

**Ordinance Number 3.100.** Amended by Resolution No. 99-038, dated February 27, 1999; Resolution No. 2005-361, dated September 16, 2005.

Original Date: September 25, 1992  
Subject: Rules of Criminal Procedure

## **RULES OF CRIMINAL PROCEDURE**

### **Siletz Tribal Code § 3.100**

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#### **§ 3.100      SCOPE OF THE RULES**

(a) These rules shall govern the procedure in all criminal proceedings in the Siletz Tribal Court and all preliminary and additional procedures as specified herein.

(b) Every proceeding in which a person is charged with an offense or crime and brought to trial therefore is a criminal proceeding.

(c) These rules shall be construed to secure simplicity in procedure, fairness in administration, the elimination of unjustifiable expense and delay in the just determination of criminal proceedings.

#### **§ 3.101      AUTHORITY AND BASIS OF DECISIONS**

(a) In cases otherwise properly before the Siletz Tribal Court and Court of Appeal decisions on matters of both substance and procedure will be based, in sequence, upon the following:

(1) The Constitution of the Siletz Tribe.

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Adopted 9/25/92

Amended 2/27/99;  
9/16/05

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- (2) The Indian Civil Rights Act, 25 U.S.C. Sect. 1302 et. Seq.
- (3) Ordinances of the Siletz Tribe.
- (4) Resolutions of the Siletz Tribe.
- (5) The customs, traditions and culture of the Siletz Tribe.
- (6) Laws, rules and regulations of the United States, the State of Oregon, other states, and Indian Tribes and cases interpreting such laws, rules and regulations.
- (7) The Common Law.

(b) The Siletz Tribal Court and Courts of Appeals shall not recognize or apply any federal, state or common law, rule or procedure which is inconsistent with either the spirit or the letter of either the Tribal Constitution, approved ordinances, resolutions, or with the customs, traditions or culture of the Siletz Tribe, unless otherwise required by Federal Law.

**§ 3.102      PRELIMINARY PROVISIONS**

- (a) Prosecution of Offenses.
  - (1) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court, by a court of competent jurisdiction. No incarceration or other disposition of one accused but no convicted of an offense, under these rules shall be deemed a punishment.

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(2) All criminal proceedings shall be prosecuted in the name of the Siletz Indian Tribe as Plaintiff, against the person charged with an offense, referred to as the Defendant.

(b) Rights of the Defendant. In all criminal proceedings the defendant shall have the following rights:

(1) To appear and defend in person or by counsel:

(A) The Defendant has the right to represent himself or represented by an attorney or any other person admitted to practice before the Siletz Tribal Court, but no Defendant shall have the right to have a professional counsel provided at the Tribe's expense. However, the Presiding Judge may order such fees to be paid, if it is determined to be necessary to protect that persons civil rights in a criminal or civil matter, and the Court or Tribal Council determined such funds are available. The determinations will be on a case by case basis.

(B) To be informed of the charges against him and to have a copy of the complaint.

(C) To testify in his own behalf, or to refuse to testify about the charges against him, provided, however, that once the defendant

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takes the stand to testify to any matter relevant to the immediate proceedings against him, he shall be deemed to have waived all right to refuse to testify in that criminal proceeding.

- (D) To confront and examine all witnesses against him, subject to the rules of evidence.
- (E) To compel by subpoena the attendance of witnesses in his own behalf.
- (F) To have a speedy and public trial by an impartial judge or jury.
- (G) The right to appeal any final order, commitment or judgment.
- (H) To prevent his present spouse from testifying against him, except:
  - (i) In any case when the offense charged is alleged to have been committed against the spouse, or the children of either the spouse or the defendant or against the marital relationship.
  - (ii) Any testimony by the spouse in the defendant's behalf will be deemed a waiver of this privilege.
- (I) Not to be twice put in jeopardy for the same offense by the Siletz Tribal Court.

(c) Limitations.

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(1) A complaint shall be filed within the periods specified following the commission of an offense:

- (A) Class A offenses within three years;
- (B) Class B Offenses within two years;
- (C) Class C Offenses within one year;
- (D) Class D offenses within one year;
- (E) Class E unclassified offenses within six months;

(2) The period of limitations shall begin upon the commission of the offense.

