



NHBP TRIBAL COURT

NOTTAWASEPPI HURON BAND OF THE POTAWATOMI

2221 1 1/2 MILE RD. • FULTON, MI 49052

P: 269.704.8404 • F: 269.729.4826 - ORI NO. MID10077J

COURT RULES OF CRIMINAL PROCEDURE CHAPTER 12

TABLE OF CONTENTS

Section 1. Title	2
Section 2. Purpose	2
Section 3. Definitions	2
Section 4. Fundamental Rights of Defendants.....	4
Section 5. Arraignment.....	5
Section 6. Preliminary Proceedings.....	8
Section 7. Pleas and Plea Taking	9
Section 8. Trials.....	10
Section 9. Pre-Sentence Investigations and Reports	12
Section 10. Victim Impact Statements.....	14
Section 11. Sentencing	15
Section 12. Modification of Conditions of Probation.....	16
Section 13. Motions to Revoke the Conditions of Bond or Probation or Show Cause for Alleged Violations of the Conditions of Bond or Probation	17
Section 14. Hearings.....	19
Section 15. Post-Conviction Proceedings	20
Section 16. Short Title, Effective Date, and Citation Format	20
CERTIFICATE OF ADOPTION.....	21



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Section 1. Title

- A. The name of this Chapter of Court Rules is: *Court Rules of Criminal Procedure*.

Section 2. Purpose

- A. The purpose of this Chapter of Court Rules is to assist the Tribal Court in fully implementing the *Nottawaseppi Huron Band of the Potawatomi Law and Order Code* and *Criminal Procedure Code*. This Chapter of Court Rules is intended to promote a fair and just outcome of every criminal proceeding before the Tribal Court. Further, these Rules are to be interpreted to ensure fairness and the elimination of unreasonable expense and delay.

Section 3. Definitions

- A. For the purposes of this Chapter of Court Rules, the following definitions will be used:
1. “*Arraignment*” refers to the court appearance when the defendant comes before the Court and is advised of the charges against them, is advised of their legal rights and bond is determined and set.
 2. “*Attorney*” and “*Counselor*” and “*Lawyer*” are synonymous and mean an individual admitted to practice before the courts of any state and in good standing, and who is admitted to practice before the Nottawaseppi Huron Band of the Potawatomi Tribal Courts.
 3. “*Band*”, “*Nation*” and “*Tribe*” are synonymous and mean the Nottawaseppi Huron Band of the Potawatomi (NHBP).

4. “*Bond*” cash or surety given to the Court to ensure a defendant’s appearance at Court proceedings after pretrial release. A surety is a guarantee by someone other than the Defendant to pay a specified amount if the Defendant does not appear at Court. Bonds may be kept by the Court if the Defendant fails to appear at Court.
5. “*Court*” and “*Tribal Court*” are synonymous and mean the trial level court of the NHBP.
6. “*Defendant*” means a person formally charged and accused of a crime by the NHBP Tribal Prosecutor in a legally acceptable complaint.
7. “*Discovery*” means the Court required disclosures between the NHBP Prosecutor and a defendant facing trial, such as police reports and witness statements.
8. “*Indigent*” means a person who is financially unable to retain an attorney to represent them in a criminal trial. A person is presumed to be indigent if he or she receives public assistance such as food stamps, aid to families of dependent children, Medicaid, disability insurance or other similar public assistance.
9. “*Jeopardy*” means that time in the criminal process after which a defendant cannot be tried again for the same offense. In a bench trial it is after opening statements have been made and the first witness has been called to testify, and in a jury trial it is after the jury has been sworn.
10. “*Joinder*” means the bringing together for trial two (2) or more defendants, or two (2) or more criminal charges against the same defendant that arise out of the same incident or occurrence.
11. “*Jury*” see *Chapter 11 Court Rules of Jury Procedure*.
12. “*Material*” means evidence that is important to proving a party’s case.
13. “*Motion*” refers to a filing in the Court that requests the Court to take some action or order some action in a pending case.
14. “*Probable Cause*” means that amount of information that would cause a reasonably careful and prudent person to believe that the facts alleged are true.
15. “*Prosecutor*” and “*Tribal Prosecutor*” are synonymous and mean the NHBP Tribal Prosecutor or their designee.
16. “*Recognizance*” means being released on one’s own supervision after arraignment.

