Title III – Criminal Code

Criminal Code of the Three Affiliated Tribes of the Fort Berthold Reservation

This Act is called the Three Affiliated Tribal Criminal Code of the Fort Berthold Indian Reservation. It became effective upon its enactment on ______ 2023.

LEGISLATIVE HISTORY
Resolution #

Chapter 1 - Rules of Criminal Procedure

3-1-1 **Scope**

3-1-1.1 Except as otherwise provided by the Tribal Law and Order Code and in Rule 3-1-37, these rules govern the practice and procedure in all criminal proceedings in the Tribal Courts of the Fort Berthold Indian Reservation.

3-1-2 **Purpose and Construction**

3-1-2.1 These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

3-1-3 **Title**

3-1-3.1 These rules shall be known as the Three Affiliated Tribes Rules of Criminal Procedure and may be cited as T.A.T.R. Crim. P.

3-1-4 **Complaint**

3-1-4.1 General – All criminal prosecutions for violation of tribal law shall be initiated by complaint. The complaint is a written statement of the essential facts constituting the offense charged.

a. Contents:
   i. The name of the jurisdiction where it is filed;
   ii. The names of the person(s) complained of, if the defendant(s) name is known, and if not, then such name(s) as may be given by the complainant;
   iii. A written statement of the complainant describing in ordinary language the nature of the offense committed, including the time, and please as near as may be ascertained; and
   iv. The section of the tribal code allegedly violated.

b. Filing: The completed complaint must be filed by the tribal prosecutor with the clerk of court who shall mark thereon the date and time of filing.

c. Amendment: The judge may permit a complaint to be amended at any time before a finding or verdict if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

3-1-5 **Arrest Warrant or Summons Upon Complaint**

3-1-5.1 Written Warrant – If it appears to the judge or magistrate from the complaint, and from any affidavit filed with the complaint that there is probable cause to believe a criminal offense has been committed by the defendant, a warrant for the arrest of the defendant upon the complaint may issue directing any authorized law enforcement officer to execute it. The finding of probable cause must be based upon evidence, which may be hearsay in whole or in part, provided there is a substantial basis for believing the source of the hearsay to be credible and for believing that there is a factual

basis for the information furnished. The judge or magistrate shall deny the issuance of a warrant if he finds that there is not probable cause to believe that the offense charged has been committed by the named accused.

3-1-5.2 Telephonic Warrant – The magistrate or judge may consider information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue a warrant or summons. If the magistrate or judge decides to proceed under this rule, the following procedures apply:

a. The magistrate must place the applicant under oath and may examine the applicant and any person on whose testimony the application is based.
b. If the applicant does no more than attest to the contents of a written declaration submitted by reliable electronic means, the magistrate must acknowledge the attestation in writing on declaration. If the magistrate considers additional testimony or exhibits, the magistrate must:
    i. Ensure the testimony is recorded verbatim by electronic recording device, by court reporter or recorder, or in writing.
    ii. Ensure any recording or notes are filed, transcribed on request, and any transcription is certified as accurate.
    iii. Sign any other written record and ensure it is certified as accurate and filed; and
    iv. Ensure the exhibits are filed.
c. The applicant must prepare a proposed duplicate original of a complaint, warrant, or summons, and must read or otherwise transmit its contents verbatim to the magistrate.
d. If the applicant reads the contents of the proposed duplicate original, the magistrate must enter those contents into an original complaint, warrant, or summons. If the applicant transmits the contents by reliable electronic means, the transmission received by the magistrate may serve as the original.
e. The magistrate may modify the complaint, warrant, or summons. The magistrate must then:
    i. Transmit the modified version to the applicant by reliable electronic means; or
    ii. File the modified version and direct the applicant to modify the proposed duplicate original accordingly.
f. To issue the warrant or summons, the magistrate must:
    i. Sign the original documents.
    ii. Enter the date and time of issuance on the warrant or summons; and
    iii. Transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the magistrate's name and enter date and time on the duplicate original.
g. Absent a finding of bad faith, evidence obtained from a warrant issued under this rule is not subject to suppression on the grounds that issuing the warrant in this manner was unreasonable under the circumstances.

3-1-5.3 Summons – A summons may be issued in lieu of a warrant if the judge or magistrate has reason to believe that the named accused will appear in response to it, or if the defendant is a corporation.

a. Failure of Defendant to Appear After Summons - If a defendant who has been duly summoned fails to appear, or if there is reasonable cause to believe that he will fail to appear, a warrant of arrest shall be issued. If a defendant corporation fails to appear after having been duly summoned, the judge may proceed to trial and judgment without further process.

3-1-5.4 Form

3-1-5.4.1 Warrant – The warrant shall be in writing, in the name of the Three Affiliated Tribes of the Fort Berthold Indian Reservation and shall be signed by the issuing judge or magistrate. It shall state:

a. The defendant's name or, if unknown, a name or description by which the defendant can be identified with reasonable certainty and address, if known, of the accused who is to be arrested;

b. The date and place of issuance;
c. The description of the offense charged;
d. A command that the defendant be arrested and brought before the nearest available magistrate;

e. The name and title of the issuing judicial officer with a legible signature; and
f. It may also have endorsed upon it the amount of bail recommended or acceptable.

3-1-5.4.2 Summons – The summons shall be in the same form as the warrant except that it shall summon the defendant to appear before the person issuing it, or another person therein designated at a stated time and place and shall inform the defendant that if he fails to appear, a warrant for his arrest shall issue.

3-1-5.4.3 Execution of Service

3-1-5.4.3.1 Execution of Warrant – The warrant shall be directed to all law enforcement officers of the Three Affiliated Tribes, or outside the reservation to any law enforcement officer, and shall be executed by only a law enforcement officer. It shall be executed by the arrest of the defendant and may be executed any place upon the reservation by a law enforcement officer authorized to act within the reservation and elsewhere by any law enforcement officer authorized to act in the place of arrest. The officer need not have the warrant in his possession at the time of arrest, but if he has the warrant or a copy thereof at the time, he shall show it to the defendant immediately upon request. If the officer does not have the warrant or a copy thereof in his possession at the time of arrest, he shall inform the defendant of the offense charged and of the fact that a warrant has been issued, and upon request he shall show the warrant or a copy thereof to the defendant as soon as possible.

3-1-5.4.3.2 Service of Summons – The summons shall be served as follows:

a. By leaving a copy personally with the defendant, or
b. By mailing a copy of the same to the defendant at his known address at least fourteen (14) days prior to the stated date of his appearance, or
c. By leaving a copy, with a member of his household who is over the age of eighteen (18) years, at his place of residence.
d. The summons may be served by any person over the age of eighteen (18) years.