The period begins to run on the date when the offense occurred or the date when any member of the Siletz Law Enforcement Division learned of such offense, or forever thereafter be bared. Provided, that the prosecution of the offense by a separate sovereign shall toll this statute for the duration of that proceeding, including all appeals and the period of limitation shall not run during any period when the defendant is not physically within the jurisdiction of the Siletz Tribe.

(d) The Complaint

(1) The prosecution for a criminal violation of the Siletz Law shall be initiated by a written complaint. Each complaint shall contain the name of the defendant, a short description of the facts constituting the offense charged,

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and the date, time and place the offense occurred.

- (2) No complaint shall be valid unless signed by the complainant or tribal prosecutor and witnessed by a tribal judge, court clerk or notary public, except in cases where a tribal police officer has issued a citation in lieu of arrest.
- (3) No minor omission or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(e) Arrest/Hot Pursuit

- (1) No police officer shall arrest any person for any offense defined by this Code or by federal law, except when the offense shall occur in the presence of the arresting officer or he shall have probable cause to believe that the person arrested has committed an offense, or he shall have a warrant commanding him to apprehend the person.
- (2) Any police officer who observes any person within the Tribe's jurisdiction, as provided by the Siletz Tribal Court Rules of Procedure, committing an offense defined by this Code or by state or federal law or who has probable cause to believe that the person has committed an offense, may pursue and capture the person or seize and impound the

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property in his possession if he attempts to flee the geographical  
jurisdiction of the Siletz Tribe

- (f) Warrant or Summons.
- (1) Except when a citation is issued under these rules, upon the issuance of a complaint, a warrant of arrest or a summons shall issue to bring the named defendant before a Judge of the Siletz Tribal Court.
  - (2) When a summons shall issue, it shall name the defendant, the offense charged, and order the defendant to appear before a Tribal Court Judge within ten (10) days from the date of service or within such other time as is provided on the summons to enter a plea to the charge. If a defendant fails to appear in response to the summons, a warrant of arrest shall issue.
  - (3) Warrants and summons may be served by any-Tribal Police officer or any person over the age of eighteen (18) years designated to perform that function by the Chief of Police or a Tribal Court Judge.
    - (A) Service may be made anywhere within the geographical jurisdiction of the Siletz Tribe.
    - (B) The date, time, and place of service or arrest shall be endorsed on the warrant or summons along with the name of the person serving it. A copy will be left with the person served and a copy shall be

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returned to the Court.

(C) In the event a person is arrested pursuant to a warrant issued under this section, the officer need not have the warrant in his possession at the time of arrest, but if he doesn't he shall notify the defendant that a warrant has been issued and the nature of the charge, and shall provide the defendant with a copy of the warrant and complaint no later than the time of arraignment.

(D) If a defendant refuses service of a summons or if the defendant's whereabouts remains unknown after a reasonable search an arrest warrant shall issue.

(g) Search Warrants

(1) Every judge of the Tribal Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court. However, no warrant of search and seizure shall be issued except upon a presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation and charging the commission of an offense against the Tribe. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and seized and bears the signature of a



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judge of competent jurisdiction. Service of warrants of search and seizure shall be made by an officer.

- (2) An officer may search or seize property without a warrant in circumstances under which warrantless searches are permitted by federal criminal law.

(h) Citations, Contents, Effects, Procedures

- (1) Whenever a person is arrested for a violation of Siletz Tribal law, the arresting officer, or any other officer may serve upon the arrested person a citation and notice to appear in Court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:

- (A) whether the person has identified himself satisfactorily;
- (B) whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;
- (C) whether the person has ties to the Tribes or is a local resident, so as to provide reasonable assurance his appearance before the Court, or whether there is substantial likelihood that he will refuse to respond the citation; and

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- (D) whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful process of the Court.
- (2) The citation written to the offender by the officer shall include the name of the person, his address, the date of birth and sex, the date, time and place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear.
- (3) The citation shall also state the time and place at which the person is to appear in Court to hear the charges against him and post bail, which shall be not less than 72 hours after the date of the citation, nor more than 15 days after the date of citation.
- (4) If a defendant fails to appear, the judge may issue a warrant of arrest and may order any bail deposited by the defendant as hereinafter set forth forfeited.
  - (i) Arraignment.
    - (1) As soon as reasonably possible after arrest but not more than twenty four (24) hours thereafter excluding Saturdays, Sundays and holidays or within the period designated on a summons, the defendant shall appear or be

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brought before a Tribal Court Judge, and the defendant shall be advised of his right to counsel, and his rights under the Indian Civil Rights Act of 1968, USCA 25-1302. If the defendant desires but does not presently have counsel he will be given a reasonable time to secure counsel at his own expense, before entering his plea.

