

TITLE 8

CRIMES AND OFFENSES

TITLE 8A: CRIMINAL PROCEDURE

CHAPTER 1 GENERAL PROVISIONS

This Title governs the general practice and procedure in all criminal proceedings in the Crow Tribal Court, unless specifically directed otherwise by applicable law.

8A-1-101. *Purpose.* The provisions of this Title shall be construed in accordance with Crow Tribal custom and tradition as well as to achieve the following general purposes:

- (1) to provide for the just determination of every criminal proceeding;
- (2) to protect the rights of individuals; and
- (3) to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense, judicial inefficiency, and delay.

8A-1-102. *Definitions.* As used in this Title, unless the context or a particular section requires otherwise, the following definitions apply:

- (1) “Arraignment” means the formal act of calling the defendant into open court to enter a plea answering a charge.
- (2) “Arrest” means taking a person into custody in the manner authorized by law.
- (3) “Arrest warrant” means a written order from a court directing that a law enforcement officer arrest the person named in the warrant.
- (4) “Bail” means the security given, in the form of cash, stocks, bonds, real property, or any other form of approved collateral, for the purpose of insuring the presence of the defendant in a pending criminal proceeding.
- (5) “Charge” means a written statement that accuses a person of the commission of an offense, that is presented to the Crow Tribal Court, and that is contained in the complaint.
- (6) “Conditional release” means releasing a defendant from lawful custody, pending a criminal proceeding, after placing specific restrictions or requirements on the activities and/or the association of the defendant.
- (7) “Conviction” means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of a defendant’s guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.
- (8) “Defendant” means a person who has been charged by the Crow Tribe of allegedly violating a Crow Tribal law and is appearing before the Crow Tribal Court as a result of the charge.
- (9) “Elder” or “Older Person” means a Crow Tribal member or other individual residing on the Reservation who is:
 - (a) 60 years of age or older,
 - (b) determined by the Crow Tribal Court to be an elder, or
 - (c) at least 45 years of age and unable to protect himself/herself from abuse, neglect, or exploitation because of mental or physical impairment or because of frailties or dependancies brought about by age or disease.
- (1) “Family member” or “household member” means a spouse, former spouse, person related by blood or marriage, person related based on Crow Tribal customs, person residing with the offender due to adoption or foster placement, any person currently cohabitating with the offender at any time during the year immediately preceding the commission of any alleged abuse.
- (2) “Frisk” means an external patting of a person’s outer clothing.

- (3) “Indian” means a person who is enrolled or enrollable in any federally recognized Indian tribe or who has some biological identification as an Indian and is recognized as an Indian for the purposes of one or more federal laws conferring benefits upon or providing protection to individual Indians.
- (4) “Judge” means a person who is vested by law with the power to perform judicial functions.
- (5) “Judgment” means an adjudication by a court of competent jurisdiction that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, the judgment includes the sentence pronounced by the Crow Tribal Court.
- (6) “Law enforcement officer” means any person who by virtue of his/her office, employment by the Crow Tribe, or employment by any other recognized governmental entity, is vested by law with a duty to:
- (a) enforce Crow Tribal or federal regulatory laws;
 - (b) maintain public order; or
 - (c) make arrests for offenses while acting within the scope of his/her authority.
- (16) “Notice to appear” means a written document, issued by a clerk of the Crow Tribal Court or a law enforcement officer, requesting that the named person appear before a judge at the stated time and date in Crow Tribal Court to answer a charge for the alleged commission of an offense. Citations issued by law enforcement officers are notices to appear.
- (17) “Offense” means a violation of a criminal statute contained in Title 8B: Crow Criminal Code.
- (18) “Parole” means the release from jail of a prisoner by the Crow Tribal Court prior to the expiration of the prisoner’s term, subject to any conditions and/or supervision imposed by the Crow Tribal Court.
- (19) “Particularized suspicion” means that when considering all observed behavior or circumstances, the law enforcement officer’s training and experience leads him/her to believe that the particular individual under observation may be engaged in the commission of an offense.
- (20) “Personal recognizance” means the release from lawful custody of a defendant upon his/her promise to appear in court at all appropriate times and obey all laws in the interim.
- (21) “Probable Cause” means the possession of that degree of knowledge sufficient to support a reasonable person’s belief that an offense has been committed.
- (22) “Probation” means the release by the Crow Tribal Court without imprisonment of a defendant found guilty by plea or verdict, subject to conditions and/or supervision imposed by the Crow Tribal Court.
- (23) “Sentence” means the punishment imposed on an offender by the court and may include fines, incarceration, labor on Tribally-owned property, restitution to victims, court costs, or any combination thereof, together with participation in any rehabilitative programs or counseling ordered by the Crow Tribal Court.
- (24) “Subpoena” means a court order commanding a person to:
- (a) appear at a certain time and place to give testimony upon a certain matter;
 - (b) produce specific books, records, papers, documents, or other objects as may be necessary and proper to an investigation or court proceeding; or
 - (c) do both (a) and (b).
- (17) “Summons” means a written order issued by the Crow Tribal Court that commands a person to appear before the court at a stated time and place to answer a charge for the offense set forth in the order.
- (18) “Witness” means a person whose testimony is desired in a criminal action, prosecution, or related proceeding.

