



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85147

RESOLUTION GR-97-13

THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AUTHORIZES AND APPROVES THE GILA RIVER INDIAN COMMUNITY RULES OF CRIMINAL PROCEDURE

WHEREAS, the Gila River Indian Community Council (the “Community Council”) is the governing body of the Gila River Indian Community (the “Community”), a federally recognized and sovereign Indian tribe; and

WHEREAS, the Community Council is authorized by Article XV, Section 1(a)(9) of the Constitution and Bylaws of the Community (March 17, 1960) (the “Constitution”) to promote and protect the health, peace, morals, education, and general welfare of the Community and its members; and

WHEREAS, the Community Council is authorized by Article XV, Section 1(a)(17) of the Constitution to provide for the maintenance of law and order and the administration of justice by establishing a Community Court and police force and defining the powers and duties thereof; and

WHEREAS, on July 6, 2011, the Community Council directed the implementation of enhanced sentences (up to three years per criminal offense and up to nine years per criminal proceeding) under the Tribal Law and Order Act of 2010 (“TLOA”); and

WHEREAS, a workgroup comprised of representatives from Community departments and other organizations (Gila River’s Office of the General Counsel, Office of the Prosecutor, Defense Services Office, Police Department, Department of Rehabilitation and Supervision, Judicial Department, Probation, Tribal Social Services; and GRHC Behavioral Health, Four Rivers Indian Legal Services, and Tribal Court Advocate), which included Community members, met on a monthly basis during 2011 and most of 2012 to revise the Criminal Code, including enhanced sentences under the TLOA; and

WHEREAS, while revising the Criminal Code the workgroup simultaneously drafted Rules of Criminal Procedure for the Community Court that are based on the revised Criminal Code; and

WHEREAS, the Rules of Criminal Procedure will govern criminal proceedings in the Community Court, and are intended to ensure simplicity in court procedure, fairness in the administration of justice, eliminate unnecessary delay and expense, and protect the fundamental rights of Community members; and

WHEREAS, the Community Council is considering enacting a revised Criminal Code which would necessitate the adoption of Rules of Criminal Procedure for the Community Court; and

WHEREAS, the Rules of Criminal Procedure include a provision that after the initial rules are approved by the Community Council any subsequent amendments would be through an advisory committee on rules and by order of the Chief Judge after notice and opportunity for comment by Community members. The advisory committee on rules, which will include interested Community members, at least one representative from the Office of the Prosecutor, at least one representative from the Defense Services Office, the Chief Judge, Associate Judges, and others designated by the Chief Judge shall, when there is representation from at least the Office of the Prosecutor, Defense Services Office, and Judicial, review all proposed amendments and recommend revisions and additional rules as the committee deems appropriate, draft amendments, submit any proposed amendment for public notice and comment, and submit proposed amendments to the Chief Judge for adoption or rejection.

NOW, THEREFORE, BE IT RESOLVED, the Community Council hereby authorizes and approves the Gila River Indian Community Rules of Criminal Procedure, as attached.

BE IT FURTHER RESOLVED, that the Gila River Indian Community Rules of Criminal Procedure shall be made publically available at all District Service Centers and the Ira Hayes Library, made available at the Department of Rehabilitation and Supervision, and made available on-line by January 1, 2014; and any future appellate court decisions concerning the Rules of Criminal Procedure shall be made available in the same manner within two weeks of the release and publication of the appellate decision.

BE IT FURTHER RESOLVED, that the Gila River Indian Community Rules of Criminal Procedure shall be effective January 1, 2014, except as noted in the Rules of Criminal Procedure for any felony offense, procedures specifically relating to felony offenses, and mental competency, which shall not be effective until May 1, 2014.

BE IT FINALLY RESOLVED, that the Governor, or in the Governor's absence the Lieutenant Governor, is hereby authorized to take all steps necessary to carry out the intent of this resolution.

CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a) (7), (9), (17), (18), (b) (8), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing resolution was adopted on the 15th of May 2013, at a regular Community Council meeting held in District 3, Sacaton, Arizona at which a quorum of 14 Members were present by a vote of: 13 FOR; 1 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



COMMUNITY COUNCIL SECRETARY



IN WITNESS

2013 MAY 22 A.M. 11:00

RECEIVED
BIA RIMA AGENT

GILA RIVER INDIAN COMMUNITY RULES OF CRIMINAL PROCEDURE

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I. GENERAL PROVISIONS

RULE 1. SCOPE, PURPOSE, CONSTRUCTION, AMENDMENTS, COMPUTATION OF TIME, DEFINITIONS.

Rule 1.1. Scope, Purpose, Construction, Amendments, Effective Date, Severability.

a. **Scope.** These Gila River Indian Community Rules of Criminal Procedure (“GRIC R. Crim. P.”) govern the procedure in all criminal proceedings in the Gila River Indian Community Court, except as otherwise provided by the Gila River Indian Community Code (“code” or “GRIC code”) or any ordinance enacted by the Gila River Indian Community Council, or as specifically set forth in these rules.

b. **Purpose.** These rules are intended to provide uniform standards and procedures for all criminal proceedings in the Community Court and for the just and speedy determination of every criminal proceeding. These rules are not intended to create or expand substantive individual rights.

c. **Construction.** These rules shall be construed to ensure simplicity in court procedure and fairness in administration, to promote the elimination of unnecessary delay and expense, and to protect the fundamental rights of individuals as provided in the Constitution and Bylaws of the Gila River Indian Community and in the Indian Civil Rights Act (25 U.S.C. § 1302), while preserving the public welfare.

d. **Amendments.** These rules may be amended by order of the Chief Judge after notice and opportunity for comment by Community members and review and analysis by an advisory committee on rules. The advisory committee on rules shall be comprised of the following members: interested Community members, at least one representative from the Office of the Prosecutor, at least one representative from the Defense Services Office, Chief Judge, Associate Judges, and others designated by the Chief Judge. The advisory committee on rules shall, when there is representation from at least the Office of the Prosecutor, Defense Services Office, and Judicial, review all proposed amendments and recommend revisions and additional rules as the committee deems appropriate; draft amendments, submit any proposed amendment for public notice and comment; and submit any proposed amendment to the Chief Judge for adoption or rejection.

e. **Effective Date.** The effective date for these rules shall be January 1, 2014, except as may be otherwise provided for any felony offense, felony procedure or mental competency procedure which shall not be effective until May 1, 2014. Any reference to the GRIC Code where the effective date is not until May 1, 2014, shall be applicable in the same manner to these rules.

f. **Severability.** If any provisions of these rules or any application of these rules is held invalid, the application of the remaining provisions of these rules shall not be affected thereby.

COMMENT:

GRIC Code §5.1531.

Rule 1.2. Computation of Time.

a. The following rules apply in computing any time period specified in these rules, in any court order, or in GRIC code Title 5, Criminal Code, or in any ordinance enacted by the Community Council that does not specify a method of computing time.

b. **Period of One or More Years.** A year is a period of 365 days, except a leap year which consists of 366 days. If a period of years includes a leap year or that part of a leap year including February 29, the calculation will include February 29.

c. **Period Stated in Days.** When the period is stated in days:

1. Exclude the day of the event that triggers the period; and
2. Include the last day of the period unless the last day is a Saturday, Sunday or legal holiday, in which case the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.
3. When the period prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

d. **Period Stated in Hours.** When the period is stated in hours:

1. Begin counting immediately on the occurrence of the event that triggers the period;
2. Count every hour, including hours during intermediate Saturdays, Sundays and legal holidays; and
3. If the period would end on a Saturday, Sunday or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday or legal holiday.

e. **Inaccessibility of the Clerk's Filing Window.** Unless the court orders otherwise, if the clerk's filing window is inaccessible on the last day for filing, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday.

COMMENT:

GRIC Code §5.1531.

Rule 1.3. Definitions.

a. Whenever the terms below appear in these rules the terms shall carry the following meaning, applicable to both singular and plural thereof. Words in the masculine gender include the feminine, and words of the feminine gender include the masculine. When used in a context consistent with the definition of the listed-defined term, the term shall have the meaning as defined below whether capitalized or italicized or otherwise:

1. *Advocate* means a person who is authorized to practice in the Community Court and who is not licensed as an attorney to practice law in any state of the United States.
2. *Attorney* means a person who is licensed to practice law in any state of the United States and has been authorized to practice in the Community Court.
3. *Clerk* means the Clerk of the Community Court and includes all employees of the Community Court whose job title and job functions include performing the duties and fulfilling the responsibilities of the Clerk of the Community Court.
4. *Community Court* or *court* means the Gila River Indian Community Court.
5. *GRIC code* means the Gila River Indian Community Code established pursuant to Ordinance GR-15-09, or as subsequently codified by the Community Council.
6. *Counsel* means an attorney as defined in this rule.
7. *Felony* means a criminal offense punishable by more than one year of imprisonment.
8. *Judge* means any judicial officer of the Community Court, including the Chief Judge, Associate Judges, judges pro tempore, visiting judges and

any other elected or appointed official performing the functions of a judge pursuant to the GRIC code.

9. *Last day* means that, unless a different time is set, the last day ends:
 - (a) When the clerk's filing window is regularly scheduled to close; or
 - (b) For filing by other means as permitted by law or court order, at midnight in the court's time zone.
10. *Legal holiday* means any day declared a holiday included in the memorandum issued annually by the GRIC Human Resources Department as established by the Community Council.
11. *Prosecutor* means an individual authorized to practice in the Community Court as designated by the Office of the Prosecutor, and who may or may not be an attorney.
12. *Sentence* means the pronouncement by the judge of the penalty imposed upon the defendant after a judgment of guilt.

II. PRELIMINARY PROCEEDINGS

RULE 2. COMMENCEMENT OF CRIMINAL PROCEEDINGS, CRIMINAL COMPLAINTS.

Rule 2.1. Commencement of Criminal Proceedings.

Criminal proceedings are commenced by the filing a criminal complaint with the court as set forth in Rule 2.2. Criminal proceedings include any hearings before the court during which a defendant is charged by a criminal complaint, filed with the court.

COMMENT:
GRIC Code §5.1501.

Rule 2.2. Criminal Complaints.

a. **Complaint Against an Arrested Person.** If a person is arrested without a warrant, a prosecutor shall file a complaint bearing a prosecutor's signature 72 hours, excluding

legal holidays and weekends, after initial appearance under Rule 4. If a complaint has not been filed within 72 hours, the person shall be released immediately.

b. **Contents of Criminal Complaints.**

1. The complaint shall be subject to the requirements in the GRIC Code § 5.1501.B.
2. A criminal complaint may allege more than one offense arising from a single event or criminal transaction, in which case each such offense alleged shall be listed as a separate count of the criminal complaint.
3. A criminal complaint shall designate within parentheses either “misdemeanor” or “felony” after the GRIC code citation, shall indicate whether the prosecutor seeks more than one year of incarceration per criminal proceeding, shall identify if a bail hearing is required, and shall identify any aggravating factors for purposes of GRIC Code § 5.407.A.
4. Technical errors in the complaint that do not deprive the defendant of fair notice of the offense(s) charged shall not be grounds for dismissal and the complaint may be amended for technical errors.

c. **Confidential Information.** Information shall be kept confidential as subject to the requirements in the GRIC Code § 5.1537.A. A copy of the redacted and the unredacted criminal complaint shall be provided to the court, and an unredacted criminal complaint provided to the defendant.

d. **Other Information Regarding the Defendant.** If known, the prosecutor shall inform the court of the defendant’s aliases or fictitious name(s); date and birth and social security number; the mailing address; the street address or reasonable description of the location of the residence, including, but not limited to, house color, name or roadway or subdivision, District number; GPS coordinates or other identifying information for location of the residence; physical description; tribal membership or affiliation.

e. **Amendment of Criminal Complaints.**

1. Upon motion, the judge shall permit the complaint to be amended for technical errors at any time before verdict if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

2. Amendments shall conform to the requirements in the GRIC Code §§ 5.1506.D and 5.1511.I.

3. The defendant's right to a speedy trial will be computed from the date of arraignment, less any time tolled under Rule 8, and shall not be recalculated by the filing of an amended complaint.

f. **Prosecution of Criminal Complaints.** Prosecutions shall be subject to the requirements in the GRIC Code § 5.1501.B.

g. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

COMMENT:

GRIC Code §§5.1501, 5.1504, 5.1506, 5.1511, 5.1537.

Rule 2.3. Joinder.

a. **Offenses.** Provided that each is stated in a separate count, two or more offenses - whether felonies or misdemeanors or both - may be joined in a complaint, if the offenses:

1. Are of similar character; or
2. Are based on the same act; or
3. Are a series of act that are part of a single scheme or plan.

b. **Defendants.** Two or more defendants may be joined when each defendant is charged with each offense included, or when the several offenses are part of a common conspiracy, scheme or plan or are otherwise so closely connected that it would be difficult to separate proof of one from proof of the others.

c. **Consolidation.** If the offenses or the defendants are charged in separate proceedings, they may be joined in whole or in part by the court or upon motion of either party, provided that the ends of justice will not be defeated by their joinder.

COMMENT:

GRIC Code §5.1503.

Rule 2.4. Severance.

a. **In General.** Whenever two or more offenses or two or more defendants have been joined for trial, and severance of any or all offenses, or of any or all defendants, or both, is necessary to promote a fair determination of the guilt or innocence of any defendant of any offense, the court may on its own initiative, and shall on motion of a party, order such severance.

b. **As of Right.** The defendant shall be entitled as of right to sever offenses joined only by virtue of Rule 2.3(a)(1), unless evidence of the other offense or offenses would be admissible under applicable rules of evidence if the offenses were tried separately.

c. **Timeliness and Waiver.** A defendant's motion to sever offenses or defendants must be made at least 20 days prior to trial and, if denied, renewed during trial at or before the close of the evidence. If a ground not previously known arises during trial, the defendant must move for severance at or before the close of the evidence. Severance is waived if a proper motion is not timely made and renewed.

d. **Jeopardy.** No motion by the prosecutor to sever offenses of defendants may be granted after trial has commenced unless the defendant consents. Severance of offenses during trial upon motion of the defendant or with the defendant's consent shall not bar a subsequent trial of that defendant on the offenses severed.

COMMENT:
GRIC Code §5.1503.

RULE 3 ARREST WARRANT OR SUMMONS UPON COMMENCEMENT OF CRIMINAL PROCEEDINGS.

