

TITLE 2. CRIMINAL LAW

CHAPTER 1. TRIBAL CRIMINAL RULES AND PROCEDURES

2 M.P.T.L. ch. 1 § 1

§ 1. Rules and Procedures

This law shall be known as the Mashantucket Pequot Tribal Criminal Law.

2 M.P.T.L. ch. 1 § 2

§ 2. Definitions

The following definitions shall apply in this Law:

a. "Arrest" shall mean the taking of a person into custody by the tribal police in order that the person arrested may be held to answer for an alleged offense.

b. "Arrest Warrant" shall mean a document issued by a judge of the tribal court which directs the Tribal Police to arrest a designated person and take that person into custody for further proceedings.

c. "Defendant" shall mean any person who is charged with an offense in tribal court.

d. "Indian" shall mean the following:

(1) any person who is an enrolled member of an Indian tribe which is contained on the most current list of federally recognized tribes published in 65 Fed. Reg. 49 (March 13, 2000); or

(2) any person who is an enrolled member of any of the following Indian tribes:

(a) all tribes which have, on an historic basis, been recognized by the state of Connecticut;

(b) all tribes recognized by the Canadian government; or

(c) any person, under the age of 18, who is eligible for membership in a federally recognized Indian tribe or in any of the tribes listed in subsection (2) of this Section.

e. "Mashantucket Pequot Tribal Nation Lands" shall include the following:

(1) The Tribal Council shall require the tribal lands map to be kept and may amend such map from time to time; or

(2) all land over which, pursuant to federal law, a federally recognized Indian

tribe is entitled to exercise jurisdiction.

f. "Offense" shall mean any act which is a violation of tribal criminal law. Until such time as the Mashantucket Pequot Tribal Council enacts its own criminal laws, the criminal laws of the state of Connecticut shall serve as Tribal criminal law. (TCR112091-01). In the event of conflict between State law adopted pursuant to TCR112091-01 and other tribal law, the provisions of other tribal law shall govern.

g. "Probable Cause" shall mean more than a mere belief or suspicion and shall be composed of underlying facts and circumstances which would warrant a prudent person to believe that an offense has occurred. Probable cause shall be determined in a practical and common sense fashion. The tribal court may be guided by, but shall not be bound by, the decisions of any federal or state courts which address the meaning of "Probable Cause".

h. "Summons" shall mean a document directing the persons named and described therein to appear before the tribal court on a specified date. Summonses may be issued by a judge of the tribal court. Summonses may also be issued by the tribal police pursuant to a delegation of authority from the tribal court.

i. "Tribal Elders" shall mean those enrolled members of the Tribe who are age 55 or older.

j. "Tribal Law" shall mean all tribal laws, the tribal Constitution, and the decisional authority of the tribal court.

k. "Tribal Police" shall mean the Mashantucket Pequot tribal police force or any sworn officer of that force.

2 M.P.T.L. ch. 1 § 3

§ 3. Juvenile Offenders

a. Until such time as the Tribal Council enacts its own juvenile code the juvenile code of the state of Connecticut is hereby adopted and shall serve as tribal law. In the event of conflict between this Law and the juvenile code of the state of Connecticut, the provisions of this Law shall govern.

b. Defendants under the age of 18 shall be considered juvenile offenders.

c. The tribal court shall have exclusive jurisdiction over juvenile offenders.

d. Juvenile offender proceedings shall be confidential and closed to the public. Records of such proceedings shall be sealed.

2 M.P.T.L. ch. 1 § 4

§ 4. Contempt Powers

a. Indians cited by the tribal court for contempt of court shall be subject to

immediate arrest. Indians cited for contempt of court are entitled to a hearing in tribal court prior to any finding of contempt. Indians found in contempt of court may be fined up to \$500 and/or sentenced to imprisonment for up to six months for each such finding of contempt.

b. Non-Indians found in contempt of court may, after a hearing by the tribal court, be fined up to \$500 for each finding of contempt and shall be subject to an emergency exclusion order.

2 M.P.T.L. ch. 1 § 5

§ 5. Procedure and Evidence; Neetskehheau-Pomushaonk Program

Judges are authorized to develop rules of criminal procedure and evidence that are consistent with this law and with other tribal law. The proposed rules of criminal procedure and evidence shall be effective upon submission to and approval by the Tribal Council. Until such time as tribal criminal rules of procedure and evidence are effective, the tribal court shall use the *Superior Court Rules of Criminal Procedure and Rules of Evidence* applicable in the state of Connecticut. The tribal court may be guided but shall not be bound by decisions of the courts of the State, which interpret the Connecticut *Superior Court Rules of Criminal Procedure and Rules of Evidence*.

In the event of conflict between the state rules of criminal procedure and evidence and tribal law, the provisions of tribal law shall govern.

The chief judge may establish a separate criminal docket, entitled "Neetskehheau-Pomushaonk" (Healing Journey) for the hearing of criminal matters in which a defendant is a drug-dependent or alcohol-dependent person or is charged with the commission of an offense while under the influence of drugs or alcohol. A drug or alcohol-dependent person is one who has a clinically maladaptive pattern of drug or alcohol use that causes significant functional impairment as defined in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders* of the American Psychiatric Association. The program shall be available to those offenders who could benefit from placement in a substance abuse treatment program.

2 M.P.T.L. ch. 1 § 6

§ 6. Complaints

a. A complaint shall be a written statement of the essential facts constituting probable cause to believe that an offense by an Indian has occurred. Complaints shall be made under oath and presented to a judge of the tribal court. Complaints may be signed by any person, the tribal prosecutor, or a tribal police officer.

b. The tribal court shall adopt forms for complaints. Originals of complaints shall be filed with the tribal court, designated by number and retained by the tribal clerk. The tribal court clerk shall keep a record of the issuance and disposition of each complaint. Whenever practicable, a copy of the complaint

shall be served upon the defendant at the time of execution of an arrest warrant or summons.

c. Complaints may be reviewed by a judge of the tribal court even when the judge is located off the Mashantucket Pequot Tribal Nation Lands. In all instances, complaints shall be deemed "filed" after judicial review.

d. Except as provided in this subsection, the essential facts alleged in a complaint and constituting probable cause to believe that an offense by an Indian has occurred shall be derived from the complainant's personal knowledge. If the complainant is a tribal police officer, the essential facts may be composed of any of the following criteria or a combination thereof:

(1) The officer's personal knowledge; or

(2) Except as provided herein, information received from another officer of the tribal police who has probable cause to believe that an offense has occurred and that a particular person has committed such offense; or

(3) Information that is otherwise received by the officer establishing probable cause to believe that an offense has occurred and that a particular person has committed such offense.

2 M.P.T.L. ch. 1 § 7

§ 7. Authority to Issue Arrest Warrants and Summonses

a. Subject to the provisions of Section 8 of this Law, it is the policy of the Tribe to issue summonses in lieu of arrest warrants whenever possible.

b. Judges of the tribal court are authorized to issue arrest warrants and summonses pursuant to the provisions of this Law.

c. Judges may issue arrest warrants or summonses if, based upon the complaint or such other information that may support the complaint, they are satisfied that there is probable cause to believe that an offense has occurred and that the accused person committed the offense.

d. Officers of the tribal police shall have authority to directly issue summonses in certain minor matters and offenses. Minor matters and offenses shall be specifically designated by the tribal court.

e. Arrest warrants and summonses may be issued by judges from locations off the nation lands but shall be executed by the tribal police within the nation lands.

2 M.P.T.L. ch. 1 § 8

§ 8. Procedures for the Issuance of Arrest

a. Warrants or Summonses. Except as provided for in Section 10 of this Law,

all applications for arrest warrants and summonses must be approved by a tribal prosecutor before submission to a judge of the tribal court.

b. Except as provided in Section 10 of this Law, judges shall issue summonses rather than arrest warrants unless a judge finds that any of the following conditions exist:

(1) the accused is charged with any offense that, in addition to being a violation of tribal law, also constitutes a violation of any federal criminal statutes;

(2) the person has previously failed to respond to a Summons;

(3) the tribal police have reason to believe that the person poses a threat to the safety of persons or property located on the nation lands;

(4) there is one or more outstanding arrest warrant for the person;

(5) the prosecution of the offense or offenses for which the person to be arrested or the prosecution of any other offense or offenses would be jeopardized by immediate release of the person;

(6) the person cannot provide satisfactory evidence of personal identification;
or

(7) a tribal police officer has reason to believe the person will not appear in response to a summons.

If the judge finds that one or more of the aforementioned conditions exist, the judge may issue an arrest warrant.

2 M.P.T.L. ch. 1 § 9

§ 9. Identification Procedures Upon Issuance of Summons

In cases where a summons has been issued by the tribal court in lieu of an arrest warrant, the defendant shall undergo all post arrest identification procedures on the return date of the summons. In the event that the defendant does not appear on the return date or refuses to submit to the post arrest identification procedures, the tribal court may, on its own, or at the request of a tribal prosecutor, order the issuance of an arrest warrant.

2 M.P.T.L. ch. 1 § 10

§ 10. Summonses in Minor Offenses

a. Subject to the provisions of Section 14(d) of this Law, the tribal court shall authorize the tribal police to issue summonses in cases involving minor offenses. The tribal court shall determine which matters shall be considered minor offenses. Such determination shall be effective upon approval of the Tribal Council.

b. The tribal court shall prescribe written summons forms for minor offenses. Such forms shall contain the information needed for a complaint. Such forms shall be submitted to the court but need not have the prior approval of the tribal prosecutor. Service of this type of summons may be in person or by mail.

