TITLE 4 – CRIMINAL CODE

CHAPTER 2 – SENTENCES

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CHAPTER 2 – SENTENCES (Formerly Chapter 4)

Legislative History:

Enacted and Established July 26, 1982 by Resolution No. C-31-82 as part of Law and Order Code.

Adopted on May 24, 1990 as revised Law & Order Code by Resolution No.C5-103-90 & Ord. No. 5

Adopted May 26, 1992 the Tribal Codes and rescinded all other conflicting codes by Resolution No. C5-42-92.

Adopted January 28, 2003 as Pascua Yaqui Code and rescinded all prior codes by Resolution No. C01-04-03.

Recodified on August 9, 2006 by Resolution No. C08-313-06.

Amended on April 9, 2008 by Resolution No. C04-66-08 and Ordinance No. 08-08.

Adopted on July 27, 2022, by Resolution No. C07-xx-22 and Ordinance No. 22-xx. Resolution No. C07-xx-22 and Ordinance No. 22-xx also repealed the previous version of Title 4, Chapters 1, 2, 3 and 4.

SUBCHAPTER A GENERAL PROVISIONS

Section 10 Sentencing Savings Clause

(A) The repeal of Chapter 2-2, Part II or Title 3 and Chapters 1, 2, 3, and 4, of Title 4, does not apply to an offense committed under that section, the applicable rule of criminal procedure or the possible sentence before the effective date of this Ordinance. An offense committed before the effective date of this Ordinance is governed by that section, rule of procedure and sentencing as it existed on the date the offense was committed, and the former law is continued in effect for that purpose. An offense is committed if all elements of the offense occurred before the effective date of this Ordinance.

(B) The effective date of this Ordinance is October 1, 2022.

(C) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(D) The repeal of Chapter 2-2, Part II or Title 3 and Chapters 1, 2, 3, and 4, of Title 4, shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

Section 20 Severability

(A) It is hereby declared to be the intention of the Tribal Council that the sections, paragraphs, sentences, clauses, title, subsection, subpart and words of this Tribal Code are severable; and if any word, clause, sentence, paragraph, section, title, subsection, or subpart of this Code shall be declared unconstitutional by a valid judgment or decree of any Pascua Yaqui Tribal Court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining words, clauses, sentences, paragraphs, sections, titles, subsections, or subparts of this Tribal Code, since the same would have been enacted by the Tribal Council without the incorporation in this Tribal Code of any such unconstitutional word, clause, sentence, paragraph, section, title, subsection, or subpart. the remainder of this Ordinance not deemed unlawful, invalid or preempted, shall continue in full force and effect.

Section 100 Definitions

In this title, unless the context otherwise requires:

(B) "Dangerous offense" means an offense involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury on another person.

(C) "Historical prior felony conviction" means:

(1) Any prior felony conviction for which the offense of conviction either:

(a) Mandated a term of imprisonment except for a violation of chapter 34 of this title involving a drug below the threshold amount.

(b) Involved a dangerous offense.

(c) Involved aggravated driving under the influence of intoxicating liquor or drugs.

(d) Involved any dangerous crime against children as defined in section 2-205.

(2) Any class 1 felony, except the offenses listed in subdivision (a) of this paragraph, that was committed within the ten years immediately preceding the date of the present offense. Any time spent on absconder status while on probation, on escape status or incarcerated is excluded in calculating if the offense was committed within the preceding ten years. If a court determines a person was not on absconder status while on probation or escape status, that time is not excluded. For the purposes of this subdivision, "escape" means:

(a) A departure from custody or from a juvenile secure care facility, a juvenile detention facility or an adult correctional or detention facility in which the person is held or detained, with knowledge that the departure is not permitted, or the failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period.

(b) A failure to report as ordered to custody or detention to begin serving a term of incarceration.

(3) Any class 2 or 3 felony, except the offenses listed in subdivision (a) of this paragraph that was committed within the five years immediately preceding the date of the present offense. Any time spent on absconder status while on probation, on escape status or incarcerated is excluded in calculating if the offense was committed within the preceding five years. If a court determines a person was not on absconder status while on probation or escape status, that time is not excluded. For the purposes of this subdivision, "escape" has the same meaning prescribed in subdivision (b) of this paragraph.

(4) Any felony conviction that is a third or more prior felony conviction. For the purposes of this subdivision, “prior felony conviction” includes any offense committed outside the jurisdiction of this tribe that was punishable by that jurisdiction as a felony.

(5) Any offense committed outside the jurisdiction of this tribe that was punishable by that jurisdiction as a felony and that was committed within the five years immediately preceding the date of the present offense. Any time spent on absconder status while on probation, on escape status or incarcerated is excluded in calculating if the offense was committed within the preceding five years. If a court determines a person was not on absconder status while on probation or escape status, that time is not excluded. For the purposes of this subdivision, "escape" has the same meaning prescribed in subdivision (b) of this paragraph.

(6) Any offense committed outside the jurisdiction of this tribe that involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of death or serious physical injury and that was punishable by that jurisdiction as a felony. A person who has been convicted of a felony weapons possession violation in any court outside the jurisdiction of this tribe that would not be punishable as a felony under the laws of the Pascua Yaqui Tribe is not subject to this paragraph.

Section 101 Classification of Offenses

(A) Felonies are classified, for the purpose of sentence, into the following three categories:

(1) Class 1 felonies.

(2) Class 2 felonies.

(3) Class 3 felonies.

(B) Misdemeanors are classified, for the purpose of sentence, into the following three categories:

(1) Class 1 misdemeanors.

(2) Class 2 misdemeanors.

(3) Class 3 misdemeanors.

(C) Petty and Status offenses are not classified.

Section 102 Designation of Offense

(A) The particular classification of each felony defined in Title 4 is expressly designated in the section or chapter defining it. Any offense defined outside this title which is declared by law to be a felony without either specification of the classification or of the penalty is a class 3 felony.

(B) The particular classification of each misdemeanor defined in Title 4 is expressly designated in the section or chapter defining it. Any offense defined outside this title which is declared by law to be a misdemeanor without either specification of the classification or of the penalty is a class 3 misdemeanor.

(C) Every petty offense in Title 4 is expressly designated as such. Any offense defined outside Title 4 without either designation as a felony or misdemeanor or specification of the classification or the penalty is a petty offense.

(D) Any offense which is declared by law to be a felony, misdemeanor or petty offense without specification of the classification of such offense is punishable according to the penalty prescribed for such offense.

(E) Any offense defined within or outside Title 4 without designation as a felony, misdemeanor or petty offense is punishable according to the penalty prescribed for such offense.

(F) Any offense defined outside this title with a specification of the classification of such offense is punishable according to the provisions of this title.

Section 103 Authorized Disposition of Offenders

(A) Every person convicted of any offense defined in Title 4 or defined outside Title 4 shall be sentenced in accordance with this chapter unless otherwise provided by law.

(B) If a person is convicted of an offense, the court, if authorized by Subchapter C of this title, may suspend the imposition or execution of sentence and grant such person a period of probation except as otherwise provided by law. The sentence is tentative to the extent that it may be altered or revoked in accordance with Subchapter C of this title, but for all other purposes it is a final judgment of conviction.

(C) If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the court and in the manner as determined by the court or the court's designee pursuant to

Subchapter D of this title. Restitution ordered pursuant to this subsection shall be paid to the clerk of the court for disbursement to the victim.

(D) If the court imposes probation it may also impose a fine as authorized by Subchapter D of this title.

(E) If a person is convicted of an offense and not granted a period of probation, or when probation is revoked, any of the following sentences may be imposed:

(1) A term of imprisonment authorized by this chapter.

(2) A fine authorized by Subchapter D of this title and chapter. The sentence is tentative to the extent it may be modified or revoked in accordance with Subchapter D of this title, but for all other purposes it is a final judgment of conviction. If the conviction is of a class 1, 2 or 3 felony, the sentence cannot consist solely of a fine.

(3) Both imprisonment and a fine.

(4) Intensive probation, subject to the provisions of Subchapter C of this title.

(5) Intensive probation, subject to the provisions of Subchapter C of this title, and a fine.

(6) A new term of probation or intensive probation.

(F) If a person or an enterprise is convicted of any felony, the court may, in addition to any other sentence authorized by law, order the forfeiture, suspension or revocation of any charter, license, permit or prior approval granted to the person or enterprise by any department or agency of the Pascua Yaqui Tribe, United States, State of Arizona, or of any political subdivision.

(G) A court authorized to pass sentence upon a person convicted of any offense defined within or without this Title 4 shall have a duty to determine and impose the punishment prescribed for such offense.

(H) If a person is convicted of a felony offense and the court sentences the person to a term of imprisonment, the court at the time of sentencing shall impose on the convicted person a term of community supervision. The term of community supervision shall be served consecutively to the actual period of imprisonment if the person signs and agrees to abide by conditions of supervision established by the Pascua Yaqui Tribe Chief Probation Officer or his designee. Except pursuant to subsection 103(I), in this chapter, the term of community supervision imposed by the court shall be for a period equal to one day for every seven days of the sentence or sentences imposed.

(I) In calculating the term of community supervision, all fractions shall be decreased to the nearest month, except for a class 3 felony which shall not be less than one month.

(J) Notwithstanding subsection 103(I), in this chapter, if the court sentences a person to serve a consecutive term of probation immediately after the person serves a term of imprisonment, the court may waive community supervision and order that the person begin serving the term of probation upon the person's release from confinement. If the court waives community supervision, the term of probation imposed shall be equal to or greater than the term of community supervision that would have been imposed. If the court does not waive community supervision, the person shall begin serving the term of probation after the person serves the term of community supervision.

Section 104 Class 3 Felony; designation

(A) Notwithstanding any other provision of this title, if a person is convicted of any class 3 felony not involving not involving a dangerous offense and if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a felony, the court may enter judgment of conviction for a class 1 misdemeanor and make disposition accordingly or may place the defendant on probation in accordance with Subchapter C of this title and refrain from designating the offense as a felony or misdemeanor until the probation is terminated. The offense shall be treated as a felony for all purposes until such time as the court may actually enter an order designating the offense a misdemeanor. This subsection does not apply to any person who stands convicted of a class 3 felony and who has previously been convicted of one or more felonies.

(B) If a crime or public offense is punishable in the discretion of the court by a sentence as a class 3 felony or a class 1 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting attorney files any of the following:

(1) A complaint in tribal court designating the offense as a misdemeanor.

(2) A complaint, with the consent of the defendant, before or during the preliminary hearing amending the complaint to charge a misdemeanor.

(C) All offenses identified as "class 3 felony" shall be eligible for misdemeanor designation provided by paragraphs (A) and (B), unless the class 3 felony involves a dangerous or repetitive felony offense, in which case the class 3 felony shall be treated as a designated felony offense.

Section 105 Judgment of Conviction; Time For (Formerly 4 PYTC § 4-10)

Upon a plea of guilty or verdict of guilty, the Trial Court must fix a time for pronouncing judgment which must be pronounced within a reasonable time after the verdict is rendered. Prior to pronouncing judgment, the Court may request a pre-sentence investigation.

Section 106 Presence of Defendant (Formerly 4 PYTC § 4-30)

When judgment is pronounced, the defendant must be personally present.

Section 107 Judgment of guilt and sentence document; fingerprint; contents of document; recitations

(A) At the time of sentencing a person convicted of a felony offense, a domestic violence offense as defined in 4 PYTC § 1-1305 or a violation of Subchapter H in Chapter 1 of Title 4 or a violation of Arizona Revised Statute Title 28, chapter 4, pursuant to 8 PYTC § 6-4-10, the court shall execute a judgment of guilt and sentence document or minute order as prescribed by this section.