8A-1-103. *Rights of the Defendant.* In all criminal proceedings, the defendant shall have the right, subject to the provisions of this Title, to:

- (1) appear and defend in person and by counsel, at his expense;
- (2) be informed of the nature of the charges pending against him/her and to be given a copy of those charges;
- (3) be released from custody pending trial upon payment of reasonable bail;
- (4) confront and cross examine all prosecution witness against him/her;
- (5) not testify against himself or herself without an inference being drawn from such choice;
- (6) compel by subpoena witnesses and evidence necessary to defend against the charges;
- (7) have a public trial unless the right to a speedy trial is waived in writing;

- (8) have a trial by jury unless the right to jury trial is waived in writing or forfeited upon default of a court appearance;
- (9) appeal from any final decision of the Crow Tribal Court to the Crow Tribal Court of Appeals; or
- (10) not twice be put in jeopardy by the Crow Tribal Court for the same offense.

8A-1-104. Jurisdiction.

- (1) An Indian defendant is subject to Crow Tribal prosecution for any offense enumerated in Title 8B: Crow Criminal Code or other recognized and applicable law, where the alleged offense is committed totally or partially within the exterior boundaries of the Crow Reservation.
- (2) An offense is committed partially within the Crow Reservation if either the conduct which is an element of the offense or the result which is an element of the offense occurs within the exterior boundaries of the Crow Reservation.

CHAPTER 2 SEARCH AND SEIZURE

8A-2-101. When authorized. A search of a person, object, or place may be made and evidence, contraband, and persons may be seized when a search is made by:

- (1) the authority of a search warrant; or
- (2) in accordance with existing judicially recognized exceptions to the warrant requirement.

8A-2-102. When search and seizure is not illegal. A search and seizure, whether with or without a warrant, may not be held to be illegal if:

- (1) the defendant has either given consent to search or has disclaimed any right to or interest in the place or object searched or the evidence, contraband, or person seized;
- (2) any irregularity in the proceedings has no effect on the substantial rights of the accused.

8A-2-103. Search incident to arrest. When a lawful arrest is effected, a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

- (1) protecting the officer from attack;
- (2) discovering and seizing the fruits of the crime; or
- (3) discovering and seizing any persons, instruments, articles, or things which may have been used in the commission of or which may constitute evidence of the offense.

8A-2-104. Grounds for a search warrant. A judge shall issue a search warrant upon application by a law enforcement officer or the Crow Tribal prosecutor, in writing or by telephone, made under oath or affirmation, that:

- (1) states facts sufficient to support probable cause to believe that an offense has been committed;
- (2) states facts sufficient to support probable cause to believe that evidence, contraband, persons connected with the offense may be found;
- (3) particularly describes the premises, property, place, object, or persons to be searched; and particularly describes who or what is to be seized.

8A-2-105. Execution of a Search Warrant.

- (1) A search warrant shall be:
 - (a) in writing;
 - (b) in the name of the Crow Tribe;
 - (c) signed by a Crow Tribal Judge;
 - (d) particular in describing the premises, property, place, object, or person to be searched and the instruments, articles, or items to be seized; and
 - (e) directed to a specific law enforcement officer which commands that officer to search for and seize the person or property designated in the warrant and bring the person or property before a Judge.

- (2) Every Crow Tribal Judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items.
- (3) Unless the issuing Crow Tribal Judge authorizes the warrant to be served any time, day or night, warrants shall only be served between the hours of 6:00 A.M. and 9:00 P.M.
- (4) Before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of his/her identity, authority, and purpose to the person to be searched, or to the person in apparent control of the premises to be searched.
- (5) Before undertaking any search or seizure pursuant to the warrant, the executive law enforcement officer shall read and give a copy of the original or duplicate original warrant to the person to be searched, or the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant prominently affixed to the premises.
- (6) If the warrant is executed and property is seized, a duplicate copy of the inventory and a receipt for all items taken shall be left with the person in apparent control of the premises. The inventory shall be made in the presence of the person in apparent control of the premises, or in the presence of at least one credible person other than the applicant for the warrant if the place is unoccupied. In the case of an unoccupied premises, a copy of the inventory shall be left at the premises.
- (7) Only reasonable and necessary force may be used to execute a search warrant.
- (8) The executing officer shall return the warrant to Crow Tribal Court within the time limit shown on the face of the warrant. No warrant is effective ten (10) days past the date of issuance. Warrants not returned within such time limits are void.

8A-2-106. Scope of Search.

- (1) The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the person or property specified in the warrant.
- (2) Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant.
- (3) If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

8A-2-107. Procedures for Property Seized.

- (1) A return of the warrant must be made promptly to the Crow Tribal Court and must be accompanied by a written inventory of any evidence or contraband seized, verified by the person serving the warrant.
- (2) The Crow Tribal Judge shall enter an order providing for the custody or appropriate disposition of the evidence or contraband seized pending further proceedings.
- (3) The Crow Tribal Judge before whom the warrant is returned shall attach to the warrant a copy of the return, the inventory, and all other papers in connection with the warrant and shall file them with the Crow Tribal Court.
- (4) At the request of any owners of seized property, a hearing shall be held by the Crow Tribal Court to determine the disposition of all property seized by law enforcement. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless the property is contraband or is to be used as evidence in a pending case. Unless contraband, property seized as evidence shall be returned to the owner after final judgment. Confiscated contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Crow Tribal Court.

8A-2-108. Exclusion of Unlawfully Obtained Evidence. The Court shall prohibit the introduction or use at trial of any evidence seized in a search conducted in violation of any applicable and recognized law.