17. “*Relevant*” refers to evidence having some value or tendency to prove a matter of fact in a case.
18. “*Sever or Severance*” means to legally separate or divide legal charges against a single defendant or to legally separate the trials for individual defendants.
19. “*Tribal Court Administrator*” means the person employed as the Tribal Court Administrator for the Nottawaseppi Huron Band of the Potawatomi Tribal Court or that person’s designee.

Section 4. Fundamental Rights of Defendants

- A. All criminal defendants that appear in Tribal Court are presumed to be innocent until proven guilty beyond a reasonable doubt.
- B. All criminal defendants have the right to a speedy and public trial:
 1. If incarcerated after arraignment, they must have their trial start no later than ninety (90) days after arraignment;
 2. If not incarcerated, they must have their trial start no later than 120 days after arraignment.
 3. Criminal cases that do not adequately progress toward trial within 120 days after arraignment may be dismissed with prejudice, meaning the Tribal Prosecutor may not bring the same charges against the Defendant. Absent good cause, criminal cases must be fully tried within 270 days of arraignment or they may be dismissed by the Court with prejudice.
- C. All criminal defendants are entitled to court-appointed assistance of counsel during criminal proceedings if:
 1. The Tribal Prosecutor is requesting incarceration;
 2. If the Defendant is found to be indigent by the Court upon submission of a notarized affidavit by the Defendant that confirms that he or she is indigent.
 3. The Court may require partial or full reimbursement to the Court of the cost of providing court-appointed counsel.
 4. The Defendant may waive court-appointed counsel on the record after a complete advice of rights and after the Defendant demonstrates a knowing and voluntary waiver. Waiver at one proceeding does not mean waiver at all following proceedings.

The issue of court-appointed counsel may be addressed at later proceedings at the Defendant's request or as justice so requires.

- D. Criminal defendants have the right to trial by jury if the offense charged, or combination of offenses charged, is punishable by incarceration and the Tribal Prosecutor informs the Court prior to trial that incarceration is being sought as a sentence.
- E. Criminal defendants have the right to confront witnesses called to testify against them, and if representing themselves, to the Court's assistance in the preparation and service of subpoenas on their own behalf.
- F. Any Court costs associated with the issuance of a subpoena(s) on behalf of the Defendant can be charged as court costs.
- G. No criminal defendant can be compelled to be a witness against themselves.
- H. No criminal defendant can be put in jeopardy for the same offense a second time. Jeopardy attaches after opening statements and the first witness has been sworn in a bench trial, and in a jury trial it is after the jury has been sworn.

Section 5. Arraignment

- A. Preliminary proceedings are actions that take place up to, but before, the bench or jury trial begins.
- B. Arraignment is the bringing of the accused defendant before the Tribal Court for the following purposes:
 - 1. To inform the accused of the criminal charges filed against him or her;
 - 2. To inform the accused of his or her legal rights;
 - 3. To allow the accused the opportunity to make a plea of "not guilty", "guilty", "no contest", "guilty but mentally ill", or "not guilty by reasons of insanity" to the filed charges;
 - 4. To set conditions of pretrial release or to establish a bond;
 - 5. To inform the accused of the maximum authorized penalty if convicted of the filed charges; and
 - 6. To provide the accused with a copy of the filed complaint containing the charges.