2 M.P.T.L. ch. 1 § 11

§ 11. Failure of Defendant to Appear after Summons

If a defendant who has been duly summoned fails to appear or if there is reasonable cause to believe that the defendant will fail to appear, an arrest warrant shall issue.

2 M.P.T.L. ch. 1 § 12

§ 12. Arrest Warrants and Summons/Form and Content

a. In addition to the necessary information contained in the supporting complaint, all arrest warrants and summonses shall contain the following information:

- (1) name, description and address, if known, of the person arrested or summoned;
- (2) date of issuance of the warrant or summons;
- (3) citation of the offense charged;
- (4) except as provided in Section 10, the signature of the issuing Judge; and
- (5) a number which corresponds to the number assigned to the supporting complaint;

b. More than one arrest warrant or summons may issue on the same complaint.

2 M.P.T.L. ch. 1 § 13

§ 13. Execution of Arrest Warrants

Upon execution of an arrest warrant, the tribal police shall:

- a. Provide a copy of the arrest warrant and supporting complaint to the defendant as soon as practicable; and
- b. Advise the defendant of all rights and privileges pursuant to the 20 M.P.T.L., Civil Rights Code.

2 M.P.T.L. ch. 1 § 14

§ 14. Authority and Procedures to Arrest without a Warrant

a. Tribal Police are authorized to make arrests without previously securing an arrest warrant upon satisfaction of the following criteria:

(1) person commits an offense in the presence of any officer of the Tribal Police; or

(2) probable cause exists to believe that an offense has been committed and that the accused committed such offense.

b. As soon as practicable, but in all cases prior to arraignment as provided in Section 16 of this Law, the Tribal Prosecutor shall file a complaint consistent with the requirements set forth in Section 6 of this Law.

c. As soon as practicable, but in all cases within 24 hours from the time a person is arrested with or without a warrant, or detained, the arrested person shall be entitled to a bail determination as provided in Section 24 of this Law. In the case of an arrest authorized by warrant, no bail or condition of release set by the Court or contained in said warrant may be modified except by further order of the Court.

d. As soon as practicable, but in all cases within 72 hours from the time a person is arrested without a warrant, or detained, the arrested person shall be entitled to a determination whether probable cause has been demonstrated that an offense was committed and that the defendant committed such offense. A Judge may make such a finding from the complaint, relevant police reports, or other relevant evidence. If the Judge concludes that probable cause has not been demonstrated, the defendant must be released on the defendant's own recognizance pending further proceedings. Probable cause determinations may be made and issued from locations either on or off Nation Lands and may be conveyed by telephone, facsimile or otherwise.

e. The Tribal Police Department shall promptly provide all necessary information relevant to the determination of probable cause to a Judge upon request.

f. In cases involving minor offenses, as defined by the Tribal Court pursuant to this Law, and provided that the circumstances demonstrate that the criteria in Section 14(a) have been satisfied, the Tribal Police are authorized to arrest and detain a person. In the event a summons is not issued the complaint procedures set forth in Section 6 and the post arrest procedures set forth in Section 14(b) and (c) shall apply. If the arrested subject is a non-Indian, the provisions of Section 15 shall control.

2 M.P.T.L. ch. 1 § 15

§ 15. Arrest or Detention of Non-Indians

a. Persons arrested or detained for a violation of tribal law and who, upon

further investigation, are revealed to be non-Indian, shall be expeditiously transferred to the custody or control of the appropriate state or federal authorities.

b. In matters involving the arrest or detention of non-Indians and pending transfer to the appropriate federal or state law enforcement authorities, the tribal police may advise such persons of the Constitutional rights enunciated in the decision of the United States Supreme Court in *Miranda vs. Arizona*, 384 U.S. 468 (1966).

2 M.P.T.L. ch. 1 § 16

§ 16. Arraignment

Defendants shall be arraigned before the Tribal Court following the execution of an arrest warrant or upon their initial appearance in response to a summons or following an arrest and detention of a person pursuant to Section 14 of this Law. The date and time of arraignment in all matters shall not be more than 14 days after the date of the arrest or detention.

All references to gender used in this section include the other genders, the singular includes the plural, and the plural includes the singular.

a. After a defendant has been arrested with or without a warrant and pursuant to the authority in Sections 7 and 14 of this Law, the defendant shall be arraigned before a Judge of the Tribal Court.

b. At arraignment, the Judge shall inform the defendant:

(1) of the alleged offense with which he is charged and the Judge shall provide the defendant with a copy of any applicable complaint and warrant if they have not previously been furnished to him. The Judge shall advise the defendant that he can enter a plea of guilty, not guilty or nolo contendere to the charge(s); and

(2) that he has a right not to make a statement to the charge and that any statement made may be used against him at trial; and

(3) that he has a right to retain counsel pursuant to the provisions of this Law; and

(4) that he is entitled to the protection afforded under the Tribe's Civil Rights Law; and

(5) that he may be entitled to a trial by jury pursuant to the provisions of this Law; and

(6) that he may be eligible for entry into the Pre-Trial Intervention program [hereinafter PTI]. The Judge shall also inform the defendant of the name and telephone number of the PTI program director, and shall further direct that the defendant be provided with an application for PTI which shall be submitted pursuant to the provisions and guidelines of the PTI program.

c. If a defendant refuses to enter a plea to a charge or stands mute, the Judge shall enter a not guilty plea to the Complaint.

d. The Judge may also review and, if appropriate, modify any bail determination made pursuant to Section 24 of this Law.

e. If a defendant is not represented by counsel, no plea of guilty to offenses charged can be accepted by the Tribal Court unless and until the Judge is satisfied that:

(1) the defendant understands his right to be represented by either a retained or Court appointed counsel;

(2) the defendant knowingly and intelligently has waived such right to be represented by counsel;

(3) there is a factual basis for the plea and that the plea is made voluntarily and not as the result of threats, coercion, or of any promise not disclosed on the record;

(4) the defendant understands the nature of the charge and the consequences of the plea;

(5) the defendant understands that the Tribal Court may accept a plea of guilty and, upon a showing of good cause, order that such plea not be admissible as evidence in any civil proceeding; and

(6) the defendant understands that if a plea of guilty is refused, no admission made by the defendant shall be admissible in evidence against him at trial.

f. If a defendant is represented by counsel, a plea of guilty may be accepted by the Tribal Court if the Judge concludes that both the defendant and his counsel fully understand the charges and evidence and that the criteria set forth in subsection (e) (1)-(6) above are otherwise satisfied. In the interests of justice, a Judge may grant defendants a reasonable time and opportunity to consult with counsel before the acceptance of a guilty plea.

g. After the entry of a not guilty plea, the Judge shall inform the defendant of a date for a pre-trial hearing.

2 M.P.T.L. ch. 1 § 17

§ 17. Search and Seizure Warrants—Authority

a. Judges, whether located on or off the nation lands, are authorized to issue search and seizure warrants which authorize the tribal police to search a described area, vehicle or person and to seize property.

b. Search and seizure warrants may authorize the tribal police to search any area, vehicle or person and/or to seize any property within the nation lands.

c. Notwithstanding (a) and (b) of this Section, a search and/or seizure without a search warrant is authorized provided it does not violate the provisions of the Tribe's Civil Rights Law.

2 M.P.T.L. ch. 1 § 18

§ 18. Search and Seizure Warrants—Procedure and Execution

a. Search and seizure warrants shall be in writing and signed by the issuing judge.

b. Search and seizure warrants shall be issued only upon application by the tribal police after approval by the tribal prosecutor. Applications for a search and seizure warrant shall contain a showing of probable cause. Probable cause shall be shown by a written or oral statement made by a person under oath or affirmation and submitted to a judge. The requisite showing for probable cause shall include a specific showing that the property sought to be searched for and seized includes any documents, books, papers, or other tangible items which were or are being:

- (1) obtained in violation of tribal law; or
- (2) obtained in violation of a law of any other jurisdiction; or
- (3) possessed, controlled, designed, or intended for use with an offense, which have been used in connection with any offense; or
- (4) which constitute evidence of an offense.

c. Search and seizure warrants shall describe with particularity the area, vehicle or person to be searched and the property to be seized. Search and seizure warrants shall direct the tribal police to search for and to seize evidence within the described area, vehicle or person.

d. The tribal police serving search and seizure warrants shall utilize only the degree of force necessary to effectuate the seizure of evidence and to ensure the safety of the tribal police and the public.

e. The tribal police officer serving search and seizure warrants shall also endorse upon the copy of the warrant served the serving officer's name, title and the place, date and time of service. The tribal police shall return a copy of the served warrant to the court clerk stating the name of the case, if applicable, and the name of the person served and the place, date and time of service. The tribal police officer serving the warrant shall subscribe his or her name on the return copy.

f. Search warrants shall be executed during daylight hours unless the underlying application sets forth circumstances which establish good cause for execution at any other time.

g. All search warrants shall be executed within 14 days of issuance; if not executed during that period, the warrant is void and may not be executed

without a new application being filed with the tribal court.

h. The tribal police serving and executing search and seizure warrants shall make an inventory of all seized property. The tribal police shall leave a copy of the inventory with persons from whom property is seized. The tribal police shall file a copy of the inventory with the court clerk within seven days of execution.