(B) The court or a person appointed by the court shall at the time of sentencing and in open court either permanently affix a defendant's fingerprint to the document or order or obtain and record the defendant's two fingerprint biometric-based identifier in the court case file.

(C) The document or order shall recite all of the following in addition to any information deemed appropriate by the court:

(1) The defendant's full name and date of birth.

(2) The name of the counsel for the defendant or, if counsel was waived, the fact that the defendant knowingly, voluntarily and intelligently waived the defendant's right to counsel after having been fully apprised of the defendant's right to counsel.

(3) The name, citation and classification of the offense.

(4) Whether there was a finding by the trier of fact that the offense was of a dangerous or repetitive nature pursuant to section 203 or 204 or was committed while released from confinement pursuant to section 207.

(5) Whether the basis of the finding of guilt was by trial to a jury or to the court, or by plea of guilty or no contest.

(6) That there was a knowing, voluntary and intelligent waiver of the right to a jury trial if the finding of guilt was based on a trial to the court.

(7) That there was a knowing, voluntary and intelligent waiver of all pertinent rights if the finding of guilt was based on a plea of guilty or no contest.

(D) The document or order shall be made a permanent part of the public records of the court, and the recitations contained in the document or order are prima facie evidence of the facts stated in the recitations.

(E) The clerk may issue certified electronic reproduction or image of the original document or order.

Section 108 Civil Commitment after imposition of sentence [Reserved]

SUBCHAPTER B SENTENCING AND IMPRISONMENT; INCARCERATION

Section 200 Execution of Judgment; Imprisonment; Fine; Record (Formerly 4 PYTC § 4-40)

When judgment of imprisonment is entered, a signed copy thereof must be delivered to the enforcement officer as defined in 3 PYTC § 1-4-10(B), or other officer, which is sufficient warrant for its execution.

Section 201 Sentence of Imprisonment for Felony; Presentence Report; Aggravating and Mitigating Factors; Consecutive Terms of Imprisonment; Definition

(A) A sentence of imprisonment for a felony shall be a definite term and the person sentenced, unless otherwise provided by law, shall be committed to the custody of Pascua Yaqui Law Enforcement Detention or its designee.

(B) No prisoner may be transferred to the custody of the Yaqui Law Enforcement Detention or its designee without a certified or original copy of the judgment and sentence, signed by the sentencing judge.

(C) The aggravated or mitigated term imposed pursuant to section 202 or 203 may be imposed only if one or more of the circumstances alleged to be in aggravation of the crime are found to be true by the trier of fact beyond a reasonable doubt or are admitted by the defendant, except that an alleged aggravating circumstance under subsection D, paragraph 11 of this section shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.

(D) For the purpose of determining the sentence pursuant to subsection C of this section, the trier of fact shall determine and the court shall consider the following aggravating circumstances, except that the court shall determine an aggravating circumstance under paragraph 11 of this subsection:

(1) Infliction or threatened infliction of serious physical injury, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 204**.**

(2) Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of the crime, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 204.

(3) If the offense involves the taking of or damage to property, the value of the property taken or damaged.

(4) Presence of an accomplice.

(5) Especially heinous, cruel or depraved manner in which the offense was committed.

(6) The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

(7) The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

(8) At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to the defendant's office or employment.

(9) The victim or, if the victim has died as a result of the conduct of the defendant, the victim's immediate family suffered physical, emotional or financial harm.

(10) During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred.

(11) The defendant was previously convicted of a felony within the ten years immediately preceding the date of the offense. A conviction outside the jurisdiction of this jurisdiction for an offense that if committed in this jurisdiction would be punishable as a felony, is a felony conviction for the purposes of this paragraph.

(12) The defendant was wearing body armor as defined as any clothing or equipment designed in whole or in part to minimize the risk of injury from a deadly weapon.

(13) The victim of the offense is at least fifty-five years of age or is a person with a disability as defined as an individual who has a physical or mental impairment that substantially limits one or more major life activities of the individual or who has a record of such an impairment or is regarded as having such an impairment.

(14) The defendant was appointed as a fiduciary and the offense involved conduct directly related to the defendant's duties to the victim as fiduciary.

(15) The defendant was convicted of a violation of 4 PYTC § 1-240, 4 PYTC § 1-230, 4 PYTC § 1-220, subsection A, paragraph 3 or 4 PYTC § 1-410, subsection A, paragraph 1 or 2 arising from an act that was committed while driving a motor vehicle and the defendant's alcohol concentration at the time of committing the offense was 0.15 or more. For the purposes of this paragraph, “alcohol concentration” has the same meaning prescribed in Arizona Revised Statute 28-101.

(16) Lying in wait for the victim or ambushing the victim during the commission of any felony.

(17) The offense was committed in the presence of a child and any of the circumstances exists that are set forth in 4 PYTC § 1-1305, subsection A.

(18) The offense was committed in retaliation for a victim either reporting criminal activity or being involved in an organization, other than a law enforcement agency, that is established for the purpose of reporting or preventing criminal activity.

(19) The defendant was impersonating a peace officer as defined 4 PYTC § 1-1030.

(20) The defendant was in violation of 8 United States Code section 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

(21) The defendant used a remote stun gun or an authorized remote stun gun in the commission of the offense. For the purposes of this paragraph:

(a) "Authorized remote stun gun" means a remote stun gun that has all of the following:

(i) An electrical discharge that is less than one hundred thousand volts and less than nine joules of energy per pulse.

(ii) A serial or identification number on all projectiles that are discharged from the remote stun gun.

(iii) An identification and tracking system that, on deployment of remote electrodes, disperses coded material that is traceable to the purchaser through records that are kept by the manufacturer on all remote stun guns and all individual cartridges sold.

(iv) A training program that is offered by the manufacturer.

(b) "Remote stun gun" means an electronic device that emits an electrical charge and that is designed and primarily employed to incapacitate a person or animal either through contact with electrodes on the device itself or remotely through wired probes that are attached to the device or through a spark, plasma, ionization or other conductive means emitting from the device.

(22) During or immediately following the commission of the offense, the defendant committed a violation of Arizona Revised Statute 28-661, 28-662 or 28-663.

(23) During or immediately following the commission of the offense, the defendant caused damage to a cultural object or disrupted a cultural ceremony.

(24) Any other factor that the tribe alleges is relevant to the defendant's character or background or to the nature or circumstances of the crime.

(E) For the purpose of determining the sentence pursuant to subsection C of this section, the court shall consider the following mitigating circumstances:

(1) The age of the defendant.

(2) The defendant's capacity to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.

(3) The defendant was under unusual or substantial duress, although not to a degree that would constitute a defense to prosecution.

(4) The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.

(5) During or immediately following the commission of the offense, the defendant complied with all duties imposed under Arizona Revised Statute 28-661, 28-662 and 28-663.

(6) Any other factor that is relevant to the defendant's character or background or to the nature or circumstances of the crime and that the court finds to be mitigating.

(F) If the trier of fact finds at least one aggravating circumstance, the trial court may find by a preponderance of the evidence additional aggravating circumstances. In determining what sentence to impose, the court shall take into account the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to justify the lesser term. If the trier of fact finds aggravating circumstances and the court does not find any mitigating circumstances, the court shall impose an aggravated sentence.

(G) The court in imposing a sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in any presentence report.

(H) The intentional failure by the court to impose the mandatory sentences or probation conditions provided in this title is malfeasance.

(I) For the purposes of this section, “trier of fact” means a jury, unless the defendant and the tribe waive a jury in which case the trier of fact means the court.

Section 202 First Time Felony Offenders; Sentence; definition

(A) Unless a specific sentence is otherwise provided, the term of imprisonment for a first felony offense shall be the presumptive sentence determined pursuant to subsection B of this section. Except for those felonies involving a dangerous offense or if a specific sentence is otherwise provided, the court may increase or reduce the presumptive sentence within the ranges set by subsection B of this section. Any reduction or increase shall be based on the

aggravating and mitigating circumstances listed in section 201, subsections D and E and shall be within the ranges prescribed in subsection B of this section.

(B) The term of imprisonment for a presumptive, mitigated or aggravated sentence shall be within the range prescribed under this subsection. The terms are as follows:

Felony	Mitigated	Presumptive	Aggravated
Class 1	16.5 months	26.25 months	36 months
Class 2	9 months	16.5 months	24 months
Class 3	6 months	9 months	12 months

(C) If a person is convicted of a felony without having previously been convicted of any felony and if at least one of the aggravating factors listed in section 201, subsection D apply, the court may increase the term of imprisonment otherwise authorized for that offense to an aggravated term. If a person is convicted of a felony without having previously been convicted of any felony and if the court finds at least one mitigating factors listed in section 201, subsection E apply, the court may decrease the term of imprisonment otherwise authorized for that offense to a mitigated term.

(D) The aggravated or mitigated term imposed pursuant to subsection B of this section may be imposed only if at least one of the aggravating circumstances are found beyond a reasonable doubt to be true by the trier of fact or are admitted by the defendant, except that an aggravating circumstance under section 201, subsection D, paragraph 11 shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.

(E) A person who is sentenced pursuant to this section is eligible for suspension of sentence and probation as authorized by Subchapter C.

(F) For the purposes of this section, “trier of fact” means a jury, unless the defendant and the tribe waive a jury in which case the trier of fact means the court.

Section 203 Repetitive offenders; mandatory sentencing

(A) If a person is convicted of multiple felony offenses that were not committed on the same occasion but that either are consolidated for trial purposes or are not historical prior felony convictions, the person shall be sentenced as a first time felony offender pursuant to section 202, for the first offense. The second and subsequent offenses offense shall be sentenced as repetitive offender under this section.

(B) Except as provided in section 204 or section 205, a person shall be sentenced as a repetitive offender if the person is at least eighteen years of age or has been tried as an adult and stands convicted of a felony and has at least one historical prior felony conviction.

(C) The term of imprisonment for a presumptive, mitigated or aggravated sentence shall be within the range prescribed under this subsection. The terms are as follows:

Felony	Mitigated	Presumptive	Aggravated
Class 1	16.5 months	26.25 months	36 months
Class 2	9 months	16.5 months	24 months
Class 3	6 months	9 months	12 months

(D) The presumptive term set by this section may be aggravated or mitigated within the range under this section pursuant to section 201, subsections C, D and E.

(E) A person who is sentenced pursuant to this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, except as specifically authorized, until the sentence imposed by the court has been served, the person is eligible for release pursuant to section 303 or the sentence is commuted.

(F) The aggravated or mitigated term imposed pursuant to subsection C of this section may be imposed only if at least one of the aggravating circumstances are found beyond a reasonable doubt to be true by the trier of fact or are admitted by the defendant, except that an aggravating circumstance under section 201, subsection D, paragraph 11 shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.

(G) Convictions for two or more offenses committed on the same occasion shall be counted as only one conviction for the purposes of subsection B of this section.

(H) A person who has been convicted in any court outside the jurisdiction of the Pascua Yaqui Tribe of an offense that was punishable by that jurisdiction as a felony is subject to this section. A person who has been convicted as an adult of an offense punishable as a felony under the provisions of any prior code in this jurisdiction or the jurisdiction in which the offense was committed is subject to this section.