- C. When the Defendant has been arrested, with a warrant that requires Arraignment prior to pretrial release or without a warrant, the Arraignment shall be held within seventy-two (72) hours of the arrest.
- D. If the Defendant was arrested without a warrant, and the prosecutor wants the Defendant to remain in custody, the Trial Court shall determine, at Arraignment, whether there is probable cause to believe that an offense(s) against Tribal Law has been committed and whether there is probable cause to believe that the Defendant committed that offense(s).
 - 1. The Court may require the Prosecutor to bring forth witnesses and other evidence to establish probable cause.
 - 2. The Court may call witnesses to establish probable cause.
 - 3. Any probable cause hearing and all arraignments are to be open to the public unless the Court, after taking proofs on the record, finds that there is good cause for the arraignment and/or probable cause hearing to be closed.
- E. The Court may accept pleas of “guilty” and “no contest” from defendants at Arraignment under the following conditions:
 - 1. The Court must provide an “Advice of Rights” form to the Defendant that contains both the rights of every defendant and a separate “Waiver of Advice of Rights” if entering a plea;
 - 2. The Court must receive a factual basis for the plea:
 - 3. The Court must determine that the plea is freely, voluntarily, and understandingly made;
 - 4. The Court must determine that the accused understands the legal consequences of the plea;
 - 5. The Court must advise that a plea of “no contest”:
 - a. Shall be considered the same as a “guilty” plea for sentencing purposes; and
 - b. Must have the approval of the Tribal Prosecutor;
 - 6. The Court may not accept a plea to an offense other than the one charged without the consent of the Tribal Prosecutor;
 - 7. The Court shall take the plea on the record; and

8. If the Court accepts the plea after fulfilling all requirements in this provision, the Defendant shall sign the “Advice of Rights” form, including the “Waiver of Advice of Rights”, and it shall be placed in the Court file.
- F. If the Defendant chooses not to enter a plea, the Court shall enter a “not guilty” plea on his or her behalf.
- G. At the Arraignment, the presiding Judge shall decide whether to release the Defendant pending trial or sentencing. In extraordinary situations, the Court may travel to the place where the Defendant is incarcerated to conduct an arraignment or may conduct the arraignment by video or other electronic means as is deemed fair and appropriate by the Court and the detention facility.
1. The Court shall set a cash, surety or ten percent (10%) bond or an unsecured own recognizance bond;
 2. The Court may place restrictions on travel or personal contacts and make any condition reasonably necessary to assure the appearance of the Defendant as required. The Court shall also consider in determining conditions of pretrial release the safety of any persons or victims; and
 3. If the Defendant fails to appear for Arraignment, the Court may modify or revoke the conditions of release that were imposed at the time the Defendant was notified of the pending charges. The Court may also modify the conditions of release, or modify the issuance of any bond, if it determines that the conditions will not reasonably assure the appearance of the Defendant or for the safety of any victim or other person.
- H. The Court may modify the conditions of release imposed at Arraignment:
1. Upon motion by the Probation Department, the Prosecuting Attorney, the Defendant, other individual as authorized by the Court, or the Court:
 - a. If the Defendant violates the conditions of his or her release;
 - b. For the safety of any persons or victims; or
 - c. As justice requires for the benefit of the Defendant.
- I. In dealing with multiple defendants, the Court may in its discretion:
1. Join for trial or sever for separate and individual trials, more than one defendant accused of committing the same offense.

2. In the interests of justice and judicial economy, the Prosecutor may also petition the Court for joinder or severance of criminal defendants.
3. On a defendant's motion, the Court must sever unrelated offenses for separate trials.

Section 6. Preliminary Proceedings

- A. Preliminary proceedings are actions that take place up to, but before, the bench or jury trial begins.
- B. Discovery
 1. The Court may order such pretrial discovery as it determines to be necessary in the interests of fairness and justice.
 2. Every accused defendant is legally entitled to copies of police reports prepared for the Tribal Prosecutor including any testing results, reports, warrants, search warrants and returns, and any other document in the possession of the Prosecutor or police that the Defendant can show is necessary to aid in the preparation of his or her defense.
 3. The Court on its own motion may order the Tribal Prosecutor to provide a defendant with a bill of particulars describing the essential facts of the alleged offense or offenses.
 4. The Court may allow the Tribal Prosecutor to amend a criminal complaint, unless the proposed amendment would unfairly surprise or prejudice the Defendant.
 5. Upon request, the Tribal Prosecutor must provide each defendant any information or evidence known to the Tribal Prosecutor discovered at any time prior to the conclusion of the case that is material and relevant to the defense.
 6. Notwithstanding any other provision of this rule, there is no right to discover information that is constitutionally protected from disclosure or protected pursuant to Tribal ordinance or statute, or tribally recognized privilege.
- C. The Court may schedule a hearing or hearings after arraignment and before trial. These hearings will be referred to a "Pretrial Hearings" and can be scheduled to:
 1. Hear motions;
 2. Review bond and other conditions of release;
 3. Settle scheduling matters;