8A-2-109. Investigative Stops. (1) In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

- (2) A law enforcement officer who has lawfully stopped a person under this section:
- (a) may demand the name and present address of the person;
 - (b) may frisk the person and take other reasonably necessary steps for protection if the officer has probable cause to suspect that the person is armed and presently dangerous to the officer or another person present;
 - (c) may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon; and
 - (d) shall inform the person, as promptly as possible under the circumstance and in any case before questioning the person, that the officer is a law enforcement officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released if not arrested.
- (3) A stop authorized by this section may not last longer than is reasonably necessary to effectuate the purpose of the stop.

8A-2-110. Temporary Roadblocks. (1) Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense. To the extent practicable, the roadblock should be designed and effectuated to ensure motorist safety.

- (2) Unless exigent circumstances exist justifying a departure from the below stated requirements, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:
- (a) establishing a roadblock at a point on the highway visible at a distance of not less than 100 yards in either direction;
 - (b) placing a sign on the center line of the highway at the point of the roadblock displaying the word "STOP" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions at all times of day; placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 100 yards, on the side of the road at the point of the roadblock; and
 - (c) placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.

CHAPTER 3 COMMENCING PROSECUTION

8A-3-101. The Complaint.

- (1) All criminal prosecutions shall be initiated by complaint.
- (2) A complaint is the written statement of the essential facts constituting the offense charged.
- (3) All complaints shall be based upon probable cause that the offense charged occurred, and that the person named in the complaint committed the offense.
- (4) Every complaint shall contain:
 - (a) a written statement describing in ordinary language the nature of the offense committed;
 - (b) the name and description of the person(s) accused;
 - (c) the general location where the alleged offense was committed;
 - (d) the name and code citation of the alleged offense;
 - (e) the name of the person, if any, against whom the alleged offense was committed;
 - (f) a statement describing why the court has personal jurisdiction of the person accused in the complaint;

- (g) the date and approximate time of the commission of the alleged offense, if known; and
 - (h) the Crow Tribal prosecutor's or law enforcement officer's sworn signature.
- (5) An affidavit of probable cause shall accompany the complaint, and be supported by such additional evidence as the Crow Tribal Judge may demand.
 - (6) No minor omission from or error in the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.
 - (7) The Crow Tribal Judge shall examine the complaint to:
 - (a) ascertain its validity;
 - (b) determine whether probable cause exists to believe the named defendant has committed the crime alleged; and
 - (c) decide whether an arrest warrant or a summons should be issued if the defendant has not already been taken into custody.
 - (8) The Crow Tribal Judge shall hold a hearing within 48 hours if the defendant is in custody, or at the next regular court session if the defendant is not in custody, to determine whether probable cause as to the crime exists, and whether the appropriate defendant is named in the complaint.

8A-3-102. Amending the Complaint.

- (1) A complaint may be amended in matters of substance at any time prior to arraignment without leave of the Crow Tribal Court.
- (2) The Crow Tribal Court may in its discretion allow a complaint to be amended in matters of substance at any time not less than ten (10) days before trial, provided that a motion is filed in a timely manner, stating the nature of the proposed amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended. Motions to amend the complaint within ten (10) days of trial may be considered by the Crow Tribal Court as a Motion to Continue.
- (3) If the Crow Tribal Court grants leave to amend the complaint, the defendant shall be:
 - (a) arraigned on the amended complaint without delay; and
 - (b) given a reasonable period of time to prepare for trial on the amended charge(s).

- (4) The Court may permit a complaint to be amended as to form at any time before a verdict or finding is issued if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

8A-3-103. Time Limit for Commencing Prosecution. A prosecution must be commenced within the time limits specified in Section 8B: Crow Criminal Code, unless otherwise provided in this code.

8A-3-104. Joinder and Severance of Offenses and Defendants.

- (1) Two or more offenses may be charged in the same complaint as separate counts. Allegations made in one count may be incorporated by reference in another count.
- (2) Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same transaction constituting an offense or offenses.
- (3) The Crow Tribal Court may order that different counts or defendants set forth in the complaint(s) be tried separately or consolidated for trial.

8A-3-105. Subsequent Prosecutions. A subsequent prosecution will not constitute double jeopardy when the previous prosecution was properly terminated under any of the following circumstances:

- (1) The defendant consents to the termination or waives the right to object to the termination of the prosecution.
- (2) the Crow Tribal Court finds that a termination, other than by acquittal, is necessary because:
 - (a) it is impossible to proceed with the trial in conformity with the law;

- (b) there is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;
 - (c) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Crow Tribe;
 - (d) the jury cannot reach a verdict; or
 - (e) a false statement of a juror on voir dire prevents a fair trial.
- (3) The former prosecution occurred in a court which lacked jurisdiction over the defendant or the offense.

CHAPTER 4 ARREST

8A-4-101. Method of Arrest.

- (1) Arrest is the taking of a person into police custody in order that he or she may be held to answer for a criminal offense or a violation of a recognized court order.
- (2) A law enforcement officer may arrest a person within the exterior boundary of the Crow Reservation under the following circumstances:
- (a) when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Crow Tribal Court or that a warrant for that person's arrest has been issued in another jurisdiction;
 - (b) when the person has committed an offense in the officer's presence; or
 - (c) when the officer has probable cause to believe that the person to be arrested has committed an offense.
- (3) When an arrest is made without an arrest warrant, the arresting officer must inform the person to be arrested, as soon as practicable, of his or her authority to make the arrest and the reasons for making the arrest.

8A-4-102. Arrest in Abuse Situations.

