

## CHAPTER 175 - TRIAL

### TRIAL BY JURY OR COURT

<a href="#">SECTION 175.011</a>	Trial by jury.
<a href="#">SECTION 175.021</a>	Formation of jury; number of jurors.
<a href="#">SECTION 175.031</a>	Examination of trial jurors.
<a href="#">SECTION 175.036</a>	Challenges for cause for individual jurors: Grounds; trial of challenge.
<a href="#">SECTION 175.041</a>	Limitation of defendants' right to sever in challenges.
<a href="#">SECTION 175.051</a>	Number of peremptory challenges.
<a href="#">SECTION 175.061</a>	Alternate jurors.
<a href="#">SECTION 175.071</a>	Discharge of juror where juror dies or unable to perform duty.
<a href="#">SECTION 175.081</a>	Discharge of jury after retirement upon accident or cause.
<a href="#">SECTION 175.091</a>	Disability of judge during trial.
<a href="#">SECTION 175.101</a>	Disability of judge after verdict or finding of guilty or guilty but mentally ill.

### CONDUCT OF TRIAL

<a href="#">SECTION 175.111</a>	Oath of jurors.
<a href="#">SECTION 175.121</a>	Personal knowledge of jurors.
<a href="#">SECTION 175.131</a>	Judge to inform jury of right to take notes.
<a href="#">SECTION 175.141</a>	Order of trial.
<a href="#">SECTION 175.151</a>	Number of counsel who may argue case.
<a href="#">SECTION 175.161</a>	Instructions.
<a href="#">SECTION 175.171</a>	No special instructions to be given relating exclusively to defendant's testimony.
<a href="#">SECTION 175.181</a>	Instruction not to be given relative to failure of defendant to testify.
<a href="#">SECTION 175.186</a>	Instructions in prosecution for sexual assault or statutory sexual seduction: Use of certain terms and instructions prohibited.
<a href="#">SECTION 175.191</a>	Presumption of innocence: Acquittal in case of reasonable doubt.
<a href="#">SECTION 175.201</a>	Presumption of innocence: Conviction of lowest degree of offense.
<a href="#">SECTION 175.211</a>	Definition of reasonable doubt; no other definition to be given to juries.
<a href="#">SECTION 175.221</a>	Evidence.
<a href="#">SECTION 175.241</a>	Proof of corporate existence generally.
<a href="#">SECTION 175.251</a>	Conspiracy: Allegation and proof of overt act; evidence of overt acts not alleged.
<a href="#">SECTION 175.261</a>	False pretenses: What evidence necessary.
<a href="#">SECTION 175.271</a>	Expert witnesses.
<a href="#">SECTION 175.282</a>	Plea bargain: Inspection by jury; instruction of jury; cross-examination of defendant.
<a href="#">SECTION 175.291</a>	Testimony of accomplice must be corroborated; sufficiency of corroboration; accomplice defined.
<a href="#">SECTION 175.311</a>	Procedure when higher offense is shown by evidence.
<a href="#">SECTION 175.321</a>	Procedure if higher offense ignored.
<a href="#">SECTION 175.331</a>	When defendant on bail appears for trial he may be committed and held.
<a href="#">SECTION 175.341</a>	Mistake in charging proper offense: Defendant not discharged; commitment or bail.
<a href="#">SECTION 175.351</a>	Discharge of defendant when jury discharged for want of jurisdiction.
<a href="#">SECTION 175.361</a>	Offense committed in other county: Commitment to await warrant; admission to bail; transmittal of papers to tribal attorney of proper county; expense of transmission.
<a href="#">SECTION 175.371</a>	Discharge where defendant not arrested on warrant from other county; proceedings in case of arrest.
<a href="#">SECTION 175.381</a>	Court may advise jury to acquit defendant when evidence on either side closed; motion for judgment of acquittal after verdict of guilty or guilty but mentally ill; subsequent motion for new trial.
<a href="#">SECTION 175.383</a>	Withdrawal, discharge or change of defense counsel; limitations.
<a href="#">SECTION 175.387</a>	Misconduct of defendant; sanctions.