3-1-5.4.3.3 Return – The person executing the warrant or summons shall make a return thereof to the designated judge or magistrate before whom the defendant is brought or ordered to appear. An unexecuted warrant or summons shall be returned to the tribal judge who may either cancel the same or receive it.

a. No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any informality in the warrant or summons, and the warrant or summons may be amended so as to remedy the informality.

3-1-6 **Arrest**

3-1-6.1 General – Arrest is the taking of a person into custody in order that he may be held to answer for a criminal offense; and the taking of a person into custody in response to a citation for contempt to be held to answer to the court for the same.

3-1-6.2 Authorized Arrest – No person shall be arrested upon the reservation except by a law enforcement officer authorized to make arrests therein and then only when:

a. The officer shall have a warrant signed by a tribal judge or magistrate or an authenticated copy of a warrant signed by a judge of a court of the state of North Dakota or of the United States, commanding the arrest of such person, or the officer knows for a certainty that such warrant has been issued;

b. The offense shall have occurred in the presence of the arresting officer; or
c. The officer shall have probable cause based upon reliable information that the person to be arrested has committed an offense.

3-1-7 **Notification of Rights at Time of Arrest**

3-1-7.1 Advice of Rights – Immediately upon arrest, or as soon thereafter as practical, the arrested person shall be advised of the following rights:

a. That he has the right to remain silent.
b. That any statements made by him may be used against him in court.
c. That he has the right to obtain counsel at his own expense. That if he does not wish or obtain counsel at his own expense, he may obtain the services of the public defender at no expense to himself.
d. If he begins to answer questions or make statements, he may choose to stop the same at any time.

3-1-8 **Initial Appearance Before the Magistrate or Judge**

3-1-8.1 General – An officer making an arrest shall take the arrested person without unnecessary delay before the nearest available magistrate. If a person arrested without a warrant is brought before the magistrate, a complaint shall be filed forthwith. A copy of the complaint shall be given within a reasonable time to the arrested person and to any magistrate before whom he is brought.

3-1-8.2 Statement by Magistrate or Judge at the Initial Appearance

3-1-8.2.1 In all cases, the person arrested shall be informed of:

a. The charge against him and of any accompanying affidavit;
b. His right to remain silent;
c. That any statement made by him may be later used against him;
d. His right to advice of counsel before making any statement or answering any questions;
e. His right to obtain the services of the public defender should he choose not to hire counsel;
f. His right to be represented by his counsel at every stage of the proceedings;
g. His right to be admitted to bail pursuant to the provisions of Rule 3-1-9;
h. His right to a jury trial upon demand; and
i. His right to appear and defend in person or by counsel.

3-1-8.2.2 The magistrate or judge shall then set bail in accordance with the provisions of Rule 3-1-9.

3-1-9 **Release from Custody**

3-1-9.1 Release Prior to Trial – Any person charged with an offense shall, at his initial appearance before a magistrate or judge, be ordered released pending trial in his personal recognizance or upon the execution of an unsecured appearance bond, unless the magistrate or judge determines, in the exercise of this discretion, that release will not reasonably assure the appearance of the defendant as required. In that event the magistrate may:

a. Release him to the custody of a designated person or organization agreeing to assure the accused's appearance.
b. Release him upon reasonable restrictions on his travel, association, or place of residence during the period of release.
c. Release him upon the deposit of himself or others of bond either cash or collateral in an amount specified by the judge or a bail schedule. The judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to become due if the accused fails to appear as ordered.
d. Release him upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

e. In determining which conditions of release will reasonably assure appearance, the magistrate or judge, on the basis of available information, shall take into account the nature and circumstance of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear voluntarily at court proceedings.

3-1-9.2 Conditions Imposed Upon Release – The conditions imposed upon release shall be entered upon an appropriate order and the defendant shall be informed of the fact that a warrant for his arrest will be issued immediately upon any violation of the same.

3-1-9.3 Review by Court if Detention Continues – A person for whom conditions of release are imposed and who after 48 hours from the time of initial appearance continues to be detained as a result of his inability to meet the conditions of release, shall be entitled, upon request, to have the conditions reviewed by a magistrate or judge.

3-1-9.4 Amendment of Release Conditions – A magistrate ordering the release of a person on any conditions specified in this section may at any time amend his order to impose additional or different conditions of release.

3-1-9.5 Disposition by Forfeiture of Collateral Security – This section shall not be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where that disposition is authorized by the court.

3-1-9.6 Release During Trial – A person released before trial shall continue on release during trial under the same terms and conditions as were previously imposed unless the court determines that other terms or conditions or termination of release are necessary to assure his presence during trial or to assure that his conduct will not obstruct the orderly and expeditious progress of the trial.

3-1-9.7 Release Pending Appeal – Application for release after judgment of conviction shall be made in the first instance in the trial court. If the trial court refuses to release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for such action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the MHA Supreme Court or one of the judges thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the Appellee. The MHA Supreme Court or a judge thereof may order the release of the appellant pending disposition of the motion.

3-1-9.8 Forfeiture of Bail

a. Declaration – If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail.
b. The court may direct that a forfeiture be set aside if it appears that justice does not require the enforcement of the forfeiture.
c. Enforcement – If a forfeiture has not been set aside, the court shall enter a judgment of default and execution may issue thereon. By entering into a bond, the obligors submit to the jurisdiction of the tribal court and irrevocably appoint the clerk of tribal court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced without the necessity of an independent action after service of notice by mail at the obligor last-known address.

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3-1-9.9 Exoneration – If the condition of the bond has been satisfied or the forfeiture thereof set aside, the court shall exonerate the obligors and release any bail. A surety may be exonerated by a cash deposit in the amount of the bond or by timely surrender of the defendant into custody.

3-1-9.10 Supervision of Detention – The court shall supervise the detention of the defendant pending trial, for the purpose of preventing all unnecessary detention.

3-1-9.11 Release on Bail by Law Enforcement Officer – Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. Police shall have available a bail schedule prepared by the court which shall be used for setting bond where such conditions of release are authorized but the court. Any police officer who refuses to release an accused on bail shall bring such accused before a tribal judge or magistrate for review at the first available opportunity without unnecessary delay.

3-1-10 **Joinder of Offenses and Defendants**

3-1-10-.1 Joinder of Offenses – Two or more offenses may be charged in the same complaint with a separate count for each offense if the offenses charged are of the same or similar character or are based upon the same act or transaction or on two or more acts or transactions connected or constituting parts of the common scheme or plan.

3-1-10.2 Joinder of Defendants – Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction or in the same series or acts or transactions constituting one or more offenses. Such defendants may be charged in one or more counts together or separately and all the defendants need not be charged in each count.

3-1-11 **Arraignment**

3-1-11.1 General – The arraignment is the bringing of an accused before the court, informing him of his rights and of the charge against him, receiving his plea, and setting bail as appropriate in accordance with Rule 3-1-9.