- (1) A law enforcement officer may arrest a person without a warrant, and may do so at that person's residence, if the officer has probable cause to believe the person is committing or has committed abuse of an elder, family member, or household member, regardless of whether the offense took place in the responding law enforcement officer's presence.
- (2) When a law enforcement officer is called to the scene of a reported incident of elder, family member, or household member abuse but does not make an arrest, the officer shall file a written report with the commanding officer stating the reasons for deciding not to make an arrest.

8A-4-103. Arrest Warrants.

- (1) Crow Tribal Judges shall have the authority to issue warrants to arrest persons if there is probable cause to believe that an offense against Crow Tribal law has been committed by the person whom is Indian, based on a sworn complaint, an affidavit, or testimony.
- (2) The arrest warrant shall contain the following information:
- (a) the name or description, and address, if known, of the person to be arrested;
 - (b) the date of issuance;
 - (c) a description of the offense;
 - (d) the amount of bail; and
 - (e) the signature of the issuing Crow Tribal Judge.
- (3) The warrant shall be executed by the arrest of the person named in it. The officer need not have the warrant in the officer's possession at the time of the arrest, but upon request shall, as soon as practicable, show it to the person arrested.
- (4) An arrest warrant shall not be executed by a Crow Tribal or Bureau of Indian Affairs law enforcement officer outside the boundaries of the Crow Reservation, unless the officer is cross-deputized.

8A-4-104. Notification of Rights at Time of Arrest. Upon arrest, the suspect shall be advised immediately of the following rights:

- (1) that he/she has a right to remain silent;
- (2) that any statements made by the suspect may be used against him/her in court;
- (3) that the suspect has the right to obtain counsel at his/her expense, or to have counsel appointed for him/her, if such counsel is available;
- (4) that the suspect has the right to make at least one completed telephone call.

8A-4-105. Summons.

(1) The Crow Tribal Court may or, upon request of a prosecutor, shall issue a summons in lieu of an arrest warrant.

(2) The summons, together with a copy of the complaint, if applicable, shall be served in person or left at the named defendant's residence or place of business with a person of suitable age and discretion who also lives or resides there. Service shall be made by an authorized law enforcement officer, who shall make a return of service which shall be filed with the records of the case in Crow Tribal Court.

(3) The summons shall:

- (a) be in writing and in the name of the Crow Tribe;
- (b) state the name and address of the person summoned;
- (c) set forth the nature of the offense charged;
- (d) contain the date of issue;
- (e) command the person to appear in Crow Tribal Court at a specific date and time; and
- (f) be signed by a Crow Tribal Judge.

8A-4-106. Notice to Appear.

(1) Whenever a law enforcement officer is authorized to arrest a person without a warrant, the officer may instead issue the person a notice to appear.

(2) The notice to appear must:

- (a) be in writing;
- (b) state the person's name and address;
- (c) set forth the nature of the offense; and
- (d) direct the person to appear in Crow Tribal Court at a specific date and time.

(3) The notice to appear shall state that if the person fails to appear as directed, a warrant for his/her arrest may be issued.

(4) A citation shall be considered a notice to appear unless the defendant has been taken into custody.

CHAPTER 5 ARRAIGNMENT AND RELEASE

8A-5-101. Arraignment.

(1) Arraignment is the bringing of an accused before the Crow Tribal Court whenever a complaint has been filed by the Crow Tribal prosecutor. Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall arraignment be later than the next regular session of the Crow Tribal Court.

(2) Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of the charge to the defendant, informing the defendant of his/her rights, and calling on the defendant to enter a plea to the charge.

8A-5-102. Rights of Defendant at Arraignment. Before an accused is required to plead to any criminal charges, the Crow Tribal Judge shall:

- (1) Read the complaint to the accused and ensure that the defendant understands the charge and section of the Crow Tribal Code which the defendant is charged with violating, including the maximum authorized penalty;
- (2) Advise the accused that he/she has the following rights, and have the accused sign an advisement of rights form in which he/she certifies that he/she understands these rights:
 - (a) to remain silent;
 - (b) to have a speedy and public trial where he/she may confront witnesses called to testify against him/her;
 - (c) to be tried by jury if the offense is punishable by imprisonment; and
 - (d) to be represented by counsel at his/her expense, or to have counsel appointed, if available.
- (3) If the defendant was arrested without a warrant, and the defendant is to be continued in custody, the Crow Tribal Judge shall also determine during arraignment whether there is probable cause to believe that an offense against Crow Tribal law has been committed by the accused.

8A-5-103. Plea Alternatives. A defendant shall enter a plea of “guilty” or “not guilty” to each charge contained in the complaint.

- (1) If the defendant pleads “not guilty”, the Crow Tribal Judge shall then set a trial date and consider conditions for release as provided in Section 8A-5-104.
- (2) If the defendant pleads “guilty” to the charge, the Crow Tribal Judge shall accept the plea only if he/she is satisfied that the plea is knowingly and voluntarily entered, that the defendant can provide a statement which demonstrates that the defendant committed the charged offense and that the defendant understands the consequences of the plea, including the rights that the defendant is waiving by virtue of the plea.
- (3) If the defendant voluntarily enters a plea of “guilty” to the charge, the Crow Tribal Judge may impose a sentence at that time or may defer sentencing for a reasonable amount of time in order to obtain any information that the Crow Tribal Court deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the Crow Tribal Court prior to sentence being imposed.
- (4) If the defendant refuses to enter a plea, the Crow Tribal Judge shall enter a “not guilty” plea on the defendant’s behalf.
- (5) The Crow Tribal Court may, in its discretion, allow a defendant to withdraw a plea of “guilty” if it appears that the interests of justice would be served by doing so.