- (2) At that time, the complaint will be read to the defendant and the defendant will be asked to enter a plea.
  - (3) The defendant will enter a plea or the Court will enter one for him, then he will be advised regarding bail or sentencing, whichever is appropriate.
  - (4) If the defendant has not received a copy of the complaint, one will be given him.
- (j) Commitment Orders.
- (1) No person shall be detained or jailed under this code for a period longer than 36 hours, exclusive of Saturdays, Sundays and holidays, unless a commitment order signed by a judge has been issued.
  - (2) A temporary commitment order may be issued pending trial or investigation of charges.
  - (3) A final commitment order shall be issued for persons jailed as a result of a sentence by the Court.

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- (k) Joinder of Offenses and Defendants.
- (1) Two or more offenses may be charged in the same complaint in a separate count for each offense if the offenses are of the same character or based on the same act or transaction or if they constitute part of a common scheme or plan.
  - (2) Two or more defendants may be charged in the same complaint if it is alleged that they have taken part in the same act or transaction constituting the offense or offenses.
  - (3) Such defendants may be charged in one or more counts together or separately but all need not be charged on each count.
- (l) Pleas.
- (1) A defendant may plead guilty, not guilty or no contest. The Court will not accept a guilty plea without first determining that the defendant made the plea voluntarily with an understanding of the charges against him and the possible penalties. If the defendant refuses to plead or if the Court refuses to accept a guilty plea, the Court shall enter a plea of not guilty. The Court shall not enter a judgment on a guilty plea unless there is a factual basis for the plea.
  - (2) The defendant, with the consent of the prosecuting attorney and the Court,

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may plead guilty to any lesser offense included in the complaint or to any lesser degree of the offense charged.

(m) Time of Trial

- (1) When the defendant is brought before the judge upon a warrant of arrest, the cause shall be set for trial within 90 days unless continued for cause or at the request of the defendant. Bail shall then be set in accordance with the section on Bail, Bonds and Fines under these Rules.
- (2) When the defendant is summoned before the judge pursuant to a citation as provided herein, the defendant shall appear on the date indicated on the citation to hear the charges against him, post bail, enter a plea, and be assigned a trial date. Trial shall be set within 90 days unless continued for cause or at the request of the defendant.
- (3) A defendant may post bail, enter a plea, and request a trial date prior to the return date of the citation if the defendant so desires, provided, that bail or other bond satisfactory to the judge is posted. A trial date shall be set within 90 days of the return date on the citation unless continued for cause or at the request of the defendant.
- (4) Provided, a defendant not released from jail pending trial shall be brought to trial not later than 60 days after the date of arraignment.

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(n) Bail and Bonds

- (1) Except as provided herein, every person charged with any offense before the Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the Siletz Tribe who reside within the boundaries of the Tribe's geographical jurisdiction who shall execute an agreement in compliance with the form provided therefore to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of the Siletz Tribal ordinance for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the clerk or any bonded employee authorized by the Court to accept bail. All such bonds shall be promptly filed with the clerk.
- (2) In lieu of bail, a person charged with any offense may be released on his personal recognizance (PR) without posting bail or bond, pursuant to the discretion of the judge. In determining whether to grant PR, the judge may consider the following factors:
  - (A) whether such person has identified himself satisfactorily;
  - (B) whether detention appears necessary to prevent imminent bodily harm to such person or to another, injury to property, or breach of

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the peace;

(C) whether the person has ties to the Tribe or is a local resident, so as to provide reasonable assurance of his appearance before the Court, or whether there is substantial likelihood that he will refuse to appear for trial; and

(D) in any case, to secure his release, the person must give written promise to appear in Court as required by the citation.