i. Within 14 days of the execution of search and seizure warrants, the tribal court shall, upon request of a purported owner of seized property, hold a hearing to determine the disposition of any property seized from said owner. Whenever practical, the judge that issued the search and seizure warrant shall be assigned to the disposition hearing.

j. At a disposition hearing, judges may dispose of seized property as follows:

(1) Upon satisfactory proof of ownership the seized property shall be delivered by the tribal police immediately to the legal owner, unless the property is contraband, is to be used as evidence in a pending case, or was used in connection with the commission of an offense;

(2) Property confiscated as contraband shall be destroyed or otherwise disposed of as ordered by the tribal court;

(3) Except as provided herein, property seized as evidence in a pending case shall be returned to the owner after judgment in that case;

(4) Except as provided herein, property seized which has been used in connection with the commission of an offense shall be disposed of as ordered by the tribal court;

(5) In those situations where seized property is retained as evidence or was used in connection with the commission of an offense, a non-defendant purported property owner may apply to the tribal court for return of the property pursuant to the provisions of this Law; and

(6) If a non-defendant purported property owner satisfactorily demonstrates proof of ownership of the property, and further demonstrates that continued denial of use or possession of the seized property would result in demonstrable harm, the tribal court may order the return of the seized property provided that a suitable alternative such as photography and/or other documentation may be substituted for evidential purposes in future proceedings. In such situation, a defendant in a matter where evidence of the seized property is relevant, shall be given notice and an opportunity to object to the release of and substitution of such property. The tribal court, upon receiving notice of such an objection, shall then schedule a hearing to determine if any demonstrable and credible prejudice results from the release of and substitution for such property. The burden to establish such prejudice by clear and convincing evidence shall be on the defendant. If the defendant fails to establish this burden, the property may be returned to its owner consistent with the Rules of Evidence to be developed by the tribal court.

k. Judges are authorized to prohibit the introduction or use at trial of any evidence seized in violation of this Law. Persons alleging that they have been

aggrieved by an unlawful search and seizure, and having reasonable grounds to believe that the evidence obtained may be used against him or her in a criminal proceeding, may apply to the tribal court for an order suppressing the tribal prosecutor's use of such evidence. The form and time for such motion shall be prescribed by the tribal court.

1. Search and seizure cases decided under federal or state law may guide but shall not control the decisions of the tribal court when considering the validity of a search and seizure warrant or the admissibility of evidence at trial.

2 M.P.T.L. ch. 1 § 19

§ 19. Sealing and Confidentiality

Upon application by the tribal prosecutor or any defendant, the tribal court is authorized to order that the following documents be sealed and held confidential until further order of the court:

- a. complaints, or
- b. applications for arrest warrants or summonses or search warrants, or
- c. arrest warrants, summonses and search warrants, or
- d. any other document or exhibit submitted in support of the foregoing.

2 M.P.T.L. ch. 1 § 20

§ 20. Discovery

Subject to the provisions of Section 19 of this Law, within 30 days of arraignment, and pending the adoption of formal rules of discovery by the tribal court, defendants shall be entitled to inspect, review, or copy any of the following materials which are within the possession, custody, or control of the tribal prosecutor:

- a. All complaints charging the defendant with an offense;
- b. police reports relevant to the charged offenses;
- c. written statements of the defendant and witnesses;
- d. any record of prior conviction(s) of the defendant;
- e. search warrants, affidavits and any supporting documents; and
- f. any other documents upon which the tribal prosecutor intends to rely upon in prosecuting the matter.

2 M.P.T.L. ch. 1 § 21

§ 21. Trial by Jury or by the Court

a. Trial by jury or by the court

(1) All trials of offenses shall be tried by the court without a jury unless the defendant requests a trial by jury within 30 days of arraignment.

(2) A defendant is entitled to a jury trial where imprisonment is a possible penalty for the offense charged.

(3) Juries shall be composed of six jurors with one alternate.

(4) In a case tried without a jury, the judge shall make a general finding of guilty or not guilty.

b. Eligibility for Jury Duty. Any enrolled member of the Mashantucket Pequot Tribal Nation, between the ages of 21 and 70, who has not been convicted in any jurisdiction of a felony within the five years preceding the date that the jury trial request is made, and who resides on the Mashantucket Pequot Tribal Nation lands or within 50 miles of the tribal lands, shall be eligible to be a juror. Judges, other officers or employees of the court, Tribal Council members, and tribal police officers shall not be eligible to be jurors while thus employed or appointed.

c. Jury List. Annually, the tribal clerk shall provide to the court clerk a listing of enrolled tribal members, between the ages of 21 and 70, who are residents of the Nation's lands or reside within 50 miles of the Nation's Lands, and their mailing addresses.

2 M.P.T.L. ch. 1 § 22

§ 22. Trial by Jury Procedure

a. No more than 60 days prior to trial the court clerk shall select by lot or some other means of random, impartial selection, not less than 35 persons from the list of eligible jurors to receive a selection letter and questionnaire which shall be returned to the tribal court.

b. From the above list of potential jurors, the court clerk shall select, by lot or some other means of random, impartial selection, and summon a panel of not less than 21 persons to appear and be available to serve as jurors.

c. Each person, duly chosen and summoned, who fails to appear shall have committed a contempt of court and the court may require payment of a fine in the amount not less than \$500 and not more than \$2,500. The court may excuse the juror from the payment of the fine thereof for good cause shown.

d. If a sufficient number of the prospective jurors summoned do not appear, or if for any reason there is not a sufficient number of persons to make up the panel, the court may order such number of persons who qualify for jury service

to be summoned as may be necessary, and any person so summoned who makes default of appearance without sufficient cause shall have committed a contempt of court requiring payment of a fine in the amount not less than \$500 and not more than \$2,500. The court may excuse the juror from the payment of the fine thereof for good cause shown.

e. Prospective jurors shall be excused from sitting if they are related to the defendant or to a victim in the case by blood or marriage within the second degree, or to any person likely to be called as a witness for or against the defendant, or to any person who resides in the same household as the defendant, stands in the relationship of guardian or ward, is a surety or guarantor of any bond or undertaking of the defendant or likely witness, or with the person alleged to be injured by the offense charged, or has personal knowledge of the subject of the trial beyond that which is generally held by the members of the Tribe and which may influence the juror's decisions as a juror or has a state of mind, knowledge, or belief in reference to the facts and circumstances of the trial, or to any party, or to the counsel for any party.

f. Six qualified jurors shall be selected from the jury panel. To reach a finding of guilty or not guilty, five of six jurors must vote in favor of the finding.

g. An alternate juror shall be selected in addition to the six jurors who shall replace a juror who, prior to the time the jury retires to consider its verdict, becomes or is found, in the discretion of the trial judge, to be unable or disqualified to perform his/her duties. An alternate juror shall be dismissed prior to the jury retiring to deliberate if the juror has not first been called to replace a regular juror who has become for any reason unable or disqualified to serve.

h. Power to Excuse Jurors. A judge may excuse a person notified and/or summoned to appear as a juror on account of sickness, disability, extreme hardship or other good cause shown upon the request for such excusal by the person notified and/or summoned.

i. Compensation of Jurors.

(1) Each person who is called and reports for jury selection shall be entitled to mileage at the prevailing rate paid by the Mashantucket Pequot Tribe ("mileage") and to a fee of \$25 for participation in the jury selection process.

(2) Each person selected for jury service and who is not a regular full time employee of the Mashantucket Pequot Tribal Nation or a full time student, shall be entitled to mileage and a fee of \$100 for each full or partial day of jury service. In the event that trial is conducted on the same day as jury selection then the selection fee shall be added to the first day service fee.

j. Examination of Jurors.

(1) The court shall conduct voir dire and shall determine that all prospective jurors are of sound mind and have not prejudged the case to be heard by them. The court shall also determine that all prospective jurors are physically capable of sitting and considering the evidence and argument presented for

trial. Prior to the date of trial, the prosecutor, the defendant or the defendant's counsel, may submit written questions to the court to be asked of prospective jurors. During voir dire, neither the prosecutor nor the defendant, or the defendant's counsel shall be permitted to question any prospective juror.

(2) Challenges regarding prospective jurors may be taken as follows:

(a) Each side shall be entitled to two peremptory challenges.

(b) Either side may challenge any juror for cause.

(c) An alternate juror shall be treated as a regular juror for purposes of challenges.

(3) The prosecutor first, and afterward the defendant, shall complete his/her challenges for cause. They may then, in turn, in the same order, have the right to challenge one juror each, until each shall have exhausted their peremptory challenges as provided herein.

(4) Upon completion of the challenge process, the court clerk shall select, by lot or some other means of random, impartial selection, seven members from the remaining panel and the jury shall be seated.

(5) Jury Foreperson. The judge in any trial by jury shall select the foreperson for each jury.

k. Oath of Jury. The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence.

1. Jury Trial Procedure. The tribal court shall develop Rules of Court that shall govern the jury trial process.

2 M.P.T.L. ch. 1 § 23

§ 23. Right to Attorney

a. Defendants who are demonstrably indigent are entitled to an attorney at the Tribe's expense.

b. Defendants who are tribal members and who are or may be eligible for a distribution under the Tribe's incentive program or other tribal per capita payment plan shall not be considered indigent for purposes of this Law.

c. Defendants who are tribal members and who are or may be eligible for a distribution under the Tribe's incentive program or other tribal per capita payment plan shall, at their request, have an attorney appointed by a judge from a list of approved attorneys established by the tribal court. Such appointments shall be paid for by the Tribe, provided that the cost of any attorney appointed and paid for by the Tribe shall be deducted from any future tribal distribution or payment to tribal members.

d. Consistent with the provisions of this Law, the tribal court may develop rules regarding the provision of attorneys which shall be effective upon approval by the Tribal Council.