Rule 3.1. Issuance of Arrest Warrant or Summons Upon Commencement of Criminal Proceedings.

a. **Presumption of Summons.** There shall be a presumption in favor of issuing a summons, unless a judge finds, upon motion of the prosecutor:

1. The defendant has no reliable address within the Community at which to receive a summons;
2. The defendant has confirmed active warrants in any jurisdiction;

3. The offense is related to escape from lawful custody or resistance to lawful arrest;
4. The defendant has other criminal matters pending at the time the offense was alleged to have occurred; or
5. The defendant has a history of failures to appear that indicate defendant is unlikely to respond to summons.

b. **Summons Procedure.** The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication. In addition, a summons may be served by first class mail or by certified or registered mail, return receipt requested. Return of the receipt shall be prima facie evidence of service.

c. **Arrest Warrant Procedure.** An arrest warrant may be issued by a judge when the judge reasonably believes that the warrant is necessary. A warrant for arrest does not expire. The warrant will be delivered to the defendant at the time of his arrest or no later than the initial appearance of the defendant. When an arresting officer is not in possession of the arrest warrant at the time of the arrest, the officer shall inform the defendant that such a warrant has been issued, that the officer is acting pursuant to the arrest warrant, and that a copy of the warrant will be delivered to the defendant no later than his initial appearance.

d. **Form of Arrest Warrant.** The form of an arrest warrant shall be subject to the requirements in the GRIC Code § 5.1605.A.1.

e. **Execution of Arrest Warrant.** The execution of arrest warrants shall be subject to the requirements in the GRIC Code § 5.1605.A.2.

COMMENT:

GRIC Code §§5.1501, 5.1605.

RULE 4. INITIAL APPEARANCE AND ARRAIGNMENT.

Rule 4.1. Initial Appearance Upon Arrest Without a Warrant.

The initial appearance shall be subject to the requirements in the GRIC Code §§ 5.1504 and 5.1605.B.

COMMENT:

GRIC Code §§5.1504, 5.1605.

Rule 4.2. Initial Appearance of an Arrested Person.

a. The initial appearance shall be subject to the requirements in the GRIC Code § 5.1504.

b. Any person detained, jailed or imprisoned without a formal complaint filed against him shall be brought before a judge for an initial hearing. The judge shall:

1. Determine the person's true name and address;
2. Instruct the person to notify the court promptly of any change of address;
3. Advise the person of the nature of the charge(s);
4. Inform the person of the right to remain silent;
5. Determine if probable cause exists for the purpose of release from custody;
6. Determine release conditions in accordance with this chapter;
7. Inform the person of the date and time for an arraignment hearing; and
8. If no complaint has been filed with the court against a person who has been arrested, and that person is brought before the court, and the court has probable cause to believe the person has committed an offense and that a complaint will be filed, the court may order the temporary detention of the person pending the filing of the complaint.
 - i. No detention under this subsection shall be for more than 72 hours after the initial hearing.
 - ii. If no criminal complaint has been filed within 72 hours after the initial hearing, or within the time frame ordered by the court, the person shall immediately be released.
 - iii. If the person has previously been convicted of a registerable sex offense pursuant to the Title 8, Chapter 8, entitled "Sex Offender Registration and Notification" and is not currently registered with the Gila River Police Department, the person must register prior to being released from

incarceration, but in any event incarceration for purposes of completing registration shall not exceed 24 hours.

c. A person who has not been arrested does not have a right to an initial appearance under this rule.

COMMENT:

GRIC Code §§5.1501, 5.1504.

Rule 4.3. Arraignment.

a. The purposes of the arraignment hearing are to advise the defendant of the charge(s) filed, accept a plea from the defendant to the charge(s), and set additional court dates as necessary.

b. **Judicial qualifications.** If the defendant is subject to more than one year of incarceration per criminal proceeding, then the defendant shall be arraigned before a judge that has sufficient legal training and is licensed to practice law by any jurisdiction in the United States.

c. **Arrested persons.** Within 72 hours after initial appearance under Rule 4, the defendant shall appear before a judge for arraignment. If a defendant is arrested without a warrant, a complaint meeting the requirements of Rule 2.2 must be filed prior to arraignment, or the defendant will be released pursuant to Rule 2.2.

d. **Summons for persons not arrested.** If a criminal complaint is filed and the defendant has not been arrested and appeared pursuant to Rule 4.2(a), the court shall send a summons to the defendant to appear within 30 days of the date the complaint is filed. If a defendant appears on a summons, the arraignment shall proceed on the defendant's first appearance before the court.

e. **Arraignment Procedure.**

1. The judge shall read the complaint to the defendant; however, this requirement may be waived as long as the defendant has been informed of the charges and the defendant waives the formal reading of the complaint on the record; and
2. The judge shall advise the defendant of the following:
 - (i) The right to remain silent;

- (ii) The right to a trial by jury, if provided for in the GRIC code;
 - (iii) The right to confront and cross-examine his/her accusers, to plead not guilty or no contest, and to call witnesses;
 - (iv) The right to counsel at the defendant's expense, except that a Community member charged with any offense or any indigent defendant charged with a felony offense shall be entitled to the assistance of a defense attorney at the expense of the Community;
 - (v) The right to be considered for release pending trial or if the defendant is released, any modification of release conditions;
 - (vi) The maximum sentence(s) that could be imposed if the defendant were to be found guilty or plead guilty to the charges; and
- 3. After the defendant is advised of the above rights, the defendant shall be asked to enter a plea to the charge(s). If the defendant refuses or is unable to enter a plea, the judge shall enter a plea of "not guilty" on behalf of the defendant.
 - 4. When a defendant has been charged with misdemeanor offense(s) that is not a non-bailable offense under GRIC Code § 5.1510, the judge shall set a pretrial date pursuant to Rule 14.
 - 5. When a defendant has been charged with a non-bailable offense the judge shall inform the defendant of the right to bail hearing and the procedures by which that right may be waived, and unless waived, set the time for a bail hearing pursuant to Rule 7.4 and shall order the defendant held in custody until the bail hearing.
 - 6. When a defendant has been charged with a felony offense or a felony offense and a non-bailable offense either as separate offenses or the same offense, the judge shall inform the defendant of the right to a preliminary hearing and the procedures by which the right may be waived, and unless waived, set the time for a preliminary hearing pursuant to Rule 5 and shall order the defendant held in custody until the preliminary hearing.
 - 7. A copy of the criminal complaint shall be given to the defendant or to defendant's counsel of record.

f. When the appearance of a defendant or counsel is required, the appearance may be made by use of an interactive audio visual system from the jail.

g. **Appointment of counsel.** If an arrested person is appointed counsel under Rule 6, the court shall direct the defendant to meet with his counsel within 72 hours after release.

h. **Issuance of bench warrants.**

1. A judge shall issue a bench warrant for a defendant who fails to appear for arraignment after he has been released pursuant to Rule 4.2.
2. A judge may issue a bench warrant for a defendant who was not arrested who fails to appear for arraignment pursuant to Rule 4.3(c) after first summons;
3. A judge shall issue a bench warrant for a defendant who fails to appear for arraignment pursuant to Rule 4.3(c) after second summons.

i. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

COMMENT:

GRIC Code §§5.104, 5.1501, 5.1504, 5.1507.

RULE 5. PRELIMINARY HEARINGS.

a. Preliminary hearings shall be subject to the requirements in the GRIC Code § 5.1511.

b. A preliminary hearing shall commence not later than 10 days following arraignment if the defendant is in custody and not later than 30 days following arraignment if the defendant is not in custody unless the complaint has been dismissed, or the hearing is waived, or the judge orders the hearing postponed.

1. If a preliminary hearing has not been commenced within 10 days the defendant shall be released from custody automatically unless he or she is charged with a non-bailable offense or unless the court has failed to schedule the hearing within 10 days.

2. Upon motion of any party, or on his own initiative the judge may postpone the hearing beyond the 30 day limit specified in Rule 5.b. upon finding that extraordinary circumstances exist and that delay is indispensable to the interests of justice, entering a written order detailing reasons for his findings and giving parties prompt notice.
- c. After arraignment where a complaint has been filed charging a defendant with the commission of a non-bailable offense under GRIC code Section 5.1510, Bail Hearings, and a felony offense, either as separate offenses or the same offense, the matter shall be scheduled for a combined Preliminary and Bail Hearing during which the judge shall first determine the matter under Preliminary Hearing, whether probable cause exists to hold the defendant for trial; and then shall make a determination under Rule 7.4 and GRIC code Section 5.1510, Bail Hearings.
- d. The finding of probable cause shall be based on evidence which may be hearsay in whole or part in any of the following forms:
 1. Written reports of expert witnesses;
 2. Documentary evidence without foundation, provided there is a substantial basis for believing such foundation will be available at trial and the document is otherwise admissible; or
 3. The testimony of a witness concerning the declarations of another or others where such evidence is cumulative or there is reasonable ground to believe that the declarants will be personally available for trial.
- e. Preliminary hearings shall be conducted before a judge that has sufficient legal training and is licensed to practice law by any jurisdiction in the United States.
- f. At the conclusion of the preliminary hearing, or if waived, the court shall set the matter for a pretrial hearing.
- g. An appeal may be filed as an extraordinary writ, or as otherwise provided, pursuant to Title 4: Courts and Procedure, Chapter 5: Court of Appeals and Appellate Procedure. A motion to appeal the probable cause determination shall allege specifically the ways in which such evidence was lacking, filed no later than 20 days after the completion of the preliminary hearing. Review of the evidence shall be limited to certified transcript of the proceedings, which shall be filed with the court of appeals within 20 days after receipt of request for the certified transcript. If the motion is granted, the case shall be returned to the judge with appropriate instructions.

h. Failure to satisfy any time frames provided in this Rule will not be grounds for dismissal if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

i. The effective date for this rule shall be May 1, 2014.

COMMENT:

GRIC Code §§5.1501, 5.1511.

III. RIGHTS OF PARTIES

RULE 6. ATTORNEYS, APPOINTMENT OF COUNSEL.

Rule 6.1. Right to Counsel; Waiver of Rights to Counsel.

The appointment and waiver of counsel shall be subject to the requirements in the GRIC Code § 5.1505.

COMMENT:

GRIC Code §§5.1501, 5.1505.

Rule 6.2. Appointment of Counsel.

a. As provided in Rule 6.1, the court shall appoint an attorney for a defendant where the defendant faces incarceration as a potential punishment upon finding of guilt for the charged offense.

b. Whenever counsel is appointed, the court shall enter an order to that effect, a copy of which shall be served on the defendant, the attorney appointed, and the Office of the Prosecutor within 24 hours of appointment.

c. A judge appointing an attorney for an indigent defendant shall first determine if the defendant is indigent.

1. A determination of indigency or continuing indigency of a non-Community member defendant subject to more than one year in jail may be made by a judge at any stage of the criminal proceedings.
2. A defendant claiming indigency shall file a sworn financial statement to determine eligibility for appointment of counsel. The statement shall advise the

defendant of the criminal penalties for making of a false sworn statement or false official statement. There is an obligation by defendant to disclose all sources of income, all assets, which the defendant owns or may derive financial benefit from, all sources of financial support and any information required to accurately assess the defendant's indigency.

3. Indigency means that a person:
 - i. Does not have sufficient income, assets, credit or other means to provide for the payment of legal counsel and all other necessary expenses of representation without depriving that person or the family of that person of food, shelter, clothing, and other necessities; or
 - ii. Has an income level at or below 150% of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services; and
 - iii. Has not transferred or otherwise disposed of any assets since the commission of the offense with the intent of establishing eligibility for the appointment of counsel under this section.
4. In making a determination of indigency the judge shall consider:
 - i. The probable expense and burden of defending the case;
 - ii. The gross income including total salary, wages, earnings from personal services or sales, and all other income; including income from sale of crafts, Bureau of Indian Affairs Individual Indian Monies accounts, Social Security benefits, union funds, veteran's benefits, support from absent family members, public or private employee pensions, dividends, interest payments, per capita payments, rents, estates, trusts, or gifts;
 - iii. Deductions from determinations from gross income for necessities shall be for the following expenses only: food, utilities, housing, child support by court order, child care expenses, medical expenses, nursing home expenses, reasonable transportation for employment or medical treatment. A judge may consider any unusual and necessary expense for the defendant or the defendant's family that would prevent the defendant from being able to pay for the cost of private counsel;

- iv. The value of assets, which may be converted into cash within a reasonable period of time without causing substantial hardship or jeopardizing the defendant's ability to maintain a home or employment. Those assets include, but are not limited to: cash on hand, checking or savings accounts, stocks, certificates of deposit, tax refunds, or accounts payable (i.e. reasonable expectancies of payment);
 - v. The ownership of, or any interest in, any tangible or intangible personal property or real property, or reasonable expectancy of any such interest;
 - vi. The amounts of debts owned by the defendant or that might reasonably be incurred by the defendant because of illness or other needs within the defendant's family;
 - vii. Number, ages, and relationships of any dependents; and
 - viii. Other relevant factors.
5. The court may assess monthly contributions for the cost of defense based upon gross income, including the income of a spouse or family members, where the spouse or family member is not the victim of the alleged offense.
6. The Probation or Pretrial Services program may verify any information provided by the defendant from any source, and may require the defendant to provide any documents to verify information provided.
- i. Proof of income, assets or expenses includes, but is not limited to: bank statements, statements from employers, tax returns or income reporting forms, statements or receipts for medical expenses, nursing home expenses, child support payments, rent or mortgage receipts or statements, trader pawn slips, records of monies receivable, or documents which show the receipt and amounts for unemployment, welfare or other social security benefits.
 - ii. The defendant may be required to execute necessary releases, Privacy Act authorizations or other documents required to verify information.
 - iii. A judge may enter orders for the production of information regarding eligibility.

7. After making a finding of indigency, the judge shall enter the findings on the record and enter an order assigning counsel.
 8. Whenever counsel is appointed, the court shall enter an order to that effect, a copy of which shall be given or sent to the defendant, the attorney appointed, and the Office of the Prosecutor within 24 hours of appointment.
 9. Any person who intentionally or knowingly makes a material false statement or omits a material fact in a sworn financial statement for indigency is guilty of the offense of fraudulent schemes and practices against the Community in violation of Section 5.1108, Fraudulent Schemes and Practices Against the Community. No defendant who is charged with providing false, misleading or incomplete information may claim a denial of the right against self-incrimination following any charge or penalty for such conduct.
- d. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

COMMENT:
GRIC Code §5.1505.

Rule 6.3. Duties of Attorneys and Advocates.