3-1-11.2 Where and How Held – The arraignment shall be held in open court without unnecessary delay after the accused is taken into custody or after the initial appearance if appropriate, and in no instance shall the arraignment be later than the next regularly scheduled session of court in cases where the defendant has not met the conditions of release ordered pursuant to Rule 3-1-9.

3-1-11.3 Rights of Accused – At the arraignment, the accused shall be informed of:

a. Those rights as set out in Rule 3-1-8.2.1.
b. The right to enter a plea of guilty or not guilty to the charge against him; and
c. Before an accused is required to plead to any criminal charge, the judge or magistrate shall:
    i. Read the complaint to the accused and determine that he understands the same and the section of the tribal code which he is charged with violating, including the maximum authorized penalty; and
    ii. Advise the accused that the arraignment will be postponed should he desire to consult with counsel.

3-1-11.4 Receipt of Plea at Arraignment

3-1-11.4.1 If the defendant refuses to plead or if the defendant's corporation fails to appear, the court shall enter a plea of not guilty. When a defendant has entered a plea of not guilty or when the court has entered a plea of not guilty for him, the judge shall then inform him of a trial date and set conditions of bail prior to trial.

a. If the accused pleads "guilty" to the charge, the judge shall not accept the plea without first determining that:
   i. The defendant understands that by entering a plea of guilty, he waives his right to further trial of any kind, his right to confront his accuser, his right to remain silent and his rights against self-incrimination;
   ii. That the plea is voluntarily made and is not the result of threats, promises, or coercion;
   iii. Whether the plea is a result of plea discussions made between the prosecuting attorney and the defendant or his attorney; and
   iv. That a basis in fact exists for the acceptance of the plea.

3-1-11.5 Plea Agreement Procedure

3-1-11.5.1 The prosecuting attorney and the attorney for the defendant may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecuting attorney will move for dismissal of other charges or will recommend or not oppose the imposition of a particular sentence or will do both. The court shall not participate in any such discussions.

3-1-11.5.2 If a plea agreement has been reached by the parties which contemplates entry of a plea of guilty in the expectation that a specific sentence will be imposed or that other charges before the court will be dismissed, the parties shall disclose the same to the court in open court at the time that the plea is offered. Thereupon the court may accept or reject the agreement.

3-1-11.5.3 If the court accepts the plea agreement, it shall inform the defendant that it may integrate into the judgment and sentence the disposition called for in the plea agreement or another disposition which may be more favorable to the defendant than that provided for in the plea agreement.

3-1-11.5.4 If the court rejects the plea agreement, it shall inform the parties of this fact, and afford the defendant the opportunity to withdraw his plea, advise the defendant that if he persists in his guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

3-1-11.5.5 If a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or withdrawn, or if judgment on a plea of guilty is reversed on review, neither the plea discussion nor any resulting plea, agreement, or reversed judgment shall be admissible in any subsequent proceeding of this charge whether criminal, civil, or administrative.

3-1-11.6 Judgment after Acceptance of Plea – If the judge accepts the guilty plea of the defendant, he may thereupon impose sentence and enter judgment or he may defer sentencing for a reasonable time to obtain any information he deems necessary for the imposition of a just sentence. In every case, the defendant shall be afforded an opportunity to inform the court of facts in mitigation of the sentence and to address the court personally by way of allocation.

3-1-11.7 Plea put in by Defendant unless Corporation – In no case shall a plea of guilty be put in by anyone except the defendant himself in open court, unless the defendant is a corporation, in which case the plea may be put in by counsel.

3-1-12 **Withdrawal of Plea**

3-1-12.1 Discretion to Withdraw Plea – The court may, in its discretion, allow a defendant to withdraw a plea and enter a different plea whenever it appears that the interest of justice and fairness would be served by doing so.

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3-1-13 **Pleadings and Before Trial**

3-1-13.1 Pleadings – Pleadings in criminal proceedings shall be the complaint and the plea of not guilty or guilty.

3-1-13.2 Motion for Lack of Jurisdiction – A motion that the court lacks jurisdiction may be made at any time while the case is pending.

3-1-13.3 Pretrial Motions – The following defense, objections, and requests must be raised by pretrial motion if the basis for the motion is then readily available, and the motion can be determined without a trial on the merits:

a. A defect in the institution of the prosecution, including:
    i. Improper venue.
    ii. Charging delay.
    iii. A violation of the right to speedy trial.
    iv. Selective or vindictive prosecution.
    v. An error in the preliminary hearing.
b. A defect in the complaint, including:
    i. Joining two or more offenses in the same count (duplicity).
    ii. Charging the same offense in more than one count (multiplicity).
    iii. Lack of specificity.
    iv. Improper joinder; and
    v. Failure to state an offense.
c. Suppression of evidence.
d. Severance of charges or defendants under Rule 3-1-14.
e. Discovery under Rule 3-1-17.

3-1-13.4 Notice of Intention to Use Evidence – At the arraignment or as soon afterward as practicable:

a. The tribal prosecutor may notify the defendant of its intent to use specified evidence at trial in order to afford the defendant an opportunity to object before the trial pursuant to Rule 3-1-13.3(c).
b. The defendant may have an opportunity to move to suppress evidence under Rule 3-1-13.3(c), request notice of the prosecution's intent to use in its evidence-in-chief at trial, any evidence that the defendant may be entitled to discover under Rule 3-1-17.

3-1-13.5 Notice of Alibi Defense – A defendant who intends to offer an alibi defense must serve written notice on the prosecuting attorney of any intended alibi defense and file the notice within the time provided for the making of pretrial motions or afterwards as the court directs. The notice must state:

a. Each specific place where the defendant claims to have been at the time of the alleged offense; and
    i. The name, address, and telephone number, if any, of each witness on whom the defendant intends to rely.
b. If the defendant serves notice pursuant to this section, the prosecuting attorney must disclose in writing to the defendant or the defendant's attorney:
    i. The name, address, and telephone number, if any, of each witness the prosecution intends to rely on to establish defendant's presence at the scene of the alleged offense; and
    ii. Each prosecution rebuttal witness to the defendant's alibi defense.

c. Unless the court directs otherwise, the prosecuting attorney must give its Rule 3-1-13.5(b) disclosure within fourteen (14) days after the defendant serves notice of an intended alibi defense under Rule 3-1-13.5(a), but not later than fourteen (14) days before trial.
d. Both the defendant and the prosecuting attorney must promptly disclose in writing to the other party the name, address, and telephone number, if any, of each additional witness if:
   i. The disclosing party learns of the witness before or during the trial; and
   ii. The witness should have been disclosed under Rule 3-1-13.5(a or b) if the disclosing party had known of the witness earlier.
e. For good cause, the court may grant an exception to any requirement of Rule 3-1-13.5(a-d).
f. If a party fails to comply with this rule, the court may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not prohibit the defendant's right to testify.
g. Evidence of an intention to rely on an alibi defense, later withdrawn, or of a statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

