to both the Choctaw Nation and the defendant.

**Rule 3.3. Joinder of appellants**

A. Joint Appeal. When two or more defendants stand convicted as co-defendants at a single trial, they may join in one appeal or appeal separately.

B. Single Record. When two or more co-defendants file separate appeals, represented by different attorneys, one record may be filed, but separate petitions in error and briefs must be filed for each appellant. In addition to the requirements set forth in Rule 3.1, the petition in error must cross-reference to the appellant in whose name the appeals records were filed. However, if only one defendant timely appeals, that defendant shall only be entitled to that portion of the trial court record and transcripts that apply to him/her.

C. Cross-Reference of Appeal Records. When several co-defendants file separate appeals, but only one set of appeal records is filed, it shall be the responsibility of each attorney perfecting an appeal to ensure that the appeal records are timely filed and properly cross-referenced at the time the petition in error is filed with the Clerk of this Court. The briefs must also refer to the case number in which the appeal records are filed.

D. Consolidation. This Court without notice and on its own motion may consolidate appeals of the same defendant, or the appeals of two or more co-defendants unless a co-defendant specifically states in the petition in error that he/she opposes such consolidation and shows good cause why the appeal should not be consolidated.

**Rule 3.4. Briefs; Service and filing**

A. Number of Copies. An original and four (4) copies of each brief for each party shall be filed with the Clerk of this Court, and a copy must be served on the adverse party. The counsel of record shall be responsible for service on the adverse party, except that service on the prosecuting will be made by the Clerk of this Court. See Rule 1.9(B).

B. Filing time. Unless otherwise ordered by this Court, the appellant's brief must be filed within sixty (60) days from the date the notice to transmit record on appeal is filed by the Clerk of this Court.

C. Answer Brief. Unless otherwise ordered by this Court, the appellee shall file an answer brief within sixty (60) days from the date the appellant's brief is filed with the Clerk of this Court in both felony and misdemeanor appeals.

D. Extensions of Time to File Brief.
(1) In all appeals an attorney of record or party applying for an extension of time to brief must file an application, supported by affidavit, with the Clerk of this Court. See Rule 1.9. An extension is not a matter of right, and will only be approved if the facts in the application and affidavit merit the extension. Extensions will not be granted for more than thirty (30) days upon each application.

(2)(a) Because extensions of time are not favored, a motion for extension of time must be filed by appellate counsel and shall include an affidavit containing a specific statement of facts showing the reasons why it is impossible to file the brief within the time prescribed. The affidavit shall also recite whether a prior extension of time has been granted to the applicant, and if so, the time granted and date of each. The Chief Judge or Vice-Chief Judge may grant requests for extensions not exceeding a total of sixty (60) days. If an attorney requests an extension beyond sixty (60) days from the original due date, the Presiding Judge may, subject to the approval of the Court at conference, grant additional time or may order the attorney to appear in person before the Court en banc to show cause as to why additional time is required.

(b) If an appellant is proceeding pro se and an extension of time beyond sixty (60) days is required, appellant must file an affidavit as set forth in Rule 3.4(D)(2)(a). A request for an

extension beyond sixty (60) days for appellants proceeding pro se will be reviewed by this Court en banc and if granted, will be a final extension and will not be for more than an additional ninety (90) days.

(3) Applications must be accompanied by stamped, addressed envelopes for all attorneys of record and the appellant. The Clerk shall mail a copy of the order granting or denying an extension to the appellant and each attorney of record.

E. Briefs to Be Filed by Attorney of Record. When the records of this Court reflect that an appellant has either a retained attorney or court-appointed attorney, only briefs submitted by the attorney of record will be accepted for filing by the Clerk of this Court. Any "pro se" legal arguments to be contained in appellant's brief shall be submitted by the appellant to the attorney of record for submission to this Court. The attorney of record shall review any requested "pro se" legal arguments to ensure only viable, non-frivolous arguments are incorporated into the brief prepared and submitted by the attorney. Any motion to supplement or amend legal arguments must contain a certification by the attorney of record that the attorney has examined the pro se arguments, and that the arguments and authority submitted comply with the Rules of this Court. The attorney shall also list the reasons for the recommendation that the supplemental arguments be accepted. Any request to file a "pro se" brief must be filed within sixty (60) days of the appellant's initial brief. Such "pro se" supplemental briefs shall be limited to ten (10) pages. See Rule 3.4(F)(3). This Court will summarily deny "pro se" briefs which are merely forwarded by the appellant's attorney without compliance with the requirements of this Rule and/or which do not comply with the time requirements set forth herein.

F. Reply Brief, Supplemental Brief, Amicus Curiae Brief.
(1) A reply brief may be filed in any direct appeal. The reply brief must be filed within twenty (20) days of the answer brief. The reply brief shall only respond to the appellee's brief in chief. Any propositions of error advanced for the first time in any reply brief shall be deemed waived and forfeited for consideration.

(2) A supplemental brief, if necessary to present new authority on issues previously raised, may be filed if granted leave of Court. Any party granted leave to file a supplemental brief shall file the brief within fifteen (15) days from the date the request to file is approved. A brief or document tendered for filing does not constitute acceptance for consideration as a proper part of the pending appeal unless the Court enters an order granting the filing of record. Except for issues of first impression, propositions of error advanced for the first time in any supplemental brief will be deemed forfeited for consideration. New propositions of error may be advanced in a supplemental brief only on an issue of first impression decided after an appellant's brief-in-chief is filed but before the appellant's case is decided by this Court; however, the application to file supplemental brief, with brief attached, containing the new proposition must be filed within thirty (30) days after the issue of first impression is published. Supplemental briefs containing new propositions filed after this thirty-day period will be deemed forfeited for consideration. If the application is granted, the Court may direct a response from the appellee, if required. For purposes of this Rule, an "issue of first impression" is defined as one where the result was not dictated by precedent existing at the time an appellant was convicted at trial, one which was susceptible to debate among reasonable minds, and is shown to be retroactively applicable to

appellant's trial. Also for purposes of this Rule, "published" here refers to the date in which this Court first issues a written decision or opinion on a particular legal question or issue.

(3) A reply brief or supplemental brief shall be limited to ten (10) pages. A request to exceed the page limitation must be filed in writing setting forth a specific basis for need.

(4) An amicus curiae brief shall not be filed until leave of Court is granted. Any person or organization seeking to file an amicus curiae brief shall first submit a motion to the Court requesting authorization to file a brief which shall set out with specificity the basis in law or fact why an amicus curiae brief would be of assistance to the Court in deciding the issue presented. The Court shall rule on the motion and set a time for filing the brief if the motion is granted.

**Rule 3.5. Briefs; Contents; Citation of authorities**

A. Brief of the Appellant. The brief of the appellant shall be in substantial compliance with the form and organization as follows:

(1) A cover page containing the style of the case, the case number(s) in this Court and the trial court, together with the name(s), address(es) and telephone number(s) of the attorney(s) submitting the brief and the attorney(s) Choctaw Nation Bar number(s);

(2) A table of contents, with page references, and an alphabetical table of cases, statutes and other authorities cited, with references to the pages in the brief where they are cited;

(3) A statement of the case, indicating briefly its nature, the course of proceedings, and its disposition in the trial court;

(4) A statement of the facts relevant to the issues presented for review, with appropriate references to the record, referring to the original record as "(O.R._____ )" and to pages in the transcript of evidence as "(Tr. _____ )";

(5) An argument, containing the contentions of the appellant, which sets forth all assignments of error, supported by citations to the authorities, statutes and parts of the record. Each proposition of error shall be set out separately in the brief. Merely mentioning a possible issue in an argument or citation to authority does not constitute the raising of a proposition of error on appeal. Failure to list an issue pursuant to these requirements constitutes waiver of alleged error.

(6) A short conclusion stating the specific relief sought;

(7) A business address and telephone number following the signature of the attorney of record or party together with the attorney's Choctaw Nation Bar number; and,

(8) A certificate of service on the adverse party, as provided in Rule 1.9(B).

(9) A pro-se handwritten brief must be printed, double-spaced and written with a pen, not pencil. Writing on the back of pages is NOT allowed.

B. Brief of Appellee. The brief of the appellee shall conform to the requirements of subdivision (A).

C. Argument and Citation of Authorities.
(1) Both parties shall also include a concise statement of the applicable standard of review in the discussion of each issue presented or in a separate heading placed before the discussion of the issue. The parties shall also provide a reference to the pages of the record filed and the authorities relied upon in support of each point raised.

(2) Opinions of the Court of Appeals issued for publication shall be published on the Court's Internet site. Such opinions may not be cited as authority in a subsequent appellate opinion nor used as authority by a trial court until the mandate in the matter has issued. See Rule 1.0(D) for citation to Rules.

(3) In all instances, an unpublished decision is not binding on this Court. However, parties may cite and bring to the Court's attention the unpublished decisions of this Court provided counsel states that no published case would serve as well the purpose for which counsel cites it, and provided further that counsel shall provide opposing counsel and the Court with a copy of the unpublished decision.

(4) Citation to opinions of the United States Supreme Court shall include each of the following: U.S., S.Ct.,L.Ed. (year).

(5) Failure to present relevant authority in compliance with these requirements will result in the issue being forfeited on appeal.

D. Length of Brief. The brief shall not exceed fifty (50) typewritten 8-1/2 x 11-inch pages in length, except as otherwise specified. Briefs may be either printed or typewritten and must be double spaced. Quotations of fifty (50) words or more in length from any authority cited in a brief must be indented and single spaced. Left and right margins must be one inch. The top margin must be 1-1/4 inch, and the bottom margin must be one inch.

E. Type Size. Briefs and pleadings shall not use more than 12 characters per inch in the body of the document, and 17 characters per inch in footnotes.

F. Paper Size. All pleadings shall be made on 8-1/2 x 11-inch paper.

G. Pagination. All pleadings filed in this Court in excess of two (2) pages shall be paginated.

**Rule 3.6. Failure to appeal or file briefs; Duty of counsel; Scope of review**

A. An appearance of record before this Court requires counsel to diligently proceed with the appeal including the filing of a brief, until and unless withdrawal as the attorney of record is granted by this Court. When the briefs are not filed, or when an appearance is not made, the appeal may be dismissed or submitted for review on the record as filed; PROVIDED

HOWEVER, this Court, on its own motion, may summarily submit an appeal for decision prior to the expiration of time authorized for the submission of the briefs when, in the opinion of the Court, the appeal is frivolous. Prior to summary submission, this Court will notify the attorney of record for the appellant, and it is the attorney's duty to immediately notify the appellant in writing of the Court's proposed action. See also Rule 3.12.

B. Appellate counsel may file with this Court a brief stating there are no serious issues in appeal.

(1) The requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate on behalf of the client, as opposed to that of amicus curiae. A simple letter stating there is no merit to an appeal is not sufficient.

(2) Counsel's role as advocate requires that counsel support the appeal to the best of counsel's ability. Counsel must function zealously and resolve all doubts and ambiguous legal questions in favor of the client.

(3) If counsel finds the case to be wholly frivolous, after a conscientious examination of it, counsel should so advise this Court and request permission to withdraw.

(4) A motion to withdraw must be accompanied by a brief referring to anything in the record that might arguably support the appeal.

(5) The motion to withdraw, with accompanying brief, must contain a statement of the facts, a description of the proceedings, and the citation of pertinent authorities sufficient to permit this Court to make a finding the appeal is frivolous. To assist this Court, a brief must be accompanied with either a transcript of proceedings, or a stipulation describing the trial proceedings pertinent to each alleged error. This brief must also certify counsel has met the requirements set forth below, and should adequately incorporate, any points the indigent client has raised with counsel. The prosecuting attorney or other attorney on behalf of the Choctaw Nation is not required to file a response brief, although a response brief may be filed upon proper motion and with permission of this Court.

(6) A copy of counsel's brief shall be furnished to the indigent client and the client may file any additional propositions of error within sixty (60) days of the filing of the motion to withdraw.

(7) This Court will then proceed, after a full examination of the record, and briefs, to decide whether (1) counsel has diligently searched the record for arguable claims and (2) the case is wholly frivolous.

(8) Upon a finding the appeal is frivolous, the Court may grant counsel's request to withdraw and affirm the decision of the trial court.

(9) If this Court finds any of the legal points arguable on their merits (and therefore not frivolous), it will, before reaching a decision, deny the motion to withdraw and direct counsel to argue the appeal. In reviewing guidelines 7-9 above, this Court will grant counsel permission to withdraw and will affirm the conviction (rather than dismiss the appeal) in criminal appeals

found to be wholly frivolous; however, if this Court is not unanimous in its decision to affirm, the appeal must be pursued on the merits. In such an event, this Court will either direct the moving counsel to submit a brief on the merits, or grant counsel leave to withdraw, whichever it deems appropriate in the circumstances of the individual case.

C. If an attorney for an indigent defendant fails to file a brief in accordance with these rules or Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), or if an attorney retained by a defendant fails to file a brief in accordance with these rules, this Court may summarily dismiss or submit the appeal for decision and notify the Bar Association of the attorney's delinquency.

**Rule 3.7. Contempt of Court, what constitutes**

No instrument filed in this Court shall contain language showing disrespect for or contempt of the trial court or this Court. Improper, insulting or contemptuous language, pleadings or conduct of attorneys to or concerning each other in court, or to and concerning this Court, or any member thereof, or the trial court shall constitute contempt.

**Rule 3.8. Assignment for oral argument; Notice**

All cases shall be submitted for decision without oral argument upon the order of the Chief Judge. Oral argument shall not be granted in any other case except on application of either party, filed at the time the brief is filed, except for those cases assigned to the Accelerated Docket in accordance with Section XI. The request for oral argument will be approved or denied by the Chief Judge, or Vice-Chief Judge; PROVIDED HOWEVER, that the case may be set for a hearing by an order of this Court if, in the opinion of the judges, oral argument is beneficial or necessary for a determination of the issues presented. Notice will be given to all interested parties by an order setting the time, date and place for oral argument or by any other form of communication as the Court deems proper. Oral arguments may be heard by a majority of this Court or any number of the judges thereof.

**Rule 3.9. Argument; Opening and closing; Time**

A. Oral argument, when granted, shall be limited to thirty (30) minutes to each side, with ten (10) additional minutes rebuttal by appellant, or the moving party in original proceedings. See Rule 11.2(F) for Accelerated Docket cases.

B. The appellant, or the moving party, shall be entitled to open and conclude the argument of the case.

**Rule 3.10. Motion; Requisites**

A. An original and four (4) copies of any motion shall be filed in this Court, supported by a brief, absent provisions to the contrary in these Rules.

B. The brief shall contain a statement of the facts and legal authorities in support of the motion. The counsel of record shall be responsible for serving a copy of the motion and supporting brief on the adverse party, with the exception that service on the prosecuting attorney, will be made on the Clerk of this Court who will then post to the prosecuting attorney's office.

C. In the event the motion and brief fails to contain a certificate of service on the adverse party, this Court on its own motion may dismiss the motion or pleading of the moving party.

**Rule 3.11. Supplementation of record**

A. After the Petition in Error has been timely filed in this Court, and upon notice from either party or upon this Court's own motion, the majority of the Court may, within its discretion, direct a supplementation of the record, when necessary, for a determination of any issue; or, when necessary, may direct the trial court to conduct an evidentiary hearing on the issue.

B. Supplementation of the record upon request of a party will be allowed only in the following instances:

(1) When it appears from the record that an item admitted during proceedings in the trial court and timely designated to be included in the record has been excluded, supplementation of the record will be allowed on motion of either party; or

(2) When a party files a motion to either amend the designation of record or counter designate a part of the record to include a transcript of any proceeding conducted by the trial court during the course of the trial court proceedings in this case or any item admitted as evidence by the trial court but not included in the original designation of record, the court may allow the amendment and direct the supplementation of the record with the item designated; or when the following special requirements are met; See also Rule 2.5(B).

(3) The Record on appeal is formulated only by matters which have been admitted during proceedings in the trial court. A request to supplement the record on appeal with matters not presented to and included as a part of the trial court record is only available under the following two circumstances:

(a) Matters timely and properly admitted as a part of a motion for a new trial as set out in Sections 952 and 953 of the Choctaw Nation Code of Criminal Procedure and Rule 2.1 of the Rules of the Court of Appeals—Criminal; or

(b) When an allegation of the ineffective assistance of trial counsel is predicated upon an allegation of failure of trial counsel to properly utilize available evidence or adequately investigate to identify evidence which could have been made available during the course of the trial, and a proposition of error alleging ineffective assistance of trial counsel is raised in the brief-in-chief of Appellant, appellate counsel may submit an application for an evidentiary hearing, together with affidavits setting out those items alleged to constitute ineffective assistance of trial counsel. The proposition of error relating to ineffective assistance of trial

counsel can be predicated on either allegations arising from the record or outside the record or a combination thereof. This Court will utilize the following procedure in adjudicating applications regarding ineffective assistance of trial counsel based on evidence not in the record:

(i) In order to rebut the strong presumptions of regularity of trial proceedings and competency of trial counsel, the application and affidavits must contain sufficient information to show this Court by clear and convincing evidence there is a strong possibility trial counsel was ineffective for failing to utilize or identify the complained-of evidence.

(ii) If this Court determines such a strong possibility exists, it shall remand the matter to the trial court for an evidentiary hearing, utilizing the adversarial process, and direct the trial court to make findings of fact and conclusions of law solely on the issues and evidence raised in the application. The order directing an evidentiary hearing shall set out the scope of the hearing. The trial court shall have discretion as to the number of witnesses who can be called in support or opposition to the issues and evidence identified by this Court as being within the scope of the evidentiary hearing. The order shall also set out the time requirements for the completion of the record, to include the court's findings and supplemental briefing, if different from the time requests set out in this Rule.

(iii) Upon remand, the trial court shall conduct an evidentiary hearing within thirty (30) days from the date of remand. The court reporter shall complete and file an original and three (3) certified copies of the transcripts with exhibits attached within twenty (20) days of the completion of the evidentiary hearing. The trial court shall then make written findings of fact and conclusions of law to be submitted to this Court within twenty (20) days of the filing of the transcripts in the District Court. The findings of fact and conclusions of law shall determine the availability of the evidence or witness, the effect of the evidence or witness on the trial court proceedings; whether the failure to use a witness or item of evidence was trial strategy, and if the evidence or witness was cumulative or would have impacted the verdict rendered.

(iv) The findings of fact and conclusions of law of the trial court shall be given strong deference by this Court in determining the proposition raised by appellate counsel; however, this Court shall determine the ultimate issue whether trial counsel was ineffective.

(v) The clerk of the District Court shall transmit the record to the Clerk of this Court, and Appellant's attorney, within five (5) days of filing of the trial court's written findings of fact and conclusions of law. The Clerk of this Court shall upon receipt, then deliver copies of the record and transcripts to the prosecuting attorney or attorney representing the Choctaw Nation.

(vi) A supplemental brief may be filed by either party within twenty (20) days after the trial court's written findings and conclusions are filed in this Court. A supplemental brief shall be limited to ten (10) pages and shall address only issues concerning the record supplementation. A request to exceed the page limitation must be filed in writing setting forth a specific basis for need.

(4) A request to supplement under this rule will not be granted after the filing of the requesting party's brief-in-chief.

C. A motion to supplement, tendered for filing, does not constitute acceptance for consideration as a proper part of the record of the pending appeal. Approval to supplement shall only be granted upon a written order approved by a majority of the members of the Court.

D. Any request to supplement the record must be filed by counsel in accordance with Rule 3.4(E).

E. A copy of the Motion to Supplement shall be served on the opposing party, or counsel, who shall have fifteen (15) days to file an objection.

**Rule 3.12. Monitoring appeal time; Motion to dismiss; Notification; Remands for evidentiary hearings**

A. Monitoring Appeal Time. The Clerk of this Court shall assign an appeal number at the time the Clerk receives the notice of intent to appeal, together with the designation of record and filing fee or order determining indigency by the trial court for the appeal being filed, or pauper's affidavit. The Clerk shall enter the necessary information (name, case number(s), date of Judgment and Sentence) and assign sequentially numbered storage space. The Clerk shall monitor the time from date of Judgment and Sentence and shall notify in writing this Court, the trial court, clerk of the trial court, and the parties or their counsel of record in the event an appeal is not perfected within the time required by law.

B. Motion to Dismiss.
(1) In the event an appeal is not perfected in a timely manner and no good cause is advanced as a reason, this Court will entertain a motion from the opposing party, or, on its own motion, may order that the appeal be dismissed. The dismissal shall constitute a default of the appeal by the appellant.

(2) When an appellant seeks to dismiss his/her appeal, the motion to dismiss shall have attached an affidavit executed by the appellant acknowledging the waiver of the right to appeal and the bar to raising the issues on appeal at a future time. If the appellant is a juvenile, the affidavit shall be executed by the juvenile and a parent/legal guardian.

C. Notice of Motion. If the motion to dismiss is made by opposing party, the party shall serve notice of the motion, with a copy of a supporting brief or argument, on the counsel for the opposing party of record in this Court.

D. Notification. In the event an appeal is dismissed, the Clerk of this Court shall notify the defendant at last known address, the attorneys of record, and the trial court of the action, and return to the trial court all records that have been filed. Upon receiving proper notification, the trial court shall revoke a defendant's appeal bond, if any exist, and order punishment to be administered as set forth in the Judgment and Sentence.

E. Remands for Evidentiary Hearings. If a case is remanded to the District Court for an evidentiary hearing, the order remanding shall set out with specificity the time in which the

hearing must be held, the time the record must be compiled and submitted to this Court, to include the trial court's findings of facts and conclusions of law, and set a schedule for the filing of briefs by the parties. The order may also set out the responsibilities for the costs of the preparation of the record of the evidentiary hearing.

**Rule 3.13. Opinions; Definition of votes**

A. Filing Opinions. Opinions may be by Summary Opinion form, memorandum or of such length and detail as the Court determines. All opinions delivered by the Court shall, immediately upon the delivery thereof, be handed to the Clerk to be recorded, and it shall be the duty of the Clerk to mail copies to all interested parties when recorded.

B. Definitions of Votes.
(1) Concur.—The voting judge agrees with both the rationale and result reached in the opinion.

(2) Specially Concur.—The voting judge agrees with the rationale and result reached, but would like to add specific authority or explanation to the rationale used in the opinion.

(3) Concur in Results.—The voting judge agrees with the result reached in the majority opinion, but does not agree with the rationale used.

(4) Concur in Part and Dissent in Part.—The voting judge agrees with the rationale and/or the result of a particular issue(s) in the opinion, but disagrees with the rationale and/or the result of other issue(s).

(5) Not Participating.—The judge has not participated in the vote on the decision.

(6) Recused.—The judge has elected to disqualify himself/herself from participating in the vote or the case.

(7) Dissent.—The voting judge disagrees with the rationale and result reached in the majority opinion.

**Rule 3.14. Rehearing; Requisites of petition**

A. A petition for rehearing, unless otherwise ordered by this Court, shall be made by the attorney of record, and filed with the Clerk within twenty (20) days from the date on which the opinion in the cause was filed.

B. A petition for rehearing shall not be filed, as a matter of course, but only for the following reasons:

(1) Some question decisive of the case and duly submitted by the attorney of record has been overlooked by the Court, or

(2) The decision is in conflict with an express statute or controlling decision to which the attention of this Court was not called either in the brief or in oral argument.

C. Such petition shall briefly state the grounds upon which the attorney of record relies for a rehearing. The overlooked question, statute or decision must be specifically set forth in the petition. If the application is granted, the cause shall be assigned for rehearing. Additional time may be granted for argument or briefing.

D. If a petition for rehearing is not filed within twenty (20) days, the decision shall be final.

E. A petition for rehearing may be filed only in regular appeals, as defined by Rule 1.2.

**Rule 3.15. Mandate; Stay; Further petition for rehearing**

A. Issuance of Mandate. After the expiration of twenty (20) days from the filing of a decision in any appeal filed with this Court, the Clerk shall issue a mandate to the court in which the Judgment and Sentence was rendered in accordance with the decision of this Court. This procedure shall not apply to original proceedings for extraordinary writs brought under Section X of these Rules. PROVIDED HOWEVER, nothing in these Rules shall prohibit this Court from directing issuance of the mandate forthwith upon the filing of the decision with the Clerk of this Court. The Court's action shall be without prejudice to the filing of a petition for rehearing as set out in Rule 3.14.

B. Mandate Stayed. If a petition for a rehearing is timely filed after the filing of a decision, the mandate shall not issue until the disposition of the petition for rehearing, unless the mandate was issued at the time of the filing of the decision, in which case the mandate may be withdrawn pending the resolution of the rehearing. After the ruling on the petition for rehearing, the mandate shall be issued forthwith. Provided, further, that in the event the petition for rehearing is granted and the decision originally rendered withdrawn, the aggrieved party shall have fifteen (15) days within which to file a petition for rehearing, but in no event shall either party be entitled to more than one (1) petition for rehearing. When the petition for rehearing has been decided, the mandate shall issue forthwith. The mandate shall not be recalled, nor stayed pending an appeal to any other court, nor shall bail be allowed by this Court pending appeal from a final decision of this Court, unless a majority of the Court, for good cause shown, recalls or stays the mandate.

**Rule 3.16. Notification of mandate**

The Clerk of this Court shall notify the clerk of the trial court and the office of the prosecuting attorney that the mandate has been issued.

**Section IV. Procedures for Appeal by Certiorari from Plea of Guilty or Nolo Contendere**

**Rule 4.1. Mandatory form for plea of guilty summary of facts**

The form set out in Section XIII, Form 13.10 shall be utilized for all pleas entered in the district court of the Choctaw Nation of Oklahoma, except pleas entered to motor vehicle traffic violations, fish and game violations and misdemeanors which cannot serve as a predicate crime for a felony. Provided however, the district court is encouraged to adopt a simplified plea of guilty summary of facts for misdemeanor offenses.

**Rule 4.2. Requirements for commencement of certiorari appeal**

A. Application to Withdraw Plea. In all cases, to appeal from any conviction on a plea of guilty or nolo contendere, the defendant must have filed in the trial court clerk's office an application to withdraw the plea within ten (10) days from the date of the pronouncement of the Judgment and Sentence, setting forth in detail the grounds for the withdrawal of the plea and requesting an evidentiary hearing in the trial court. See Sections 1051 and 1055 of the Choctaw Nation Code of Criminal Procedure.

B. Evidentiary Hearing. The trial court shall hold an evidentiary hearing and rule on the application within thirty (30) days from the date it was filed. No matter may be raised in the petition for a writ of certiorari unless the same has been raised in the application to withdraw the plea, which must accompany the records filed with this Court. PROVIDED HOWEVER, if the trial court fails to hold the evidentiary hearing within thirty (30) days, petitioner may seek extraordinary relief with this Court.

C. Motion for a New Trial. No motion for a new trial is required.

D. Notice of Intent to Appeal and Designation of Record. A defendant seeking to appeal a denial of the application to withdraw the plea shall file notice of intent to appeal, together with the designation of record, in the trial court within ten (10) days from the date the application to withdraw the plea of guilty or nolo contendere is denied. It shall be the responsibility of trial counsel to file all jurisdictional documents required to seek a petition for certiorari before this Court, including the notice of intent to appeal form required by Rule 1.14(C) and Rule 13.4; however, Form 13.4 can be amended to comply with the requirements for certiorari. The filing of the Notice of Intent to Appeal and Designation of Record in the district court is jurisdictional and failure to timely file constitutes waiver of the right to appeal. A certified copy of the Notice of Intent to Appeal and Designation of Record shall also be filed by trial counsel with the Clerk of this Court within ten (10) days from the date the Notice is filed in the trial court. See Section II, Rule 2.5(B), for procedures on counter-designation of record.

**Rule 4.3. Time for Lodging Appeal; Record of Proceedings; Contents of Petition in Error; Briefs.**

A. In order to perfect a certiorari appeal, the petitioner must ensure the following record on appeal is completed in accordance with Rules 2.2, 2.3 and 2.4 and filed with the Clerk of this Court within ninety (90) days from the date the trial court ruled on the application to withdraw

the plea. The filing of the petition for writ of certiorari is jurisdictional and failure to timely file constitutes waiver of right to appeal. In convictions where the death penalty is imposed, the petitioner must file the following items within six (6) months from the date the trial court ruled on the application to withdraw the plea in accordance with Rules 9.1, 9.2 and 9.3.