(I) The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if an allegation of prior conviction is charged and admitted or found by the court. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or a provision of law that specifies a later release or completion of the sentence imposed before release. The court shall allow the allegation of a prior conviction at any time before the date the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the person was in fact prejudiced by the untimely filing and states the reasons for these findings. If the allegation of a prior conviction is filed, the tribe must make available to the person a copy of any material or information obtained concerning the prior conviction. The charge of previous conviction shall not be read to the jury. For the purposes of this subsection, “substantive offense” means the felony offense that the

trier of fact found beyond a reasonable doubt the person committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the person otherwise would be subject.

(J) The court in imposing a sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in any presentence report

Section 204 Dangerous Offenders

(A) A person who is convicted of one or more felony offenses that are dangerous offenses is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, except as specifically authorized, until the sentence imposed by the court has been served. The sentence of imprisonment for a dangerous offense is not eligible for release pursuant to section 303 nor eligible for commutation pursuant to section 211.

(B) A person who has been convicted in any court outside the jurisdiction of the Pascua Yaqui Tribe of an offense that was punishable by that jurisdiction as a felony is subject to this section. A person who has been convicted of an offense punishable as a felony under the provisions of any prior code in this tribe or the jurisdiction in which the offense was committed is subject to this section.

(C) The penalties prescribed by this section shall be substituted for the penalties otherwise authorized by law if an allegation of prior conviction is charged and admitted or found by the court or if an allegation of dangerous offense is charged and admitted or found by the trier of fact. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed before release. The court shall allow the allegation of a prior conviction or the allegation of a dangerous offense at any time before the date the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the defendant was in fact prejudiced by the untimely filing and states the reasons for these findings. If the allegation of a prior conviction is filed, the tribe must make available to the defendant a copy of any material or information obtained concerning the prior conviction. The charge of prior conviction shall not be read to the jury. For the purposes of this subsection, "substantive offense" means the felony that the trier of fact found beyond a reasonable doubt the defendant committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the defendant otherwise would be subject.

Section 205 Dangerous Crimes Against Children; Sentence; Definitions (Formerly § 1-111)

(A) "Dangerous crime against children" means any of the following committed against a minor under 15 years of age:

(1) Second degree murder.

(2) Aggravated assault resulting in serious physical injury or committed by the use of a deadly weapon or dangerous instrument.

(3) Sexual assault.

(4) Molestation of a child.

(5) Sexual conduct with a minor.

(6) Commercial sexual exploitation of a minor.

(7) Sexual exploitation of a minor.

(8) Child abuse as defined in 4 PYTC § 1-545.

(9) Kidnapping.

(10) Sexual abuse.

(11) Taking a child for the purpose of prostitution.

(12) Child prostitution

(13) Involving or using minors in drug offenses.

(14) Abduction.

(B) Classification

(1) A dangerous crime against children is a class 1 felony if it is a completed offense.

(2) A dangerous crime against children is a class 2 felony if it is a preparatory offense.

(C) Except as otherwise provided in this section, a person who is at least 18 years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children shall be sentenced to no less than the presumptive term of imprisonment.

(D) A person sentenced for a dangerous crime against children pursuant to this section is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement until the sentence imposed by the Court has been served.

(E) In addition to the term of imprisonment imposed pursuant to this section and notwithstanding any other law, the Court shall order that a person convicted of any dangerous crime against children be supervised on parole after release from confinement on such conditions as the Court deems appropriate.

(F) The sentence imposed on a person by the Court for a dangerous crime against children shall be consecutive to any other sentence imposed on the person at any time.

Section 206 Serious, Violent or Aggravated Offenders

(A) A person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a serious offense except a drug offense, first degree murder or any dangerous crime against children as defined in section 205, whether a completed or preparatory offense, and who has previously been convicted of two or more serious offenses not committed on the same occasion shall be sentenced to the aggravated term of incarceration and is not eligible for suspension of sentence, probation, pardon, commutation or release from confinement on any basis, except as specifically authorized.

(B) The sentence imposed for a serious offense shall be consecutive to any other sentence imposed on the person at any time.

(C) Unless a longer term of imprisonment is the prescribed penalty and notwithstanding any provision that establishes a shorter term of imprisonment, a person who has been convicted of committing or attempting or conspiring to commit any violent or aggravated felony and who has previously been convicted on separate occasions of two or more violent or aggravated felonies not committed on the same occasion shall be sentenced to the aggravated term of incarceration and is not eligible for suspension of sentence, probation, pardon, commutation or release on any basis.

(D) In order for the penalty under subsection C of this section to apply, both of the following must occur:

(1) The aggravated or violent felonies that comprise the prior convictions shall have been entered within fifteen years of the conviction for the third offense, not including time spent in custody or on probation for an offense or while the person is an absconder.

(2) The sentence for the first aggravated or violent felony conviction shall have been imposed before the conduct occurred that gave rise to the second conviction, and the sentence for the second aggravated or violent felony conviction shall have been imposed before the conduct occurred that gave rise to the third conviction.

(E) For the purposes of this section:

(1) "Serious offense" means any of the following offenses if committed within the Pascua Yaqui Tribe's jurisdiction or any offense committed outside the Pascua Yaqui Tribe's jurisdiction that if committed in the Pascua Yaqui Tribe's jurisdiction would constitute one of the following offenses:

(a) First degree murder.

(b) Second degree murder.

(c) Manslaughter.

(d) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

(e) Sexual assault.

(f) Any dangerous crime against children.

(g) Arson of an occupied structure.

(h) Armed robbery.

(i) Burglary in the first degree.

(j) Kidnapping.

(k) Sexual conduct with a minor under fifteen years of age.

(l) Child prostitution.

(2) "Violent or aggravated felony" means any of the following offenses:

(a) First degree murder.

(b) Second degree murder.

(c) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

(d) Dangerous or deadly assault by prisoner.

(e) Discharging a firearm at a residential structure if the structure is occupied.

(f) Kidnapping.

(g) Sexual conduct with a minor that is a class 1 felony.

(h) Sexual assault.

(i) Molestation of a child.

(j) Burglary in the first degree committed in a residential structure if the structure is occupied.

(k) Arson of an occupied structure.

(l) Armed robbery.

(m) Taking a child for the purpose of prostitution.

(n) Child prostitution.

(o) Commercial sexual exploitation of a minor.

(p) Sexual exploitation of a minor.

Section 207 Offenses While on Release

(A) A person who is convicted of any felony involving a dangerous offense that is committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or has escaped from confinement for conviction of a felony offense shall be sentenced to imprisonment for not less than the presumptive sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served.

(B) A person who is convicted of a dangerous offense that is committed while the person is on release or has escaped from confinement for a conviction of a serious offense as defined in section 206, an offense resulting in serious physical injury or an offense involving the use or exhibition of a deadly weapon or dangerous instrument shall be sentenced to the maximum sentence authorized under this chapter and is not eligible for suspension or commutation or release on any basis until the sentence imposed is served.

(C) A person who is convicted of any felony offense that is not included in subsection A or B of this section and that is committed while the person is on probation for a conviction of a felony offense or parole, work furlough, community supervision or any other release or escape from confinement for conviction of a felony offense shall be sentenced to a term of not less than the presumptive sentence authorized for the offense and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized until the sentence imposed by the court has been served, or the sentence is commuted. The release provisions prescribed by this section shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed before release. For the purposes of this subsection, "substantive offense" means the felony, misdemeanor or petty offense that the trier of fact found beyond a reasonable doubt the defendant committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the defendant would otherwise be subject.

(D) A person who is convicted of committing any felony offense that is committed while the person is released on bond or on the person's own recognizance on a separate felony offense or while the person is escaped from preconviction custody for a separate felony offense shall be sentenced to a term of not less than the presumptive sentence authorized. The person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis, except as specifically authorized, or the sentence is commuted. The penalties prescribed by this subsection shall be substituted for the penalties otherwise authorized by law if the allegation that the person committed a felony while released on bond or on the person's own recognizance or while escaped from preconviction custody is

charged and admitted or found by the court. The release provisions prescribed by this subsection shall not be substituted for any penalties required by the substantive offense or provision of law that specifies a later release or completion of the sentence imposed before release. The court shall allow the allegation that the person committed a felony while released on bond or on the person's own recognizance on a separate felony offense or while escaped from preconviction custody on a separate felony offense at any time before the case is actually tried unless the allegation is filed fewer than twenty days before the case is actually tried and the court finds on the record that the person was in fact prejudiced by the untimely filing and states the reasons for these findings. The allegation that the person committed a felony while released on bond or on the person's own recognizance or while escaped from preconviction custody shall not be read to the jury. For the purposes of this subsection, "substantive offense" means the felony offense that the trier of fact found beyond a reasonable doubt the person committed. Substantive offense does not include allegations that, if proven, would enhance the sentence of imprisonment or fine to which the person otherwise would be subject.

(E) A sentence imposed pursuant to subsection A, B or C of this section shall revoke the convicted person's release if the person was on release and shall be consecutive to any other sentence from which the convicted person had been temporarily released or had escaped, unless the sentence from which the convicted person had been paroled or placed on probation was imposed by a jurisdiction other than the Pascua Yaqui Tribe, and where not inconsistent with 25 U.S.C. 1302.

Section 208 Misdemeanors; sentencing

(A) A sentence of imprisonment for a misdemeanor shall be for a definite term to be served within the custody of the Pascua Yaqui Law Enforcement Detention or its designee. The court shall fix the term of imprisonment within the following maximum limitations:

(1) For a class 1 misdemeanor, six months.

(2) For a class 2 misdemeanor, four months.

(3) For a class 3 misdemeanor, thirty days.

(B) A person who is at least eighteen years of age or who has been tried as an adult and who stands convicted of any misdemeanor or petty offense, other than a traffic offense, and who has been convicted of one or more of the same misdemeanors or petty offenses within two years next preceding the date of the present offense shall be sentenced for the next higher class of offense than that for which the person currently is convicted. Time spent incarcerated within the two years next preceding the date of the offense for which a person is currently being sentenced shall not be included in the two years required to be free of convictions.

(C) If a person is convicted of a misdemeanor offense and the offense requires enhanced punishment because it is a second or subsequent offense, the court shall determine the existence of the previous conviction. The court shall allow the allegation of a prior

conviction to be made in the same manner as the allegation prescribed by Arizona Revised Statute § 28-1387, subsection A.

(D) A person who has been convicted in any court outside the jurisdiction of the Pascua Yaqui Tribe of an offense that if committed in the Pascua Yaqui Tribe's jurisdiction would be punishable as a misdemeanor or petty offense is subject to this section. A person who has been convicted as an adult of an offense punishable as a misdemeanor or petty offense under the provisions of any prior code in the Pascua Yaqui Tribe jurisdiction is subject to this section.

(E) The court may direct that a person who is sentenced pursuant to subsection A of this section shall not be released on any basis until the sentence imposed by the court has been served.

Section 208.01 Misdemeanor compromise and petty offenses; domestic violence; effect of order of dismissal; exceptions and limitations

(A) When a defendant is accused of a misdemeanor or petty offense for which the person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in this section, except:

(1) When the offense is committed by or upon any officer of justice while in the execution of the duties of his office.

(2) When the offense is committed riotously.

(3) When the offense is committed with intent to commit a felony.

(B) If a defendant is accused of an act involving assault, threatening or intimidating or a misdemeanor offense of domestic violence as defined in 4 PYTC § 1-1305, the offense shall not be compromised except on recommendation of the prosecuting attorney.