2 M.P.T.L. ch. 1 § 24

§ 24. Bail and Release

a. The Mashantucket Pequot Tribal Council declares that it is the policy of the Tribe to require the minimum amount of bail, surety, or bond that is reasonably calculated to ensure the presence of any defendant in any future Tribal Court proceeding.

b. Except in cases of arrest pursuant to a warrant in which the Tribal Court has set bail, the Tribal Police are authorized to set bail upon such terms and conditions as are consistent with Tribal policy as stated in subsection (a) of this Section and which, in their discretion, will ensure the presence of the defendant in Tribal Court when required. Said bail determination shall be made by the ranking Tribal Police Officer on duty at the time of arrest. **The Tribal Police shall determine bail based upon the Bail Guidelines attached to this law. The Tribal Court has reviewed and recommends adoption of the Bail Guidelines attached to this law.** Upon request of the defendant, a Judge shall review and, if appropriate, modify any bail determination made by the Tribal Police at the next regularly scheduled court session.

c. Judges may require bail upon such terms and conditions as are consistent with Tribal policy as stated in subsection (a) of this Section and which, in their discretion, will ensure the presence of the defendant in Tribal Court when required.

d. Determinations of Judges and the Tribal Police regarding bail may be based upon but shall not be limited to the seriousness of the offense charged and the background, residence, employment and family status of the defendant. Bail determinations may be made and issued from locations either on or off Nation Lands and may be conveyed by telephone, facsimile or otherwise.

e. The Tribal Police Department shall promptly provide all necessary information relevant to the determination of bail to a Judge upon request.

f. The Tribal Prosecutor shall provide a report to the Tribal Court at any bail hearing. Such report shall contain all information relevant to the issue of bail as may be available to the Tribal Prosecutor concerning the defendant to be bailed. Such report shall include but not be limited to:

(1) record of prior arrest;

(2) arrest reports;

(3) the defendant's marital status, residence, employment and such other information as would assist the Tribal Court in making a bail determination.

- g. The Tribal Court shall prescribe bail information forms.
- h. Judges are authorized to order the release of defendants on their own recognizance and may impose terms or conditions appropriate to such release.
- i. Judges are authorized to revoke the release of defendants and order them committed to jail if, at any time, a Judge determines that the terms and conditions of release will not reasonably ensure the presence of defendants in Tribal Court or if any terms or conditions of release have been violated.
- j. Judges are authorized to appoint the Tribal Police to monitor the compliance of defendants with bail or release terms or conditions. The Tribal Police Department is authorized to accept payments for bail, or surety agreements, or execute promises to appear.

BAIL GUIDELINES

These guidelines shall serve as a guide for the setting of bail pursuant to Mashantucket Pequot Tribal Law and the MPTN Penal Code.

The guideline amounts in Schedule A shall be used to determine the base bail amount for any individual defendant. Mitigating factors shall be applied to the base bail amount from Schedule B and Aggravating and Enhancing factors shall be applied from Schedule C in order to determine the adjusted bail amount. The purpose of bail, as provided by Tribal law, is to assure that the defendant appears in court when scheduled. Bail shall not be used as a punitive measure.

Schedule A

Offense Charged Presumptive Bail

Capital Murder	No Bail
Murder	No Bail
Class A Felonies	\$50,000
Class B Felonies	\$25,000
Class C Felonies	\$10,000
Class D Felonies	\$ 5,000
Class A Misdemeanors	\$ 2,500
Class B Misdemeanors	\$ 1,500
Class C Misdemeanors	\$ 500

Choose the single most serious charge and establish the base bail.

Bail shall be in the form of cash only. MPTN Tribal Police are authorized to accept cash in an amount not to exceed Two Thousand Five Hundred Dollars (\$2,500) as bail monies. All bail in excess of Two Thousand Five Hundred Dollars (\$2,500) shall be submitted to an account specified by the MPTN Tribal Police. Upon proof of deposit of the monies, bail shall be considered posted.

Schedule B (Mitigating Factors)

Factor Effect on Bail

- | | | |
|----|--|----------------------------|
| 1. | Defendant resides on the Reservation or in a tribally owned home | 85% reduction of base bail |
| 2. | Defendant has no prior criminal record | 50% reduction of base bail |
| 3. | Defendant owns a home within 25 miles of the Reservation | 75% reduction of base bail |
| 4. | Defendant has lived in the same location, being within 25 miles of the Reservation for more than three years | 50% reduction of base bail |
| 5. | Defendant has family (children, wife, parents) living within 25 miles of the Reservation | 50% reduction of base bail |
| 6. | Defendant is employed within 25 miles of Reservation | 25% reduction of base bail |

7. If the Defendant has no prior convictions *and* is credited with any of the above factors, and is charged with a misdemeanor, then Defendant may be released on a promise to appear (i.e. without bail requirements)

Choose the single mitigating factor that results in the greatest reduction in the base bail.

Schedule C

(Aggravating Factors)

Factor

Effect on Bail

- | | | |
|----|---|------------------|
| 1. | Defendant has been issued a citation for failure to appear in Tribal Court | Triple Base Bail |
| 2. | Defendant has been convicted for failure to appear in any state court | Triple Base Bail |
| 3. | Defendant has been issued a citation for contempt of Tribal Court | Double Base Bail |
| 4. | Defendant has been convicted of Contempt of Court in any State or Federal Court | Double Base Bail |

Choose the single aggravating factor that results in the greatest increase in the base bail.

Example:

1. Defendant is charged with a Class A felony under Tribal Law. The base bail is \$2,500. Defendant has a wife and child and owns a home within twenty-five miles of the Reservation. The largest mitigating factor is home ownership. If there are no aggravating factors then the base bail is reduced by 75% for an adjusted bail of \$625 (75% of \$2,500 <EQUAL> \$1,875; \$2,500 - \$1,875 <EQUAL> \$625).

2. Same example except that the Defendant has been cited for failure to appear in Tribal Court. In that instance triple the base bail then apply the reduction. $3 \times \$2,500$ <EQUAL> \$7,500. Apply the reduction of base bail of \$1,875 as previously determined. Adjusted bail is \$5,625. Note that since the Tribal Police cannot accept cash in an amount greater than \$2,500 the Defendant will not be able to be released until the Adjusted Bail amount is deposited in the specified MPTN account.

2 M.P.T.L. ch. 1 § 25

§ 25. Probation

a. Consistent with tribal policy, judges are authorized to sentence persons convicted of an offense to probation in lieu of jail provided the offense does not provide for mandatory incarceration.

b. It is the policy of the Tribe to assign conditions to any probation. Probation conditions shall be imposed to assist persons convicted to address personal problems that may have contributed to a conviction. Conditions may include but shall not be limited to drug and/or alcohol abuse counseling, counseling to address abuse of a spouse or such other problems as, in the opinion of the court, require remedial action. It is also the policy of the Tribe to require those who have been found guilty of injuring others to provide restitution as a condition of probation or to perform community service as deemed appropriate by a tribal judge.

c. Judges shall assign a probation officer to ensure that the conditions of probation are being met. Judges shall appoint tribal probation officers to serve on an as needed basis. The qualifications and terms of employment for probation officers shall be established by the tribal court and shall be subject to approval by the Tribal Council.

d. Tribal probation officers and other persons may file complaints with the tribal prosecutor for alleged violations of probation. The tribal prosecutor may apply for an arrest warrant for persons alleged to be in violation of probation. After arrest or upon notice of an alleged violation of probation, whichever is later, a probation revocation hearing shall be held.

e. After a hearing and upon a finding that a violation of probation has occurred, judges are authorized to revoke probation or impose additional conditions of probation.

2 M.P.T.L. ch. 1 § 26

§ 26. Subpoenas and Service of Papers

a. Judges are authorized to issue subpoenas directing the attendance of witnesses, jurors, or such other persons as may be necessary for trial or other proceedings as well as for the production of documentary and physical evidence.

b. Subpoenas shall be issued upon the judge's own motion or at the written request of the prosecutor or defendant.

c. Subpoenas shall be in writing and shall be signed by the Judge issuing them.

d. Subpoenas shall be served by the tribal police within the Nation Lands. The tribal police serving subpoenas shall endorse upon the copy of the subpoena served the officer's name, title and the place, date and time of service. The tribal police shall also return a copy of the served subpoena to the court clerk stating the name of the case, the name of the person served, and the place, date and time of service. The serving tribal police officer shall subscribe their name to the return copy.

2 M.P.T.L. ch. 1 § 27

§ 27. Sentences

Persons convicted in tribal court may be sentenced up to the maximum extent provided under the Tribe's Civil Rights Law, for each such offense. Judges imposing jail sentences on persons convicted in tribal court, may be guided by but shall not be bound by, sentencing provisions and guidelines of Connecticut state law.

2 M.P.T.L. ch. 1 § 28

§ 28. Appeals

a. Persons convicted in tribal court of any offense may appeal to the Mashantucket Pequot Court of Appeals.

b. Executions of judgments or appealable orders of the tribal court entered under this Law may be stayed, pending appeal, upon written application to and at the discretion of any judge of the Mashantucket Pequot Court of Appeals.