(1) A petition for a writ of certiorari;

(2) Four (4) certified copies of the original record, which shall include a copy of the order denying the application to withdraw plea; and,

(3) The original and three (3) copies of the transcript of the proceedings in which the plea of guilty or nolo contendere was taken (not applicable if a court reporter was waived as set forth in Form 13.10), and the evidentiary hearing on the application to withdraw plea.

The above items shall be filed in accordance with Rules 2.2, 2.3, and 2.4.

B. Contents of the Transcript. The transcript shall include the proceedings held on the court's acceptance of the plea, the pronouncement of the Judgment and Sentence and the hearing on the application to withdraw the plea of guilty or nolo contendere.

C. Contents of Petition. The petition for a writ of certiorari shall consist of the following:

(1) The trial court case number;

(2) The crime for which the petitioner was sentenced;

(3) The Judgment and Sentence imposed and the date of pronouncement;

(4) The date the application to withdraw the plea of guilty or nolo contendere was filed and the date it was denied by the trial court;

(5) The errors of law urged as having been committed during the proceedings in the trial court which were raised in the application to withdraw plea;

(6) The nature of the relief the petitioner seeks;

(7) The statute under which the petitioner is appealing; and

(8) A certified copy of the trial court's final order denying the application to withdraw plea.

D. Brief in Support. A brief in support shall be filed within thirty (30) days from the date the notice to transmit record on appeal is filed by the Clerk of this Court. See Section IX for capital cases.

E. Answer Brief. This Court may then direct either the prosecuting attorney, or the attorney representing the Choctaw Nation to file an answer brief, if necessary. While not required to

respond unless directed by the Court, the prosecuting attorney or the attorney representing the Choctaw Nation may file an answer brief to the petition and brief on their own motion within thirty (30) days from the filing of the petitioner's brief. PROVIDED HOWEVER, in instances where a sentence of death has been imposed upon a petitioner, the prosecuting attorney or the attorney representing the Choctaw Nation shall respond within sixty (60) days from the filing of the petitioner's brief.

**Rule 4.4. Service of petition and brief in support on prosecuting attorney**

A copy of the petition for a writ of certiorari and the brief in support shall be served on the prosecuting attorney who prosecuted the petitioner within five (5) days from the date of the filing of the petition and brief. See Rule 1.9(B). The petition and brief in support shall contain a certificate of service on the opposing counsel certified by the attorney of record for the petitioner.

**Rule 4.5. Bail pending decision on certiorari appeal**

Whether or not a petitioner who files for a writ of certiorari is entitled to bail pending this Court's decision shall be at the discretion of the trial court. See Section 1077 of the Choctaw Nation Code of Criminal Procedure.

**Rule 4.6. Oral argument, opinions, rehearing and issuance of mandate**

See Rules 3.8 through 3.16, for procedures on matters such as oral argument, opinions, rehearing, and issuance of mandate.

**Section V. Procedures for Appealing Final Judgment under Post-Conviction Procedure Act**

**Rule 5.1. Purpose of procedures**

These procedures are provided to establish the manner of appealing from a final judgment of the district court after an application for post-conviction relief has been heard in the district court.

**Rule 5.2. Appeal from final judgment**

A. Final Judgment on Post-Conviction Application. The appeal to this Court under the Post-Conviction Procedure Act constitutes an appeal from the issues raised, the record, and findings of fact and conclusions of law made in the District Court. For appeal out of time see Rule 2.1(E).

B. Stay of Execution of Judgment Pending Appeal. The District Court may stay the execution of its judgment upon the filing of a verified motion to stay execution of the judgment pending appeal within ten (10) days from the date of the entry of the judgment. If the motion is granted, the party granted the stay shall file a certified copy of the petition in error in the District Court

within five (5) days after the filing of the petition in error in this Court to ensure the District Court is notified of the perfecting of the appeal. See Section 1087 of the Choctaw Nation Code of Criminal Procedure.

C. Petition in Error, Briefs and Record.
(1) The party desiring to appeal from the final order of the District Court under Section V of these Rules MUST file a Notice of Post-Conviction Appeal with the Clerk of the District Court within ten (10) days from the date the order is filed in the District Court.

(2) A petition in error and supporting brief, WITH A CERTIFIED COPY OF THE ORDER ATTACHED must be filed with the Clerk of this Court. The petition in error shall state the date that the Notice of Post-Conviction Appeal was filed in the District Court. If the post-conviction appeal arises from a misdemeanor or felony conviction, the required documents must be filed within thirty (30) days from the date the final order of the District Court is filed with the Clerk of the District Court.

(3) The brief shall not exceed thirty (30) typewritten 8-1/2 by 11-inch pages in length.

(4) This Court may direct the other party to file an answer brief, if necessary. However, the respondent is not required to file an answer brief unless directed by the Court.

(5) Failure to file a petition in error, with a brief, within the time provided, is jurisdictional and shall constitute a waiver of right to appeal and a procedural bar for this Court to consider the appeal.

(6) The record on appeal of a denial of post-conviction relief shall be transmitted by the Clerk of the District Court in accordance with the procedure set forth in Rule 2.3(B), but within the time requirements set forth in Rule 5.3. The record to be compiled by the Clerk of the District Court and transmitted to the Clerk of this Court is limited to the following:

(a) The Application for Post-Conviction Relief presented to the District Court and response, if filed by the Choctaw Nation;

(b) The Findings of Fact and Conclusions of Law entered by the District Court, setting out the specific portions of the record and transcripts considered by the District Court in reaching its decision or setting forth whether the decision was based on the pleadings presented, and which includes a certificate of mailing. See Rule 5.3;

(c) The record of the evidentiary hearing conducted, if held;

(d) Supporting evidence presented to the District Court;

(e) Copies of those portions of the record and transcripts considered by the District Court in adjudicating the issues presented in the application for post-conviction relief as set forth in the findings of fact and conclusions of law entered by the District Court; and

(f) A certified copy of the Notice of Post-Conviction Appeal filed in the trial court.

(7) Rule 3.11 applies to any request to supplement the record in an appeal of a denial of post-conviction relief, to include allegations of ineffective assistance of appellate counsel.

(8) The party filing the petition in error shall be known as the petitioner. The party against whom the appeal is taken shall be known as the respondent.

(9) The Notice of Post-Conviction Appeal Form required by Rule 5.2(C)(1) shall be in substantial compliance with the following language: The Petitioner gives notice of intent to appeal the order granting/denying application for post-conviction relief entered in the District Court of the Choctaw Nation of Oklahoma, on the ___ day of _____, 20 ___, arising from District Court Case No. ___. The Petitioner requests the preparation of the record on appeal as required by Rule 5.2(C)(6).

(10) Form 13.4, Section XIII, shall not be utilized in appeals from a granting/denial of post-conviction relief and the Clerk of the District Court shall not be required to accept for filing or act upon any pleading which does not comply with Rule 5.2 (C)(6) and (9).

**Rule 5.3. Duties of court clerks and court reporters**

A. The court clerk shall on the same day that the order granting or denying post-conviction relief is filed in the District Court, mail to petitioner or counsel of record for the post-conviction proceedings, a file-stamped certified copy of the order of the District Court setting out findings of fact and conclusions of law granting or denying the application. The Court Clerk shall include a certificate of mailing with the order, which shall also be made a part of the record of the case.

B. 1. Upon receipt of the notice of post-conviction appeal, the Clerk of the District Court shall compile two certified copies of the record on appeal as defined by Rule 5.2(C)(6), and ensure the Notice of Completion of record is filed with this Court within thirty (30) days of the filing of the order granting or denying post-conviction relief, unless an extension is requested by the court clerk and granted by this Court.

2. When an evidentiary hearing is held pursuant to Section 1084 of the Choctaw Nation Code of Criminal Procedure and a notice of post-conviction appeal is filed with the court clerk and served on the court reporter within ten (10) days of the filing of the order granting or denying post-conviction relief, the court clerk and court reporter shall ensure the record and transcript of the proceedings on the application are completed and notice of completion of record is filed with this Court within thirty (30) days of the filing of the order. Except for the specific time requirements of this Rule, the provisions of Rule 2.3(B) apply.

**Rule 5.4. Duties of the judge of the District Court**

A. The judge assigned to adjudicate the application for post-conviction relief shall prepare a detailed order setting out specific findings of fact and conclusions of law on each proposition for

relief presented in the application. The order shall also specify the pleadings, documents, exhibits, specific portions of the original record and transcripts, considered in adjudicating the application, which shall then become a part of the record on appeal as defined by Rule 5.2(C)(6).

B. Due to the statutory time constraints set out in Section 1087 of the Choctaw Nation Code of Criminal Procedure, the judge shall monitor and ensure timely notice is provided to the parties by the clerk of the District Court, and if a notice of post-conviction appeal is filed, a timely completion of the record on appeal by the clerk of the District Court together with the court reporter(s), as required.

**Rule 5.5. Final order; Exhaustion of Choctaw Nation remedies**

Once this Court has rendered its decision on a post-conviction appeal, that decision shall constitute a final order and the petitioner's Choctaw Nation remedies will be deemed exhausted on all issues raised in the petition in error, brief and any prior appeals. A petition for rehearing is not allowed and these issues may not be raised in any subsequent proceeding in a court of the Choctaw Nation of Oklahoma. The Clerk of this Court shall return to the movant any petitions for rehearing tendered for filing. See Section 1086 of the Choctaw Nation Code of Criminal Procedure.

**Rule 5.6. Form for application for post-conviction relief**

Any convicted person who seeks post-conviction relief under this Act may apply to the trial court on the form provided in Section XIII, Form 13.11.

**Section VI. Appeal by Choctaw Nation from Adverse Ruling of Magistrate**

**Rule 6.1. Commencement of appeal**

A. An appeal may be taken from a magistrate's adverse ruling to the Choctaw Nation in accordance with the provisions of Sections 1089.1 through 1089.7 of the Choctaw Nation Code of Criminal Procedure. At the conclusion of the appeal, the reviewing judge shall enter an order containing findings of fact and conclusions of law supporting the ruling. See Section 1089.5 and 1089.6 of the Choctaw Nation Code of Criminal Procedure.

B. In the event the reviewing judge reverses the magistrate's order of dismissal, that order constitutes an interlocutory order which may only be raised in a regular appeal, in the event of a conviction. In the event the reviewing judge affirms the magistrate's order dismissing the charges, that order constitutes a final appealable order by the Choctaw Nation.

C. The reviewing judge shall execute a written order containing findings of fact and conclusions of law along with directions as to the proper order to be issued by the Magistrate.

D. Time for Lodging State Appeal.

(1) The Choctaw Nation must file notice of intent to appeal and designation of record with the trial court clerk within five (5) days from date the reviewing judge's ruling is pronounced in open court or filed in the office of the court clerk, whichever date is earlier. The filing of the Notice of Intent to Appeal in the District Court is jurisdictional and failure to timely file constitutes waiver of the right to appeal. The Notice of Intent to Appeal, together with a certified copy of the reviewing judge's order, shall also be filed by the trial counsel seeking the appeal with the Clerk of this Court within ten (10) days from the date the Notice is filed in the trial court. See Section 1089.2 of the Choctaw Nation Code of Criminal Procedure, Rule 2.5 and Form 13.4.

(2) See Rule 1.4 for time requirements and Section XI for procedure.

## Section VII. Procedure for Appealing from an Order Adjudicating a Juvenile to Be Delinquent

### Rule 7.1. Cases which may be appealed

An appeal may be lodged by either party under the Rules of this Court from an adjudication of juvenile delinquency.

### Rule 7.2. Notice of intent to appeal

Any party appealing an order adjudicating a juvenile as a delinquent under Rule 7.1 SHALL file with the clerk of the trial court a notice of intent to appeal and a designation of record as set forth in Form 13.4 within ten (10) days from the date of the trial court order. See Rule 2.5. The filing of the Notice of Intent to Appeal and Designation of Record in the District Court is jurisdictional and failure to timely file constitutes waiver of the right to appeal. A certified copy of the Notice of Intent to Appeal and Designation of Record shall also be filed by trial counsel with the Clerk of this Court within ten (10) days from the date the Notice is filed in the trial court. This Court shall issue a scheduling order in accordance with the time requirements set out in Rule 7.3 setting the date for oral argument and due dates for the record on appeal together with the application and response due date. This scheduling order will be strictly enforced to ensure timely resolution of all issues arising from appeals from juvenile proceedings.

### Rule 7.3. Time for perfecting appeal; Extension request; Record of proceedings

A. Perfecting an Appeal. In order to perfect an appeal from any juvenile proceeding, the petition in error, certified copy of original record, transcript of proceedings and brief shall be filed with the Clerk of this Court within sixty (60) days from the date the trial court enters a final order adjudicating a juvenile as delinquent.

B. Extensions. See Rule 3.2(C); however, insofar as these proceedings are sui generis and time is of the essence, the court reporter shall be required by the District Court to expedite the record of the proceedings being appealed.

C. Preparation of Record and Transcripts. To ensure the appeal is perfected within sixty (60) days, the record and transcripts shall be completed and filed with the District Court clerk, and immediately transmitted to the Clerk of the Court of Appeals and appellate counsel within forty (40) days of the entry of the trial court's order. If the record is not complete within forty (40) days of the trial court's order, a Notice of Non-Completion of Record shall be sent to the Clerk of the Court of Appeals, explaining the cause for the delay. A show cause hearing in this Court may be scheduled.

**Rule 7.4. Duties of court clerk**

After notice of intent to appeal and designation of record are filed, the court clerk of the District Court shall prepare four (4) certified copies of all pleadings and instruments filed in the proceedings for transmittal within forty (40) days from the date of the order in the same manner provided for the preparation of a regular appeal and as set forth in Rules 2.2, 2.3, and 2.4. However, the dates established in the scheduling order shall control. The original transcript and three (3) certified copies of the record designated shall be filed with the Clerk of this Court; one (1) certified copy of the record and transcript shall be provided to the prosecuting attorney; and, one (1) certified copy of the record and transcript to either the retained or other appointed counsel of record on appeal.

**Rule 7.5. Petition in error; Time for filing; Contents; Brief**

A. Petition in Error. A petition in error shall be filed within sixty (60) days from the date of the order of the District Court to invoke the jurisdiction of this Court.

B. Contents of Petition. The appellant's petition in error must contain the following information:

(1) The type of appeal and authority for such appeal;

(2) The case number and the court from which the appeal is lodged;

(3) The offense(s) upon which the final order is premised;

(4) The date on which the court order was entered and the name of the judge;

(5) Whether or not the person has been admitted to bail, is under probation or is satisfying the court order;

(6) The nature of the relief being sought; and

(7) A certified copy of the final order appealed shall be attached to the Petition in Error.

C. Brief. An Application for Accelerated Docket shall be filed with the petition in error. See Section XI. The Application for Accelerated Docket shall be served on the adverse party within

five (5) days from the date on which the brief or application is filed, and the appellant's brief must contain a certificate of service. See Rules 1.9(B) and 3.4(A). See form 13.14.

D. Response Brief. The Response Brief shall be filed within twenty (20) days from the date the appellant's brief is filed. See Form 13.15.

E. Use of Juvenile's Initials. The parties and this Court shall identify the person by his/her initials in order to protect anonymity.

**Rule 7.6. Oral argument; Opinions; Rehearing; Issuance of mandate**

See Rules 3.8 through 3.16 and Section XI for procedures on matters such as oral argument, opinions, rehearing, and issuance of mandate.

**Rule 7.7. Stay of proceedings**

Upon written application by either party, this Court may grant a stay of proceedings in any juvenile matter pending before this Court. The granting or denial of a stay is discretionary.

**Section VIII. Procedures Relating to Imprisonment for Nonpayment of Fines and Costs**

**Rule 8.1. Judicial hearings**

When the Judgment and Sentence of a court, either in whole or in part, imposes a fine and/or costs upon a defendant, a judicial hearing shall be conducted and judicial determination made as to the defendant's ability to immediately satisfy the fine and costs. See Section 983(C) of the Choctaw Nation Code of Criminal Procedure.

**Rule 8.2. Immediate confinement on refusal or neglect to pay fine and/or costs**

If the defendant, by judicial finding, is financially able but refuses or neglects to pay the fine and/or costs in accordance with the court order, he/she may be immediately confined. See Section 983(A) of the Choctaw Nation Code of Criminal Procedure.

**Rule 8.3. Ordering installment payments and fixing the date**

After a judicial finding that the defendant may be able to pay the fine and/or costs in installments, the court may order the defendant to make payment of installments in reasonable amounts and fix the due date of each payment, and may order the defendant to appear before the court on each due date. In event of imprisonment as a part of the judgment rendered, a determination shall be made as to the defendant's ability to make installment payments after

completion of the term of imprisonment. See Section 983(B) of the Choctaw Nation Code of Criminal Procedure.

**Rule 8.4. Failure to make installment payments when due**

If the defendant fails to make an installment payment when due, he/she must be given an opportunity to be heard as to the refusal or neglect to pay the installment when due. If no satisfactory explanation is given at the hearing on failure to pay, the defendant may then be incarcerated. If a defendant has the ability to pay but due to exigent circumstances or misfortune fails to make payment of a particular installment when due, he/she may be given further opportunity to satisfy the fine and/or costs, at the discretion of the court, to be governed by the facts and circumstances of each particular case.

**Rule 8.5. Inability to pay installments because of physical disability or poverty**

In the event the defendant, because of physical disability or poverty, is unable to pay fine and/or costs either immediately or in installment payments, he/she must be relieved of the fine and/or costs; or, in the alternative, be required to report back to the court at a time fixed by the court to determine if a change of condition has made it possible for the defendant to commence making installment payments toward the satisfaction of fine and/or costs.

**Rule 8.6. Change of conditions; Incarceration for failure to appear or satisfy fine and/or costs**

At any time so fixed by the court for the defendant to appear on due date of installment or to appear for examination to determine change of condition set out in Rule 8.5, and the defendant fails to appear, he/she may be incarcerated to satisfy the fine and/or costs. In addition, if the defendant fails to pay fine and/or costs in accordance with the court's order, and the court determines the failure to pay was willful in accordance with Rules 8.1, 8.2, 8.3 and 8.4, the defendant may be incarcerated to satisfy the fine and/or costs.

**Rule 8.7. Court reporter; Judicial order reduced to writing and filed of record; Contents of order**

A court reporter shall be present and report all such judicial hearings required by this Section, provided however, a court reporter is not required to be present if the proceedings were preserved by an electronic instrument or recording device. Any order of the court, whether there be a court reporter in attendance or not, shall be reduced to writing and filed of record in the case. The order shall set forth the findings of the court regarding the defendant's ability or inability to pay the fine and/or costs, the refusal or neglect to do so, if that be the case, the amount of the installments and due dates, if so ordered, and all other findings of facts and conclusions of law necessary to support the order of the court. Any order directing incarceration for failure to pay fine and/or costs shall provide for immediate release upon full payment of the amount ordered or in lieu thereof set a daily rate to be credited to the satisfaction of the amount

of fine and/or costs due which will allow the custodian of the prisoner to compute the amount of time to be served to satisfy the total amount due.

**Rule 8.8. Direct appeal from an order of detention and scope of appeal**

A. Final Order of Detention for Non-Payment. The appeal to this Court from a final order of the district court directing a defendant to be imprisoned under the provisions of Section 983 of the Choctaw Nation Code of Criminal Procedure or under the foregoing provisions of Section VIII of these Rules shall constitute an appeal from the issues raised in the record below and the judicial findings of fact and conclusions of law made in the trial court, and the trial court's ultimate decision to imprison the defendant. The appeal shall be limited to whether the trial court abused its discretion in entering its final order of detention. The propriety of any fine, cost, or other assessment made within the original judgment and sentence is not a proper subject of an appeal from an order of detention. Such claims must instead be raised in a direct appeal from the judgment and sentence.

B. Stay of Execution of Detention Order Pending Appeal. The trial court may stay the execution of its final order of detention upon the filing by the defendant of a verified motion to stay execution of the order pending appeal. The verified motion must be filed within ten (10) days from the date of the trial court's pronouncement of its order of detention. If the motion is granted, the defendant shall, within five (5) days after the filing of the petition in error in this Court, file a certified copy of the petition in error in the trial court and serve a copy thereof upon the trial judge which entered the order of detention. This shall ensure the trial court is notified that an appeal has in fact been commenced in the Court of Appeals.

C. Notice of Appeal from Order of Detention and Request for Appeal Record. A defendant desiring to appeal from a final order of detention under these Rules must file a Notice of Appeal from Order of Detention with the Clerk of the District Court within ten (10) days from the date the detention order is pronounced. The Notice of Appeal from Order of Detention shall be in substantial compliance with the following language:

Defendant gives notice of intent to appeal from the trial court's order imprisoning him/her for non-payment of sums due in Case No(s)._____ in the District Court of the Choctaw Nation of Oklahoma. The final order of detention was pronounced by said court on the _____ day of _____, _____. Defendant requests the clerk of the trial court to prepare an appeal record as required by Section VIII of the Rules of the Oklahoma Court of Criminal Appeals—Criminal, the Choctaw Nation Code of Criminal Procedure, Ch. 18, App. Form 13.4, Section XIII of these Rules shall not be utilized in direct appeals from a final order of detention, and the trial court clerk shall not be required to accept for filing or act upon any pleading which does not comply with this rule.

D. Petition in Error, Briefs, and Service.
(1) A petition in error WITH A CERTIFIED COPY OF THE DETENTION ORDER ATTACHED and a supporting brief, must be filed with the Clerk of this Court within thirty (30) days from the date the final detention order is pronounced. The filing of a petition in error is jurisdictional and failure to timely file constitutes waiver of the right to appeal.

(2) The brief shall not exceed thirty (30) typewritten, 8-1/2 by 11-inch pages in length. Briefs and pleadings shall comply with the requirements of Rule 3.5.

(3) The party filing the petition in error shall be known as the appellant. The party against whom the appeal is taken shall be known as the appellee.

(4) This Court may direct the appellee to file an answer brief, if necessary; however, the appellee is not required to file an answer brief unless directed by the Court.

(5) All pleadings and briefs filed in a direct appeal from an order of detention shall be signed by the party responsible for their filing or by the party's attorney of record. Additionally, all such pleadings or briefs shall contain a certificate of service upon the adverse party. The party or their attorney of record shall be responsible for service upon the adverse party, except that service upon the prosecuting attorney will be made by the Clerk of this Court. No pleadings, briefs, or motions will be considered by this Court without proof of service to the adverse party.

E. Record on Appeal from an Order of Detention.
(1) The record on appeal from a final order of detention for non-payment shall be transmitted by the clerk of the trial court in accordance with the procedure set forth in Rule 2.3(B), but within the thirty (30) day time period set forth in Rule 8.8(D)(1).

(2) The record on appeal to be compiled by the trial court clerk and transmitted to the Clerk of this Court is limited to the written order containing findings of fact and conclusions of law and the transcript of the proceedings (both as set out in Rule 8.7) and the judgment and sentence being enforced by means of the detention order.

## Section IX. Reserved

## Section X. Extraordinary Writs

### Rule 10.1. Types of extraordinary writs; Jurisdiction; Duties of District Court Clerk

A. This Court may entertain certain extraordinary writs which arise out of criminal matters. Such extraordinary writs include: writs of mandamus, prohibition, and habeas corpus. This Court will only entertain such writs if petitioner has been denied relief in the District Court.

B. The District Court may stay the execution of its judgment upon the filing of a verified motion to stay execution of the judgment pending appeal within ten (10) days from the date of the entry of the judgment. If the motion is granted, the party granted the stay shall file a certified copy of the petition for extraordinary relief in the District Court within five (5) days after the filing of the petition in this Court to ensure the District Court is notified of the perfecting of the appeal.

C. It shall be the responsibility of the petitioner to ensure the record is filed with the Clerk of this Court. In order to seek relief, the petitioner shall file within thirty (30) days from the date the trial court's order is filed in the District Court:

(1) A petition and supporting brief setting forth the relief requested which shall contain a statement of facts, the trial court from which the appeal is lodged and the District Court case number, errors of law urged as having been committed during the proceedings in the trial court and citation of legal authority supporting the petition;

(2) A certified copy of the original record applicable to the writ which shall include a copy of the order entered by the trial court;

(3) A certified copy of any supporting evidence presented to the District Court upon which the request for relief is predicated; and,

(4) The original transcript of any proceedings conducted on the petition, if applicable.

D. It shall be the duty of the clerk of the trial court to mail, no later than one (1) day after the order granting or denying extraordinary relief is filed, a certified file-stamped copy of the order to the Petitioner and/or Counsel of record. The clerk of the trial court shall include a certificate of mailing with the order.

**Rule 10.2. Ten-day rule**

Ten-Day Rule. No petition for extraordinary relief shall be filed or considered by this Court unless it is filed at least ten (10) days prior to the date the cause is set for hearing or trial. Three (3) members of this Court may suspend this rule upon proper motion setting forth exigent circumstances supporting the suspension of the rule.

**Rule 10.3. Notice**

No petition for extraordinary relief shall be heard without notice to the adverse party. The petition for extraordinary relief and brief in support shall reflect service on the adverse party or parties.

**Rule 10.4. Oral argument, response, disposition, evidentiary hearing**

A. Oral argument and/or a response may be ordered by this Court. This Court may also remand the petition to the district court for an evidentiary hearing if determined to be necessary.

B. This Court may dismiss the petition for extraordinary relief or may decline to assume jurisdiction. PROVIDED HOWEVER, if this Court dismisses the petition or declines to assume jurisdiction, an order will be issued citing the authority and rationale for such disposition.

**Rule 10.5. Perfecting petition for extraordinary writ**

A petition for an extraordinary writ shall not be perfected until the following documents are filed:

(1) A petition, original and seven (7) copies, shall include the case number, the subject matter of the District Court proceedings, and state the nature of the relief sought. The moving party shall be designated as petitioner and the responding party as respondent.

(2) An original and four (4) copies of a brief which sets forth arguments and authorities supporting the assertions in the petition.

(3) A certified copy of the District Court order shall be attached to the petition.

(4) When a petitioner seeks to interrupt a District Court proceeding, the petitioner shall state the date the ruling or order was entered, from which the relief is being sought, and the date of the next scheduled hearing.

(5) There shall also be filed a certified copy of the original record and either the original or certified copy of the transcript, where appropriate.

**Rule 10.6. Requirements for particular writs**

A. Writ of Prohibition. Petitioner has the burden of establishing (1) a court, officer or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of said power will result in injury for which there is no other adequate remedy. The adequacy of a remedy is to be determined upon the facts of each particular case.

B. Writ of Mandamus. Petitioner has the burden of establishing (1) he has a clear legal right to the relief sought; (2) the respondent's refusal to perform a plain legal duty not involving the exercise of discretion; and (3) the adequacy of mandamus and the inadequacy of other relief. Mandamus is also appropriate to ensure procedural due process requirements are followed in administrative proceedings. Provided however, in matters involving disqualification of judges in criminal cases, if a hearing before the second judge results in an order adverse to the movant, he/she shall have not more than five (5) days from the date of the order to institute a proceeding in this Court for writ of mandamus.

C. Writ of Habeas Corpus.
Petitioner has the burden of establishing confinement is unlawful. Petitioner shall attach a certified copy of both the Judgment and Sentence and the District Court order denying relief with his petition to meet his burden of proof. In the absence of an extreme emergency, this Court will not entertain an original application for a writ of habeas corpus where such application has not been presented to and refused by the District Court. The writ of habeas corpus has not been suspended or altered by the Post-Conviction Procedure Act so long as the statutory appeal procedures have been first exhausted. The writ of habeas corpus is not an authorization to bypass

the statutory appeal process. See also Sections 1331 through 1355 of the Choctaw Nation Code of Civil Procedure.

D. Rehearing. Once this Court has rendered its decision on an extraordinary writ, that decision shall constitute a final order. A petition for rehearing is not allowed. The Clerk of this Court shall return to the movant any petitions for rehearing tendered for filing.

## Section XI. Accelerated Docket Procedures

### Rule 11.1. Creation of an accelerated docket

The procedures included within this Section are created to establish an accelerated system of docketing, allowing for faster resolution of an appeal on its merits when certain criteria, delineated within the body of this rule, are met.

### Rule 11.2. Automatic assignment of certain cases to the accelerated docket

A. Appeals arising out of the following cases will be automatically assigned to the Accelerated Docket upon the filing of the Notice of Intent to Appeal and Designation of Record.

(1) Adjudication as Delinquent; and

(2) Actions brought pursuant to Section 1089.1 to 1089.7 of the Choctaw Nation Code of Criminal Procedure (Choctaw Nation Appeals from Adverse Ruling of Magistrate).