3-1-13.6 Notice of Lack of Criminal Responsibility by Reason of Mental Disease or Defect Defense – A defendant who intends to assert a defense of lack of criminal responsibility by reason of mental disease or defect at the time of the alleged offense must so notify the prosecuting attorney in writing and file notice within the time provided for filing a pretrial motion or at any later time the court sets. A defendant who fails to do so cannot later rely on the defense of lack of criminal responsibility. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.

a. If a defendant intends to introduce expert evidence relating to a mental disease or defect or any other mental condition of the defendant bearing on the issue of whether the defendant had the mental state required for the offense charged, the defendant must, within the time provided for filing pretrial motion or at any later time the court sets, notify the prosecuting attorney in writing of this intention and file the notice. The court may, for good cause, allow the defendant to file the notice late, grant the parties additional trial-preparation time, or make other appropriate orders.
b. In an appropriate case the court may, upon motion of the prosecuting attorney, order the defendant to submit to an examination by one or more mental health professionals retained by the tribal government through the prosecuting attorney.
   i. No statement made by a defendant in the course of any examination conducted under this rule (whether conducted with or without the defendant's consent), no testimony based on the statement, and no other fruits of the statement may be admitted in evidence against the accused in any criminal, civil, or administrative proceeding except on an issue regarding mental condition on which the defendant has introduced evidence.
c. If the defendant fails to give notice under Rule 3-1-13.6(a) or does not submit to an examination when ordered under Rule 3-1-13.6(b), the court may exclude any expert evidence from the defendant on the issue of the defendant's mental disease, mental defect, or any other mental condition bearing on the defendant's guilt.
d. Evidence of an intention of which notice was given under Rule 3-1-13.6(a) or (b), which is later withdrawn, is not, in any civil, criminal, or administrative proceeding, admissible against the person who gave notice of the intention.

3-1-13.7 Motion Date – The Court may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing. At any time before the trial, the court may extend the deadline for pretrial motions. If the court does not set one, the deadline is the start of the trial.

3-1-13.8 Ruling on Motion – A motion before trial shall be determined before trial unless the court finds good cause to defer a ruling. The Court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in determining a motion, the court shall state its finding on the record.

3-1-13.9 Effect of Failure to Raise Defense or Objections – A failure to make the motions requested to be made prior to trial shall constitute a waiver thereof unless the court for good cause shown grants relief from such waiver.

3-1-13.10 Records – All proceedings at the hearing, including the findings of fact and conclusions of law made orally, shall be recorded verbatim.

3-1-13.11 Effect of Determination – If the court grants a motion based on a defect in instituting the prosecution or in the complaint, it may order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint.

3-1-14 **Trial Joinder**

3-1-14.1 Joinder of Complaints – The court may order two or more complaints to be tried together if the offenses and the defendants, if there are more than one, could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under a single complaint. The court's order is discretionary.

3-1-14.2 Separate Trials for Defendants – If prejudice would result to the defendants or the prosecution, the court may order separate trials.

3-1-15 **Relief from Prejudicial Joinder**

3-1-15.1 Joinder of Offenses or Defendants – If the joinder of offenses or defendants in a complaint or consolidation for trial appears to prejudice a defendant or prosecution, the court may order separate trial on the counts, sever the defendants' trials, or provide any other relief that justice requires.

3-1-15.2 Inspection of Evidentiary Use of Defendant's Statement – Before ruling on a defendant's motion to sever, the court may order the prosecuting attorney to deliver to the court for in-camera inspection any defendant's statements that the prosecution intends to use as evidence.

3-1-16 **Depositions**

3-1-16.1 When Taken – At any time after the defendant has appeared, any party may take testimony of any person by deposition including audio-visual depositions, except:

a. The defendant may not be deposed unless the defendant consents and the defendant's lawyer, if the defendant has one, is present or the defendant waives the lawyer's presence.
b. A discovery deposition may be taken after the time set by the court only with leave of court.
c. A deposition to perpetuate testimony may be taken only with leave of court, which must be granted upon motion of any party if it appears that the deponent may be able to give material testimony but may be unable to attend a trial or hearing.
d. Upon a motion of a party or of the deponent and upon a showing that the taking of the deposition does or will unreasonably annoy, embarrass, or oppress, or cause undue burden or expense to, the deponent or a party, the court in which the prosecution is pending may order that the deposition not be taken or continued or may limit the scope and manner of its taking. Upon demand of the objecting party or deponent, the taking of the deposition may be suspended for the time necessary to make the motion.

e. A victim may refuse to participate in a deposition requested by the defendant or the defendant's attorney.

3-1-16.2 Motion to Perpetuate Testimony – If a party is granted leave to take a deposition to perpetuate testimony, the court, upon motion of the party and a showing of probable cause to believe that the deponent would not respond to a subpoena, by order must direct law enforcement officer to take the deponent into custody and hold the deponent until the taking of the deposition begins but shall not hold longer than six (6) hours and then keep the deponent in custody during the taking of the deposition. If the motion is by the prosecuting attorney, the court, upon further motion by the prosecuting attorney and a showing of probable cause to believe the defendant would not otherwise attend the taking of the deposition, may make the same order for the defendant.

3-1-16.3 Written Notice of Deposition – The party at whose instance the deposition is to be taken shall give all parties reasonable written notice of the name and address of each person to be examined, the time and place for the deposition and the manner of recording. Upon motion of a party or of the deponent, the court may change the time, place, or manner of record.

3-1-16.4 Manner of Deposition – The deposition must be taken in the manner provided in civil actions.

3-1-16.5 Location of Deposition – The deposition must be taken at any location agreed upon by the parties or a location designated by the court.

3-1-16.6 Presence of Defendant

3-1-16.6.1 The defendant may be present at the taking of a discovery deposition, but if the defendant is in custody, the defendant may be present only with leave of court.

3-1-16.6.2 The defendant must be present at the taking of a deposition to perpetuate testimony, but if the defendant's counsel is present at the taking:

a. The court may excuse the defendant from being present if the defendant appears before the court and understandingly and voluntarily waives the right to be present.
b. The taking of the deposition may continue if the defendant, present when it commenced, leaves voluntarily; or
c. If the deposition's taking is presided over by a judicial officer, the judicial officer may direct that the deposition's taking, or part of the deposition's taking be conducted in the defendant's absence if the judicial officer has justifiably excluded the defendant because of the defendant's disruptive conduct.