4. Take a negotiated plea and/or give the Tribal Prosecutor and Defendant an opportunity to discuss a plea negotiation; and
 5. To address any other matter necessary.
- D. Mental Competency Hearing. A mental competency hearing in a criminal case shall be governed by MCL 330.2020 et seq. unless and until superseded by a mental health code adopted by the Tribe.

Section 7. Pleas and Plea Taking

- A. At Arraignment or at any time in the course of the criminal proceedings, but before a judgment or verdict of a jury is rendered, a defendant may make a plea of “guilty”, “not guilty”, “guilty but mentally ill”, “not guilty by reason of insanity”, or “no contest”.
- B. The Court may accept pleas of “guilty” and “no contest” from defendants under the following conditions:
 1. The Court must provide an “Advice of Rights” form to the Defendant that contains both the rights of every defendant and a separate “Waiver of Advice of Rights” if entering a plea;
 2. The Court must receive a factual basis for the plea;
 3. The Court must determine that the plea is freely, voluntarily, and understandingly made;
 4. The Court must determine that the accused understands the legal consequences of the plea;
 5. The Court must advise that a plea of “no contest”:
 - c. Shall be considered the same as a “guilty” plea for sentencing purposes; and
 - d. Must have the approval of the Tribal Prosecutor;
 6. The Court may not accept a plea to an offense other than the one charged without the consent of the Tribal Prosecutor;
 7. The Court shall take the plea on the record; and
 8. If the Court accepts the plea after fulfilling all requirements in this provision, the Defendant shall sign the “Advice of Rights” form, including the “Waiver of Advice of Rights”, and it shall be placed in the Court file.

- C. A defendant who has asserted an insanity defense may enter a plea of “guilty but mentally ill” or a plea of “not guilty by reasons of insanity”. Before such plea can be entered, the Defendant must comply with a mental health examination if ordered by the Court or requested by the Tribal Prosecutor.
- D. Before accepting a plea of “guilty but mentally ill”, the Court must establish a factual basis for the plea and examine any reports prepared. The Court must convene a hearing and hear evidence that supports the finding that the Defendant was mentally ill at the time of the offense.
- E. Before accepting a plea of “not guilty by reason of insanity” the Court must convene a hearing and hear evidence that supports the finding that:
 - 1. The Defendant committed the acts charged; and
 - 2. A reasonable doubt exists about the Defendant’s legal sanity at the time the offense was committed.
- F. After accepting the plea, the Court must advise the Defendant that he or she must seek mental health treatment and that the Court may order him to be committed to a treatment facility for the purposes of diagnosis, treatment, and placement.
- G. The Court may, in its discretion, allow a defendant to withdraw a plea of “guilty” or “no contest” if the following circumstances are met:
 - 1. The Defendant is fully advised of the consequences of the plea withdrawal including the maximum penalty upon conviction;
 - 2. The Prosecutor is allowed to address the Court on the record as to the Prosecutor’s position on the plea withdrawal;
 - 3. The withdrawal of the plea is on the record;
 - 4. The Court specifically finds that the withdrawal is in the interests of justice; and
 - 5. The Court upon allowing the withdrawal of a plea may set or continue bond or orders of pretrial release.

