



September 14, 2011

GAMYU

Hualapai Tribal Council is asking for public comments of these revisions of the Hualapai Law and Order Code

Hualapai/DNA Work Group
Summary of Discussions
Proposed Amendments to
Hualapai Law and Order Code
Chapter 5 - Criminal Procedure

Hualapai/DNA Work Group

The Hualapai/DNA Work Group on revisions to the Hualapai Law and Order Code, Chapter 5 - Criminal Procedure consisted of DNA staff attorney Jennifer McEwen, DNA contract attorney Frank Seanez, and the following Hualapai officials and employees: Hualapai Tribal Councilwoman Wynona Sinyella, Hualapai Tribal Councilman Barney "Rocky" Imus, Hualapai Tribal Courts Chief Judge Alene Garcia, Hualapai Tribal Chief of Police Francis Bradley, Hualapai Tribal Public Defender Estevan Hernandez, Hualapai Tribal Prosecutor Marie James, and Hualapai Tribal Probation Director Margaret Vaughn.

While all members of the Hualapai/DNA Work Group were not present for all discussion on revisions to the individual provisions of Chapter 5, the proposed amendments reflect the work done by the group as a whole. It should be noted, as well, that there were areas where the members of the work group were in consensus on the revisions. There were also areas where there remained unresolved issues, where a majority of the work group recommended revisions while other members were unconvinced. Finally, there were areas where the disputes were so marked that the work group determined that it would be best to leave any revisions to further discussion, guidance by the Hualapai Tribal Council, and public input from the membership of the Hualapai Tribe.

With these factors in mind, the following is a summary of discussions on the proposed amendments to the Hualapai Law and Order Code, Chapter 5 - Criminal Procedure:

Section 5.3 Criminal Complaint; Basis; Content; Amendment

There was extensive discussion on whether it should be possible for criminal complaints to be amended following their filing in the Hualapai Courts by the Hualapai Tribal Prosecutor. It was perceived that there was a need to clarify the existing language, and to provide a limited ability to the Hualapai Tribal Prosecutor to amend the criminal complaints in order to provide flexibility in criminal proceedings, without harming the due process rights of Hualapai tribal members accused of having violated Hualapai criminal laws.

It was determined that a recommendation would be made for amendment of Section 5.3 to specifically state that defects, errors, omissions or imperfections in the criminal complaints which would not harm the due process rights of defendants would not be the basis for dismissal with prejudice of the criminal complaints. The Hualapai Tribal Prosecutor would have the discretion to amend criminal complaints at any time prior to entry of a verdict, if no additional criminal offenses were alleged in such amended criminal complaints. The Hualapai Tribal Prosecutor would be able to amend criminal complaints to add alleged criminal offenses only

prior to the arraignment of the defendant before the Hualapai Court. Following the arraignment, the Hualapai Tribal Prosecutor would have to dismiss the criminal complaint without prejudice and file a new complaint containing the additional alleged offense. Under the proposed amendment, the Hualapai Tribal Court Judge would have the discretion to maintain the conditions of release of the defendant, or to modify the conditions of release, based upon the filing of the new complaint.

Section 5.4 Criminal Complaint; Time for Filing

There was extensive discussion on the provisions which work as a statute of limitations for the filing of criminal complaints. There were differences of opinion relative to whether the existing one year limitations for the filing of criminal complaints should be continued. Reasoning was advanced that because of the number of members of the Hualapai Tribe and the number of criminal prosecutions, the one year statute of limitations should be maintained. Other positions were raised that certain crimes, because of their severity or because of the difficulty in discovery of commission of such crimes, merited extended or even limitless time in which criminal complaints could be filed.

The discussion of which crimes merited longer statutes of limitation than one year included crimes which are considered major crimes under the Federal Major Crimes Act. Murder, manslaughter, and kidnapping were considered as crimes which should not have any statute of limitations, but upon which criminal complaints could be filed at any time following their commission. As well, there was exploration of the manners in which the commission of sexual offenses could be masked, by coercion, fear, shame, or impairment of memories of the traumatic injuries received by the victim.

The work group recommends the extension of the statute of limitation for certain crimes, aggravated assault, aggravated battery, aggravated arson, burglary, robbery, and forgery from one year to three years following alleged commission of the crime. Criminal proceedings alleging murder, manslaughter, kidnapping, and all sexual offenses were recommended for no statute of limitations.

Section 5.5 Right to Jury

The work group discussed whether the Hualapai Tribe had jurisdiction to prosecute alleged violations of federal law, as implied by the current provisions of Section 5.5. As there was consensus that Indian tribes do not have such jurisdiction, it was recommended that the reference to federal law be removed from Section 5.5.

Section 5.6 Complaint against Defendant not in Custody; Tribal Court Action

Discussions previously conducted by the work group relative to Chapter 7 - Domestic Violence and further discussions relative to Chapter 5 led to a consensus that the term, "peace officer" should be amended to specify "commissioned peace officer," in certain sections of the Hualapai Law and Order Code.

There was discussion relative to a need for clarification of what was served upon a criminal defendant. Accordingly, it was the consensus of the work group that language be added to indicate that service of process includes the criminal complaint and summons.

Section 5.8 Arrests

The use of the language “reasonable cause” to describe the standard by which a police officer would have to determine the commission of a criminal offense was discussed. The term “reasonable cause” is not generally used in criminal law. In United States criminal law, probable cause is the standard by which an officer or agent of the law has the grounds to make an arrest, to conduct a personal or property search, or to obtain a warrant for arrest, etc. when criminal charges are being considered. It is also used to refer to the standard to which a grand jury believes that a crime has been committed. This term comes from the Fourth Amendment of the United States Constitution. The term “probable cause” is likewise used in the Constitution of the Hualapai Indian Tribe, Article IX - Bill of Rights. The replacement of the term “reasonable cause” with the term “probable cause” is therefore recommended in Section 5.8.