(C) If the party injured appears before the court in which the action is pending at any time before trial, and acknowledges that he or she has received satisfaction for the injury, the court may, on payment of the costs incurred and upon recommendation of the prosecuting attorney, order the prosecution dismissed, and the defendant discharged. The reasons for the order shall be set forth and entered of record on the minutes and the order shall be a bar to another prosecution for the same offense.

(D) No public offense shall be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law.

Section 209 Consecutive Terms of Imprisonment

(A) Except as otherwise provided by law, if multiple sentences of imprisonment are imposed on a person at the same time, the sentence or sentences imposed by the court shall run consecutively unless the court expressly directs otherwise, in which case the court shall set forth on the record the reason for its sentence.

(B) Notwithstanding subsection A, if a person is subject to an undischarged term of imprisonment and is sentenced to an additional term of imprisonment for a felony offense that is committed while the person is under the jurisdiction of the Pascua Yaqui Law Enforcement Detention or its designee, the sentence imposed by the court shall run consecutively to the undischarged term of imprisonment, unless otherwise waived by both parties.

Section 210 Imprisonment Time Calculation

(A) A sentence of imprisonment commences when sentence is imposed if the defendant is in custody or surrenders into custody at that time. Otherwise it commences when the defendant becomes actually in custody.

(B) All time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter.

(C) If a sentence of imprisonment is vacated and a new sentence is imposed on the defendant for the same offense, the new sentence is calculated as if it had commenced at the time the vacated sentence was imposed, and all time served under the vacated sentence shall be credited against the new sentence.

(D) If a person serving a sentence of imprisonment escapes from custody, the escape interrupts the sentence. The interruption continues until the person is apprehended and confined for the escape or is confined and subject to a detainer for the escape. Time spent in actual custody prior to return under this subsection shall be credited against the term authorized by law if custody rested on an arrest or surrender for the escape itself, or if the custody arose from an arrest on another charge which culminated in a dismissal or an acquittal, and the person was denied admission to bail pending disposition of that charge because of a warrant lodged against such person arising from the escape.

(E) The sentencing court shall include the time of commencement of sentence under subsection A and the computation of time credited against sentence under subsection B, C or D, in the original or an amended commitment order, under procedures established by rule of court.

Section 211 Commutation of Sentence (Formerly 4 PYTC § 4-80)

If the Court is satisfied that justice will best be served by reducing a sentence, the Court may, at any time after one-half of the sentence has been served, commute to a lesser period any sentence imposed upon a person, where commutation is not expressly prohibited, upon proof that during the period of sentence the person served without misconduct and did satisfactory work.

Section 212 Sexual Crimes; Sentencing (Formerly 4 PYTC § 4-110)

(A) Increase in Sentencing: Sentences provided in 4 PYTC § 1-525 for a first conviction of a sexual offense, except those offenses involving a use or exhibition of a deadly weapon or dangerous instrument or when the intentional or knowing infliction of serious physical injury upon another has occurred, may be increased by the Court up to 25%, not to exceed

the maximum sentence authorized by federal law. Said increase shall be based on the following circumstances:

(1) Infliction or threatened infliction of serious physical injury.

(2) Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of a crime.

(3) If the offense involves the taking of or damage to property, the value of the property so taken or damaged.

(4) Presence of an accomplice.

(5) Especially heinous, cruel or depraved manner in which the offense was committed.

(6) The defendant committed the offense as consideration for the receipt or in the expectation of the receipt, of anything of pecuniary value.

(7) The defendant procured the commission of the offense by payment or promise of payment, of anything of pecuniary value.

(8) At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to his office or employment.

(9) The physical, emotional and financial harm caused to the victim or, if the victim has died as a result of the conduct of the defendant, the emotional and financial harm caused to the victim's immediate family.

(10) During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred.

(11) The defendant was previously convicted of a sexual offense within the ten years immediately preceding the date of the offense. A conviction outside the jurisdiction of the Pascua Yaqui Tribe for an offense which if committed within the Tribe's jurisdiction would be punishable as a sexual offense is a sexual offense conviction for the purposes of this paragraph.

(12) If the victim of the offense is 65 or more years of age or is a handicapped person.

(13) Any other factors which the Court may deem appropriate to the ends of justice.

(B) Reduction in Sentencing: Sentences provided in 4 PYTC § 1-525 for a first conviction of a sexual offense, except those offenses involving a use or exhibition of a deadly weapon or dangerous instrument or when the intentional or knowing infliction of serious physical injury upon another has occurred, may be reduced by the Court up to 25% percent of the sentence and fine prescribed for said offense. Said reduction shall be based on the following circumstances:

(1) The age of the defendant.

(2) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired but not so impaired as to constitute a defense to prosecution.

(3) The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution.

(4) The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.

(5) Any other factors which the Court may deem appropriate to the ends of justice.

(C) The upper or lower term imposed pursuant to this Section may be imposed only if the alleged circumstances of the crime are found to be true by the trial judge upon any evidence or information introduced or submitted to the Court prior to sentencing or any evidence previously heard by the judge at the trial and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.

(D) The victim of any sexual offense or the immediate family of the victim, if the victim has died as a result of the conduct of the defendant, may appear personally or by counsel at any sentencing proceeding to present evidence and express opinions concerning the crime, the defendant or the need for restitution. The Court in imposing sentence shall consider the evidence and opinions presented by the victim or the victim's immediately family at any sentencing proceeding or in the pre-sentence report.

Section 213 Truancy; Minimums and Maximums (Formerly 4 PYTC § 4-111)

(A) Juvenile Penalties:

(1) Any juvenile who has been adjudicated for Minor in Need of Control, with at least one additional adjudication for the same, and is also convicted of violating 5 PYTC § 7-560, Truancy with a Prior shall be deemed guilty of a criminal offense.

(B) Adult Penalties:

(1) Any adult who has been found responsible for violating 5 PYTC § 7-570, Adult Civil Infractions for Juvenile Truancy, with at least one additional finding for the same, shall be deemed guilty of a class 2 misdemeanor.

(2) Any adult who has been found responsible at least twice for violating 5 PYTC § 7-570, Adult Civil Infraction for Juvenile Truancy shall be deemed guilty of a class 1 misdemeanor. The court shall order the adult to participate in a Tribal program or other services in the Court's discretion.

SUBCHAPTER C PROBATION & CIVIL RIGHTS

Section 300 Suspension of Sentence (Formerly 4 PYTC § 4-90)

(A) If a person who has been convicted of an offense is eligible for probation, the court may suspend the imposition or execution of sentence and, if so, shall without delay place the person on intensive probation supervision pursuant to section 300.2 or supervised probation on such terms and conditions as the law requires and the court deems appropriate, including participation in any rehabilitative programs. If a person is not eligible for probation, imposition or execution of sentence shall not be suspended or delayed. If the court imposes probation, it may also impose a fine as authorized by Subchapter D of this title. If probation is granted the court shall impose a condition that the person waive extradition for any probation revocation procedures and it shall order restitution pursuant to section 103, subsection C where there is a victim who has suffered economic loss. When granting probation to an adult the court, as a condition of probation, shall assess a monthly fee after determining the ability of the probationer to pay the fee. This fee is not subject to any surcharge. The fee shall only be assessed when the person is placed on supervised probation. For persons placed on supervised probation, the fee shall be paid to the clerk of the court.

(B) The period of probation shall be determined according to section 301.

(C) The court, in its discretion, may issue a warrant for the rearrest of the defendant and may modify or add to the conditions or, if the defendant commits an additional offense or violates a condition, may revoke probation in accordance with the rules of criminal procedure at any time before the expiration or termination of the period of probation. If the court revokes the defendant's probation and the defendant is serving more than one probationary term concurrently, the court may sentence the person to terms of imprisonment to be served consecutively, unless otherwise stated.

(D) The court, on its own initiative or on application of the probationer, after notice and an opportunity to be heard from the prosecuting attorney and, on request, the victim, may terminate the period of probation or intensive probation and discharge the defendant at a time earlier than that originally imposed if in the court's opinion the ends of justice will be served and if the conduct of the defendant on probation warrants it.

(E) When granting probation the court may require that the defendant be imprisoned under the authority of the Pascua Yaqui Law Enforcement Detention or its designee at whatever time or intervals, consecutive or nonconsecutive, the court shall determine, within the period of probation, as long as the period actually spent in confinement does not exceed one year or the maximum period of imprisonment permitted under Subchapter B of this chapter, whichever is the shorter.

(F) If restitution is made a condition of probation, the court shall fix the amount of restitution and the manner of performance pursuant to Subchapter D of this chapter.

(G) When granting probation, the court shall set forth at the time of sentencing and on the record the factual and legal reasons in support of each sentence.

(H) If the defendant meets the criteria set forth in section 300.1 the court may place the defendant on probation pursuant to that section. If a defendant is placed on probation pursuant to section 300.1, the court may impose any term of probation that is authorized pursuant to this section and that is not in violation of section 300.1.

Section 300.1 Probation for persons convicted of possession or use of controlled substances or drug paraphernalia; treatment; prevention; education; exceptions; definition.

(A) Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation.

(B) Any person who has been convicted of or indicted for a violent crime as defined in this section is not eligible for probation as provided for in this section but instead shall be sentenced pursuant to Subchapter O, of Chapter 1 of this Title and subchapter B, Chapter 2 of this Title.

(C) Personal possession or use of a controlled substance pursuant to this section shall not include possession for sale, production, manufacturing or transportation for sale of any controlled substance.

(D) If a person is convicted of personal possession or use of a controlled substance or drug paraphernalia, as a condition of probation, the court shall require participation in an appropriate drug treatment or education program administered by a qualified agency or organization that provides such programs to persons who abuse controlled substances. Each person who is enrolled in a drug treatment or education program shall be required to pay for participation in the program to the extent of the person's financial ability.

(E) A person who has been placed on probation pursuant to this section and who is determined by the court to be in violation of probation shall have new conditions of probation established by the court. The court shall select the additional conditions it deems necessary, including intensified drug treatment, community service and/or restitution, intensive probation, home arrest or any other sanctions except that the court shall not impose a term of incarceration unless the court determines that the person violated probation by committing an offense listed in Subchapter O, of Chapter 1 of this Title or an act in violation of an order of the court relating to drug treatment.

(F) If a person is convicted a second time of personal possession or use of a controlled substance or drug paraphernalia, the court may include additional conditions of probation it deems necessary, including intensified drug treatment, community service and/or restitution, intensive probation, home arrest or any other action within the jurisdiction of the court.

(G) At any time while the defendant is on probation, if after having a reasonable opportunity to do so the defendant fails or refuses to participate in drug treatment, the probation department or the prosecutor may petition the court to revoke the defendant's probation. If

the court finds that the defendant refused to participate in drug treatment, the defendant shall no longer be eligible for probation under this section but instead shall be sentenced pursuant Subchapter O, of Chapter 1 of this Title and Chapter 2 of this Title.

(H) A person is not eligible for probation under this section but instead shall be sentenced pursuant to Subchapter O, of Chapter 1 of this Title and Chapter 2 of this Title if the court finds the person either:

(1) Had been convicted three times of personal possession of a controlled substance or drug paraphernalia.

(2) Refused drug treatment as a term of probation.

(3) Rejected probation.

(I) Subsections G and H of this section do not prohibit the defendant from being placed on probation pursuant to section 300 or 300.2 if the defendant otherwise qualifies for probation under either section.

(J) For the purposes of this section, "controlled substance" has the same meaning as the enumerated items in section 4 PYTC §§ 1-1200, 1200.1 and 1200.2.