The duties of attorneys and advocates shall be subject to the requirements in the GRIC Code § 5.1533.

COMMENT:
GRIC Code §5.1533.

RULE 7. RELEASE

Rule 7.1. Right to Release Pending Trial.

- a. The determination of release and bail shall be subject to the requirements in the GRIC Code § 5.1509.
- b. If requested by a judge, pretrial services program officers shall submit a report to the court regarding their investigation and findings, which shall be in writing and signed by an authorized representative of the pretrial services program, with copies of the report

simultaneously provided to the defendant, any defense counsel or advocate of record, and the Office of the Prosecutor.

1. The report shall include all factual findings on which any recommendation and conclusion is based together with the source of each fact, and shall contain information and data relevant to the need for financial security to assure the defendant's appearance for later court proceedings and appropriate conditions imposed to protect against the risk of nonappearance and commission of a new offense or other interference with the orderly administration of justice before trial.
2. The report shall in appropriate cases include specific recommendations for setting, increasing, or decreasing bail; the release of the defendant on his own recognizance; and the imposition of pretrial conditions to minimize the risks of nonappearance, the commission of new offenses while awaiting trial, and other potential interference with the orderly administration of justice. The pretrial services program may utilize point scales for evaluating risks.
3. The factual findings, conclusions, and recommendations in the report may be challenged by the defendant, defense counsel, or the prosecutor by presentation of any relevant evidence.

c. The presumptive bail is separate for felony and misdemeanor offenses and is further defined by the category of offense; the offense categories are found in GRIC Code Title 5, Chapter 4, Section 5.407.H and I. The presumptive bail is as follows:

- | | | |
|----|--------------------|------------------|
| 1. | Felony | (\$0 - \$45,000) |
| | (i) Category I | \$11,200 |
| | (ii) Category II | \$2,800 |
| | (iii) Category III | \$700 |
| 2. | Misdemeanor | |
| | (i) Category I | \$3,700 |
| | (ii) Category II | \$900 |
| | (iii) Category III | \$200 |

e. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

COMMENT:
GRIC Code §5.1509.

Rule 7.2. Review of Conditions; Revocation of Release.

a. The review of release conditions and revocation of release shall be subject to the requirements in the GRIC Code § 5.1509.

b. The court shall set the matter for hearing within 30 days after a motion to revoke pretrial release is filed, and the clerk of court shall notify the parties within five days after setting the hearing.

COMMENT:
GRIC Code §5.1509.

Rule 7.3. Forfeiture of Bond.

a. The forfeiture of bond shall be subject to the requirements in the GRIC Code § 5.1509.

b. The judge shall set the matter for a hearing within 30 days of a motion to forfeit bond or upon judges own motion, requiring the defendant and the person posting bond to show cause as to why the bond should not be forfeited. The clerk of court shall notify the defendant, the person posting the bond, and the Office of the Prosecutor within five days of setting the hearing.

c. An order forfeiting all or part of the amount of bond shall be issued and provided to all parties within 10 days after the hearing.

COMMENT:
GRIC Code §5.1509.

Rule 7.4. Bail Hearings for Non-Bailable Offenses.

a. Bail hearings shall be subject to the requirements in the GRIC Code § 5.1510.

b. The court shall convene a bail hearing for non-bailable offenses within 10 days of the arraignment to determine whether bail should be granted to the person.

1. If a bail hearing has not commenced within 10 days of arraignment hearing, the defendant shall be released from custody automatically, unless the judge postpones the hearing or the court fails to schedule the hearing within 10 days.

2. Upon motion of any party or upon his or her own initiative a judge may postpone the hearing beyond the 10 days upon finding that extraordinary circumstances exist and that delay is indispensable to the interests of justice, entering a written order detailing the reasons, and giving the parties prompt notice.

COMMENT:

GRIC Code §5.1510.

RULE 8. SPEEDY TRIAL

Rule 8.1. Speedy Trial Rights.

- a. Speedy trial shall be subject to the requirements in the GRIC Code § 5.104.
- b. The trial by defendants in custody shall be given scheduling preference over other criminal cases.
- c. The prosecutor shall inform the court of facts relevant to determining the scheduling of cases.
- d. The defendant's counsel shall advise the court of the impending expiration of time limits in the defendant's case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 8.4.
- e. The time limits may be extended by any delays resulting from continuances under Rule 8.2 granted by a judge at the request of a party to serve the interest of justice and the judge shall state the specific reasons for the continuance and the excluded period of time.

COMMENT:

GRIC Code §5.104.

Rule 8.2. Excluded Periods and Continuances.

Exclusions from speedy trial shall be subject to the requirements in the GRIC Code § 5.104.

COMMENT:

GRIC Code §5.104.

Rule 8.3. Continuances.

a. Either party may move the court to find the ends of justice are served by taking delay and the delay outweighs the best interest of the public and the defendant in speedy trial.

b. The court shall within 30 days of receipt of the motion hold a hearing and make findings of fact.

c. The factors, among others, which a judge shall consider in determining whether to grant a continuance in any case are as follows:

1. Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.
2. Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.
3. Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Community continuity of counsel, or would deny counsel for the defendant or the prosecutor for the Community the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d. In ruling on a motion for continuance the judge shall consider the rights of the defendant and the victim to a speedy disposition of the case.

e. If a continuance is granted, the judge shall state the reasons for the continuance and reset the trial date for a time certain.

COMMENT:

GRIC Code §§5.104, 5.1701.

Rule 8.4. Remedy for Denial of Speedy Trial Rights.

If a judge determines after considering the exclusions under Rule 8.2 that the time limit under Rule 8.1 has been violated, the judge shall on motion of the defendant, or on its own initiative, dismiss the prosecution with or without prejudice. All parties shall notify the court of any speedy trial time violations under Rule 8.

COMMENT:
GRIC Code §5.104.

RULE 9. PRESENCE OF DEFENDANT.

Rule 9.1. Defendant's Right to be Present; Defendant's Waiver of Presence.

a. The defendant's right and waiver to be present at trial shall be subject to the requirements in the GRIC Code § 5.1521.F.

b. A defendant who voluntarily engages in disruptive or disorderly conduct after having been warned by a judge that the continued disruptive or disorderly conduct will result in forfeiture of his right to be present for the criminal proceeding, shall forfeit his right to be present at the criminal proceeding.

1. A defendant may reacquire his right to be present for the proceeding if the defendant gives personal assurance to the judge of his intended good behavior.
2. A defendant may be excluded from the criminal proceeding without any additional warnings if the defendant engages in further disruptive or disorderly conduct.
3. If the defendant has been removed under this rule, the judge shall use reasonable means to enable the defendant to hear, observe or be informed of the criminal proceedings and give the defendant reasonable opportunity to consult with defendant's counsel at reasonable intervals.
4. In addition to sanctions imposed for disruptive or disorderly conduct by the defendant, the judge may impose sanctions under Rule 32.1.

COMMENT:
GRIC §5.1521.

Rule 9.2. Defendant Serving Sentence in Other Jurisdiction.

a. If a defendant is serving a sentence of imprisonment in another jurisdiction and the defendant has a charge(s) pending in the Community Court, the defendant may request by written affidavit to the court and prosecutor to plead guilty to the Community offense(s) and to have his sentence that he is serving in another jurisdiction be credited towards any sentenced imposed in his Community charge(s).

b. The court may appoint advisory counsel for the defendant.

c. Under this rule, a defendant, any advisory counsel, and the prosecutor may reach an agreement on the charge(s) and the sentence for the judge's consideration.

d. A defendant who makes this request agrees to give up his right to be present for the guilty plea and sentence hearing.

e. The judge may accept the agreement reached by the defendant, any advisory counsel, and prosecutor and make a determination of guilt and impose a sentence without the defendant being personally present.

f. The clerk of court shall forward a copy of the determination of guilt and sentence to the defendant.

g. This rule does not give the defendant the right to resolve the case.

COMMENT:

GRIC Code §§5.413, 5.1521.

RULE 10. CHANGE OF JUDGE.

Rule 10.1. Change of Judge.

a. **Change of Judge for Cause.** Any party may file a motion verified by affidavit of the moving party alleging the specific grounds for change of judge.

1. The grounds which may be alleged for change of judge shall be subject to the requirements in the GRIC Code § 5.1514.A.

2. Within 10 days after discovery that grounds exist for change of judge, but not after commencement of trial, any party may file a motion verified by affidavit of the moving party alleging the specific ground for change of judge.
3. Except for commencement of trial, no event occurring before discovery of the grounds shall constitute a waiver of rights to change of judge for cause.
4. Allegations of interest or prejudice which prevent a fair and impartial hearing may be preserved for appeal.
5. The court shall set the matter for hearing, which shall be held within 10 days after filing of the motion for change of judge.
6. The Chief Judge shall assign the matter to a judge ('hearing judge') other than the challenged judge, who shall hear the motion for change of judge and decide the issues by preponderance of the evidence. The hearing judge shall provide his findings to the Chief Judge within five days of the hearing. The Chief Judge will either assign the case back to the original judge if the hearing judge finds by preponderance of the evidence that no grounds exists for change of judge, or will make a new assignment if the hearing judge finds by preponderance of the evidence that grounds exists for change of judge for cause.

b. **Change of Judge upon Request.** Each side in a criminal case is entitled as a matter of right to a change of judge. Each case, whether single or consolidated, shall be treated as having only two sides; except that when two or more parties on a side have adverse or hostile interests, the Chief Judge may allow additional changes of judge as a matter of right. The right to a change of judge for entitlement does not apply to petitions for post-conviction relief or remands for sentencing.

1. A party may exercise his right to change of judge for entitlement by filing a pleading with the court entitled "Notice of Change of Judge", signed by counsel or advocate, if any, stating the name of the judge to be changed. The Notice of Change of Judge shall include an avowal that the request is made in good faith and not: for the purpose of delay; to obtain a severance; to interfere with the reasonable case management practices of a judge; to remove a judge for reasons of race, gender, or religious affiliations; for purposes of using the rule against a particular judge in a blank fashion by the prosecutors or defense attorney or advocate; to obtain

advantage or avoid disadvantage in connection with a plea bargain or at sentencing, except as allowed under Rule 17.

2. A Notice of Change of Judge shall be filed within 10 days after arraignment. If the party fails to file the notice within 10 days after arraignment or participates in any contested matter in the case before the challenged judge the party loses the right to change of judge under entitlement. The Chief Judge shall reassign the case to a new judge within five days after filing of a Notice of Change of Judge, and the clerk shall provide written notice of the reassignment which names the new judge to the parties within five days of the reassignment.

c. When a motion or request for change of judge is timely filed under this rule, the challenged judge shall proceed no further in the action, except to make such temporary orders as may be necessary in the interests of justice before the motion or request of change of judge is decided.

COMMENT:
GRIC Code §5.1514.

Rule 10.2. Unavailability of Judge.

The unavailability of a judge shall be subject to the requirements in the GRIC Code § 5.1521.G.

COMMENT:
GRIC Code §5.1521.

RULE 11. COMPETENCY TO STAND TRIAL.

Rule 11.1. Determination of Mental Competency to Stand Trial.

- a. Motion to Determine Competency of a Defendant.
 1. The defendant, the defendant's attorney or advocate, or a prosecutor for the Community may file a motion to determine the competency of the defendant any time after:
 - i. Commencement of prosecution for an offense and prior to sentencing, or
 - ii. At any time after the commencement of probation and prior to the completion of the sentence.

2. If there is reasonable ground to believe the defendant may presently be suffering from a mental illness, mental or psychiatric disorder, disease or disability rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist in his defense, the judge may grant the motion to determine competency.
- b. Psychiatric or Psychological Examination and Report.
 1. When granting a motion to determine competency the judge may concurrently order a psychiatric or psychological examination of the defendant.
 2. The psychiatric or psychological examination shall be conducted by a licensed psychiatrist or psychologist. The moving party may include in his or her motion to determine competency names of recommended licensed psychiatrists or psychologists, and the other party may include names of recommended licensed psychiatrists or psychologists in their response to the motion to determine competency.
 3. The judge shall appoint one licensed psychiatrist or psychologist from the recommendations submitted by both parties to examine the defendant.
 4. The judge shall order the examination of the defendant be completed within 30 calendar days after appointment, with a report to be filed with the court within 10 business days after the examination. If the appointed psychiatrist or psychologist is unable to conduct the examination within the allotted time, the psychiatrist or psychologist shall immediately inform the court through the prosecutor or defense attorney or advocate, the court shall appoint another licensed psychiatrist or psychologist from the recommendations submitted by both parties, and the court may extend the period for conducting the examination by a reasonable amount of time not to exceed 30 days after the new appointment is made.
 5. The judge may commit the person to a psychiatric facility to be examined for a reasonable period, not to exceed 30 calendar days. The prosecutor or defense attorney or advocate, at the request of the director of the psychiatric facility, may apply for a reasonable extension, but not to exceed an additional 30 calendar days, upon a showing that the additional time is necessary to observe and evaluate the defendant.
 6. A psychiatric or psychological report shall be prepared by the appointed licensed psychiatrist or psychologist and shall be filed with the court with copies provided

to counsel for defendant and to the prosecutor for the Community. The report shall include:

- i. The defendant's history and present symptoms;
 - ii. A description of the psychiatric, psychological and/or medical test that was employed and the results;
 - iii. The psychiatrist's or psychologist's findings; and
 - iv. The psychiatrist's or psychologist's opinions as to diagnosis, prognosis, and whether the defendant is presently suffering from a mental illness, mental or psychiatric disorder, defect or disability rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.
- c. Hearing, Determination and Disposition.
1. Unless the parties stipulate, subject to court approval, to a disposition based upon the results of the examination, the judge shall hold a hearing on the motion to determine competency.
 2. The defendant whose mental competency is subject of the hearing shall be represented by counsel and shall be afforded the opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.
 3. If, after the hearing, the judge finds by a preponderance of the evidence that the defendant is presently suffering from a mental illness, mental or psychiatric disorder, defect or disability rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the judge may commit him to an appropriate psychiatric facility in accordance with Rule 11.2.
 4. Inadmissibility of a Defendant's Statements. No statement made by a defendant in the course of any examination conducted under this chapter (whether conducted with or without the defendant's consent), no testimony by an expert based on the statement, and no other fruits of the statement may be admitted into evidence against the defendant in any criminal proceedings except on an issue

regarding mental condition on which the defendant has introduced evidence of incompetency or insanity.