Section 5.9 Search Warrants

Likewise, the use of the language “reliable information or a belief charging” to describe the standard by which a police officer would have to determine the commission of a criminal offense was discussed. This language is not generally used in criminal law. In United States criminal law, probable cause is the standard by which an officer or agent of the law has the grounds to make an arrest, to conduct a personal or property search, or to obtain a warrant for arrest, etc. when criminal charges are being considered. It is also used to refer to the standard to which a grand jury believes that a crime has been committed. This term comes from the Fourth Amendment of the United States Constitution. The term “probable cause” is likewise used in the Constitution of the Hualapai Indian Tribe, Article IX - Bill of Rights. The replacement of the term “reasonable cause” with the term “probable cause” is therefore recommended in Section 5.9.

Section 5.10 Arraignment

The time for arraignment of a criminal defendant under the current language of the Hualapai Law and Order Code is “at a time specified by Tribal law or in a summons.” The time for arraignment is not specified elsewhere in the Hualapai Law and Order Code, and the concern of the work group was to provide a set time period for conducting all arraignments, taking into account the occurrences of weekends and holidays observed by the Hualapai Tribe. The work group discussed a number of possible time periods for conducting arraignments and by consensus agreed to recommend that all arraignments must be done within 24 hours of the defendant being taken into custody, excluding weekends and observed holidays.

The work group discussed the information which the Tribal Court Judge would have to provide the criminal defendants in order to ensure that their pleas were made in a knowing and voluntary

manner. As well, this court conversation between the Tribal Court Judge and defendant would include a specific inquiry as to whether a plea of guilty or no-contest was being made voluntarily and not as a result of force or promises apart from a plea bargain. This information and inquiry are set forth in the recommendations for amendment to Section 5.10.

The work group discussed making the term “Tribal Court Judge” a uniform term within the Hualapai Code. It was determined by consensus that this would be appropriate and provide clarification. Accordingly, all references to “Judge” are recommended for change to “Tribal Court Judge.”

Section 5.11 Pre-Trial Release; Bail or Bond

Currently, Section 5.11 does not provide guidance to Tribal Court Judges when making a determination about whether to release a defendant, and under what conditions defendants should be released. The group recommends adding these provisions to provide Tribal Court Judges with guidance in making a release determination.

Section 5.12 Commitments

The current language of the Hualapai Law and Order Code provides that no person shall be detained for longer than 24 hours absent a temporary or final commitment order of a Tribal Court Judge. As the work group had recommended that the time for arraignment would exclude weekends and holidays observed by the Hualapai tribe, the retention of the time limit of 24 hours for maximum detention is recommended.

Section 5.13 Pre-Trial Hearings

The current language of the Hualapai Law and Order Code does not address the range of pre-trial motions which must be addressed prior to the commencement of trial in a criminal proceeding. The work group recommended that Section 5.13 be amended to address the range of pre-trial motions.

Section 5.15 Setting a Trial Date

The current language of the Hualapai Law and Order Code requires that the “trial of a criminal case shall take place within 90 days after the date on which the complaint initiating the case was filed, unless extraordinary circumstances exist which require further delay or the defendant consents in writing to a delay.” If the trial does not take place within the 90 day period, or the Tribal Court Judge does not make a finding of the occurrence of an extraordinary circumstance, then the Tribal Court Judge would dismiss the criminal case.

There were various concerns raised relative to lack of clarity in the meaning of the term “extraordinary circumstances” and whether that term addressed matters which are outside of the control of the parties. As well, the time period of 90 days after the filing of the complaint was discussed in order to address whether the period of time or the occurrence which triggers the 90

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~~practices prohibits or refuses to provide reciprocal extradition of persons who may be subject to warrants of arrest issued by the Tribal Court.~~

Sec. 5.32 Confiscated Contraband and Abandoned Property

- A. The disposition of all property, confiscated as contraband or seized as evidence, shall be determined at a hearing before the Tribal Court.
- B. The Tribal Court shall, upon satisfactory proof of ownership, order such property to be delivered to the rightful owner, unless such property is required as evidence. Where the property is required as evidence, it shall not be returned until final judgment in the case is entered. In no case shall property be returned where possession of such property is unlawful. Such property may be declared property of the Hualapai Indian Tribe and may be destroyed.
- C. Except as otherwise provided by Tribal law, the Tribal Court shall not return any contraband property confiscated pursuant to a conviction of:
 1. Carrying a concealed weapon; or
 2. An offense involving the use of any dangerous object or dangerous weapon ~~or instrument~~ in the commission of such offense.
- D. Any property not claimed by the owner when delivered to the owner, or any property, for which an owner has not been determined within six months after a Tribal Court hearing, shall become the property of the Tribe.
- E. Property delivered to the custody of the Tribal Court by a private person shall become the property of ~~such person~~ the Hualapai Tribe if it is not claimed within 30 days after the hearing.
- F. Any property declared to be property of the United States shall be dealt with as directed by federal law.
- G. The Administrator of the Hualapai Tribal Court shall keep written records of all transfers and dispositions of property taken into the custody of the Tribal Court.

Sec. 5.33 Eligible Age for Criminal Prosecution

After a hearing and at the discretion of the Hualapai Tribal Court, any person who was 14 years of age at the time the person allegedly committed the offense can be tried as an adult and convicted for any criminal offense enumerated in Chapter 6 of this Code or elsewhere under Tribal law.

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constituted tribal court of any federally recognized Indian tribe may be extradited to that jurisdiction.