Provided that no case on appeal will be assigned to the Accelerated Docket if that cause was consolidated for trial with other counts resulting in convictions for which appellate relief is sought, and those other convictions are not among those cases enumerated above. If assignment to the Accelerated Docket is desired in such a case, the procedures of Rule 11.3 should be followed with respect to all counts contained in a single case.

B. Upon the filing of the Notice of Intent to Appeal and Designation of Record under Rule 2.5, the above cases shall be assigned to the Accelerated Docket under this Section and the Clerk of this Court shall send notice of such assignment to all named parties. Either party may move within ten (10) days to have the cause removed from the Accelerated Docket. Good cause must be stated in support of the request. Failure to object within the allotted time period waives any future objections.

C. All pleadings and records required by Rule 11.5 shall be filed within the time requirements for regular appeals. See Sections I, II and III. PROVIDED HOWEVER, juvenile appeals shall be filed within the time requirements set out in Section VII and the scheduling order issued by this Court. See Rule 7.5.

D. There is no limitation on the number of issues which may be raised in cases automatically assigned to the Accelerated Docket by reason of this Section.

E. In all appeals properly assigned to the Accelerated Docket, oral argument shall be scheduled, giving each party fifteen (15) minutes to argue to the Court the propositions or issues raised in the appellant's brief. Failure to argue a proposition during oral argument does not waive consideration of that argument on appeal.

**Rule 11.3. Application for accelerated docket in cases not included above**

A. An appellant may apply to be placed on the Accelerated Docket, at any time by completing and filing the prescribed Application and Waiver set out in Rule 11.5. See Section XIII, Forms 13.13, 13.14.

B. When a criminal defendant applies for the Accelerated Docket the application must be accompanied by a verified Consent to Placement on the Accelerated Docket. See Section XIII, Form 13.13.

C. Either upon the filing of an objection to placement of the cause on the Accelerated Docket by the adverse party within ten (10) days of the filing of the application, or upon this Court's own motion, this Court will determine whether placement on the Accelerated Docket will best serve the interests of justice.

D. Cases assigned to the Accelerated Docket under this Section will be limited to three (3) propositions of error. Sub-propositions will be counted.

**Rule 11.4. Cases not eligible for placement on the accelerated docket**

The procedures outlined in this Section of the Rules will not apply to any case pursuant to Section V of the Rules of the Court of Appeals—Criminal.

**Rule 11.5. Forms to be used relative to the accelerated docket**

A. Forms to be used for the Accelerated Docket. The forms contained in Section XIII of these Rules are to be used as an application or a response as it relates to the Accelerated Docket procedure. Such forms are set forth in Section XIII as:

1. Form 13.13, Accelerated Docket Waiver (of appellant or defendant);

2. Form 13.14, Application for Accelerated Docket—Fast Track (to be used by appellant); and

3. Form 13.15, Response to Application for Accelerated Docket—Fast Track (to be used by appellee).

(1) Forms 13.13, 13.14 and 13.15 together with exhibits called for, are to be used in lieu of filing a brief by the appellant or appellee in the ordinary course of the appeal. A party who fails to object to being placed on the Accelerated Docket pursuant to Rule 11.2(A) shall be deemed to have waived the right to the standard appeal procedure and the right to use a brief therein. PROVIDED HOWEVER, such party may move within ten (10) days of the date the petition in error is filed for leave to file a standard brief in accordance with Rule 3.5(D). The granting of such motion shall be within the discretion of this Court and the same will be considered only upon a showing of extraordinary circumstances.

(2) A Reply Brief shall not be filed in Accelerated Docket appeals, except by prior approval of the Court. Supplemental Briefs or Amicus Curiae Briefs shall not be filed in Accelerated Docket appeals, except by prior approval of the Court and in accordance with Rule 3.4(F). PROVIDED HOWEVER, the page limitation on additional briefs shall be set by the Court at the time a request is approved.

B. Propositions to be Presented. The propositions of error shall be presented with reference to the exact location in the transcript or record where such error may be found, together with the propositions of error and case authority as it relates to same by appellant or appellee.

1. The propositions of error shall be specific and not general or conclusory in nature.

2. Each proposition shall contain only one (1) issue.

3. Each proposition shall be specific with reference to the transcript, together with the appropriate citations of cases or statutes pertaining to such error.

4. Case authority shall be cited to specific page(s). Citation of authority shall include one parenthetic paragraph after the citation explaining why it is cited and how it is relevant to the proposition of error in the current case.

5. If one of the allegations of error is “insufficiency of evidence”, the appellant must specify which element or elements of the offense have not been proved, together with appropriate authority and citations to the record if appropriate.

6. If one of the allegations of error is ineffective assistance of counsel, appellant must specify as to how counsel was ineffective, together with appropriate references to the record.

C. Failure to follow the Rules set forth in this Section may, upon the Court’s Order or motion of the adverse party, result in the rejection of the application or dismissal of the appeal.

**Section XII. Reserved**

**Section XIII. Forms**

**Rule 13.0. Mandatory forms to be utilized in criminal cases in the Choctaw Nation of Oklahoma**

The following forms shall be utilized by trial courts and parties in the prosecution and appeal of criminal cases in the Choctaw Nation of Oklahoma. The forms may be computerized with additional lines and spaces added as needed. In addition, appendices/exhibits/attachments may be utilized to supplement the forms (for example—rules and conditions of probation, payment schedule for fines and/or costs, etc.). Local requirements may be added to the forms but the format and specific provisions in the forms shall not be altered. The forms are as follows:

**Form 13.1. Reserved**

**Form 13.2. Affidavit in Forma Pauperis**

The Affidavit in Forma Pauperis must be in the following form:

**AFFIDAVIT IN FORMA PAUPERIS**

I, _____, state that I am a poor person without funds or property or relatives willing to assist me in paying for filing the within instrument. I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Signed this ___ day of _____, 20 ___ at

_____.
(Print City, County, & State)

_____
(Signature of Affiant)

_____
(Print Name)

**Form 13.3. Pauper's affidavit**

**IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA**

**CHOCTAW NATION OF OKLAHOMA, )**

| | | |
|---|---|---|
| | **Plaintiff,** | **)** |
| | | **)** |
| **v.** | | **) Case No. _____** |
| | | **)** |
| **_____,** | | **)** |
| | **Defendant.** | **)** |

**PAUPER'S AFFIDAVIT**

I, _____ (Name),

| | |
|---|---|
| **Address:** | |
| **City, State, Zip:** | |

| | |
|---|---|
| **Social Security Number:** | |

upon oath, do depose and state:

**I. PERSONS IN HOUSEHOLD**

| **List the names of those residing in your household:** | | **Is the person a dependent? (Check yes or no.)** | |
|---|---|---|---|
| Spouse: | | Yes | No |
| Child: | | Yes | No |
| Child: | | Yes | No |
| Child: | | Yes | No |
| Child: | | Yes | No |
| Other: | | Yes | No |
| Other: | | Yes | No |

| | | |
|---|---|---|
| **Are you claimed as a dependent by a parent or guardian?** | Yes | No |

If so, explain:

## II. FINANCIAL STATUS—ASSETS

(Defendant or person(s) responsible for defendant's support):

A. 1. Cash

| | |
|---|---|
| **Cash on hand** | **$** |

2. Bank Accounts:

| Bank Name | Bank Address | Checking or Savings | $ Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

3. Bonds & Securities

| Bonds and Securities | Value |
|---|---|
| | |
| | |

4. All Other Possessions of Value: (including tax refunds, notes, accts. receivable, etc.)

| Other Possessions of Value (Including tax refunds, accounts receivables, etc.) | Value |
|---|---|
| | |
| | |
| | |

B. 1. Current Employer

| Current employer | Wages |
|---|---|

| | |
|---|---|
| | |

2. Prior Employer

| If not currently employed, list prior employer | Place | Dates of employment |
|---|---|---|
| | | |

3. Supplemental Income

| Supplemental Income (V.A., Social Security, Disability, Child Support, etc.) | Amount |
|---|---|
| | |

C. Home and Other Real Estate:

| Real Property | Value | Balance Owed |
|---|---|---|
| | | |
| | | |
| | | |

D. Vehicle(s):

| Description | Value | Balance Owed |
|---|---|---|
| | | |
| | | |

E. Personal Property: (furniture, appliances, tools, equipment, etc.)

| Items | Value | Balance Owed |
|---|---|---|
| | | |
| | | |

F. Litigation you or your spouse have pending for recovery of money:

| Case Number | Court |
|---|---|

| | |
|---|---|
| | |
| | |
| | |
| | |

## III. FINANCIAL STATUS-LIABILITIES

A. Charge or Open Accounts:

| Description | Balance |
|---|---|
| | |
| | |
| | |
| | |

B. Housepayment or Rent:

| Mortgagor/Landlord | Monthly Payment |
|---|---|
| | |
| | |

| | |
|---|---|
| **If you own your home, what is the value?** | |

C. Child Support Obligations

| Number of children | Monthly payment |
|---|---|
| | |
| | |

D. Other Debts:

| Creditor | Balance Owed |
|---|---|

| | |
|---|---|
| | |
| | |
| | |

## IV. OTHER

A. Sold or transferred assets

| | | |
|---|---|---|
| **Have you transferred or sold any assets since charges were filed in this case?** | Yes | No |

If so, describe the buyer and the amount received:

_____

_____

B. Retained counsel

| | | |
|---|---|---|
| **Have you retained counsel in this case or in any other pending criminal case?** | Yes | No |

If so, state the case number, court, attorney and amount paid to attorney for services:

| Case Number | Court | Attorney | Amount Paid |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

C. If you have posted bond, who provided the funds for the bond?

_____

D. Other sources of funds

| | | |
|---|---|---|
| **Do you have any friend or relatives who are able and willing to assist you in hiring counsel and paying for transcripts?** | Yes | No |

| | | |
|---|---|---|
| **If so, have those persons been asked to help?** | Yes | No |

E. If a friend or relative has given previous financial assistance in this case, including the posting of bond, but is no longer able or willing to do so; an affidavit to that effect from that person shall be attached, stating why such help is no longer available.

### V. Certification

I further swear and affirm that I am without funds or other sources of income to pay an attorney or to pay for transcripts and costs associated with this case. I understand I am under a continuing obligation to keep this Court informed of any changes in my financial status and this Court may conduct another hearing to determine my indigent status at any time.

_____
Applicant's Signature

Subscribed and sworn to before me this _____ day of _____ 20_____.

**CHOCTAW NATION OF OKLAHOMA**

_____
Court Clerk/Deputy

_____
Notary Public

My Commission Expires _____ My Commission Number _____

**Form 13.4. Notice of intent to appeal**

**IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA**

| | |
|---|---|
| **THE CHOCTAW NATION OF OKLAHOMA,** | **)** APPEAL CASE NO. _____ |
| **Plaintiff,** | **)** DISTRICT COURT CASE NO. _____ |
| | **)** |
| **v.** | **)** TYPE OF APPEAL |
| | **)** ( ) Direct Felony Appeal |
| **_____,** | **)** ( ) Direct Misdemeanor Appeal |
| **Defendant.** | **)** ( ) Certiorari |
| | **)** ( ) Revocation/Acceleration |
| | **)** ( ) Choctaw Nation Appeal-1089.1-1089.7 |
| | **)** ( ) Choctaw Nation Appeal-1053/1053.1 |

**)** ( ) Juvenile – Adjudication
**)** ( ) Other (specify) _____
**)**

**NOTICE OF INTENT TO APPEAL;
ORDER DETERMINING INDIGENCY, APPELLATE COUNSEL,
PREPARATION OF APPEAL RECORD, AND GRANTING TRIAL COUNSEL'S
MOTION TO WITHDRAW; COURT REPORTER'S ACKNOWLEDGEMENT; AND
NOTIFICATION OF APPROPRIATE APPELLATE COUNSEL, IF APPOINTED**

The Defendant was sentenced on the _____ day of _____, 20_____, for:

If certiorari appeal, date of trial court's denial to withdraw plea _____.

| **Crime(s)** | **Statute(s)** | **Sentence(s)** |
|---|---|---|
| | | |
| | | |
| | | |

The sentence(s) was/were ordered to run ( ) concurrently ( ) consecutively as follows:

_____

The Defendant intends to appeal ( ) all convictions arising from the trial had in the above captioned case, whether hereinabove specifically listed or not; or ( ) only the following Counts: _____ to the Choctaw Nation Court of Appeals pursuant to

_____ (cite specific statute).

This Notice of Intent to Appeal and the Designation of Record, attached as Exhibit "A", pursuant to Rule 2.5 (B) of the Rules of the Court of Appeals—Criminal, Ch.18, App., of the Choctaw Nation Code of Criminal Procedure, was filed with the clerk of the trial court within ten (10) days of the date of the pronouncement of the Judgment and Sentence in this case and constitutes a valid initiation of a direct appeal in accordance with the Court of Appeals Rule 2.1(B). The Defendant further requests that the original record and transcripts be prepared in accordance with the completed Designation of Record, attached as Exhibit A. To assist in the expediting of the appeal, an advisory list of propositions of error, if any, deemed viable by trial counsel, signed by trial counsel (if trial counsel will not be attorney on appeal), is attached as Exhibit "B".

_____

Trial Counsel
( ) Retained
( ) Appointed
( ) Individual

A true and correct certified copy of the Notice of Intent to Appeal and the Designation of Record with acknowledged receipt by the court reporter(s) were mailed this _____ day of _____, 20_____, to the Clerk of the Choctaw Nation Court of Appeals.

_____
Trial Counsel

(Signature plus typed name)

_____

Choctaw Nation Bar No. _____

Address _____

Telephone No. _____

## II. APPLICATION FOR DETERMINATION OF INDIGENCE

In accordance with Rule 1.14 of the Rules of the Court of Appeals—Criminal, Ch.18, App., the Defendant submits that he/she is indigent and cannot pay the costs of an appeal. Counsel states:

( ) Indigency has been previously determined by this Court or its designee, and a pauper's affidavit in accordance with
Rule 1.14(A) will be provided if this Court elects to review the Defendant's status.

( ) Indigency has not been previously determined by this Court or its designee, and a pauper's affidavit in accordance with Rule 1.14(A) is attached as Exhibit "C".

It is requested that appropriate counsel be appointed and transcripts be prepared at the expense of the Choctaw Nation.

_____
Trial Counsel

## III. DETERMINATION OF INDIGENCE

Pursuant to Rule 1.14 of the Rules of the Court of Appeals—Criminal, Ch.18, App., of the Choctaw Nation Code of Criminal Procedure, this Court finds the Defendant ( )IS ( )IS NOT currently indigent.

**THE COURT ORDERS:**

**A. Preparation of the Appeal Record:**

1. A record of this case ( )IS ( )IS NOT to be prepared at the expense of the court fund.

2. The court reporter(s) listed below ( )SHALL ( ) SHALL NOT be reimbursed out of the Choctaw Nation Court Fund for preparation of this record.

Name: _____

Mailing Address: _____

_____

_____

Transcript Type: _____

Transcript Date: _____

3. The return to the trial court clerk all transcripts prepared at the expense of the court fund during the course of the trial proceedings.

These transcripts shall be returned within ten (10) days from the date of sentencing. See Rule 3.2(E).

**B. IF INDIGENT:**

1. _____, trial counsel for the Defendant, timely completed this Notice of Intent to Appeal and has timely filed a Designation of Record.

2. The court reporter(s) has/have been served with a copy of the Designation of Record.

3. Appropriate transcripts are ordered at the expense of the court fund.

4. _____,
( ) PUBLIC DEFENDER
( ) A PRIVATE ATTORNEY

ADDRESS _____,

TELEPHONE _____, is appointed to represent the Defendant on appeal.

5. Any Supplemental Designation of Record by the Public Defender pursuant to Section 1362 of the Choctaw Nation Code of Criminal Procedure must be filed and served upon the appropriate court reporter(s) within thirty (30) days from the date of appointment, and the reporter's acknowledgement of service shall be filed in accordance with Rule 1.15(B); 2.1(B)(3).

6. _____, trial counsel for the Defendant, is permitted to withdraw as counsel of record.

**C. IF NOT INDIGENT:**

1. _____, trial counsel for the Defendant, timely completed this Notice of Intent to Appeal and has timely filed a Designation of Record.

2. The court reporter(s) has been served with a copy of the Designation of Record.

3. _____ has entered his/her appearance and will represent the Defendant on appeal as retained counsel.

4. _____, trial counsel for the Defendant, has filed a Motion to Withdraw as Counsel. The Motion is granted and trial counsel is permitted to withdraw as counsel of record.

**IT IS SO ORDERED.**

This order signed this _____ day of _____, 20_____.

_____
Judge of the District Court

_____
(Signature plus typed name and title)

**NOTE:** A NOTICE OF INTENT TO APPEAL AND DESIGNATION OF RECORD MUST BE FILED WITHIN TEN (10) DAYS FROM THE DATE THE SENTENCE IS PRONOUNCED IN OPEN COURT WITH THE CLERK OF THE TRIAL COURT. THIS NOTICE AND DESIGNATION IS JURISDICTIONAL AND FAILURE TO TIMELY FILE CONSTITUTES WAIVER OF THE RIGHT TO APPEAL. A CERTIFIED COPY OF THIS NOTICE AND DESIGNATION SHALL ALSO BE FILED BY TRIAL COUNSEL WITH THE CLERK OF THE COURT OF APPEALS WITHIN TEN (10) DAYS FROM THE DATE THE NOTICE IS FILED IN THE TRIAL COURT. NO TRIAL ATTORNEY MAY BE GRANTED PERMISSION TO WITHDRAW, IF THE DEFENDANT DESIRES TO APPEAL, UNLESS THESE DOCUMENTS ARE FILED. IF THE DEFENDANT DOES NOT WISH TO APPEAL THIS CONVICTION, TRIAL COUNSEL MUST FILE AN AFFIDAVIT SIGNED BY TRIAL COUNSEL AND ACKNOWLEDGED BY THE TRIAL JUDGE WITH THE CLERK OF THE DISTRICT COURT, BEFORE TRIAL COUNSEL IS ALLOWED TO WITHDRAW, ASSERTING THAT THE DEFENDANT HAS BEEN FULLY ADVISED OF HIS/HER APPEAL RIGHTS AND DOES NOT WISH TO PURSUE AN APPEAL OF THE CONVICTION. See Rule 1.14(D).

## IV. COURT REPORTER'S ACKNOWLEDGEMENT

A. The Designation of Record, attached as "Exhibit A", was received on _____, 20___.

B. IF NOT INDIGENT, satisfactory arrangements ( )have ( )have not been made for payment of the transcript cost.

These financial arrangements were completed on, _____ 20___. If payment has not been made/arranged, explain why:

_____

_____

_____

C. Number of trial and/or hearing days:

_____

D. Estimated number of transcript pages:

_____

E. Estimated completion date:

_____

F. I acknowledge receipt of this document and understand I must prepare the record within the time limits prescribed by the Oklahoma Court of Appeals.

DATE:

_____

_____

Signature—Official Court Reporter

_____

Printed Signature

## V. NOTIFICATION OF COUNSEL, IF APPOINTED

**NOTE:** No Designation of Record shall be accepted for filing by the trial court clerk unless it contains one of the following:

A. A signed acknowledgement from the court reporter(s) who reported proceedings in a case indicating receipt of the request for transcript(s), the date received, and completed financial arrangements, or an order of the trial court directing the case be prepared at the expense of the court fund; or, [For Supplemental Designation of Record, a signed certified mail return receipt card acknowledged by the court reporter(s), together with the attorney's certificate of mailing attached is sufficient for compliance.] or,

B. A signed statement by the attorney preparing the designation of record stating that transcripts have not been ordered and a brief explanation why. (Example, I, _____, attorney for the Appellant, hereby state that I have not ordered a transcript because: (1.) A transcript is not necessary for this appeal; (2.) No stenographic reporting was made.)

A true and correct certified copy of this Notice and Order and the Designation of Record were mailed this _____ day of _____, 20_____, to

( ) Public Defender at the following address: _____;

( ) _____, privately retained counsel at the following address:

_____.

_____

Court Clerk/Deputy

**Form 13.5. Certification of appeal rights**

**Certification of Advice of Appeal Rights**

I, _____, trial counsel for the above named defendant, hereby certify that I have advised the defendant of his/her appeal rights and that he/she fully understands the rights of appeal and that the defendant affirmatively states he/she does not want to appeal. I further certify I have delivered a copy of this affidavit to the defendant, _____, on the _____ day of _____, 20_____.

Date: _____ _____

Trial Counsel

**Form 13.6. Application to proceed pro se on direct appeal**

**IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA**

| | |
|---|---|
| **CHOCTAW NATION OF OKLAHOMA** | **)** |
| **Plaintiff,** | **) Application Case No. _____** |
| | **)** |
| **v.** | **) Original Conviction Case** |
| | **) No. _____** |
| **_____,** | **)** |
| **Defendant.** | **) Appeal Case No. _____** |

**Affidavit of Defendant Requesting to Proceed Pro Se in a Direct Appeal**
**Pursuant to Section 1051 of the Choctaw Nation Code of Criminal Procedure**

1. The district court has explained, and I fully understand, the nature of the crime of which I have been convicted and the severity of the punishment imposed upon me.

2. I understand that I have a right to the assistance of an attorney in taking an appeal of the judgment against me to the Choctaw Nation Court of Appeals and to have an attorney appointed for me if I am unable to afford one.

3. I understand the knowledge and experience that an attorney can provide me.

4. I understand that the conviction(s) I am appealing, if affirmed by the Choctaw Nation Court of Appeals, might be used to enhance the punishment of crimes for which I am convicted in the future.

5. I understand that in seeking to take my appeal without assistance of an attorney that I am assuming sole responsibility for perfecting and pursuing my appeal in accordance with the Rules

of the Choctaw Nation Court of Appeals—Criminal, Ch.18, App. of the Choctaw Nation Code of Criminal Procedure, and in accordance with the laws of the Choctaw Nation of Oklahoma. I understand that, if I fail to so perfect and pursue my appeal, neither the Choctaw Nation Court of Appeals nor any official of the Choctaw Nation of Oklahoma is required, or responsible, to correct such failure.

6. I understand that I am precluded from raising, in any subsequent proceeding before this Court, any issue which was raised or could have been raised in my direct appeal. I also understand that I am precluded from raising, in any subsequent proceeding before any court, these issues which could have been raised and any issue concerning the effective assistance of counsel in taking my appeal.

7. I acknowledge that I have not, in any way, been compelled or coerced into waiving and relinquishing my right to assistance of an attorney in taking my appeal. I further acknowledge that I am competent to make said waiver and relinquishment and that it is made knowingly, intelligently and voluntarily.

8. I acknowledge that I have consulted an attorney about my decision to waive and relinquish my right to assistance of an attorney in taking my direct appeal and understand the dangers and requirements I am assuming in representing myself in this matter.

9. I acknowledge that I have been fully advised of my right to assistance of an attorney to take my appeal and the consequences of waiving and relinquishing same.

10. I herewith voluntarily waive and relinquish my right to an attorney, either retained or appointed, to represent me on appeal, and request the Choctaw Nation Court of Appeals to so find and allow me to represent myself in all further matters relating to this appeal.

_____ _____

Date Signature of Defendant

**STATE OF OKLAHOMA )**
**COUNTY OF _____ )**

_____, being first sworn under oath, states that he/she signed the above affidavit and that the statements therein are true to the best of his/her knowledge and belief.

_____

Signature

Subscribed and sworn to before me this _____ day of _____, 20_____.

_____
Notary Public

My Commission expires: _____ My Commission Number: _____

**Form 13.7. Order allowing defendant to proceed pro se on appeal**

**IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA**

| | |
|---|---|
| **CHOCTAW NATION OF OKLAHOMA** | **)** |
| **Plaintiff,** | **) Application Case No. _____** |
| | **)** |
| **v.** | **) Original Conviction Case** |
| | **) No. _____** |
| **_____,** | **)** |
| **Defendant.** | **) Appeal Case No. _____** |

**Order Allowing Defendant to Represent Himself/Herself in Perfecting an Appeal to the Court of Appeals**

**Findings of Fact.**

Based upon evidence presented concerning Defendant's background, education, and experience and upon his/her conduct at this hearing, I find that Defendant is literate, competent and informed and therefore can intelligently waive and relinquish his/her right to assistance of an attorney in perfecting/pursuing an appeal to the Choctaw Nation Court of Appeals.

The Defendant has been fully advised of his/her rights to assistance of an attorney in perfecting/pursuing an appeal to the Choctaw Nation Court of Appeals, including the right to have an attorney appointed at the expense of the Choctaw Nation of Oklahoma if he/she is indigent. The Defendant has acknowledged each of these rights together with the understanding of the potential dangers and responsibilities he/she is assuming in requesting to represent himself/herself on appeal without the assistance of an attorney.

The Defendant has not been, and does not feel, coerced or compelled, in any way, to waive and relinquish his/her right to assistance of an attorney in perfecting/pursuing an appeal.

The Defendant has knowingly waived and relinquished his/her right to assistance of an attorney in perfecting/pursuing an appeal to the Oklahoma Court of Appeals.

**Conclusions of Law.**

The Defendant is entitled to access the courts of justice of the Choctaw Nation of Oklahoma, which includes the right to represent himself/herself in perfecting/pursuing a direct appeal of a criminal conviction to the Choctaw Nation Court of Appeals.

**IT IS THEREFORE THE ORDER OF THIS COURT** that the Defendant's application to represent himself/herself in perfecting/pursuing a direct appeal of his/her conviction in Case No._____ to the Choctaw Nation Court of Appeals should be, and is hereby, **GRANTED**.

_____ _____

Date Judge of the District Court

**Form 13.8. Uniform Judgment and Sentence**

[**NOTE ON USE:** The uniform Judgment and Sentence Form 13.8 shall be used in all felony convictions and any misdemeanor the subsequent conviction of which can be prosecuted as a felony.]

**IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA**

| | |
|---|---|
| **CHOCTAW NATION OF OKLAHOMA** | **)** |
| **Plaintiff,** | **)** |
| | **)** |
| **v.** | **) Case No. _____** |
| | **)** |
| **_____,** | **)** |
| **Defendant.** | **)** |

Date of Birth: _____

Social Security Number: _____

**JUDGMENT AND SENTENCE**

**Now**, on this ____ day of _____, 20_____, this matter comes on before the undersigned Judge, for sentencing and the Defendant, _____, appears personally and by Attorney _____, the Choctaw Nation of Oklahoma is represented by _____, and the Defendant, having previously:

( ) Entered a plea of guilty
( ) Entered a plea of Nolo Contendere
( ) Been found guilty by jury
( ) Been found guilty by Judge after waiver of jury trial

( ) Other _____

to/of the crime(s) of: Statutory Reference

Count _____: _____ ____ C.N.S._____
Count _____: _____ ____ C.N.S._____
Count _____: _____ ____ C.N.S._____

(Attach additional sheet for additional counts or if computerized, add to body of Judgment and Sentence at each appropriate place.)

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** by the Court that the Defendant, _____, is guilty of the above described offenses and is sentenced as follows:

**TERM OF IMPRISONMENT**

| **COUNT** | **SENTENCED TO A TERM OF** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

under the custody and control of the Department of Public Safety.

These terms to be served as follows (consecutive/concurrent):

_____

_____

**TERM OF IMPRISONMENT WITH EXECUTION OF SENTENCE SUSPENDED IN PART**

(Attach additional sheet(s) to clarify, if necessary)

| **COUNT** | **SENTENCED TO A TERM OF** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

with all except the first _____ suspended under the custody and control of the Department of Public Safety pursuant to the rules and conditions of probation entered by the court.

These term(s) to be served as follows (consecutive/concurrent):

_____

_____

**TERMS OF IMPRISONMENT WITH EXECUTION OF SENTENCE SUSPENDED**
**(Attach additional sheet(s) to clarify, if necessary)**

| **COUNT** | **SENTENCED TO A TERM OF** |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

under the custody and control of the Department of Public Safety all of said term(s) of imprisonment suspended pursuant to the rules and conditions of probation entered by the court.

These term(s) to be served as follows (consecutive/concurrent):

_____

_____

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED BY THE COURT** that in addition to the preceding terms, the Defendant is also sentenced to:

**FINE**

( ) The defendant shall pay a fine of $_____

( ) immediately; or

( ) on or before _____ _____, 20_____ at the rate of $_____ per _____, or within _____ days of release from the Department of Corrections.

( ) payment of $_____ is suspended pursuant to Rules and Conditions of probation.

**COSTS, VCA, RESTITUTION**

( ) The defendant shall pay costs, fees, and restitution in accordance with the schedule attached as Exhibit _____.