(3) The Chief Judge may establish a bail schedule for all offenses under Siletz Tribal Law. Any person arrested and taken into custody for violation of such Code may be released upon posting the specified bail with the clerk, or other person authorized by the Court to receive bail, unless released on personal recognizance or detention is ordered by the Court.

(4) The judge may deny a person release on bail if it appear reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Tribe or the public, if released, or if there is a substantial likelihood that the person will not appear for trial.

(o) Fine Schedule

(1) The Chief Judge may also establish a schedule for fines for specified violations of this Code, within the limits prescribed by this Code and the

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section establishing the offense.

- (p) Pleadings and Pre-Trial Motions; Defenses and Objections.
  - (1) Pleadings in criminal proceedings shall consist of the complaint and the plea of guilty, not guilty or no contest. All other pleas and motions shall be made as follows:
    - (A) All defenses or objections capable of determination other than at trial may be raised by motion before trial.
    - (B) Defenses and objections based on defects in complaint other than it fails to show jurisdiction in the Court or fails to charge an offense may be raise only by a pre-trial motion or it shall be deemed waiver unless the Court on a showing of good cause grants relief from the waiver. Lack of jurisdiction or failure to charge an offense may be raised as defenses, or note by the Court on its own motion, at any stage of the proceedings.
    - (C) Pre-trial motions shall be made in writing and filed with the Court at least five (5) working days before the trial date. The motions will be argued before trial on the trial date unless the Court directs otherwise.
    - (D) If a motion is decided against the defendant, the trial shall proceed



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as scheduled. If a motion is decided for the defendant, the Court shall proceed or enter judgment as is appropriate.

(q) Discovery and Inspection.

- (1) The Prosecutor and/or the tribal police, shall upon request, allow the defendant or his representative to inspect and copy any statements or confessions, or copies thereof, made by the defendant which are reasonably obtainable or in their possession or control. They shall also make available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.
- (2) The defendant or his representative shall present to the prosecutor and the Court written notice at least five (5) working days before trial the names of any witnesses they intend to call to provide an alibi for the defendant. Failure to provide this notice will bar the defense from using the witnesses unless it can be shown that prior notice was impossible or that no prejudice to the prosecution will result, in this case the Court may order the trial delayed or make such orders as will tend to assure a just determination of the case.

(r) Subpoenas.

- (1) Any party to a proceeding before the Tribal Court shall have the right to

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request the Court to issue a subpoena to compel witnesses to appear in court on his or her behalf.

- (2) Upon the request of a party or his or her representative the Court shall issue a subpoena which commands a named person to appear in court and/or to bring certain evidence or documents to court.
- (3) Every subpoena commanding a witness to appear shall be in writing and shall include the name of the court, the names of the parties, the time and place the witness must appear and a clear and detailed description of any documents or evidence which the witness is required to bring.
- (4) A subpoena issued as provided in this rule shall be delivered to the witness by a person designated by the Court for that purpose. The subpoena may be delivered either by giving it to the witness directly or by leaving it at the witness's residence or place of employment with a person at least fourteen (14) years old who lives or works there.
- (5) A person who serves a subpoena on a witness shall promptly file with the Court a copy of the subpoena and a signed written statement describing where, when, how and to whom service was made.
- (6) The failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of court.

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- (7) The Tribal Council may establish witness fees. The Court may order witness fees, if any are paid, to be assessed as costs in civil actions and appeals.

**§ 3.103**      **TRIAL**

(a) Judge or jury trial.

- (1) All trials of criminal offenses shall be by the Court without a jury unless the defendant files a request for a jury trial at his/her arraignment or no later than two (2) weeks prior to the date set for trial.

- (2) The right to a jury trial is limited to criminal prosecutions in which the offense is punishable by imprisonment.

- (3) In a case tried without a jury, the judge shall determine both questions of law and of facts and shall make a finding of guilt or innocence. A judge shall upon the request, of either party, make specific findings which may be embodied in a written decision.

(b) Juries.

- (1) Members of the Siletz Tribe who are at least 18 years of age are eligible to serve as jurors. However, no person shall be eligible to sit on a jury in any case in which he or she has a direct interest or is related to a party by blood or marriage in the first or second degree. Law enforcement officers

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and court personnel are not eligible to serve as jurors.