2 M.P.T.L. ch. 1 § 29

§ 29. Attachment Prohibition

Neither execution nor attachment shall issue against the Tribe in any suit for injury or proceedings initiated under this Law.

2 M.P.T.L. ch. 1 § 30

§ 30. Severability

If any part of this Law is invalidated by the tribal court all valid parts that are severable from the invalid part remain in effect. If any part of this Law is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.

2 M.P.T.L. ch. 1 § 31

§ 31. Miscellaneous

a. In construing this Law, the present tense includes the past and future tenses, and the future tense includes the present tense.

b. When reference is made to any portion of this Law, the reference shall apply to all amendments made hereafter.

c. In the event of any conflict between this Law and other tribal laws, this Law shall control. To the extent that this Law is inconsistent with any provisions of the substantive or procedural laws of the state of Connecticut which may have been adopted by reference by this Law or any other law of the Tribe, the provisions of this Law shall govern.

d. Section headings shall be used only for reference to format and not in construing this Law.

2 M.P.T.L. ch. 1 § 32

§ 32. Designation of Minor Matters

The following are minor matters and offenses:

a. A violation as defined by the language of Section 53a-27 of the Connecticut General Statutes as may be amended from time to time.

b. Any offense which is designated as an infraction by the language of the Connecticut General Statutes, as they may be amended from time to time.

2 M.P.T.L. ch. 1 Chart

CHART OF CRIMINAL JURISDICTION IN INDIAN COUNTRY BY PARTIES AND CRIMES

This chart does not reflect federal crimes applicable to all persons in all places, such as theft from the mails or treason.

CRIMES BY PARTIES JURISDICTION STATUTORY AUTHORITY LINES

a. Crimes by Indians against Indians:

i. "Major" crimes. Federal or tribal (concurrent) 18
U.S.C.A. Sec. 1153

ii. Other crimes. Tribal (exclusive)

b. Crimes by Indians against non-Indians:

i. "Major" crimes. Federal or tribal (concurrent) 18
U.S.C.A. Sec. 1153

ii. Other crimes. Federal or tribal (concurrent) 18
U.S.C.A. Sec. 1152

c. Crimes by Indians without victims: Tribal (exclusive)

d. Crimes by non-Indians against Indians: Federal (exclusive)
18 U.S.C.A. Sec. 1152

e. Crimes by non-Indians against non-Indians: State (exclusive)

f. Crimes by non-Indians without Victims: State (exclusive)

Source: William C. Canby, Jr. *American Indian Law 3d.* (West Publishing)

CHAPTER 2. OFFENSES AGAINST THE TRIBE LAW AND ORDER CODE

2 M.P.T.L. ch. 2 § 1

§ 1. Offenses Against the Tribe

The following are declared to be offenses against the law of the Mashantucket Pequot Tribe which shall be punishable in the courts of the Mashantucket Pequot

Tribe by imprisonment for a term of not more than one year and a fine of not more than \$5,000 or both:

a. Mashantucket Pequot Criminal Laws. The Mashantucket Pequot Tribe hereby adopts as tribal law the criminal laws of the state of Connecticut, and all other actions, activities, and conduct determined to be criminal or prohibited pursuant to tribal law.

b. Violation of Tribal Gaming Law. The commission of any act as defined by Section 9 of the Mashantucket Pequot Tribal Gaming Law, 3 M.P.T.L. ch. 1, is a criminal offense of the Mashantucket Pequot Tribe.

c. Violations of Tribal Liquor Law: The sale of any intoxicating liquor within the Mashantucket Pequot Reservation, including the lands now or hereafter held in trust for the Tribe by the United States or held by the Tribe subject to a restriction against alienation imposed by the laws of the United States, except in conformity to the requirements of the Mashantucket Pequot Tribal Liquor law, 17 M.P.T.L., is declared to be a criminal offense against the law of the Mashantucket Pequot Tribe.

2 M.P.T.L. ch. 2 § 2

§ 2. Tribal Police Department

The Mashantucket Pequot Tribal Police Department is hereby established as the law enforcement agency of the Mashantucket Pequot Tribe, to have and exercise all of the sovereign law enforcement powers of the Mashantucket Pequot Tribe within the Mashantucket Pequot Reservation, including all lands now or hereinafter held in trust for the Tribe by the United States or held by the Tribe subject to restriction against alienation imposed by the laws of the United States. The Mashantucket Pequot Tribal Police Officers shall be subject to and shall satisfy the requirements set forth in the Federal Register for Bureau of Indian Affairs law enforcement programs, including without limitation each of the training requirements thereof, and such regulations are hereby adopted as the law of the Tribe.

2 M.P.T.L. ch. 2 § 3

§ 3. Power of Police Officers

Mashantucket Pequot Tribal Police Officers shall have the following powers:

a. the power to carry firearms;

b. the power to execute or serve warrants, summonses, or other orders relating to crime committed on the Mashantucket Pequot Reservation;

c. the power to arrest, including arrest without warrant if the offense is committed in the presence of the officer or the offense is a felony and the officer has reasonable ground to believe that the person to be arrested has committed, or is committing, the felony;

d. the power to make inquiries of any person, and administer to, or take from any person an oath, affirmation, or affidavit, concerning any matter relevant to the enforcement or carrying out of any law applicable within the Mashantucket Pequot Reservation.

e. The power to serve summonses and subpoenas in civil cases within the boundaries of the Mashantucket Pequot Reservation.

2 M.P.T.L. ch. 2 § 4

§ 4. Chief of Police

The Mashantucket Pequot Tribal Police Department shall be under the direction and management of a chief of police, who shall be appointed by and serve at the pleasure of the Mashantucket Pequot Tribal Council. The chief of police shall have the authority, acting on behalf of the Tribe:

a. to establish an annual budget for the police department subject to the approval of the Tribal Council;

b. to employ, train and supervise such additional police officers and supporting personnel as may be authorized by the budget of the department, and to exercise the authority to discipline and terminate such officers and personnel in accordance with the employment policies established by the department;

c. to enter into agreements and arrangements with other federal, state, municipal, and tribal law enforcement agencies to provide, receive and exchange information, assistance, training and other forms of cooperation appropriate to carry out the functions of the department and to promote public order and public safety;

d. to exercise overall management responsibility for the department and its officers in accordance with the professional standards appropriate to law enforcement agencies.

2 M.P.T.L. ch. 2 § 5

§ 5. Other Powers

The Mashantucket Pequot Tribal Police shall exercise all of the responsibilities of the tribal law enforcement agency as defined by the Final Mashantucket Pequot Gaming Procedures, 56 Fed. Reg. 24996 (May 31, 1991).

2 M.P.T.L. ch. 2 § 6

§ 6. Limited Immunity and Indemnification of Tribal Law Enforcement Officers

The chief of police and other law enforcement officers are officers of the

Mashantucket Pequot Tribe and shall be immune from suit or other liability when exercising the duties and powers of their respective offices within the scope of their authority. The chief of police and other law enforcement officers shall be indemnified and held harmless by the Mashantucket Pequot Tribe for any claim of damages for which they may be held personally accountable for actions which they may take in the course of their official duties so long as such actions were made within the scope of their authority and taken in good faith in the belief that such actions were lawful.

CHAPTER 3. ELDERS PROTECTION

2 M.P.T.L. ch. 3 § 1

§ 1. Jurisdiction

The Mashantucket Pequot Tribe (the "Tribe") is a federally recognized Indian tribe and, in order to more fully exercise their inherent tribal sovereignty, has taken jurisdiction over criminal matters that arise on the Mashantucket Pequot Reservation.

2 M.P.T.L. ch. 3 § 2

§ 2. Role of Tribal Elders

The Tribe has provided that tribal elders shall participate in the criminal justice system by serving on a tribally established Pre-Trial Intervention Program (herein PTI) and that they shall also serve as jurors in criminal trials.

2 M.P.T.L. ch. 3 § 3

§ 3. Protection from Intimidation

It is essential that the elders be protected from intimidation or the threat of actual physical violence as a result of or relating to their service as either member of the PTI program or as jurors in criminal trials.

2 M.P.T.L. ch. 3 § 4

§ 4. Prohibition Against Jury Tampering

a. No person shall influence or attempt to influence any elder participating in a jury trial or any official proceeding to or for which such juror has been drawn, summonsed or sworn. No person shall, outside of the usual PTI program procedures, influence or attempt to influence any elder participating in a PTI proceeding.

b. No person shall assault or batter or otherwise physically harm any juror or

commissioner in the PTI program in retaliation for or in connection with any action taken by such juror or PTI commissioner during the course of their duties.

2 M.P.T.L. ch. 3 § 5

§ 5. Penalties

Whoever is convicted under the provisions of this Law shall be guilty of interfering with a tribal official in the course of their duty and, in addition to any other offense that may be provided for in 2 M.P.T.L ch. 1 shall be punished by incarceration for up to a year in jail and/or a fine of \$5,000.

CHAPTER 4. TRIBAL GOVERNMENT PROTECTION

2 M.P.T.L. ch. 4 § 1

§ 1. Protection of Tribal Council

It is essential that Tribal Council members be protected from intimidation or the threat of actual physical violence. Whoever threatens the life of, assaults, batters or otherwise physically harms or attempts to harm any member of the Mashantucket Pequot Tribal Council, shall be guilty of a criminal offense. In a prosecution of an offense under this law, the tribal prosecutor need not prove that the defendant knew that the victim of the offense was a member of the Mashantucket Pequot Tribal Council.