**RULES AND CONDITIONS OF PROBATION**

The rules and conditions of probation as ordered by the court and signed by the defendant, acknowledging his/her understanding of the rules and conditions, are incorporated as Exhibit _____.

**ATTORNEY FEES**

( ) The defendant shall pay court-appointed attorney fee in the amount of $_____ on or before _____, 20____, to _____.

## HEARING ON ABILITY TO PAY AFTER INCARCERATION

( ) The defendant shall report to the District Court of the Choctaw Nation within _____ days of release for a hearing on the defendant's ability to pay fines and costs pursuant to Section VIII of the Rules of the Court of Appeals—Criminal, Ch. 18, App., the Choctaw Nation Code of Criminal Procedure.

**IT IS FURTHER ORDERED** that judgment is hereby entered against the Defendant as to the fines, costs and assessments set forth above.

The Court further advised the Defendant of his/her rights and procedure to appeal to the Court of Appeals of the Choctaw Nation of Oklahoma, and that if he/she desired to appeal and was unable to afford counsel and a transcript of the proceedings, that the same would be furnished by the Choctaw Nation subject to reimbursement of the cost of representation in accordance with Sec. 1355.14 of the Choctaw Nation Code of Criminal Procedure. The Court further advised the Defendant that, in the event the above sentence is for a crime involving domestic violence where the Defendant is or was a spouse, intimate partner, parent, or guardian of the victim or is or was involved in another similar relationship with the victim, it may be unlawful for him or her to possess, purchase, receive, transport or ship a firearm including a rifle, pistol or revolver or ammunition pursuant to federal law under 18 U.S.C. Section 992(g)(8) or (9), or pursuant to Choctaw Nation law, or both.

In the event the above sentence is for incarceration, the Director of the Department of Public Safety, is ordered and directed to deliver the Defendant to a suitable jail, detention center, prison, or other such facility, and leave therewith a copy of this Judgment and Sentence to serve as warrant and authority for the imprisonment of the Defendant as provided herein. A second copy of this Judgment and Sentence to be warrant and authority of the officer for the transportation and imprisonment of the Defendant as herein before provided. The officer delivering the Defendant to said jail, detention center, prison, or other such facility is to make due return to the Clerk of this Court, with his proceedings endorsed thereon.

Witness my hand the day and year first above mentioned.

_____
JUDGE OF THE DISTRICT COURT

_____
(Name of Judge Typed)

**ATTEST:**

_____
Court Clerk
(SEAL)

_____
Deputy Clerk

**CLERK'S CERTIFICATION OF COPIES**

I, _____, Clerk of the District Court of the Choctaw Nation of Oklahoma, do hereby certify the foregoing to be true, correct, full and complete copy of the original Judgment and Sentence in the case of the Choctaw Nation of Oklahoma vs. _____ as the same appears of record in my office.

WITNESS my hand and official seal this _____ day of _____, 20_____.

By:

_____
Court Clerk
(SEAL)

_____
Deputy Clerk

**RETURN OF OFFICER**

I received this Judgment and Sentence the _____ day of _____, 20_____, and executed it by delivering the Defendant to _____, which is a jail, detention center, prison, or other such facility located in _____, on the _____ day of _____, 20_____.

_____
Officer

**Form 13.9. Certificate of original record**

**CERTIFICATION OF ORIGINAL RECORD**

I, _____, Court Clerk for the District Court of the Choctaw Nation of Oklahoma, do hereby certify that the foregoing is a full, true and correct original record in the above entitled cause, as designated.

In testimony whereof, I have hereunto set my hand and the seal of this Court this _____ day of _____, 20 _____.

_____
Court Clerk

## Form 13.10. Uniform plea of guilty—Summary of facts

**IN THE DISTRICT COURT OF THE CHOCTAW NATION OF OKLAHOMA**

| | | |
|---|---|---|
| **CHOCTAW NATION OF OKLAHOMA**, Plaintiff, | ) | |
| v. | ) | Case No. _____ |
| _____, Defendant. | ) | [NOTE: The trial judge shall ensure the defendant is sworn either prior to completing the Summary of Facts or prior to inquiry by the Court on the Plea. If the defendant is entering a nolo contendere, or other type guilty plea, correct by pen change where term "guilty" used.] |
| SS#_____ D.O.B._____ | ) | |
| _____ | ) | |
| _____ (Home Address) | ) | |

**PLEA OF GUILTY**
**SUMMARY OF FACTS**

**PART A: Findings of Fact, Acceptance of Plea**

| | | CIRCLE |
|---|---|---|
| 1. | Is the name just read to you your true name? | Yes No |
| | If no, what is your correct name? _____ | |
| | I have also been known by the name(s): _____ | |
| | _____. | |
| 2. | My lawyer's name is _____. | |
| 3. | (a) Do you wish to have a record made of these proceedings by a Court Reporter? | Yes No |
| | (b) Do you wish to waive this right? | Yes No |
| 4. | Age:_____ Grade completed in school:_____ | |
| 5. | Can you read and understand this form? (If the answer above is no, Addendum A is to be completed and attached.) | Yes No |

6. Are you a member of the Choctaw Nation of Oklahoma or a member of another federally recognized Indian tribe? Yes No

7. Are you currently taking any medications or substances which affect your ability to understand these proceedings? Yes No

8. Have you been prescribed any medication that you should be taking, but you are not taking? Yes No

If so, what kind and for what purpose? _____

_____

9. Have you ever been treated by a doctor or health professional for mental illness or confined in a hospital for mental illness? Yes No

If yes, list the doctor or health professional, place, and when occurred:

_____.

10. Do you understand the nature and consequences of this proceeding? Yes No

11. Have you received a copy of the Information and read its allegations? Yes No

12. Does the Choctaw Nation move to dismiss or amend any case(s) or count(s) in the information? If so, set forth the cases/counts dismissed or amended: Yes No

_____

_____.

13. A. Do you understand you are charged with:

| | **Crime** | **Statutory Reference** | | |
|---|---|---|---|---|
| (1) | _____ | _____C.N.S._____ | Yes | No |
| (2) | _____ | _____C.N.S._____ | Yes | No |
| (3) | _____ | _____C.N.S._____ | Yes | No |
| (4) | _____ | _____C.N.S._____ | Yes | No |

For additional charges: List any additional charges on a separate sheet and label as PLEA OF GUILTY ADDENDUM B.

14. Have you previously been convicted of a felony? If so, when, where and for what felony/felonies? Yes No

_____

_____

_____

15. _____ (Check if applicable) Do you understand that a conviction on a plea of guilty to the offense(s) of _____ Yes No

_____

will subject you to mandatory compliance with the Oklahoma Sex Offender Registration Act?

16. What is the charge(s) to which the defendant is entering a plea today?

_____

_____

_____

17. Do you understand the range of punishment for the crime(s) is/are: (List in same order as in No. 13 above)?

(1) Minimum of _____ to a maximum of _____ and/or a fine of $_____ Yes No

(2) Minimum of _____ to a maximum of _____ and/or a fine of $_____ Yes No

(3) Minimum of _____ to a maximum of _____ and/or a fine of $_____ Yes No

(4) Minimum of _____ to a maximum of _____ and/or a fine of $_____ Yes No

18. Read the following statements: You have the right to a speedy trial before a jury for the determination of whether you are guilty or not guilty and if you request, to determine sentence. At the trial:

(1) You have the right to have a lawyer represent you, either one you hire yourself or if you are indigent a court appointed attorney.

(2) You are presumed to be innocent of the charges.

(3) You may remain silent or, if you choose, you may testify on your own behalf.

(4) You have the right to see and hear all witnesses called to testify against you and the right to cross-examine them.

(5) You may have your witnesses ordered to appear in court to testify and present evidence of any defense you have to these charges.

(6) The state is required to prove your guilt beyond a reasonable doubt.

(7) The verdict of guilty or not guilty decided by a jury must be unanimous. However, you can waive a jury trial and, if all parties agree, the case could be tried by a Judge alone who would decide if you were guilty or not guilty and if guilty, the appropriate punishment.

Do you understand each of these rights? Yes No

19. Do you understand by entering a plea of guilty you give up these rights? Yes No

20. Do you understand that a conviction on a plea of guilty could increase punishment in any future case committed after this plea? Yes No

21. Have you talked over the charge(s) with your lawyer, advised him/her regarding any defense you may have to the charges and had his/her advice? Yes No

22. Do you believe your lawyer has effectively assisted you in this case and are you satisfied with his/her advice? Yes No

23. Do you wish to change your plea of not guilty to guilty and give up your right to a jury trial and all other previously explained constitutional rights? Yes No

24. Is there a plea agreement? Yes No

What is your understanding of the plea agreement? _____

_____

_____

25. Do you understand the Court is not bound by any agreement or recommendation and if the Court does not accept the plea agreement, you have the right to withdraw your plea of guilty? Yes No

26. Do you understand that if there is no plea agreement the Court can sentence you within the range of punishment stated in Question 16? Yes No

27. What (is)/(are) your plea(s) to the charge(s) (and to each one of them)?

_____

_____

_____

28. Did you commit the acts as charged in the Information? Yes No

State the factual basis for your plea(s) (attach additional pages as needed, labeled as ADDENDUM C):

_____

_____

_____

29. Have you been forced, abused, mistreated, or promised anything by anyone to have you enter your plea(s)? Yes No

30. Do you plead guilty of your own free will and without any coercion or compulsion of any kind? Yes No

31. (a) Do you have any additional statements to make to the Court? Yes No

(b) Is there any legal reason you should not be sentenced now? Yes No

HAVING BEEN SWORN, I, the Defendant whose signature appears below, make the following statements under oath:

(1) CHECK ONE

_____(a) I have read, understand and completed this form.

_____(b) My attorney completed this form and we have gone over the form and I understand its contents and agree with the answers. *See* Addendum "A".

_____(c) The Court completed this form for me and inserted my answers to the questions.

(2) The answers are true and correct

(3) I understand that I may be prosecuted for perjury if I have made false statements to this Court.

_____
DEFENDANT

Acknowledged this _____ day of _____, 20_____.

_____
Notary Public/Deputy Court Clerk/Judge

32 I, the undersigned attorney for the Defendant, believe the Defendant understands the nature, purpose and consequence of this proceeding. (S)He is able to assist me in formulating any defense to the charge(s). I am satisfied that the Defendant's waivers and plea(s) of guilty are voluntarily given and he/she has been informed of all legal and constitutional rights.

_____
ATTORNEY FOR DEFENDANT

33 The sentence recommendation in Question 24 is correctly stated. I believe the recommendation is fair to the Choctaw Nation of Oklahoma.

34 Offer of Proof (Nolo contendere plea): _____

_____

_____

_____.

_____

PROSECUTING ATTORNEY

**THE COURT FINDS AS FOLLOWS:**

A. The Defendant was sworn and responded to questions under oath.

B. The Defendant understands the nature, purpose and consequence of this proceeding.

C. The Defendant's plea(s) of _____ is/are knowingly and voluntarily entered and accepted by the Court.

D. The Defendant is competence for the purpose of this hearing.

E. A factual basis exists for the plea(s).

F. The Defendant is guilty as charged or the Court withholds a finding of guilt. [Circle one.]

G. Sentencing or order deferring sentence shall be: imposed instanter ( ); or continued until the _____ day of _____, 20_____, at _____ ____.m

**DONE IN OPEN COURT this _____ day of _____, 20_____.**

_____ _____

Court Reporter Present JUDGE OF THE DISTRICT COURT

_____ _____

Deputy Court Clerk NAME OF JUDGE TYPED OR PRINTED

**Part B: Sentence on Plea**

Case No._____

Choctaw Nation v. _____

Date: _____

[NOTE ON USE: Part B to be used with the Summary of Facts if contemporaneous with the entry of plea or may be formatted as a separate sentencing form if sentencing continued to future date.]

**THE COURT SENTENCES THE DEFENDANT AS FOLLOWS:**

**TIME TO SERVE**

1. You are sentenced to confinement under the supervision of the Department of Public Safety for a term of years as follows: (list in same order as in Question No. 17 in Part A)

_____

_____

_____

_____

2. The sentence(s) are to run (concurrently/consecutively) _____

   or NOT APPLICABLE _____.

3. Defendant shall receive:

   _____ Credit for time served

   _____ No credit for time served.

**DEFERRED SENTENCE**

1. The sentencing date is deferred until _____ _____, 20_____, at _____ _____.m.

2. You (will/will not) be supervised. The terms set forth in the Rules and Conditions of Probation found in Addendum D shall be the rules you must follow during the period of deferment.

**SUSPENDED SENTENCE or SUSPENDED AS TO PART**

1. You are sentenced to confinement under the supervision of the Department of Public Safety for a term of years as follows:

_____

_____

_____

_____

To be suspended as follows:

(a) ALL SUSPENDED YES_____ NO_____

(b) suspended ***except*** as to the first _____ (months)/(years) of the term(s) during which time you are to be held in the custody of the Department of Public Safety, the remainder of the sentence(s) to be suspended under the terms set forth in the Rules and Conditions of Probation found in Addendum D.

_____ Defendant's term of incarceration shall be calculated as:

2. The sentence(s) to run:

_____ (concurrently/consecutively)

OR

_____ NOT APPLICABLE.

**FINES AND COSTS**

You are to pay a fine(s), costs, fees and/or restitution to the Choctaw Nation District Court Clerk as set out in Addendum E which is attached and made a part of this Order. [NOTE ON USE: The District Court may develop and utilize schedules for payment of fines and costs as appropriate and attach as Addendum E.]

**“NOTICE OF RIGHT TO APPEAL”**

Sentence to Incarceration, Suspended or Deferred:

To appeal from this conviction, or order deferring sentence, on your plea of guilty, you must file in the District Court Clerk’s Office a written Application to Withdraw your Plea of Guilty within ten (10) days from today’s date. You must set forth in detail why you are requesting to withdraw your plea. The trial court must hold a hearing and rule upon your Application within thirty (30) days from the date it is filed. If the trial court denies your Application, you have the right to ask the Court of Appeals to review the District Court’s denial by filing a Petition for Writ of Certiorari within ninety (90) days from the date of the denial. Within ten (10) days from the date the application to withdraw plea of guilty is denied, notice of intent to appeal and designation of record must be filed pursuant to Choctaw Nation Court of Appeals Rule—Criminal 4.2(D). If you are indigent, you have the right to be represented on appeal by a court appointed attorney and the right to a record and transcript at the expense of the court fund.

Do you understand each of these rights to appeal? Yes No

Have you fully understood the questions that have been asked? Yes No

Have your answers been freely and voluntarily given? Yes No

**I ACKNOWLEDGE UNDERSTANDING OF RIGHTS AND SENTENCE IMPOSED.**

_____
DEFENDANT

I, the undersigned attorney, have advised the Defendant of his appellate rights.

_____
Attorney for Defendant

**Done in open Court, with all parties present, this _____ day of _____ 20_____.**

_____ _____
Court Reporter Present Judge of the District Court

_____
Deputy Court Clerk

**ADDENDUM "A"**
**CERTIFICATE OF DEFENSE COUNSEL**

As the attorney for the defendant,_____, I certify that:

1. The Defendant has stated to me that he/she is (able/unable) to read and understand the attached form, and I have: (check appropriate option)

____ determined the Defendant is able to understand the English language.

____determined the Defendant is unable to understand the English language and obtained _____ to interpret.

2. I have read and fully explained to the Defendant the allegations contained in the Information in this case.

3. I have read and fully explained to the Defendant all of the questions in the Plea of Guilty/Summary of Facts and the answers to the questions set out in the Summary of Facts are the Defendant's answers.

4. To the best of my knowledge and belief the statements and declaration made by the Defendant are accurate and true and have been freely and voluntarily made.

Dated this _____ day of _____, 20_____.

_____
Attorney for the Defendant

## Form 13.11. Application for Post-Conviction Relief

**IN THE COURT OF APPEALS OF THE CHOCTAW NATION OF OKLAHOMA**

| | |
|---|---|
| **_____,** | **)** |
| **Petitioner,** | **)** |
| | **)** |
| **v.** | **) No. _____** |
| | **)** |
| **_____,** | **)** |
| **Respondents.** | **)** |

**APPLICATION FOR POST-CONVICTION RELIEF**
(Petitioner must use one application for each conviction.)

**PART A**

I, _____, whose present address is _____ _____, hereby apply for relief under the Post-Conviction Procedure Act, Section 1080 et seq. of the Choctaw Nation Code of Criminal Procedure.

The sentence from which I seek relief is as follows:

1. The District Court of the Choctaw Nation of Oklahoma rendered judgment in Case Number _____.

2. Date of sentence _____

3. Terms of sentence _____

4. Name of Presiding Judge _____

5. Are you now in custody serving this sentence? Yes ( ) No ( )

Where? _____

6. For what crime or crimes were you convicted?

_____

_____

7. Check whether the finding of guilty was made:

After plea of guilty ( ) After plea of not guilty ( )

8. If found guilty after plea of not guilty, check whether the finding was made by:

A jury ( ) A judge without a jury ( )

9. Name of lawyer who represented you in trial court:

_____

10. Was your lawyer hired by you or your family? Yes ( ) No ( )

Appointed by the court? Yes ( ) No ( )

11. Did you appeal the conviction? Yes ( ) No ( )

To what court or courts?

_____

12. Did a lawyer represent you for the appeal? Yes ( ) No ( )

Was it the same lawyer as in No. 9 above? Yes ( ) No ( )

If "no," what was this lawyer's name?

_____

Address?

_____

13. Was an opinion written by the appellate court? Yes ( ) No ( )

If "yes," give citations if published:

_____

_____

If not published, give appellate case no.:

_____

14. Did you seek any further review of or relief from your conviction at any other time in any court? Yes ( ) No ( )

If "Yes," state when you did so, the nature of your claim and the result (include citations to any reported opinions.)

_____

_____

**PART B**

(If you have more than one proposition for relief, attach a separate sheet for each proposition. Answer the questions below as to each additional proposition, labeled SECOND PROPOSITION, THIRD PROPOSITION.)

I believe that I have _____ (number of) propositions for relief from the conviction and sentence described in PART A. This is the first proposition.

_____

_____

1. Of what legal right or privilege do you believe you were deprived in your case?

_____

_____

2. In the facts of your case, what happened to deprive you of that legal right or privilege and who made the error of which you complain?

_____

_____

3. List by name and citation any case or cases that are very close factually and legally to yours as examples of the error you believe occurred in your case.

_____

_____

4. How do you think you could now prove the facts you have stated in answer to Question No. 2, above? Attach supporting documentation.

_____

_____

5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own.

_____

_____

6. Is this a proposition that could have been raised on Direct Appeal? Yes ( ) No( )
Explain:

_____

_____

**PART C**

I understand that I have an absolute right to appeal to the Court of Appeals from the trial court's order entered in this case, but unless I do so within thirty (30) days after the entry of the trial judge's order, I will have waived my right to appeal as provided by Section 1087 of the Choctaw Nation Code of Criminal Procedure.

**PART D**

I have read the foregoing application and assignment(s) of error and hereby state under oath that there are no other grounds upon which I wish to attack the judgment and sentence under which I am presently convicted. I realize that I cannot later raise or assert any reason or ground known to me at this time or which could have been discovered by me by the exercise of reasonable diligence. I further realize that I am not entitled to file a second or subsequent application for post-conviction relief based upon facts within my knowledge or which I could discover with reasonable diligence at this time.

**PART E** (As Applicable)
I hereby apply to have counsel appointed to represent me. I believe I am entitled to relief. I do not possess any money or property except the following: (If none, state "None").

_____

_____

_____ _____
Date Signature

STATE OF OKLAHOMA )
COUNTY OF_____ )

_____, being first sworn under oath, states that he/she signed the above application and that the statements therein are true to the best of his/her knowledge and belief.

_____
Signature

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
NOTARY PUBLIC

My Commission Expires: _____ My Commission Number _____

**Form 13.12. Reserved**

**Form 13.13. Accelerated docket waiver**

**IN THE COURT OF APPEALS OF THE CHOCTAW NATION OF OKLAHOMA**
**ACCELERATED DOCKET WAIVER**

Consent to this form shall serve as notice to the Oklahoma Court of Appeals that the appellant understands the conditions of Accelerated Docket (Fast Track).

I understand my appeal will be limited to three (3) alleged propositions or issues of error. Review of other alleged propositions or issues of error from the same trial record will be foreclosed by the Oklahoma Court of Appeals.

Each party shall submit the required form (which serves as a brief). The alleged proposition[s] or issue[s] of error should be supported by pertinent statutory and case law and cited to the trial record. In addition, the parties shall present these propositions or issues in oral argument to the Oklahoma Court of Appeals. The argument shall address only the alleged propositions or issues of error stated in the form. Argument of related propositions or issues of error is barred.

The Oklahoma Court of Appeals shall review and render a decision only to those propositions or issues of error mentioned in the brief and presented at oral argument. As with regular appeals, future review to the Oklahoma Court of Criminal Appeals of any other alleged propositions of error associated with the trial court decision is waived.

The above conditions are understood and the consent below shall serve as notice to the Court of Appeals that review of any other alleged propositions of error related to this appeal is waived.

_____
Appellant

_____
Case No.

_____
Date

Subscribed and sworn to before me this _____ day of _____, 20 _____.

_____
Notary Public

My Commission Expires: My Commission Number:

_____ _____

(SEAL)

**Form 13.14. Application for accelerated docket**

**IN THE COURT OF APPEALS OF THE CHOCTAW NATION OF OKLAHOMA**

| | |
|---|---|
| **_____,** | **)** |
| **Appellant,** | **)** |
| | **)** |
| **v.** | **) No. _____** |
| | **)** |
| **_____,** | **)** |
| **Appellee.** | **)** |

**APPLICATION FOR ACCELERATED DOCKET (FAST TRACK)**

**A. Trial Court History**

Case No._____

Judge: _____

Sentence: _____

**B. Post-Trial Motions**

(Kind) (Date)

1. _____ _____

2. _____ _____

**C. Disposition of Post-Trial Motions**

(Kind) (Date)

1. _____ _____

2. _____ _____

**D. Disposition in Trial Court**

Nature of judgment or order appellant seeks to reverse:

_____

Attach as Exhibit "A" a certified copy of the Journal Entry of Judgment and Sentence or the order used as basis of appeal.

## E. Summary of Case (Facts only, without argument)

Not to exceed two (2) 8-1/2" x 11" double spaced pages. Attach as Exhibit "B".

## F. Alleged Propositions or Issues of Error with Supporting Authority:

Allegations of error that are general in nature (conclusory) or "shotgun" (all encompassing) will not suffice; e.g., "Decision is contra to law and evidence."

**Proposition 1:**

_____
_____
_____

**Citation to exact location(s) in record or transcript where error occurred.**

1._____
2._____
3._____

**Citation of Authority Supporting Proposition 1:**

(Case authority shall be cited to specific page(s). Citations of authority shall include one parenthetic paragraph explaining why it is cited and how it is relevant to the proposition of error in the present case.)

1._____
2._____
3._____

**Proposition 2:**

_____
_____
_____

**Citation to exact location(s) in record or transcript where error occurred.**

1._____
2._____
3._____

**Citation of Authority Supporting Proposition 2:**
(See directions set forth above.)

1._____
2._____
3._____

**Proposition 3:**

_____
_____
_____

**Citation exact location(s) in record or transcript where error occurred.**

1._____
2._____
3._____

**Citation of Authority Supporting Proposition 3:**
(See directions set forth above.)

1._____
2._____
3._____

**G. Appellant Agrees to Accelerate Procedures for this Appeal under Court Rules.**
(Attach copy of "EXPEDITED REVIEW WAIVER" to this form as Exhibit "C".)

**H. Address of Appellant at Time of filing application.**

_____

**I. Name of Counsel**
(With telephone number and address)

**Attorney for Appellant:**

Name:_____

Choctaw Nation Bar #_____
Firm:_____
Address:_____
_____
Telephone:_____
DATE:_____, 20____

Verified by:

_____
(Signature of individual member of firm)
Firm:_____
_____
Address:_____
_____
Telephone:_____

**AFFIDAVIT OF MAILING TO APPELLEE AND TRIAL COURT CLERK ON DAY OF FILING IN THE CHOCTAW NATION COURT OF APPEALS**

I hereby certify that a true and correct copy of the above and foregoing Application for Accelerated Docket was mailed this _____ day of _____ 20____, to _____ by depositing it in the U.S. Mails, postage prepaid.

I further certify that a true and correct copy of the above and foregoing Application for Accelerated Docket was mailed to the office of the court clerk of the Choctaw Nation of Oklahoma on the _____ day of _____ 20____.

_____
Attorney of Record

**Form 13.15. Response to application for accelerated docket**

**IN THE COURT OF APPEALS OF THE CHOCTAW NATION OF OKLAHOMA**

**_____, )**
**Appellant, )**
**)**
**v. ) No. _____**
**)**

_____, )
**Appellee.** )

**RESPONSE TO APPLICATION FOR ACCELERATED DOCKET (FAST TRACK)**

**A. Is appellee agreeable to accelerated docket (fast track) procedures for this appeal under court of criminal appeals rules?** _____ Yes ____ No

If not agreeable, why not?

_____
_____

**B. Appellees' brief statement as to case.**
[Attach as Exhibit "A" not more than two 8-1/2" x 11" double spaced page(s).]

**C. Response to alleged propositions and issues of error with supporting authority:**
[Allegations of error that are general in nature (conclusory) or "shotgun" (all encompassing) will not suffice; e.g., "Decision is contra to law and evidence."]

**Response Proposition 1:**

_____
_____
_____

**Citation to exact location(s) in record or transcript where error occurred.**

1._____
2._____
3._____

**Citation of authority supporting Response 1:**
(Case authority shall be cited to specific page(s). Citations of authority shall include one parenthetic paragraph explaining why it is cited and how it is relevant to the proposition of error in the present case.)

1._____
2._____
3._____

**Response to Proposition 2:**

_____
_____
_____

**Citation to exact location(s) in record or transcript where error occurred.**

1._____
2._____
3._____

**Citation of authority supporting Response 2:**
(See directions set forth above.)

1._____
2._____
3._____

**Response to Proposition 3:**

_____
_____
_____

**Citation exact location(s) in record or transcript where error occurred.**

1._____
2._____
3._____

**Citation of Authority Supporting Response 3:**
(See directions set forth above.)

1._____
2._____
3._____

D. Date _____ _____, 20 _____.

Verified by:

_____
(Signature of Prosecuting Attorney or party making appeal)
Choctaw Nation Bar #:_____
Address: _____
_____
Telephone: _____

**AFFIDAVIT OF MAILING TO APPELLANT AND TRIAL COURT CLERK ON DAY OF FILING IN THE CHOCTAW NATION COURT OF APPEALS**

I hereby certify that a true and correct copy of the above and foregoing Application for Accelerated Docket was mailed this _____ day of _____ 20____, to _____ by depositing it in the U.S. Mails, postage prepaid.

I further certify that a true and correct copy of the above and foregoing Application for Accelerated Docket was mailed to the office of the court clerk of the Choctaw Nation of Oklahoma on the _____ day of _____ 20____.

_____
Attorney of Record

**Section XIV. Expungement of Records**

**Rule 14.1. Expungement of records**

Persons who have obtained an order of expungement from a district court, pursuant to the Choctaw Nation Code of Criminal Procedure, Sections 18 and 19, may seek expungement of related criminal appellate records in this Court.

**Rule 14.2. Application for expungement**

A party desiring expungement of appellate records must file an Application for Expungement with the Clerk of this Court. The Application shall state (1) the category under which the person was qualified to seek expungement in the district court, as set forth in the Choctaw Nation Code of Criminal Procedure, Section 18; and (2) the date the district court entered the order of expungement and the scope of that order. A certified copy of the district court's order shall be filed with the Application for Expungement.

**Rule 14.3. Inspection of expunged criminal appellate records**

Inspection of expunged criminal appellate records may thereafter be permitted by the court only upon the application of the petitioner who is the subject of such records or by the prosecuting attorney and only to those persons and for such purposes named in the application. For purposes of this section, appellate records ordered expunged shall not be physically destroyed. See the Choctaw Nation Code of Criminal Procedure, Section 19.

**Section XV. Reserved**

## Chapter 19. Bail

### Section 1101. Offenses bailable—Who may take bail

A. Except as otherwise provided by law, bail, by sufficient sureties, shall be admitted upon all arrests in criminal cases and in such cases it may be taken by any of the persons or courts authorized by law to arrest, to imprison offenders, or by the clerk of the district court or his or her deputy, or by the judge of such courts.