Section 300.2 Intensive Probation; evaluation; sentence; criteria; limit; conditions

(A) In this chapter, unless the context otherwise requires, "intensive probation" means a program established pursuant to this chapter of highly structured and closely supervised probation which emphasizes the payment of restitution.

(B) A probation officer shall, upon order of the court, prepare a presentence report for every offender who has either:

(1) Been convicted of a felony and for whom the granting of probation is not prohibited by law.

(2) Violated probation by commission of a technical violation that was not chargeable or indictable as a criminal offense.

(C) The probation officer shall evaluate the needs of the offender and the offender's risk to the community, including the nature of the offense and criminal history of the offender. If the nature of the offense and the prior criminal history of the offender indicate that the offender should be included in an intensive probation program, the adult probation officer may recommend to the court that the offender be granted intensive probation.

(D) The court may suspend the imposition or execution of the sentence and grant the offender a period of intensive probation in accordance with this subchapter. The sentence is tentative to the extent that it may be altered or revoked pursuant to this chapter, but for all other purposes it is a final judgment of conviction.

(E) When granting intensive probation the court shall set forth on the record the factual and legal reasons in support of the sentence.

(F) Intensive probation shall be conditioned on the offender:

(1) Maintaining employment or maintaining full-time student status at a school or other court or probation approved educational institution and making progress deemed satisfactory to the probation officer, if physically and/or mentally capable, or being involved in supervised job searches and community restitution work at least five days a week throughout the offender's term of intensive probation.

(2) Paying restitution and probation fees after determining the ability of the offender to pay the fee. Any amount assessed pursuant to this paragraph shall be used to supplement monies used for the salaries of adult probation and surveillance officers and for support of programs and services of the tribal court probation department.

(3) Establishing a residence at a place approved by the intensive probation officer and not changing the offender's residence without the probation department's prior approval.

(4) Remaining at the offender's place of residence at all times except to go to work, to attend school, to perform community restitution or participate in cultural events and as specifically allowed in each instance by the probation officer.

(5) Allowing administration of drug and alcohol tests if requested by a member of the probation office.

(6) Performing not less than twenty hours of community service or restitution each month. Full-time students may be exempted or required to perform fewer hours of community service or restitution. For good cause, the court may reduce the number of community service or restitution hours performed to not less than ten hours each month.

(7) Meeting any other conditions imposed by the court to meet the needs of the offender and limit the risks to the community.

(G) The probation officer shall periodically examine the needs of each person granted intensive probation and the risks of modifying the level of supervision of the person. The court may at any time modify the level of supervision of a person granted intensive probation, or may transfer the person to supervised probation or terminate the period of intensive probation pursuant to section 300, subsection D.

(H) The court may issue a warrant for the arrest of a person granted intensive probation. If the person commits an additional offense or violates a condition of probation, the court may revoke intensive probation at any time before the expiration or termination of the period of intensive probation. If a petition to revoke the period of intensive probation is filed and the court finds that the person has committed an additional felony offense or has violated a condition of intensive probation which poses a serious threat or danger to the community,

the court shall revoke the period of intensive probation and impose a term of imprisonment as authorized by law. If the court finds that the person has violated any other condition of intensive probation, it shall modify the conditions of intensive probation as appropriate or shall revoke the period of intensive probation and impose a term of imprisonment as authorized by law.

(I) The court shall notify the prosecuting attorney, and the victim on request, of any proposed modification of a person's intensive probation if that modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status.

Section 301 Periods of Probation; monitoring; fees

(A) Unless terminated sooner, probation may continue for the following periods:

(1) For a class 1, 2 or 3 felony, up to three years.

(2) For a class 1 misdemeanor, up to three years.

(3) For a class 2 misdemeanor, up to two years.

(4) For a class 3 misdemeanor, up to one year.

(B) When the court has required, as a condition of probation, that the defendant make restitution for any economic loss related to the defendant's offense and that condition has not been satisfied, the court at any time before the termination or expiration of probation may extend the period within the following limits:

(1) For a felony, not more than three years.

(2) For a misdemeanor, not more than two years.

(C) After conviction of a violation of Subchapter I of Chapter 1, Title 4, if a term of probation is imposed and the offense for which the person was required to register was a felony, probation may continue for a term of not less than the term that is specified in subsection A of this section and that the court believes is appropriate for the ends of justice.

Section 302 Violation of Probation (Formerly 4 PYTC § 4-130)

(A) Initiation.

(1) Motion to revoke by Probation Officer:

If he has reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the officer responsible or the prosecutor may make a motion to the court to revoke probation.

(2) After the motion has been filed, the court may issue a summons directing the probationer to appear at a specified date for a revocation hearing or may issue a warrant for the probationer's arrest.

(B) Initial Appearance After Arrest.

If a probationer is arrested pursuant to subsection (A) (2) above, the probation officer shall immediately be notified, and the probationer shall be taken before the issuing judge without unreasonable delay, who shall advise him of his right to counsel, inform him that any statement he makes prior to the hearing may be used against him, set the date for the revocation hearing and make a release determination.

(C) Revocation of Probation.

(1) Arraignment:

(a) The revocation arraignment shall be held no later than seven days after service of summons or the probationer's initial appearance before the court.

(b) The court shall inform the probationer of each alleged violation of probation and the probationer shall admit or deny each such allegation.

(c) If no admission is made or if an admission is not accepted, the court will set a revocation hearing, unless both parties agree that a revocation hearing may proceed forthwith.

(2) Revocation Hearing:

(a) A hearing to determine whether a probationer has violated a written condition or regulation of probation shall be held before the court no sooner than seven days and no more than 20 days after the arraignment, unless the court, upon the request of the probationer made in writing or in open court on the record, sets the hearing for another date.

(b) Upon a determination that a violation of a condition or regulation of probation occurred, the court may revoke, modify or continue probation. If probation is revoked, the court shall pronounce sentence. Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.

(3) Disposition Hearing:

(a) A disposition hearing shall be held no sooner than seven days and no more than 20 days after a determination that a probationer has violated a condition or regulation of probation.

(b) Upon determination that a violation of a condition or regulation of probation occurred, the court may revoke, modify or continue probation. If probation

is revoked, the court shall pronounce sentence. Probation shall not be revoked for violation of a condition or regulation of which the probationer has not received a written copy.

(4) Waiver of Disposition Hearing:

(a) At the time of an admission by a probationer or a finding by the court that violation of a condition or regulation of probation has occurred, the probationer may waive a disposition hearing. If, the waiver is accepted, the court may proceed forthwith to enter disposition.

(D) Admission by probationer.

Before accepting an admission by a probationer that he has violated a condition or regulation of his probation the court shall address him personally and shall determine that he understands the following:

(1) The nature of the violation of probation to which an admission is offered.

(2) The right to counsel.

(3) The right to cross-examine the witnesses who testify against him.

(4) The right to present witnesses in his behalf.

(5) If the alleged violation involves a criminal offense for which he has not yet been tried, the probationer shall be advised, at the beginning of the revocation hearing, that regardless of the outcome of the present hearing, he may still be tried for that offense, and any statement made by him at the hearing may be used to impeach his testimony at the trial.

(6) The court shall also determine that the defendant wishes to forego these rights, that his admission is voluntary and not the result of force, threats, or promises and that there is factual basis for the admission.

(E) Revocation in Absentia.

(1) Time for Commencement. A proceeding to revoke probation in absentia shall be commenced only after the probationer's whereabouts are unknown to the probation officer for at least 30 days.

(2) Petition. If he has reasonable cause to believe that a probationer has violated a written condition or regulation of probation, the probation officer responsible for the probationer's conduct or the prosecutor may petition the sentencing court to revoke probation in absentia.

(a) The petition shall be verified and shall include:

(i) Each violation of the terms and regulations of probation.

(ii) An allegation that the whereabouts of the probationer are unknown.

(iii) Efforts made to locate the probationer.

(iv) The probationer's last known address.

(3) Order to Show Cause. If the court finds the petition to be in proper form, it shall issue an order to show cause directing the probationer to appear at a specified date and time within no sooner than ten and not more than 60 days to show cause why probation should not be revoked.

(4) Service of Process. Service of process shall be affected under 3 PYTC R.Civ.P. Rule 7.

(5) Hearing.

(a) If the probationer appears at the time for hearing, the proceeding shall continue under subsection (C) (2) above.

(b) Non-appearance of the probationer. If the probationer fails to appear at the time set for the hearing and the court is satisfied that reasonable efforts have been made to give the probationer notice, it may:

(i) Hear evidence in support of each allegation of violation.

(ii) Make specific findings of each violation; and

(iii) Revoke Probation

(6) Record of Proceedings. All proceedings at the revocation hearing in absentia shall be reported verbatim.

Section 303 Parole (Formerly 4 PYTC § 4-140)

Any person committed to a term of incarceration by the Pascua Yaqui Tribal Court, who has without misconduct served one-half of the sentences imposed upon him by such Court, shall be eligible for parole. Parole shall be granted only by a judge of the Pascua Yaqui Tribal Court. Revocation of parole shall be conducted under the same procedures as revocation of probation.

Section 304 Parole Violation (Formerly 4 PYTC § 4-150)

If the Court finds after a hearing in open Court that a person has violated the terms of his parole, said person may be ordered to serve part or all of the remaining term of the original sentence.

Section 305 Suspension of rights

(A) A conviction for a felony suspends the following civil rights of the person sentenced:

(1) The right to vote.

(2) The right to hold public office of trust or profit.

(3) The right to serve as a juror.

(4) During any period of imprisonment any other civil rights the suspension of which is reasonably necessary for the security of the institution in which the person sentenced is confined or for the reasonable protection of the public.

(5) The right to possess a gun or firearm.

(B) Persons sentenced to imprisonment shall not thereby be rendered incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property.

(C) A person sentenced to imprisonment is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if such person was not convicted and sentenced.

(D) A person shall not be disqualified from employment by Pascua Yaqui Tribe or any of its agencies or political subdivisions, nor shall a person whose civil rights have been restored be disqualified to engage in any occupation for which a license, permit or certificate is required to be issued solely because of a prior conviction for a felony or misdemeanor within or without the Pascua Yaqui Tribe. A person may be denied employment by the Pascua Yaqui Tribe or any of its agencies or political subdivisions or a person who has had his civil rights restored may be denied a license, permit or certificate to engage in an occupation by reason of the prior conviction of a felony or misdemeanor if the offense has a reasonable relationship to the functions of the employment or occupation for which the license, permit or certificate is sought.

(E) Subsection D of this section is not applicable to any law enforcement agency.

Section 306 Restoration of rights; probation completed

(A) A person who has been convicted of two or more felonies and whose period of probation has been completed may have any civil rights which were lost or suspended by the felony conviction restored by the judge who discharges him at the end of the term of probation.

(B) On proper application, a person who has been discharged from probation either before or after adoption of this chapter may have any civil rights which were lost or suspended by the felony conviction restored by the tribal court judge by whom the person was sentenced or the judge's successors in office in which the person was originally convicted. The clerk of the tribal court shall have the responsibility for processing the application on request of the person involved or the person's attorney. The superior court shall serve a copy of the application on the tribal prosecutor.

(C) If the person was convicted of a dangerous offense under section 204, the person may not file for the restoration of the right to possess or carry a gun or firearm. If the person was convicted of a serious offense as defined in section 206 the person may not file for the restoration of the right to possess or carry a gun or firearm for ten years from the date of his discharge from probation. If the person was convicted of any other felony offense, the person may not file for the restoration of the right to possess or carry a gun or firearm for two years from the date of the person's discharge from probation.