5. Admissibility of Competency Finding. A finding by a judge that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of insanity as a defense to the offense charged, and shall not be admissible as evidence in trial for the offense charged.

d. Failure to satisfy any time frames provided in this Rule will not be grounds for dismissal of the criminal complaint if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

- e. The effective date for this rule shall be May 1, 2014.

COMMENT:
GRIC Code §5.209.

Rule 11.2. Hospitalization of Persons Suffering from Mental Illness, Mental or Psychiatric Disorder, Disease or Disability.

a. A defendant found pursuant to Rule 11.1, to be presently suffering from a mental illness, mental or psychiatric disorder, defect or disability rendering him mentally incompetent to the extent he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense may be committed to a psychiatric facility:

1. For such reasonable period of time, not to exceed four months, as is necessary to determine whether there is substantial probability that in the foreseeable future he will attain capacity to permit the proceedings to go forward; and
2. Upon application of the prosecutor and upon a showing of good cause, for a reasonable time period not to exceed an additional four months until his mental condition is so improved that trial may proceed, if the judge finds that there is substantial probability that with such additional time he will attain capacity to permit the proceedings to go forward; or
3. Until the pending charges against him are disposed of according to law, whichever is earlier.

b. When a psychologist or psychiatrist at the psychiatric facility determines that the defendant has recovered to such an extent that he is able to understand the nature and

consequences of the proceedings against him and to assist properly in his defense, the psychologist or psychiatrist shall file a certificate to that effect with the clerk of court. The court shall then hold a hearing to determine the competency of the defendant.

c. If, after hearing, the judge finds by a preponderance of the evidence the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his discharge from the psychiatric facility and shall set the date for trial or other proceedings. The defendant shall either return to the jail pursuant to bond or other conditions or shall be released from custody pending trial.

d. If the judge finds that a defendant is incompetent to stand trial and there is no substantial probability that the defendant will regain competency within 18 months after the date of the original finding of incompetency, the judge:

1. Shall dismiss the charges without prejudice; and
2. Shall either immediately release the defendant or issue an order to temporarily hold the defendant not to exceed 72 hours and refer the defendant pursuant to Title 17, Chapter 5 of the GRIC code to Adult Protective Services for possible guardianship proceedings. Once the matter has been referred by the court, Adult Protective Services must either initiate proceedings pursuant to Title 17, Chapter 5, or provide written justification to the court explaining why guardianship will not be pursued; and
3. May proceed pursuant to Title 17, Chapter 4 of the GRIC code, entitled "Mental Health," if the defendant is alleged to be a danger to self, danger to others, or persistently or acutely disabled. If the Court does not proceed pursuant to Title 17, Chapter 4, the defendant must be released from custody immediately.

f. Failure to satisfy any time frames provided in this Rule will not be grounds for dismissal of the criminal complaint if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

g. The effective date for this rule shall be May 1, 2014.

COMMENT:
GRIC Code §5.209.

Rule 11.3. Determination of the Existence of Insanity at the Time of the Offense.

a. The defendant shall file notice that he intends to rely on the defense of insanity within the time provided under Rule 15.3, with simultaneous copy to the Community prosecutor. Upon the defendant's filing of the intent to rely on the defense of insanity and a showing by clear and convincing evidence of insanity at the time of the offense, the court, upon motion from the Community prosecutor, may order a psychiatric or psychological examination of the defendant be conducted by a licensed psychiatrist or psychologist, and shall order the psychiatric or psychological report be filed with the court.

b. The psychiatric or psychological examination to determine insanity at the time of the offense shall include:

1. The defendant's history and present symptoms; and
2. A description of the psychiatric, psychological, and/or medical tests that were employed and their results; and
3. The psychiatrist's or psychologist's findings; and/or
4. The psychiatrist's or psychologist's opinions as to diagnosis, prognosis, and whether the defendant was insane at the time of the offense charged.

c. The judge may exclude any expert evidence from the defendant on the issue of the defendant's mental illness, mental or psychiatric disorder, disease or disability or any other mental condition bearing on the defendant's guilt if the defendant fails to give proper notice, submit to an examination, or disclose the results and reports of any examination on mental condition by the defendant's expert about which the defendant intends to introduce expert evidence.

d. The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

e. Special Verdict. The jury shall be instructed to find, or in the event of a non-jury trial, the judge shall find the defendant:

1. Guilty;
2. Not guilty; or
3. Not guilty only by reason of insanity.

- f. The effective date for this rule shall be May 1, 2014.

COMMENT:

GRIC Code §5.209.

Rule 11.4. Hospitalization of a Person Found Not Guilty by Reason of Insanity.

a. If a defendant is found not guilty only by reason of insanity at the time of the offense charged, the judge shall determine the maximum sentence the defendant could have received if found guilty under Rule 11.3. The defendant may be committed to a suitable psychiatric facility until such time as he is eligible for release as provided in this section, but in no event shall a defendant be committed under this section to an amount of time longer than the maximum sentence the defendant could have received if found guilty under Rule 11.3.

b. A hearing to determine the release of a defendant found not guilty only by reason of insanity shall be conducted within 30 calendar days following the special verdict.

c. Any defendant found not guilty only by reason of insanity of an offense involving bodily injury to another, or serious damage to the property of another, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage to the property of another due to a present mental illness, mental or psychiatric disorder, disease or disability. With respect to any other offense, the defendant has a burden of such proof by a preponderance of the evidence.

d. If, after a hearing, the defendant fails to establish by the specified standard of proof, that the defendant's release would not create a substantial risk of bodily injury to another person or serious damage to the property of another due to a present mental illness, mental or psychiatric disorder, disease or disability, the judge shall commit the person to an appropriate psychiatric facility.

e. When a physician, psychologist or psychiatrist at the psychiatric facility determines that the defendant has recovered from his mental illness, mental or psychiatric disorder, disease or disability to the extent that his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another the physician, psychologist or psychiatrist shall file a certificate to that effect with the clerk of court. The court shall hold a hearing within 10 business days from the date the certificate is filed to determine whether the person should be released.

f. The judge may conditionally release a person under a prescribed regimen of medical, psychiatric or psychological care or treatment for a time frame not to exceed the maximum sentence determined by the judge under Rule 11.4. The judge at any time may, after a hearing, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

g. Failure to satisfy any time frames provided in this Rule will not be grounds for dismissal of the criminal complaint if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

h. The effective date for this rule shall be May 1, 2014.

COMMENT:
GRIC Code §5.209.

Rule 11.5. Competency and Insanity Records.

The reports of the experts filed pursuant to this Rule shall be treated as confidential by the court. After the case proceeds to trial or the defendant is found unable to regain competency the court shall order the reports sealed.

COMMENT:
GRIC Code §5.209.

IV. PRETRIAL PROCEDURES

RULE 12. NOTICE OF ALIBI AND INSANITY DEFENSES.

a. **Notice of an Alibi Defense.** If the defendant intends to raise the defense of alibi, the defendant must serve written notice to the Office of the Prosecutor of any intended alibi defense within 20 days after arraignment and in any event no later than 10 days prior to pretrial hearing. The defendant's notice must state: (1) each specific place where the defendant claims to have been at the time of the alleged offense; and (2) the name/aliases, if available, address and telephone number of each alibi witness on whom the defendant intends to rely.

1. If the defendant serves the Office of the Prosecutor with a notice of an alibi defense the prosecutor must disclose in writing to the defendant or the defendant's counsel or advocate 15 days after receiving defendant's notice the name, address and telephone number of each witness the prosecutor intends to rely on to establish the defendant's presence at the scene of the alleged offense and each prosecutor's rebuttal witness to the defendant's alibi defense.
2. Both prosecutor and defendant must disclose in writing to the other party the name, address and telephone number of each additional witness if the disclosing party learns of the witness before or during trial and the witness should have been disclosed under Rule 15 if the disclosing party had known of the witness earlier.
3. If a party fails to comply with this rule the judge may exclude the testimony of any undisclosed witness regarding the defendant's alibi. This rule does not limit the defendant's right to testify.
4. Evidence of an intention to rely on an alibi defense, later withdrawn, or if the statement made in connection with that intention, is not, in any civil or criminal proceeding, admissible against the person who gave notice of the intention.

b. **Notice of an Insanity Defense.**

1. The notice of an insanity defense shall be subject to the requirements in the GRIC Code § 5.212.B.

2. The defendant shall file notice that he intends to rely on the defense of insanity within 40 days after arraignment or within 10 days after prosecutor's disclosure, whichever occurs first, with simultaneous copy to the Community prosecutor.

COMMENT:

GRIC Code §§5.212, 5.1520.

RULE 13. SETTLEMENT CONFERENCE.

a. At the request of either party, or sua sponte, the court may, in its sole discretion, participate in settlement discussions by directing counsel having the authority to settle to participate in a good faith discussion with the court regarding a non-trial or non-jury trial resolution which conforms to the interests of justice.

b. Before such discussions take place, the prosecutor shall afford the victim an opportunity to confer with the prosecutor concerning a non-trial or non-jury trial resolution, if they have not already conferred, and shall inform the court and counsel of any statement of position by the victim.

c. If the defendant is to be present at any such settlement discussions, the victim shall also be afforded the opportunity to be present and to state his position with respect to a non-trial or non-jury trial settlement.

d. The trial judge shall only participate in settlement discussions with the consent of both parties. In all other cases, the discussions shall be before another judge. If settlement discussions do not result in an agreement, the case shall be returned to the trial judge.

COMMENT:

GRIC Code §5.1506.

RULE 14. PRETRIAL HEARING.

a. A pretrial hearing shall be scheduled within 40 to 60 days after arraignment, bail hearing or preliminary hearing; whichever hearing occurs last.

b. Pretrial hearings shall be subject to the requirements in the GRIC Code § 5.1512.

COMMENT:

GRIC Code §5.1512.

RULE 15. DISCOVERY.

Rule 15.1. General Standards Governing Discovery.

a. **Materials not subject to Disclosure.** Materials not subject to disclosure shall be subject to the requirements in the GRIC Code § 5.1518.C.

b. **Failure to Call a Witness or Raise a Defense.** Failure to call a witness or raise a defense shall be subject to the requirements in the GRIC Code § 5.1518.C.

c. **Use of Materials.** Any materials furnished to counsel pursuant to this rule shall not be disclosed to the public, but only to others to the extent necessary for the proper conduct of the case.

COMMENT:

GRIC Code §5.1518.

Rule 15.2. Discovery by Prosecutor.

a. **Initial Disclosure.** Four business days prior to preliminary hearing or a bail hearing, or 10 business days prior to a pretrial hearing, whichever occurs first, the prosecutor shall make available to the defendant all reports containing items listed in Rule 15.2(b)(3) and (8) that were in the possession of the prosecutor filing the charge at the time of the filing.

b. **Supplemental Disclosure.** Except as provided in the GRIC Code Chapter 17, Victim's Rights, the prosecutor shall make available to the defendant the following materials and information within the prosecutor's possession or control within 30 days after arraignment:

1. The names and physical addresses, if known, of all persons whom the prosecutor will call as witnesses in the case-in-chief together with relevant written or recorded statements of those witnesses;
2. All statements of the defendant and of any person who will be tried with the defendant;
3. The names and addresses of experts who have personally examined a defendant or any evidence in the particular case, together with the results

of physical examinations and of scientific tests, experiments or comparisons, including all written reports or statements made by them in connection with the particular case;

4. A list of all papers, documents, photographs or tangible objects which the prosecutor will use for trial or which were obtained from or purportedly belong to the defendant;
5. A list of all prior convictions of the defendant which the prosecutor will use at trial or at sentencing;
6. A list of all prior acts of the defendant which the prosecutor will use to prove motive, intent, or knowledge or otherwise use at trial;
7. All then existing material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefore, including all convictions that go to the credibility of the witness(es) whom the prosecutor expects to call at trial;
8. All then existing original reports, supplemental reports, search warrant affidavits and return, and probable cause statements prepared by law enforcement officers in connection with the charged offense.
9. Any aggravating factor the prosecutor intends to prove for an aggravated sentence, including any materials and information as described in 15.2.b.1-8.

c. **Possible Collateral Issues.** At the same time the prosecutor shall inform the defendant and make available to the defendant for examination and reproduction any written or recorded material or information within the prosecutor's possession or control regarding:

1. Whether there has been any electronic surveillance of any conversations to which the accused was a party, or the accused's business or residence.
2. Whether or not the case involved an informant, and, if so, the informant's identity, if the defendant is entitled to know either or both of these facts under Rule 15.1(a).

d. **Prior Felony Convictions.**

1. Cases that include only misdemeanor charges: at least 10 days prior to trial, the prosecutor shall make available to the defendant a list of prior felony convictions of witnesses whom the prosecutor intends to call at trial and a list of prior felony convictions that the prosecutor intends to use to impeach a disclosed defense witness at trial.
2. Cases that include felony charges: at least 10 days prior to trial, or 30 days after request from the defendant, whichever occurs first, the prosecutor shall make available to the defendant a list of the prior felony convictions of witnesses whom the prosecutor intends to call at trial and a list of the prior felony convictions that the prosecutor intends to use to impeach a disclosed witness at trial.

e. **Additional Disclosure upon Request and Specification.** The prosecutor, upon written request, shall disclose to the defendant a list of the prior convictions of a specified defense witness which the prosecutor will use to impeach the witness at trial, and make available to the defendant for examination, testing and reproduction any specified items contained in the list submitted under Rule 15.2(b)(4). The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under this section.

f. **Extent of Prosecutor's Duty to Obtain Information.** The prosecutor's obligation under this rule extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case and who are under the prosecutor's control.

g. **Disclosure by Order of the Court.** Upon motion of the defendant showing that the defendant has substantial need in preparation of the defendant's case or material or information not otherwise covered by this rule, and that the defendant is unable without undue hardship to obtain the substantial equivalent by other means, a judge in the judge's discretion may order any person to make it available to the defendant. The judge may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

h. **Disclosure of Rebuttal Evidence.** Upon receipt of the notice of defenses required from the defendant under Rule 15.3(b) the prosecutor shall disclose the names and addresses of all persons whom the prosecutor will call as rebuttal witness together with their relevant written or recorded statements.

i. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

COMMENT:

GRIC Code §§5.1512, 5.1518.