## CONDUCT OF JURY

<a href="#"><u>SECTION 175.391</u></a>	Separation or custody of jury before submission.
<a href="#"><u>SECTION 175.401</u></a>	Jury to be admonished at each adjournment.
<a href="#"><u>SECTION 175.421</u></a>	Accommodations for jury upon retirement; power of court to furnish.
<a href="#"><u>SECTION 175.431</u></a>	Jury provided food and lodging when kept together.
<a href="#"><u>SECTION 175.441</u></a>	Jury may take written instructions, materials received in evidence, certain papers and own notes of trial on retiring for deliberation.
<a href="#"><u>SECTION 175.451</u></a>	Return of jury for information.
<a href="#"><u>SECTION 175.461</u></a>	Jury not to be discharged after cause submitted; exceptions.
<a href="#"><u>SECTION 175.471</u></a>	Adjournment of court during absence of jury.

## VERDICT

<a href="#"><u>SECTION 175.481</u></a>	Return.
<a href="#"><u>SECTION 175.491</u></a>	Verdict where there are several defendants.
<a href="#"><u>SECTION 175.501</u></a>	Jury may convict of lesser included offense or attempt.
<a href="#"><u>SECTION 175.511</u></a>	When offenses to be stated separately.
<a href="#"><u>SECTION 175.531</u></a>	Polling jury; further deliberation or discharge.
<a href="#"><u>SECTION 175.533</u></a>	Finding of guilty but mentally ill upon plea of not guilty by reason of insanity; required findings; effect of finding.

## ACQUITTAL

<a href="#"><u>SECTION 175.541</u></a>	Discharge of defendant after acquittal.
<a href="#"><u>SECTION 175.543</u></a>	Notice to defendant of provisions concerning sealing of records of proceedings leading to acquittal.

---

## TRIAL BY JURY OR COURT

### **SECTION 175.011 Trial by jury.**

In Tribal Court, cases must be tried by jury only if the offense charged is punishable by imprisonment and defendant so demands in writing not less than 30 days before trial.

### **SECTION 175.021 Formation of jury; number of jurors.**

1. Trial juries for criminal actions are formed in the same manner as trial juries in civil actions.
2. Juries must consist of six jurors for the trial of a criminal action in Tribal Court.

**SECTION 175.031 Examination of trial jurors.** The court shall conduct the initial examination of prospective jurors, and defendant or his attorney and the Tribal prosecutor are entitled to supplement the examination by such further inquiry as the court deems proper. Any supplemental examination must not be unreasonably restricted.

### **SECTION 175.036 Challenges for cause for individual jurors: Grounds; trial of challenge.**

1. Either side may challenge an individual juror for disqualification or for any cause or favor which would prevent him as a juror from adjudicating the facts fairly.
2. Challenges for cause shall be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.

**SECTION 175.041 Limitation of defendants' right to sever in challenges.** When several defendants are tried together, they cannot sever their peremptory challenges, but must join therein.

**SECTION 175.051 Number of peremptory challenges.**

1. Each side is entitled to three peremptory challenges.
2. The Tribe and the defendant shall exercise their challenges alternately, in that order. Any challenge not exercised in its proper order is waived.

**SECTION 175.061 Alternate jurors.**

1. The court may direct that not more than one (1) juror in addition to the regular jury be called and impaneled to sit as an alternate juror.
2. Alternate jurors shall replace jurors who become unable or disqualified to perform their duties.
3. Alternate jurors shall:
  - (a) Be drawn in the same manner;
  - (b) Have the same qualifications;
  - (c) Be subject to the same examination and challenges;
  - (d) Take the same oath; and
  - (e) Have the same functions, powers, facilities and privileges, as the regular jurors.
4. If an alternate juror is required to replace a regular juror after the jury has retired to consider its verdict, the judge shall recall the jury, seat the alternate and resubmit the case to the jury.

**SECTION 175.071 Discharge of juror where juror dies or unable to perform duty.** If, before the conclusion of the trial, and there being no alternate juror called or available, a juror dies, or becomes disqualified or unable to perform his duty, the court may duly order him to be discharged and a new juror may be sworn and the trial begun anew, or the jury may be discharged and a new jury then or afterward impaneled.

**SECTION 175.081 Discharge of jury after retirement upon accident or cause.** If, after the retirement of the jury, any accident or cause occurs to prevent their being kept for deliberation, the jury may be discharged.

**SECTION 175.091 Disability of judge during trial.** If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to tribal court, upon certifying that he has familiarized himself with the record of the trial, may proceed with and finish the trial.

**SECTION 175.101 Disability of judge after verdict or finding of guilty or guilty but mentally ill.** If by reason of absence from the reservation, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilty or guilty but mentally ill, any other Tribal judge approved by the Tribal Council may perform those duties, but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

**CONDUCT OF TRIAL**

**SECTION 175.111 Oath of jurors.** When the jury has been impaneled, the court shall administer the following oath:

Do you and each of you solemnly swear that you will well and truly try this case, now pending before this court, and a true verdict render according to the evidence given.