- B. Commencement of Action. A true and correct copy of the warrant of arrest ~~under signature and seal~~ of the issuing off-reservation court shall ~~may~~ be presented to the Hualapai Tribe's Office of the Prosecutor, who shall prepare a tribal extradition order request based on the warrant information. Tribal prosecutors shall present the request for tribal extradition to the Tribal Court.
- C. Preliminary Determination on Warrant. The Tribal Court shall promptly examine the warrant and the request for tribal extradition, and shall consider any relevant information as may be presented to the court by any person. The Tribal Court shall make a preliminary determination on the apparent validity of the warrant.

Sec. 5.31 Fugitive Warrant of Arrest

After preliminary determination by the Tribal Court on the validity of the off-reservation warrant, the Tribal Court shall issue a fugitive warrant of arrest for the person named on the off-reservation warrant. The person named in the warrant shall be brought before the court for an extradition hearing within seventy-two hours after being arrested.

- A. Issues at Extradition Hearing. The Tribal Court shall conduct a hearing to determine the validity of the off-reservation warrant, and to determine whether the person arrested on the tribal fugitive warrant is the same person named on the off-reservation warrant. The Tribal Court shall consider any other relevant circumstances and information that may be presented at the time of hearing. Upon determination that the warrant from the off-reservation jurisdiction is valid and the person in custody is the same person named on the off-reservation warrant, and after considering all other relevant information presented, the court shall issue an order directing that the person be released to lawful authorities presenting the off-reservation warrant.
- B. Notification; Authorization, and Removal of the Alleged Offender. If the Tribal Court executes an order for extradition, either the Hualapai Office of the Prosecutor or the ~~tribal police~~ Hualapai Tribal Police Department shall notify the off-reservation jurisdiction that the person named in their warrant is in custody and that he/she may be picked up within forty-eight hours. If the person named in the off-reservation warrant is not picked up or transferred to the off-reservation jurisdiction within forty-eight hours, the person in custody shall be released from custody. The person named in the off-reservation warrant cannot be taken into custody for the same charge except upon the issuance of a new warrant by the jurisdiction that originally sought the extradition.
- C. ~~Reciprocity. In no case shall a warrant for arrest from an off-reservation jurisdiction be honored by the Tribal Court if that jurisdiction, by its laws, rules or~~

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Sec. 5.26 Violation of Probation

If the Tribal Court finds, after a hearing in open court, that a person has violated the terms of probation, said person may be ordered to serve part or all of the term of the original sentence. If the cause for violation involves the commission of a separate offense which violates any federal or Tribal law, the probation violator, if convicted, may be sentenced in accordance with the penalties prescribed for that particular violation. Such sentence may be imposed upon the violator in addition to reinstitution of the original suspended sentence and shall run consecutively to the original sentence.

Sec. 5.27 Early Release from Imprisonment

Any person committed to a term of imprisonment by the Tribal Court, who has without misconduct served three-fourths of the sentence imposed, shall be eligible for early release from imprisonment. Early release shall be granted only by a Judge of the Hualapai Tribal Court upon such terms and conditions as the Judge deems appropriate. The Tribal Court may order that the remainder of the sentence be served under the supervision of a Probation Officer, subject to the provisions contained in Section 5.26 herein.

Sec. 5.28 Deposit and Disposition of Funds

Except where Tribal law expressly requires another disposition of fines collected, all money fines imposed upon conviction of a criminal offense shall be ~~applied to Tribal Court expenses~~ deposited into the general fund of the Hualapai Tribe. ~~The fines assessed shall be paid by the Tribal Court Administrator to the Tribe for deposit as "Tribal Court Funds" to the credit of the Hualapai Indian Tribe. The Tribal Treasurer shall withdraw such funds in accordance with existing regulations. The Tribal Treasurer and the Tribal Court Administrator shall keep an account of all such deposits and withdrawals for the inspection of any person interested. Except where Tribal law provides otherwise, whenever such funds exceed the amount necessary with a reasonable reserve for the payment of court expenses.~~

Sec. 5.29 Failure to Appear

In any criminal case, if the defendant fails to appear for any proceeding and the defendant is not then in custody, the Tribal Court shall immediately issue a warrant for the arrest of the defendant. In addition, if the defendant has posted a cash or property bond or if, in connection with the case, any property of the defendant has been seized, failure of the defendant to appear before the Tribal Court as required by Tribal law or by any notice or order of the Tribal Court shall may result in forfeiture of the posted or seized property or cash bond, and disposition of such cash or property as provided by Tribal law.

Sec. 5.30 Fugitive from Justice

- A. Authority to Extradite. Any person within the boundaries of the Hualapai Reservation who is named in an arrest warrant issued by any state or duly

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offender, who may be required to serve a term of imprisonment in lieu of payment of the fine, and may be subject to additional charges for contempt of Tribal Court ~~and/or~~ disobedience of a lawful Tribal Court order, or both.

Sec. 5.24 Community Service

- A. A person convicted of a criminal offense may be required to perform work for the benefit of the Tribe for a period of time deemed appropriate by the Tribal Court, which time period shall not exceed the maximum period of imprisonment designated for the offense as set forth in Chapter 6 of this Code or elsewhere under Tribal law. The work shall be performed under the supervision of the Tribal Court or any other Tribal department, program or personnel.
- B. During the period of sentence, the convicted person may be confined in a detention facility if so directed by the Tribal Court or to such other approved facility as the Tribal Court may deem to be in the best interests of the convicted person or of the Hualapai Tribe.
- C. If any convicted person is unwilling, or otherwise fails to perform community service, the Tribal Court may sentence him or her to imprisonment for the remainder of the term of community service imposed.