Section 8. Trials

- A. Rights of the Defendant in a criminal a case are as follows:
 - 1. Not to be put in jeopardy twice for the same offense;
 - 2. Not to be compelled to be a witness against themselves;

3. To a speedy and public trial;
4. Right to court-appointed counsel if:
 - a. The Court has found the Defendant to be indigent, the Defendant is facing incarceration, and the Tribal Prosecutor informs the Court that incarceration is being sought; or
 - b. As required by law.
5. Right to a jury trial upon the same conditions as the right to court-appointed counsel;
6. Right to subpoena witnesses in their own defense;
7. Right to question and cross-examine witnesses called against them; and
Right to present books, records, documents, or other physical evidence to the Court for determination of admissibility.

B. Bench Trials and Jury Trials

1. Unless a defendant requests a trial by jury, all criminal matters will be tried by a Tribal Court Judge.
2. If, for reasons placed on the record in open Court, the Tribal Court Judge assigned cannot preside over the case, the Tribal Court Administrator shall arrange for another Judge to preside.
3. All jury trial proceedings shall be governed by *Chapter 11, Court Rules of Jury Procedure*. If the Court does not receive a proper or timely request for a jury trial within twenty-eight (28) days after arraignment, the right to jury trial will be presumed to be waived by the Defendant. The Court may then set the matter for a bench trial in its discretion.

C. Conduct of the Trial

1. The Tribal Prosecutor shall have the burden of proof beyond a reasonable doubt and the burden of going forward with the presentation of evidence.
2. All defendants are presumed not guilty until proved guilty beyond a reasonable doubt.
3. The Defendant shall be present in Court for the trial and all pretrial proceedings unless the Judge has the defendant removed to maintain decorum in the courtroom.
4. The Defendant is not required to present any evidence in their own defense but may do so at their discretion.
5. All testimony shall be given under oath in open court and on the record.

6. *Chapter 7 Rules of Evidence* shall govern evidentiary matters at trial unless otherwise provided by Tribal law and/or applicable Court Rules.
7. At the close of proofs, the prosecution and the defense may present arguments to the Judge or jury. The Prosecutor shall go first with the Defendant arguing next and then the Prosecutor may have the last word. Arguments are not to be considered as evidence by the jury and the jury shall be so instructed.
8. If the case is a jury trial, the Court shall instruct the jury as to the applicable law. The jury shall be instructed to determine all questions of fact on the basis of the law given them by the Court. Each party may request, in writing, specific jury instructions be given. Each party is entitled to receive written copies of proposed jury instructions and they may, at the Court's discretion, present arguments for use of their instructions, but these arguments must be made outside of the presence of the jury.
9. After deliberation, the jury shall return a verdict of "not guilty", "guilty", "guilty but mentally ill", or "not guilty by reasons of insanity" with respect to each defendant. A verdict of guilty requires a unanimous vote of the jury.

Section 9. Pre-Sentence Investigations and Reports

- A. Upon a plea of "guilty" or "no contest", a jury verdict of "guilty" or judgment by the Court of "guilty" the Court may, upon its own discretion, order the Probation Department to conduct a pre-sentence investigation, including appropriate assessments:
 1. When required by law;
 2. Upon motion of the Prosecutor or Defendant; or
 3. In the discretion of the Court.
- B. The Pre-Sentence Investigation Report ("PSI Report") shall:
 1. Be in writing and submitted to the Court and served upon the parties:
 - a. Seven (7) calendar days before the Sentencing Hearing if by mail; or
 - b. Not less than two (2) business days before the Sentencing Hearing if by personal service.
 2. If the PSI Report is not made available to the Prosecutor and Defendant at least two (2) business days before the day of sentencing, the Prosecutor and Defendant may be granted an adjournment on oral motion to:

