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ARRAIGNMENT

SECTION 174.015 Conduct of arraignment.

Arraignment shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the complaint before he is called upon to plead.

SECTION 174.025 Proceedings respecting name of defendant; entry of true name in minutes; subsequent proceedings in true name. When the defendant is arraigned, he must be informed that if the name by which he is prosecuted is not his true name he must then declare his true name, or be proceeded against by the name in the complaint. If he gives no other name, the court may proceed accordingly; but, if he alleges that another name is his true name, the court must direct an entry thereof in the minutes of the arraignment, and the subsequent proceedings on the complaint may be had against him by that name, referring also to the name by which he was first charged therein.

PLEAS

SECTION 174.035 Types of pleas; procedure for entering plea.

1. A defendant may plead not guilty, guilty, guilty but mentally ill or, with the consent of the court, nolo contendere. The court may refuse to accept a plea of guilty or guilty but mentally ill.

2. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be in substantially the form prescribed in [SECTION 174.063](#). If a plea of guilty or guilty but mentally ill is made orally, the court shall not accept such a plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea.

3. With the consent of the court and the tribal prosecuting attorney, a defendant may enter a conditional plea of guilty, guilty but mentally ill or nolo contendere, reserving in writing the right, on appeal from the judgment, to a review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal must be allowed to withdraw the plea.

4. A plea of guilty but mentally ill must be entered not less than 21 days before the date set for trial. A defendant who has entered a plea of guilty but mentally ill has the burden of establishing his mental illness by a preponderance of the evidence. Except as otherwise provided by specific statute, a defendant who enters such a plea is subject to the same criminal, civil and administrative penalties and procedures as a defendant who pleads guilty.

5. The defendant may, in the alternative or in addition to any one of the pleas permitted by subsection 1, plead not guilty by reason of insanity. A plea of not guilty by reason of insanity must be entered not less than 21 days before the date set for trial. A defendant who has not so pleaded may offer the defense of insanity during trial upon good cause shown. Under such a plea or defense, the burden of proof is upon the defendant to establish by a preponderance of the evidence that:

- (a) Due to a disease or defect of the mind, he was in a delusional state at the time of the alleged offense; and
- (b) Due to the delusional state, he either did not:
 - (1) Know or understand the nature and capacity of his act; or
 - (2) Appreciate that his conduct was wrong, meaning not authorized by law.

6. If a defendant refuses to plead or if the court refuses to accept a plea of guilty or guilty but mentally ill or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

7. As used in this section, a "disease or defect of the mind" does not include a disease or defect which is caused solely by voluntary intoxication.

SECTION 174.061 Plea bargaining: General requirements; prohibited agreements.

1. If a prosecuting attorney enters into an agreement with a defendant in which the defendant agrees to testify against another defendant in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for a recommendation of a reduced sentence, the agreement:

- (a) Is void if the defendant's testimony is false.
- (b) Must be in writing and include a statement that the agreement is void if the defendant's testimony is false.

2. A prosecuting attorney shall not enter into an agreement with a defendant which:

- (a) Limits the testimony of the defendant to a predetermined formula.
- (b) Is contingent on the testimony of the defendant contributing to a specified conclusion.

SECTION 174.063 Written plea agreement for plea of guilty or guilty but mentally ill: Form; contents.

1. If a plea of guilty or guilty but mentally ill is made in a written plea agreement, the agreement must be substantially in the following form:

Case No.
Dept. No.

IN THE ELY SHOSHONE TRIBAL COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF WHITE PINE,

ELY SHOSHONE TRIBE
PLAINTIFF,

v.

(Name of defendant),
DEFENDANT.

GUILTY OR GUILTY BUT MENTALLY ILL PLEA AGREEMENT

I hereby agree to plead guilty or guilty but mentally ill to: (List charges to which defendant is pleading guilty or guilty but mentally ill), as more fully alleged in the charging document attached hereto as Exhibit 1.

My decision to plead guilty or guilty but mentally ill is based upon the plea agreement in this case which is as follows:

(State the terms of the agreement.)

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty or guilty but mentally ill I admit the facts which support all the elements of the offenses to which I now plead as set forth in Exhibit 1.

I understand that as a consequence of my plea of guilty or guilty but mentally ill I may be imprisoned for a period of not more than (maximum term of imprisonment) and that I (may or will) be fined up to (maximum amount of fine). I understand that the law requires me to pay an administrative assessment fee.

I understand that, if appropriate, I will be ordered to make restitution to the victim of the offenses to which I am pleading guilty or guilty but mentally ill and to the victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to reimburse the Ely Shoshone Tribe for expenses relating to my extradition, if any.