8A-5-104. Release of Defendant.

- (1) A person charged with any offense is subject to release from custody pending trial, subject to such conditions as the Crow Tribal Court may reasonably prescribe to assure the defendant’s appearance when required. The Crow Tribal Court may:
 - (a) release the defendant on personal recognizance or conditional release;
 - (b) require the defendant to deposit cash or other sufficient collateral in an amount specified by the Crow Tribal Judge;
 - (c) require the defendant, or any other designated person or organization satisfactory to the Crow Tribal Judge, to execute a written promise to appear or to deliver the defendant at all required times;
 - (d) impose reasonable restrictions on the defendant’s travel, personal associations, conduct and place of residence;
 - (e) impose any other reasonable condition necessary to assure the appearance of the accused as required and ensure the safety of the community.
- (2) Any law enforcement officer authorized to do so by the Crow Tribal Court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the Crow Tribal Court.
- (3) A convicted person may be released from custody while he/she awaits sentencing or pending appeal on such conditions as the Crow Tribal Court may impose to assure future court appearances

and ensure the safety of the community. If the Court determines that release of a defendant is likely to pose a danger to himself/herself or any other person in the community, the Crow Tribal Court may refuse to admit the defendant to bail.

- (4) The Court may revoke the release of the defendant at any time if it determines that the existing release conditions will not reasonably assure the appearance of the defendant, or if any conditions of release are violated by the defendant.

CHAPTER 6 PRE-TRIAL PROCEDURES

8A-6-101. Plea Agreements.

(1) The Crow Tribal prosecutor and the attorney for the defendant, or the defendant when acting pro se, 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 prosecutor will do one of the following:

- (a) move for dismissal or deferred prosecution of other charges;
- (b) agree that a specific sentence, specified in the agreement, is the appropriate disposition of the case.

(2) The plea agreement shall be in writing and signed by the Crow Tribal prosecutor and the defendant's attorney, or the defendant when acting pro se.

(3) The plea agreement may be entered into at any time prior to a verdict or finding of guilt by a Crow Tribal Judge or jury.

(4) If a plea agreement has been reached by the parties in subsection (1), the Crow Tribal Court shall require the disclosure of the agreement in open court, on the record, at the time the change of plea is offered. The Crow Tribal Court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection for a reasonable amount of time so that the court may obtain and consider any information that the court deems necessary to reach its decision.

(5) If the Crow Tribal Court accepts the agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(6) Prior to rejecting any offered plea agreement, the Crow Tribal Court shall inform the parties on the record:

- (a) that the Crow Tribal Court is not bound by the plea agreement;
- (b) that the defendant may withdraw the guilty plea at any point prior to the court accepting

the agreement; and

- (c) that if the defendant persists in the guilty plea, the disposition of the case by the Crow Tribal Court may be less favorable to the defendant than that contemplated in the plea agreement.

8A-6-102. Pre-trial Motions.

(1) Except for good cause shown, any defense, objection or request which is capable of determination without trial on the general issues must be made in writing at least ten (10) days before trial by motion, unless otherwise directed by any Crow Tribal Court order.

(2) The time requirements of this section shall also apply to motions to dismiss and motions to suppress evidence or admissions.

(3) All motions must be in writing and supported by a statement of the relevant facts and law on which the party is relying.

8A-6-103. Motions to Continue.

(1) The Crow Tribe or the defendant may file a written motion for continuance, or the Crow Tribal Court may continue any criminal proceeding on its own motion. If a party moves to continue less than ten (10) days before any scheduled hearing or trial, the Crow Tribal Court may require that the motion be accompanied by an affidavit showing good cause, regardless of whether the opposing party objects to the continuance. The Crow Tribal Court may assess costs associated with granting a continuance against the moving party.

(2) All motions to continue are in the sound discretion of the Crow Tribal Court and must be considered in light of the diligence shown by the moving party. This section must be construed to the end that criminal cases are tried with due diligence consistent with the rights of the defendant and the prosecution to a speedy trial.

8A-6-104. Speedy Trial.

(1) After the entry of a plea on a misdemeanor charge, the Crow Tribal Court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant is not brought to trial within six (6) months.

(2) All time which accrues due to postponements sought by the defendant shall not be included in calculating the time prescribed in subsection (1).

8A-6-105. Dismissal of Charges by Court or Prosecutor. The Court may at any time, either on its own motion or upon the application of the Crow Tribal prosecutor, order a complaint dismissed either with or without prejudice in the furtherance of justice.

8A-6-106. Disclosure by Prosecutor.

(1) Upon defendant's request, any of the following information or evidence which is within the possession, custody, or control of the Crow Tribal prosecutor is subject to disclosure and production and may be copied, photographed, or viewed, as appropriate for the item, by the defendant:

- (a) any relevant written or recorded statement made by the defendant while in custody of the Crow Tribe and of any person who will be tried with the defendant;
- (b) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief;
- (c) the defendant's prior criminal record, if any;
- (d) any papers, documents, photographs, tangible objects, or other physical or demonstrative evidence which the prosecutor intends to use at trial;
- (e) any written reports or statements by experts who have personally examined the defendant or any evidence in the case, together with any results of physical examinations, scientific tests or experiments;
- (f) all material or information which tends to mitigate or negate the defendant's potential sentence; and
- (g) whether the case has involved an informant and, if so, the informant's identity.