- a. Whoever is convicted under the provisions of this law shall be guilty of interfering with a member of the Tribal Council and shall be punished by incarceration by up to one year in jail and/or a fine of \$5,000
- b. Anyone convicted under the provisions of this law shall be incarcerated for a minimum of 30 days.
- c. Persons accused of violating the provisions of this law are not eligible to participate in the Pre-Trial Intervention Program.
- d. Anyone convicted under the provisions of this law may, upon further action of the Tribal Council, be subject to removal from the Mashantucket Pequot tribal membership rolls and, upon removal, will forfeit all tribal rights and benefits.

2 M.P.T.L. ch. 4 § 2

§ 2. Prohibition on the Assault or Intimidation of Officers of the Tribal Government

The Tribal Council has previously provided that it is essential that certain officers of the tribal government, such as the Tribal Council, the Peacemakers

Council, and the tribal court, be protected from intimidation or threat of actual physical violence as a result of or relating to their services on behalf of the tribal government; and

The Tribal Council believes it is necessary to formally extend this protection to all officers of the tribal government, including members of the Tribal Council's standing committees and teams.

a. No person shall unduly influence or attempt to influence any officer of the Mashantucket Pequot tribal government with respect to their duties and responsibilities as officers of the government.

b. No person shall threaten, assault, or batter, or otherwise physically harm any officer of the Mashantucket Pequot tribal government in retaliation for or in connection with any action taken or proposed action to be taken by such officer of the government during the course of their duties.

c. Violations of these provisions may be punishable to the maximum extent provided by law.

CHAPTER 5. CHILD NEGLECT AND ABUSE REPORTING

ENACTMENT OF THE CHILD PROTECTION AND FAMILY PRESERVATION LAW

2 M.P.T.L. ch. 5 § 1

§ 1. Mandated Reporters and Penalties

a. Any person who is a physician, surgeon, dentist, podiatrist, chiropractor, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider, teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver or monitor employed by the Tribe, administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal school, child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker, psychiatrist, psychologist, or psychological assistant, licensed or unlicensed marriage, family, or child counselor, person employed in the mental health profession, or law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in an agency who is responsible for enforcing statutes and judicial orders, or any person who supervises or has control over children or who has regular contact with children, who knows, or has reasonable suspicion that a child was neglected or abused, or that actions are being taken, or are going to be taken, that would reasonably be expected to result in the neglect or abuse of a child, shall immediately report such neglect or abuse to the Tribe's child protective services or law enforcement service, or both.

b. Any person who fails to immediately report such neglect or abuse to the child protective services or law enforcement service shall be fined and imprisoned as provided by tribal law.

2 M.P.T.L. ch. 5 § 2

§ 2. Definitions

The terms used in this Law are further defined by the Child Protection and Family Preservation Act and shall be deemed incorporated herein by reference.

2 M.P.T.L. ch. 5 § 3

§ 3. Immunity of Liability for Good Faith Reporting

Any person making a report of suspected child neglect or abuse which is based upon their reasonable belief and which is made in good faith shall be immune from civil or criminal liability for making such report and, if employed by the Tribe, shall not be subject to discipline, suspension, or termination.

CHAPTER 6. PRE-TRIAL INTERVENTION PROGRAM

2 M.P.T.L. ch. 6 § 1

§ 1. Policies

In order to provide an alternative to custodial sentencing which emphasizes rehabilitation rather than retribution and in recognition of the reality that penal consequences alone do not effectively deter future criminal activity, the Tribal Council hereby creates the Mashantucket Pequot Pre-trial Intervention Program ("PTI"). This program has among its purposes the following:

- a. To provide defendants with opportunities to avoid ordinary prosecution by receiving early rehabilitative services when such services can reasonably be expected to deter future criminal behavior by the defendant, and when there is an apparent causal connection between the offense charged and the rehabilitative need, without which cause both the alleged offense and the need to prosecute might not have occurred.
- b. To provide for meaningful tribal community participation in the criminal justice system through the establishment of a commission of tribal elders who shall assist in formulating a rehabilitative plan for each PTI applicant which will serve to balance tribal concerns with unlawful behavior with the need to deter and rehabilitate such offenders.
- c. To provide an alternative to prosecution for defendants who might be harmed by the imposition of criminal sanctions as presently administered, when such an alternative can be expected to serve as sufficient sanctions to deter criminal conduct.
- d. To provide a mechanism for permitting the least burdensome form of prosecution possible for defendants charged with "victimless" offenses.

e. To deter future criminal or disorderly behavior by a defendant/participant in PTI.

2 M.P.T.L. ch. 6 § 2

§ 2. Tribal PTI Commission

a. Establishment. The Tribal Council hereby authorizes the Mashantucket Pequot Elders Council to appoint three elders to serve on a "Tribal Elders Rehabilitation Commission" (hereinafter the "PTI Commission"). The Commission shall provide oversight for, and input from, the tribal community in the evaluation and implementation of rehabilitative activities for applicants for the PTI program. Elders assigned to the PTI Commission shall serve on a case by case basis during their assigned tenure.

b. Terms and Compensation. The Tribal Council shall designate one such elder as the chairman of the PTI Commission. All members shall serve for a one year term. Attendance at a meeting by at least two members of the PTI Commission shall constitute a quorum. Elders assigned to the PTI Commission shall be entitled to compensation at the rate of \$150 per day (or a pro rata portion thereof) for their service.

c. Qualification of Elders. Elders appointed to the PTI Commission shall be physically capable of meeting and discussing the facts and criteria regarding each PTI applicant. Appointed elders must abstain from participation in any PTI Commission activity if:

(1) they have prejudged the matter; or

(2) if they are the son, daughter, father, mother, brother, sister, granddaughter, grandson of the applicant or any victim of the alleged offense; or

(3) the elder is a witness, victim or otherwise had some direct personal involvement in the alleged offense.

d. PTI Commission Responsibilities. The duties and responsibilities of a member of the PTI Commission shall include:

(1) attendance at meetings of the PTI Commission as scheduled by the chairman;

(2) review of applications for PTI diversion of defendants charged with offenses against tribal law;

(3) review of recommendations of the PTI Program director regarding a rehabilitative plan for the applicant; and

(4) the supplementation of such recommendation consistent with the rehabilitative goals and objective of the Tribe measured against the need to promote a secure and stable community.

e. Standards. In determining an appropriate rehabilitative plan for a PTI

applicant, the PTI Commission may utilize the criteria set forth in the PTI Law and Guidelines, but the PTI Commission may also utilize their experience and knowledge of tribal customs and standards of acceptable conduct in formulating their recommendations to achieve an applicant's rehabilitation.

2 M.P.T.L. ch. 6 § 3

§ 3. Pre-trial Intervention Program

a. Establishment. The Tribal Council further authorized the establishment of the position of PTI program director whose compensation shall be set by the Tribal Council, and whose duties shall include the following:

- (1) establish appropriate forms and applications for applicants to the PTI program;
- (2) maintain all records of the PTI program;
- (3) review and investigate information submitted by PTI applicants;
- (4) make determinations for PTI acceptance or denial consistent with this PTI Law and the attendant guidelines;
- (5) maintain the PTI Registry;
- (6) interact with the Tribal PTI Commission in their review of PTI applications and applicant performance of PTI duties;
- (7) interact with the Tribal Council and office of the tribal prosecutor in the review of PTI applications; and
- (8) maintain records of PTI performance by persons accepted for enrollment.

b. Procedures. The PTI program shall utilize the following operational system:

- (1) The chief judge of the tribal court shall designate a judge to act on all matters pertaining to the PTI program;
- (2) In order to facilitate the operation of the PTI program, the tribal court shall adopt guidelines that are consistent with the spirit, intent and terms of this Law. Such guidelines shall prescribe the method and criteria for filing PTI applications pursuant to this Law. No interpretations of such guidelines shall be inconsistent with the terms of this Law;
- (3) If a defendant's application for PTI is approved by the program director and consented to by the tribal prosecutor, prior to the submission to the tribal court, the program director shall notify the tribal PTI Commission of such preliminary acceptance. The program director shall then recommend to the tribal PTI Commission, a course of rehabilitative activity for each accepted defendant. Such rehabilitative activity may include, but is not limited to, the following:

(a) drug/alcohol abuse evaluation in order to determine if the defendant is appropriate for the program. Defendants determined to be substance abusers will not be eligible for the PTI Program, but may be eligible for the Healing Journey Program.

(b) community service consistent with PTI Guidelines to be established by the tribal court;

(c) reasonable restitution or other remedial action to victims of the defendant's criminal offenses including the tribal community as a whole; and

(d) any other rehabilitative directive that fairly balances the harm to the victim(s) with the goal of rehabilitation.

(4) After the tribal PTI Commission's receipt and review of the program director's recommendations, the following procedure shall occur:

(a) The tribal PTI Commission shall then schedule a meeting with the PTI program director and the applicant. At the meeting, the defendant's charges and recommended PTI rehabilitative activities shall be discussed. The tribal PTI Commission shall first determine if the program director's recommended rehabilitative plan is sufficient to achieve the Tribe's goals for rehabilitation. The tribal PTI Commission may, on its own motion, supplement or modify the recommended treatment, duties and/or responsibilities assigned to applicant.