I understand that I (am or am not) eligible for probation for the offense to which I am pleading guilty or guilty but mentally ill. (I understand that, except as otherwise provided by statute, the question of whether I receive probation is in the discretion of the sentencing judge, or I understand that I must serve a mandatory minimum term of (term of imprisonment) or pay a minimum mandatory fine of (amount of fine) or serve a mandatory minimum term (term of imprisonment) and pay a minimum mandatory fine of (amount of fine).)

I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.

I understand that information regarding charges not filed, dismissed charges or charges to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the court within the limits prescribed by statute. I understand that if my attorney or the Ely Shoshone Tribe or both recommend any specific punishment to the court, the court is not obligated to accept the recommendation.

I understand that the Probation Department may or will prepare a report for the sentencing judge before sentencing. This report will include matters relevant to the issue of sentencing, including my criminal history. I understand that this report may contain hearsay information regarding my background and criminal history. My attorney (if represented by counsel) and I will each have the opportunity to comment on the information contained in the report at the time of sentencing.

WAIVER OF RIGHTS

By entering my plea of guilty or guilty but mentally ill, I understand that I have waived the following rights and privileges:

1. The constitutional privilege against self-incrimination, including the right to refuse to testify at trial, in which event the prosecution would not be allowed to comment to the jury about my refusal to testify.
2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney at my own expense. At trial, the Tribe would bear the burden of proving beyond a reasonable doubt each element of the offense charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction, unless the appeal is based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings and except as otherwise provided in subsection 3 of [SECTION 174.035](#).

VOLUNTARINESS OF PLEA

I have discussed the elements of all the original charges against me with my attorney (if represented by counsel) and I understand the nature of these charges against me.

I understand that the Tribe would have to prove each element of the charge against me at trial.

I have discussed with my attorney (if represented by counsel) any possible defenses and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights and waiver of rights have been thoroughly explained to me by my attorney (if represented by counsel).

I believe that pleading guilty or guilty but mentally ill and accepting this plea bargain is in my best interest and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney (if represented by counsel) and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

My attorney (if represented by counsel) has answered all my questions regarding this guilty or guilty but mentally ill plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

Dated: This day of the month of of the year

.....
Defendant.

Agreed to on this day of the month of of the year

.....
Tribal Prosecutor/Police Officer.

2. If the defendant is represented by counsel, the written plea agreement must also include a certificate of counsel that is substantially in the following form:

CERTIFICATE OF COUNSEL

I, the undersigned, as the attorney for the defendant named herein and as an officer of the court hereby certify that:

1. I have fully explained to the defendant the allegations contained in the charges to which guilty or guilty but mentally ill pleas are being entered.
2. I have advised the defendant of the penalties for each charge and the restitution that the defendant may be ordered to pay.
3. All pleas of guilty or guilty but mentally ill offered by the defendant pursuant to this agreement are consistent with all the facts known to me and are made with my advice to the defendant and are in the best interest of the defendant.
4. To the best of my knowledge and belief, the defendant:

- (a) Is competent and understands the charges and the consequences of pleading guilty or guilty but mentally ill as provided in this agreement.
- (b) Executed this agreement and will enter all guilty or guilty but mentally ill pleas pursuant hereto voluntarily.
- (c) Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time of the execution of this agreement.

Dated: This day of the month of of the year

.....
 Attorney for defendant.

SECTION 174.065 When plea may specify degree of crime or punishment. Except as otherwise provided in [SECTION 174.061](#):

On a plea of guilty or guilty but mentally ill to a complaint accusing a defendant of a crime divided into degrees, when consented to by the prosecuting attorney in open court and approved by the court, the plea may specify the degree, and in such event the defendant shall not be punished for a higher degree than that specified in the plea.

PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTIONS

SECTION 174.075 Pleadings and motions.

- 1. Pleadings in criminal proceedings are the complaint and, in tribal court, the complaint, and the pleas of guilty, guilty but mentally ill, not guilty, not guilty by reason of insanity and nolo contendere.
- 2. All other pleas, demurrers and motions to quash are abolished, and defenses and objections raised before trial which could have been raised by one or more of them may be raised only by motion to dismiss or to grant appropriate relief, as provided in this title.

SECTION 174.085 Proceedings not constituting acquittal; effect of acquittal on merits; proceedings constituting bar to another prosecution; retrial after discharge of jury; effect of voluntary dismissal.