- (2) When a defendant asks for a jury, the Court Clerk shall draw the names of at least twelve (12) persons, at random, from the Elections Board's list of qualified voters, which list constitutes the list of eligible jurors. The Clerk shall then send a summons to each person whose name is drawn. The summons shall order the person to appear in court at the time set for trial of the case. The summons shall contain the name of the Court, the title of the case, the offense charged and the defendant's name.
- (3) At the trial six of the jurors summoned shall be called and then seated in the courtroom. The parties shall alternately question the jurors as to their impartiality and fairness. A party may challenge any juror for cause and the judge shall excuse any juror whom he or she feels would not be completely fair and impartial. As a juror is excused, the Court Clerk shall draw the name of another juror to be seated and each party shall have an opportunity to examine the juror for fairness and impartiality. There shall be no limit on challenges for cause.
- (4) Each side shall be entitled to three (3) peremptory challenges.
- (5) An alternate juror shall be treated as a regular juror for purposes of challenges.

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- (6) The alternate juror shall be dismissed prior to the jury's retiring to deliberate if he or she has not been called to replace an original juror who has become for any reason unable or disqualified to serve.
- (c) Judges Disability.
- (1) If by reason of death, sickness or other disability, the judge before whom a jury trial has commenced is unable to proceed with the trial, any other Tribal Judge may, upon certifying that he or she has familiarized himself or herself with the record of the trial, proceed with the trial.
- (2) If by reason of death, sickness or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or a finding of guilty, any other Tribal judge may perform those duties unless such judge feels he cannot fairly perform those duties, then a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of the defendant.
- (d) Evidence.
- (1) Evidence presented must be relevant to the issue in dispute. A witness, including a party, may testify as to a statement made by a person not before the court if the witness heard the statement when it was uttered by the person alleged to have made the statement. The Court may inquire into

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the circumstances surrounding the failure of the party offering the statement to present the actual speaker and such circumstances may be considered in determining the credibility of the evidence.

- (2) Whenever practical, documents presented as evidence shall be the originals. All issues regarding the admissibility of evidence shall be determined by the Presiding Judge, who shall have the discretion to exclude any evidence for good cause.

(e) Continuances.

At any stage of the proceeding, the Court may grant a reasonable continuance upon its own motion or the request of a party after a showing of good cause. The Court shall consider the objections of any party to a continuance.

(f) Open Proceedings.

All proceedings shall be open to the public and the press unless the Presiding Judge determines that, due to the highly sensitive nature of the testimony of young children or the circumstances which could cause extreme embarrassment to witnesses or parties, the proceeding should be closed.

(g) Exclusion of Witnesses.

Upon the motion of either party, the Presiding Judge shall exclude witnesses not actually testifying from the room where proceedings are being held.

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(h) Expert Witnesses

The parties may each call expert witnesses of their own choosing and they shall bear the expense for the expert witnesses they call.

(i) Interpreters

The Court may select and appoint an interpreter and each party may provide their own interpreters and shall bear the costs therefore. An interpreter through whom testimony is received shall be put under oath to faithfully and accurately translate and communicate as the Court requires.

(j) Motions for Acquittal

(1) The Court on a motion of the Defendant or on its own motion, shall order an entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of the offenses charged. A motion by the defendant for acquittal does not affect his right to present evidence.

(2) If a motion for acquittal is made at the close of all evidence, the Court may reserve making a decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

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(k) Instructions

At the close of the evidence or at an earlier time during the trial as the Court may reasonably direct, any party may file written requests that the Court instruct the jury on the law as it is set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform Counsel of its proposed action upon the requests prior to the arguments of counsel to the jury, but the Court shall instruct the jury after arguments b1 counsel are completed. No party may assign as error any portion of the charge or an omission there from unless they make an objection thereto prior to the time the Jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity to make the objection shall be made out of the hearing or if necessary out of the presence of the jury.

(1) Verdict.

(1) The verdict of the jury shall be unanimous. It shall be returned to the judge by the jury in open court.