Sec. 5.25 Probation Officers

- A. The Hualapai Tribal Court, ~~with the approval of~~ within the budget approved by the Tribal Council, may ~~appoint~~ hire probation officers and other persons as may be required to carry out the probationary functions of the Tribal Court.
- B. ~~Probation Officers may be assigned, among others,~~ Duties of probation officers include, but are not limited to, the following duties:
 - 1. Make preliminary inquiries, social studies, and such other investigations as the Tribal Court may direct, keep written records of such investigations or studies, and make reports to the Tribal Court;
 - 2. Upon the placement of any person on probation, explain to the person the meaning and conditions of probation;
 - 3. Keep informed concerning the conduct and condition of each person on probation or parole and report thereon to the Tribal Court;
 - 4. Use all suitable methods to bring about improvements in the conduct or condition of persons on probation or parole.
- C. The activities, duties and authority of Probation Officers may be further governed by rules promulgated by the Tribal Court.

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- B. A fine, not to exceed \$5,000, corresponding to the offense for which the defendant was convicted as provided in Chapter 6 or elsewhere under Tribal law; ~~and/or~~
- C. A term of Community Service; ~~and/or~~
- D. Forfeiture of property; ~~and/or~~
- E. To pay restitution, or perform any other act, for the benefit of any person or party who was injured personally or ~~in the~~ whose property was damaged, ~~by any person adjudged guilty provided~~ Provided, any such personal injuries or property damage, or both, are fairly attributable to the act or failure to act constituting the criminal offense ~~for which guilt was adjudged~~ committed by the person; ~~and/or~~
- F. To treatment, counseling ~~and/or~~ rehabilitation; ~~and/or~~
- G. To probation ~~and/or~~ suspension of sentence on such terms and conditions as the Tribal Court may direct, including payment of probation program costs; ~~and/or~~
- H. Other penalties, including paying Tribal Court costs, deemed appropriate by the Tribal Court to address or rectify the offense committed.

Sec. 5.21 Determining Factors

In determining the character and duration of the sentence which shall be imposed, the Tribal Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful and whether the offender has attempted to make restitution, the extent of the defendant's resources and the needs of the defendant's dependents. The penalties listed in Chapter 6 of this Code are provided to guide the Tribal Court in determining appropriate sentencing except where they are specifically identified as mandatory.

Sec. 5.22 Imprisonment

Terms of imprisonment shall be served by incarceration in ~~any a~~ detention facility. Juveniles and adults shall be held in custody in separate detention facilities, in accord with the requirements of Section 13.37.

Sec. 5.23 Fines

Assessed fines shall be paid by money order or ~~certified-cashier's~~ check, to the Clerk of the Tribal Court either in a lump sum or, at the discretion of the Tribal Court, in installments. In the event an offender is granted an installment plan for payment of a fine, the Tribal Court shall set a reasonable time limit on the payment; if the defendant does not adhere to the payment schedule fixed by the Tribal Court, the Tribal Court shall issue a warrant for the arrest of the

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1. As used in 5.17.B above, "lesser included offense" is defined as a lesser crime, all the elements of which are encompassed by a greater crime. If a greater crime is charged which includes the elements of a lesser crime, if so instructed, a jury may convict the defendant of that lesser crime.

Sec 5.18 Judgment

After the return of the jury verdict, or after evidence has been submitted in a bench trial conducted before a Tribal Court Judge without a jury, the Tribal Court Judge shall issue a final judgment of guilty or not guilty.

- A. If found "not guilty" the defendant shall be released forthwith.
- B. If the defendant is found "guilty" the Tribal Court Judge shall then ascertain if the defendant has any reason why sentence should not there and then be imposed. If the defendant advances such reason, the Judge, after weighing merits of the reasons given, may: (a) defer sentence for not more than five days for an opportunity to investigate provision of a pre-sentencing report, during which time the judge may incarcerate the defendant or release the defendant pending sentencing, upon such conditions as the judge determines appropriate and within the discretion of the Tribal Court ~~defendant shall remain in the same status as to the defendant's personal liberty as prevailed immediately preceding his or her trial;~~ or (b) impose sentence.

Sec 5.19 General Principles

In imposing a sentence for violation of this Chapter Code, the Tribal Court in each case shall consider the protection of the public, the gravity of the offense, the impact of the crime on the victim, and the results of any pre-sentencing reports.

- A. Pre-sentencing reports shall include, at a minimum, the following information regarding the defendant: identification data, family history, marital history, education history, employment history, economic data, military record, health history, drug and alcohol use history, mental health history, arrest and criminal records from any jurisdiction, including any prior or pending cases, and any additional information deemed relevant by the probation officer or the defendant.

Sec 5.20 Nature of Sentence

Except where Tribal law provides for specific mandatory penalties, the Tribal Court may, in its discretion, impose as a sentence upon a person convicted of a criminal offense any combination of the following:

- A. A term of imprisonment, not to exceed one year, corresponding to the offense for which the defendant was convicted as provided in Chapter 6 or elsewhere under Tribal law; ~~and/or~~

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Sec 5.16 Trial

- A. The complaint shall be read to the defendant and the defendant may (1) change his or her plea; or (2) stand trial. If the defendant changes his or her plea from “not guilty” to “guilty” sentence may be entered or deferred under the same procedure and subject to the same time limits as provided in Section 5.10.C.1 above.
- B. If the defendant chooses to stand trial, the jury shall be empanelled if the defendant has made a timely jury trial request, as provided in Sections 5.5 and 5.13 above. The Tribal Court shall require the defendant and witnesses to be sworn and proceed to hear evidence. Unless the Tribal Court for good cause directs otherwise, the prosecution’s case shall be presented first, followed by the presentation of the defendant’s case. Throughout the proceeding, the Judge must preserve to the defendant the rights guaranteed to the defendant under Article VI, Section 13, and Article IX of the Tribal Constitution.
- C. In the case of a jury trial, at the close of the evidence, and after the Tribal Court Judge makes determinations on any motions made by the parties following the close of evidence, the jury shall receive instruction and deliberate as provided in Sections 3.12 and 3.13 ~~and 3.14~~ of this Code.