Rule 15.3. Discovery by Defendant.

a. **Physical Evidence.** Discovery request of the defendant regarding physical evidence shall be subject to the requirements in the GRIC Code § 5.1520.A.

b. **Disclosures by Defendant.** Within 40 days after arraignment or within 10 days after the prosecutor's disclosure under Rule 15.2(b), whichever occurs first, the defendant shall serve the prosecutor information and copies of the following:

1. The names and physical addresses, if known, of all persons, other than that of the defendant, whom he or she will call as witnesses at trial, together with all statements made by them in connection with the particular case;
2. The names and addresses of experts whom the defendant will call at trial, together with the results of the defendant's physical examination and of scientific tests, experiments or comparisons, including all written reports and statements, made by them in connection with the particular case;
3. A list of all papers, documents, photographs and other tangible objects which the defendant will use at trial.
4. Any mitigating factors the defendant intends to use for a mitigated sentence, including any materials or information as described in Rule 15.3.b.1-3.

c. **General Notice of Defenses.**

1. Simultaneous with disclosures under Rule 15.3(b), or at such other times as a judge may direct, the defendant shall provide the prosecutor with a written notice specifying all defenses as to which the defendant will introduce at trial (notwithstanding disclosure required under Rule 12 Notice of Alibi and Insanity Defenses) justification for use of force, duress, entrapment, impotency, marriage, insufficiency of prior conviction, mistaken identity, and good character. The notice shall specify for each defense the persons, including the defendant, whom the

defendant will call as witnesses at trial in support thereof. It may be signed by either the defendant or defendant's counsel, and shall be filed with the court.

d. **Additional Disclosure Upon Request and Specification.** The defendant, upon written request, shall make available to the prosecutor for examination, testing, and reproduction any specified items contained in the list submitted under rule 15.3(c)(3).

e. **Extent of Defendant's Duty to Obtain Information.** The defendant's obligation under this rule extends to material and information within the possession or control of the defendant, his or her counsel, staff, investigators, and agents.

f. **Disclosure by Order of the Court.** Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of his case for material or information not otherwise covered by this rule, that the prosecutor is unable without undue hardship to obtain the substantial equivalent by other means, and that disclosure thereof will not violate the defendant's rights, a judge in the judge's discretion may order any person to make such material or information available to the prosecutor. The judge may, upon request by any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive.

COMMENT:

GRIC Code §§1512, 5.1520.

Rule 15.4. Depositions.

- a. Depositions shall be subject to the requirements in the GRIC Code § 5.1519.
- b. This rule does not apply to informal interviews conducted by either party.

COMMENT:

GRIC Code §5.1519.

Rule 15.5. Excision and Protective Orders.

a. **Discretion of the Court to Deny, Defer or Regulate Disclosure.** Upon motion of any party showing good cause, a judge may at any time order that disclosure of the identity of any witness be deferred for any reasonable period of time not to extend beyond five days prior to the date set for trial, or that any other disclosures required by this rule be denied, deferred or regulated when it finds:

1. That the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and
2. That the risk cannot be eliminated by a less substantial restriction of discovery rights.

b. **Discretion of the Court to Authorize Excision.** Whenever the court finds, on motion of any party, that only a portion of a document, material or other information is subject to disclosure under these rules, it may authorize the party disclosing it to excise that portion of the material that is not subject to disclosure and to disclose the remainder.

c. **Protective and Excision Order Proceedings.** On motion of the party seeking a protective or excision order, or submitting to the court for a determination as to whether any document, material or other information is subject to disclosure, the judge may permit the party to present the material or information for the inspection of the judge alone. Counsel for all other parties shall be entitled to be present when such presentation is made.

d. **Preservation of Record.** If a judge enters an order that any material, or any portion thereof, is not subject to disclosure under this rule, the entire text of the material shall be sealed and preserved in the record to be made available to the appellate court in the event of an appeal.

COMMENT:
GRIC Code §5.1518.

Rule 15.6. Continuing Duty to Disclose.

The continuing duty to disclose shall be subject to the requirements in the GRIC Code § 5.1518.E; however, each party shall continue to disclose materials subject to disclosure in Rules 15.2 and 15.3 as it becomes available and exercise due diligence in obtaining and disclosing materials that are subject to disclosure in Rules 15.2 and 15.3.

COMMENT:
GRIC Code §5.1518.

Rule 15.7. Sanctions.

a. If at any time during the course of proceeding it is brought to the attention of a judge that a party has failed to comply with any provisions of this rule or any other issued pursuant hereto, the judge may impose any sanction it finds just under the circumstances, including but not limited to:

1. Ordering disclosure of the information not previously disclosed;
2. Granting a continuance;
3. Holding a witness, party, or counsel in contempt;
4. Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed;
5. Declaring a mistrial when necessary to prevent a miscarriage of justice; or
6. Dismissal of a case with or without prejudice.

b. The severity of the sanction imposed should be proportional to the severity of the violation and only in rare circumstances should a case be dismissed for a discovery violation. Likewise, only in rare circumstances should a defendant be precluded from presenting a defense for a discovery violation. In determining the appropriate sanction, the judge should consider whether the violator acted in good faith or bad faith and whether the sanction(s) would promote the interests of justice.

COMMENT:

GRIC Code §5.1518.

RULE 16. PRETRIAL MOTION PRACTICE.

Rule 16.1. Pretrial Motions.

a. All pretrial motions shall be subject to the requirements in the GRIC Code § 5.1513.

b. All pretrial motions shall be filed at least 20 days prior to trial or at such other time as the judge may direct, with a conformed copy simultaneously served on the opposing party. The opposing party shall have 10 days after service of motion to file a response, or at such other time as the judge may direct, with a conformed copy simultaneously served on the opposing party; and the moving party shall have five days after receipt of the response to file a reply, or at such other time as the judge may direct, with a conformed copy simultaneously served on the opposing party.

c. Either party may request an oral hearing and such request for oral hearing must be included with the pretrial motion or response. The judge shall have the discretion to set the matter for motion hearing or issue a ruling based on the pleadings. The judge shall issue a ruling at least two days prior to trial and simultaneously provide copies of the ruling to the parties.

d. Lack of jurisdiction may be raised at any time before trial, and is subject to the requirements in the GRIC Code § 5.102.B.

COMMENT:
GRIC Code §5.1513.

Rule 16.2. Procedure on Pretrial Motions to Suppress.

a. **Duty of Court to Inform Defendant.** Whenever an issue concerning the use of specific evidence against the defendant arises before trial, and the defendant is not represented by counsel, the court shall inform the defendant that:

1. The defendant may, but need not, testify at a pretrial hearing on the circumstances surrounding the acquisition of the evidence;
2. If the defendant does testify at the hearing, he or she will be subject to cross-examination;
3. If the defendant does testify at the hearing, he or she does not by so testifying waive his or her right to remain silent during the trial; and
4. If the defendant does testify at the hearing, neither this fact nor his or her testimony at the hearing shall be mentioned to the jury unless he or she testifies at trial concerning the same matters.

b. **Burden of Proof on Pretrial Motions to Suppress Evidence.** The prosecutor shall have the burden of proving, by a preponderance of the evidence, the lawfulness in all respects of the acquisition of all evidence which the prosecutor will use at trial. However, whenever the defense is entitled to discover the circumstances surrounding the taking of any evidence by confession, identification or search and seizure, or defense counsel was present at the taking, or the evidence was obtained pursuant to a valid search warrant, the prosecutor's burden of proof shall arise only after the defendant has come forward with evidence of specific circumstances which establish a prima facie case that the evidence taken should be suppressed.

c. If the judge decides by preponderance of the evidence that the evidence has been unlawfully obtained he shall order the evidence suppressed; and if the judge decides by

preponderance of the evidence that the evidence was lawfully obtained it may be used against the defendant.

COMMENT:

GRIC Code §5.1513.

Rule 16.3. Dismissals of Prosecution.

a. **On Prosecutor's Motion.** The court, on motion of the prosecutor showing good cause, may order that a prosecution be dismissed at any time upon finding that the purpose of the dismissal is not to avoid the provisions of Speedy Trial.

b. **On Defendant's Motion.** The court, on motion of the defendant, shall order that a prosecution be dismissed upon finding that the complaint is insufficient as a matter of law; however, the motion should not be granted on the basis of technical defects which can be cured by amendment.

c. **Record.** The court shall state, on the record, its reasons for ordering dismissal of any prosecution.

d. **Effect of Dismissal.** Dismissal of a prosecution shall be without prejudice to commencement of another prosecution, unless the court order finds that the interests of justice require that the dismissal be with prejudice.

e. **Release of Defendant; Exoneration of Bond.** When a prosecution is dismissed, the defendant shall be released from custody, unless the defendant is in custody on some other charge, and any appearance bond exonerated.

COMMENT:

GRIC Code §§5.1502, 5.1517.

V. PLEAS OF GUILTY AND NO CONTEST

RULE 17. PLEAS OF GUILTY AND NO CONTEST.

Rule 17.1. Considering and Accepting a Guilty or No Contest Plea.

a. **Advising and questioning the defendant.** The judge must inform the defendant of, and determine that the defendant understands, the following:

1. The right to plead not guilty;
2. The right to a jury trial;
3. The right to be represented by counsel at trial and every other stage of the criminal proceedings at the expense of the defendant, or, if a Community member, the right to the assistance of counsel at the Community's assistance;
4. The right to confront and cross-examine witnesses against the defendant, to be protected from compelled self incrimination, to testify and present evidence, and to compel the attendance of witnesses;
5. The defendant's waiver of these trial rights if the judge accepts a plea of guilty or no contest;
6. The nature of each charge to which the defendant is pleading;
7. Any maximum possible penalty, including imprisonment, fine, and the term of probation;
8. Any mandatory minimum penalty; and
9. The court's authority to order restitution.

b. **Ensuring that a Plea is Voluntary.** Ensuring that a plea is voluntary shall be subject to the requirements in the GRIC Code § 5.1506.C.

c. **Determining the Factual Basis for the Plea.** Determining the factual basis for a plea shall be subject to the requirements in the GRIC Code § 5.1506.C.

d. A complete record shall be made of all plea proceedings.

COMMENT:

GRIC Code §5.1506.

Rule 17.2. Plea Agreement Procedure.

a. Plea agreement procedures shall be subject to the requirements in the GRIC Code § 5.1506.D.

b. The prosecutor shall submit the plea agreement to the court at least 10 days prior to a hearing where the plea agreement will be considered. In the judge's discretion, a plea agreement may be considered that has not been submitted within the designated time frame prior to the hearing.

COMMENT:

GRIC Code §5.1506.

Rule 17.3. Withdrawing a Guilty or No Contest Plea.

Withdrawing a guilty or no contest plea shall be subject to the requirements in the GRIC Code § 5.1506.E.

COMMENT:

GRIC Code §5.1506.

Rule 17.4. Inadmissibility of a Plea, Plea Discussions, and Related Statements.

The inadmissibility of a plea, plea discussions and related statements shall be subject to the requirements in the GRIC Code § 5.1506.F.

COMMENT:

GRIC Code §5.1506.

VI. TRIAL

RULE 18. TRIAL.

Rule 18.1. Setting Trial Dates.

If a plea is “no contest: or “not guilty” the judge shall set a trial date pursuant to Rule 8. If the defendant is not notified of a trial date at the time of his entry of not guilty, the court shall provide written notice of the trial date to the defendant no later than 10 days after the pretrial hearing.

COMMENT:

GRIC Code §5.1512.

Rule 18.2. Jury Trial.

a. The right to jury trial, eligible jurors, the number of jurors, and request for jury trials shall be subject to the requirements in the GRIC Code § 5.1522.

b. Prior to the voir dire examination on the day when jury selection is commenced, the parties shall each be furnished with a list of the names of the panel of prospective jurors called for the case with the employment status, occupation, employer, prior jury duty experience, and prior criminal conviction status. The court shall obtain this information from a questionnaire form approved by the Chief Judge and sent to the panel of prospective jurors 30 days prior to the jury trial date. The court shall provide the jury listing, including potential juror names, and any questionnaire forms received by the court to the defendant or defense counsel and the prosecutor at least one day prior to the jury trial, but shall otherwise exclude the jury questionnaire forms from public access.

COMMENT:

GRIC Code §§5.1521, 5.1522, 5.1537.

Rule 18.3. Challenges.

a. **Challenge to the Panel.** Either party may challenge the panel on the ground that in its selection there has been a material departure from the requirements of law. Challenges to the panel shall specify the facts on which the challenge is based. Challenges shall be made and decided before any individual juror is examined.

b. **Challenge for Cause.** When there is reasonable ground to believe that a juror cannot render a fair and impartial verdict, the judge, on his own initiative, or on motion of any party, shall excuse the juror from service in the case. A challenge for cause may be made at any time, but may be denied for failure of the party making it to exercise due diligence.

c. **Peremptory Challenges.** Each party shall be allowed a maximum of three peremptory challenges. A party may exercise fewer than the allowable peremptory challenge(s) subject to limitations in Rule 18.4(g). If an alternate juror is selected under Rule 18.4(h), neither party shall be entitled to additional peremptory challenges.

COMMENT:

GRIC Code §5.1522.

Rule 18.4. Procedure for Selecting a Jury.

a. **Swearing Panel.** All members of the panel shall swear or affirm that they will truthfully answer all questions concerning their qualifications.

b. **Calling Jurors for Examination.** The clerk or bailiff shall then call to the jury box a number of jurors equal to the number to serve plus the number of alternates plus the number of peremptory challenges allowed the parties, for a total not less than 15. There shall be at least 10 names drawn from the jury list.

c. **Inquiry by the Court.** The judge shall initiate the examination of jurors by identifying the parties and their counsel, briefly outlining the nature of the case, and explaining the purposes of the examination. The judge shall ask any questions which he thinks necessary to determine the prospective jurors' qualifications to serve in the case on trial.

d. **Voir Dire Examination.** The judge shall conduct a thorough oral examination of prospective jurors. Upon the request of any party, the judge shall permit that party a reasonable time to conduct a further oral examination of the prospective jurors. The judge may impose reasonable limitations with respect to questions allowed during a party's examination of the prospective jurors, giving due regard to the purpose of such examination. In addition, the judge may terminate or limit voir dire on grounds of abuse. Nothing in this rule shall preclude the use of written questionnaires to be completed by the prospective jurors, in addition to oral examination. Parties shall submit written proposed voir dire questions at least seven days prior to trial.

e. **Scope of Examination.** The examination of prospective jurors shall be limited to inquiries directed to challenge for cause or to information to enable the parties to intelligently exercise their peremptory challenges.

f. **Challenge for Cause.** At any time that cause for disqualifying a juror appears, the judge shall excuse the juror before the parties are called upon to exercise their peremptory challenges. Challenges for cause shall be made out of the hearing of the jurors, but shall be made on the record.

g. **Exercise of Peremptory Challenges.** Following examination of the jurors, the parties shall exercise their peremptory challenges by alternating strikes, beginning with the prosecutor, until the peremptory challenges are exhausted. Failure of a party to exercise a challenge in turn shall operate as a waiver of the party's remaining challenges, but shall not deprive the other party of any remaining challenges. If the parties fail to exercise the full number of challenges allowed, the clerk shall strike the jurors on the bottom of the list until only the number to serve, plus an alternate, if any remain. Peremptory challenges shall be made outside the presence of the jurors.

h. **Selection of Jury and An Alternate Juror(s).** The persons remaining in the jury box or on the list of the panel of prospective jurors shall constitute the jurors for the trial. Just

before the jury retires to begin deliberations, the clerk shall, by lot, determine the juror or jurors to be designated as an alternate. The alternate(s), upon being physically excused by the judge, shall be instructed to continue to observe the admonitions to jurors until the alternate juror is informed that a verdict has been returned or the jury has been discharged. In the event a deliberating juror is excused due to inability or disqualification to perform required duties, the judge may substitute an alternate juror, unless disqualified, to join in the deliberations. If an alternate joins the deliberations, the jury shall be instructed to begin deliberations anew. In general, the judge may empanel no more than two alternate jurors in addition to the regular jury.