3-1-16.6.3 If the defendant is not present at the commencement of the taking of the deposition to perpetuate testimony and the defendant's absence has not been excused:

a. Its taking may proceed, in which case the deposition may be used only as a discovery deposition; or
b. If the deposition is taken at the instance of the prosecution, the prosecuting attorney may direct that commencement of its taking be postponed until the defendant's attendance can be obtained, and the court, upon application of the prosecuting attorney, by order may direct a law enforcement officer to take the defendant into custody during the taking of the deposition.

3-1-16.7 Payment of Deposition Costs – If the deposition is taken at the instance of the prosecution, the court may, and in all cases where the defendant is unable to bear the expense the court must, direct the tribal government to pay the expense of the taking of the deposition, including the reasonable expenses of travel and subsistence of defense counsel and, if the deposition is to perpetuate

testimony or if the court permits for a discovery deposition, of the defendant in attending the deposition.

3-1-16.8 Use of Deposition at Trial – So far as otherwise admissible under the rules of evidence, a deposition to perpetuate testimony may be used as substantive evidence at the trial or upon any hearing if the deponent is unavailable as defined in Fed. R. Ev. 804(a). A discovery deposition may then be used if the court determines that the use is fair considering the nature and extent of the total examination at the taking thereof, but it may be offered by the prosecution only if the defendant was present at its taking. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering of all of it that is relevant to the part offered.

3-1-16.9 Objections to Deposition – Objections to receiving in evidence a deposition or part of a deposition may be made as provided in civil actions.

3-1-16.10 Agreement on Depositions – Nothing in this rule precludes the taking of a deposition, orally or upon written questions, or the use of a deposition, by agreement of the parties.

3-1-17 **Discovery and Inspection**

3-1-17.1 Disclosure of Evidence by Prosecuting Attorney – Information subject to disclosure by the prosecuting attorney:

a. Upon a defendant's written request, the prosecuting attorney must disclose to the defendant and make available for inspection, copying, or photographing all of the following:
   i. Any relevant written or recorded statement by the defendant, if:
      1. the statement is within the prosecution's possession, custody, or control; and
      2. the prosecuting attorney knows, or through due diligence could know, that the statement exists;
   ii. The portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by a person the defendant knew to be an agent of state, tribal or federal government;
   iii. The defendant's recorded testimony in any judicial proceeding relating to the charged offense; and
   iv. The substance of any other oral statement made by the defendant, before or after arrest, in response to interrogation by a person the defendant knew to be an agent of the state, tribal or federal government.
b. Upon a defendant's request, if the defendant is an organization such as a corporation, partnership, association, or labor union, the prosecution must disclose to the defendant any statements described in Rule 3-1-17.1(a) if the prosecution contends that the person making the statement:
   i. Was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or
   ii. Was personally involved in the alleged conduct because of that person's position as the defendant's director, officer, employee, or agent.
c. Upon a defendant's written request, the prosecution must furnish the defendant with a copy of the defendant's prior criminal record, if any, that is within the prosecution's possession, custody, or control if the prosecuting attorney knows, or through due diligence could know, that the record exists.
d. Upon a defendant's written request, the prosecuting attorney must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings, or places, or copies or portions of any of these items, if the item is within the prosecution's possession, custody, or control, and:

   i. The item is material to prepare the defense;
   ii. The prosecution intends to use the item in its case-in-chief at trial; or
   iii. The item was obtained from or belongs to the defendant.

e. Upon the defendant's written request, the prosecuting attorney must permit a defendant to inspect and to copy or photograph the results or reports of any physical or mental examinations, and of any scientific tests or experiments if:
   i. The item is within the prosecution's possession, custody, or control;
   ii. The prosecuting attorney knows, or through due diligence could know, that the item exists; and
   iii. The item is material to prepare the defense of the prosecution intends to use the item in its case-in-chief at the trial.

f. Upon the defendant's written request, the prosecution must give to the defendant a written summary of any testimony that the prosecution intends to use under Fed.R.Ev.702, 703, or 705 during its case-in-chief at trial. If the prosecution requests discovery under Rule 3-1-17.2.1(c)(ii) and the defendant complies, the prosecution must, upon defendant's written request, give to the defendant a written summary of testimony that the prosecution intends to use under Fed.R.Ev.702, 703, or 705 as evidence at trial on the issue of the defendant's mental condition. Expert witness summaries must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications.

3-1-17.1.2 Except as Rule 3-1-17.1 provides otherwise, this rule does not authorize the discovery or inspection of reports, memoranda, or other internal prosecution documents made by an attorney for the prosecution or other prosecution agent in connection with investigating or prosecuting the case. Nor does this rule authorize discovery or inspection of statements made by prosecution witnesses or prospective prosecution witnesses (other than the defendant) to agents of the prosecution except as provided in Rule 3-1-17.4

3-1-17.2 Defendant's Disclosure of Evidence – Information subject to disclosure by the defendant:

a. If a defendant, in writing, requests disclosure under Rule 3-1-17.1(d), and the prosecution complies, then the defendant, upon written request of the prosecution, must permit the prosecution to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items if:
   i. The item is within the defendant's possession, custody, or control; and
   ii. The defendant intends to use the item in the defendant's case-in-chief at trial.

b. If a defendant, in writing, requests disclosure under Rule 3-1-17.1(e) and the prosecution complies, the defendant, upon written request of the prosecution, must permit the prosecution to inspect and to copy or photograph the results or reports of any physical or mental examination and of any scientific test or experiment if:
   i. The item is within the defendant's possession, custody, or control; and
   ii. The defendant intends to use the item in the defendant's case-in-chief at trial or intends to call the witness who prepared the report, and the report relates to the witness's testimony.

c. The defendant must, upon written request of the prosecution, give to the prosecution a written statement of any testimony that the defendant intends to use under Fed.R.Ev.702, 703, or 705 as evidence at trial, if:
   i. The defendant requests disclosure under Rule 3-1-17.1(f) and the prosecution complies; or
   ii. The defendant has given notice under Rule 3-1-13.6(a) with the intent to present expert testimony on the defendant's mental condition.
      1. This summary must describe the witness's opinions, bases and reasons for these opinions, and the witness's qualifications.

3-1-17.2.1 Except for scientific or medical reports, Rule 3-1-17.2 does not authorize the discovery or inspection of reports, memoranda, or other documents made by the defendant or the defendant's attorney or agent during the case's investigation or defense or of statements made to the defendant, or the defendant's attorney or agent, by the defendant, a prosecution or defense witness, or a prospective prosecution or defense witness.

3-1-17.3 Continuing Duty to Disclose Evidence and Regulation by the Court

3-1-17.3.1 A party who discovers additional evidence or material before or during trial must promptly disclose its exitance to the other party or the court if:

a. The evidence or material is subject to discovery or inspection under this rule; and
b. The other party previously requested, or the court ordered, its production.