Sec 5.17 Jury Verdict

- A. The Tribal Court Judge shall provide the jury with instructions and send the jury into the jury room for deliberation. In every criminal case tried to a jury, the jury must reach a unanimous verdict of guilty or not guilty. If the judge determines that a jury in a criminal case is unable to reach a unanimous verdict ~~after deliberations~~, the Tribal Court Judge shall declare a mistrial ~~and the case may be re-tried at the option of the Tribal Prosecutor upon written request to the Tribal Court~~ and the Tribal Court Judge shall set a new trial date to commence within 90 days of the Tribal Court’s declaration of mistrial. If the Tribal Prosecutor decides not to proceed with retrial of the case, the Tribal Prosecutor shall file a motion to dismiss prior to the commencement of the retrial.
- B. Lesser Included Offenses and Attempts. If so instructed, the jury may find the defendant guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the charge. If the jury has been instructed on one or more lesser included offenses, and the jury cannot unanimously agree upon any of the offenses submitted, the court shall poll the jury by inquiring as to each lesser included offense. If upon a poll of the jury the Tribal Court Judge determines that the jury has unanimously voted not guilty as to any lesser included offense, a verdict of not guilty shall be entered for the lesser offenses and the greater offense.

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5. Motions to Disqualify the Judge;

6. Motions to Name Additional Witnesses;

7. Motions to Dismiss based on denial of a speedy trial;

8. All pretrial evidentiary motions, including Motions to Suppress and Motions in Limine;

9. Motions alleging lack of mental capacity.

Sec 5.14 Wellness Tribal Court Division

The administration and procedures of the Wellness Tribal Court Division shall be governed by rules promulgated by the Tribal Court.

Sec 5.15 Setting a Trial Date

- A. In the event disposition of a criminal case has not otherwise been achieved through pre-trial proceedings, the Tribal Court shall set a date for the trial of the case. The trial of a criminal case shall ~~take place~~ commence within 90 days after ~~the date on which the complaint initiating the case was filed~~ the arraignment, unless ~~extraordinary circumstances exist which require further delay or~~ the defendant or circumstances beyond the control of the parties consents in writing ~~to a~~ cause a delay in the proceedings.
- B. 1. As used in Subsection A above, the phrase “disposition of a criminal case” shall mean either:
- ~~(1a)~~ a plea bargain has been entered and approved by the Tribal Court; or
 - (2b) the defendant has pled guilty or no contest and final sentence has been imposed by the Tribal Court; or
 - (3c) the defendant has been referred to the Wellness Court Division, and has satisfied all obligations imposed in connection with that referral.
- C. 2. The Tribal Court shall retain jurisdiction over matters referred under Subsection ~~B.3~~ A.1.c above, and if the defendant fails to adhere to all conditions imposed in connection with any such referral, the Tribal Court may rescind the referral; in that event, the Tribal Court shall set the matter for trial within 30 days of the date the referral is rescinded.

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- B. If a defendant released on bail or bond fails to appear before the Tribal Court as required, or fails to comply with any conditions of release set by the Tribal Court Judge in the release order, the Tribal Court ~~shall~~ Judge may order any posted cash or bond to be forfeited and ~~shall~~ may issue a warrant for the defendant's arrest pending further proceedings in the case.

Sec. 5.12 Commitments

- A. Except as provided in Subsection B below, no person shall be detained, jailed or imprisoned for a longer period than 24 hours after being taken into custody, excluding weekends and holidays observed by the Hualapai Tribe, absent a temporary or final commitment order bearing the signature of a Tribal Court Judge.
- B. Any person arrested for the commission of an offense involving violence, including weapons and sexual abuse offenses, driving under the influence of intoxicating liquor or other drugs shall automatically be subject to a commitment period of up to 72 hours pending arraignment.

Sec 5.13 Pre-Trial Hearings, Pre-Trial Motions

- A. In every criminal case in which the defendant enters a plea of not guilty, or such a plea is entered on the defendant's behalf by the Tribal Court, the Tribal Court shall schedule a pre-trial hearing to take place not more than 30 days after arraignment. At the pre-trial hearing the Tribal Court shall determine whether it is appropriate to dispose of the matter by plea bargain, referral to the Wellness Tribal Court Division, or some other alternative method of resolution. In the event the Tribal Court and the parties determine such a method should be pursued, the Tribal Court will schedule a further status hearing to be held within 60 days. In the event the Tribal Court and parties determine, either at the first pre-trial hearing, or at a subsequent status conference, that the case must proceed to trial, the Tribal Court shall set a trial date, subject to the provisions of Section 5.15 below. In order to preserve the right to a jury trial, a criminal defendant must submit a written request for trial by jury at or before the first pre-trial hearing.

- B. Motions to Be Made Seven Days Prior to Trial; The following motions must be made at least seven days prior to the commencement of trial or will be deemed waived, unless good cause is shown for extension of the time period:

1. Motions relating to conditions of pretrial release;
2. Motions to Dismiss for defects in the complaint;
3. All discovery motions and requests;
4. Motions for Severance;

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- b. The Tribal Court Judge shall set bail, or remand the defendant to temporary custody pending the pre-trial hearing, pursuant to the bail and commitment provisions set forth below.
- ~~3.~~ 5. If the defendant refuses to plead, the judge shall enter a plea of not guilty on the defendant's behalf, and shall follow the procedures set forth in Subsection C.~~2~~4 above.
- D. If the defendant pleads not guilty, or if the defendant pleads guilty or no contest and sentencing is deferred, the Tribal Court shall determine whether the defendant should be committed to the Tribal Jail pending further proceedings or released pursuant to the provisions of Section 5.11 below.