(b) After a thorough discussion of the rehabilitative plan, the PTI applicant shall indicate his acceptance or rejection, in writing, of the terms and conditions of said plan. If the applicant accepts the PTI requirements of the plan, the program director shall transmit to the tribal court, the PTI program's recommendation for the applicant's acceptance and written confirmation of the tribal prosecutor's consent thereto. The program director shall also transmit the recommended rehabilitative action plan submitted to the PTI program and the tribal PTI Commission. If the court approves the applicant's PTI enrollment, the tribal court shall accept the rehabilitative recommendations and may modify or supplement such recommendations only if their implementation would constitute a clear abuse of the goals and objectives of the PTI program.

(c) If the applicant rejects the proposed rehabilitative plan, the applicant shall be ineligible for continued PTI consideration and a recommendation shall be made to the tribal court consistent with 2 M.P.T.L. ch. 6, § 3(b)(6)(c). If the applicant initially accepts the rehabilitative program and thereafter refuses to satisfy the established criteria, the applicant shall also be subject to the termination pursuant to 2 M.P.T.L. ch. 6, § 3(b)(6)(c).

(5) Where a defendant charged with a criminal offense has been accepted by the program the designated judge may, on recommendation of the PTI program director, and with the consent of the tribal prosecutor and the defendant, postpone all further proceedings against said defendant on such charges for a period not to exceed one year.

(6) At the conclusion of such one year period, the designated judge shall make one of the following dispositions:

(a) On recommendation of the PTI program director and with the consent of the tribal prosecutor and the defendant, dismiss the complaint against the defendant, such dismissal to be designated and titled "complaint dismissed—PTI successfully completed";

(b) On recommendation of the PTI program director and with the consent of the tribal prosecutor and the defendant, further postpone all proceedings against such defendant on such charges for an additional period not to exceed one year;

(c) On the written recommendation of the PTI program director, or the tribal prosecutor, or on the court's own motion, order the prosecution of the defendant to proceed in the ordinary course. Where a recommendation for such an order is made by the PTI program director or by the tribal prosecutor, such person shall, before submitting such recommendation to the designated judge, provide the defendant or their attorney with a copy of such recommendation, shall advise the defendant of their opportunity to be heard thereon and the designated judge shall afford the defendant such a hearing;

(d) During the conduct of hearings subsequent to an order returning the defendant to prosecution in the ordinary course, no PTI program records, PTI investigative reports, or any statements made by the defendant to the PTI program staff, the PTI Commission, or any person designated to provide supervisory or rehabilitative treatment, shall be admissible in evidence against such defendant. No such hearing with respect to such defendant shall be conducted by the designated judge who issues the order returning the defendant to prosecution in the ordinary course;

(e) No PTI program records, PTI investigative reports of statements made by the defendant to the PTI program staff, the PTI Commission, or to any person designated to provide supervisory or rehabilitative treatment, shall be disclosed at any time to the prosecutor, nor shall any such statement of disclosure be admitted as evidence in any civil or criminal proceeding against the participant, provided that the program director shall not be prevented from informing the prosecutor, or the court, upon request or otherwise, whether the participant is satisfactorily responding to supervisory treatment;

(f) Where proceedings have been postponed against a defendant for a second period of one year as provided in PTI law section 3(b)(6)(b); at the conclusion of such additional period not to exceed one year, the designated judge may not postpone the proceeding but shall make a disposition in accordance with the PTI law section 3(b)(6)(a) or section 3(b)(6)(c). The aggregate of postponement periods under this Rule shall not exceed two years;

(g) The PTI program director in conjunction with the tribal clerk, shall establish and maintain a PTI registry for the purpose of determining applications, enrollments and the degree of completion thereof by a defendant in the PTI program. The PTI registry shall contain such information and material as directed by the tribal court;

(h) When a program director or tribal prosecutor, either individually or jointly reject an application for participation in the PTI program, the defendant shall have a right to appeal from such enrollment denial to the designated judge. The burden to establish eligibility shall be on the

defendant. In addition thereto, the defendant also must show that the PTI enrollment denial by either the program director and/or tribal prosecutor was an arbitrary and capricious action. If such a showing is made, the judge may order the enrollment of the defendant into the PTI program. If such showing is not made, the defendant shall be prosecuted in the ordinary course;

Where a defendant has been approved for enrollment by both the PTI program director and the tribal prosecutor, the designated judge shall have authority to reject the defendant's enrollment if the interests of justice so requires. A decision by the designated judge to disregard the recommendations for enrollment and so exclude the defendant from the PTI process shall not be reviewable upon appeal.

CHAPTER 7. TRIBAL PRE-TRIAL INTERVENTION PROGRAM GUIDELINES

2 M.P.T.L. ch. 7 Guid. 1

Guideline 1. Eligibility

Eligibility for PTI is broad enough to include all defendants who demonstrate sufficient effort to effect necessary behavioral change and show that future criminal behavior will not occur. Any defendant accused of an offense shall be eligible for admission into a PTI program. When the application indicates factors which would ordinarily lead to exclusion under the guidelines established hereinafter, the applicant nevertheless shall have the opportunity to present to the program director and through him to the prosecutor, any facts or materials demonstrating his amenability to the rehabilitative process, showing compelling reasons justifying his admission, and establishing that a decision against enrollment would be arbitrary and unreasonable.

2 M.P.T.L. ch. 7 Guid. 2

Guideline 2. Application Criteria

a. In evaluating a defendant's application for participation in the PTI program, consideration shall be given to the criteria set forth below:

- (1) the nature of the offense;
- (2) the facts of the case;
- (3) the motivation and age of the defendant;
- (4) the desire of the complainant or victim to forego prosecution;
- (5) the existence of personal problems and character traits which may be related to the applicant's crime and for which services are unavailable within the criminal justice system, or which may be provided more effectively through supervisory treatment and the probability that the causes of criminal behavior can be controlled by proper treatment;

(6) the likelihood that the applicant's crime is related to a condition or situation that would be conducive to a change through his participation in supervisory treatment;

(7) the needs and interests of the victim, Tribe and society;

(8) the extent to which the applicant's crime constitutes part of a continuing pattern of anti-social behavior;

(9) the applicant's records of criminal and penal violations and the extent to which he may present a substantial danger to others;

(10) whether or not the crime is of an assaultive or violent nature, whether in the criminal act itself or in the possible injurious consequences of such behavior;

(11) consideration of whether or not prosecution would exacerbate the social problem that led to the applicant's criminal act;

(12) the history of the use of physical violence toward others;

(13) whether or not the crime is of such nature that the value of supervisory treatment would be outweighed by the Tribe's need for prosecution;

(14) whether or not the applicant's involvement with other people in the crime charged or in other crime is such that the interest of the Tribe would be best served by processing his case through traditional criminal justice system procedures;

(15) whether or not applicant's participant in PTI will adversely affect the prosecution of a co-defendant; and

(16) whether or not the harm done to society by abandoning criminal prosecution would outweigh the benefits to society from channeling an offender into a supervisory treatment program.

b. In addition, the following shall be considered together thereto, with other relevant circumstances:

(1) Age—PTI is designed to deal only with adult defendants who, in accordance with tribal law, are those persons above the age of 18;

(2) Residence—The Mashantucket Pequot PTI program is designed to deal with the problem of crime in tribal lands;

(3) Jurisdiction—Only defendants charged with criminal offenses in the Mashantucket Pequot Tribal Criminal Court may be enrolled in the PTI program;

(4) Minor Violations—Defendants should not be eligible for enrollment if the likely disposition would result in a suspended sentence without probation or a fine. Those charged with animal control law, health code, motor vehicle and other similar violations are not eligible;

(5) Prior Record of Conviction—While the PTI program is not limited to "first offenders", defendants who have been previously convicted of a criminal offense should ordinarily be excluded. Such defendants who have at any prior time been convicted of a violent crime or who irrespective of the type of the crime have completed a term of probation, incarceration or parole within five years prior to the date of application for diversion shall ordinarily not be considered for enrollment in PTI except on joint application by the defendant and the prosecutor. Defendants charged with more than one offense may be considered for enrollment;

(6) Parolees and Probationers—Defendants who at the time of arrest, are probationers or parolees, should be considered for enrollment only after consultation with the probation officer, and only after they have agreed that revocation of probation or parole need not be recommended or after the tribal court has made the decision not to revoke probation or parole;

(7) Defendants Previously Diverted—Supervisory treatment may occur only once with respect to any defendant who has previously been enrolled in a program of PTI. All applications for enrollment in the PTI program must proceed in accordance with the PTI Law and the rules of the tribal court, and these guidelines after reference to the PTI registry established pursuant to the Law. No order to expunge or seal records of arrest after dismissal of a complaint shall bar the retention of material and information in the PTI registry for the purposes of determining a defendant's prior applications to, enrollments in, and the degree of completion of a PTI program or for statistical reports.