(2) Attorney work product is not subject to disclosure or production.

8A-6-107. Disclosure by Defendant.

(1) At any time after the filing of a complaint, the defendant, in connection with the particular offense(s) charged, shall upon written request of the prosecutor and approval of the Crow Tribal Court:

- (a) appear in a lineup;
- (b) speak for identification purposes by witnesses;
- (c) be finger printed and photographed;
- (d) try on clothing; and
- (e) permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions.

(2) Upon written request of the Crow Tribal prosecutor, the defendant or defendant's counsel shall make available to the prosecutor for examination and reproduction:

- (a) the names and addresses of all witnesses the defendant may call as witnesses in defendant's case in chief;
- (b) the names and addresses of all experts whom the defendant may call as witnesses at trial, including all written reports and statements made by these experts in connection with the particular case; and
- (c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

8A-6-108. Pre-trial Conference.

- (1) Within a reasonable time following the defendant's arraignment but not less than (30) days before trial, the Crow Tribal Court may hold a Pre-trial conference for the purpose of promoting a fair and expedient trial.
- (2) The Crow Tribal prosecutor and the defendant's counsel, or the defendant if proceeding pro se, shall attend the conference and be prepared to discuss any pre-trial matter appropriate to the case, including but not limited to:
 - (a) the confirmation of jury trial;
 - (b) the names of witnesses and a list of exhibits to be used by the parties;
 - (c) any anticipated pre-trial motions;
 - (d) the progress of plea negotiations;
- (3) Within seven (7) days after the pre-trial conference, the Crow Tribal Court shall issue a Pre-trial Memorandum and Order which shall list the issues settled and shall govern all procedural issues and scheduling related to the subsequent trial.
- (4) In lieu of a pre-trial conference, the parties may submit to the Crow Tribal Court for consideration and approval a completed Pre-trial Memorandum and Order which, when approved by the Crow Tribal Court, will have the same effect as that of subsection (3).

CHAPTER 7 TRIAL

8A-7-101. Right to a Jury Trial.

- (1) A defendant, in a criminal case where imprisonment is a possible penalty, has the right to trial by jury of six fair and impartial jurors. Requests for a jury trial after the pre-trial order has been issued may be treated as a motion to continue by the court, and costs assessed to the defendant.
- (2) A defendant may waive the right to a jury trial if such waiver is made in writing.
- (3) The court may vacate a jury trial and schedule a trial before the court on the charge(s) if the defendant or the defendant's counsel fail to appear at any scheduled court appearance in connection with the charge(s).

8A-7-102. Issuance of Subpoenas.

- (1) Upon request of the Crow Tribal prosecutor or the defendant, the Crow Tribal Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or other physical evidence relevant to the determination of the case.
- (2) An employee of the Crow Tribal Court may act on behalf of the Crow Tribal Court in issuing subpoenas.
- (3) A subpoena shall state the name of the court, the title of the case, and command the person named in the subpoena to attend and give testimony or produce evidence at the time and place specified in the subpoena.
- (4) A subpoena must be signed by a Judge of the Crow Tribal Court.

8A-7-103. Service of Subpoenas.

- (1) A subpoena may be served by a law enforcement officer or other person appointed by the Crow Tribal Court for such purpose. Service shall be made by delivering a copy of it to the person named in the subpoena.
- (2) A subpoena may be served at any place within or without the confines of the Crow Reservation.
- (3) The person making the service shall, without delay, file proof of service with the Crow Tribal Court by noting the following information on the back of a copy of the original subpoena:
 - (a) the name of the person to whom it is delivered;
 - (b) the time and place of service;
 - (c) the signature of the person making the service.

8A-7-104. Failure to Obey Subpoenas. In the absence of a justification satisfactory to the Crow Tribal Court, a person who fails to obey a subpoena may be held in contempt of court as a result of a show cause hearing.

8A-7-105. Expenses of Witnesses.

- (1) Each witness answering a subpoena shall be entitled to reimbursement fees and mileage expenses at the rate determined appropriate by the Crow Tribal Court.

- (2) The expenses provided for in this section shall be paid by the Crow Tribal Court upon completion of the trial, but such expenses associated with the witnesses called by the defendant may be assessed as costs to the defendant if the defendant is found guilty as part of the judgment. No defendant shall be imprisoned solely because of the defendant's inability to pay such costs.

8A-7-106. Trial Procedures.

- (1) The time and place of court sessions, the rules of evidence to be followed by the court and all other details of judicial procedure shall be set out in rules of the court. In the absence of such a rule on a particular subject, the federal rules may be followed.
- (2) The defendant shall be present in court during all stages of the trial, and at any other time as the Crow Tribal Court may require.
- (3) All testimony of witnesses shall be given under oath in open court and subject to the right of cross examination. Documentary and tangible physical evidence shall also be received in open court and available to the defendant.
- (4) The prosecution shall present its case first, followed by the case of the defendant. If rebuttal is required, the prosecution will proceed first, followed by the defendant.
- (5) At the conclusion of evidence, the parties shall have the right for final argument, with the prosecution proceeding first, followed by the defendant, followed by the prosecutor's rebuttal.
- (6) At any time in the trial process, the Crow Tribal Court may appoint an interpreter and may fix the reasonable compensation for the interpreter's services. An interpreter through whom testimony is communicated and received shall be placed under oath to faithfully and accurately translate and communicate as required by the Crow Tribal Court.

8A-7-107. Burden of Proof.