**SECTION 175.121 Personal knowledge of jurors.**

1. The judge shall then admonish the jury that:
  - (a) No juror may declare to his fellow jurors any fact relating to the case as of his own knowledge; and
  - (b) If any juror discovers during the trial or after the jury has retired that he or any other juror has personal knowledge of any fact in controversy in the case, he shall disclose such situation to the judge out of the presence of the other jurors.
2. When any such disclosure is made, the judge shall examine the juror who admits or is alleged to have personal knowledge, under oath, in the presence of counsel for the parties, and may allow such counsel to examine the juror.
3. If the juror has disclosed his own knowledge to the judge and it appears that he has not declared any fact relating to the case to his fellow jurors as of his own knowledge, the judge shall after the examination decide whether the juror shall remain or shall be replaced by an alternate juror.
4. If it appears that the juror has declared any fact relating to the case to his fellow jurors as of his own knowledge, or that his vote was influenced by such knowledge undisclosed, the judge shall declare a mistrial.

**SECTION 175.131 Judge to inform jury of right to take notes.** Before any evidence has been introduced the judge may inform the jury they may individually take notes during the trial, but he shall further caution them not to rely upon their respective notes in case of conflict among them, because the reporter's notes contain the complete and authentic record of the trial.

**SECTION 175.141 Order of trial.** The jury having been impaneled and sworn, the trial shall proceed in the following order:

1. The clerk must read the complaint and state the plea of the defendant to the jury.
2. The tribal prosecutor, or other counsel for the Tribe, must open the cause. The defendant or his counsel may then either make his opening statement or reserve it to be made immediately prior to the presentation of evidence in his behalf.
3. The Tribe must then offer its evidence in support of the charge, and the defendant may then offer evidence in his defense.
4. The parties may then respectively offer rebutting testimony only, unless the court, for good reasons, in furtherance of justice, permits them to offer evidence upon their original cause.
5. When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the tribal prosecutor, or other counsel for the tribe, must open and must conclude the argument.

**SECTION 175.151 Number of counsel who may argue case.** The court may, in its discretion, restrict the argument to one counsel on each side.

**SECTION 175.161 Instructions.**

1. Upon the close of the argument, the judge shall charge the jury. He may state the testimony and declare the law, but may not charge the jury in respect to matters of fact. The charge must be reduced to writing before it is given; and no charge or instructions may be given to the jury otherwise than in writing, unless by the mutual consent of the parties. If either party requests it, the court must settle and give the instructions to the jury before the argument begins, but this does not prevent the giving of further instructions which may become necessary by reason of the argument.
2. In charging the jury, the judge shall state to them all such matters of law he thinks necessary for their information in giving their verdict.
3. Either party may present to the court any written charge, and request that it be given. If the court thinks it correct and pertinent, it must be given; if not, it must be refused.
4. An original and one copy of each instruction requested by any party must be tendered to the court. The copies must be numbered and indicate who tendered them. Copies of instructions given on the court's own motion or modified by the court must be so identified. When requested instructions are refused, the judge shall write on the margin of the original the word "refused" and initial or sign the notation. The instructions given to the jury must be firmly bound together and the judge shall write the word "given" at the conclusion thereof and sign the last of the

instructions to signify that all have been given. After the instructions are given, the judge may not clarify, modify or in any manner explain them to the jury except in writing unless the parties agree to oral instructions.

5. After the jury has reached a verdict and been discharged, the originals of all instructions, whether given, modified or refused, must be preserved by the clerk as part of the proceedings.

6. Conferences with counsel to settle instructions must be held out of the presence of the jury and may be held in chambers at the option of the court.

**SECTION 175.171 No special instructions to be given relating exclusively to defendant's testimony.** In the trial of all complaints and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness, the credit to be given his testimony being left solely to the jury, under the instructions of the court, but no special instruction shall be given relating exclusively to the testimony of the defendant.

**SECTION 175.181 Instruction not to be given relative to failure of defendant to testify.**

1. No instruction shall be given relative to the failure of the person charged with the commission of crime or offense to testify, except, upon the request of the person so charged, the court shall instruct the jury that, in accordance with a right guaranteed by the Constitution, no person can be compelled, in a criminal action, to be a witness against himself.