COMMENT:

GRIC Code §5.1522.

Rule 18.5. Preparation of Jurors.

a. **Oath.** Each juror shall take the following oath: “Do you swear or affirm that you will give careful attention to the proceedings, abide by the court's instructions, and render a verdict in accordance with the law and evidence presented to you?”

b. **Preliminary Instructions.** Immediately after the jury is sworn, the judge shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the court as set forth in Rule 18.5(d), and the elementary legal principles that will govern the proceeding.

c. **Note Taking; Access to Juror Notes and Notebooks.** The judge shall instruct the jurors that they may take notes regarding the evidence presented. The judge shall provide materials suitable for this purpose. The judge may authorize, in his discretion, documents and exhibits to be included in notebooks for use by jurors during trial to aid them in performing their duties. Jurors shall have access to their notes and notebooks during recesses and deliberations, except that the bailiff shall collect and store in a secure location the notebooks during any overnight recess. After the jury has rendered its verdict, the notes shall be collected by the bailiff or clerk who shall destroy them promptly.

d. **Juror Questions.** Jurors shall be instructed that they are permitted to submit to the judge written questions directed to witnesses or to the court; and that opportunity will be given to counsel to object to such questions out of the presence of the jury. Notwithstanding the foregoing, for good cause the judge may prohibit or limit the submission of questions to witnesses.

e. **Additional Communications.** The judge shall provide additional instructions to the jury as necessary during the course of the trial. All communications between the judge and members of the jury panel shall be in writing or on the record.

COMMENT:
GRIC Code §5.1522.

Rule 18.6. Conduct of Trial.

a. **Order of Proceedings.** The trial shall proceed in the following order unless otherwise directed by the court:

1. The complaint shall be read and the plea of the defendant stated;
2. The prosecutor may make an opening statement;
3. The defendant may then make an opening statement or may defer such opening statement until the close of the prosecution's evidence;
4. The prosecutor shall offer the evidence in support of the charge;
5. The party calling the witness shall proceed first with direct examination. The non-calling party shall have the opportunity to cross-examine the witness. If the non-calling party has exercised its right to cross-examine the witness, the party calling the witness shall have a right to conduct a re-direct of the witness. The re-direct shall be limited in scope to areas covered on cross-examination. Re-cross examination shall not be permitted without explicit permission of the judge and if permission is granted, the scope of the re-cross examination shall be to the re-direct examination;
6. The defendant may then make an opening statement if it was deferred, and offer evidence in his or her defense. If the defendant has no evidence to offer and deferred making an opening statement, defendant shall not be allowed to make an opening statement;
7. If a defendant offers evidence in his or her defense, the prosecutor may offer rebuttal evidence;
8. The parties may present closing arguments, the prosecutor proceeding first and then defense, and finally prosecution's rebuttal;
9. The judge shall then charge the jury.

With the permission of court, the parties may agree to any other method of proceeding.

b. **Proceedings When Defendant is Charged With Prior Convictions.** In all prosecutions in which a prior conviction is alleged as a sentencing enhancement, the procedure shall be as follows:

1. The trial shall proceed initially as though the prior conviction for sentencing allegations were not alleged. When the complaint is read all reference to prior convictions shall be omitted. During the trial of the case, no instructions shall be given, reference made, nor evidence received concerning the sentencing allegations, except as permitted by the judge after notice of intent to use the prior conviction(s) has been provided to the defendant pursuant to Rule 15.2.
2. If the verdict is guilty, the judge shall determine, unless the defendant has admitted to the allegation, the existence of the allegation or prior conviction(s). The defendant may only be tried on the prior convictions that have been previously disclosed under Rule 15.2. The prosecutor shall bear the burden of proof beyond a reasonable doubt.

c. **Proceedings When Defendant is Charged with Aggravating Factors Other Than Prior Convictions.** In all prosecutions in which an aggravating factor is alleged as a sentencing enhancement, the procedure shall be as follows:

1. The trial shall proceed initially as though the aggravating factors for sentencing were not alleged. When the complaint is read all reference to sentencing allegations shall be omitted. During the trial of the case, no instructions shall be given, reference made, nor evidence received concerning the sentencing allegations, except as permitted by the judge after notice of intent to use the prior conviction(s) has been provided to the defendant pursuant to Rule 15.2. The defendant may only be tried on aggravating factors that have been previously disclosed under Rule 15.2.
2. If the verdict is guilty the trier of fact shall determine if one or more aggravating factors, unless the defendant has admitted the allegations of the aggravating factor(s). The proceeding to determine any aggravating factors shall be conducted by the trier of fact immediately after, or as soon as practicable, after the guilty verdict is returned.
 - (i) Unless admitted by the defendant, the prosecutor bears the burden of proving beyond a reasonable doubt before the trier of fact any

aggravating factor affecting sentencing, except prior convictions which are governed under Rule 18.6(b).

- (ii) If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factor(s) exists, any juror dies, becomes incapacitated or disqualified or is discharged for any reason, an alternate juror shall become part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected.
- (iii) If the trial jury is unable to reconvene for a hearing on the issue of whether one more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue. A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.
- (iv) If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying offense, the trier of fact shall determine the guilt or innocence of the underlying offense and after a finding of guilty the judge may consider the aggravating factors in sentencing.
- (v) If the defendant pleads guilty to the underlying offense but contests one or more aggravating factors the trier of fact shall determine the aggravating factor, except prior convictions which are governed by Rule 18.6(b). After a request for a jury, a jury shall be impaneled to determine the aggravating factor(s).

d. **Proceedings When Defendant Alleges Mitigating Factors.** Subject to GRIC Code § 5.407.C.1.c.

e. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

COMMENT:

GRIC Code §§5.407, 5.1521, 5.1522.

Rule 18.7. Presence of Defendant.

The defendant has the right to be present at every stage of the trial, including impaneling of the jury, the giving of jury instructions, and the return of the verdict. If the defendant has been given notice of the trial date and the judge determines, after reviewing the factors identified in Rule 9.1, that the defendant voluntarily has not appeared for trial, the trial may proceed in the absence of the defendant at the request of the prosecutor.

COMMENT:

GRIC Code §5.1521.

Rule 18.8. Evidence.

a. **Rules of Evidence.** If the Community adopts written Rules of Evidence those rules, as adopted and approved at the time of the criminal proceeding, shall be followed in all criminal proceedings before the court. In the absence of Community adopted Rules of Evidence the written Rules of Evidence for the Superior Courts of the State of Arizona, as adopted and approved at the time of the criminal proceeding, shall be followed.

b. **Prior Inconsistent Statements.** No prior statement of a witness may be admitted for the purpose of impeachment unless it varies materially from the witness' testimony at trial.

c. **Prior Recorded Testimony.**

1. **Admissibility.** Statements made under oath by a party or witness during a previous judicial proceeding or a deposition under Rule 15.4 shall be admissible if: (i) the party against whom the former testimony is offered was a party to the action or proceeding during which a statement was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which the party now has (no person who was unrepresented by counsel at the proceeding during which the statement was made shall be deemed to have had the right and opportunity to cross-examine the declarant, unless such representation was waived; and (ii) the declarant is unavailable as a witness, or is present and subject to cross-examination.
2. **Limitations and Objections.** The admissibility of former testimony under this section is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that the former testimony offered under this section is not subject to: (i) objections to the form of the question which were not made at the time the prior testimony was given;

(ii) objections based on competency or privilege which did not exist at the time the former testimony was given.

COMMENT:

GRIC Code §5.105.

Rule 18.9. Separation and Detention of Jurors.

The judge in his discretion may permit jurors to separate or, on motion of any party, may require them to be sequestered in charge of a proper officer whenever they leave the jury box. The judge shall admonish the jurors not to converse among themselves or with anyone else on any subject connected with the trial, or to permit themselves to be exposed to news accounts of the proceeding, or to form or express any opinion thereon until the action is finally submitted to the jury. If the jurors are permitted to separate, they shall be admonished not to view the place where the offense allegedly was committed.

COMMENT:

GRIC Code §5.1521.

RULE 19. JUDGMENT OF ACQUITTAL.

a. **Before Verdict.** On motion of the defendant or on its own motion, a judge shall enter a judgment of acquittal of one or more offenses charged in the complaint after the evidence on either side is closed if there is no substantial evidence to warrant a conviction. The judge's decision on a defendant's motion shall not be reserved, but shall be made with all possible speed. Proceedings under this rule shall be conducted outside the presence of the jury. If the defendant's motion for acquittal is not allowed the defendant may offer his evidence.

b. **After Verdict.** A motion for judgment of acquittal made before the verdict may be renewed by a defendant within 10 days after the verdict was returned. The motion shall be made in writing, filed with the court and a conformed copy simultaneously served to the Office of the Prosecutor. The prosecutor shall have five days after service of the motion to file a written response. Unless the motion is granted within 30 days of filing, the motion shall be deemed denied.

COMMENT:

GRIC Code §5.1515.

RULE 20. INSTRUCTIONS.

Rule 20.1. Request for Instructions and Forms of Verdict.

At the close of the evidence or at such earlier time as the judge directs, counsel for each party shall submit to the court the counsel's written requests for instructions and forms of verdict and shall simultaneously furnish copies to the other parties.

COMMENT:

GRIC Code §5.1522.

Rule 20.2. Rulings on Instructions and Forms of Verdict.

a. **Conference.** The judge shall confer with counsel and inform them of the judge's proposed action upon requests for instructions and forms of verdict prior to final argument to the jury.

b. **Duty of the Court.** The judge shall not inform the jury which instructions, if any, are included at the request of a particular party.

c. **Waiver of Error.** No party may assign as error on appeal the judge's giving or failing to give any instruction or portion thereof or to the submission or the failure to submit a form of verdict unless the party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which the party objects and the grounds for the objection.

d. **Jurors' Copies.** The judge's preliminary and final instructions on the law shall be in written form. A copy of the final instructions shall be furnished to jurors before the jury retires for deliberations.

COMMENT:

GRIC Code §5.1522.

RULE 21. DELIBERATIONS.

Rule 21.1. Retirement of Jurors.

a. **Retirement.** After instructing the jury, including the law governing the case, the judge shall appoint or instruct the jurors to elect a foreperson. The jurors shall then retire in the custody of a bailiff and consider their verdict.

b. **Permitting the Jury to Disperse.** The judge may, in the judge's discretion, permit the jurors to disperse after their deliberations have commenced, instructing them when to reassemble. The judge shall further instruct the jury that they are not to discuss the matter among themselves unless all jurors are reassembled. The jury shall be also admonished not to converse with involved parties or to view any evidence that was not presented during trial.

c. **Length of Jury Deliberations.** The judge shall not require a jury to deliberate after normal work hours unless the judge, after consultation with the jury and the parties, determines that evening or weekend deliberations are necessary in the interest of justice and will not impose an undue hardship upon the jurors.

COMMENT:
GRIC Code §5.1522.

Rule 21.2. Materials Used During Deliberations.

- a. Upon retiring for deliberation the jurors shall take with them:
1. The forms of verdict approved by the judge, which shall not indicate in any manner the punishment subscribed to the offense(s);
 2. All jurors' copies of written or recorded instructions;
 3. The juror's notes and notebooks; and
 4. Such tangible evidence as the judge in the judge's discretion shall direct.

COMMENT:
GRIC Code §5.1522.

Rule 21.3. Further Review of Evidence and Additional Instructions.

After the jurors have retired to consider their verdict, if they desire to have any testimony repeated, or if they or any party request additional instructions, the judge may recall them to the courtroom and order the testimony read or give appropriate additional instructions. The judge may also order other testimony read or give other instructions, so as not to give undue prominence to the particular testimony or instructions requested. Such testimony may be read or instructions given only after notice is given to the parties and the parties shall have a right to be present before any testimony is read to the jury or any additional instructions are given.

COMMENT:
GRIC Code §5.1522.

Rule 21.4. Assisting Jurors at Impasse.

If the jury advises the judge that it has reached an impasse in its deliberations, the judge may, in the presence of counsel, inquire of the jurors to determine whether and how the judge and counsel can assist them in their deliberative process. After receiving the jury's response, if any, the judge may direct that further proceedings occur as appropriate.

COMMENT:
GRIC Code §5.1522.

Rule 21.5. Discharge.

- a. The judge shall discharge the jurors when:
 1. Their verdict has been recorded as set forth in Rule 22.1;
 2. Upon expiration of such time as the judge deems proper, it appears that there is no reasonable probability that the jurors can agree upon a verdict;
or
 3. A necessity exists for their discharge.

COMMENT:
GRIC Code §5.1522.

RULE 22. VERDICT.

Rule 22.1. Time and Form of Verdict.

The verdict of the jury shall be in writing, signed by all of the jurors and returned to the judge in open court. The verdict must be unanimous.

COMMENT:
GRIC Code §5.1522.

Rule 22.2. Types of Verdicts.

a. **General Verdicts.** Except as otherwise specified in this rule, the jury shall in all cases render a verdict finding the defendant either guilty or not guilty.

b. **Insanity Verdicts.** When the jury determines that a defendant is not guilty by reason of insanity, the verdict shall state not guilty by reason of insanity. If the jury returns a verdict of not guilty by reason of insanity, the judge shall proceed under Rule 24.

c. **Different Offenses.** If different counts or offenses are charged in the complaint, the verdict shall specify each count or offense of which the defendant has been found guilty or not guilty.