(2) If there are two or more defendants, the jury may at any time during its deliberations return a verdict or verdicts with respect to the defendant or defendants as to whom it has agreed; if the jury cannot agree as to all, the defendant .or defendants as to whom the jury does not agree may be tried



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again.

- (3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit the offense charged or of an offense necessarily included therein if the attempt is an offense, without the necessity of the defendant having been formerly charged with such lesser included offenses or with attempt.
- (4) When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the Courts own motion. If upon being polled the jury does not unanimously concur, they may be directed to retire for further deliberations or may be discharged.

**§ 3.104**      **JUDGMENT**

- (a) Judgment.

A judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence when imposed. If the defendant is found not guilty or for any other reason entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the Judge and entered by the Clerk.

- (b) Sentencing.

- (1) The Judges of the Siletz Tribal Court shall have broad latitude in the sentencing of persons convicted of offenses. In determining sentences,

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judges shall be guided by both the welfare of the Tribal Community and the particular needs of the convicted person. Sentences may be of a nature customary with other systems of law, or may reflect traditional tribal remedies.

- (2) Whether a trial is by a jury or the Court, upon conviction the presiding judge shall determine the sentence. The following shall guide the judge when imposing sentence.
- (A) A defendant may be sentenced to jail or to community service, or both at the discretion of the judge;
  - (B) Fines may be paid pursuant to a payment schedule, to be determined by the judge, who shall carefully consider the person's financial resources;
  - (C) In serving jail time in lieu of paying a fine, the convicted person shall be credited at the rate of twenty five dollars (\$25.00) per day;
  - (D) The Court may direct that all or part of a fine be paid to the victim as restitution for a wrong, provided, that in no event shall a fine and restitution, taken together, exceed five thousand dollars (\$5,000.00) per offense;
  - (E) In the event that restitution is ordered, a separate hearing must be

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- held to determine the amount of the victim's damages;
- (F) A defendant who testifies at a hearing determining restitution does not waive his right against self incrimination in the event of a new trial;
- (G) The fact that restitution shall be ordered as part of a criminal proceeding shall not preclude a civil action for damages to recover remaining damages;
- (H) Upon conviction of any offense, the Court may order that costs be paid, provided that in no event shall a defendant pay more than a total of five thousand dollars per offense, including fines, restitution, costs, or other assessments;
- (I) In determining the nature and duration of a sentence, the Court shall consider the previous conduct of the defendant, the circumstances of the crime, whether, the defendant is likely to reform, whether the defendant represents a danger to the community, and the extent of the defendant's resources and the needs of his dependents;
- (J) The penalties prescribed in any criminal offense under a Siletz Tribal Ordinance are maximum penalties, and should be imposed

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only in extreme cases.

(c) Probation

- (1) In its discretion, the Court may suspend a sentence and allow the convicted person his freedom on probation upon the condition of signing a pledge of good conduct. The Court may impose such terms as are fitting and just as conditions of probation.
- (2) A person found by the Court to be violating their conditions of probation may be required to serve all or part of the original sentence.

(d) Parole

- (1) A person is eligible for parole when they have served one-half of the sentence imposed without misconduct. At that point a hearing may be held by the Judge who imposed the sentence to determine whether parole shall be granted, and if so, what conditions shall attach.
- (2) A person found by the Court to be violating conditions of his parole may be required to serve the remainder of the original sentence.

(e) Vacating sentence.

Upon a motion brought to vacate, the judge who imposed the sentence may vacate any portion of a remaining sentence. A hearing on the motion shall be had in which all interested parties may present evidence or bring related facts to the

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attention of the Court;

(f) Disposition of fines.

All fines and fees collected by the Court under the provisions of this Ordinance shall be paid to the Clerk of the Court, who shall in turn deliver them to the Tribal Treasurer for deposit in a special account of the Tribe to be used for maintenance of the Court and Law Enforcement program. Provided, however, that the clerk may maintain a petty cash fund up to Fifty dollars (\$50.00), with a full and accurate accounting of such fund to be made available to the Tribal Council upon request.

(g) Default on fine

When a defendant defaults in the payment of a fine or any installment thereof, the Court on its own motion shall order the defendant to show cause why he is not in contempt and may issue a summons or an arrest warrant for the defendant's appearance. If good faith is shown, the Court may allow additional time for payment or revoke all or part of the unpaid fine; otherwise, the Court may order his imprisonment until the fine is paid. The Court may order the seizure and sale of any personal property of the defendant found within the territorial jurisdiction of the Siletz Tribe.