B. In criminal cases where the defendant is currently an escaped prisoner from the Department of Public Safety, the defendant must be processed back into the Department of Public Safety prior to bail being set on new criminal charges.

C. All persons shall be bailable by sufficient sureties, except that bail may be denied for:

1. Violent offenses;

2. Felony offenses where the person charged with the offense has been convicted of two or more felony offenses arising out of different transactions; and

3. Controlled dangerous substances offenses.

On all offenses specified in paragraphs 2 and 3 of this subsection, the proof of guilt must be evident, or the presumption must be great, and it must be on the grounds that no condition of release would assure the safety of the community or any person.

D. There shall be a rebuttable presumption that no condition of release would assure the safety of the community if the Choctaw Nation shows by clear and convincing evidence that the person was arrested for a violation of Section 741 of the Choctaw Nation Criminal Code.

### Section 1102. Reserved

### Section 1103. Reserved

### Section 1104. Qualifications of bail—Justification

The qualifications of bail are the same as those in civil cases, and the sureties must in all cases justify by affidavits taken before the magistrate, court or judge, or before the clerk of the district court or his or her deputy, that they each possess those qualifications.

### Section 1105. Defendant discharged on giving bail—Exceptions

A. Except as otherwise provided by this section, upon the allowance of bail and the execution of the requisite recognizance, bond, or undertaking to the Choctaw Nation, the magistrate, judge, or court, shall, if the defendant is in custody, make and sign an order for discharge. The court, in its discretion, may prescribe by court rule the conditions under which the court clerk or deputy court clerk, or the Choctaw Nation law enforcement officer, may prepare and execute an order of release on behalf of the court.

B. No law enforcement officer may release a person arrested for a violation of an ex parte or final protective order as provided in Sections 60.3 and 60.4 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of the Choctaw Nation Criminal Code, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.2 of this title, or arrested for an act constituting domestic assault and battery or domestic assault and battery with a deadly weapon pursuant to Section 644 of the Choctaw Nation Criminal Code, without the violator appearing before a magistrate, judge or court. To the extent that any of the following information is available to the court, the magistrate, judge or court shall consider, in addition to any other circumstances, before determining bond and other conditions of release as necessary for the protection of the alleged victim, the following:

1. Whether the person has a history of domestic violence or a history of other violent acts;

2. The mental health of the person;

3. Whether the person has a history of violating the orders of any court or governmental entity;

4. Whether the person is potentially a threat to any other person;

5. Whether the person has a history of abusing alcohol or any controlled substance;

6. Whether the person has access to deadly weapons or a history of using deadly weapons;

7. The severity of the alleged violence that is the basis of the alleged offense including, but not limited to:

a. the duration of the alleged violent incident,

b. whether the alleged violent incident involved serious physical injury,

c. whether the alleged violent incident involved sexual assault,

d. whether the alleged violent incident involved strangulation,

e. whether the alleged violent incident involved abuse during the pregnancy of the alleged victim,

f. whether the alleged violent incident involved the abuse of pets, or

g. whether the alleged violent incident involved forcible entry to gain access to the alleged victim;

8. Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending;

9. Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim including, but not limited to, stalking, surveillance, or isolation of the alleged victim;

10. Whether the person has expressed suicidal or homicidal ideations; and

11. Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint.

**Section 1106. Deposit Equivalent to Bail**

A deposit of the sum of money mentioned in the order admitting to bail is equivalent to bail and upon such deposit the defendant must be discharged from custody.

**Section 1107. Arrest by Bail—Defendant Recommitted—Exoneration of Bail**

Any party charged with a criminal offense and admitted to bail may be arrested by his bail at any time before they are finally discharged, and at any place within the Choctaw Nation of Oklahoma; or by a written authority endorsed on a certified copy of the recognizance, bond or undertaking, may empower any officer or person of suitable age and discretion, to do so, and he may be surrendered and delivered to the proper law enforcement officer, before any court, judge or magistrate having the proper jurisdiction in the case; and at the request of such bail the court, judge or magistrate shall recommit the party so arrested to the custody of the Department of Public Safety or other officer, and endorse on the cognizance, bond or undertaking, or certified copy thereof, after notice to the prosecuting attorney, and if no cause to the contrary appear, the discharge and exoneration of such bail; and the party so committed shall therefrom be held in custody until discharged by due course of law.

**Section 1108. Forfeiture of Bail**

If the defendant neglects to appear according to the terms or conditions of the recognizance, bond or undertaking, either for hearing, arraignment, trial or judgment, or upon any other occasion when his presence in court or before the magistrate may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the recognizance, bond or undertaking of bail, or the money deposited instead of bail, as the case may be, is and shall be thereupon declared forfeited and forfeiture proceedings shall then proceed as prescribed by law. If money deposited instead of bail be so forfeited, the clerk of the court or other officer with whom it is deposited, must, immediately after the final adjournment of the court, pay over the money deposited to the court fund.

Provided however, if a person charged with a traffic offense neglects to appear for arraignment after signing a written promise to appear as provided for by the Traffic Bail Bond Procedure Act, Section 1115 et seq. of this title and no other form of bail has been substituted therefor, then said recognizance shall not be forfeited as provided in this section and the court shall proceed in accordance with the provisions of Section 1115 et seq. of this title.

**Section 1109. Own Recognizance Bonds—Posting—Forfeiture**

A. Own recognizance bonds set in a penal amount shall be posted by executing an own recognizance indenture contract which shall be executed and maintained by the district court clerk. The indenture shall constitute an inchoate obligation to pay in the event forfeiture proceedings are commenced and result in a final order of forfeiture by the authorizing and issuing judge of the district court.

B. Setting aside of forfeitures shall be governed by the same rules and procedures applicable to cash, property or surety bonds, provided that if the forfeiture is set aside, the district court shall exempt from forfeiture set aside all reasonable costs of recovery to return the defendant to custody, and an administrative fee to be retained by the court fund in a sum not to exceed ten percent (10%) of the total penal bond amount plus all costs incurred in processing the forfeiture proceeding to include costs of notices, warrants, service and execution.

C. The final judgment of forfeiture shall constitute a judgment enforceable through all procedures available for the collection of a civil judgment, provided that the judgment shall be considered a debt in the nature of defalcation as defined by the United States Bankruptcy Code, and shall not be subject to other forms of debtor relief. The judgment shall be subject to collection as costs in the underlying action regardless of final disposition or determination of guilt.

D. The prosecuting attorney shall initiate the forfeiture action and collection of forfeitures and shall receive one-third (1/3) of all sums collected from the ten percent (10%) premium, not to include costs as defined in subsection B of this section, to offset the costs of administering the program.

E. This section does not apply to traffic or wildlife cases.

**Section 1110. Circumstances Requiring Better Security**

When proof is made to any court, judge or other magistrate having authority to commit on criminal charges, that a person previously admitted to bail on any such charge is about to abscond, or that his bail is insufficient, or has removed from the Choctaw Nation of Oklahoma, the judge or magistrate shall require such person to give better security, or for default thereof cause him to be committed to prison; and an order for his arrest may be endorsed on the former commitment, or a new warrant therefor may be issued by such judge or magistrate, setting forth the cause thereof.

**Section 1111. Jumping Bail—Penalties**

Whoever, having been admitted to bail or released on recognizance, bond, or undertaking for appearance before any magistrate or court of the Choctaw Nation of Oklahoma, incurs a forfeiture of the bail or violates such undertaking or recognizance and willfully fails to surrender himself or herself within five (5) days following the date of such forfeiture shall, if the bail was given or undertaking or recognizance extended in connection with a charge of felony or pending appeal or certiorari after conviction of any such offense, be guilty of a felony and shall be fined not more than One Thousand Dollars ($1,000.00) or imprisoned not more than one (1) year, or both. Nothing in this section shall be construed to interfere with or prevent the exercise by any court of its power to punish for contempt.

**Section 1112. Plea of Guilty**

The person so charged who elects to plead guilty may indicate his plea of guilty on the ticket or warrant; and said bond deposit shall be used for payment of fine and costs, which fine and costs shall not exceed the amount of bond.

**Section 1113. Stamping and Filing of Traffic Tickets—Duty to Prosecute**

A. Upon issuing a traffic citation required to be filed in district court, the arresting officer or the law enforcement agency employing the arresting officer shall deliver or forward the "Complaint Information" and "Abstract of Court Record" parts of the citation, in electronic or written format:

1. To the district court clerk without the endorsement of the prosecuting attorney. It shall be the duty of the district court clerk to deliver the "Complaint Information" to the prosecuting attorney who shall endorse or decline and file the "Complaint Information" with the district court clerk; or

2. If the officer has issued a citation which could result in the prosecuting attorney filing an information, to the prosecuting attorney who shall endorse or decline and file both parts of the citation with the district court clerk.

B. Upon receipt of a traffic citation by the district court clerk, the district court clerk shall deliver the original "Complaint Information" to the prosecuting attorney. The district court clerk’s office shall maintain the "Abstract of Court Record" part of the citation until the final disposition of the case.

C. A traffic citation that is certified by the arresting officer, the complainant, or the prosecuting attorney, shall constitute an information against the person arrested and served with the traffic citation.

**Traffic Bail Bond Procedure Act**

**Section 1115. Short title—Application**

Sections 1115 through 1115.4 of this title shall be known and may be cited as the "Traffic, Water Safety, and Wildlife Bail Bond Procedure Act". The provisions of the Traffic, Water Safety, and Wildlife Bail Bond Procedure Act shall not apply to parking or standing traffic violations.

**Section 1115.1. Release on personal recognizance—Arraignment—Plea—Failure to plead or appear**

A. In addition to other provisions of law for posting bail, any person, who is arrested by a law enforcement officer solely for a misdemeanor violation of a traffic law shall be released by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by any state of the United States;

2. The arresting officer is satisfied as to the identity of the arrested person;

3. The arrested person signs a written promise to appear as provided for on the citation, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician; and

4. The violation does not constitute:

a. a felony, or

b. negligent homicide, or

c. driving or being in actual physical control of a motor vehicle while impaired or under the influence of alcohol or other intoxicating substances, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician, or

d. eluding or attempting to elude a law enforcement officer, or

e. operating a motor vehicle without having been issued a valid driver license, or while the driving privilege and driver license is under suspension, revocation, denial or cancellation, or

f. an arrest based upon an outstanding warrant, or

g. a traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph.

B. If the arrested person is eligible for release on personal recognizance as provided for in subsection A of this section, then the arresting officer shall:

1. Designate the traffic charge;

2. Record information from the arrested person's driver license on the citation form, including the name, address, date of birth, personal description, type of driver license, driver license number, issuing state, and expiration date;

3. Record the motor vehicle make, model and tag information;

4. Record the date and time on the citation on which, or before which, the arrested person promises to contact, pay, or appear at the court, as applicable to the court; and

5. Permit the arrested person to sign a written promise to contact, pay, or appear at the court, as provided for in the citation.

The arresting officer shall then release the person upon personal recognizance based upon the signed promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon a signed written promise to appear for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the arrested person's driving privilege and driver license.

C. The court, or the court clerk as directed by the court, may continue or reschedule the date and time of arraignment upon request of the arrested person or the attorney for that person. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and written promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and signed by the defendant. An arraignment may be continued or rescheduled more than one time. Provided, however, the court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant to appear for arraignment unless the citation is satisfied as provided for in subsection D of this section.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before the defendant is required to appear for arraignment by indicating such plea on the copy of the citation furnished to the defendant or on a legible copy thereof, together with the date of the plea and signature. The defendant shall be responsible for assuring full payment of the fine and costs to the court clerk. Payment of the fine and costs may be made by personal, cashier's, traveler's, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the court in an amount prescribed as bail for the offense. Provided, however, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as provided for in this subsection, such plea shall be accepted by the court and the amount of the fine and costs shall be:

1. As prescribed in Section 1115.3 of this title as bail for the violation; or

2. As prescribed by the court.

E. 1. If, pursuant to the provisions of subsection D of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the court may issue a warrant for the arrest of the defendant and the district court clerk, within one hundred twenty (120) calendar days from the date the citation was issued by the arresting officer, shall notify the proper agency of the state of the United States that issued the defendant's driver license that:

a. the defendant was issued a traffic citation and released upon personal recognizance after signing a written promise to appear for arraignment as provided for in the citation,

b. the defendant has failed to appear for arraignment without good cause shown,

c. the defendant has not posted bail, paid a fine, or made any other arrangement with the court to satisfy the citation, and

d. the citation has not been satisfied as provided by law.

Additionally, the court clerk shall request the suspension of the defendant's driving privilege and driver license.

2. The court clerk shall not process the notification and request provided for in paragraph 1 of this subsection if, with respect to such charges:

a. the defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case, or

b. the defendant was not released upon personal recognizance upon a signed written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment, or

c. the violation relates to parking or standing, or

d. a period of one hundred twenty (120) calendar days or more has elapsed from the date the citation was issued by the arresting officer.

F. The district court clerk shall maintain a record of each request for driving privilege and driver license suspension submitted pursuant to the provisions of this section. When the court or court clerk receives appropriate bail or payment of the fine and costs, settles the citation, makes other arrangements with the defendant, or otherwise closes the case, the court clerk shall furnish proof thereof to such defendant, if the defendant personally appears, or shall mail such proof by first class mail, postage prepaid, to the defendant at the address noted on the citation or at such other

address as is furnished by the defendant. Additionally, the court or court clerk shall notify the home jurisdiction of the defendant as listed on the citation of the resolution of the case.

**Section 1115.1A. Release on personal recognizance for traffic violation—Arraignment—Plea—Failure to plead or appear**

A. In addition to other provisions of law for posting bail, any person, whether a resident of the Choctaw Nation of Oklahoma or a nonresident, who is arrested by a law enforcement officer solely for a misdemeanor violation of a traffic law, shall be released by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by any state jurisdiction within the United States;

2. The arresting officer is satisfied as to the identity of the arrested person and certifies the date and time and the location of the violation;

3. The arrested person acknowledges, a written promise to appear as provided for on the citation, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician; and

4. The violation does not constitute:

a. a felony,

b. negligent homicide,

c. driving or being in actual physical control of a motor vehicle while impaired or under the influence of alcohol or other intoxicating substances, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician,

d. eluding or attempting to elude a law enforcement officer,

e. operating a motor vehicle without having been issued a valid driver license or while the driving privilege and driver license is under suspension, revocation, denial or cancellation,

f. an arrest based upon an outstanding warrant, or

g. a traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph.

B. If the arrested person is eligible for release on personal recognizance as provided for in subsection A of this section, then the arresting officer shall on the citation:

1. Designate the traffic charge;

2. Record information from the driver license of the arrested person on the citation form, including the name, address, date of birth, physical description, type of driver license, driver license number, issuing state, and expiration date;

3. Record the motor vehicle make, model and tag information;

4. Record the date and time on which, or before which, the arrested person promises, as evidenced by the electronic signature of the person, to contact, pay, or appear at the court, as applicable to the court;

5. Record the signature of the arrested person which shall serve as evidence and acknowledgment of a promise to contact, pay, or appear at the court, as provided for in the citation; and

6. Record the signature of the arrested person which shall serve as evidence to certify the date and time and the location that the arrested person was served with a copy of the citation and notice to appear, after which, the arresting officer shall then release the person upon personal recognizance based upon the acknowledged promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon an acknowledged promise to appear, as evidenced by the electronic signature of the person, for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the driving privilege and driver license of the arrested person in the home state of the driver.

C. The court, or the court clerk as directed by the court, may continue or reschedule the date and time of arraignment at the discretion of the court or upon request of the arrested person or the attorney for that person. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and acknowledged promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and electronically signed by the defendant. An arraignment may be continued or rescheduled more than one time. Provided, however, the court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant to appear for arraignment unless the citation is satisfied as provided for in subsection D of this section.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before the defendant is required to appear for arraignment by indicating such plea on the copy of the citation furnished to the defendant or on a legible copy, together with the date of the plea and signature of the defendant. The defendant shall be responsible for assuring full payment of the fine and costs to the court clerk. Payment of the fine and costs may be made by personal, cashier’s, traveler’s, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the court in an amount prescribed as bail for the offense. Provided, however, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as provided for in this subsection, such plea shall be accepted by the court and the amount of the fine and costs shall be:

1. As prescribed in Section 1115.3 of this title as bail for the violation; or

2. In the absence of such law, then as prescribed by the court.

E. 1. If, pursuant to the provisions of subsection D of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the court may issue a warrant for the arrest of the defendant. The district court clerk, within one hundred twenty (120) calendar days from the date the citation was issued by the arresting officer, shall notify the issuing state that:

a. the defendant was issued a traffic citation and released upon personal recognizance after acknowledging a written promise to appear for arraignment as provided for in the citation,

b. the defendant has failed to appear for arraignment without good cause shown,

c. the defendant has not posted bail, paid a fine, or made any other arrangement with the court to satisfy the citation, and

d. the citation has not been satisfied as provided by law.

Additionally, the court clerk shall request the issuing state to suspend the driving privilege and driver license of the defendant to operate a motor vehicle.

2. The court clerk shall not process the notification and request provided for in paragraph 1 of this subsection if, with respect to such charges:

a. the defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case,

b. the defendant was not released upon personal recognizance upon an acknowledged written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment,

c. the violation relates to parking or standing, or

d. a period of one hundred twenty (120) calendar days or more has elapsed from the date the citation was issued by the arresting officer.

F. The district court clerk shall maintain a record of each request for driving privilege and driver license suspension submitted to the issuing state pursuant to the provisions of this section. When the court or court clerk receives appropriate bail or payment of the fine and costs, settles the citation, makes other arrangements with the defendant, or otherwise closes the case, the court clerk shall furnish proof thereof to the defendant, if the defendant personally appears, or shall mail such proof by first-class mail, postage prepaid, to the defendant at the address noted on the citation or at such other address as is furnished by the defendant.

Additionally, the court or court clerk shall notify the home jurisdiction of the defendant as listed on the citation. Provided however, failure by the court or court clerk to furnish such proof or notice in the manner provided for in this subsection shall in no event create any civil liability upon the court, the court clerk, the Choctaw Nation of Oklahoma, but duplicate proof shall be furnished to the person entitled to such proof or notice upon request.

**Section 1115.2. Posting bail after release on personal recognizance for traffic violation—Failure to appear—Person ineligible for release on personal recognizance—Juveniles**

A. If a person arrested for a traffic violation is released upon personal recognizance as provided for in Section 1115.1 of this title, but subsequently posts bail and thereafter fails to timely appear as provided for by law, the court may issue a warrant for the person's arrest and the case shall be processed as provided for in Section 1108 of this title.

B. If the defendant is not eligible for release upon personal recognizance as provided for in Section 1115.1 of this title, or if eligible but refuses to sign a written promise to appear, the officer shall deliver the person to an appropriate magistrate for arraignment and the magistrate shall proceed as otherwise provided for by law. If no magistrate is available, the defendant shall be placed in the custody of the appropriate jail or detention facility, to be held until a magistrate is available or bail is posted as provided for in Section 1115.3 of this title or as otherwise provided for by law.

C. 1. Notwithstanding any other provision of law, a juvenile may be held in custody pursuant to the provisions of this section, but shall be incarcerated separately from any adult offender. Provided however, the arresting officer shall not be required to:

a. place a juvenile into custody as provided for in this section, or

b. place any other traffic offender into custody:

(1) who is injured, disabled, or otherwise incapacitated, or

(2) if custodial arrest may require impoundment of a vehicle containing livestock, perishable cargo, or items requiring special maintenance or care, or

(3) if extraordinary circumstances exist, which, in the judgment of the arresting officer, custodial arrest should not be made.

In such cases, the arresting officer may designate the date and time on the citation by which, or on which, the person shall appear or contact the court, as applicable to the court, and release the person. If the person fails to appear without good cause shown, the court may issue a warrant for the person's arrest.

2. The provisions of this subsection shall not be construed to:

a. create any duty on the part of the officer to release a person from custody, or

b. create any duty on the part of the officer to make any inquiry or investigation relating to any condition which may justify release under this subsection, or

c. create any liability upon any officer, or the Choctaw Nation, arising from the decision to release or not to release such person from custody pursuant to the provisions of this subsection.

**Section 1115.2B. Posting bail after release on personal recognizance for traffic violation—Failure to appear—Person ineligible for release on personal recognizance—Juveniles**

A. If a person arrested for a traffic violation is released upon personal recognizance as provided for in Section 1115.1A of this title, but subsequently posts bail and thereafter fails to timely appear as provided for by law, the court may issue a warrant for the arrest of the person and the case shall be processed as provided for in Section 1108 of this title of the Choctaw Nation Code of Criminal Procedure.

B. If the defendant is not eligible for release upon personal recognizance as provided for in Section 1115.1A of this title, or if eligible but refuses to acknowledge a written promise to appear, as evidenced by the signature of the person, the officer shall deliver the person to an appropriate magistrate for arraignment and the magistrate shall proceed as otherwise provided for by law. If no magistrate is available, the defendant shall be:

1. Placed in the custody of the appropriate jail or detention facility, to be held until a magistrate is available or bail is posted as provided for in Section 1115.4 of this title of the Choctaw Nation Code of Criminal Procedure;

2. Released upon personal recognizance by the arresting officer as provided in subsection A of Section 1115.1A of this title; or

3. Processed as otherwise provided for by law.

C. 1. Notwithstanding any other provision of law, a juvenile may be held in custody pursuant to the provisions of this section, but shall be incarcerated separately from any adult offender. Provided however, the arresting officer shall not be required to:

a. place a juvenile into custody as provided for in this section,

b. place any other traffic offender into custody:

(1) who is injured, disabled, or otherwise incapacitated,

(2) if custodial arrest may require impoundment of a vehicle containing livestock, perishable cargo, or items requiring special maintenance or care, or

(3) if extraordinary circumstances exist, which, in the judgment of the arresting officer, custodial arrest should not be made.

In such cases, the arresting officer may record the date and time on the citation by which, or on which, the person shall appear or contact the court, as applicable to the court, and release the person. If the person fails to appear without good cause shown, the court may issue a warrant for the arrest of the person.

2. The provisions of this subsection shall not be construed to:

a. create any duty on the part of the officer to release a person from custody,

b. create any duty on the part of the officer to make any inquiry or investigation relating to any condition which may justify release under this subsection, or

c. create any liability upon any officer, or the Choctaw Nation, arising from the decision to release or not to release such person from custody pursuant to the provisions of this subsection.

**Section 1115.3. Traffic-related offenses—Bail**

A. The court shall prescribe the amount of bail for the following traffic-related offenses:

1. Any felony;

2. Negligent homicide;

3. Driving or being in actual physical control of a motor vehicle while impaired by or under the influence of alcohol or other intoxicating substances;

4. Eluding or attempting to elude a law enforcement officer;

5. Driving while license is under suspension, revocation, denial or cancellation;

6. Failure to stop or remain at the scene of an accident; and

7. Any other traffic violation for which a defendant is delivered to the judge of the court as magistrate pursuant to the provisions of Section 1115.2 of this title, or other law.

B. The District Judge shall prepare a schedule of amounts to be received as bail for each traffic offense and shall distribute the schedule to the Department of Public Safety, the district court clerk and to other interested parties upon request.

C. The district court clerk, unless otherwise directed by the court, shall accept bail or the payment of a fine and costs in the form of currency or personal, cashier’s, traveler’s, certified or guaranteed bank check, or postal or commercial money order for the amount prescribed in this section for bail.

D. The district court clerk shall accept as bail a guaranteed arrest bond certificate issued by a surety company, an automobile club or trucking association, if:

1. the issuer is authorized to do business in the State of Oklahoma by the Oklahoma Insurance Commissioner;

2. the certificate is issued to and signed by the arrested person;

3. the certificate contains a printed statement that appearance of such person is guaranteed and the issuer, in the event of failure of such person to appear in court at the time of trial, will pay any fine or forfeiture imposed; and

4. the limit provided on the certificate equals or exceeds the amount of bail provided for in this section.

**Section 1115.4. Court clerk not liable on dishonored check—Bench warrant and arrest of issuer**

A. In any case where the district court clerk accepts any personal check or other form of a negotiable instrument from the arrestee or from any person acting for or on his or her behalf in payment of a fine or as bail for his or her appearance for arraignment, trial or a hearing, and said check or instrument proves to be on a closed account or is insufficient, false, bogus, a forgery, or otherwise dishonored for any reason, the court clerk shall not be civilly liable personally, or upon his or her official bond for the amount of such instrument or for the amount of the fine imposed in the case, or criminally liable therefor.

B. A personal check or other instrument tendered to the district court clerk for bail or for the payment of fine and costs, if dishonored and returned to said clerk for any reason other than the lack of proper endorsement, shall constitute nonpayment of bail or fine, as the case may be, and the court, in addition to any civil or criminal remedy otherwise provided for by law, may issue a bench warrant for the arrest of the person named on the citation to require his appearance on the charge specified.

**Chapter 20. Fugitives from Justice**

**Section 1121. Rewards for apprehension of fugitives**

The Chief of the Choctaw Nation or his or her designee may offer a reward not exceeding One Thousand Dollars ($1,000.00), payable out of the Choctaw Nation Treasury, for the apprehension, or information leading to the apprehension of any convict who has escaped from a Choctaw Nation of Oklahoma correctional institution, jail, detention facility, or any such institution or facility contracted by the Choctaw Nation of Oklahoma.

**Section 1122. Reward for arrest and conviction of person committing felony**

The Chief of the Choctaw Nation is hereby authorized in his or her discretion to offer a reward of not exceeding One Thousand Dollars ($1,000.00) for the arrest and conviction of any person who commits or attempts to commit any felony in the Choctaw Nation of Oklahoma. Such reward may be paid to any officer, agency or person who makes such arrest and conviction is secured. In case any person shall forcibly resist arrest, and shall be killed in the attempt to accomplish his arrest, the reward shall, in the discretion of the Chief, be paid the same as in the case of conviction.

**Section 1123. Extradition—Delivery of accused**

A person charged in any state or territory of the United States with treason, a felony, or any other crime, who shall flee from justice and be found in the Choctaw Nation of Oklahoma, must, on demand of the executive authority of the state or territory from which he fled be delivered up by the Chief of the Choctaw Nation of Oklahoma, to be removed to the state or territory having jurisdiction of the crime.

**Criminal Extradition Act**

**Section 1134. Costs of returning fugitives**

A. 1. When the Chief of the Choctaw Nation of Oklahoma shall demand from the executive authority of a state or territory of the United States or of a foreign government the surrender to the authorities of the Choctaw Nation of Oklahoma of a fugitive from justice, the accounts of the persons employed for that purpose shall be paid out of the Choctaw Nation Treasury and shall be collected as costs in the case.

2. When extradition is demanded by the Chief of the Choctaw Nation of Oklahoma upon the application of a prosecuting attorney of the Choctaw Nation of Oklahoma, for the return of a fugitive wanted for prosecution, the actual, necessary expenses of the person designated by the prosecuting attorney and appointed as the agent of the Choctaw Nation to return the fugitive shall be paid by the court fund upon an itemized, verified claim with receipts attached which shall be collected as costs in the case.

B. 1. In all cases wherein any person shall be charged with the violation of the statutes of the Choctaw Nation of Oklahoma relating to desertion or abandonment of wife and child, or of child, and such person shall be a fugitive from justice and such person’s whereabouts shall be known, it shall be the mandatory duty of the prosecuting attorney, to request the Chief of the Choctaw Nation of Oklahoma to issue a requisition for the return of such fugitive and to appoint an agent to effect such return.

2. The accounts of the person or persons employed by the Chief, to return such fugitive referred to in paragraph 1 above, may be paid by the Choctaw Nation out of funds appropriated for that

purpose, not to exceed Twenty-five Thousand Dollars ($25,000.00) for any one (1) year in excess of any amounts recovered from such fugitives.

3. The cost of returning the fugitive shall be added on to the court costs against the deserter and no such case shall be dismissed unless the costs are paid. Such amount shall be used to reimburse the Choctaw Nation for the amount disbursed therefrom.

C. Every fugitive from justice shall be required to reimburse the Department of Public Safety for the actual costs required for apprehension and return, unless such costs are paid from some other fund of the Choctaw Nation of Oklahoma, and in such case the reimbursement may be paid to such fund.

**Section 1135. Foreign arrests—Fees or rewards forbidden**

No compensation, fee, or reward of any kind can be paid to, or received by an officer of the Choctaw Nation of Oklahoma for a service rendered or expense incurred in procuring from the Chief the demand mentioned in the last section, or the surrender of the fugitive, or for conveying him to the Choctaw Nation of Oklahoma, or detaining him herein, except as provided in the last section.