- a. Review the PSI Report; and
 - b. Prepare any necessary corrections, additions, or deletions to present to the Court.
3. The PSI Report shall include:
- a. A complete description of the offense and the circumstances surrounding the offense;
 - b. Sentencing requirements or recommendations pursuant to the Nottawaseppi Huron Band of the Potawatomi Law and Order Code (See Title VIII: Judiciary; Law and Order);
 - c. A brief description of the Defendant's vocational background and work history, including military record and present employment status;
 - d. A brief social history of the Defendant, including marital status, financial status, educational background, and other pertinent information;
 - e. The Defendant's medical history, if pertinent, substance abuse history, if any, and a current psychological or psychiatric report if requested by the Prosecutor or Defendant and warranted by the facts or in the discretion of the Court;
 - f. Information concerning the financial, social, psychological, or physical harm suffered by the victim:
 - i. The restitution requests of the Victim;
 - g. The victim's written impact statement, if provided;
 - h. Any statement the Defendant wishes to make in the PSI Report;
 - i. A specific recommendation for disposition including, but not limited to:
 - i. Batterer Intervention Programs and Services;
 - ii. Treatment; and/or
 - iii. Cultural programs; and
 - j. Any other information that may aid the Court in sentencing.
4. The PSI Report may include:
- a. The Defendant's prior criminal history/convictions, including juvenile adjudications when allowed by law.
 - i. When required by Tribal law, the Prosecutor shall provide to the Probation Department the Defendant's criminal history, if any, that occurred under

the laws of the NHBP, any state, Federal, territory, possession, Tribe, or United States military tribunal.

- ii. The Probation Department may conduct a criminal history for the purposes of its own investigation and/or recommendations.

5. The PSI Report shall not include:

- a. Any address or telephone number for the home, workplace, school, or place of worship of any victim or witness, or a family member of any victim or witness
 - i. Unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.
- b. Any other address or telephone number that would reveal the location of a victim or witness or a family member of a victim or witness
 - i. Unless an address is used to identify the place of the crime or to impose conditions of release from custody that are necessary for the protection of a named individual.

C. The Court may order a chemical dependency evaluation to determine if a treatment plan is an appropriate term of the Defendant's sentence.

D. At the time the plea is taken, judgment is delivered, or verdict is delivered, the Court may set a specific date or give a time-frame for when the Sentencing Hearing will be held.

1. The Court may take into consideration when setting the date or time-frame:

- a. Requests from the parties;
- b. Requests from the Victim;
- c. Requests from the Probation Department; and
- d. The time-frames for the completion of assessments that the facts of the case indicate may be helpful or necessary.

Section 10. Victim Impact Statements

A. The Victim has the right to provide a victim impact statement

- 1. The victim impact statement may be written or oral.
- 2. The victim may discuss, but is not limited to the following:
 - a. The impact of the crime;

- b. How the crime affected them psychologically, financially, and physically; and
 - c. Recommendations for sentencing and/or treatment.
3. The Victim may be assisted to provide the victim impact statement:
 - a. As provided by law;
 - b. By the Domestic Violence Victim Advocate; and/or
 - c. Probation Department Personnel.
4. The Court shall make all reasonable efforts to accommodate the participation of the Victim at the sentencing hearing, being mindful of the emotional and psychological barriers victims may experience when facing a perpetrator in Court.
5. The impact on the victim, after consultation with the victim, may also be represented by:
 - a. The Prosecutor;
 - b. The Probation Department in the PSI Report; and/or
 - c. Domestic Violence Victim Advocate.

Section 11. Sentencing

A. Considerations for Sentencing

1. Any requirements for sentencing as provided in the Nottawaseppi Huron Band of the Potawatomi Law and Order Code (Title VIII: Judiciary; Law and Order) shall be incorporated into the sentence.
2. At the Sentencing Hearing:
 - a. The Court shall review the PSI Report, if a PSI was ordered by the Court;
 - b. The Court may take testimony from the Probation Department regarding the investigation for and contents of the PSI Report.
 - c. Either party may introduce evidence or testimony concerning the information in front of the Court, including any reports.
 - d. The Victim may present a Victim Impact Statement in person, in writing or through a designated individual.
 - e. The rules of evidence concerning hearsay shall not be applicable at sentencing.
 - f. All sentences shall be entered by the presiding Judge in open court, on the record, with the Defendant present, unless there is good cause to exclude the Defendant.

- i. The Court may indicate on the record that details will be added to the written Sentencing Order if specific information is not available at the hearing, such as contact information for a service provider.