- (1) A plea of not guilty puts in issue every material allegation of the complaint.
- (2) The defendant is presumed to be innocent.
- (3) The prosecution has the burden of proving the defendant's guilt beyond a reasonable doubt as to each element of the offense charged, including that the defendant committed the offense with the requisite intent, if intent is an element.

8A-7-108. Jury Eligibility.

- (1) A jury shall consist of at least six (6) persons selected at random from a list of eligible jurors prepared each year by the Crow Tribal Court.
- (2) An eligible juror is a person who:
 - (a) is at least eighteen (18) years of age;
 - (b) is of sound mind and discretion;
 - (c) has never been convicted of a felony;
 - (d) is not a Crow Tribal Judge or member of the Crow Tribal Council;
 - (e) is not an employee of the Crow Tribal Court, the Crow Tribal Jail, or the Crow Tribal police force; and
 - (f) is not otherwise disqualified according to standards established by the Crow Tribal Court.
- (3) A list of at least twenty-one (21) persons who are eligible for jury duty shall be prepared and maintained in a current status by the clerk of the Crow Tribal Court.

8A-7-109. Jury Panel.

- (1) Under the supervision of the presiding Crow Tribal Judge, a panel of twelve (12) jurors shall be drawn by lot from the jury list.
- (2) A trial jury consists of six (6) qualified jurors selected from the panel as provided for in Section 8A-7-110, and who have no interest in the case, and are not related to any of the parties or their attorneys.
- (3) If the jury panel is exhausted before a sufficient number of jurors can be selected for the trial jury, additional jurors shall be drawn by lot from the jury list for the panel until a jury is selected.
- (4) The Crow Tribal Court shall have the power to issue subpoenas, signed by the issuing Crow Tribal Judge, to compel the attendance of members of the jury panel and of trial jurors.

8A-7-110. Jury Selection.

- (1) The Crow Tribal Judge shall question the jury panel to determine whether each prospective juror is capable of being fair and impartial, and is not disqualified pursuant to the proscriptions of Section 8A-7-109(2).

(2) Any panel member whom the Crow Tribal Judge determines incapable of acting with impartiality and without prejudice to the rights of either party, or for such other cause as the Crow Tribal Court may determine, shall be excused.

(3) After questioning by the Crow Tribal Judge, the prosecutor and the defendant, or defendant's counsel, may question the panel members to determine impartiality. The Crow Tribal Judge may limit such examination of a panel member when the Crow Tribal Judge believes it to be improper.

(4) The prosecutor and the defense shall have unlimited challenges for cause and three (3) preemptory challenges. Where there is more than one defendant, they must join in a challenge unless the Crow Tribal Court shall permit otherwise, or permit each defendant to exercise two preemptory challenges.

(5) All challenges must be made to the Crow Tribal Court before the jury is sworn. When a potential challenge for cause is discovered after the jury is sworn and before the introduction of any evidence, the Crow Tribal Court may allow a challenge for cause to be made.

(6) The Crow Tribal Court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

8A-7-111. Juror Compensation.

(1) Each member of the jury panel called to service and each juror who serves on the trial jury, including alternates, shall be entitled to compensation at an appropriate rate as determined by the Crow Tribal Court.

(2) At the discretion of the presiding Crow Tribal Judge, jurors may be allowed per diem and mileage expenses at a rate to be fixed by the Crow Tribal Court. All payments for per diem and mileage expenses shall be supported by vouchers signed by the presiding Crow Tribal Judge, and shall be paid in order of presentation, from available funds on deposit for the purpose.

8A-7-112. Conduct of Jury During Trial.

(1) Once sworn and impaneled, the jurors shall be instructed by the Crow Tribal Judge on general matters, including that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion concerning the trial until the issues of the case are finally submitted to them.

(2) At each recess or adjournment prior to submission of the case to the jury, the Crow Tribal Judge shall repeat instructions of subsection (1), and give such other instructions for conduct during the recess as the court deems appropriate.

8A-7-113. Jury Instructions.

(1) The presiding Crow Tribal Judge shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law.

(2) At the close of evidence or at such earlier time as the Crow Tribal Judge directs, each party may file with the Crow Tribal Judge written instructions on the law which the party requests the Crow Tribal Judge to deliver to the jury. Copies of such proposed instructions shall be given to the opposing party.

(3) Outside the hearing of the jury, the Crow Tribal Judge shall inform the parties before final arguments as to what instructions the court has chosen and intends to deliver to the jury, but shall deliver jury instructions after final argument is completed.

(4) No party may assign as error any portion of the Crow Tribal Judge's charge or any omission unless the party objects and provides argument in support of the objection before the jury retires to deliberate. Opportunity shall be given to make any objection out of the hearing of the jury.

8A-7-114. Jury Deliberations.

(1) After the final charge has been given to the jury, the jury shall retire to deliberate in private.

(2) Upon retiring to deliberate, the jurors shall select one of their number to serve as foreperson.

8A-7-115. Jury Verdict.

(1) The jury shall return a verdict of guilty or not guilty in open court for each offense charged and for each defendant. The verdict shall be signed by the foreperson.

(2) A verdict in criminal cases shall be rendered by a five-sixths (5/6) majority of the jury.

(3) When a verdict is returned, the jurors shall be individually polled at the request of any party or upon the Court's own motion to ascertain that the verdict reflects the concurrence specified in subsection (2).

(4) When the jury has reached a verdict or has determined that it is unable to acquit or find the defendant guilty, even with additional deliberation, the court shall discharge the jurors from service.