- 1. If a defendant was formerly acquitted on the ground of a variance between the complaint and proof, or the complaint was dismissed upon an objection to its form or substance, or in order to hold a defendant for a higher offense without a judgment of acquittal, it is not an acquittal of the same offense.
- 2. If a defendant is acquitted on the merits, he is acquitted of the same offense, notwithstanding a defect in the form or substance in the complaint on which the trial was had.
- 3. When a defendant is convicted or acquitted, or has been once placed in jeopardy upon a complaint, except as otherwise provided in subsections 5 and 6, the conviction, acquittal or jeopardy is a bar to another complaint for the offense charged in the former, or for an attempt to commit the same, or for an offense necessarily included therein, of which he might have been convicted under that complaint.
- 4. In all cases where a jury is discharged or prevented from giving a verdict by reason of an accident or other cause, except where the defendant is discharged during the progress of the trial or after the cause is submitted to them, the cause may be again tried.
- 5. The prosecuting attorney, in a case that he has initiated, may voluntarily dismiss a complaint. Before trial, without prejudice to the right to file another complaint, unless the Ely Shoshone Tribe has previously filed a complaint against the defendant which was dismissed at the request of the prosecuting attorney. After the dismissal, the court shall order the defendant released from custody or, if he is released on bail, exonerate the obligors and release any bail.
- 6. If a prosecuting attorney files a subsequent complaint after a complaint concerning the same matter has been filed and dismissed against the defendant:
 - (a) The case must be assigned to the same judge to whom the initial complaint was assigned; and
 - (b) A court shall not issue a warrant for the arrest of a defendant who was released from custody pursuant to subsection 5 or require a defendant whose bail has been exonerated pursuant to subsection 5 to give bail unless the defendant does not appear in court in response to a properly issued summons in connection with the complaint.

7. The prosecuting attorney, in a case that he has initiated, may voluntarily dismiss a complaint before the actual arrest or incarceration of the defendant without prejudice to the right to bring another complaint. After the arrest or incarceration of the defendant, the prosecuting attorney may voluntarily dismiss a complaint without prejudice to the right to bring another complaint only upon good cause shown to the court and upon written findings and a court order to that effect.

SECTION 174.095 Defenses and objections which may be raised by motion. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

SECTION 174.105 Defenses and objections which must be raised by motion.

1. Defenses and objections based on defects in the institution of the prosecution, other than insufficiency of the evidence to warrant a complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant.

2. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver.

3. Lack of jurisdiction or the failure of the complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

SECTION 174.115 Time of making motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

SECTION 174.125 Certain motions required to be made before trial.

1. All motions in a criminal prosecution to suppress evidence, for a transcript of former proceedings for severance of joint defendants, for withdrawal of counsel, and all other motions which by their nature, if granted, delay or postpone the time of trial must be made before trial, unless an opportunity to make such a motion before trial did not exist or the moving party was not aware of the grounds for the motion before trial.

2. In tribal court:

(a) All motions subject to the provisions of subsection 1 must be made in writing, with not less than 10 days' notice to the opposite party unless good cause is shown to the court at the time of trial why the motion could not have been made in writing upon the required notice.

(b) The court may, by written order, shorten the notice required to be given to the opposite party.

3. Grounds for making such a motion after the time provided or at the trial must be shown by affidavit.

SECTION 174.135 Hearing on motion.

1. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

2. An issue of fact shall be tried by a jury if a jury trial is required under the Indian Civil Rights Act.

3. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

SECTION 174.145 Effect of determination.

1. If a motion is determined adversely to the defendant he shall be permitted to plead if he had not previously pleaded. A plea previously entered shall stand.

2. If the court grants a motion based on a defect in the institution of the prosecution or in the complaint, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint.

3. Nothing in this section shall affect the provisions of any statute relating to periods of limitations.

JOINDER AND RELIEF THEREFROM

SECTION 174.155 Trial together of multiple complaints. The court may order two or more multiple complaints or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single complaint. The procedure shall be the same as if the prosecution were under such single complaint.

SECTION 174.165 Relief from prejudicial joinder.

1. If it appears that a defendant or the Tribe is prejudiced by a joinder of offenses or of defendants in a complaint, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires.

2. In ruling on a motion by a defendant for severance the court may order the tribal prosecuting attorney to deliver to the court for inspection in chambers any statements or confessions made by the defendants which the Tribe intends to introduce in evidence at the trial.

DEPOSITIONS

SECTION 174.171 Applicability. The provisions of [SECTION 174.171](#) to [174.225](#), inclusive, do not apply to a deposition taken pursuant to [SECTION 174.227](#) or used pursuant to [SECTION 174.228](#), or both.

SECTION 174.175 When taken.

1. If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing, that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court at any time after the filing of a complaint may upon motion of a defendant or of the Tribe and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place. If the deposition is taken upon motion of the Tribe, the court shall order that it be taken under such conditions as will afford to each defendant the opportunity to confront the witnesses against him.