B. Sentencing Order

1. Within seven (7) days after sentencing the Court must date and sign a written sentencing order which states:
 - a. The sentence for each conviction;
 - b. Any incarceration for each conviction;
 - i. If incarceration is ordered, the term of incarceration and the place of detention or incarceration shall be included when known at sentencing;
 - c. Any probation period for each conviction;
 - d. Any conditions for probation;
 - e. The amount and terms of payment for fines, costs, and/or fees for each conviction;
 - f. The amount and terms of payment if restitution is ordered;
 - g. Whether the sentence runs concurrently or consecutively with any other sentences or periods of probation applicable to the Defendant; and
 - h. Any other conditions incident to the conviction.

- C. The Court may correct an invalid sentence or mistakes in the sentencing order, but the Court may not modify a valid sentence after it has been imposed except as otherwise provided by law.

Section 12. Modification of the Conditions of Probation

- A. The Court may modify or revoke the conditions of probation:
1. Upon motion by the Probation Department, the Prosecuting Attorney, the Defendant, other individual as authorized by the Court, or upon the Court's own motion;
 - a. If the Defendant violates the conditions of his or her release;
 - b. For the safety of any persons or victims; or
 - c. As justice requires for the benefit of the Defendant.
- B. Requests to modify conditions of probation may be made:

1. By written motion with the Court scheduling a hearing and providing a minimum of fourteen (14) days notice by mail to the parties.
2. By oral motion during a hearing:
 - a. With the matter resolved upon agreement of the parties and approval of the Court;
 - b. With the matter resolved upon both parties having the opportunity to be heard and the Court having been fully advised of the considerations;
 - c. With the matter resolved as justice so requires; or
 - d. With the matter scheduled for a future hearing.
3. The burden of proof is on the moving party or for the reasons stated on the record if by the Court's own motion.

Section 13. Motions to Revoke the Conditions of Bond or Probation or Show Cause for Alleged Violations of the Conditions of Bond or Probation

- A. The Court, the Probation Department, the Prosecutor, the Defendant, and the Victim or Victim's Advocate on behalf of the Victim have standing to file a motion to revoke bond or probation or a condition of bond or probation or to file a motion to show cause on an alleged violation of a condition of bond or probation.
- B. A motion to revoke the conditions of bond or probation shall:
 1. Be in writing;
 2. Provide the name of the case, the Tribal Court Case Number, and the contact information for the parties, or attorneys if applicable;
 3. Provide the name and status of the person filing the motion;
 4. State the specificity the reasons for the request to revoke bond or probation; and
 5. State the new sentence recommended including any terms of incarceration, if incarceration is recommended.
- C. A motion to show cause on an alleged violation of a condition of bond or probation shall:
 1. Be in writing;
 2. Provide the name of the case, the Tribal Court Case Number, and the contact information for the parties, or attorneys if applicable;
 3. Provide the name and status of the person filing the motion;
 4. State the condition of bond or probation that the Defendant allegedly violated;

5. State with specificity the alleged actions of the Defendant that violated the condition of bond or probation or support the revocation of the condition of bond or probation; and
 6. State the sentence recommended including any terms of incarceration, if incarceration is recommended.
- D. Upon receipt of motion to revoke the conditions of bond or probation or motion to show cause, the Tribal Court Administrator shall forward the motion to the presiding Judge.
- E. Upon receipt of motion to revoke the conditions of bond or probation or motion to show cause, the presiding Judge shall determine whether there is probable cause to issue an arrest warrant in accordance with Tribal law.
1. If no arrest warrant is issued, the Court shall issue an order to show cause and notice of hearing that states:
 - a. That the Defendant is required to appear at the hearing to show cause;
 - b. Why probation should not be revoked or why she or he should not be found in violation of the conditions of bond or probation;
 - c. That the failure to appear at the hearing may result in an arrest warrant being issued;
 - d. The date and time set for the Show Cause Hearing;
 - i. The Court may set the date and time for the hearing with the parties during related Court proceedings.
 - e. That the Defendant shall have the opportunity to:
 - i. Provide a defense or explanation;
 - ii. Challenge evidence, including cross-examine witnesses;
 - iii. Testify; and
 - iv. Present evidence, including witnesses.
 2. If the Court determines that an arrest warrant should be issued, the warrant shall state:
 - a. That an arraignment is required before release; or
 - b. That the Defendant may be released without arraignment if she or he pays a specific bond with acknowledgement that appearing at the Arraignment is required.