(8) Assessment of the Nature of the Offense—Any defendant charged with an offense not deemed minor is eligible for enrollment in a PTI program, but the nature of the offense is a factor to be considered in reviewing the application. If the crime was:

(a) part of organized criminal activity; or

(b) part of a continuing criminal business or enterprise; or

(c) deliberately committed with violence or threat of violence against another person; or

(d) a breach of the tribal or public trust where admission to a PTI program would depreciate the seriousness of a defendant's crime, the defendant's application should generally be rejected;

(9) Co-Defendants—The impact of diversion on the prosecution of co-defendants is a factor to be considered;

(10) Restitution and Community Service—A restitution or community service requirement, or both, may be included as part of an individual's service plan when such a requirement promises to aid the rehabilitation of the offender. Any such requirement and its terms shall be judicially determined at the time of enrollment following recommendation by the program director and/or tribal PTI Commission, and with consent by the prosecutor. Evidence of the restitution condition is not admissible against a defendant in any subsequent civil or criminal proceeding. Admission to the program shall not be denied solely on the basis of anticipated inability to meet a restitution requirement.

Where appropriate to further rehabilitation, a symbolic or partial restitution requirement may be included in the service.

2 M.P.T.L. ch. 7 Guid. 3

Guideline 3. Plea

Enrollment in the PTI program should be conditioned upon neither informal admission nor entry of a plea of guilty. Enrollment of defendants who maintain their innocence should be permitted unless the defendants' attitude would render PTI ineffective.

2 M.P.T.L. ch. 7 Guid. 4

Guideline 4. Confidentiality

Effective operation of the PTI program requires that a relationship of confidence and trust be initiated and maintained between the participating defendant and the PTI staff and the tribal PTI Commission. No information, therefore, obtained as a result of a defendant's application to or participation in a PTI Program should be used in a subsequent proceeding against a defendant to his/her disadvantage.

2 M.P.T.L. ch. 7 Guid. 5

Guideline 5. Application Procedures

a. Application for PTI shall be made as soon as possible after commencement of proceedings but where a complaint is filed, not later than 14 days after original plea to the complaint. All applications for the PTI program should be processed in the order of their filing. The applicant shall file the original application with the clerk of the court and a copy with the PTI program director.

b. The PTI program director shall complete evaluation of the application and make recommendations thereon within 14 days after a copy of the application has been filed; notice thereof shall be given by the PTI program director to the prosecutor, the defendant, defendant's counsel and the designated tribal court judge.

c. If the PTI program director recommends approval of the PTI application, then the prosecutor shall complete his review within 10 days after receipt of such notice from the PTI program director; and within said time period, the prosecutor shall give notice of his decision to consent or not to consent to the PTI application to the PTI program director, the defendant, defendant's counsel and the designated tribal court judge.

d. If the application is approved by the PTI program director and consented to by the prosecutor, such combined action shall constitute preliminary acceptance and the PTI program director shall notify the tribal PTI Commission of such

preliminary acceptance. The program director shall then forward specific recommendations for rehabilitative activity to the tribal PTI Commission within 14 days of the preliminary acceptance.

e. The tribal PTI Commission shall review the PTI program director's recommendations and shall schedule and hold a meeting with the PTI program director, the defendant, and, if requested, the defendant's attorney, within 14 days of its receipt of preliminary acceptance. At such meeting, the tribal PTI Commission shall review the defendant's charges and the recommendations of the PTI program director, including the specific recommendations for rehabilitative activity; such review shall be made in conjunction with the criteria set forth in Guideline 2. The tribal PTI Commission may, at such meeting, ask the defendant such questions as it deems appropriate to assist it in deciding whether to recommend application approval and in determining rehabilitative activities.

f. The tribal PTI Commission may recommend approval or denial of the defendant's PTI application; and if approval is recommended, such approval may be recommended with the rehabilitative activities recommended by the PTI Program director or such modified rehabilitative activities as are determined by the tribal PTI Commission to be appropriate to achieve the Tribe's goals for rehabilitation. At such meeting, the tribal PTI Commission shall inform the defendant of its recommendations and the defendant shall indicate whether he consents to the recommendations, including the rehabilitative activities. In addition, the PTI program director shall prepare a list of the tribal PTI Commission's recommended rehabilitative activities and any other conditions of application approval for consent to and signature by the tribal PTI Commission and the defendant at the meeting. A copy thereof shall be provided to the defendant at the meeting. If the defendant rejects the proposed rehabilitative plan, the PTI program director shall recommend defendant's return to prosecution in the ordinary course and follow the procedures in 2 M.P.T.L. ch. 3 § 3(b) (6) (c).

g. Within seven days after said meeting, all applications, including applications approved with rehabilitative recommendations consented to by the defendant and applications denied by the tribal PTI Commission, shall be forwarded by the PTI program director to the designated tribal court judge. In the event the tribal PTI Commission does not recommend application approval, or the defendant does not consent in writing to the rehabilitative activities and any conditions recommended by the tribal PTI Commission, the PTI program director shall so notify the designated tribal court judge and the defendant, in writing, within seven days after the meeting.

h. All such applications and recommendations shall be acted upon by the designated tribal court judge within seven days after receipt of same, or at the earliest date after receipt at which a defendant can be presented in tribal court before the designated tribal court judge. The court shall enter written orders detailing all rehabilitative recommendations as orders of the court.

2 M.P.T.L. ch. 7 Guid. 6

Guideline 6. PTI Decisions

The decisions and reasons therefore made by the designated tribal judges, prosecutor and program director in granting or denying a defendant's application for PTI enrollment, in recommending and ordering termination from the program or dismissal or charges, in all cases must be reduced to writing and disclosed to the defendant. A defendant may be accepted into the PTI Program by the designated tribal court judge, on recommendation of the program director, with the consent of the prosecuting attorney, the defendant and the tribal PTI Commission. Rehabilitative recommendations shall also be considered by the designated tribal court judge prior to the imposition of any such PTI rehabilitative conditions. Defendants recommended for enrollment by the program director and consented to by the prosecutor must be presented to the designated tribal court judge authorized to enter orders.

2 M.P.T.L. ch. 7 Guid. 7

Guideline 7. Appeals

a. If an application is rejected by the program director, prosecutor or the tribal PTI Commission, an appeal may be taken by the defendant to the tribal court. Any such appeal shall be filed within 14 days after the mailing of the rejection notice to the defendant and shall be heard by the designated tribal court judge. The challenge is to be based on alleged arbitrary or capricious action, and the defendant has the burden of showing that the action taken by the program director, prosecutor or the tribal PTI Commission was an abuse of discretion in denying or refusing to consent to the application.

b. If preliminary acceptance is given to defendant's application but the rehabilitative recommendations made by the tribal PTI Commission are rejected or modified by the designated tribal court judge, the matter shall be re-considered by the tribal PTI Commission and additional recommendations issued. If the tribal PTI Commission's new recommendations are not accepted by the defendant, an appeal may be taken by the defendant to the tribal court; such appeal shall be filed within 14 days of the mailing of the new recommendations to the defendant by the PTI Program director. Any such appeal shall be on the grounds above stated and shall be heard by the designated tribal court judge.

c. All decisions of the designated tribal court judge in appeals filed pursuant to paragraphs (a) and (b) hereof, shall be final.

2 M.P.T.L. ch. 7 Guid. 8

Guideline 8. Termination of PTI Program

a. If the defendant has been accepted into the PTI program and has failed to perform the conditions of rehabilitation as detailed in the PTI orders of the court, a written recommendation to return the defendant to prosecution in the ordinary course and terminate eligibility for continued participation in the PTI program, may be filed by either the PTI program director, the prosecutor or

the tribal PTI Commission, with the designated tribal court judge.

b. If such a written recommendation is filed with the designated tribal court judge, the judge shall order that the tribal PTI Commission and PTI program director meet with the defendant on a specified date. At such meeting the tribal PTI Commission shall consider the written recommendation and provide the defendant with the opportunity to oppose such written recommendation. The tribal PTI Commission shall determine at such meeting whether or not it concurs with the recommendation to terminate the defendant's PTI eligibility and, within seven days of such meeting, the PTI program director shall notify the designated tribal court judge and the defendant of the tribal PTI Commission's recommendation.

c. The defendant shall have the right to a hearing before the designated tribal court judge entering the original PTI order, if the PTI Commission recommends termination of PTI eligibility, and the defendant files a timely motion for hearing with the tribal court within 14 days of the PTI program director's mailing of notice to the defendant containing the recommendation of the tribal PTI Commission.

d. Upon the failure of the defendant to file a timely motion for hearing, the designated tribal court judge shall review the recommendations filed and render a decision as to whether defendant's PTI eligibility shall be terminated. In the event that the designated tribal court judge decides that the defendant's PTI eligibility is to be terminated, the designated tribal court judge shall order that the defendant's prosecution proceed in the ordinary course. The decision of the tribal court judge, whether after motion and hearing, or based upon written recommendation, shall be final.

2 M.P.T.L. ch. 7 Guid. 9

Guideline 9. Guideline Compliance; Confidentiality

Consistent with the goals of the PTI Program, it shall be the duty of the designated judge to whom any matter is presented as a result of which a defendant may be eligible for participation in the PTI program to determine whether all procedures for such eligibility have been followed. If such procedures have not been followed or not completed, the designated judge shall suspend further proceedings in the matter until all such procedures have been completed in accordance with these Guidelines. The designated judge shall also take all steps to ensure the confidentiality of all PTI records.

Historical Notes

Derivation.

Effective November 30, 1993, TCR113093-03 enacted the "Mashantucket Pequot Tribal Criminal Court Ordinance."

Amendments.

Effective October 5, 2000, TCR100500-02 reorganized and renumbered the Title to encompass all Criminal Law and Procedure provisions.