Sec. 5.11 Pre-Trial Release; Bail or Bond

- A. Every person arraigned for an offense may be ~~released~~ considered for release on bail or bond pending further proceedings in the case, upon conditions set by the Tribal Court Judge to ensure the appearance of the defendant at all future court ordered appearances, and conditions determined necessary to protect persons, property and the public peace. Bail may be made by any reliable member of the Hualapai Indian Tribe, who shall execute an agreement in the form prescribed, or by a personal bond by the defendant upon deposit with the Tribal Court or money order or certified cashier's check. In no case shall the defendant's deposit, or the penalty specified in the agreement exceed twice the maximum penalty set by Tribal law for the offense(s) charged. A Tribal Judge may release a defendant on the defendant's own recognizance if the Tribal Judge finds, by a preponderance of the evidence, that the defendant will obey any order of the Tribal Court, including orders setting proceedings, and that the defendant is not a danger to any person, including the defendant. The Tribal Court Judge shall in setting bail consider the following information:
 - 1. the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves drugs or alcohol; and
 - 2. the weight of the evidence against the defendant; and
 - 3. the history and characteristics of the defendant, including the defendant's character and mental condition, family ties, employment status, employment history, financial resources, past and present residences, length of residence in the community, ties to the community, past conduct, history relating to drug or alcohol abuse, criminal history and record of appearance at court proceedings, probation or parole status; and
 - 4. the nature and seriousness of the danger to any person or to the community that would be posed by the defendant's release.

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trial by jury, to confront accusers and to have the assistance of an attorney or an advocate at the defendant's own expense.

C. The Tribal Court shall ask the defendant to enter a plea of guilty or not guilty.

1. Prior to acceptance of a plea of guilty or no contest, the Tribal Court Judge shall address the defendant in open court and inform the defendant of the following:

a. the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and

b. the additional consequences and enhanced consequences of any guilty or no contest plea upon the defendant if the offense falls under the domestic violence provisions of Chapter 7 or requires registration as a sex offender; and

c. that if the defendant pleads guilty or no contest, there will be no further trial of any kind and the defendant will be waiving the right to trial.

2. The Tribal Court Judge shall inquire of the defendant whether the plea of guilty or no contest is entered voluntarily and not the result of force or threats or of promises apart from a plea bargain.

~~1.~~ 3. If the defendant pleads guilty or no contest to the charges in the complaint, the Tribal Court Judge shall inquire if the defendant has any reason for not being sentenced at that time.

a. If no reason is advanced, the Judge shall pass sentence forthwith in accordance with the sentencing procedures set forth below.

b. If the defendant advances reasons why sentence should not be passed at that time, the Tribal Court Judge shall give due consideration to such reasons and act thereon within his or her discretion considering his or her oath to uphold the laws; provided, however, that in no event shall sentencing be delayed more than 30 days from the date of entry of the guilty or no contest plea.

~~2.~~ 4. If the defendant pleads not guilty,

a. The matter will be set for pre-trial hearing at the earliest practicable date, or as otherwise provided by Rules of Tribal Court; and

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forcefully enter the premises when the commissioned Peace Officer has reasonable cause to believe that there exists danger of imminent harm or damage to persons or property.

Sec 5.9 Search and Seizure**A. Search Warrants**

1. Every Judge of the Hualapai Tribal Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of said Tribal Court.
2. No warrant of search and seizure shall be issued except upon a duly signed and written affidavit based upon ~~reliable information or a belief charging~~ probable cause that an offense has been committed against the Hualapai Indian Tribe.
3. No warrant for search and seizure shall be valid unless it contains the name or description of the person or the persons or property to be searched and describes the articles or property to be seized and bears the signature of a duly qualified Judge of the Hualapai Tribal Court.
4. Execution of a search warrant and seizure of property shall be made only by a commissioned Peace Officer from 7:00 A.M. to 7:00 P.M. according to local time, unless authorized otherwise by a duly qualified Judge of the Hualapai Court.
5. Search warrants not executed within five calendar days of issuance must be returned to the Tribal Court and voided.

- B. Search and Seizure without a Warrant – No commissioned peace officer shall search and seize any property without a warrant unless the officer knows or shall have probable cause to believe that the person in possession of such property is engaged in the commission of an offense defined under Tribal law.

Sec 5.10 Arraignment

- A. Except as provided by Section 5.12.B, every criminal defendant shall appear before a Tribal Court Judge for arraignment ~~at a time specified by Tribal law or in a summons~~ within 24 hours of being taken into custody, excluding weekends and holidays observed by the Hualapai Tribe.
- B. At the arraignment, the criminal complaint shall be read to the defendant in a language which the defendant understands; ~~and~~ and the defendant shall be advised of his or her rights under Tribal law, including the right to remain silent, to have a

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3.

i. Personal service of process shall be made in a manner reasonably calculated, under all the circumstances, to inform the defendant of: 1) the existence and pendency of the criminal proceeding, 2) the necessity to appear before the Court, and 3) his or her reasonable opportunity to defend against the allegations. Service shall be deemed complete at the time personal service is made.

ii. If personal service of process of the criminal complaint and summons is impractical under the circumstances, the Tribal Court may order service by registered mail with return receipt requested to be signed by the addressee only, to be addressed to the last known address of the person to be served. Service shall be complete upon return of the signed receipt to the Tribal Court.

iii. Service of process shall be attested to by an affidavit of the person who actually served the documents or by affidavit of the Clerk who mailed the documents.

B. The warrant or summons must be issued within five days of the date the complaint is filed and must be served immediately.

Sec 5.7 Arrest Warrants

Every Judge of the Hualapai Tribal Court shall have authority and discretion to issue a warrant commanding the arrest and detention of a person against whom a criminal complaint has been filed. No arrest warrant shall be valid unless signed by a Judge of the Hualapai Tribal Court and executed by a commissioned Peace Officer.