2. If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

3. This section does not apply to the prosecutor, or to an accomplice in the commission of the offense charged.

SECTION 174.185 Notice of taking. The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

SECTION 174.195 Defendant's counsel and payment of expenses. If a defendant is without counsel the court shall advise him of his right to counsel at his own expense.

SECTION 174.205 How taken. A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

SECTION 174.215 Use of deposition.

1. At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears:

(a) That the witness is dead;

(b) That the witness is out of the Tribe, unless it appears that the absence of the witness was procured by the party offering the deposition;

- (c) That the witness cannot attend or testify because of sickness or infirmity;
- (d) That the witness has become of unsound mind; or
- (e) That the party offering the deposition could not procure the attendance of the witness by subpoena.

2. Any deposition may also be used by any party to contradict or impeach the testimony of the deponent as a witness.

3. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

SECTION 174.225 Objections to admissibility. Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

VIDEOTAPED DEPOSITIONS AND TESTIMONY

SECTION 174.227 Videotaped depositions: Order of court; notice to parties; cross-examination; use.

1. A court on its own motion or on the motion of the tribal attorney may, for good cause shown, order the taking of a videotaped deposition of:

- (a) A victim of sexual abuse as that term is defined in [SECTION 432B.100](#); or
- (b) A prospective witness in any criminal prosecution if he is less than 14 years of age.

➤ The court may specify the time and place for taking the deposition and the persons who may be present when it is taken.

2. The tribal attorney shall give every other party reasonable written notice of the time and place for taking the deposition. The notice must include the name of the person to be examined. On the motion of a party upon whom the notice is served, the court:

- (a) For good cause shown may release the address of the person to be examined; and
- (b) For cause shown may extend or shorten the time.

3. If at the time such a deposition is taken, the tribal attorney anticipates using the deposition at trial, the court shall so state in the order for the deposition and the accused must be given the opportunity to cross-examine the deponent in the same manner as permitted at trial.

4. Except as limited by [SECTION 174.228](#), the court may allow the videotaped deposition to be used at any proceeding in addition to or in lieu of the direct testimony of the deponent. It may also be used by any party to contradict or impeach the testimony of the deponent as a witness. If only a part of the deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

SECTION 174.228 Videotaped depositions: Use. A court may allow a videotaped deposition to be used instead of the deponent's testimony at trial only if:

1. In the case of a victim of sexual abuse, as that term is defined in [SECTION 432B.100](#):

(a) Before the deposition is taken, a hearing is held by a tribal judge who finds that:

(1) The use of the videotaped deposition in lieu of testimony at trial is necessary to protect the welfare of the victim; and

(2) The presence of the accused at trial would inflict trauma, more than minimal in degree, upon the victim; and

(b) At the time a party seeks to use the deposition, the court determines that the conditions set forth in subparagraphs (1) and (2) of paragraph (a) continue to exist. The court may hold a hearing before the use of the deposition to make its determination.

2. In all cases:

(a) A tribal judge presides over the taking of the deposition;

(b) The accused is able to hear and see the proceedings;

(c) The accused is represented by counsel who, if physically separated from the accused, is able to communicate orally with him by electronic means;

(d) The accused is given an adequate opportunity to cross-examine the deponent subject to the protection of the deponent deemed necessary by the court; and

(e) The deponent testifies under oath.

SECTION 174.229 Videotaped testimony. If a prospective witness who is scheduled to testify before a hearing is less than 14 years of age, the court shall, upon the motion of the tribal attorney, and may, upon its own motion, order the child's testimony to be videotaped at the time it is given.

SECTION 174.231 Effect of [SECTION 174.227](#), [174.228](#) and [174.229](#). The provisions of [SECTION 174.227](#), [174.228](#) and [174.229](#) do not preclude:

1. The submission of videotaped depositions or testimony which are otherwise admissible as evidence in court.
2. A victim or prospective witness from testifying at a proceeding without the use of his videotaped deposition or testimony.

DISCOVERY AND INSPECTION

SECTION 174.233 Disclosure by defendant of intent to claim alibi; defendant to disclose list of alibi witnesses; prosecuting attorney to disclose list of rebuttal witnesses; continuing duty to disclose; sanctions.

1. In addition to the written notice required by [SECTION 174.234](#), a defendant in a criminal case who intends to offer evidence of an alibi in his defense shall, not less than 10 days before trial or at such other time as the court may direct, file and serve upon the prosecuting attorney a written notice of his intention to claim the alibi. The notice must contain specific information as to the place at which the defendant claims to have been at the time of the alleged offense and, as particularly as are known to defendant or his attorney, the names and last known addresses of the witnesses by whom he proposes to establish the alibi.