**Section 1136. Foreign arrests—Misdemeanors**

A violation hereof is a misdemeanor.

**Uniform Criminal Extradition Act**

**Section 1141.1. Definitions**

Where appearing in this act, the term “Chief” includes any person performing the functions of Chief by authority of the laws of the Choctaw Nation of Oklahoma. The term “executive authority” includes the Governor, and any person performing the functions of Governor in any state of the United States and includes the Chief, and any person performing the functions of Chief in any other federally recognized Indian tribe, and the term “state”, means any state or territory, organized or unorganized, of the United States of America and any other federally recognized Indian tribe.

**Section 1141.2. Duty of Chief**

Subject to the provisions of this act, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the Chief of the Choctaw Nation of Oklahoma to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, a

felony, or other crime, who has fled from justice and is found in the Choctaw Nation of Oklahoma.

**Section 1141.3. Requisites of demand—Accompanying papers**

No demand for the extradition of a person charged with crime in another state shall be recognized by the Chief unless in writing alleging, except in cases arising under Section 1141.6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

**Section 1141.4. Investigation and report**

When a demand shall be made upon the Chief of the Choctaw Nation of Oklahoma by the executive authority of another state for the surrender of a person so charged with crime, the Chief may call upon a prosecuting attorney in the Choctaw Nation of Oklahoma to investigate or assist in investigating the demand, and to report to him or her the situation and circumstances of the person so demanded, and whether he or she ought to be surrendered.

**Section 1141.5. Agreement for return to other state—Surrender of person leaving state involuntarily**

When it is desired to have returned to the Choctaw Nation of Oklahoma a person charged in the Choctaw Nation of Oklahoma with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Chief of the Choctaw Nation of Oklahoma may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his or her term of sentence in such other state, upon condition that such person be returned to such other state at the expense of the Choctaw Nation of Oklahoma as soon as the prosecution in the Choctaw Nation of Oklahoma is terminated.

The Chief of the Choctaw Nation of Oklahoma may also surrender on demand of the executive authority of any other state any person in the Choctaw Nation of Oklahoma who is charged in the manner provided in Section 1141.23 of this title with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

**Section 1141.6. Surrender of persons not fleeing from demanding state**

The Chief of the Choctaw Nation of Oklahoma may also surrender, on demand of the executive authority of any other state, any person in the Choctaw Nation of Oklahoma charged in such other state in the manner provided in Section 1141.3 with committing an act in the Choctaw Nation of Oklahoma, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

**Section 1141.7. Warrant of arrest of Chief**

If the Chief decides that the demand should be complied with, he or she shall sign a warrant of arrest, which shall be sealed with the Choctaw Nation Seal, and be directed to any peace officer or other person whom he or she may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

**Section 1141.8. Authority conferred by warrant**

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the Choctaw Nation and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

**Section 1141.9. Authority to command assistance**

Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the executive of any criminal process directed to them, with like penalties against those who refuse their assistance.

**Section 1141.10. Notice of demand to alleged fugitive—Counsel—Habeas corpus**

Any person who is arrested within the Choctaw Nation of Oklahoma, by virtue of a warrant issued by the Chief of the Choctaw Nation of Oklahoma, upon a requisition of the executive authority of any other state or territory, as a fugitive from justice under the laws of the United States, shall not be delivered to the agent of such state or territory until notified of the demand made for his or her surrender, and given twenty-four (24) hours to make demand for counsel; and should such demand be made for the purpose of suing out a writ of habeas corpus, the prisoner shall be forthwith taken to the nearest judge of the district court, and ample time given to sue out such writ, such time to be determined by the said judge of the district court.

**Section 1141.11. Disobedience of preceding section**

Any officer who shall deliver to the agent for extradition of the demanding state a person in his or her custody under the Chief's warrant, in willful disobedience to the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than Five Hundred Dollars ($500.00) or be imprisoned not more than six (6) months, or both.

**Section 1141.12. Confinement of prisoner in jail**

The officer or persons executing the Chief's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any jurisdiction through which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him or her is ready to proceed on his or her route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through the Choctaw Nation of Oklahoma with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail or other detention facility of the Choctaw Nation of Oklahoma which he or she may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him or her is ready to proceed on his or her route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail or detention facility satisfactory written evidence of the fact that he or she is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in the Choctaw Nation of Oklahoma.

**Section 1141.13. Issuance of warrant of arrest by judge or magistrate**

Whenever any person within the Choctaw Nation of Oklahoma shall be charged on the oath of any credible person before any judge or magistrate of the Choctaw Nation of Oklahoma with the commission of any crime in any other state and, except in cases arising under Section 1141.6, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation or parole, or whenever complaint shall have been made before any judge or magistrate in the Choctaw Nation of Oklahoma setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state, and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under Section 1141.6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation or parole and is believed to

be in the Choctaw Nation of Oklahoma, the judge or magistrate shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein, wherever he or she may be found in the Choctaw Nation of Oklahoma, and to bring him or her before the same or any other judge or magistrate who may be available in the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

**Section 1141.14. Arrest without warrant**

The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him or her under oath setting forth the ground for the arrest as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

**Section 1141.15. Commitment by judge or magistrate**

If from the examination before the judge or magistrate, it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under Section 1141.6, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to a suitable jail or detention facility for such a time not exceeding thirty (30) days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Chief on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he or she shall be legally discharged.

**Section 1141.16. Bail**

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in the Choctaw Nation of Oklahoma may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he or she deems proper, conditioned for his or her appearance before him or her at a time specified in such bond, and for his or her surrender, to be arrested upon the warrant of the Chief of the Choctaw Nation of Oklahoma.

**Section 1141.17. Discharge or recommitment**

If the accused is not arrested under warrant of the Chief by the expiration of the time specified in the warrant or bond, a judge or magistrate may discharge him or her or may recommit him or her for a further period not to exceed sixty (60) days, or a judge or magistrate may again take bail for his or her appearance and surrender, as provided in Section 1141.16, but within a period not to exceed sixty (60) days after the date of such new bond.

**Section 1141.18. Forfeiture of bail**

If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his or her immediate arrest without warrant if he or she be within the Choctaw Nation of Oklahoma. Recovery may be had on such bond in the name of the Choctaw Nation as in the case of other bonds given by the accused in criminal proceedings within the Choctaw Nation of Oklahoma.

**Section 1141.19. Demand for person against whom prosecution pending**

If a criminal prosecution has been instituted against such person under the laws of the Choctaw Nation of Oklahoma and is still pending the Chief, in his or her discretion, either may surrender him or her on demand of the executive authority of another state or hold him or her until he or she has been tried and discharged or convicted and punished in the Choctaw Nation of Oklahoma.

**Section 1141.20. Inquiry into guilt or innocence**

The guilt or innocence of the accused as to the crime of which he or she is charged may not be inquired into by the Chief or in any proceedings after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Chief, except as it may be involved in identifying the person held as the person charged with the crime.

**Section 1141.21. Recalling warrant—New warrant**

The Chief may recall his or her warrant of arrest or may issue another warrant whenever he or she deems proper.

**Section 1141.22. Warrant to agent to receive person demanded**

Whenever the Chief of the Choctaw Nation of Oklahoma shall demand a person charged with crime or with escaping from confinement or breaking the terms of his or her bail or probation in the Choctaw Nation of Oklahoma, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he or she shall issue a warrant under the seal of Choctaw Nation of Oklahoma, to some agent, commanding him or her to receive the person so charged if delivered to him or her and convey him or her to the proper officer of the Choctaw Nation of Oklahoma.

**Section 1141.23. Application to Chief by prosecuting attorney for requisition**

When the return to the Choctaw Nation of Oklahoma of a person charged with crime in the Choctaw Nation of Oklahoma is required, the prosecuting attorney shall present to the Chief a written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him or her, the approximate time, place and circumstances of its commission, the state in which he or she is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to the Choctaw Nation of Oklahoma for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to the Choctaw Nation of Oklahoma is required of a person who has been convicted of a crime in the Choctaw Nation of Oklahoma and has escaped from confinement or broken the terms of his or her bail or probation, the prosecuting attorney, or the warden of the institution of the Director of the Department of Public Safety, from which escape was made, shall present to the Chief a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his or her escape from confinement or of the breach of the terms of his or her bail or probation, the state in which he or she is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, warden or director may also attach such further affidavits and other documents in duplicate as he or she shall deem proper to be submitted with such application. One copy of the application, with the action of the Chief indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the district court clerk to remain of record in that office. The other copies of all papers shall be forwarded with the Chief's requisition.

**Section 1141.24. Immunity from civil process**

A person brought into the Choctaw Nation of Oklahoma by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings to answer which he or she is being or has been returned, until he or she has been convicted in the criminal proceeding, or, if acquitted, until he or she has had reasonable opportunity to return to the state from which he or she was extradited.

**Section 1141.25. Waiver of proceedings and consent to return to demanding state**

Any person arrested in the Choctaw Nation of Oklahoma charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in Section 1141.7 and 1141.8 and all other procedure incidental to extradition proceedings, by

executing or subscribing in the presence of a judge of any court of record within the Choctaw Nation of Oklahoma a writing which states that he or she consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his or her rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in Section 1141.10. If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Chief of the Choctaw Nation of Oklahoma and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the officers of the demanding state or of the Choctaw Nation of Oklahoma.

**Section 1141.26. Rights of state not deemed waived**

Nothing contained in this act shall be deemed to constitute a waiver by the Choctaw Nation of Oklahoma of its right, power or privilege to try such demanded person for any crime committed within the Choctaw Nation of Oklahoma, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within the Choctaw Nation of Oklahoma, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by the Choctaw Nation of Oklahoma of any of its rights, privileges or jurisdiction in any way whatsoever.

**Section 1141.27. Trial for other offenses than that specified**

After a person has been brought back to the Choctaw Nation of Oklahoma by, or after waiver of extradition proceedings, he or she may be tried in the Choctaw Nation of Oklahoma for other crimes which he or she may be charged with having committed here as well as that specified in the requisition for his or her extradition.

**Section 1141.28. Uniformity of construction**

The provisions of this act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

**Section 1141.29. Partial invalidity**

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 1141.30. Short title
This act, Section 1141.1 through Section 1141.30 of this title, may be cited as the Uniform Criminal Extradition Act.

**Uniform Disposition of Criminal Cases on the Merits Act**

**Section 1145.1. Short title**

This act, Section 1145.1 through Section 1145.6 of this title, shall be known and cited as "The Uniform Disposition of Criminal Cases on the Merits Act."

**Section 1145.2. Purpose of act**

The purpose of this act is to allow the activities of an individual to be dealt with in one court at a time, no matter where the activities occurred, to the end that society may be afforded retribution for offenses against it and that the rehabilitative process can immediately begin.

**Section 1145.3. Definitions**

In this act, unless the context requires otherwise:

1. "Asylum state" means that state or federally recognized Indian tribe in which the defendant is located;

2. "Demanding state" means that state or federally recognized Indian tribe, other than the Choctaw Nation of Oklahoma, in which the accused is charged with committing criminal acts;

3. "Prosecuting attorney" means the attorney of the county, parish or district, state, tribe or federal district, wherein charges are filed; and

4. "Jurisdiction" means geographic division or subdivision in which such prosecuting attorney has responsibility.

**Section 1145.4. Disposal of criminal charge at request of defendant**

On request of the defendant and consent of the prosecuting attorney in the demanding state and the prosecuting attorney in the asylum state, the trial court of general jurisdiction or such other court having appropriate jurisdiction in the asylum state may dispose of the offense or offenses set out in the complaint, information or other equivalent pleading of the demanding state, and an exemplified copy of the judgment of the asylum state shall constitute a judgment on the merits when filed in the case in the courts of the demanding state.

**Section 1145.5. Relief available—Effect of judgment—Act as supplemental**

All relief available in the courts of the demanding state and in the courts of the asylum state shall be available to the court of the asylum state in rendering its judgment and satisfaction of the judgment of the asylum state shall constitute a complete satisfaction of the judgment of the demanding state and the judgment so rendered may be enforced in either state.

This act is supplemental to and not in substitution for the provisions of the agreement on detainers, including but not limited to sentencing, incarceration, probation, orders for restitution, suspension and enhancement of sentence.

**Section 1145.6. Procedures, rules and regulations**

A. A defendant arrested or held in a state or district other than that in which the information is pending against him or her may state in writing that he or she wishes to plead guilty, to waive trial in the district in which the information is pending and to consent to disposition of the case in the jurisdiction or district in which he or she was arrested or is held, subject to the approval of the prosecuting attorney for each jurisdiction. Upon receipt of the defendant's statement and of the written approval of the prosecuting attorneys, the clerk of the court in which the information is pending shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the jurisdiction in which the defendant is held and the prosecution shall continue in that jurisdiction.

B. A defendant arrested on a warrant issued upon a complaint in a jurisdiction other than the county, parish or district of arrest may state in writing that he or she wishes to plead guilty, to waive trial in the jurisdiction in which the warrant was issued and to consent to disposition of the case in the jurisdiction in which he or she was arrested, subject to the approval of the prosecuting attorney for each jurisdiction. Upon receipt of the defendant's statement and of the written approval of the prosecuting attorneys, the court of limited jurisdiction shall certify and transmit the records in the case to the court of general jurisdiction, and, upon the filing of an information or the return of an indictment, the clerk of the court for the jurisdiction or district in which the warrant was issued shall transmit the papers in the proceeding or certified copies thereof to the clerk of the court for the jurisdiction or district in which the defendant was arrested and the prosecution shall continue in that jurisdiction or district. When the defendant is brought before the court to plead to an information filed in the jurisdiction or district where the warrant was issued, he or she may at that time waive indictment and the prosecution may continue based upon the information originally filed.

C. A juvenile who is arrested or held in a jurisdiction or district other than that in which he or she is alleged to have committed an act in violation of a law of a state or of the United States not punishable by death or life imprisonment may, after he or she has been advised by counsel and with the approval of the court and the prosecuting attorney, consent to be proceeded against as a juvenile delinquent in the jurisdiction or district in which he or she is arrested or held. The consent shall be given in writing before the court but only after the court has apprised the juvenile of his or her rights, including the right to be returned to the jurisdiction or district in which he or she is alleged to have committed the act, and of the consequences of such consent.

D. For the purpose of initiating a transfer under this rule a person who appears in response to a summons shall be treated as if he or she had been arrested on a warrant in the jurisdiction or district of such appearance.

## Chapter 21. Habeas Corpus

### Section 1151. Habeas corpus for person to testify or be surrendered on bail

The Court of Appeals and the District Court of the Choctaw Nation of Oklahoma, or the judges thereof in vacation, shall have power to issue writs of habeas corpus, for the purpose of bringing the body of any person confined in any prison before them, to testify or be surrendered in discharge of bail. When a writ of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness, shall be confined in any prison in the Choctaw Nation of Oklahoma, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his or her bail discharged, or a person testifying as aforesaid, shall by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the custodian, shall exonerate such prison keeper from being liable for an escape. The party praying out such writ of habeas corpus shall pay to the officer executing the same, such reasonable sum for his or her services as shall be adjudged by the courts respectively.

## Chapter 22. Insanity of Accused

### Section 1161. Acts of insane person not punishable—Acquittal on ground of insanity—Discharge procedure—Forensic Review Board

A. 1. An act committed by a person in a state of insanity cannot be punished as a public offense, nor can the person be tried, sentenced to punishment, or punished for a public offense while such person is insane.

2. When in any criminal action by information, the defense of insanity is raised, but the defendant is not acquitted on the ground that the defendant was insane at the time of the commission of the crime charged, an issue concerning such defense may be raised on appeal. If the appellate court finds relief is required, the appellate court shall not have authority to modify the judgment or sentence, but will only have the authority to order a new trial or order resentencing without recommendations to sentencing.

3. When in any criminal action by information the defense of insanity is interposed either singly or in conjunction with some other defense, the jury shall state in the verdict, if it is one of acquittal, whether or not the defendant is acquitted on the ground of insanity. When the defendant is acquitted on the ground that the defendant was insane at the time of the commission of the crime charged, the person shall not be discharged from custody until the court has made a determination that the person is not presently dangerous to the public peace and safety because the person is a person requiring treatment as defined in Section 1175.1 of this title.

B. 1. To assist the court in its determination, the court shall immediately issue an order for the person to be examined by the Choctaw Nation Health Services Authority. Upon the issuance of the order, the Director of the Department of Public Safety shall deliver or cause to be delivered the person to the designated facility.

2. Within forty-five (45) days of the court entering such an order, a hearing shall be conducted by the court to ascertain whether the person is presently dangerous to the public peace or safety because the person is a person requiring treatment as defined in Section 1175.1 of this title or, if not, is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance. During the required period of hospitalization the Choctaw Nation Health Services Authority shall have the person examined by two qualified psychiatrists or one such psychiatrist and one qualified clinical psychologist whose training and experience enable the professional to form expert opinions regarding mental illness, competency, dangerousness and criminal responsibility.

C. 1. Each examiner shall, within thirty-five (35) days of hospitalization, individually prepare and submit to the court, the prosecuting attorney and the person's trial counsel a report of the person's psychiatric examination findings and an evaluation concerning whether the person is presently dangerous to the public peace or safety.

2. If the court is dissatisfied with the reports or if a disagreement on the issue of mental illness and dangerousness exists between the two examiners, the court may designate one or more additional examiners and have them submit their findings and evaluations as specified in paragraph 1 of this subsection.

3. a. Within ten (10) days after the reports are filed, the court must conduct a hearing to determine the person's present condition as to the issue of whether:

(1) the person is presently dangerous to the public peace or safety because the person is a person requiring treatment as defined in Section 1175.1 of this title, or

(2) if not believed to be presently dangerous to the public peace or safety, the person is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance.

b. The prosecuting attorney must establish the foregoing by a preponderance of the evidence. At this hearing the person shall have the assistance of counsel and may present independent evidence.

D. 1. If the court finds that the person is not presently dangerous to the public peace or safety because the person is a person requiring treatment as defined in Section 1175.1 of this title and is not in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance, it shall immediately discharge the person from hospitalization.

2. If the court finds that the person is presently dangerous to the public peace and safety, it shall commit the person to the custody of the Choctaw Nation Health Services Authority.

a. During the period of hospitalization, the Choctaw Nation Health Services Authority may administer or cause to be administered to the person such psychiatric, medical or other therapeutic treatment as in its judgment should be administered.

b. The person shall be subject to discharge or conditional release pursuant to the procedures set forth in this section.

E. If at any time the court finds the person is not presently dangerous to the public peace or safety because the person is a person requiring treatment pursuant to the provisions of Section 1175.1 of this title, but is in need of continued supervision as a result of unresolved symptoms of mental illness or a history of treatment noncompliance, the court may:

1. Discharge the person with an order for treatment on an out-patient basis;

2. Discharge the person, and upon the court's or the prosecuting attorney's motion commence civil involuntary commitment proceedings against the person; or

3. Order conditional release, as set forth in subsection F of this section.

F. There is hereby created a Forensic Review Board to be composed of seven (7) members. The Board members shall serve for a term of three (3) years except that for members first appointed to the Board.

1. The Board shall be composed of:

a. Four mental health professionals employed by the Choctaw Nation of Oklahoma with experience in treating mental illness, at least one of whom is licensed as a Doctor of Medicine, a Doctor of Osteopathy, or a licensed clinical psychologist, shall be appointed by the Director of the Choctaw Nation Health Services Authority. The first members appointed pursuant to this subsection shall serve: one for a term ending December 31, 2014, two shall serve for a term ending December 31, 2015, and one shall serve for a term ending December 31, 2016.

b. One member who shall be an attorney licensed to practice in the Choctaw Nation of Oklahoma shall be appointed by the District Judge. The member first appointed pursuant to this subsection shall serve until December 31, 2014.

c. One member who shall be a social worker employed by the Choctaw Nation of Oklahoma shall be appointed by the Executive Director of Health Services Authority. The member first appointed shall serve until December 31, 2016.

d. One member who shall be a law enforcement officer employed by the Choctaw Nation of Oklahoma who shall be appointed by the Executive Director of the Department of Public Safety. The first member appointed pursuant to this subsection shall serve until December 31, 2016.

The attorney member of the Board shall be prohibited from participating as a member of the Board if the attorney represents a person whose case will come before the Board.

2. The Board shall meet as necessary to determine which individuals confined with the Choctaw Nation Health Services Authority are eligible for therapeutic visits, conditional release or discharge and whether the Board wishes to make such a recommendation to the court.

a. Forensic Review Board meetings shall not be open to the public. Other than the Forensic Review Board members, only the following individuals shall be permitted to attend Board meetings:

(1) the individual the Board is considering for therapeutic visits, conditional release or discharge, his or her treatment advocate, and members of his or her treatment team,

(2) the Director of the Choctaw Nation Health Services Authority or designee,

(3) an attorney representing the Choctaw Nation of Oklahoma or the Choctaw Nation Health Services Authority, and

(4) any other persons the Board and Director of the Choctaw Nation Health Services Authority wish to be present.

b. The Choctaw Nation Health Services Authority shall provide administrative staff to the Board to take minutes of meetings and prepare necessary documents and correspondence for the Board to comply with its duties as set forth in this section. The Choctaw Nation Health Services Authority shall also transport the individuals being reviewed to and from the Board meeting site if necessary.

c. The Board shall promulgate rules concerning the granting and structure of therapeutic visits, conditional releases and discharge.

d. For purposes of this subsection, “therapeutic visit” means a scheduled time period off campus which provides for progressive tests of the consumer’s ability to maintain and demonstrate coping skills.

3. The Forensic Review Board shall submit any recommendation for therapeutic visit, conditional release or discharge to the court, the prosecuting attorney, the person’s trial counsel, the Choctaw Nation Health Services Authority and the person at least fourteen (14) days prior to the scheduled visit.

a. The prosecuting attorney may file an objection to a recommendation for a therapeutic visit within ten (10) days of receipt of the notice.

b. If an objection is filed, the therapeutic visit is stayed until a hearing is held. The court shall hold a hearing not less than ten (10) days following an objection to determine whether the therapeutic visit is necessary for treatment, and if necessary, the nature and extent of the visit.

4. During the period of hospitalization the Choctaw Nation Health Services Authority shall submit an annual report on the status of the person to the court and to the prosecuting attorney.

G. Upon motion by the prosecuting attorney or upon a recommendation for conditional release or discharge by the Forensic Review Board, the court shall conduct a hearing to ascertain if the person is presently dangerous and a person requiring treatment as defined in Section 1175.1 of this title. This hearing shall be conducted under the same procedure as the first hearing and must occur not less than ten (10) days following the motion or request by the Forensic Review Board.

1. If the court determines that the person continues to be presently dangerous to the public peace and safety because the person is a person requiring treatment as defined in Section 1175.1 of this title, it shall order the return of the person to the hospital for additional treatment.

2. If the court determines that the person is not dangerous subject to certain conditions, the court may conditionally release the person subject to the following:

a. the Forensic Review Board has made a recommendation for conditional release, including a written plan for outpatient treatment and a list of recommendations for the court to place as conditions on the release,

b. in its order of conditional release, the court shall specify conditions of release and shall direct the appropriate agencies or persons to submit annual reports regarding the person's compliance with the conditions of release and progress in treatment,

c. the person must agree, in writing, that during the period the person is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all pertinent information, including clinical information regarding the person, among the Choctaw Nation Health Services Authority, the appropriate mental health centers or personnel and the appropriate prosecuting attorneys, law enforcement and court personnel,

d. the court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause. The person placed on conditional release shall remain under the supervision of the Choctaw Nation Health Services Authority until the committing court enters a final discharge order. The Choctaw Nation Health Services Authority shall assess the person placed on conditional release annually and shall have the authority to recommend discharge of the person to the Board,

e. any agency or individual involved in providing treatment with regard to the person's conditional release plan may prepare and file an affidavit under oath if the agency or individual believes that the person has failed to comply with the conditions of release or that such person has progressed to the point that inpatient care is appropriate.

(1) Any peace officer who receives such an affidavit shall take the person into protective custody and return the person to the forensic unit of the Choctaw Nation Health Services Authority.

(2) A hearing shall be conducted within three (3) days, excluding holidays and weekends, after the person is returned to the forensic unit of the Choctaw Nation Health Services Authority to determine if the person has violated the conditions of release, or if full-time hospitalization is the least restrictive alternative consistent with the person's needs and the need for public safety. Notice of the hearing shall be issued, at least twenty-four (24) hours before the hearing, to the hospital director, the person, trial counsel for the person, and the patient advocate of the Choctaw Nation Health Services Authority. If the person requires hospitalization because of a violation of the conditions of release or because of progression to the point that inpatient care is appropriate, the court may then modify the conditions of release.

3. If the court determines that the person is not presently dangerous to the public peace or safety because the person is not a person requiring treatment, it shall order that the person be discharged from the custody of the Choctaw Nation Health Services Authority.

H. The court may continue or delay the required hearings provided for in this section for good cause shown by any of the parties or upon its own motion.

**Section 1162. Jury to try sanity**

When an information is called for trial, or upon conviction the defendant is brought up for judgment, if a doubt arise as to the sanity of the defendant, the court must order a jury to be impaneled from the jurors summoned and returned for the term, or who may be summoned by direction of the court, to inquire into the fact.

**Section 1163. Sanity hearing—Criminal trial to be suspended**

The trial of the cause or the pronouncing the judgment, as the case may be, must be suspended until the question of insanity is determined by the verdict of the jury.

**Section 1164. Order of trial of sanity**

The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case and offer evidence in support of the allegation of insanity.

2. The counsel for the Choctaw Nation may then open their case and offer evidence in support thereof.

3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice permit them to offer evidence upon their original case.

4. When the evidence is concluded, unless the case is submitted to the jury on either side or on both sides, without argument, the counsel for the Choctaw Nation must commence, and the defendant or his or her counsel may conclude the argument to the jury.

5. The court may, in its discretion, restrict the argument to one counsel on each side.

6. The court must then charge the jury before argument as in other cases.

**Section 1165. Rules governing sanity trial**

The provisions of Chapter 12 of this title on trials, in respect to the duty of the court upon questions of law, and of the jury upon questions of fact, and the provisions in respect to the charge of the court to the jury, upon the trial of an information, apply to the questions of insanity.

**Section 1166. Sanity hearing—Trial or judgment to proceed if defendant sane**

If the jury finds the defendant sane, the trial of the information must proceed, or judgment may be pronounced as the case may be.

**Section 1167. Finding of insanity—Suspension of trial or judgment—Commitment to hospital**

If the jury finds the defendant presently insane, the trial or judgment must be suspended until he or she becomes sane, and if the jury deems his or her discharge dangerous to the public peace or safety, the court shall order that the defendant be committed to the Choctaw Nation Health Services Authority, and to be held therein and kept as a patient until he or she is discharged and released as presently sane by the authority of the director of said hospital. A release by the director of said hospital shall be to the custody of the Choctaw Nation Director of the Department of Public Safety. The court shall then set the cause for trial.

**Section 1168. Commitment in sanity hearing exonerates bail**

The commitment of the defendant as mentioned in the last section, exonerates the defendant's bail, or entitles the person authorized to receive the property of the defendant to the return of money he or she may have deposited instead of bail.

**Section 1169. Restoration to sanity**

When the defendant becomes sane the Director of the Department of Public Safety must thereupon, without delay, place him or her in the proper custody until he or she is brought to trial or judgment, as the case may be, or is legally discharged.

**Determination of Competency—Procedure**

**Section 1175.1. Definitions**

As used in Sections 1175.1 through 1175.8 of this title:

A. “Competent” or “competency” means the present ability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense;

B. “Incompetent” or “incompetency” means the present inability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense;

C. “Dangerous” means a person who is a person requiring treatment as defined in this section;

D. “Criminal proceeding” means every stage of a criminal prosecution after arrest and before judgment, including, but not limited to, interrogation, lineup, preliminary hearing, motion dockets, discovery, pretrial hearings and trial;

E. “Qualified forensic examiner” means any:

1. psychiatrist with forensic training and experience,

2. psychologist with forensic training and experience, or

3. a mental health professional whose forensic training and experience enable him or her to form expert opinions regarding mental illness, competency and dangerousness and who has been approved to render such opinions by the court;

F. “Reasonable period of time” means a period not to exceed the lesser of:

1. the maximum sentence specified for the most serious offense with which the defendant is charged, or

2. a maximum period of two (2) years;

G. 1. “Person requiring treatment” means a person who because of his or her mental illness or drug or alcohol dependency:

a. poses a substantial risk of immediate physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other significant self-inflicted bodily harm,

b. poses a substantial risk of immediate physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons,

c. has placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious and immediate threats,

d. is in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person, or

e. poses a substantial risk of immediate serious physical injury to self or death as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs.