Sec 5.8 Arrests

A. Any commissioned Peace Officer shall arrest any person for an offense when:

1. Such offense has occurred in the presence of the arresting ~~P~~peace ~~O~~fficer, or
2. The arresting Peace Officer has ~~reasonable~~ probable cause to believe that the person has committed an offense, or
3. The ~~P~~peace ~~O~~fficer has a warrant commanding him to apprehend such person, duly issued as provided in Section 5.6 A.1 above.

B. No person shall be arrested in a dwelling house or other privately owned structure unless a valid warrant for the person's arrest has been issued or where the consent of the person in rightful possession of the premises to enter for the purpose of arrest has been obtained; provided, that a commissioned Peace Officer may

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- D. The Tribal Prosecutor may amend the criminal complaint to allege an additional offense prior to the arraignment. If the Tribal Prosecutor wishes to add an offense to the complaint following the arraignment, the Tribal Prosecutor shall request the dismissal of the original complaint without prejudice and file a new complaint containing the additional alleged offense. The Tribal Court shall have the discretion to maintain the conditions of release of the defendant, to modify the conditions of release, or to remand the defendant into custody following the filing of the new complaint.

Sec. 5.4 Criminal Complaint; Time for Filing

- A. ~~Except as otherwise provided by Tribal law~~ for the crimes of Aggravated Assault, Aggravated Battery, Murder, Manslaughter, Kidnapping, all crimes listed as Sexual Offenses, Aggravated Arson, Burglary, Robbery, and Forgery, no criminal proceeding shall be instituted unless the offense, violation or other event forming the basis of the criminal proceeding occurred within a one year period prior to the date of the initiation of the ~~action.~~ criminal proceeding. Criminal proceedings for the crimes of Aggravated Assault, Aggravated Battery, Aggravated Arson, Burglary, Robbery, and Forgery must be filed within three years of the commission of the crime. Criminal proceedings for the crimes of Murder, Manslaughter, Kidnapping, and all crimes listed as Sexual Offenses may be brought at any time following the commission of the crime, without limitation.
- B. If a criminal defendant has been apprehended pursuant to the provisions of Section 5.8 below, the complaint must be filed prior to the arraignment of the defendant.

Sec. 5.5 Right to Jury

Every criminal defendant accused of any violation of Tribal ~~or applicable federal~~ law shall have the right to trial by jury in the Tribal Court. To assert this right, the defendant must request a jury trial in writing at or before the pre-trial hearing provided for in Section 5.13 below.

Sec. 5.6 Complaint against Defendant not in Custody; Tribal Court Action

- A. Upon the filing of a criminal complaint against a defendant not then in custody, the Tribal Court must either:
1. Issue a warrant to apprehend the defendant for detention pending arraignment, execution of such a warrant to be made by any commissioned Peace Officer; or
 2. Issue a summons and attached criminal complaint, which shall be personally served, by any commissioned Peace Officer, process server, or other individual designated by the Court, on the defendant commanding the defendant's presence for arraignment at a specified date and time.

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**CHAPTER 5
CRIMINAL PROCEDURE****Sec. 5.1 Tribal Prosecutor; Authority; Duties**

- A. One or more Tribal Prosecutors appointed by the Tribal Council shall be responsible for the timely prosecution, pursuant to the provisions of this Chapter, of all criminal cases brought hereunder.
- B. Each Tribal Prosecutor shall represent the Tribe in all criminal cases as provided by Tribal law; shall prepare and file criminal and civil complaints on behalf of the Tribe; negotiate plea bargains; attend pre-trial conferences and make recommendations regarding alternative dispute resolution such as referrals to the Wellness Tribal Court; prosecute criminal cases through trial and sentencing; and make sentencing recommendations to the Tribal Court.

Sec. 5.2 Representation of Defendant

Every criminal defendant shall have the right to assistance of a professional attorney or an advocate at the defendant's own expense.

Sec. 5.3 Criminal Complaint; Basis; Content; Amendment

- A. Every criminal case shall be initiated by the filing of a written complaint based on information or charges brought by the Tribal Prosecutor.
- B. The complainant shall be the Tribe and the defendant shall be the person alleged to have committed the offense(s) charged. The complaint shall set forth in plain terms the act(s) of the defendant alleged to constitute the offense(s) charged, the date, time and place of such acts(s), and the provision(s) of Tribal law alleged to have been violated.
- C. Defects, errors, omissions or imperfections in the criminal complaint, which do not prejudice the substantive rights of the defendant ~~Failure to cite a specific provision of law, such as a Subsection of a Section cited,~~ shall not be grounds for dismissal with prejudice of a criminal complaint, provided the complaint clearly articulates the actions of the defendant(s) and the general provision(s) of law which those actions are alleged to violate. ~~If the provision of law alleged to have been violated is not, in the view of the Tribal Court, articulated with sufficient specificity, the Tribal Court shall provide the prosecutor a reasonable opportunity to amend the complaint to address the defect.~~ The tribal prosecutor shall have the discretion to amend the complaint at any time prior to the entry of the verdict to correct any such defects, errors, omissions or imperfections, provided that no additional offenses are alleged, and substantial rights of the defendant are not prejudiced.

Section 5.22 Imprisonment

The current language of the Hualapai Law and Order Code do not address the necessity of maintaining children and adults in separate incarceration facilities. The work group, by consensus, recommended that Section 5.22 be clarified to clearly state this requirement.

Section 5.23 Fines

The language of Section 5.23 was clarified to indicate that cashier's checks, not certified cashier's checks, can be used to pay fines imposed by the Court.