2. Not less than 10 days after receipt of the defendant's list of witnesses, or at such other time as the court may direct, the prosecuting attorney shall file and serve upon the defendant the names and last known addresses, as particularly as are known to the prosecuting attorney, of the witnesses the tribe proposes to offer in rebuttal to discredit the defendant's alibi at the trial of the cause.

3. Both the defendant and the prosecuting attorney have a continuing duty to disclose promptly the names and last known addresses of additional witnesses which come to the attention of either party after filing their respective lists.

4. If a defendant fails to file and serve a copy of the notice required by this section, the court may exclude evidence offered by the defendant to prove an alibi, except the testimony of the defendant himself. If the notice is given by a defendant, the court may exclude the testimony of any witness offered by the defendant to prove an alibi if the name and last known address of the witness, as particularly as are known to the defendant or his attorney, are not stated in the notice.

5. If the prosecuting attorney fails to file and serve a copy on the defendant of a list of witnesses as required by this section, the court may exclude evidence offered by the in rebuttal to the defendant's evidence of alibi. If the list is filed and served by the prosecuting attorney, the court may exclude the testimony of any witness offered by the prosecuting attorney for the purpose of rebutting the evidence of alibi if the name and last known address of the witness, as particularly as are known to the prosecuting attorney, are not stated in the notice. For good cause shown the court may waive the requirements of this section.

SECTION 174.234 Reciprocal disclosure of lists of witnesses and information relating to expert testimony; continuing duty to disclose; protective orders; sanctions.

1. Except as otherwise provided in this section, not less than 5 judicial days before trial or at such other time as the court directs:

(a) If the defendant will be tried for one or more offenses that are punishable as a **Category A or B offense**:

(1) The defendant shall file and serve upon the prosecuting attorney a written notice containing the names and last known addresses of all witnesses the defendant intends to call during the case in chief of the defendant; and

(2) The prosecuting attorney shall file and serve upon the defendant a written notice containing the names and last known addresses of all witnesses the prosecuting attorney intends to call during the case in chief of the Tribe.

(b) If the defendant will not be tried for any offenses that are punishable as a **Category A or B offense**:

(1) The defendant shall file and serve upon the prosecuting attorney a written notice containing the name and last known address of any witness the defendant intends to call during the case in chief of the defendant whose

name and last known address have not otherwise been provided to the prosecuting attorney pursuant to [SECTION 174.245](#); and

(2) The prosecuting attorney shall file and serve upon the defendant a written notice containing the name and last known address or place of employment of any witness the prosecuting attorney intends to call during the case in chief of the tribe whose name and last known address or place of employment have not otherwise been provided to the defendant pursuant to [SECTION 171.1965](#) or [174.235](#).

2. If the defendant will be tried for one or more offenses that are punishable as a **Category A or B offense** and a witness that a party intends to call during the case in chief of the tribe or during the case in chief of the defendant is expected to offer testimony as an expert witness, the party who intends to call that witness shall file and serve upon the opposing party, not less than 21 days before trial or at such other time as the court directs, a written notice containing:

(a) A brief statement regarding the subject matter on which the expert witness is expected to testify and the substance of his testimony;

(b) A copy of the curriculum vitae of the expert witness; and

(c) A copy of all reports made by or at the direction of the expert witness.

3. After complying with the provisions of subsections 1 and 2, each party has a continuing duty to file and serve upon the opposing party:

(a) Written notice of the names and last known addresses of any additional witnesses that the party intends to call during the case in chief of the tribe or during the case in chief of the defendant. A party shall file and serve written notice pursuant to this paragraph as soon as practicable after the party determines that he intends to call an additional witness during the case in chief of the or during the case in chief of the defendant. The court shall prohibit an additional witness from testifying if the court determines that the party acted in bad faith by not including the witness on the written notice required pursuant to subsection 1.

(b) Any information relating to an expert witness that is required to be disclosed pursuant to subsection 2. A party shall provide information pursuant to this paragraph as soon as practicable after the party obtains that information. The court shall prohibit the party from introducing that information in evidence or shall prohibit the expert witness from testifying if the court determines that the party acted in bad faith by not timely disclosing that information pursuant to subsection 2.

4. Each party has a continuing duty to file and serve upon the opposing party any change in the last known address, or, if applicable, last known place of employment, of any witness that the party intends to call during the case in chief of the tribe or during the case in chief of the defendant as soon as practicable after the party obtains that information.

5. Upon a motion by either party or the witness, the court shall prohibit disclosure to the other party of the address of the witness if the court determines that disclosure of the address would create a substantial threat to the witness of bodily harm, intimidation, coercion or harassment. If the court prohibits disclosure of an address pursuant to this subsection, the court shall, upon the request of a party, provide the party or his attorney or agent with an opportunity to interview the witness in an environment that provides for protection of the witness.