3-1-17.3.2 Regulating discovery by the court:

a. At any time, the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.
b. Upon motion, the court may permit a party to show good cause by a written statement that the court will inspect in-camera. If relief is granted following a showing in-camera, the court must preserve the entire text of the party's statement under seal.

3-1-17.3.3 If a party fails to comply with Rule 3-1-17.3 or with an order issued under this rule, the court may:

a. Order that party to permit the discovery or inspection: Specify its time, place, manner, and prescribe other just terms and conditions;
b. Grant a continuance of the trial;
c. Prohibit that party from introducing undisclosed evidence;
d. Relieve the requesting party from making disclosure required under this rule; or
e. Enter any other order that is just under the circumstances.

3-1-17.3.4 Rule 3-1-13.5 governs discovery of alibi witnesses.

3-1-17.4 Demand for Production of Names, Addresses, and Statements of Witnesses; Codefendant Statements; and Statements of Other Persons

3-1-17.4.1 Upon a defendant's written request, the prosecution must furnish the defendant:

a. A written list of the names and addresses of all prosecution witnesses that the prosecution intends to call during its case-in-chief;
b. Any statements made by the listed prosecution witnesses; and
c. Any records of prior criminal convictions of the listed prosecution witnesses that the prosecuting attorney knows, or through due diligence could know, that the records exist.

3-1-17.4.2 A prosecutor may not disclose victim contact information, including the address of the victim, if the victim has requested nondisclosure. If a defendant makes a written request for discovery of the names, addresses, and statements of witnesses, the prosecuting attorney must be allowed to perpetuate the testimony of those witnesses under Rule 3-1-16.2.

3-1-17.4.3 Upon a defendant's written request, the prosecution must permit the defendant to inspect and to copy or photograph any relevant written or recorded confession, admission, or statement of a codefendant, or copies of any of these items if:

a. The item is within the prosecution's possession, custody, or control; and
b. The prosecution knows, or through due diligence could know, that the item exists.

3-1-17.4.4 Upon a defendant's written request, the prosecution must permit the defendant to inspect and to copy or photograph any relevant written or recorded statement of any person if:
a. The statement is within the prosecution's possession, custody, or control;
b. The prosecuting attorney knows, or through due diligence could know, that the statement exists; and
c. The statement is not available to the defendant under Rules 3-1-17.1 or 3-1-17.4.1 and 3-1-17.4.2.

3-1-17.4.5 The term "statement" as used in Rule 3-1-17.4 means:
a. A written statement made by the witness, codefendant, or other person and signed or otherwise adopted by the declarant; or
b. A stenographic, mechanical, electronic, or other record, or a transcription of a record, which is a verbatim recital of an oral statement made by a witness, codefendant, or other person to an agent of the prosecution and recorded contemporaneously with the making of an oral statement.

3-1-18 **Search Warrant Defined: Search and Seizure**

3-1-18.1 Search warrant – A search warrant is a written order, signed by a tribal judge or magistrate, directed to a tribal law enforcement officer, ordering him to conduct a search of a particular place, which is described in the order, and to seize and take possession of the property described in the order.

3-1-18.2 Authority to Issue – Every tribal judge or magistrate shall have the power to issue search warrants for the search and seizure of property and premise of any person under the jurisdiction of the court.

3-1-18.3 Property Which May Be Seized with a Warrant – A warrant may authorize the seizure of:
a. Property that constitutes evidence of the commission of a criminal offense; or
b. Contraband, the fruits of a crime, or things otherwise criminally possessed; or
c. Property designed or intended for use, or which is or has been used as the means of committing a criminal offense.

3-1-18.4 Issuance and Contents – No warrant shall be issued except upon probable cause. Said probable cause shall be supported by written sworn statement of the applicant for said warrant and such others who have reliable information supporting probable cause. The magistrate's finding of probable cause may be based upon hearsay in whole or in part.

3-1-18.5 Execution and Return with Inventory – The warrant shall be executed only by tribal law enforcement officers. The officer taking property under warrant shall give the person from whom or from whose promises the property was taken a copy of the warrant and had a receipt for the property taken, if he is present, or if not present, shall leave a copy and receipt at the place from which the property was taken. The return shall be made within the time limit shown on the warrant, which shall not be longer than ten (10) days from the date of issuance and shall be accompanied by a written inventory of any property seized. Warrants not returned within the time specified shall be void.

3-1-18.6 Motion for Return of Property – A person may make a motion to the trial court for the return of the property seized on the grounds that he is entitled to lawful possession of the property and that the same was illegally seized. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted, the property shall be returned and shall not be admissible as evidence at any hearing or trial. This motion shall be made before a complaint has been filed, if made after a complaint is filed, it shall be treated as a motion to suppress under Rule 3-1-13.

3-1-18.7 Return of Papers to Clerk – The magistrate before whom the warrant is returned shall attach to the warrant a copy of the return, inventory, and all other papers in connection with the warrant and shall file them with the clerk of the tribal court.

3-1-19 **Search Without Warrant**

3-1-19.1 No tribal officer shall conduct any search without a valid warrant except:

a. Incident to a lawful arrest;
b. With the consent of the person being searched when such consent is given in writing;
c. Upon probable cause to believe that the person searched may be armed and dangerous; or
d. When the search is of a motor vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

3-1-20 **Disposition of Seized Property**

3-1-20.1 Return of Seized Property – After final judgment has been entered, unless a motion made pursuant to Rule 3-1-18.6 has been granted, the court shall hold a hearing to determine ownership of all property seized by the police. Upon satisfactory proof of ownership, and after the time for appeal has passed, the property shall be delivered to the owner unless such property is contraband or illegal to possess in which case it shall be sold at public auction, retained for the use of the tribe, or destroyed.

3-1-21 **Subpoena**

3-1-21.1 For Attendance of Witness and Production of Evidence Form: Issuance – Every subpoena shall be issued by the judge or the clerk of court and shall state the name of the court and the title of the action and shall command each person to whom it is directed to attend and bring with him what is demanded and give testimony at a time and place specified therein.

3-1-21.1.2 A subpoena may be issued upon the request of any party or upon the court's own initiative and shall compel the attendance of a witness or the production of books, records, documents, or other physical evidence necessary to the fair determination of the case and not an undue burden on the person possessing the evidence.

3-1-21.2 Costs – Every witness answering a subpoena shall be entitled to a fee of fifteen (15) dollars for each day his service is required by the court. In addition, the court may order payment of reasonable travel expenses not to exceed the current established tribal mileage rate and five (5) dollars per diem.

a. The fees and expenses provided for in this section shall be paid by the defendant upon completion of the trial if he requested the subpoena. If the tribe requested the subpoena, the fees and expenses incidental thereto may be taxed as costs against the defendant if he is found guilty, provided that no defendant shall be incarcerated solely because he is unable to pay such costs immediately.
b. If the defendant is indigent, the fees and expenses provided for by this rule shall be paid by the Tribe and may be taxed at cost if the defendant is found guilty.
c. Costs of production of books, documents and other physical evidence shall be as allowed by the court and shall be borne by the party requesting the production of the same.