2. The mental health or substance abuse history of the person may be used as part of the evidence to determine whether the person is a person requiring treatment. The mental health or substance abuse history of the person shall not be the sole basis for this determination.

3. Unless a person also meets the criteria established in subparagraph 1 of this section, person requiring treatment shall not mean:

(a) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,

(b) a mentally retarded or developmentally disabled person,

(c) a person with seizure disorder,

(d) a person with a traumatic brain injury, or

(e) a person who is homeless.

H. “Mentally retarded person” means a person who has significantly sub-average functioning, an IQ of less than 70 that manifested before age 18 and existing concurrently with related limitations in two or more of the following applicable adaptive skill areas:

i. Communication;

ii. Self-care;

iii. Home living;

iv. Social skills;

v. Use of community resources;

vi. Self-direction;

vii. Health and safety;

iix. Functional academics;

ix. Leisure; and

x. Work.

I. “Developmentally disabled person” means a person with a severe, chronic disability which:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, or autism;

2. Is manifested before the person attains twenty-two (22) years of age;

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

a. self-care,

b. receptive and expressive language,

c. learning,

d. mobility,

e. self-direction,

f. capacity for independent living, and

g. economic self-sufficiency; and

5. Reflects the person’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. The term developmental disability shall not include mentally ill persons, whose sole disability is mental illness.

J. “Mentally ill person” means a person with substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs his or her judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life.

**Section 1175.2. Application for determination of competency—Service—Notice—Suspension of criminal proceedings**

A. No person shall be subject to any criminal procedures after the person is determined to be incompetent except as provided in Sections 1175.1 through 1175.8 of this title. The question of the incompetency of a person may be raised by the person, the attorney for the person whose competency is in question, or the prosecuting attorney, by an application for determination of competency. The application for determination of competency shall allege that the person is incompetent to undergo further proceedings, and shall state facts sufficient to raise a doubt as to the competency of the person. The court, at any time, may initiate a competency determination on its own motion, without an application, if the court has a doubt as to the competency of the person.

If the court so initiates such an application, it may appoint the prosecuting attorney for the purpose of filing and proceeding with the application. If the prosecuting attorney opposes the application of the court and by reason of a conflict of interest could not represent the court as applicant, then the court shall appoint private counsel. Said private counsel shall be reasonably compensated by the court fund.

B. A copy of the application for determination of competency and a notice, as hereinafter described, shall be served personally at least one (1) day before the first hearing on the application for a competency determination. The notice shall contain the following information:

1. The definitions provided by Section 1175.1 of this title of competency and incompetency;

2. That the petitioner and any witnesses identified in the application may offer testimony under oath at the hearings on the petition and that the defendant may not be called to testify against the defendant's will, unless the application is initiated by the defendant;

3. That if the person whose competency is in question does not have an attorney, the court will appoint an attorney for the person who shall represent the person until final disposition of the case;

4. That if the person whose competency is in question is indigent or poor, the court will pay the attorney fees; and

5. That the notice shall be served upon the person whose competency is in question, upon the person's father, mother, husband, or wife or, in their absence, someone of the next of kin, of full age, if any said persons are known to be residing within the Choctaw Nation of Oklahoma, as may be ordered by the court, and also upon the person with whom the person whose competency is in question may reside, or at whose house the person may be. The person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of the Choctaw Nation of Oklahoma.

C. Any criminal proceedings against a person whose competency is in question shall be suspended pending the determination of the competency of the person.

**Section 1175.3. Hearing—Date—Evidence—Orders—Examination of accused—Instructions to physician**

A. Upon filing of an application for determination of competency, the court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by Section 1175.2 of this title.

B. The court shall hold a hearing on the date provided. At the hearing, the court shall examine the application for determination of competency to determine if it alleges facts sufficient to raise a doubt as to the competency of the person. Any additional evidence tending to create a doubt as to the competency of the person may be presented at this hearing.

C. If the court finds there is no doubt as to the competency of the person, it shall order the criminal proceedings to resume.

D. 1. If the court finds there is a doubt as to the competency of the person, it shall order the person to be examined by a qualified forensic examiner of the Choctaw Nation Health Services Authority.

2. The person shall be examined by a qualified forensic examiner on an outpatient basis prior to referral for any necessary inpatient evaluation, as ordered by the court. The outpatient examination may be conducted in the community, the jail or detention facility where the person is held.

3. If the court determines that the person whose competency is in question may be dangerous as defined in Section 1175.1 of this title, it shall order the person retained in a secure facility until the completion of the competency hearing provided in Section 1175.4 of this title. If the court determines the person may be dangerous as defined in Section 1175.1 of this title because the individual is a person requiring treatment as defined in Section 1175.1 of this title, it may commit the person to the custody of the Choctaw Nation Health Services Authority or any other government agency or private facility for the examination required by subsection D of this section. The person shall be required to undergo examination for a period of time sufficient for the qualified forensic examiner(s) to reach a conclusion as to competency, and the court shall impose a reasonable time limitation for such period of examination.

E. The qualified forensic examiner(s) shall receive instructions that they shall examine the patient to determine:

1. If the person is able to appreciate the nature of the charges made against such person;

2. If the person is able to consult with the lawyer and rationally assist in the preparation of the defense of such person;

3. If the person is unable to appreciate the nature of the charges or to consult and rationally assist in the preparation of the defense, whether the person can attain competency within a reasonable period of time as defined in Section 1175.1 of this title if provided with a course of treatment, therapy or training;

4. If the person is a person requiring treatment as defined by Section 1175.1 of this title;

5. If the person is incompetent because the person is mentally retarded as defined in Section 1175.1 of this title;

6. If the answers to questions 4 and 5 are no, why the defendant is incompetent; and

7. If the person were released, whether such person would presently be dangerous as defined in Section 1175.1 of this title.

F. Upon completion of the competency evaluation, the Choctaw Nation Health Services Authority shall notify the court of its findings and the person shall be returned to the court in the customary manner within five (5) business days.

**Section 1175.4. Post-examination competency hearing—Evidence—Presumptions—Presence of accused—Witnesses—Instructions**

A. A hearing to determine the competency of the person whose competency is in question shall be held within thirty (30) days after the qualified forensic examiner(s) has/have made the determination required in Section 1175.3 of this title.

B. The court, at the hearing, shall determine by a preponderance of the evidence if the person is incompetent. Such determination shall include consideration of all reports prepared by the qualified forensic examiner(s). The person shall be presumed to be competent for the purposes of the allocation of the burden of proof and burden of going forward with the evidence.

C. The person whose competency is in question shall have the right to be present at the hearing on the petition unless it is made to appear to the court that the presence of the person makes it impossible to conduct the hearing in a reasonable manner. The court may not decide in advance of the hearing, solely on the basis of the certificate of the examining qualified forensic examiner(s), that the person whose competency is in question should not be allowed to appear. It shall be made to appear to the court based on clear and convincing evidence that alternatives to exclusion were attempted before the court renders the person’s removal for that purpose or the person’s appearance at such hearing improper and unsafe.

D. All witnesses shall be subject to cross-examination in the same manner as is provided by law. If so stipulated by counsel for a person whose competency is in question, the prosecuting attorney and the court, testimony may be given by telephone or other electronic transmitting device approved by the court. No statement, admission or confession made by the person whose competency is in question obtained during the examination for competency may be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time, directly, indirectly or in any manner or form.

**Section 1175.5. Questions to be answered in determining competency**

The court shall answer the following questions in determining the disposition of the person whose competency is in question:

1. Is the person incompetent to undergo further criminal proceedings at this time? If the answer is no, criminal proceedings shall be resumed. If the answer is yes, the following questions shall be answered.

2. Can the incompetency of the person be corrected within a reasonable period of time, as defined by Section 1175.1 of this title, through treatment, therapy or training?

3. Is the person incompetent because the person is mentally retarded as defined in Section 1175.1 of this title?

4. Is the person incompetent because the person is a person requiring treatment as defined by Section 1175.1 of this title?

5. If the answers to questions 3 and 4 are no, why is the defendant incompetent?

6. Is the person presently dangerous as defined in Section 1175.1 of this title if released?

**Section 1175.6. Disposition orders—Placement in secure ward**

A. Upon the finding by the court as provided by Section 1175.5 of this title, the court shall issue the appropriate order regarding the person as follows:

1. If the person is found to be competent, the criminal proceedings shall be resumed;

2. If the person is found to be incompetent because the person is a person requiring treatment as defined in Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 1175.6a of this title;

3. If the person is found to be incompetent because the person is mentally retarded as defined in Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 1175.6b of this title; and

4. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1175.1 of this title, or for reasons other than the person is mentally retarded as defined in Section 11175.1 of this title, the court shall issue the appropriate order as set forth in Section 1175.6c of this title.

**Section 1175.6a. Person capable of achieving competence within reasonable time—Suspension of criminal proceedings—Civil commitment**

A. If the person is found to be incompetent because the person is a person requiring treatment as defined in Section 1175.1 of this title, but capable of achieving competence with treatment

within a reasonable period of time as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and commit the person to the legal custody of the Choctaw Nation Health Services Authority.

1. The Choctaw Nation Health Services Authority shall make periodic reports to the court as to the competency of the defendant.

2. If the person is determined by the Choctaw Nation Health Services Authority to have regained competency, or is no longer incompetent, a hearing shall be scheduled within twenty (20) days:

a. if found competent by the court after such rehearing, criminal proceedings shall be resumed,

b. if the person is found to continue to be incompetent because the person is a person requiring treatment as defined in Section 11751.1 of this title, the person shall be returned to the custody of the Choctaw Nation Health Services Authority,

c. if the person is found to be incompetent because the person is mentally retarded as defined by Section 11751.1 of this title, the court shall issue the appropriate order as set forth in Section 1175.6b of this title,

d. if the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1175.1 of this title, and other than the person is mentally retarded as defined in Section 1175.1 of this title, and is also found to be not dangerous as defined by Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 1175.6b of this act,

e. if the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1175.1 of this title, and other than the person is mentally retarded as defined in Section 1175.1 of this title, but is also found to be dangerous as defined by Section 1175.1 of this title, the court shall issue the appropriate order as set forth in Section 1175.6c of this title.

B. If the person is found to be incompetent because the person is a person requiring treatment as defined by Section 1175.1 of this title, but not capable of achieving competence with treatment within a reasonable period of time as defined by Section 1175.1 of this title, the court shall commence civil commitment proceedings and shall dismiss without prejudice the criminal proceeding. If the person is subsequently civilly committed, the statute of limitations for the criminal charges which were dismissed by the court shall be tolled until the person is discharged from the civil commitment.

**Section 1175.6b. Incompetence due to mental retardation—Suspension of criminal proceedings—Placement—Conditional release**

A. If the person is found to be incompetent primarily because the person is mentally retarded as defined in Section 1175.1 of this title, and is also found by the court to be dangerous as defined

by Section 1175.1 of this title, the court shall suspend the criminal proceedings, and shall place the person into the custody of the Choctaw Nation Health Services Authority.

1. The Choctaw Nation Health Services Authority may place any person placed in its custody under this title in a facility or residential setting, private or public, willing to accept the individual and that has a level of supervision and security that is appropriate to the needs of the person;

2. Such placements shall be within the sole discretion of the Choctaw Nation Health Services Authority;

3. The Choctaw Nation Health Services Authority shall report to the court at least every six (6) months as to the status of the person including, but not limited to, the type of placement, services provided, level of supervision, the medical and psychological health of the person, whether the person would be dangerous if conditionally released into a non-secure environment, the assistance and services that would be required for such conditional release and whether the person has achieved competency;

4. If the person is determined by the Choctaw Nation Health Services Authority to have regained competency or that conditional release to a private guardian or other caretaker is appropriate, a hearing shall be scheduled within twenty (20) days. If found competent by the court after such rehearing, criminal proceedings shall be resumed. If the court finds conditional release to be appropriate, the court shall make an appropriate order for conditional release; and

5. The Choctaw Nation Health Services Authority may consult with other departments and agencies of the Choctaw Nation of Oklahoma and any other agencies or departments of any other Indian tribe or any state of the United States for assistance and referrals as deemed necessary by the Choctaw Nation Health Services Authority.

B. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1175.1 of this title and is found to be not dangerous as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and either refer the person to the Choctaw Nation Health Services Authority for consideration of voluntary assistance or conditionally release the person as set forth in this section.

1. For any person recommended for conditional release, a written plan for services shall be prepared by the Choctaw Nation Health Services Authority and filed with the court. In its order of conditional release, the court shall specify the conditions of release and shall direct the appropriate agencies or persons to submit annual reports regarding the person’s compliance with the conditions of release and progress:

a. to be eligible for conditional release, the person shall agree, in writing, that during the period the person is granted conditional release and is subject to the provisions thereof, there shall be free transmission of all pertinent information, including clinical information regarding the person, among the person’s treatment providers, the appropriate prosecuting attorneys, law

enforcement and court personnel. To affect this agreement, the person shall execute any releases required by law to allow for the dissemination of this information,

b. the court's order placing the person on conditional release shall include notice that the person's conditional release may be revoked upon good cause,

c. the prosecuting attorney, as well as any agency or individual involved in providing services with regard to the person's conditional release, may prepare and file an affidavit under oath if the prosecuting attorney, agency, or individual believes that the person has failed to comply with the conditions of release. The court shall then conduct a hearing to determine if the person has violated the conditions of release. Notice of the hearing shall be issued, at least twenty-four (24) hours before the hearing, to the Choctaw Nation Health Services Authority, the person and trial counsel for the person. After reviewing the evidence concerning any alleged violation of the conditions of the release, the person's progress, treatment alternatives, and the need for public safety, the court may order no change to the conditions for the person's release or modify the conditions of release, and

d. the person placed on conditional release shall remain in a conditional release status until the reviewing court issues a full release from all conditions.

2. If the person is determined by the Choctaw Nation Health Services Authority to have regained competency, a hearing shall be scheduled within twenty (20) days:

a. if found competent by the court after such rehearing, criminal proceedings shall be resumed,

b. if the person is found to continue to be incompetent, the person shall be returned to either conditional release or referred to the Choctaw Nation Health Services Authority for consideration of voluntary assistance.

**Section 1175.6c. Person incompetent for reasons other than needed treatment or due to mental retardation—Dangerous to self or others—Placement**

A. If the person is found to be incompetent for reasons other than the person is a person requiring treatment as defined by Section 1175.1 of this title, or the person is mentally retarded as defined by Section 1175.1 of this title, but is also found to be dangerous as defined by Section 1175.1 of this title, the court shall suspend the criminal proceedings and refer the matter to the Choctaw Nation Health Services Authority for determination of appropriate placement.

B. The Choctaw Nation Health Services Authority shall establish procedures to determine the appropriate placement of individuals who are found to be incompetent to stand trial for reasons other than the person is a person requiring treatment as defined by Section 11751.1 of this title, or the person is mentally retarded as defined by Section 1175.1 of this title. The Choctaw Nation Health Services Authority shall then submit their recommendation to the court for determination of appropriate placement.

**Section 1175.7. Persons incompetent but capable of achieving competency within reasonable time—Treatment order—Medical supervisor—Commitment—Private treatment—Involuntary commitment to Choctaw Nation Health Services Authority prohibited**

A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the court, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. If the person is not committed to the custody of the Choctaw Nation Health Services Authority, the court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the court and the type of disability sought to be corrected by the court's order. The court shall require the supervisor to provide periodic progress reports to the court and may pay for the services of the medical supervisor from court funds.

C. The court may commit the incompetent person to the custody of the Choctaw Nation Health Services Authority, but only where the person is a person requiring treatment as defined by Section 1175.1 of this title, or other appropriate agency, if the court, after the hearing provided in Section 1175.4 of this title, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the court determines that the defendant is dangerous to him or herself or society as a result of being a person requiring treatment as defined by Section 1175.1 of this title.

D. The court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the Choctaw Nation nor the court fund is required to directly pay for such care.

**Section 1175.8. Resumption of competency**

If the medical supervisor reports that the person appears to have achieved competency after a finding of incompetency, the court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceedings shall be resumed.

**Section 1176. Raising issue of mental illness or insanity at time of offense**

A. If the defendant intends to raise the question of mental illness or insanity at the time of the offense, the defendant shall file notice with the court no later than thirty (30) days after formal arraignment. Additionally, if the defendant is financially unable to obtain the services of a qualified mental health professional, the defendant shall file an application with the court at the time of the filing of notice of insanity defense. The procedure to be followed for review of such an application will be the same as provided in Section 1175.3 of this title.

B. In cases not involving the appointment of a public defender, if the court finds that the defendant's sanity at the time of the offense is to be a significant factor in his or her defense at trial and that the defendant is financially unable to obtain the services of a qualified mental health professional, the court shall provide the defendant with access to a qualified mental health professional by authorizing counsel to obtain the services of a qualified mental health professional to conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense. Compensation for such services shall be paid by the court fund.

C. As used in this section, "qualified mental health professional" means an individual certified or licensed in the State of Oklahoma to practice psychiatry, psychology, professional counseling, or social work.

## Chapter 23. Reserved

## Chapter 24. Searches and Seizures

### General Provisions

### Section 1221. Search warrant defined

A search warrant is an order in writing, in the name of the Choctaw Nation, signed by a magistrate, directed to a peace officer, commanding him or her to search for personal property and bring it before the magistrate.

### Section 1222. Grounds for issuance of search warrant—Seizure of property

A search warrant may be issued and property seized upon any of the following grounds:

First: When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed, or from the possession of the person by whom it was stolen or embezzled, or of any other person in whose possession it may be.

Second: When it was used as the means of committing a felony, in which case it may be taken on the warrant from any house or other place in which it is concealed, or from the possession of the person by whom it was used in the commission of the offense, or of any other person in whose possession it may be.

Third: When it is in the possession of any person, with the intent to use it as the means of committing a public offense, or in the possession of another to whom the person may have delivered it for the purpose of concealing it or preventing its being discovered, in which case it may be taken on the warrant from such person, or from a house or other place occupied by the person, or under the person's control, or from the possession of the person to whom the person may have so delivered it.

Fourth: When the property constitutes evidence that an offense was committed or that a particular person participated in the commission of an offense.

Fifth: When there is probable cause to believe that, at a future time, the property or items sought which are intended to be used to commit a public offense, will be located at a particular place. Under such circumstances, the magistrate shall insert a direction in the search warrant making execution of the warrant contingent upon the happening of an event which evidences probable cause that the item to be seized is in the place to be searched.

**Section 1223. Probable cause must be shown**

A search warrant shall not be issued except upon probable cause, supported by affidavit, naming or describing the person, and particularly describing the property and the place to be searched.

**Section 1224. Electronically recorded oral statement—Transcription**

A magistrate may take an oral statement under oath which shall at that time be recorded electronically and thereafter transcribed by an official court reporter. The original recording and transcription thereof shall become a part of and kept with the official records of the case. The transcribed statement shall be deemed to be an affidavit for the purposes of this section and Section 1223 of the Choctaw Nation Code of Criminal Procedure.

In such cases, the magistrate and the official court reporter shall sign the transcription of the recording of the sworn statement. Thereafter, the transcript shall be filed with the clerk of the district court along with the original recording.

**Section 1225. Oral testimony supplemental to affidavit**

Before issuing a search warrant the judge may take oral testimony, sworn to under oath, supplemental to any affidavits. Provided, however, that such oral testimony shall be recorded, such record transcribed forthwith, and filed with the affidavits to support the search warrant.

**Section 1226. Filing and indexing of documents**

In the event the search warrant is executed, then the search warrant, affidavit for search warrant, return of search warrant, if separate, and transcript of oral testimony, if any, shall be filed with the clerk of the district court, and shall be indexed by the clerk in alphabetical order. Upon a criminal prosecution being filed, the prosecuting attorney shall make application for a court order that the documents be transferred and filed in the case.

**Section 1227. Requisites of search warrant—Issuing magistrate**

A. If a magistrate be thereupon satisfied of the existence of grounds of the application, or that there is probable cause to believe their existence, the magistrate must issue a search warrant, signed by him or her, with the magistrate's name of office, directed to a peace officer of the Choctaw Nation of Oklahoma, commanding the officer forthwith to search the person or place named, for the property specified, and to bring it before the magistrate, and also to arrest the person in whose possession the same may be found, to be dealt with according to law.

B. The magistrate may orally authorize a peace officer to sign the name of the magistrate on a copy made to conform to the original warrant if the peace officer applying for the warrant is not in the actual physical presence of the magistrate. Such copy shall be deemed to be a search warrant for the purposes of this title and it shall be returned to the magistrate as provided for in Section 1235 of this title. In such cases, the magistrate shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant and the copy made to conform to the original warrant with the clerk of the district court as provided for in Section 1226 of this title.

**Section 1228. Form of search warrant**

The warrant must be in substantially the following form:

The Choctaw Nation of Oklahoma. To any peace officer of the Choctaw Nation of Oklahoma.

Probable cause having been shown on this date before me, by (name every officer and person who has made affidavit or given oral testimony supplementing an affidavit) for believing the following property (describe the property) is located at (specify the location where the property is shown to be).

You are therefore commanded, in the daytime (or "at any time of the day or night," as the case may be, according to Section 1232 of the Choctaw Nation Code of Criminal Procedure), to make immediate search on the person of C.D. (or "in the house situated," describing it, or any other place to be searched, with reasonable particularity, as the case may be), for the following property (describing it with reasonable particularity), and if you find the same, or any part thereof to bring it forthwith before me, at (stating the place) or before a magistrate who presides in the Choctaw Nation of Oklahoma.

Dated at _____ the ___ day of _____, 20___.

_____
(Signature of Judge)

_____
(Judge's Official Designation)

**Section 1229. Service of search warrant**

A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer, if the officer requires it, while the officer is present, and acting in its execution.

**Section 1230. Execution of search warrant without warning or notice—Forced entry—Exigent circumstances**

A peace officer may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant when:

1. The officer has been refused admittance after having first given notice of his authority and purpose; or

2. Pursuant to an instruction inserted in the search warrant by the magistrate that no warning or other notice of entry is necessary because there is reasonable cause to believe that exigent circumstances exist. Exigent circumstances include:

a. such warning or other notice would pose a significant danger to human life,

b. such warning or other notice would allow the possible destruction of evidence,

c. such warning or other notice would give rise to the possibility of resistance or escape,

d. such warning or other notice would otherwise inhibit the effective investigation of the crime, or

e. such warning or other notice would be futile or a useless gesture.

**Section 1231. Execution of search warrant—Liberating person detained**

The officer may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid the officer in the execution of the warrant, is detained therein, or when necessary for his or her own liberation.

**Section 1232. Time for service of search warrant**

Search warrants for occupied dwellings shall be served between the hours of six o'clock a.m. and ten o'clock p.m., inclusive, unless the judge finds the existence of at least one of the following circumstances:

1. The evidence is located on the premises only between the hours of ten o'clock p.m. and six o'clock a.m.;

2. The search to be performed is a crime scene search;

3. The affidavits be positive that the property is on the person, or in the place to be searched and the judge finds that there is likelihood that the property named in the search warrant will be destroyed, moved or concealed; or

4. The search to be performed is a search for evidence relating to the illegal manufacture of methamphetamine or other controlled dangerous substance.

If any of the above criteria are met, the judge may insert a direction that the warrant be served at any time of the day or night. Search warrants for sites other than occupied dwellings may be served at any time of the day or night without a special direction.

**Section 1233. Search warrant void after ten days**

A search warrant must be executed and returned to the magistrate by whom it is issued within ten (10) days. After the expiration of these times respectively, the warrant, unless executed is void.

**Section 1234. Disposition of property recovered**

When the property is seized by an officer, the officer shall deliver a written inventory to a magistrate of the Choctaw Nation of Oklahoma. If the property was stolen or embezzled, the officer must deliver the property to the owner on satisfactory proof of the alleged owner's title, after the owner pays the necessary expenses incurred in the preservation of the property. The expenses shall be certified by the magistrate. If the property was taken on a warrant issued on the grounds stated in the second and third subdivisions of Section 1222 of this title, the officer must retain the property in his or her possession, subject to the order of the court.

**Section 1235. Return of search warrant**

Any peace officer who executes a search warrant must forthwith return the warrant to the magistrate who authorized the warrant or to a magistrate who presides in the Choctaw Nation of Oklahoma together with a written inventory of the property taken, which shall be made publicly, or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, verified by the affidavit of the officer, and taken before the magistrate, to the following effect:

I, A.B., the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant.

**Section 1236. Hearing on issuance of warrant**

If the grounds on which the warrant was issued be controverted, the magistrate must proceed to take testimony in relation thereto.

**Section 1237. Testimony on hearing for warrant**

The testimony given by each witness must be reduced to writing and authenticated in the manner as in preliminary examinations.

**Section 1238. Restoration of property to person searched**

If it appears that the property taken is not the same as that described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued, the magistrate must cause it to be restored to the person from whom it was taken.

**Section 1239. Papers returned to district court**

After the officer returns the warrant to the magistrate, the officer must annex together the affidavit for search warrant, the search warrant and return, and the inventory, and then file them with the district court clerk.

**Section 1240. Procuring search warrant without cause**

A person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor.

**Section 1241. Officer exceeding authority**

A peace officer in executing a search warrant, who willfully exceeds his or her authority, or exercises it with unnecessary severity, is guilty of a misdemeanor.

**Section 1242. Search of defendant for weapons or evidence**

When a person charged with a felony is believed by the magistrate before whom the person is brought to have upon his or her person a dangerous weapon or anything which may be used as evidence of the commission of the offense, the magistrate may direct the person to be searched in his or her presence, and the weapon or other thing to be retained, subject to further order of the court.

**Chapter 25. Miscellaneous Provisions**

**In General**

**Section 1274. Informalities or errors not fatal if not prejudicial**

Neither a departure from the form or mode prescribed in this title in respect to any pleadings or proceeding, nor an error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right.

**Section 1275. Clerk to keep record of informations and bonds**

The clerk of the district court shall keep a record in which all informations and bonds shall be entered and certified as true and correct copies of all original informations and bonds filed in his office, and whenever any such original information or bond filed with the clerk becomes either lost, destroyed or stolen, or for any other reason cannot be produced at the trial, a certified copy of the aforesaid record of such original information or bond shall be competent evidence and shall have the same validity and effect as the original thereof.

**Section 1276. Record of informations and bonds not public**

The record provided for in the preceding section shall be kept by the clerk as a private record and to be made public only in case the original information or bond becomes lost, stolen or cannot be found.

**Section 1277. Interpreters for deaf mutes—Appointment—Oath—Compensation**

A. In all criminal prosecutions, where the accused is a deaf mute, he shall have all of the proceedings of the trial interpreted to him in a language that he can understand by a qualified interpreter appointed by the court.

B. In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is a deaf mute, all of the court proceedings, pertaining to him, shall be interpreted to him in a language that he understands by a qualified interpreter appointed by the court.

C. Interpreters who shall be appointed under the terms of this section shall be required to take an oath that they will make a true interpretation to the person accused or being examined, which person is a deaf mute, of all the proceedings of his or her case in a language that he or she understands; and that the interpreter will repeat said deaf mute's answers to questions to counsel, court, or jury, in the English language, in his or her best skill and judgment.

D. Interpreters appointed under the terms of this section shall be paid for their services a sum to be determined by the court.

**Stolen Property and Property Taken from Defendant**

**Section 1321. Custody and return of stolen or embezzled property**

A. It is the intent of the Tribal Council that any stolen or embezzled money or other property held in custody of the Choctaw Nation in any criminal investigation, action or proceeding be returned to the proper person or its lawful owner without unnecessary delay.

B. If the property coming into the custody of a peace officer is not alleged to have been stolen or embezzled, the peace officer may return the property to the owner upon satisfactory proof of ownership. The notice and hearing provisions of this section shall not be required for return of the property specified in this section if there is no dispute concerning the ownership of the property. Within fifteen (15) days of the time the owner of the property is known, the peace officer shall notify the owner of the property that the property is in the custody of the peace officer. The property shall be returned to the owner upon request.