6. In addition to the sanctions and protective orders otherwise provided in subsections 3 and 5, the court may upon the request of a party:

(a) Order that disclosure pursuant to this section be denied, restricted or deferred pursuant to the provisions of [SECTION 174.275](#); or

(b) Impose sanctions pursuant to subsection 2 of [SECTION 174.295](#) for the failure to comply with the provisions of this section.

7. A party is not entitled, pursuant to the provisions of this section, to the disclosure of the name or address of a witness or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this Tribe or the Constitution of the United States.

SECTION 174.235 Disclosure by prosecuting attorney of evidence relating to prosecution; limitations.

1. Except as otherwise provided in [SECTION 174.233](#) to [174.295](#), inclusive, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:

(a) Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the tribe, or copies thereof, within the possession, custody or control of the Tribe, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney;

(b) Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the tribe, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; and

(c) Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the tribe and which are within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.

2. The defendant is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is prepared by or on behalf of the prosecuting attorney in connection with the investigation or prosecution of the case.

(b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this tribe or the Constitution of the United States.

3. The provisions of this section are not intended to affect any obligation placed upon the prosecuting attorney by the Constitution of this tribe or the Constitution of the United States to disclose exculpatory evidence to the defendant.

SECTION 174.245 Disclosure by defendant of evidence relating to defense; limitations.

1. Except as otherwise provided in [SECTION 174.233](#) to [174.295](#), inclusive, at the request of the prosecuting attorney, the defendant shall permit the prosecuting attorney to inspect and to copy or photograph any:

(a) Written or recorded statements made by a witness the defendant intends to call during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant;

(b) Results or reports of physical or mental examinations, scientific tests or scientific experiments that the defendant intends to introduce in evidence during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant; and

(c) Books, papers, documents or tangible objects that the defendant intends to introduce in evidence during the case in chief of the defendant, or copies thereof, within the possession, custody or control of the defendant, the existence of which is known, or by the exercise of due diligence may become known, to the defendant.

2. The prosecuting attorney is not entitled, pursuant to the provisions of this section, to the discovery or inspection of:

(a) An internal report, document or memorandum that is prepared by or on behalf of the defendant or his attorney in connection with the investigation or defense of the case.

(b) A statement, report, book, paper, document, tangible object or any other type of item or information that is privileged or protected from disclosure or inspection pursuant to the Constitution or laws of this tribe or the Constitution of the United States.

SECTION 174.275 Protective orders. Upon a sufficient showing, the court may at any time order that discovery or inspection pursuant to [SECTION 174.234](#) to [174.295](#), inclusive, be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the defendant or prosecuting attorney, the court may permit the defendant or prosecuting attorney to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in chambers. If the court enters an order granting relief following a showing in chambers, the entire text of the written statement must be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

SECTION 174.285 Time limits.

1. A request made pursuant to [SECTION 174.235](#) or [174.245](#) may be made only within 30 days after arraignment or at such reasonable later time as the court may permit. A subsequent request may be made only upon a showing of cause why the request would be in the interest of justice.

2. A party shall comply with a request made pursuant to [SECTION 174.235](#) or [174.245](#) not less than 30 days before trial or at such reasonable later time as the court may permit.

SECTION 174.295 Continuing duty to disclose; failure to comply; sanctions.

1. If, after complying with the provisions of [SECTION 174.235](#) to [174.295](#), inclusive, and before or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under those sections, he shall promptly notify the other party or his attorney or the court of the existence of the additional material.

2. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with the provisions of [SECTION 174.234](#) to [174.295](#), inclusive, the court may order the party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems just under the circumstances.

SUBPOENA

SECTION 174.305 Subpoena for attendance of witnesses; form; issuance. Except as provided in [SECTION 172.195](#) and [174.315](#):

1. A subpoena must be issued by the clerk under the seal of the court. It must state the name of the court and the title, if any, of the proceeding, and must command each person to whom it is directed to attend and give testimony at the time and place specified therein. The clerk shall issue a subpoena, signed and sealed but otherwise in blank, to a party requesting it, who shall fill in the blanks before it is served.

2. A subpoena must be issued by a tribal judge in a proceeding before him under the seal of the court.

SECTION 174.325 Production of prisoner as witness.

1. When it is necessary to have a person imprisoned brought before the Tribal Court, an order for that purpose may be made by the Tribal Court, at chambers, and executed by the Tribal Police when it is made. The order can only be made upon motion of a party upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality.