2. Nothing herein contained shall be construed as compelling any such person to testify.

**SECTION 175.186 Instructions in prosecution for sexual assault or statutory sexual seduction: Use of certain terms and instructions prohibited.**

1. In any prosecution for sexual assault or statutory sexual seduction or for an attempt to commit or conspiracy to commit either crime, the term "unchaste character" may not be used with reference to the alleged victim of the crime in any instruction to the jury.

2. In a prosecution for sexual assault or statutory sexual seduction, the court may not give any instructions to the jury to the effect that it is difficult to prove or establish the crime beyond a reasonable doubt.

**SECTION 175.191 Presumption of innocence: Acquittal in case of reasonable doubt.** A defendant in a criminal action is presumed to be innocent until the contrary is proved; and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to be acquitted.

**SECTION 175.201 Presumption of innocence: Conviction of lowest degree of offense.** Every person charged with the commission of a crime shall be presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt; and when an offense has been proved against him, and there exists a reasonable doubt as to which of two or more degrees he is guilty, he shall be convicted only of the lowest.

**SECTION 175.211 Definition of reasonable doubt; no other definition to be given to juries.**

1. A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

2. No other definition of reasonable doubt may be given by the court to juries in criminal actions in Ely Shoshone Tribal Court.

**SECTION 175.221 Evidence.**

1. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute.

2. The admissibility of evidence and the competency and privileges of witnesses shall be governed by:

- (a) The general provisions of title 4 of the Nevada Revised Statutes;
- (b) The specific provisions of any other applicable statute; and
- (c) Where no statute applies, the principles of the common law as they may be interpreted by the Ely Shoshone Tribal Court in the light of reason and experience.

**SECTION 175.241 Proof of corporate existence generally.** If, upon a trial or proceeding in a criminal case, the existence, constitution or powers of any corporation shall become material, or be in any way drawn in question, it is not necessary to produce a certified copy of the articles or acts of incorporation, but the same may be proved by general reputation, or by the printed laws of the tribe, or government, or country by which such corporation was created.

**SECTION 175.251 Conspiracy: Allegation and proof of overt act; evidence of overt acts not alleged.** Upon a trial for conspiracy, in a case where an overt act shall be necessary to constitute the offense, the defendant shall not be convicted unless one or more overt acts shall be expressly alleged complaint, nor unless one of the acts alleged shall have been proved; but other overt acts not alleged may be given in evidence.

**SECTION 175.261 False pretenses: What evidence necessary.** Upon a trial for having, with an intent to cheat or defraud another designedly, by any false pretense, obtained the signature of any person, to a written instrument, or having obtained from any person any money, personal property, or valuable thing, the defendant shall not be convicted if the false pretense shall have been expressed in language, unaccompanied by a false token or writing, unless the pretense or some note or memorandum thereof be in writing, subscribed by or in the handwriting of the defendant, or unless the pretense be proved by the testimony of two witnesses, or that of one witness and corroborating circumstances; but this section shall not apply to a prosecution for falsely representing or personating another, and, in such assumed character, marrying, or receiving any money or property.

**SECTION 175.271 Expert witnesses.**

1. The court may order the defendant or the tribe or both to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations.
2. The court may appoint any expert witnesses agreed upon by the parties, and may appoint witnesses of its own selection. An expert witness shall not be appointed by the court unless he consents to act.
3. A witness so appointed shall be informed of his duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have the opportunity to participate.
4. A witness so appointed shall advise the parties of his findings, if any, and may thereafter be called to testify by the court or by any party. He shall be subject to cross-examination by each party.
5. The court may determine the reasonable compensation of such a witness and direct its payment out of such funds as may be provided by law.
6. The parties also may call expert witnesses of their own selection.
7. An expert witness, whether appointed by the court or called by a party, may in the discretion of the judge be excluded from the courtroom during the testimony of other witnesses.

**SECTION 175.282 Plea bargain: Inspection by jury; instruction of jury; cross-examination of defendant.** If the tribal prosecutor 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 court shall:

1. After excising any portion it deems irrelevant or prejudicial, permit the jury to inspect the agreement;
2. If the defendant who is testifying has not entered his plea or been sentenced pursuant to the agreement, instruct the jury regarding the possible related pressures on the defendant by providing the jury with an appropriate cautionary instruction; and
3. Allow the defense counsel to cross-examine fully the defendant who is testifying concerning the agreement.

**SECTION 175.291 Testimony of accomplice must be corroborated; sufficiency of corroboration; accomplice defined.**

1. A conviction shall not be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense; and the corroboration shall not be sufficient if it merely shows the commission of the offense or the circumstances thereof.