COMMENT:
GRIC Code §5.1522.

Rule 22.3. Conviction of Necessarily Included Offenses.

Forms of verdicts shall be submitted to the jury for all offenses necessarily included in the offense charged, an attempt to commit the offense charged or an offense necessarily included therein, if such attempt is an offense. The defendant may not be found guilty of any offense for which no form of verdict has been submitted to the jury.

COMMENT:
GRIC Code §5.1522.

Rule 22.4. Poll.

After the verdict is returned and before the jury is discharged, the jury shall be polled at the request of any party or upon the judge's own initiative. If the responses to the jurors do not support the verdict, the judge may direct them to retire for further deliberations or they may be discharged.

COMMENT:
GRIC Code §5.1522.

VII. POST VERDICT PROCEEDINGS, POST CONVICTION RELIEF

RULE 23. POST-TRIAL MOTIONS.

Rule 23.1. Motion for New Trial.

a. **Defendant's Motion.** Upon the defendant's motion, the judge may vacate any judgment and grant a new trial if the interest of justice so requires. If the case was tried without a jury, the judge may take additional testimony and enter a new judgment.

b. **Grounds.** The grounds for new trial shall be subject to the requirements in the GRIC Code § 5.1526.A.

c. **Time to File Based Upon Newly Discovered Evidence.** Motions based upon newly discovered evidence shall be subject to the requirements in the GRIC Code § 5.1526, and must be filed within one year after the verdict or finding of guilty. If an appeal is pending, the court may not grant a motion for a new trial until the court of appeals confers jurisdiction back to the court.

d. **Other Grounds.** Any motion for a new trial grounded on any reason other than newly discovered evidence must be filed within 30 days after the verdict or finding of guilty, or within such further time as the court sets during the 30 day period.

COMMENT:
GRIC Code §5.1526.

Rule 23.2. Motion to Vacate Sentence.

a. **Grounds for Motion.** The grounds for motion to vacate sentence shall be subject to the requirements in the GRIC Code § 5.1525.B.

b. **Form of Motion.** The motion shall be made in writing, filed with the court and served on the opposing party. The opposing party shall have five calendar days after receipt of the motion to file a response to the motion.

c. **Previous Rulings.** A judge may deny any such motion on the grounds that the matter has already been decided.

d. **Final Decision.** The judge shall issue a final decision on the motion within 30 days after the motion is filed.

e. **Appeal from Decision on Motion.** The party appealing a final decision on the motion shall file the notice of appeal within 20 days after entry of the decision.

COMMENT:
GRIC Code §5.1525.

Rule 23.3. Motion to Modify or Correct Sentence.

Motions to modify or correct a sentence shall be subject to the requirements in the GRIC Code § 5.1525.C.

COMMENT:
GRIC Code §5.1525.

RULE 24. PROCEDURE AFTER VERDICT OF FINDING OF NOT GUILTY BY REASON OF INSANITY.

The procedure after verdict of finding of not guilty by reason of insanity shall be subject to the requirements in the GRIC Code § 5.213.

COMMENT:
GRIC Code §5.213.

RULE 25. JUDGMENT, PRESENTENCE REPORT, PRESENTENCING HEARING, SENTENCE.

Rule 25.1. Time of Rendering Judgment.

a. **Upon Acquittal.** When a defendant is acquitted of any charge, or of any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered immediately.

b. **Upon Conviction.** Upon a determination of guilt on any charge, or on any count of any charge, judgment pertaining to that count or to that charge shall be pronounced and entered together with the sentence.

c. **Factual Determination.** In the event the trial judge did not make an affirmative finding of a factual basis for the plea pursuant to Rule 17.1 before the entry of the judgment of guilt the trial judge shall make such determination. One or more of the following sources may be considered: statements made by the defendant; police reports; other satisfactory information.

COMMENT:
GRIC Code §5.1525.

Rule 25.2. Date of Sentencing; Extension.

a. **Date of Sentencing.** Upon a determination of guilt, the judge may immediately proceed to sentencing unless the judge upon the judge's own motion or upon a request of the parties may set another date for sentencing. The sentencing shall be held within 30 days after determination of guilt. The date may be extended for good cause.

b. **Extension of Time.** If a pre-sentencing hearing is requested under Rule 25.4 or if good cause is shown, the trial judge may reset the date of sentencing within 60 days after the determination of guilt.

COMMENT:

GRIC Code §5.1525.

Rule 25.3. Presentence Report.

a. **In General.** A judge may require a presentence report in all cases, except probation revocation cases, in which it has discretion over the penalty to be imposed. If ordered, the pretrial services or probation officer must conduct a presentence investigation and submit a presentence report to the judge before the judge imposes its sentence. A presentence report shall not be prepared until after the determination of guilt has been made or the defendant has entered plea of guilty or no contest.

b. **Restitution.** The pretrial services or probation officer must make reasonable efforts to obtain restitution information and submit a report that contains sufficient information for the judge to order restitution.

c. **Interviewing the Defendant.** The pretrial services or probation officer who interviews a defendant as part of a presentence investigation must, on request, give the defendant's counsel reasonable notice of the time and place of the interview and a reasonable opportunity to attend the interview.

d. **Presentence Report.** The presentence report must contain the following information:

1. The presentence reports shall be subject to the requirements in the GRIC Code § 5.1525.A.1;
2. Identify all applicable sentencing guidelines; calculate the defendant's offense level and criminal history category; state the resulting sentencing

range and kinds of sentences available; identify any factors relevant to the appropriate kind of sentence or the appropriate sentence within the applicable sentencing range; and identify any basis for departing from the applicable sentencing range;

3. Whether the prosecutor seeks forfeiture under Rule 39 and any other provision of law.

e. **Exclusions.** The presentence report must exclude the following:

1. Any diagnoses that, if disclosed, might seriously disrupt a rehabilitation program;
2. Any sources of information obtained upon a promise of confidentiality; and
3. Any other information that, if disclosed, might result in physical or other harm to the defendant or others.

f. **Victim Input.** The pretrial services or probation officer shall make reasonable efforts to obtain the views of the victim regarding the offense and to obtain victim's recommendation regarding sentencing. The victim's input shall be included in the presentence report.

g. **Disclosing the Report and Recommendation.** Except when a motion under Rule 25.4 has been granted, the pretrial services or probation officer shall provide the presentence report to the defendant, the defendant's attorney or advocate, and the prosecutor at least 15 days, or as ordered by the judge, before the sentencing hearing unless the defendant waives this minimum period.

h. **Objecting to the Report.** Within 10 days, or as ordered by the judge, after receiving the presentence report the parties must state in writing any objections, including objections to material information, sentencing guideline ranges, and policy statements contained in or omitted from the report. An objecting party must simultaneously serve a copy of its objections to the opposing party and to the pretrial services or probation officer. After receiving objections, the pretrial services or probation officer may meet with the parties to discuss the objections and may then further investigate and revise the presentence report as appropriate.

i. **Submitting the Presentence Report to the Court.** At least five days, or as ordered by the judge, before the sentencing hearing, the pretrial services or probation officer

shall submit to the court and to the parties the presentence report and any addendum containing any unresolved objections, the grounds for those objections, and the officer's comments on them.

COMMENT:

GRIC Code §5.1525.

Rule 25.4. Request for Aggravating or Mitigating Hearing.

a. Upon written motion of the defendant or prosecutor, the court shall hold a hearing prior to sentencing to consider any aggravating or mitigating information. The motion shall state the alleged aggravating or mitigating factors as disclosed pursuant to Rules 15.2.B.9 and 15.3.B.4.

b. Any jury form regarding aggravating factors shall not be provided to the jury until the aggravating hearing.

c. The judge shall not consider the disclosure of any aggravating or mitigating factor until after a verdict has been rendered..

d. Aggravating Hearing. An aggravating hearing requested by the prosecutor under this rule shall be held immediately after, or as soon as practicable after, the guilty verdict is returned subject to the requirements of GRIC Code § 5.407.C. Any reliable, relevant evidence shall be admissible pursuant to the GRIC Rules of Evidence.

e. Mitigating Hearing. A mitigating hearing requested by the defendant under this rule shall be held prior to sentencing. If the judge was the trier of fact for the trial, the mitigating hearing may occur at the same time as the aggravating hearing. Any reliable, relevant evidence shall be admissible pursuant to the GRIC Rules of Evidence, except that hearsay shall be admissible.

f. Aggravating and Mitigating Hearing Procedures. The hearing shall be held in open court and a complete record of the proceedings shall be made and maintained by the court.

g. A hearing under this rule shall be for sentencing purposes only, shall not be applicable to probation revocation hearings, and shall not involve any aggravating factor that was proven at trial as an element of an offense.

COMMENT:

GRIC Code §5.407.

Rule 25.5. Special Duty of Prosecutor; Corrections to Presentence Report.

a. **Special Duty of the Prosecutor.** The prosecutor shall disclose to the defendant any information upon discovery by the prosecutor, if not already disclosed, which would tend to reduce the punishment to be imposed.

b. **Corrections to Presentence Report.** In the event that the judge sustains any objections to the contents of a presentence report, the judge may take such action as it deems appropriate under the circumstances, including, but not limited to:

1. Excision of objectionable language or sections of the report;
2. Ordering a new presentence report with specific instructions and directions;
3. Directing a new presentence report to be prepared by a different pretrial or probation officer; and
4. Directing the pretrial or probation officer to make corrections to the presentence report.

c. **Disclosure of Corrected Presentence Report.** If the judge exercises authority under subsection (b) of this rule, the pretrial or probation officer shall disclose the new, excised, corrected, or amended presentence report to the parties within 10 calendar days of the judge's order, and in any event no later than one day before the sentencing hearing.

COMMENT

GRIC Code §5.1525.

Rule 25.6. Presence of Defendant.

The defendant shall be present at sentencing unless a defendant has requested a resolution of his case under Rule 9.2.

COMMENT:

GRIC Code §5.1525.

Rule 25.7. Pronouncement of Judgment and Sentence.

a. **Pronouncement of Judgment.** In pronouncing judgment, a judge shall state on the record the defendant's plea, the offense of which the defendant was convicted or found guilty,

a determination of whether any sentencing enhancements are applicable, and, if applicable, that the defendant is required to register as a sex offender as provided under Rule 40. The judge must, for any disputed portion of the presentence report or other controverted matter, rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the judge will not consider the matter in sentencing.

b. **Pronouncement of Sentence.** A judge shall:

1. Verify that the defendant and the defendant's attorney or advocate have read and discussed any presentence report and any addendum to the report, allow the parties' attorneys or advocates to comment on the presentence report and other matters relating to an appropriate sentence, and may for good cause allow a party to make a new objection before sentence is imposed;
2. Give the defendant an opportunity to speak on his or her own behalf;
3. State that it has considered the time the defendant has spent in custody, if any, on the present charge;
4. Explain to the defendant the terms of the sentence or probation;
5. Specify the commencement date for the term of imprisonment and any presentence incarceration time that should be credited towards the sentence imposed;
6. Direct the clerk of court to send to the jail and/or Probation Office the sentencing order; and
7. Issue a written judgment within 24 hours if the judge sentences the defendant to a term of imprisonment, and within five calendar days if the sentence is other than imprisonment.

c. **Sentencing Policy.** A judge should impose a sentence consistent with the guidelines set forth in GRIC Code § 5.407, except that a decision to depart from the range is within the discretion of the judge.

COMMENT:

GRIC Code §§5.407; 5.1525.

Rule 25.8. Duty of Court after Pronouncing Sentence.

a. **Appeal Rights.** The judge shall inform the defendant of his right to appeal from the judgment, sentence or both within 30 days of the entry of judgment and advise the defendant that failure to file a timely appeal will result in the loss of the right to appeal.

b. **Right to Assistance of Counsel for Purposes of Appeal.**

1. If the sentence of imprisonment is one year or less, the judge shall advise the defendant that the defendant has the right to counsel as provided in Rule 6.1(a).
2. If the sentence of imprisonment is more than one year, the judge shall advise the defendant that the defendant has a right to counsel as provided in Rule 6.1(b) and if the defendant is unable to obtain counsel as provided in Rule 6.2(d) counsel will be appointed as provided in Rule 6.2.

COMMENT:
GRIC Code §5.1505.

Rule 25.9. Fines and Restitution.

a. **Method of Payment--Installments.** A judge may permit payment of any fine or restitution, or both, to be made within a specified period of time or in specified installments. Restitution shall be payable as promptly as possible in light of the defendant's ability to pay.

b. **Method of Payment--To Whom.** The payment of a fine, restitution, or both, shall be made to the court, unless the judge expressly directs otherwise. Monies received from the defendant shall be applied first to satisfy the restitution order and the payment of any restitution in arrears. The court or the agency or person authorized by the Community to accept payments should, as promptly as practicable, forward restitution payments to the victim.

COMMENT:
GRIC Code §5.404.

Rule 25.10. Concurrent or Consecutive Sentences.

a. Concurrent or consecutive sentences shall be subject to the requirements in the GRIC Code § 5.412.

b. For any complaint alleging only misdemeanor offenses, the sentence shall not exceed one year imprisonment unless the prosecutor provides notice on the complaint as required under Rule 2.2(b)(3).

COMMENT:

GRIC Code §§5.412, 5.1512.

Rule 25.11. Re-sentencing.

Re-sentencing shall be subject to the requirements in the GRIC Code § 5.1525.E.

COMMENT:

GRIC Code §5.1525.

Rule 25.12. Entry of Judgment and Sentence.

The judgment of conviction and sentence shall be complete and valid as of the time of their oral pronouncement in open court. A certified copy, signed by the sentencing judge, shall be furnished to the appropriate officer, jail, probation officer, defendant, counsel or advocate for the defendant, and prosecutor. No other authority shall be necessary to carry into execution the sentence that was entered. If the written judgment differs from oral pronouncement, the oral pronouncement shall control unless the sentences has been modified or corrected pursuant to Rules 23.2 and 23.3.

COMMENT:

GRIC Code §5.1525.

RULE 26. PROBATION AND PROBATION REVOCATION.