2. When a person required as a witness before a Tribal Court is imprisoned, the judge thereof may order the tribal police to bring the prisoner before the court at the expense of the tribe or, in his discretion, at the expense of the defendant.

SECTION 174.335 Subpoena for production of documentary evidence and of objects.

1. Except as otherwise provided in [SECTION 172.139](#), a subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein.

2. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive.

3. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time before the trial or before the time when they are to be offered in evidence and may, upon their production, permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.

SECTION 174.345 Service of subpoena.

1. Except as otherwise provided in [SECTION 174.315](#) and subsection 2, a subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. Except as otherwise provided in [SECTION 289.027](#), service of a subpoena must be made by delivering a copy thereof to the person named.

2. Except as otherwise provided in [SECTION 174.315](#), a subpoena to attend a **Category C, D, or E offense** trial may be served by mailing the subpoena to the person to be served by registered or certified mail, return receipt requested from that person, in a sealed postpaid envelope, addressed to the person's last known address, not less than 10 days before the trial which the subpoena commands him to attend.

3. If a subpoena is served by mail, a certificate of the mailing must be filed with the court within 2 days after the subpoena is mailed.

SECTION 174.365 Place of service. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the reservation.

SECTION 174.375 Subpoena for taking depositions; place of examination.

1. An order to take a deposition authorizes the issuance by the clerk of the court for the county or tribe in which the deposition is to be taken of subpoenas for the persons named or described therein.

2. A resident of this reservation may be required to attend an examination only in the county wherein he resides or is employed or transacts his business in person. A nonresident of this reservation may be required to attend only in the county where he is served with a subpoena or within 40 miles from the place of service or at such other place as is fixed by the court.

SECTION 174.385 Contempt. Failure by any person without adequate excuse to obey a subpoena of a court or a prosecuting attorney served upon him or, in the case of a subpoena issued by a prosecuting attorney, delivered to him and accepted, shall be deemed a contempt of the court from which the subpoena issued or, in the case of a subpoena issued by a prosecuting attorney, of the court in which the investigation is pending or the complaint, is to be tried.

ATTENDANCE OF WITNESSES OUTSIDE STATE (UNIFORM ACT)

SECTION 174.395 Short title. [SECTION 174.395](#) to [174.445](#), inclusive, may be cited as the Uniform Act To Secure the Attendance of Witnesses From Without the state in Criminal Proceedings.

SECTION 174.405 Definitions. As used in [SECTION 174.395](#) to [174.445](#), inclusive:

1. "State" shall include any territory of the United States and the District of Columbia.
2. "Summons" shall include a subpoena, order or other notice requiring the appearance of a witness.
3. "Witness" shall include a person whose testimony is desired in any criminal action, prosecution or proceeding.

SECTION 174.415 Summoning witness on this reservation to testify in another jurisdiction.

1. If a judge of a court of record in any jurisdiction which by its laws has made provision for commanding persons within that jurisdiction to attend and testify on this reservation certifies under the seal of such court that there is a criminal prosecution pending in such court, that a person being within this reservation is a material witness in such prosecution, and that his presence will be required for a specified number of days, upon presentation of such certificate to tribal judge of a court of record in the jurisdiction, in which such person such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

2. If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other jurisdiction, and that the laws of the jurisdiction in which the prosecution is pending, (and of any other jurisdiction through which the witness may be required to pass by ordinary course of travel), will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending, and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

3. If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting jurisdiction to assure his attendance in the requesting jurisdiction, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for hearings; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that the witness be forthwith taken into custody and delivered to an officer of the requesting jurisdiction.

4. If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the amount required by [SECTION 50.225](#) for his subsistence and travel expenses, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a tribal court.

SECTION 174.425 Witness from another jurisdiction summoned to testify on this reservation.

1. If a person in any jurisdiction, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions, commenced or about to commence, on this Reservation, is a material witness in a prosecution pending in tribal court, the tribal judge may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this tribe to ensure his attendance in this Reservation. This certificate must be presented to a judge of a court of record in the jurisdiction in which the witness is found.

2. If the witness is summoned to attend and testify on this reservation he is entitled to receive the amount required by [SECTION 50.225](#) for his subsistence and travel expenses. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within this reservation a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court. If such witness, after coming onto this reservation, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the Ely Shoshone Tribal Court.

SECTION 174.435 Exemption from arrest and service of process.

1. If a person comes onto this reservation in obedience to a summons directing him to attend and testify on this reservation he shall not while on this reservation pursuant to such summons be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance onto this reservation under the summons.

2. If a person passes through this reservation while going to another jurisdiction in obedience to a summons to attend and testify in that jurisdiction or while returning therefrom, he shall not while so passing through this reservation be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this reservation under the summons.