2. An accomplice is hereby defined as one who is liable to prosecution, for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

**SECTION 175.311 Procedure when higher offense is shown by evidence.** If it appears by the testimony that the facts proved constitute an offense of a higher nature than that charged in the complaint, the court may direct the jury to be discharged, and all proceedings on the complaint to be suspended, and may order the defendant to be committed, or continued on, or admitted to bail, to answer any new complaint which may be found or filed against him for the higher offense.

**SECTION 175.321 Procedure if higher offense ignored.** If complaint for the higher offense be not filed before the next court date, the court shall dismiss the case with prejudice.

**SECTION 175.331 When defendant on bail appears for trial he may be committed and held.** When a defendant who has given bail appears for trial, the court may, in its discretion, at any time after his appearance for trial, order him to be committed to the custody of the proper officer, to abide the judgment or further order of the court, and he must be committed and held in custody accordingly.

**SECTION 175.341 Mistake in charging proper offense: Defendant not discharged; commitment or bail.**

When it appears, at any time before verdict or judgment, that a mistake has been made in charging the proper offense, the defendant must not be discharged, if there appears good cause to detain him in custody; but the court must commit him, or require him to give bail for his appearance to answer to the offense; and may also require the witnesses to give bail for their appearance.

**SECTION 175.351 Discharge of defendant when jury discharged for want of jurisdiction.** If the jury is discharged because the court has not jurisdiction of the offense charged, and it appears that it was committed out of the jurisdiction of this Tribe, the defendant must be discharged, unless the court orders that he be detained for a reasonable time, to be specified in the order, to enable the tribal prosecutor to communicate with the chief executive officer of the country, state, territory or Reservation where the offense was committed.

**SECTION 175.381 Court may advise jury to acquit defendant when evidence on either side closed; motion for judgment of acquittal after verdict of guilty or guilty but mentally ill; subsequent motion for new trial.**

1. If, at any time after the evidence on either side is closed, the court deems the evidence insufficient to warrant a conviction, it may advise the jury to acquit the defendant, but the jury is not bound by such advice.

2. The court may, on a motion of a defendant or on its own motion, which is made after the jury returns a verdict of guilty or guilty but mentally ill, set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction. The motion for a judgment of acquittal must be made within 7 days after the jury is discharged or within such further time as the court may fix during that period.

3. If a motion for a judgment of acquittal after a verdict of guilty or guilty but mentally ill pursuant to this section is granted, the court shall also determine whether any motion for a new trial should be granted if the judgment of acquittal is thereafter vacated or reversed. The court shall specify the grounds for that determination. If the motion for a new trial is granted conditionally, the order thereon does not affect the finality of the judgment. If the motion for a new trial is granted conditionally and the judgment is reversed on appeal, the new trial must proceed unless the appellate court has otherwise ordered. If the motion is denied conditionally, the defendant on appeal may assert error in that denial, and if the judgment is reversed on appeal, subsequent proceedings must be in accordance with the order of the appellate court.

**SECTION 175.383 Withdrawal, discharge or change of defense counsel; limitations.** If a counsel seeks to withdraw from the case or is discharged by the defendant for the purpose of delaying the trial, the court shall not allow the counsel to be changed. The counsel for a defendant may not be changed after a trial has commenced except upon good cause shown to the court.

**SECTION 175.387 Misconduct of defendant; sanctions.**

1. Whenever a defendant interferes with the orderly course of a trial by his disruptive, disorderly or disrespectful conduct, the court may:

- (a) Order the defendant bound and gagged.
- (b) Cite the defendant for contempt.
- (c) Order the defendant removed from the courtroom and proceed with the trial.

2. No such order or citation shall issue except after the defendant has been fully and fairly informed that his conduct is wrong and intolerable and has been warned of the consequences of continued misconduct.

3. A defendant who has been removed from the courtroom may be returned upon his promise to discontinue such misconduct. If his misconduct continues after his return the court may proceed as provided in subsection 1.

## **CONDUCT OF JURY**

**SECTION 175.391 Separation or custody of jury before submission.** The jurors sworn to try a criminal action may, at any time before the submission of the case to the jury, in the discretion of the court, be permitted to separate, depart for home overnight or be kept in charge of a proper officer. Upon commencing deliberation, the jurors shall be kept in charge of a proper officer, unless at the discretion of the court they are permitted to depart for home overnight. When the jurors are kept together, the officer in charge shall keep the jurors in some private and convenient place and separate from other persons. He shall not permit any communication to be made to them, or make any himself, unless by order of the court, except to ask them if they have agreed upon their verdict. The officer shall not, before the verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon. He shall return them into court when they have reached their verdict or when ordered by the court.