3. Upon receipt of the order to show cause and notice of hearing, the Court Clerk shall provide the order to show cause and notice of hearing, motion, and any accompanying documentation:
 - a. By mail a minimum of fourteen (14) days in advance of the hearing; or
 - b. By personal service a minimum of seven (7) days in advance of the hearing.
 4. Provide a copy of the arrest warrant, order to show cause, motion and any attachments to:
 - a. The Probation Department for entry into Law Enforcement Information Network; and
 - b. The NHBP Police Department for arrest of the Defendant.
- F. If the Defendant has been arrested, an Arraignment shall be held pursuant to this *Chapter of Court Rules*.

Section 14. Hearings

- A. Unless otherwise provided in the NHBP Tribal Court Rules or Tribal law:
 1. The Court Clerk shall provide notice of a hearing and copies of any accompanying documentation:
 - a. By mail a minimum of fourteen (14) days in advance of the hearing; or
 - b. By personal service a minimum of seven (7) days in advance of the hearing.
 2. The Court Clerk shall not provide additional notice of a hearing that was scheduled during a Court proceeding where all parties were present.
 - a. If documents are received after the Court proceeding when the hearing was scheduled, the Court Clerk shall send copies of those documents to the parties if the parties are not required to perform service.
- B. At a show cause hearing on an alleged bond violation, a show cause hearing on an alleged violation of the condition of probation, a hearing to revoke the conditions of bond, or a hearing to revoke the conditions of probation:
 1. The Defendant has the right to:
 - a. Provide a defense or explanation;
 - b. Challenge evidence, including cross-examine witnesses;
 - c. Testify; and

- d. Present evidence, including witnesses.
 2. The moving party has the burden of proof for the applicable standard.
- C. At any hearing:
1. The moving party has the burden of proof.
 2. Any party may present witnesses, cross-examine witnesses, introduce evidence, and make arguments to the Court.
 3. The Defendant has the right to remain silent.
 - a. The Defendant may testify at any proceeding, whether the moving or non-moving party.
 - b. If the Defendant testifies, she or he is subject to cross-examination.

Section 15. Post-Conviction Proceedings

- A. Motion for a New Trial
1. Any motion for a new trial must be filed with the trial court within twenty-eight (28) days after the entry of judgment.
 2. If the Defendant has filed a claim of appeal then the trial court will not rule on the motion for a new trial until the appeal process is completed.
 3. If the motion for a new trial is filed before any claim for appeal the motion shall be heard before the appeal can proceed.
- B. Reasons for Granting a New Trial
1. The Court may order a new trial on any ground that would support appellate reversal of the conviction(s) or because it believes that the verdict is not consistent with the facts or in accordance with the law.
 2. The Court must state its reasons for granting or denying a new trial on the record in open court or in a written ruling made a part of the record.

Section 16. Short Title, Effective Date, and Citation Format

- A. Short Title. These Rules are titled “Rules of Criminal Procedure”.
- B. Effective Date. These Rules become effective when adopted by the Chief Judge of the Nottawaseppi Huron Band of the Potawatomi Tribal Court.
- C. Citation. The official abbreviated citation form to these Rules is: NHBPCR 12.

CERTIFICATE OF ADOPTION

The Chief Judge of the Tribal Court adopts the above *Chapter of Court Rules* on January 5, 2018.



Hon. Melissa L. Pope, Chief Judge

January 5, 2018
Date of Adoption

JUDICIAL HISTORY

The Chief Judge adopted the *Court Rules of Criminal Procedure* on August 1, 2012. Substantive and technical amendments were adopted on January 5, 2018.