(D) Except as provided in section 309, the restoration of civil rights and the dismissal of the accusation or information under the provisions of this chapter shall be in the discretion of the tribal court judge by whom the person was sentenced or his successor in office.

Section 307 Restoration of rights; applications from persons discharged from incarceration

(A) On proper application, a person who has been convicted of two or more felonies and who has received an absolute discharge from imprisonment may have any civil rights which were lost or suspended by his conviction restored by the tribal court judge by whom the person was sentenced or the judge's successors in office in which the person was originally sentenced.

(B) A person who is subject to subsection A of this section may file, no sooner than two years from the date of his absolute discharge, an application for restoration of civil rights that shall be accompanied by sufficient proof, as determined by the tribal court, of absolute discharge from the Pascua Yaqui Law Enforcement Detention or its designee. The clerk of the tribal court that sentenced the applicant shall have the responsibility for processing applications for restoration of civil rights upon request of the person involved, the person's attorney or a representative of the Pascua Yaqui Law Enforcement Detention. The tribal court shall serve a copy of the application on the tribal prosecutor.

(C) If the person was convicted of a dangerous offense under section 204, the person may not file for the restoration of the right to possess or carry a gun or firearm. If the person was convicted of a serious offense as defined in section 206, the person may not file for the restoration of the right to possess or carry a gun or firearm for ten years from the date of his absolute discharge from imprisonment. If the person was convicted of any other felony offense, the person may not file for the restoration of the right to possess or carry a gun or firearm for two years from the date of the person's absolute discharge from imprisonment.

(D) Except as provided in section 309, the restoration of civil rights and the dismissal of the accusation or information under the provisions of this chapter shall be in the discretion of the tribal court judge by whom the person was sentenced or his successor in office.

Section 308 Setting aside judgment of convicted person on discharge; application; release from disabilities; firearm possession; exceptions

(A) Except as provided in subsection E of this section, every person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the tribal court judge who pronounced sentence or imposed probation

or such judge's successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right by the tribal court at the time of sentencing.

(B) The convicted person or, if authorized in writing, the convicted person's attorney or authorized advocate or probation officer may apply to set aside the judgment.

(C) If the judge grants the application, the judge shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction except that the conviction may be used as a conviction if the conviction would be admissible had it not been set aside and may be pleaded and proved in any subsequent prosecution of such person by the Tribe, State of Arizona or United States, any subdivisions, for any offense or used by the Arizona department of transportation in enforcing Arizona Revised Statute sections 28-3304, 28-3306, 28-3307, 28-3308 or 28-3319 as if the judgment of guilt had not been set aside.

(D) Notwithstanding section 306 or 307, if a judgment of guilt is set aside pursuant to this section, the person's right to possess a gun or firearm is restored. This subsection does not apply to a person who was convicted of a serious offense as defined in section 206.

(E) This section does not apply to a person who was convicted of a criminal offense:

(1) Involving a dangerous offense.

(2) For which the person is required or ordered by the court to register pursuant to subchapter H and I, chapter 1, title 4.

(3) In which the victim is a minor under fifteen years of age.

Section 309 Restoration of civil rights for first offenders; exceptions

(A) Any person who has not previously been convicted of any other felony shall automatically be restored any civil rights that were lost or suspended by the conviction if the person both:

(1) Completes a term of probation or receives an absolute discharge from imprisonment.

(2) Pays any fine or restitution imposed.

(B) This section does not apply to a person's right to possess weapons as defined in 4 PYTC § 1-910 unless the person applies to a court pursuant to section 306 or 307.

SUBCHAPTER D RESTITUTION AND FINES

Section 400 Restitution

(A) On a defendant's conviction for an offense causing economic loss to any person, the court, in its sole discretion, may order that all or any portion of the fine imposed be allocated as

restitution to be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

(B) In ordering restitution for economic loss pursuant to section 103, subsection C or subsection A of this section, the court shall consider all losses caused by the criminal offense or offenses for which the defendant has been convicted.

(C) The court shall not consider the economic circumstances of the defendant in determining the amount of restitution.

(D) Restitution payments that are ordered pursuant to section 103 and this section shall not be stayed if the defendant files a notice of appeal, and the payments may be held by the court pending the outcome of an appeal.

(E) After the court determines the amount of restitution, the court or a staff member designated by the court, including a probation officer, shall specify the manner in which the restitution is to be paid. In deciding the manner in which the restitution is to be paid, the court or a staff member designated by the court, including a probation officer, shall make reasonable efforts to contact any victim who has requested notice, shall take into account the views of the victim and shall consider the economic circumstances of the defendant. In considering the economic circumstances of the defendant, the court shall consider all of the defendant's assets and income, including workers' compensation and social security benefits. The court shall make all reasonable efforts to ensure that all persons entitled to restitution pursuant to a court order promptly receive full restitution. The court may enter any reasonable order necessary to accomplish this. If a victim has received reimbursement for the victim's economic loss from an insurance company, a crime victim compensation program or any other entity, the court shall order the defendant to pay the restitution to that entity. If a victim has received only partial reimbursement for the victim's economic loss, the court shall order the defendant to pay restitution first to the victim and then to the entity that partially reimbursed the victim. If a probation or parole officer has reason to believe that court ordered restitution is not being made, the officer shall report to the court supervising the probationer that the defendant has failed to make restitution in a timely manner and the court may revoke the defendant's probation or parole.

(F) If more than one defendant is convicted of the offense that caused the loss, the defendants are jointly and severally liable for the restitution, unless otherwise agreed upon by the involved parties.

(G) If the court does not have sufficient evidence to support a finding of the amount of restitution or the manner in which the restitution should be paid, it may conduct a hearing on the issue according to procedures established by court rule. The court may call the defendant to testify and to produce information or evidence. The tribe does not represent persons who have suffered economic loss at the hearing but may present evidence or information relevant to the issue of restitution.

(H) After making the determinations in subsection B of this section the trial court shall enter a restitution order for each defendant that sets forth all of the following:

(1) The total amount of restitution the defendant owes all persons.

(2) The total amount of restitution owed to each person.

(3) The manner in which the restitution is to be paid.

(I) The restitution order under subsection H of this section may be supported by evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings.

(J) If the defendant, the tribe or persons entitled to restitution pursuant to a court order disagree with the manner of payment established in subsection E of this section, the defendant, court or person entitled to restitution may petition the court at any time to change the manner in which the restitution is paid. Before modifying the order pertaining to the manner in which the restitution is paid, the court shall give notice and an opportunity to be heard to the defendant, the tribe and, on request, persons entitled to restitution pursuant to a court order.

Section 401 Restitution; retained jurisdiction

(A) The trial court shall retain jurisdiction of the case for purposes of ordering, modifying and enforcing the manner in which court-ordered payments are made until paid in full or until the defendant's sentence expires.

(B) At the time the defendant is ordered to pay restitution by the court, the court may enter a criminal restitution order in favor of each person who is entitled to restitution for the unpaid balance of any restitution order. A criminal restitution order does not affect any other monetary obligation imposed on the defendant pursuant to law.

(C) At the time the defendant completes the defendant's period of probation or the defendant's sentence or the defendant absconds from probation or the defendant's sentence, the court shall enter both:

(1) A criminal restitution order in favor of the tribe for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed, including any eligible commutation.

(2) A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered, if a criminal restitution order is not issued pursuant to subsection B of this section.

(D) The clerk of the court shall notify each person who is entitled to restitution of the criminal restitution order.

(E) All monies paid pursuant to a criminal restitution order entered by the court shall be paid to the clerk of the court.

(F) Monies received as a result of a criminal restitution order entered pursuant to this section shall be distributed in the following order of priority:

(1) Restitution ordered that is reduced to a criminal restitution order.

(2) Associated interest.

(G) The interest accrued pursuant to subsection E of this section does not apply to fees imposed for collection of the court ordered payments.

(H) A criminal restitution order is a criminal penalty for the purposes of a federal bankruptcy involving the defendant.

Section 402 Fines; felonies; misdemeanors

(A) A sentence to pay a fine for a felony shall be a sentence to pay an amount fixed by the court, as authorized by federal law, not more than $15,000 for any one offense.

(B) A sentence to pay a fine for a class 1 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than $2,500.

(C) A sentence to pay a fine for a class 2 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than $750.

(D) A sentence to pay a fine for a class 3 misdemeanor shall be a sentence to pay an amount, fixed by the court, not more than $500.

(E) A sentence to pay a fine for a petty offense shall be a sentence to pay an amount, fixed by the court, of not more than $300.

Section 403 Civil actions by victims or other persons

A defendant who is convicted in a criminal proceeding is precluded from subsequently denying in any civil proceeding brought by the victim or this TRIBE against the criminal defendant the essential allegations of the criminal offense of which he was adjudged guilty, including judgments of guilt resulting from no contest pleas. An order of restitution in favor of a person does not preclude that person from bringing a separate civil action and proving in that action damages in excess of the amount of the restitution order that is actually paid.

Section 404 Time and method of payment of fines; conditions of probation; no limitation on restitution and other assessments

(A) If a defendant is sentenced to pay a fine alone or in addition to any other sentence, the court or a probation officer or a staff member designated by the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence the fine shall be payable immediately.

(B) If a defendant sentenced to pay a fine, restitution, penalty, assessment, incarceration cost or surcharge is also sentenced to probation, the court shall make payment of the fine, restitution, penalty, assessment, incarceration cost or surcharge a condition of probation.

(C) The amount of restitution, assessments, incarceration costs and surcharges is not limited by the maximum fine that may be imposed under section 402.

Section 405 Consequences of nonpayment of fines, fees, restitution or incarceration costs

(A) In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, if a defendant who is sentenced to pay a fine, a fee or incarceration costs defaults in the payment of the fine, fee or incarceration costs or of any installment as ordered, the clerk of the court imposing the fine, fee or incarceration costs shall notify the prosecutor and the sentencing court. The court, on motion of the prosecuting attorney or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.

(B) In addition to any other remedy provided by law, including a writ of execution or other civil enforcement, if a defendant who is ordered to pay restitution defaults in the payment of the restitution or of any installment as ordered, the clerk of the court that imposed the restitution shall notify the prosecutor and the sentencing court. The court, on motion of the prosecuting attorney, on petition of any person entitled to restitution pursuant to a court order or on its own motion, shall require the defendant to show cause why the defendant's default should not be treated as contempt and may issue a summons or a warrant of arrest for the defendant's appearance.

(C) At any hearing on the order to show cause the court, the prosecuting attorney or a person entitled to restitution may examine the defendant under oath concerning the defendant's financial condition, employment and assets or on any other matter relating to the defendant's ability to pay restitution.

(D) If the court finds that the defendant has willfully failed to pay a fine, a fee, restitution or incarceration costs or finds that the defendant has intentionally refused to make a good faith effort to obtain the monies required for the payment, the court shall find that the default constitutes contempt and may do one of the following:

(1) Order the defendant incarcerated until the fine, fee, restitution or incarceration costs, or a specified part of the fine, fee, restitution or incarceration costs, is paid.

(2) Revoke the defendant's probation, parole or community supervision and sentence the defendant to prison pursuant to law.

(3) Enter an order pursuant to section 406. The levy or execution for the collection of a fine, a fee, restitution or incarceration costs does not discharge a defendant who is incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

(4) Order the defendant to perform community service or restitution.

(E) If the court finds that the default is not willful and that the defendant cannot pay despite sufficient good faith efforts to obtain the monies, the court may take any lawful action including:

(1) Modify the manner in which the restitution, fine, fee or incarceration costs are to be paid.