**SECTION 175.401 Jury to be admonished at each adjournment.** At each adjournment of the court, whether the jurors are permitted to separate or depart for home overnight, or are kept in charge of officers, they must be admonished by the judge or another officer of the court that it is their duty not to:

1. Converse among themselves or with anyone else on any subject connected with the trial;
2. Read, watch or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including without limitation newspapers, television and radio; or
3. If they have not been charged, form or express any opinion on any subject connected with the trial until the cause is finally submitted to them.

**SECTION 175.421 Accommodations for jury upon retirement; power of court to furnish.** A room shall be provided by the Tribe for the use of the jury upon their retirement for deliberation, with suitable furniture, fuel, lights and stationery.

**SECTION 175.431 Jury provided food and lodging when kept together.** While the jury are kept together, either during the progress of the trial or after their retirement for deliberation, they shall be provided, at the expense of the Tribe, with suitable and sufficient food and lodging.

**SECTION 175.441 Jury may take written instructions, materials received in evidence, certain papers and own notes of trial on retiring for deliberation.** Upon retiring for deliberation, the jury may take with them:



1. All papers and all other items and materials which have been received as evidence in the case, except depositions or copies of such public records or private documents given in evidence as ought not, in the opinion of the court, to be taken from the person having them in possession.

2. The written instructions given, and notes of the testimony or other proceedings on the trial, taken by themselves or any of them, but none taken by any other person.

**SECTION 175.451 Return of jury for information.** After the jury have retired for deliberation, if there is any disagreement between them as to any part of the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon their being brought into court, the information required shall be given in the presence of, or after notice to, the tribal prosecutor and the defendant or his counsel.

**SECTION 175.461 Jury not to be discharged after cause submitted; exceptions.** Except as provided in [SECTION 175.081](#), the jury shall not be discharged after the cause is submitted to them, until they have agreed upon their verdict and rendered it in open court, unless by the consent of both parties, entered upon the minutes, or unless, at the expiration of such time as the court may deem proper, it satisfactorily appears that there is no reasonable probability that the jury can agree.

**SECTION 175.471 Adjournment of court during absence of jury.** While the jury are absent, the court may adjourn from time to time, as to other business, but it shall nevertheless be deemed to be open for every purpose connected with the cause submitted to the jury, until a verdict be rendered or the jury discharged.

## VERDICT

**SECTION 175.481 Return.** The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.

**SECTION 175.491 Verdict where there are several defendants.** If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

**SECTION 175.501 Jury may convict of lesser included offense or attempt.** The defendant may be found guilty or guilty but mentally ill of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

**SECTION 175.511 When offenses to be stated separately.** When the defendant may be convicted of more than one offense charged, each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

**SECTION 175.531 Polling jury; further deliberation or discharge.** When a verdict is returned and before it is recorded the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

**SECTION 175.533 Finding of guilty but mentally ill upon plea of not guilty by reason of insanity; required findings; effect of finding.**

1. During a trial, upon a plea of not guilty by reason of insanity, the trier of fact may find the defendant guilty but mentally ill if the trier of fact finds all of the following:

- (a) The defendant is guilty beyond a reasonable doubt of an offense;
  - (b) The defendant has established by a preponderance of the evidence that due to a disease or defect of the mind, he was mentally ill at the time of the commission of the offense; and
  - (c) The defendant has not established by a preponderance of the evidence that he is not guilty by reason of insanity pursuant to subsection 5 of [SECTION 174.035](#).
2. Except as otherwise provided by specific statute, a defendant who is found guilty but mentally ill is subject to the same criminal, civil and administrative penalties and procedures as a defendant who is found guilty.
3. 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.

## ACQUITTAL

**SECTION 175.541 Discharge of defendant after acquittal.** If judgment of acquittal is given on a verdict, and the defendant be not detained for any other legal cause, he must be discharged as soon as the verdict is given.

**SECTION 175.543 Notice to defendant of provisions concerning sealing of records of proceedings leading to acquittal.** Upon the entry of a judgment of acquittal, the court shall provide the defendant with a written notice of the provisions of [SECTION 179.255](#) which concern the sealing of records of the proceedings leading to the acquittal.