SECTION 174.445 Uniformity of interpretation. [SECTION 174.395](#) to [174.445](#), inclusive, shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of the tribe which enact them.

REMOVAL OF ACTION BEFORE TRIAL

SECTION 174.455 Ground for removal; application not to be granted until after voir dire examination; appeal of order changing or refusing to change place of trial.

1. A criminal action prosecuted by complaint may be removed from the tribal court in which it is pending, on application of the defendant or tribe, on the ground that a fair and impartial trial cannot be had in the county where the complaint is pending.

2. An application for removal of a criminal action shall not be granted by the court until after the voir dire examination has been conducted and it is apparent to the court that the selection of a fair and impartial jury cannot be had in the tribal court where the complaint is pending.

3. An order in a criminal action changing or refusing to change the place of trial is appealable only on appeal from the final judgment.

SECTION 174.464 Application for removal: Making and service; hearing and determination in absence of defendant.

1. The application for removal must be made in open court, and in writing, verified by the affidavit of the defendant or tribal prosecuting attorney, and a copy of the affidavit must be served on the adverse party, at least 1 day prior to the hearing of the application.

2. The application may be supported or opposed by other affidavits or other evidence, or other witnesses may be examined in open court.

3. Whenever the affidavit of the defendant shows that he cannot safely appear in person to make such application, because popular prejudice is so great as to endanger his personal safety, and such statement is sustained by other testimony, such application may be made by his attorney and must be heard and determined in the absence of the defendant, notwithstanding the charge then pending against him be a **Category A offense**, and he has not, at the time of such application, been arrested or given bail, or been arraigned, or pleaded to the complaint.

SECTION 174.475 Order transferring action: When to be made. If the court is satisfied that the representations of the applicant are true, an order must be made transferring the action to the tribal court of some convenient jurisdiction.

SECTION 174.485 Entry of order of removal; transmittal of papers. The order of removal must be entered on the minutes, and the clerk must immediately make out and transmit to the court to which the action is removed a certified copy of the order of removal, record, pleadings, and proceedings in the action, including the undertakings for the appearance of the defendant and of the witnesses.

SECTION 174.495 Proceedings on removal when defendant is in custody. If the defendant is in custody, the order must direct his removal and he must be forthwith removed by the tribal police where he is imprisoned, to the custody of the sheriff of the county to which the action is removed.

SECTION 174.505 Authority of court to which action is removed; transmission of original papers. The court to which the action is removed must proceed to trial and judgment therein as if the action had been commenced in such court. If it is necessary to have any of the original pleadings or other papers before such court, the court from which the action is removed must, at any time, on the application of the tribal prosecutor or the defendant, order such papers or pleadings to be transmitted by the clerk, a certified copy thereof being retained.

TIME OF TRIAL

SECTION 174.511 Right of tribe to trial within 60 days after arraignment; exceptions. The Tribe, upon demand, has the right to a trial of the defendant within 60 days after his arraignment. The court may postpone the trial if:

1. It finds that more time is needed by the defendant to prepare his defense; or
2. The number of other cases pending in the court prohibits the acceptance of the case for trial within that time.

SECTION 174.515 Postponement: When and how ordered; court may require depositions of and undertakings by witnesses; court may consider adverse effect upon child who is victim or witness.

1. When an action is called for trial, or at any time previous thereto, the court may, upon sufficient cause shown by either party by affidavit, direct the trial to be postponed to another day. In all cases where a continuance is granted upon the application of either party the court may require, as a condition of granting such continuance, that the party applying therefor consent to taking, forthwith, or at any time to be fixed by the court, of the deposition of any witness summoned by the opposite party whose deposition has not previously been taken.

2. The court also may require all witnesses to enter into undertakings in such sum as the court may order, with or without sureties, to appear and testify on the day to which the case may be continued, but any witness who is unable to procure sureties for his attendance may be discharged on his own recognizance, upon giving his deposition in the manner prescribed in [SECTION 174.175](#) and [174.205](#).

3. If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the court may consider any adverse effect a continuance or other postponement

might have upon the mental or emotional health or well-being of the child. The court may deny a continuance or other postponement if the delay will adversely affect the mental or emotional health or well-being of the child.

SECTION 174.519 Request for preference in setting date for trial where child is victim or witness; court may consider effect on child of delay in commencement of trial. If the trial involves acts committed against a child less than 16 years of age or involving acts witnessed by a child less than 16 years of age, the tribal prosecutor shall request the court, in its discretion, to give preference in setting a date for the trial of the defendant. In making a ruling, the court may consider the effect a delay in the commencement of the trial might have on the mental or emotional health or well-being of the child.