(2) Enter any reasonable order that would assure compliance with the order to pay.

(3) Enter an order pursuant to section 406. The levy or execution for the collection of a fine, a fee, restitution or incarceration costs does not discharge a defendant incarcerated for nonpayment of the fine, fee, restitution or incarceration costs until the amount of the fine, fee, restitution or incarceration costs is collected.

(F) If a fine, a fee, restitution or incarceration costs are imposed on an enterprise it is the duty of the person or persons authorized to make disbursement from the assets of the enterprise to pay them from those assets, and their failure to do so shall be held a contempt unless they make the showing required in subsection A or B of this section.

Section 406 Garnishment for nonpayment of fines, fees, restitution or incarceration costs

(A) After a hearing on an order to show cause pursuant to section 405, subsection A or B or after a hearing on a petition to revoke probation pursuant to section 302 or the rules of criminal procedure, the court may issue a writ of criminal garnishment for any fine, fee, restitution or incarceration costs.

(B) The court may order garnishment for monies that are owed to a victim or the court, the clerk of the court or the prosecuting attorney pursuant to a court order to pay any fine, fee, restitution or incarceration costs. A writ of criminal garnishment applies to any of the following:

(1) The defendant's "Earnings," which means compensation paid or payable for personal services, whether these payments are called wages, salary, commission, bonus or otherwise. Earnings include periodic payments pursuant to a pension or retirement program.

(2) Indebtedness that is owed to a defendant by a garnishee for amounts that are not earnings.

(3) Monies that are held by a garnishee on behalf of a defendant.

(4) The defendant's personal property that is in the possession of a garnishee.

(5) If the garnishee is a corporation, shares or securities of a corporation or a proprietary interest in a corporation that belongs to a defendant.

(6) The defendant's earnings or monies that are held while the defendant is in the custody of the Pascua Yaqui Law Enforcement Detention or its designee.

Section 407 Issuance of writ of garnishment; service and return of writ [Reserved]

(A) The court shall direct the writ of criminal garnishment to any other officer who is authorized by law to serve process in the jurisdiction in which the garnishee is alleged to be. The writ shall summon the garnishee to immediately appear to answer the writ before the court issuing the writ. The garnishee shall appear within the time specified in the writ. The writ shall state all of the following:

(1) The amount due to the victim or court, clerk of the court or prosecuting attorney as of the date on which the writ is issued.

(2) The name and address of the garnishee or the garnishee's authorized agent.

(3) The name and address of the victim or the court, clerk of the court or prosecuting attorney presenting the writ.

(4) The last known mailing address of the defendant.

(B) The victim or the court, the clerk of the court or the prosecuting attorney shall serve the following on the garnishee:

(1) Two copies of the writ of garnishment and summons.

(2) A copy of the criminal restitution order.

(3) Four copies of the answer form.

(4) Two copies of the notice to the defendant.

(C) The victim or the court, the clerk of the court or the prosecuting attorney shall serve on the defendant a copy of the writ of garnishment.

Section 408 Initial lien on earnings [Reserved]

(A) If the writ of criminal garnishment is for earnings of the defendant, the writ is a lien on the earnings of the defendant from the date of service on the garnishee until any of the following occurs:

(1) An order of continuing lien is entered.

(2) If an order is not entered, within forty-five days after the date on which the garnishee files an answer.

(3) The writ is quashed or released or becomes ineffective.

(B) The garnishee shall not remit any withheld earnings to the party obtaining the writ until the court enters an order pursuant to section 2-410.

§ 2-409 Answer; time and form

(A) The garnishee shall answer the writ of criminal restitution in the court issuing the writ within ten days after being served.

(B) If the writ of criminal garnishment is for earnings of the defendant, the garnishee shall answer pursuant to section C of this section.

(C) Answer of garnishee to writ of garnishment of earnings; filings; delivery; notice

(1) The answer of the garnishee shall be under oath, in writing and signed by him and shall make true answers to the writ. If there are more judgment debtors than one, the garnishee shall answer as to each judgment debtor named in the writ. The answer of any garnishee, including a corporate garnishee, may be filed by the garnishee without representation of an attorney.

(2) The answer of the garnishee shall set forth the following:

(a) Whether the judgment debtor was employed by the garnishee on the date the writ was served.

(b) Whether the garnishee anticipates owing earnings within sixty days after the date of service of the writ.

(c) If the garnishee is unable to determine the identity of the judgment debtor after making a good faith effort to do so, a statement of the effort made and reasons for such inability.

(d) The dates of the next two paydays occurring after the date of service of the writ.

(e) The pay period of the judgment debtor, whether weekly, biweekly, semimonthly, monthly or another specified period.

(f) The amount of the outstanding judgment now due and owing as stated in the writ.

(g) Whether the judgment debtor is subject to an existing wage assignment, garnishment or levy, and if so, the name, address and telephone number of that judgment creditor.

(h) The name, address and telephone number of the garnishee.

(i) The date and manner of delivery of a copy of the answer to the judgment debtor and judgment creditor.

(3) The garnishee shall deliver a copy of the answer to the judgment creditor or the judgment creditor's attorney, if applicable. At the same time the garnishee shall deliver a copy of the answer and a copy of the notice to judgment debtor and request

for hearing form to the judgment debtor. The garnishee shall state the time and manner of delivery in the answer.

(D) Answer of garnishee

(1) The answer of the garnishee shall be under oath, in writing and signed by him, and shall make true answers to the writ. If a partnership is the judgment debtor, or if there are more judgment debtors than one, the garnishee shall answer as to the partnership and as to each judgment debtor named in the writ.

(2) The answer of any garnishee, including a corporate garnishee, may be filed by the garnishee without representation by an attorney.

(3) At the time of filing the answer, the garnishee shall deliver a copy of the answer to the judgment debtor and the judgment creditor or the judgment creditor's attorney, if applicable.

(4) The answer of the garnishee shall set forth the following:

(a) Whether the garnishee was indebted to or otherwise in possession of monies of the judgment debtor at the time the writ was served.

(b) The total amount of indebtedness or monies in possession of the garnishee at the time the writ was served.

(c) The amount of indebtedness or monies withheld by the garnishee pursuant to the writ.

(d) The amount of indebtedness or monies not withheld by the garnishee, and the reason for not withholding.

(e) Whether the garnishee was in possession of personal property of the judgment debtor at the time the writ was served.

(f) A description of each item, or group of items, of personal property of the judgment debtor in the garnishee's possession at the time the writ was served.

(g) A list of the personal property withheld by the garnishee pursuant to the writ.

(h) What other person or entity, within his knowledge, is indebted to the judgment debtor or in possession of personal property of the judgment debtor.

(i) Whether the garnishee is a corporation in which the judgment debtor owns shares of stock or some other interest.

(j) A statement of the number and types of shares owned by the judgment debtor and a description of any other interest the judgment debtor owns in the garnishee corporation as of the date the writ was served, as shown on the corporation's records.

(k) The name, address and telephone number of the garnishee.

(l) The date and manner of delivery to the judgment debtor of a copy of the writ and the notice to judgment debtor.

(m) The date and manner of delivery of a copy of the answer to the judgment creditor and judgment debtor.

Section 409 Objection to garnishment; hearing; discharge of garnishee [Reserved]

(A) A party who has an objection to the writ of garnishment or the answer may file a written objection and may request a hearing. The party shall state the grounds for objection in writing and shall deliver copies of the objection to all of the parties to the writ.

(B) The court shall hold a hearing on an objection to the writ or the answer within ten days after receiving the request. The court may continue the hearing for good cause on terms the court deems appropriate.

(C) The court may discharge the garnishee from the writ of criminal restitution if it appears from the garnishee's answer that the garnishee did not owe earnings to the defendant or have the defendant's indebtedness, monies, property or stock in the garnishee's possession and if no written objection to the answer is filed. The court shall enter an order discharging the garnishee.

Section 410 Order on writ of garnishment for money or property [Reserved]

(A) If the garnishee’s answer shows that the garnishee holds indebtedness or monies of the defendant, the court shall enter an order of criminal garnishment that requires the garnishee to immediately transfer the indebtedness or monies to the victim or to the court, the clerk of the court or the prosecuting attorney who is named in the writ of garnishment.

(B) If the garnishee's answer shows that the garnishee holds personal property or stock of the defendant, the court shall enter an order against the garnishee to hold the personal property or stock of the defendant pending service of a writ of special execution pursuant to section F of this section.

(C) The party who obtains the writ of garnishment shall deliver a copy of the order on the writ to the garnishee and the defendant.

(D) An order that is entered pursuant to subsection A or B of this section shall not order more money, stocks or property transferred than is reasonably necessary to satisfy the amount of the outstanding balance of the underlying criminal restitution order.

(E) Special Execution

(1) A special execution shall set forth in substance the portions of the judgment which command the sale or delivery of specific property and the amount of costs or damages, if any, and shall require the officer:

(a) If the judgment directs the sale of specific real or personal property, to make sale of such property as directed in the judgment.

(b) If the judgment is for the delivery of possession of real or personal property, to deliver possession of the property to the party entitled thereto, and at the same time to satisfy any costs, damages, rents, or profits given by the same judgment, out of the personal property of the person against whom the judgment was given, and the value of the property for which judgment was given shall be specified in the officer's return if a delivery cannot be had. If sufficient personal property cannot be found, the judgment shall be satisfied out of the real property as in the case of a general execution.

Section 411 Order on writ of garnishment for earnings; continuing lien [Reserved]

(A) The party who obtains the writ of garnishment for earnings shall deliver a copy of the order on the writ to the garnishee and the defendant.

(B) After service or delivery of the order is made, section D of this section applies, except that "judgment creditor" includes a victim or the court, the clerk of the court or the prosecuting attorney that obtains the writ of garnishment and "judgment debtor" includes a criminal defendant.

(C) Section E of this section applies to continuing liens for writs of criminal garnishment. Section E of this section applies to reporting by the party obtaining the writ of criminal garnishment, except that "judgment creditor" includes a victim or the court, the clerk of the court or the prosecuting attorney that obtains the writ of garnishment and "judgment debtor" includes a criminal defendant.

(D) Continuing lien on earnings and order

(1) If it appears from the answer of the garnishee that the judgment debtor was an employee of the garnishee, or that the garnishee otherwise owed earnings to the judgment debtor when the writ was served, or earnings would be owed within sixty days thereafter and there is no timely written objection to the writ or the answer of the garnishee filed, on application by the judgment creditor the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the writ be transferred to the judgment creditor who is entitled to such monies subject to the judgment debtor's right to objection and hearing pursuant to this article. The court shall further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor.

(2) If a timely objection is filed the court shall conduct a hearing pursuant to section 2-412 and shall make the following determinations:

(a) Whether the writ is valid against the judgment debtor.

(b) The amount outstanding on the judgment at the time the writ was served, plus accruing costs.

(c) Whether the judgment debtor was employed by the garnishee at the time the writ was served.

(d) Whether earnings were owed or would be owed by the garnishee to the judgment debtor within sixty days after the service of the writ.

(e) Whether the debt was, at the time of service of the writ, subject to an effective agreement for debt scheduling between the judgment debtor and a qualified debt counseling organization.

(3) If the court makes an affirmative determination under subsection 2, paragraph a of this section and subsection 2, paragraph c or d of this section and determines that the debt was not, at the time of service of the writ, subject to an effective agreement between the judgment debtor and a qualified debt counseling organization, the court shall order that the nonexempt earnings, if any, withheld by the garnishee after service of the writ be transferred to the judgment creditor and further order that the garnishment is a continuing lien against the nonexempt earnings of the judgment debtor. Otherwise the court shall order the garnishee discharged from the writ.