3-1-21.3 Frivolous Requests – If the court finds that the subpoena was not requested in good faith but with a frivolous or malicious intent it may order the requesting party to reimburse the tribe for any expenses incurred under this section and such order shall constitute a judgment upon which execution may levy.

3-1-21.4 Service – A subpoena may be served at any place within or without the confines of the reservation, but any subpoena to be served outside the reservation shall be issued by a judge of the tribal court.

3-1-21.4.1 A subpoena may be served by any tribal police officer or other person designated by the court for such purpose. Service shall be made by delivering a copy of the subpoena to the person named or by leaving a copy at his place of residence with any competent person sixteen (16) years of age or older who also resides there.

3-1-21.4.2 Proof of service shall be filed with the clerk of court by noting on the subpoena the date, time and place of service and the name of the person who served the subpoena.

3-1-21.5 Taking of Deposition – An order to take a deposition authorizes the issuance by the judge of subpoenas for the person named or described therein.

a. A witness whose deposition is to be taken may be required by subpoena to attend any place designated by the trial court.

3-1-21.6 Contempt: Failure to Obey Subpoena – Failure of a person, in the absence of justification satisfactory to the court, may be deemed contempt of the court from which the subpoena was issued, and a bench warrant may be issued for his arrest.

3-1-22 Place of Trial

3-1-22.1 Where Trial Shall be Held – In all criminal prosecutions the trial shall be in the tribal courthouse a in New Town, North Dakota, or such other place as may be designated by the Tribal Council through legislative authority.

3-1-23 Evidence

3-1-23.1 The Federal Rules of Evidence shall apply to all criminal proceedings in the Fort Berthold Tribal Court.

3-1-24 Time for Jury Request

3-1-24.1 Request and Composition of Juries – A person charged with a crime which has a jail sentence must request a jury trial at the arraignment or submit a written request within ten (10) days from the date of arraignment. Juries shall be comprised of six (6) residents of the reservation and residents of the counties which are located in the reservation.

3-1-24.2 When Jury Trial Not Required – If the court determines no jail sentence will be imposed, then no jury trial shall be required.

3-1-24.3 Trials Without Jury – In a trial held before a judge or magistrate of the court a general finding of guilty or not guilty shall be made.

3-1-25 Jury Trial Selection – Repealed (see Title 1, Chapter 2, Jury Selection)

3-1-26 Sentencing and Judgment

3-1-26.1 Imposition of Sentence – Sentence shall be imposed or other authorized disposition made without unreasonable delay. Pending disposition, the court may commit the defendant or continue or alter the bail. Before imposing sentence, the court shall:

a. Afford counsel an opportunity to speak on behalf of the defendant, and
b. Address the defendant personally to determine whether he wishes to make a statement in his own behalf or wishes to present any information in mitigation of punishment or which would require the court to withhold pronouncement of judgment or sentence; if the defendant expresses a desire to do so, the court shall provide him with such opportunity. The prosecution shall be given an opportunity to be heard on any matter material to the imposition of sentence.

3-1-26.2 Notification of Right to Appeal – After imposing sentence in a case which has gone to trial with a finding of guilty, the court shall advise the defendant of his right to appeal. There shall be no duty on the court to advise the defendant of any right to appeal after sentence is imposed following a plea of guilty.

3-1-26.3 Judgment – A judgment of conviction shall set forth the plea, the verdict, and the adjudication and sentence. If the defendant is found not guilty or is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered by the clerk.

3-1-26.4 Presentence Investigation – All matters concerning presentence investigation rest within the sole d discretion of the trial judge.

3-1-27 **New Trial**

3-1-27.1 Granting of New Trial – The court may, upon motion of the defendant, grant a new trial to prevent manifest injustice. The motion must be made in writing and must specify the defects and errors complained of or reason for the motion. A motion for new trial must be made within seven (7) days after verdict or finding of guilt unless it is based upon newly discovered evidence, in which case it must be made within thirty (30) days of said discovery and within two (2) years of final judgment.

3-1-28 **Arrest of Judgment**

3-1-28.1 Motion to Arrest Judgment – The court on motion of a defendant shall arrest judgment if:

a. The complaint does not charge an offense; or
b. The court was without jurisdiction of the offense charged.

3-1-28.2 Such motion must be made within seven (7) days of pronounced judgment.

3-1-29 **Clerical Mistakes**

3-1-29.1 Correction of Mistake or Errors – Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

3-1-30 **Probation**

3-1-30.1 Applicability – Where a sentence of imprisonment has been imposed on a convicted offender, the tribal court may, in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the court, provided that the period of probation shall not exceed eighteen months.

3-1-30.2 Violation of Probation – Any person who violates the terms of his probation may be required by the court to serve the sentence originally imposed or such park of it as the court may determine to be suitable giving consideration to all the circumstances, provided that such revocation of probation shall not be ordered without a hearing before the court at which the offender shall have the opportunity to explain his actions.

3-1-31 **Parole and Pardon**

3-1-31.1 Tribal Parole and Pardon Board – The Chairman of Mandan, Hidatsa, Arikara Nation shall establish and appoint an MHA Tribal Parole and Pardon Board (hereinafter "Board") which shall be comprised of three (3) members who shall serve a four (4) year term. The Board shall be comprised of one (1) attorney of good standing licensed in any jurisdiction of the United States and two members of the tribal membership at large.

a. The Board will meet quarterly to review all parole and pardon requests;

b. The Board must publish the dates of all scheduled meetings;
c. All applications for parole or pardon of a tribally imposed sentence must be submitted to the Board forty-five (45) days prior to the scheduled meeting of the Board;
d. The Board must notify the victim(s) of the scheduled meeting date on requests from a convicted offender in which the person was a victim of the offense of conviction;
e. The Board will consider all germane information regarding the conviction, including new mitigating information regarding the conviction, the impact of substance abuse and behavioral health issues and needs, the personal and social development and achievements of the applicant, and any significant problems or circumstances the applicant may be encountering due to the conviction;
f. The Board shall have authority to review all documents on file with the tribal court regarding the crime of conviction; and
g. The Board shall issue a recommendation to grant or deny the request for parole or pardon which shall be submitted to the Chairman of MHA Nation who must concur or reject the recommendation.

3-1-31.2 Eligibility of Parole or Pardon – Any person sentenced by the tribal court to detention or labor shall be eligible for parole or pardon after the person has served one-half (1/2) of the sentence imposed by the tribal court.