C. Except as otherwise provided for property that is pawned, when money or property alleged to have been stolen or embezzled, comes into the custody of a peace officer, the peace officer shall hold it subject to the order of the magistrate authorized by Section 1322 of this title to direct the disposal thereof. Within fifteen (15) days of the time the owner of the property is known, the peace officer shall notify the owner of the property that the property is in the custody of the peace officer. The peace officer shall make a good faith effort to locate and notify the owner of the property. If the peace officer has made a good faith effort to locate and notify the owner of the property and has been unable to locate or notify the owner, the peace officer shall release the property to the last person in possession of the property within fifteen (15) days after the peace officer determines that an owner cannot be located or notified, provided that the person who last had possession of the property shows proof that the person is a lawful possessor of the property. Such officer may provide a copy of a non-ownership affidavit to the defendant to sign if the defendant is not claiming ownership of the money or property taken from the defendant and if the defendant has relinquished the right to remain silent. The affidavit is not admissible in any proceeding to ascertain the guilt or innocence of the defendant. A copy of this affidavit shall be provided to the defendant, and a copy shall be filed by the peace officer with the court clerk. Upon request, a copy of this affidavit shall be provided to any person claiming ownership of such money or property. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property.

The application shall be on a form provided by the court clerk and made available through the court clerk's office or the office of the prosecuting attorney. The court may charge the applicant a reasonable fee to defray the cost of filing and docketing the application. Once an application has been made and notice provided, the magistrate shall docket the application for a hearing as provided in this section. Where notice by publication is appropriate, the publication notice form shall be provided free of charge to the applicant by the court clerk or the prosecuting attorney with instructions on how to obtain effective publication notice. The applicant shall notify the last person in possession of the property prior to the property being seized by the Choctaw Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of the person, unless the person has signed a non-ownership affidavit pursuant to this section disclaiming any ownership rights to the property. If the last person in possession of the property is unable to be served notice by certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the prosecuting attorney and the court when notice has been

served to the last person in possession of the property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the court has been notified that the notice has been served or published. For the sole purpose of conducting a due process hearing to establish ownership of the property, "magistrate" as used in this section shall mean a judge of the district court.

D. If the magistrate determines that the property is needed as evidence, the magistrate shall determine ownership and determine the procedure and time frame for future release. The magistrate may order the release of property needed as evidence pursuant to Section 1327 of this title, provided however, the order may require the owner to present the property at trial. The property shall be made available to the owner within ten (10) days of the court order for release. The magistrate may authorize ten (10) days additional time for the return of the exhibit if the prosecuting attorney shows cause that additional time is needed to photograph or mark the exhibit.

E. If the property is not needed as evidence, it may be released by the magistrate to the owner or designated representative of the owner upon satisfactory proof of ownership. The owner of the property or designated representative of the owner may make application to the magistrate for the return of the property. The applicant shall notify the last person in possession of the property prior to such property being seized by the Choctaw Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of the person, unless the person has signed a non-ownership affidavit pursuant to this section disclaiming any ownership rights to the property. If the last person in possession of the property is unable to be served notice by certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county where the property is held in custody. The applicant shall notify the prosecuting attorney and the court when notice has been served to the last person in possession of the property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the court has been notified that the notice has been served or published.

F. The notice and hearing provisions of subsections C and E of this section shall not be required for return of the property specified in said subsections if:

1. There is no dispute concerning the ownership of the property;

2. The property is readily identifiable by the owner; and

3. The defendant has entered a plea of guilty or nolo contendere to the criminal charge, has executed a non-ownership affidavit as provided by subsection C of this section or has been personally notified that the property will be returned to the owner and has failed to file an objection to such return within ten (10) days of being notified. The owner shall provide satisfactory proof of title to the property or sign an affidavit of ownership to be provided by the peace officer. The affidavit is not admissible in any proceeding to ascertain the guilt or innocence of the defendant. A copy of this affidavit shall be filed by the officer with the court clerk. The property shall then be returned to the owner.

G. When property alleged to have been stolen comes into the custody of a peace officer and the property is deemed to be perishable, the peace officer shall take such action as appropriate to temporarily preserve the property. However, within seventy-two (72) hours of the time the property was recovered, the receiving agency shall make application for a disposition hearing before a magistrate, and the receiving agency shall notify all persons known to have an interest in the property of the date, time and place of the hearing.

H. In any case, the magistrate may, for good cause shown, order any evidence or exhibit to be retained pending the outcome of any appeal.

I. Any time property comes into the custody of the Choctaw Nation of Oklahoma as a result of any contact with any peace officer, criminal investigation or other situation where the return of the property is prohibited by any law or when the property has disputed ownership or multiple claimants, the Choctaw Nation of Oklahoma shall advise the claimant to file an application with the district court. Upon filing an application for a hearing, the claimant shall provide notice to all interested persons. At the hearing the court shall make a judicial determination as to the proper and lawful release of the property.

J. The application, notice and hearing provisions of subsection I of this section shall include, but are not limited to, all situations where the peace officer has reason to believe:

1. One of the persons asserting a right to the return of any firearm or other weapon is or was mentally or emotionally unstable or disturbed at the time the weapon was placed in custody or at the time of the request for the return of the weapon;

2. One of the persons asserting a right to the return of a firearm or other weapon is subject to a victim protection order that would preclude the return of any weapon as a matter of law;

3. One of the persons asserting a right to the return of any firearm or other weapon has been convicted of a felony;

4. One of the persons asserting a right to the return of any firearm or other weapon has a misdemeanor conviction for domestic abuse as defined by law;

5. The ownership of the property is unclear due to multiple claimants or disputes among heirs or next of kin for the property of the deceased; or

6. The return of the property could subject the Choctaw Nation of Oklahoma to potential liability for its return.

**Section 1322. Stolen property—Magistrate to order delivery, when**

On satisfactory proof of title to the property, the magistrate before whom the information is laid, or who examines the charge against the person accused of stealing or embezzling the property, may order it to be delivered to the owner on his or her paying the reasonable and necessary expenses incurred in its preservation, to be certified by the magistrate. The order entitles the

owner to demand and receive the property. Such property shall be made available to the owner within ten (10) days of the issuance of the order. The court, however, may keep the property as evidence or on the issuance of an order, require the owner to present such property at trial.

**Section 1323. Magistrate to deliver stolen property, when**

If property that has been stolen or embezzled comes into the custody of a magistrate, it must be delivered to the owner on satisfactory proof of his or her title, and on the owner paying the necessary expenses incurred in its preservation, to be certified by the magistrate.

**Section 1324. Trial court may deliver stolen property**

If property that has been stolen or embezzled has not been delivered to the owner, the court may, on proof of his or her title, order it to be restored to the owner.

**Section 1325. Unclaimed property or money in possession of the Department of Public Safety—Disposition—Procedure**

A. The Department of Public Safety is authorized to dispose of by public sale, destruction, donation, or transfer for use to a governmental subdivision personal property which has come into its possession, or deposit in a special fund, as hereafter provided, all money or legal tender of the United States which has come into its possession, whether the property or money be stolen, embezzled, lost, abandoned or otherwise, the owner of the property or money being unknown or not having claimed the same, and which the Department of Public Safety has held for at least six (6) months, and such property or money, or any part thereof, being no longer needed to be held as evidence or otherwise used in connection with any litigation.

B. Where personal property held under the circumstances provided in subsection A of this section is determined by the Department of Public Safety to be unsuitable for disposition by public sale due to its condition or assessed by department personnel as having limited or no resale value, it may be destroyed, discarded as solid waste or donated to a charitable organization designated by the U.S. Internal Revenue Service as a 501(c)(3) nonprofit organization. Where disposition by destruction, discard, or donation is made of personal property, a report describing the property by category and quantity, and indicating what disposition was made for each item or lot, shall be submitted to the district judge within ten (10) days following the disposition.

C. Where disposition by public sale is appropriate, the Department of Public Safety shall file an application in the district court requesting the authority of the court to dispose of such personal property, and shall attach to the application a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the department and the name and address of the owner, if known. The court shall set the application for hearing not less than ten (10) days nor more than twenty (20) days after filing.

D. Written notice shall be given by the Department of Public Safety of the hearing to each and every owner known and as set forth in the application by first-class mail, postage prepaid, and directed to the last known address of the owner at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property of the owner and the place and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the Choctaw Nation of Oklahoma, one being the district court clerk's office at the regular place assigned for the posting of legal notices or shall be published in a newspaper authorized by law to publish legal notices in the county of the State of Oklahoma in which the property is located. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in a newspaper of general circulation which is published in an adjoining county. The notice shall state the name of the owner being notified by publication and shall be published at least ten (10) days prior to the date of the hearing.

E. At the hearing, if no owner appears and establishes ownership to the property, the court shall enter an order authorizing the Department of Public Safety to donate property having a value of less than Five Hundred Dollars ($500.00) to a not-for-profit organization or to sell the personal property to the highest bidder for cash, after at least five (5) days of notice has been given by publication in one issue of a legal newspaper of the county of the State of Oklahoma. The Department of Public Safety shall make a return of the donation or sale and, when confirmed by the court, the order confirming the donation or sale shall vest in the recipient or purchaser title to the property so donated or purchased.

F. The Department of Public Safety having in its possession money or legal tender under the circumstances provided in subsection A of this section, prior to appropriating the same for deposit into a special fund, shall file an application in the district court requesting the court to enter an order authorizing it to so appropriate the money for deposit in the special fund. The application shall describe the money or legal tender, together with serial numbers, if any, the date the same came into the possession of the department, and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof, and notice of the hearing shall be given as provided in subsection D of this section. The notice shall state that, upon no one appearing to prove ownership to the money or legal tender, the same will be ordered by the court to be deposited in the special fund by the Department of Public Safety. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the money or legal tender, the court shall order the same to be deposited by the department in the special fund, as provided in subsection H of this section.

G. Where Department of Public Safety has in its possession under the circumstances provided in subsection A of this section, personal property deemed to have potential utility to department or another governmental subdivision, prior to appropriating the personal property for use, the department shall file an application in the district court requesting the court to enter an order authorizing it to so appropriate or transfer the property for use. The application shall describe the property, together with serial numbers, if any, the date the property came into the possession of the department and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set

for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof. Notice of the hearing shall be given as provided in subsection D of this section. The notice shall state that, upon no one appearing to prove ownership to the personal property, the property will be ordered by the court to be delivered for use by the department or transferred to another governmental subdivision for its use. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the personal property, the court shall order the property to be available for use by the department or delivered to an appropriate person for use by another governmental subdivision.

H. The money received from the sale of personal property as above provided, after payment of the court costs and other expenses, if any, together with all money in possession of the Department of Public Safety, which has been ordered by the court to be deposited in the special fund, shall be deposited in such fund which shall be separately maintained by the department in a special fund with the tribal treasurer to be expended upon the approval of the Executive Director of the Department of Public Safety for the purchase of equipment, materials or supplies that may be used in crime prevention, education, training or programming. The fund or any portion of it may be expended in paying the expenses of the department or any duly authorized officer or employee of the department to attend law enforcement or public safety training courses which are conducted by the Oklahoma Council on Law Enforcement Education and Training (CLEET) or other certified trainers, providers, or agencies.

**Section 1327. Disposition of exhibits**

A. All exhibits which have been introduced, filed, or held in custody of the Choctaw Nation in any criminal action or proceeding may be disposed of as provided for in this section.

B. The court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order all such exhibits, other than documentary exhibits, as may be released from the custody of the court, without prejudice to the Choctaw Nation, delivered to such party at any time after the final determination of the action or proceedings; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided, further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Choctaw Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a non-ownership affidavit pursuant to Section 1321 of this title disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county of the State of Oklahoma where the property is held in custody. The applicant shall notify the prosecuting attorney and the court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the court has been notified that the notice has been

served or published. In the event the court orders the release of said exhibit to the owner, the prosecuting attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The court may authorize ten (10) days additional time for the return of such exhibit if the prosecuting attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such exhibits is unknown, or fails to apply for the return of such exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at any time after the judgment has become final, the court shall make an order specifying what exhibits may be released from the custody of the court without prejudice to the Choctaw Nation. Upon receipt of such an order, the property shall be transferred to the Department of Public Safety or other proper governmental agency for sale to the public. At least ten (10) days prior to such sale, notice of the sale shall be sent by certified mail return receipt requested to the last person in possession of such exhibit prior to such exhibit being seized by the Choctaw Nation at the last-known address of such person. Upon satisfactory proof being provided to the Department of Public Safety or other proper governmental agency holding the transferred exhibit that the last person in possession of such exhibit was a lawful possessor, the exhibit shall be released to the last person in possession of such exhibit;

2. At any time prior to the time fixed for the transfer, the owner or any person entitled to the possession of any of such exhibits may obtain from the court an order returning them to him;

3. Articles not returned to their owners or to persons entitled to their possession at or prior to the time set for the transfer shall be sold by the proper receiving agency for cash. The articles shall be sold singly or in combinations. The money received from such sales shall be placed in the appropriate fund of the governmental agency responsible for the sale;

4. Where the exhibit consists of money or currency and is unclaimed at the time of the transfer, it shall not be transferred but shall be immediately deposited in the appropriate fund of the governmental agency in possession of such property; and

5. If any property is transferred to the Department of Public Safety or other governmental agency pursuant to this section it may be sold in the manner provided by law for the sale of surplus personal property. If the Department of Public Safety or other proper governmental agency determines that any such property transferred to it for sale is needed for a public use, such property may be retained by the agency and need not be sold.

C. The court may, on application of the party entitled thereto, or an agent designated in writing by the owner, order such documentary exhibits as may be released from the custody of the court without prejudice to the Choctaw Nation delivered to such party any time after the final determination of the action or proceeding; provided, however, where the action or proceeding has resulted in an order granting probation, such delivery may be made any time after the final determination of an appeal of such order, or after the time for such appeal has elapsed. Provided,

further, if the owner of such exhibit is the victim of the offense for which such exhibit is held, said owner may make application to the court at any time prior to the final disposition of the action or proceeding for the return of the exhibit. The applicant shall notify the last person in possession of such exhibit prior to such exhibit being seized by the Choctaw Nation of the hearing by mailing a copy of the notice by certified mail return receipt requested at the last-known address of such person, unless such person has signed a non-ownership affidavit pursuant to Section 1321 of this title disclaiming any ownership rights to such exhibit. If the last person in possession of the property is unable to be served notice by said certified mail, notice shall be provided by one publication in a newspaper of general circulation in the county of the State of Oklahoma where the property is held in custody. The applicant shall notify the prosecuting attorney and the court when notice has been served to the last person in possession of such property or published pursuant to this section. The hearing shall be held not less than ten (10) days or more than twenty (20) days after the court has been notified that the notice has been served or published. In the event the court orders the release of said exhibit to the owner, the prosecuting attorney shall photograph or mark said exhibit with an identification number and return the exhibit to the owner within ten (10) days of the court order. The court may authorize ten (10) days additional time for the return of such exhibit if the prosecuting attorney shows cause that additional time is needed to photograph or mark such exhibit. Such photograph or marked exhibit may be presented as the exhibit in any further action or proceeding. If the party entitled to such documentary exhibits is unknown, or fails to apply for the return of said exhibits, the procedure for their disposition shall be as follows:

1. After the expiration of six (6) months from the time the conviction becomes final, or if the action or proceeding has not resulted in a conviction, at any time after the judgment has become final, the court in which the case was tried shall make an order requiring such exhibits to be destroyed; provided, that no such order shall be made authorizing the destruction of any documentary exhibit if the destruction of such exhibit would prejudice the Choctaw Nation of Oklahoma;

2. No exhibit shall be destroyed or otherwise disposed of until sixty (60) days after the clerk of the court has posted a notice conspicuously in three public places in the Choctaw Nation of Oklahoma, referring to the order for the disposition, describing briefly the exhibit, and indicating the date after which the exhibit will be destroyed or otherwise disposed of.

D. The provisions of subsection B of this section shall not apply to any dangerous or deadly weapons, narcotic or poisonous drugs, explosives, or any property of any kind or character whatsoever the possession of which is prohibited by law. Any such property filed as an exhibit or held by the Choctaw Nation shall be, by order of the trial court, destroyed or sold or otherwise disposed of under the conditions prescribed in such order. This act shall not be interpreted to authorize the return of any property, the possession of which is prohibited by law.

**Shoplifting**

**Section 1341. Definitions**

As used in this section:

(1) “Merchant”, means any corporation, partnership, association or person including the Choctaw Nation of Oklahoma who is engaged in the business of selling goods, wares and merchandise in a mercantile establishment;

(2) “Mercantile establishment”, means any mercantile place of business in, at, or from which goods, wares and merchandise are sold, offered for sale or delivered from and sold at retail or wholesale;

(3) “Merchandise”, means all goods, wares and merchandise offered for sale or displayed by a merchant;

(4) “Wrongful taking”, includes stealing of merchandise or money and any other wrongful appropriation of merchandise or money.

**Section 1342. Peace officers—Arrest without warrant**

Any peace officer may arrest any person without a warrant when the officer has probable cause for believing that the person has committed larceny of merchandise held for sale in retail or wholesale establishments, when such arrest is made in a reasonable manner.

**Section 1343. Detention of suspect—Purposes**

Any merchant, or any agent or employee of the merchant, who has reasonable grounds or probable cause to believe that a person has committed or is committing a wrongful taking of merchandise or money from a mercantile establishment, may detain such person in a reasonable manner for a reasonable length of time for all or any of the following purposes:

(a) Conducting an investigation, including reasonable interrogation of the detained person, as to whether there has been a wrongful taking of such merchandise or money;

(b) Informing the police or other law enforcement officials of the facts relevant to such detention;

(c) Performing a reasonable search of the detained person and his or her belongings when it appears that the merchandise or money may otherwise be lost; and

(d) Recovering the merchandise or money believed to have been taken wrongfully. Any such reasonable detention shall not constitute an unlawful arrest or detention, nor shall it render the merchant, or his or her agent or employee criminally or civilly liable to the person so detained.

**Section 1344. Concealing un-purchased merchandise—Presumption**

Any person concealing un-purchased merchandise of any mercantile establishment, either on the premises or outside the premises of such establishment, shall be presumed to have so concealed such merchandise with the intention of committing a wrongful taking of such merchandise within the meaning of Section 1341 of this title, and such concealment or the finding of such un-purchased merchandise concealed upon the person or among the belongings of such person shall be conclusive evidence of reasonable grounds and probable cause for the detention in a reasonable manner and for a reasonable length of time, of such person by a merchant, or his or her agent or employee, and any such reasonable detention shall not be deemed to be unlawful, nor render such merchant, or his or her agent or employee criminally or civilly liable.

**Public Defender**

**Section 1355. Short Title**

This act, Section 1355 through Section 1366 of this title, shall be known and may be cited as the "Public Defender Act".

**Section 1356. Creation of the Office of the Public Defender**

The office of public defender is hereby created, and such office shall be charged upon the order of any judge of a court of the Choctaw Nation, with the protection of the rights of any defendant to a criminal action including misdemeanor cases, felony cases, traffic tickets punishable by incarceration and other cases pursuant to the Choctaw Nation Juvenile Code. Public defenders may also be appointed in civil child custody cases to represent parents, guardians or children who are determined by the court to be indigent.

**Section 1357. Appointment of Public Defender**

The office of public defender shall be assumed by such attorneys, authorized to practice law in the Choctaw Nation of Oklahoma, as shall be appointed or contracted either on a full-time or part-time basis by the Court of Appeals and shall continue to serve at the pleasure of said judges. In the event that an attorney is designated by said judges as the person in charge of such office, he or she shall be the chief public defender, and all other attorneys who may be appointed to assist such chief public defender shall be designated as assistant public defenders.

**Section 1358. Determination of need for Public Defender**

The Court of Appeals shall determine, at the time the court budget is submitted, the necessity of retaining a public defender or assistants thereto on a full-time or part-time basis for representation of unfortunate and poverty stricken persons charged with the commission of a crime, which determination shall be made after inquiry into the number impoverished or destitute defendants which have been brought before such courts during the past term and an estimate of

the number that may be charged during the next fiscal year. The Court of Appeals may consult with the District Judge and the court clerk in arriving at their decision.

**Section 1359. Compensation—Private Practice**

When the judges have determined, in accordance with Section 1357 of this title that the protection of the unfortunate and poverty-stricken defendants subject to criminal action in the Choctaw Nation of Oklahoma require the employment of a public defender on a full-time basis, such person so appointed shall not engage in any practice of law except in the performance of the duties as public defender, and shall receive a salary commensurate with his or her experience as determined by the judges; provided that if additional assistance is required by the public defender to properly fulfill the duties of the office, the public defender may authorize the employment of and appoint assistant public defenders on a full-time or part-time basis, which assistants shall be under the same restrictions as to the practice of law as the public defender, and each shall receive a salary commensurate with his or her experience as determined by the chief public defender, so long as the salary is within the budget guidelines for the office.

**Section 1360. Duties of Public Defender**

A. It shall be the duty of the office of the public defender to represent as counsel anyone who appears for arraignment without aid of counsel, and who has been informed by the judge that it is his or her right to have counsel, and who desires counsel, but is unable to employ such aid.

B. When a defendant or, if applicable, his parent or legal guardian requests representation by the public defender, such person shall submit an appropriate application, the form of which shall state that such application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. The application shall state whether or not the defendant has been released on bond. In addition, if the defendant has been released on bond, the application shall include a written statement from the applicant that he or she has contacted three (3) attorneys, licensed to practice law in the Choctaw Nation of Oklahoma, and the applicant has been unable to obtain legal counsel. A nonrefundable application fee of Fifteen Dollars ($15.00) shall be paid to the court clerk at the time the application is submitted or the fee may be taxed as costs in the case. The court may, based upon the financial information submitted, waive the fee, if the person is in custody or if the court determines that the person does not have the financial resources to pay the fee. Any fee collected pursuant to this subsection shall be retained by the court clerk as an administrative fee and deposited in the court fund. Before the court appoints the public defender based on said application, the court shall advise the defendant or, if applicable, his or her parent or legal guardian that the application is signed under oath and under the penalty of perjury. A copy of the application shall be sent to the prosecuting attorney for review upon request of the prosecuting attorney, and, upon request, the court shall hold a hearing on the issue of the eligibility for appointment of the public defender.

C. If the defendant is admitted to bail and the defendant or another person on behalf of the defendant posts a bond, other than by personal recognizance, this fact shall constitute a rebuttable presumption that the defendant is not indigent.

**Section 1361. Duties of the Chief Public Defender**

A. The chief public defender shall be an attorney who has practiced law for at least four (4) years preceding the appointment and who is licensed to practice law in the Choctaw Nation of Oklahoma. The chief public defender shall have experience in the representation of persons accused or convicted of crimes.

B. The chief public defender shall perform administrative functions as directed by the Court of Appeals.

C. The Chief public defender shall have the following powers and duties:

1. To prepare and administer an annual budget approved by the Court of Appeals;

2. To employ personnel as necessary to carry out the duties imposed upon the public defender by law and to set the salaries of such personnel, subject to the budgetary guidelines established by the Court of Appeals;

3. To solicit and maintain a current list of attorneys licensed to practice law in the Choctaw Nation of Oklahoma who are willing to accept case assignments;

4. To establish reasonable hourly rates of compensation for attorneys appointed in accordance with the this act, subject to approval by the Court of Appeals; and

5. Other duties as assigned by the Court of Appeals which relate to indigent defense.

**Section 1362. Secretaries, Investigators and Other Staff—Salaries**

Pursuant to the provisions of this act, the public defender may authorize the employment of one or more secretaries and one or more investigators and shall determine and fix the salary to be paid; provided, that such salaries are provided for in the budget of the office of the public defender.

**Section 1363. Reassignment of Case upon Conflict of Interest**

If the court determines that a conflict of interest exists between a defendant and the public defender, the case may be reassigned by the court to another public defender, an attorney who represents indigents pursuant to contract, or a private attorney who has agreed to accept such appointments.

**Section 1364. Compensation of Expert Witnesses**

Expert witness compensation for indigent defense shall be paid by the court fund pursuant to procedures established by the Court of Appeals.

### Section 1365. Appeals by Public Defender

The public defender, shall perfect appeals for those defendants which they represented in the trial court unless an appellate conflict exists between two or more such defendants, in which case the public defender shall represent one defendant and the court may assign the appeal of the case for any other defendants in the same manner as provided for conflict at the trial level in Section 1361 of this title. If an appellate conflict of interest exists between the defendant and the public defender in a case, the district court may assign the appeal of the case in the same manner as provided for conflict at the trial level in Section 1361 of this title.

### Section 1366. Costs of Representation of Public Defender

A. The court shall order any person represented by a public defender to pay the costs of representation. In assessing these costs, the court shall take into consideration the ability of the defendant to pay and any likely hardship which would result. The court may then order payment to be made in total or in installments and, in the case of installment payments, set the amount and due date of each installment.

B. Costs assessed pursuant to this section shall be collected by the court clerk and deposited in the court fund.

C. Costs of representation shall be a debt against the person represented until paid and shall be subject to any method provided by law for the collection of debts.

D. Any order directing the defendant to pay costs of representation shall be a lien against all real and personal property of the defendant and may be filed against such property and foreclosed as provided by law for such liens.

## Chapter 26. Reserved

## Chapter 27. Reserved

## Chapter 28. Reserved

## Chapter 29 Reserved

## Chapter 30 Reserved

## Chapter 31. Reserved

## Chapter 32. Criminal Discovery Code

### Section 2001. Short title—Scope

This act shall be known and may be cited as the "Criminal Discovery Code". The Criminal Discovery Code shall govern the procedure for discovery in all criminal cases in all courts in the Choctaw Nation of Oklahoma.

### Section 2002. Disclosure of evidence—Continuing duty to disclose—Time of discovery—Regulation of discovery—Reasonable cost of copying, duplicating, and videotaping

A. Disclosure of Evidence by the Choctaw Nation.

1. Upon request of the defense, the Choctaw Nation shall be required to disclose the following:

a. the names and addresses of witnesses which the Choctaw Nation intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,

b. law enforcement reports made in connection with the particular case,

c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant,

d. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons,

e. any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused,

f. any record of prior criminal convictions of the defendant, or of any codefendant, and

g. Oklahoma State Bureau of Investigation (OSBI) rap sheet/records check on any witness listed by the Choctaw Nation or the defense as a witness who will testify at trial, as well as any convictions of any witness revealed through additional record checks if the defense has furnished social security numbers or dates of birth for their witnesses, except OSBI rap sheet/record checks shall not provide dates of birth, social security numbers, home phone numbers or addresses.

2. The Choctaw Nation shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment.

3. The prosecuting attorney's obligations under this standard extend to:

a. material and information in the possession or control of members of the prosecutor's staff,

b. any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and

c. any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know.

B. Disclosure of Evidence by the Defendant.

1. Upon request of the Choctaw Nation, the defense shall be required to disclose the following:

a. the names and addresses of witnesses which the defense intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,

b. the name and address of any witness, other than the defendant, who will be called to show that the defendant was not present at the time and place specified in the information, together with the witness' statement to that fact,

c. the names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other condition bearing upon his mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, if the statement is redacted by the court to preclude disclosure of privileged communication.

2. A statement filed under subparagraph a, b or c of paragraph 1 of subsection A or B of this section is not admissible in evidence at trial. Information obtained as a result of a statement filed under subsection A or B of this section is not admissible in evidence at trial except to refute the testimony of a witness whose identity subsection A of this section requires to be disclosed.

3. Upon the prosecuting attorney's request after the time set by the court, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

a. the defendant intends to offer in evidence, except to the extent that it contains any communication of the defendant, or

b. is a report or statement as to a physical or mental examination or scientific test or experiment made in connection with the particular case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is redacted by the court to preclude disclosure of privileged communication.

C. Continuing Duty to Disclose.

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under the Criminal Discovery Code, such party shall promptly notify the other party, the attorney of the other party, or the court of the existence of the additional evidence or material.

D. Time of Discovery.

Motions for discovery may be made at the time of the district court arraignment or thereafter; provided that requests for police reports may be made subject to the provisions of Section 258 of this title. However, a request pursuant to Section 258 of this title shall be subject to the discretion of the prosecuting attorney. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

E. Regulation of Discovery.

1. Protective and Modifying Orders. Upon motion of the Choctaw Nation or defendant, the court may at any time order that specified disclosures be restricted, or make any other protective order. If the court enters an order restricting specified disclosures, the entire text of the material restricted shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

2. Failure to Comply with a Request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

F. Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting; however, any item which was obtained from the defendant by the Choctaw Nation of which copies are requested by the defendant shall be paid by the Choctaw Nation. Provided, if the court determines the defendant is indigent and without funds to pay the cost of reproduction of the required items, the cost shall be paid by the public defender system, unless otherwise provided by law.