(h) Disposition of property confiscated by the Court.

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Any property, including equipment, which may have been confiscated by lawful order of the Court under the provisions of any Tribal ordinance shall be sold at public auction and the proceeds therefrom deposited by the Clerk of the Court into the Siletz Tribe's General Fund. The funds recorded upon the accounts of the tribe and shall be available for expenditure upon order of the Chief Judge and for such other purposes as the Siletz Tribal Council may direct.

(i) New Trial.

The grounds for a new trial are as follows:

- (1) Receipt by the jury of evidence not authorized by the Court;
- (2) Determination of a verdict by lot, through intimidation, or without a fair expression of opinion;
- (3) Refusal by the Court to instruct the jury correctly as to the law;
- (4) Failure of the defendant to receive a fair and impartial trial;
- (5) New evidence discovered and not available at time of the original trial.

**§ 3.105**     **APPEAL**

(a) Right of appeal.

- (1) The defendant has the right to appeal from the following:
  - (A) A final judgment of conviction;
  - (B) From an order made, after judgment, affecting his substantial

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rights.

- (2) The Tribe has the right to- appeal from the following:
  - (A) A judgment in dismissal in favor of the defendant upon a motion to dismiss based on any procedural irregularity occurring before trial.
  - (B) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
  - (C) An order of the Court directing the jury to find for the defendant;
  - (D) An order made after judgment affecting the substantial rights of the tribe.
- (3) A notice of appeal must be filed within ten (10) days of the entry of final judgment or other appealable order and must be served on all parties except the party filing the appeal.
- (4) The clerk of the trial court will prepare and transmit to the Appellate Court the record of the case appealed including a transcript or copy of the recordings taken in all the proceedings relevant thereto.
- (5) The party taking the appeal shall be referred to as the appellant and the other party as the respondent. The number and name of the case will be the same as the case number and name used at trial except the name of parties not involved in the appeal may be omitted.

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- (6) Within ten (10) after the receipt by the Appellate Court of the Trial Court record, the appellant shall file a brief supporting his position on appeal. Within twenty (20) days after receipt of a copy of the appellant's brief, the respondent shall file its brief. As soon thereafter as possible, the Appellate Court shall decide the case and may schedule and hold a hearing on the appeal. Each party shall file four copies of its brief with the Court.
- (b) Stay of Judgment and relief pending appeal.
- (1) A sentence of imprisonment may be stayed if an appeal is taken and the defendant may be given the opportunity to make bail. Any defendant not making bail or other wise obtaining release pending appeal shall have time spent in -incarceration counted towards his sentence in the matter under appeal.
- (2) A sentence to pay a fine or a fine and costs, may be stayed pending appeal upon motion of the defendant but the Court may require the defendant to pay such money subject to return it the appeal should favor the defendant and relieve his obligation to pay a fine or a fine's and costs.
- (3) An order placing the defendant on probation may be stayed on motion of the defendant if an appeal is taken.
- (c) Appellate Court Review



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- (1) If the appeal is irregular in any substantial particular, the Appellate Court may order, upon motion of the respondent, either the correction of the defects or the dismissal of the appeal.
- (2) The Appellate Court will decide the appeal on the basis of the briefs submitted without oral argument unless oral argument is requested by any party to the appeal or by the Court on its own motion.
- (3) The Appellate Court will issue a written opinion or separate opinions as may be required to fully explain the Court's disposition of the case.
- (4) The Appellate Court shall make one of the following determinations of the appeal:
  - (A) Affirm the Trial Court's result.
  - (B) Reverse or vacate the Trial judgment and remand for disposition in accordance with the order of the Appellate Court.
  - (C) The judgment of the Trial Court will be deemed affirmed if no disposition can be reached by the Appellate Court.

**“Any Person”**

The term “any person” in this code shall be construed so that the Siletz Tribe shall exercise jurisdiction only in a manner consistent with federal law, including U.S. Supreme Court holdings limiting the jurisdiction of Tribal Courts.