3-1-31.3 Violations of Parole or Pardon – Any person who violates the conditions of his parole or pardon may be required by the court to serve the whole of the original sentence, provided that such revocation of parole or pardon shall not be ordered without a hearing before the Board at which time the offender shall have the opportunity to explain his actions.

3-1-32 **Appeals**

3-1-32.1 Filing the Notice of Appeal – An appeal from an order or final judgment of the tribal court permitted as of right to the MHA Supreme Court shall be taken by filing a notice of appeal with the clerk of the tribal court within the time allowed by Rule 3-1-32.2.

3-1-32.2 Time for Appeal: When Taken - The notice of appeal shall be filed within ten (10) days after entry of the judgment or order appealed from. If a motion is made pursuant to Rule 3-1-26 or Rule 3-1-27, notice of appeal must be filed within ten (10) days after the entry of the order denying the motion. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket. The tribal court may, in its discretion, extend the time for filing a notice of appeal for a period not to exceed thirty (30) days from the expiration of the time prescribed by this subdivision.

3-1-32.3 Content of Notice of Appeal – The notice of appeal shall specify the party or parties taking the appeal, and shall designate the verdict, judgment, or order or part thereof appealed from.

3-1-32.4 Service of Notice of Appeal – The clerk of tribal court shall serve notice of the filing of the notice of appeal either by personal service on the defendant or by mail addressed to him, and by mailing a copy thereof to the prosecutor and the defendant's attorney of record, if any. The clerk also dockets the notice of appeal in the tribal appeals court docket. The clerk shall note on each copy the date on which the notice of appeal was filed. The clerk shall also note in the docket the names of the parties to whom copies have been mailed, with the date of mailing.

3-1-32.5 Transmittal to Appeals Court – Within five (5) days after the notice of appeal is filed with the tribal court, the clerk shall transmit the same to the MHA Supreme Court by docketing in the tribal appeals court docket the notice of appeal, the verdict, the judgment, or any order of the court from which the

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appeal is taken, the complaint, and the undertaking on appeal and all documents and papers filed in the action.

3-1-32.6 Designation of Parties on Appeal – A party appealing shall be known as appellant and an adverse party shall be known as appellee.

3-1-32.7 Supervision in Appeals Court – The supervision and control of the proceeding on appeal shall be in the appellate court from the time the appeal is taken. The MHA Supreme Court, at any time after an appeal is taken may entertain a motion to dismiss the appeal or direct the trial court to modify or vacate any order made by the tribal court relating to the prosecution from which the appeal is taken, including any order fixing or denying bail.

3-1-33 Stay of Execution and Relief of Pending Review

3-1-33.1 Staying of Incarceration Pending Appeal – A sentence of imprisonment, if an appeal is taken, may be stayed by the tribal court upon such terms and conditions as the court deems proper.

3-1-33.2 Fine – A sentence to pay a fine or fine and costs, if an appeal is taken, may be stayed by the tribal court upon such terms as the tribal court deems proper. The tribal court may require the defendant to deposit the whole or any part of the fine and costs with the tribal court clerk, or to give bond for the payment thereof, or to submit an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his assets.

3-1-34 Dismissal

3-1-34.1 By Prosecuting Attorney – No criminal case shall be dismissed by any prosecuting attorney except upon motion and with the court's approval. Such a motion shall be supported by a written statement concisely stating the reason for the motion. The statement shall be filed with a record of the case and be open to public inspection. A dismissal may not be ordered during trial without the defendant's consent.

3-1-34.2 By the Court – If there is unnecessary delay in filing a complaint against a defendant who has been arrested or for whose arrest a warrant has been issued, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the complaint.

3-1-35 Calendars

3-1-35.1 Calendar – The tribal court administrator shall provide for placing criminal actions or proceedings upon the calendar. Preference shall be given to criminal cases as far as practicable. The court may make such orders for advancement or continuance of a criminal action or proceeding as may be necessary in the interest of justice.

3-1-36 Regulation of Conduct in Courtroom

3-1-36.1 Conduct in Courtroom – No camera, sound recorder, or other device, except those operating for official purposes, by or under the direction of the court, shall be used to photograph, record, or broadcast proceedings of the court, nor shall such devices be brought in or allowed to remain in the courtroom while proceedings are in progress.

3-1-37 Application and Exception

3-1-37.1 Courts – These rules govern the practice and procedure in all criminal proceedings in the tribal courts of the Three Affiliated Tribes as prescribed in Rule 3-1-1.

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3-1-37.2 Proceedings Not Applicable to this Chapter

a. Habeas Corpus – These rules do not apply to proceedings on any application for a writ of Habeas Corpus had in the courts of this reservation.
b. Mental Health Proceedings – These rules do not apply to mental health proceedings.
c. Other Proceedings – these rules do not apply to:
    i. Extradition and rendition of fugitives.
    ii. Forfeiture of property for a violation of a statute of the Three Affiliated Tribes.
    iii. The collection of fines and penalties.
    iv. Proceedings under the Juvenile Court Act.
    v. An action to determine paternity of a child born out of wedlock.

3-1-38 **Appendix of Forms**

3-1-38.1 Forms – The forms contained in the Appendix of Forms are mandatory.

3-1-39 **Effective Date: Statutes Superseded**

3-1-39.1 Effective Date – These rules will take effect on XXX. They govern all criminal proceedings thereafter commenced and so far, as practicable all proceedings then pending.

3-1-39.2 Statutes Superseded – Upon the taking of effect of these rules, all statutes, and parts of statutes in conflict herewith and the statutes listed as superseded in the Table of Statutes affected are superseded.

Chapter 2 – Provisions for Criminal Practice

3-2-1 **Scope**

3-2-1.1 Governing Provisions – Except as otherwise provided by this Three Affiliated Tribes Tribal Law and Order Code and as provided by Rule 3-1-37, these provisions govern the practice and procedure in all criminal proceedings in the Tribal Courts of the Fort Berthold Indian Reservation. This code shall be known as the Three Affiliated Tribes Criminal Code and cited as T.A.T.C.C.

3-2-2 **Purpose and Construction**

3-2-2.1 Regulation of Formal Steps - These provisions are intended to regulate the formal steps in an action or other judicial proceeding and include the judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

3-2-3 **Provisions and Principles of Construction**

3-2-3.1 Definition of Offenses - The general purpose of the provisions governing the definition of offenses are:

a. To forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens substantial harm to individual or public interests.
b. To subject to public control people whose conduct indicates that they are disposed to commit crimes.
c. To safeguard conduct that is without fault from condemnation as criminal.
d. To give warning of the nature of the conduct declared to constitute an offense; and
e. To differentiate on reasonable grounds between serious and minor offenses.

3-2-3.2 Sentencing and Treatment of Offenders - The general purpose of the provisions governing the sentencing and treatment of offenders are:

a. To prevent the commission of offenses.