(4) A continuing lien ordered pursuant to this section is invalid and of no force and effect on the occurrence of any of the following conditions:

(a) The underlying judgment is satisfied in full, is vacated or expires.

(b) The judgment debtor leaves the garnishee's employ for more than sixty days.

(c) The judgment creditor releases the garnishment.

(d) The proceedings are stayed by a court of competent jurisdiction, including the United States bankruptcy court.

(e) The judgment debtor has not earned any nonexempt earnings for at least sixty days.

(f) The court orders that the garnishment be quashed.

(5) If no objections are filed to the answer of the garnishee and an order of continuing lien is not entered within forty-five days after the filing of the answer of the

garnishee, any earnings held by the garnishee shall be released to the judgment debtor and the garnishee shall be discharged from any liability on the garnishment.

(6) If at the hearing the court determines that the judgment debtor is subject to the twenty-five per cent maximum disposable earnings provision under 4 PYTC § 2-411(D)(9)(b) and based on clear and convincing evidence that the judgment debtor or his family would suffer extreme economic hardship as a result of the garnishment, the court may reduce the amount of nonexempt earnings withheld under a continuing lien ordered pursuant to this section from the twenty-five per cent to not less than fifteen per cent.

(7) A court order entered pursuant to this section if recorded does not constitute a lien against real property.

(8) The court, sitting without a jury, shall decide all issues of fact and law.

(9) Definitions; wages; salary; compensation

(a) For the purposes of this section, "disposable earnings" means that remaining portion of a debtor's wages, salary or compensation for his personal services, including bonuses and commissions, or otherwise, and includes payments pursuant to a pension or retirement program or deferred compensation plan, after deducting from such earnings those amounts required by law to be withheld.

(b) Except as provided in 4 PYTC § 2-411(D)(9)(c), the maximum part of the disposable earnings of a debtor for any workweek which is subject to process may not exceed twenty-five per cent of disposable earnings for that week or the amount by which disposable earnings for that week exceed thirty times the minimum hourly wage prescribed by federal law in effect at the time the earnings are payable, whichever is less.

(c) The exemptions provided in 4 PYTC § 2-411(D)(9)(b) do not apply in the case of any order for the support of any person. In such case, one-half of the disposable earnings of a debtor for any pay period is exempt from process.

(d) The exemptions provided in this section do not apply in the case of any order of any court of bankruptcy under chapter XIII of the federal bankruptcy act or any debt due for any tribal, state or federal tax.

(E) Reporting by judgment creditor

(1) Except as provided in subsection 2 of this subsection, as long as the order of continuing lien is in effect the judgment creditor shall issue a report in writing to the garnishee and the judgment debtor within twenty-one days after the end of each calendar quarter.

(2) The judgment creditor shall report in writing to the garnishee and judgment debtor within twenty-one days after payment is received from the garnishee reducing the outstanding balance on the judgment to five hundred dollars or less and within the first ten days of each calendar month thereafter until the judgment is satisfied.

(3) The reports required in subsections 1 and 2 shall contain the following:

(a) The beginning and ending date of the reporting period for that report. The beginning date of the first reporting period is the date the writ was served.

(b) The date and amount of each payment received during the reporting period.

(c) The total amount credited to the judgment balance for that reporting period.

(d) The interest accrued during that reporting period.

(e) The total outstanding balance due on the judgment as of the ending date of the reporting period.

(4) It is the obligation of the judgment creditor to take reasonable action to assure that the garnishee does not withhold more nonexempt earnings of the judgment debtor than are necessary to satisfy the underlying judgment. Reasonable action includes at least written notice directed to the garnishee or his authorized representative if the balance due on the judgment is less than double the amount of nonexempt earnings received in the preceding two pay periods. The judgment creditor shall instruct the garnishee to cease withholding earnings after the full amount of the judgment has been paid to the judgment creditor or when the judgment creditor has been notified that sufficient monies have been withheld to satisfy the underlying judgment.

(5) Immediately after the underlying judgment is satisfied or expires, the judgment creditor shall file with the clerk of the court a satisfaction or release of the writ and shall deliver a copy of that satisfaction or release to the garnishee, the judgment debtor and any creditor who has delivered a written request for such notice to the judgment creditor or his attorney.

Section 412 Objection to garnishment, answer or nonexempt earnings statement; hearing [Reserved]

(A) A party who has an objection to the writ of garnishment, the answer of garnishee or a nonexempt earnings statement may file a written objection and request for hearing on a form similar to those set forth in Arizona Revised Statute 12-1598.16. The hearing must be requested no later than ten days after receipt of the answer or nonexempt earnings statement objected to unless good cause for filing the request later is shown. At the time of filing the request for hearing form, the party filing the objection shall deliver a copy of the form to all parties to the writ.

(B) The hearing on an objection to the writ, answer or amount withheld or on a claim of exemption shall be commenced within ten days after receipt of the request by the court but may be continued for good cause on terms the court deems appropriate after due consideration of the importance of the judgment debtor's rights and the need for a speedy determination. Good cause includes a situation in which the objection raised at the hearing is different from that set forth in the request for hearing form. However, in no event shall the hearing be held later than fifteen days after the date the request was received by the court unless the request for a continuance is made by the judgment debtor.

(C) A party requesting a hearing pursuant to this section is required to state the grounds for his objection in writing, but the objecting party is not limited to those written objections at the hearing conducted pursuant to this section.

(D) The court shall notify the parties of the date and time of the hearing at least ten days, not including weekends and holidays, before the date of the hearing.

(E) The prevailing party may be awarded costs and attorney fees in a reasonable amount determined by the court. An award of attorney fees shall not be assessed against nor is it chargeable to the judgment debtor unless the judgment debtor is found to have objected solely for the purpose of delay or to harass the judgment creditor.

Section 413 Imprisonment of Fine (Formerly 4 PYTC § 4-50)

A judgment that the defendant pays a fine and costs may also direct that he be imprisoned until the fine and costs are satisfied, specifying the extent or the imprisonment, which shall not exceed one day for every fifty dollars of a fine. The defendant shall not be imprisoned for failure to pay that part of the fine constituting Court costs.

SUBCHAPTER E CONTEMPT

Section 500 Contempt of Court (Formerly 4 PYTC § 4-160)

A judge may punish for contempt, persons guilty of the following acts:

(A) Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course.

(B) A breach of the peace, boisterous conduct; or violent disturbance in the presence of the judge, or in the immediate vicinity of the Court held by him tending to interrupt the due course of a trial or other judicial proceeding.

(C) Disobedience to a subpoena duly served, or refusing to be sworn or to answer as a witness.

(D) Disobedience or resistance to the carrying out of a lawful order or process made or issued by the judge.

(E) Rescuing or interfering with any person or property in the custody of an enforcement officer acting under an order of the Court or process of the Court.

(F) Classification. If the court find that the person intentionally committed a violation of this section, the offense shall be a class 2 misdemeanor. In all other instances it shall be a civil infraction.

Section 501 Contempt Committed in presence of Judge (Formerly 4 PYTC § 4-170)

When contempt is committed in the immediate view and the presence of the judge, it may be punished summarily. The judge must make an order reciting the facts as they occurred, and that the person proceeded against is guilty of contempt, whether it is criminal or civil, and that he is punished as therein prescribed.

Section 502 Contempt Committed not in the presence of Judge (Formerly 4 PYTC § 4-180)

When contempt is not committed in the immediate view and the presence of the judge, a Warrant of Arrest may be issued by such judge and the person so guilty may be arrested and brought before the judge immediately. The judge must give the arrested person an opportunity to make his defense or excuse. The judge may then discharge him or may convict him of the offense.

Section 503 Proceedings for contempt (Formerly 4 PYTC § 4-190)

(A) The presiding judge may summarily impose measures in response to direct contempt when necessary to restore order or to maintain the dignity and authority of the Court and when the measures are imposed substantially contemporaneously with the contempt. Before imposing measures, the Judge must give the person charged with contempt summary notice of the charges and a summary opportunity to respond and must find facts that support the summary imposition of measures in response to contempt.

(B) A Judge can choose instead of proceeding summarily to proceed by an order directing the person to appear before a Judge at a reasonable time specified in the order and show cause why he or she should not be held in Contempt of Court.

(C) A copy of the order must be furnished to the person charged.

(D) If contempt is based upon acts before a Judge which so involve him that his objectivity may reasonably be questioned, the order must be returned before a different Judge.

(E) The person ordered to show cause may move to dismiss the order.

(F) The person charged with contempt may not be compelled to be a witness against himself or herself in the hearing.

(G) At the conclusion of the hearing, the Judge must enter a finding as to whether the person is guilty or not guilty of Contempt of Court. If a person is found to be guilty of Contempt of Court, the Judge must make findings of fact and enter a judgment.

Section 504 Punishment (Formerly 4 PYTC § 4-190)

A judge may punish for criminal contempt, by fine or imprisonment, or both; such fine not to exceed $500 or imprisonment not to exceed 60 days plus Court costs. Criminal contempt is a class 2 misdemeanor. A judge may punish for civil contempt as permitted by law to serve the ends of justice and uphold the integrity of the court.

SUBCHAPTER F MISCELLANEOUS

Section 600 Court Costs in Criminal Cases (Formerly 4 PYTC § 4-200)

The judgment of conviction in criminal cases shall include costs of court, not to exceed the following amounts:

(A) Ten dollars when disposed of at arraignment, upon a plea of guilty.

(B) $50 where a case is disposed of in pre-trial upon a plea of guilty, or

(C) $100 if trial is requested and heard by Trial Judge upon conviction, or

(D) $200 if trial by jury upon conviction.

Section 601 Failure to Work – Imprisonment (Formerly 4 PYTC § 4-60)

When any person shall be unable or unwilling to work for the benefit of the Tribe, the Court may sentence him to imprisonment for the period of the sentence.

Section 602 Contraband, Confiscated and Abandoned Property (Formerly 4 PYTC § 4-210)

(A) The disposition of all property, confiscated as contraband, seized as evidence, or otherwise taken into custody of the Court, shall be determined at a hearing before the Court.

(B) The 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 Pascua Yaqui Tribe and may be destroyed.

(C) The Tribal Court shall not return any property confiscated pursuant to a conviction of:

(1) Carrying a concealed weapon.

(2) An offense involving the use of any weapon or instrument in the commission of such offense.

(D) Any property not claimed by the owner when delivered or any property for which an owner has not been determined within six months after a court hearing. Property delivered to the

custody of the Court by a private person shall become the property of such person if it is not claimed within 30 days after the hearing.

(E) Any property declared to be the property of the United States shall be dealt with as is directed by federal law.

(F) The Clerk of the Court shall keep written records of all transfers and dispositions of property taken into the custody of the Court.

(G) Contraband is defined as:

(1) Any dangerous drug or substance, the possession, sale, transportation, or use of which has been deemed an offense under federal law and this Tribal Code.

(2) Any firearm seized pursuant to a conviction of this chapter.

Section 603 Stay of Execution (Formerly 4 PYTC § 4-220)

(A) In its discretion the Court may stay the execution of proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment.

(B) If a defendant files an appeal, the Court may stay the execution of judgment. If the Court denies the motion, it shall set forth its reasons in writing.

(C) At the time of filing the Notice of Appeal, the appellant shall also file cash or a bond in an amount set by the Trial Court sufficient to guarantee performance of the judgment, order, or commitment.