Section 5.25 Probation Officers

The work group discussed the manner by which the Hualapai Tribal Council approves the appointment of probation officers. It was determined that the Hualapai Tribal Council approves the budget which funds the hiring of probation officers, and that the Hualapai Tribal Court actually hires the Hualapai Tribal probation officers. The work group by consensus recommended that the language of Section 5.25 be clarified to codify the current practices of the Hualapai Tribe.

Section 5.28 Deposit and Disposition of Funds

The current language of the Hualapai Law and Order Code provides that fines paid to the Hualapai Tribe are paid to the Tribal Court Administrator as "Tribal Court Funds", to be used in accord with existing Hualapai Tribal regulations. However, it was determined that there are no existing Hualapai Tribal regulations for expenditure of such funds and that the Hualapai Tribal Council determines the budget and appropriates funds for the operation of the Hualapai Tribal Courts. Accordingly, the work group recommended that the language of Section 5.28 be amended to indicate that all fines paid be deposited into the general fund of the Hualapai Tribe.

Section 5.32 Confiscated Contraband and Abandoned Property

The work group discussed the return of confiscated property following the conclusion of criminal cases. The work group recommended that property seized in connection with a criminal case not be returned if it was determined that such property constituted contraband.

retrial of all cases on which a mistrial is declared. Accordingly, the work group recommends that language be added to direct the Tribal Court Judge to simply reset the trial within 90 days after the declaration of the mistrial. If the Tribal Prosecutor decides not to proceed with retrial of the case, the Tribal Prosecutor shall file a motion to dismiss prior to the commencement of the retrial.

The current language of the Hualapai Law and Order Code does not speak to consideration of lesser included offenses in criminal trials. There were concerns raised within the work group that the lack of clarity in this area presents a significant flaw in the conduct of criminal trials within the Hualapai Tribal Courts, and that the manner of consideration of such lesser included offenses should be addressed. The work group recommends language within Section 5.17.B which would describe the method by which the jury and the Tribal Court Judge shall consider lesser included offenses, as well as a definition of the term “lesser included offenses.”

Section 5.18 Judgment

The work group discussed the utilization of pre-sentencing reports as a manner of providing the Tribal Court Judge with information which would be useful in guiding the Tribal Court Judge in the entry of judgment against a person found guilty of a criminal offense. The work group further discussed whether a person found guilty of a criminal offense should have the same conditions of release as they had pre-conviction.

By consensus, the work group agreed that the language of Section 5.18 should be recommended to specify that deferral of sentencing for a period of five days would be for the purpose of provision of a pre-sentencing report and that the Tribal Court Judge would have the discretion to either incarcerate the person, or release the person upon such conditions as the Tribal Court Judge determines appropriate.

Section 5.19 General Principles

The current language of the Hualapai Law and Order Code does not address the minimum contents of pre-sentencing reports. The work group recommended that certain information, at a minimum, be set forth within the pre-sentencing reports, including identification data, family history, marital history, education history, employment history, economic data, military record, health history, drug and alcohol use history, mental health history, arrest and court records, including any prior or pending cases, and any additional information deemed relevant by the probation officer or the defendant.

Section 5.20 Nature of Sentence

The current language of the Hualapai Law and Order Code relative to restitution was discussed and determined to need clarification. The work group recommends clarified language intended to state the requirements for provision of restitution to any person who was injured personally or whose property was damaged, provided that the injury or damage are fairly attributable to the actions of the guilty person.

day period should be adjusted.

There was extended and spirited debate relative to whether the 90 day period should be maintained. It was discussed that the federal government and many states maintain a 6 month period for commencement of a criminal trial, and that states have been moving away from a strict 6 month time period to concentrate on whether the defendant has been prejudiced, or harmed in some way, by the failure of the government to commence the trial. It was stated that the numbers of cases addressed by the Hualapai Tribal Courts is growing and that it may no longer be practical or possible for the Courts to comply with the 90 day deadline. However, it was also pointed out that the population of the Hualapai Tribe still made the 90 day deadline viable, at least for the foreseeable future.

While there was not consensus reached in this matter, the work group decided to recommend that the 90 day period be maintained, but that it commence at the arraignment of the defendant, instead of at the filing of the complaint. This would ensure that a defendant could not escape prosecution by hiding or leaving for 90 days after the filing of the complaint. It would preserve the full 90 days for preparation by the prosecution and defense of a case where the defendant has been advised of the charges against him or her, and has also been advised of the penalties which could be imposed if the defendant is found by jury, or entry of a plea, to be guilty of the charges.

In order to provide more clarity, the term "extraordinary circumstances" was recommended by the work group for deletion. The discussion of the term made it clear that delays caused by the defendant or beyond the control of the parties were considered to be the only delays which should allow for extension of the 90 day period for commencing the criminal trial.

Section 5.16 Trial

The current language of the Hualapai Law and Order Code does not address the motions which are commonly made by attorneys in the course of criminal proceedings. These include motions to suppress evidence, motions in limine, motions to dismiss, and similar matters. The work group decided by consensus that language should be added to Section 5.16 to address the discretion of the Tribal Court Judge to hear and decide on such motions prior to instructing the jury.

Section 5.17 Jury Verdict

The current language of the Hualapai Law and Order Code does not address whether the Tribal Court Judge or the jury determines that the jury has deliberated sufficiently on a unanimous verdict as to merit declaration of a mistrial. The work group was in consensus that the Tribal Court Judge has the responsibility to ensure that the jury deliberates properly on a matter which has been referred to them, and likewise to determine that the jury will not be able to come to a unanimous verdict. Accordingly, language is recommended by the work group to clarify the authority of the Tribal Court Judge.

The language in the current Hualapai Law and Order Code which places retrial at the option of the Tribal Prosecutor was discussed. It was determined that the Tribal Prosecutor will request