8A-7-116. Trial by the Court. All cases not tried by a jury shall be tried by a Crow Tribal Court Judge.

8A-7-117. Trial Costs. The Crow Tribal Court shall have the authority to impose reasonable costs of trial on a convicted defendant, including the costs of a jury, witnesses, and any court appointed defender.

CHAPTER 8 SENTENCING

8A-8-101. Rendering Judgment.

- (1) The judgment shall be rendered in open court.
- (2) If the verdict or court finding is not guilty, the defendant shall be immediately discharged from custody or from the obligation of his/her bail bond.
- (3) If the verdict or court finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

8A-8-102. Sentences. An offender found guilty of an offense enumerated in Title 8B: Crow Criminal Code may be sentenced by the court to one or more of the following penalties:

- (1) Imprisonment for a period not to exceed the maximum permitted by the Crow Criminal Code section defining the offense.
 - (a) credit for time served in custody as a result of the charge for which the sentence was imposed shall be given to the defendant.
 - (b) imprisonment may be continuous or intermittent.
 - (c) imprisonment for multiple charges may be concurrent or consecutive, at the court's discretion.
- (2) A money fine in an amount not to exceed the maximum amount permitted by the Crow Criminal Code section defining the offense.
 - (a) if the court determines that an offender is unable to immediately pay a fine or costs provided for in Section 8-7-717, the court shall allow the offender a reasonable period of time in which to pay the entire sum in installments.
 - (b) offenders who default on payments to the court may be found in contempt, and punished accordingly, but no person shall be held in contempt for failure to make payment if that person is determined by the court to be indigent.
 - (c) at the discretion of the court, an offender may elect to serve time in jail or perform community service in lieu of paying fines. The amount to be credited against such fines shall be an amount deemed appropriate by the Crow Tribal Court.
- (3) Commitment to an appropriate institution or program, either on or off the Crow Reservation, for care, treatment, evaluation, instruction, or rehabilitation of the offender.
 - (a) anyone receiving physical custody of a person sentenced by the Crow Tribal Court shall be acting solely as an agent of the Crow Tribe and of the Crow Tribal Court.
 - (b) jurisdiction over a person sentenced under this subsection shall be retained by the Crow Tribal Judge.
 - (c) no placement off of the Crow Reservation shall be valid unless the order is signed by a Crow Tribal Judge.
 - (d) any offender who is under this subsection in lieu of jail time who fails to complete the requirements of such institution or program shall have incarceration reinstated by the Crow Tribal Court.
- (4) The Crow Tribal Court may order restitution to a victim of an offense for which the offender was convicted. Restitution may take the form of surrender of property, payment of money damages, or the performance of an act benefiting the injured party.

8A-8-103. Sentencing Considerations. In determining the character and duration of the sentence to be imposed, the Crow Tribal Court shall consider, in addition to the crime committed, the following factors:

- (1) The previous conduct of the defendant;
- (2) the circumstances under which the crime was committed;
- (3) whether the offense was malicious;
- (4) the prospects of rehabilitation of the offender; and
- (5) the financial resources of the offender and the needs of the offender's dependents.

8A-8-104. Suspended Sentences and Probation. Sentences imposed upon those convicted may, in whole or in part be suspended, with the offender being placed on probation under reasonable restrictions and conditions for the period of suspension, or in the discretion of the Crow Tribal Court, until the conditions of sentence have been met, which ever occurs later.

(1) The Crow Tribal Court shall rely on the considerations of Section 8A-8-103 in reaching a determination whether to suspend any part of a sentence.

(2) Violation of the terms, conditions, or restrictions of suspended sentences may result in execution of the suspended portion of the sentence.

8A-8-105. Deferred Sentences. Sentences imposed upon those convicted may be deferred for any period less than two (2) years.

(1) The Crow Tribal Court may place reasonable conditions and restrictions on any offender while deferring imposition of sentence, and shall monitor the offender's compliance with those conditions or restrictions under rules and procedures adopted by the Crow Tribe.

(2) Upon the offender's successful performance of the conditions of the deferred sentence, the record of the offense shall be expunged.

(3) Imposition of sentence shall occur after revocation hearing on any alleged violation of a restriction or condition of the deferral.

8A-8-106. Forfeiture of Weapons.

(1) Any person convicted of an offense who used a firearm or other dangerous weapon in the commission of the offense may be required to forfeit such weapon to the Crow Tribe as part of the sentence.

(2) Upon order of the Crow Tribal Court, such weapon may either be destroyed or sold at public sale after appropriate public notice, as determined by the court.

(3) If the weapon is needed for subsistence hunting, the weapon may be held by the court with release to the defendant upon such conditions and restrictions as deemed necessary and appropriate by the Crow Tribal Court.

CHAPTER 9 APPEALS

8A-9-101. Notification of Right to Appeal. In cases of a guilty verdict following trial, the Crow Tribal Court shall inform the defendant that he/she has a right to appeal. No such right of appeal exists to a defendant who pleads guilty to a charge, except to appeal the sentence of the Crow Tribal Court. The prosecution can appeal any ruling against it on a matter of law issued by the Crow Tribal Court.

8A-9-102. Notice of Appeal.

(1) The prosecution or defendant must file a Notice of Appeal with the Crow Tribal Court within fifteen (15) working days of the judgment.

(2) At the request of the defendant, the clerk of the Crow Tribal Court may provide forms to the defendant for a Notice of Appeal.