Rule 26.1. Manner of Imposing Probation.

a. A judge may impose on a probationer such conditions that will promote rehabilitation. In addition, the appropriate probation officer or other person designated by the court may impose on the probationer regulations which are necessary to implement the conditions imposed by the court and that are not inconsistent with the court's conditions. All conditions and regulations shall be in writing, and a copy of them given to the probationer. The probationer shall sign an acknowledgement of conditions and regulations of probation at the time of sentencing.

b. Probation conditions shall be imposed to assist persons convicted to address the issues that may have contributed to the conviction, and shall be subject to the requirements in the GRIC Code § 5.406.B.1. The length of probation term shall be as long as necessary to address any issues that may have contributed to the conviction, but the length of the probation period shall not exceed the statutory maximum of the convicted offense.

c. Probation conditions shall be reasonably related to the offender's conviction, the safety of the Community, and the rehabilitation of the offender.

d. All defendants placed under the supervision of probation shall be ordered to pay reasonable probation fees, costs and expenses as ordered the court.

e. The judge shall specify whether the probationer is being placed under supervised or unsupervised probation.

1. Supervised Probation is a sentence imposed by a judge that requires an individual placed on probation to be actively supervised by a probation officer under certain conditions as ordered by the judge.
2. Unsupervised Probation is a sentence imposed by a judge that allows individuals to be placed on probation without active supervision by a probation officer. A probationer placed on unsupervised probation may be subject to any or all the requirements of probation except supervision by or assignment to a probation officer. The judge may, at any time, exercise its authority and place an offender on unsupervised probation, or to place an unsupervised probationer on active supervised probation status. Generally, these cases are not opened and assigned to a probation officer unless the judge so directs. If the judge so directs, the case is placed in a supervised status.

f. Failure to satisfy any time frames provided in Rule 26 will not be grounds for dismissal if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

COMMENT:
GRIC Code §5.406.

Rule 26.2. Modification and Clarification of Conditions and Regulations.

a. A judge may modify or clarify any probation condition which has been imposed and any regulation imposed by a probation officer, after notice has been provided to the defendant and the prosecutor.

b. At any time prior to absolute discharge, a probationer, probation officer, counsel for the defendant, or prosecutor may request a judge to modify or clarify any probation condition or regulation.

c. Persons entitled to restitution pursuant to a court order, based upon a change of circumstance, may request the judge at any time prior to absolute discharge to modify the manner in which restitution is made.

d. The court may hold a hearing on any request for modification or clarification. The court should hold a hearing on any requests for modification if it would adversely affect the probationer. The court may also accept a probationer's written consent to an adverse modification of the terms of probation without a hearing. A probationer is not entitled to a hearing if the modification is in the defendant's favor or the request is for a clarification of the terms of probation.

e. A judge may modify an order of probation to allow a probationer to be excused from checking in with the probation officer for the specified time while the probationer is off reservation, enrolled and physically attending an inpatient treatment program.

f. A written copy of any modification or clarification shall be given to the probationer with a copy simultaneously provided to the Office of the Prosecutor.

COMMENT:
GRIC Code §5.406.

Rule 26.3. Early Termination of Probation.

a. After having been placed on probation for one-half the term ordered and upon motion of the probation officer, the prosecutor's motion, or the defendant's motion or on its own initiative, a judge may terminate probation and discharge the probationer absolutely after 15 days of providing notice and opportunity for response to the probation officer and the Office of the Prosecutor.

b. The probation term shall not be terminated early if the probationer owes any restitution.

c. If the prosecutor or probation officer files a written objection to the early termination within 15 days of service of the notice, the judge shall conduct a hearing before making a determination to terminate probation early.

d. The judge shall make a determination whether it serves the ends of justice to terminate probation and discharge the probationer absolutely.

COMMENT:
GRIC Code §5.406.

Rule 26.4. Order and Notice of Discharge.

Upon expiration or early termination of probation, the probationer is discharged absolutely. Upon early termination, the court shall provide the probationer, the probation officer, and the Office of the Prosecutor with a copy of the order of discharge.

COMMENT:
GRIC Code §5.406.

Rule 26.5. Initiation of Revocation Proceeding; Securing the Probationer's Presence; Notice.

a. The initiation of revocation proceedings, securing a probationer's presence, and notice shall be subject to the requirements in the GRIC Code § 5.406.D.

b. The filing of a petition to revoke probation shall automatically stay the term of probation. The court shall retain jurisdiction over the probationer for any violations of terms or conditions of probation that may be alleged to have occurred during the stay or tolling period. During the stay or period of tolling the probationer shall remain subject to all terms and conditions of probation.

COMMENT:
GRIC Code §5.406.

Rule 26.6. Initial Appearance After Arrest.

When a probationer is arrested on a warrant issued under Rule 26.5, the jail shall notify within 24 hours the Probation Office and the Office of the Prosecutor, and the probationer shall be taken before the court at the next available arraignment.

COMMENT:
GRIC Code §5.406.

Rule 26.7. Revocation of Probation.

a. Revocation Arraignment.

1. At the arraignment for a petitioner either arrested or summonsed for a petition to revoke probation, the judge shall advise the probationer of his right to counsel under Rule 6, inform the probationer of the alleged probation violation(s), inform the probationer that any statement he makes prior to the hearing may be used against him, the right to call witness(es) and to have those witness(es) summoned to court, the right to cross-examine the witness(es) who are testifying against the defendant, set the date of the revocation hearing within 30 days after arraignment on the petition to revoke probation, and make a release determination under Rule 7. A presumption of detention shall exist unless the defendant establishes good cause.
2. The probationer shall admit or deny each allegation contained in the petition to revoke probation.
3. If no admission is made or if an admission is not accepted, the judge will set a violation hearing within 30 days after arraignment on the petition to revoke probation; however, if both parties consent the violation hearing may proceed immediately. The judge, upon the request of the probationer made in writing or in open court on the record, may set the hearing date beyond the 30 day time line for good cause.

b. Discovery.

1. The Office of the Prosecutor shall provide discovery in a manner similar to Rule 15.2(b)-(d), but within 10 days of service of notice of the violation hearing, and shall supplement discovery of any materials or information that subsequently come into the prosecutor's control or possession.
2. The defendant shall provide discovery in a manner similar to Rule 15.3, but within 10 days of receipt of initial discovery from the Office of the Prosecutor or five days prior to the violation hearing, whichever occurs first.
3. Probation shall not be revoked for a violation of a condition or regulation of which the probationer has not received a written copy.

4. The files of the Probation Office are not the possession of or subject to the control of the prosecutor for disclosure purposes, but may, upon motion, hearing and court order, be subject to disclosure. Within a period of 10 days after service of a properly issued subpoena duces tecum, the probation officer shall make available to the court-appointed or retained counsel for the probationer/defendant in pending probation revocation proceedings and to the assigned prosecutor the following portions of that office's file on the individual probationer/defendant; except information protected under Federal and Community law or court rule, such information shall first be redacted and not provided pursuant to the subpoena:

- (i) Any directives issued to the probationer/defendant;
- (ii) Any written documentation produced or received as a result of any directive given to the probationer/defendant during the term of probation;
- (iii) Any documentation, such as letters or memos, submitted by the probationer/defendant or submitted on his behalf relating to his compliance with the conditions of probation.

No other information from the probationer's working file shall be made available to either counsel except upon court order. Either party may motion to quash or modify a subpoena under Rule 32.2(b).

c. Violation Hearing.

1. The probationer shall be present at the hearing unless the probationer voluntarily absents himself as provided in the GRIC Code § 5.1521.F.1-2.
2. A violation must be established by a preponderance of the evidence. Each party may present evidence and shall have the right to cross-examine witnesses who testify. The judge may receive any reliable evidence that is not legally privileged, including hearsay. The violation hearing is a post-conviction procedure and is not subject to all the rules and protections applicable to a trial, and the rules of evidence need not be observed.
3. If the judge finds that a violation of a condition or regulation of probation occurred, the judge shall make specific findings of fact which establish the violation and shall set a disposition hearing.

d. **Disposition Hearing.**

1. The disposition hearing shall be held within 10 days after an admission by the probationer or a finding that the probationer violated a condition or regulation of probation; however, a probationer may waive the 10 days, and if the judge accepts the probationer's waiver of time the judge may proceed immediately to entering disposition.
2. A judge may reinstate the probationer to the sentence probation, may order the probationer to serve out the remainder of the sentence by incarceration, or may impose some other sentence authorized by law.

e. **Disposition Upon Determination of Guilt of Subsequent Offense.** Disposition upon a determination of guilt for a subsequent offense shall be subject to the requirements in the GRIC Code § 5.406.E. A reasonable period of time may be up to 30 days following the adjudication in the subsequent criminal offense. The prosecutor shall not be precluded from proceeding on a violation based upon the subsequent charged offense where the defendant was acquitted or where the subsequent charge was dismissed.

f. **Record.** A complete record of the revocation arraignment, violation hearing and disposition shall be made and maintained by the court.

COMMENT:
GRIC Code §5.406.

Rule 26.8. Admissions by the Probationer.

a. Before accepting an admission by a probationer that he has violated a condition or regulation of probation, the judge shall address the probationer personally and shall determine that he understands the following:

1. The nature of the violation of probation to which an admission is offered;
2. The right to counsel under Rule 6;
3. The right to cross-examine the witnesses who might testify against him;
4. The right to present witnesses in his behalf and to have the witnesses summoned into court;

5. The right to be presumed innocent;
6. That by admitting a violation of a condition or regulation of probation, the probationer will waive the right to have the appellate court review the proceedings by way of direct appeal;
7. If the alleged violation involves a criminal offense for which he has not yet been tried, the probationer shall be advised that regardless of the outcome of the present proceeding, he may still be tried for that offense, and any statement made by the probationer at the proceeding may be used to impeach his testimony at the trial.

b. The judge shall also determine that the probationer waives these rights, that his admission is voluntary and not the result of force, threats or promises and that there is a factual basis for the admission.

COMMENT:
GRIC Code §5.406.

Rule 26.9. Rejection of Probation.

Any probationer may reject probation at any time while serving a term of probation. A probationer who wishes to reject probation must notify his probation officer. Upon request by the probationer of his intention to reject probation, the court shall set the matter for hearing within 15 days of the probationer's motion. After the judge finds the probationer has voluntarily, intelligently and knowingly rejected probation, the probationer shall be ordered to immediately serve the remainder of the suspended sentence in jail.

COMMENT:
GRIC Code §5.406.

Rule 26.10. Victim's Rights in Probation Proceedings.

A judge shall afford the victim, as defined in the GRIC Code § 5.106.A.60 the opportunity to be present and to be heard at any probation proceeding.

COMMENT:
GRIC Code §5.1701.

RULE 27. RETENTION AND DESTRUCTION OF RECORDS AND EVIDENCE.

Rule 27.1 Retention and Destruction of Records and Evidence.

a. The various original records of criminal cases in the trial court shall be retained according to the schedule set forth below:

1. Original non-electronically filed or maintained court case files shall be retained for nine years. The retention period begins the year following the year when time is exhausted for all post-conviction remedies in the courts of the Community.
2. Transcripts and depositions filed with the clerk during the pendency of a criminal case shall be retained for nine years. The retention period begins the year following the year when time is exhausted for all post-conviction remedies in the courts of the Community.
3. Electronic recordings of proceedings in criminal cases shall be retained for nine years. The retention period begins the year following the year when time is exhausted for all post-conviction remedies in the courts of the Community.
4. Evidence in the form of exhibits admitted shall be retained until the time is exhausted for all post-conviction remedies in the courts of the Community. Thereafter, disposition will be as ordered by the trial court upon motion of the party who submitted the evidence or on its own motion.
5. In cases ending in acquittal of all defendants or dismissal of all defendants, all papers, documents and records filed may be purged from the case file except the following:
 - i. Criminal complaint or other initiating document;
 - ii. Verdict(s) (in cases of acquittals); and
 - iii. Judgment, final order or minute entry of dismissal or acquittal.

b. All case file contents must be retained intact for cases not ending in acquittal or dismissal for all defendants.

c. The following definitions apply to this Rule:

1. “*Case file*” means the original documents or other material, regardless of physical form filed in an action or proceeding in the court, either in paper or electronic format.
2. “*Destruction*” or “*destroy*” means to discard by burning, shredding, recycling or other means that will obliterate the records.
3. “*Dispose*” means to destroy a record or transfer to an authorized archive, depending on the context.
4. “*File*” or “*filed*” means the record was delivered to and file-stamped by the clerk of the court.
5. “*Purge*” means to remove and destroy records in a case file pursuant to Rule 27.1.a.5.
6. “*Retention period*” means the period of time during which original records must be kept before they may be disposed of, usually a period of years but sometimes contingent upon an event.

d. The provisions of this Rule shall apply to all criminal case records and evidence in the possession of the clerk as of the effective date of this section regardless of the date on which the records were made or the evidence obtained.

COMMENT:

GRIC Code §5.1536.

RULE 28. SUSPENSION AND RESTORATION OF CIVIL RIGHTS.

Rule 28.1 Suspension of Civil Rights.

a. In imposing a sentence on a defendant who has been found guilty of a felony offense, a judge may order that the civil rights or privileges to possess a gun or firearm be forfeited or suspended.

b. Factors the judge may consider when ordering the suspension of civil right or privilege to possess a gun or firearm include, but are not limited to, that the person:

1. Is likely to use a weapon unlawfully or in such other manner as would endanger the person’s self or others;

2. Has previously been convicted of a felony offense, regardless of jurisdiction, that involved a gun or firearm; or

3. Is prohibited by federal law from possessing or receiving a firearm.

c. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

COMMENT:

GRIC Code §5.401.

Rule 28.2 Restoration of Civil Rights.

a. Two years after discharge from probation or sentence any person may file for restoration of the right to possess or carry a gun or firearm.

b. The person shall submit an application the court which shall include the name and address of the applicant, his signature, the offense(s) of which he was convicted, the date of conviction, the sentence imposed, and the relief requested. The court shall submit a copy of the application to the Office of the Prosecutor within five business of filing by the applicant.

c. The court shall set a hearing on any application not less than 60 days after the date the application is filed.

d. At least 10 days before the hearing on the application the prosecutor may file a written response setting forth any reason opposing the application, sending a copy to the applicant and his attorney or advocate, if any.

e. A judge has full discretion to restore the civil right to possess or carry a gun or firearm. If an application is denied the judge shall state the reasons in the court's order. A copy of the court's order disposing of the application shall be mailed to the applicant within 30 days of the hearing, with a copy simultaneously provided to the Office of the Prosecutor.

COMMENT:

GRIC Code §5.401.

VIII. APPEAL AND OTHER POST-CONVICTION RELIEF

RULE 29. APPEALS.

Rule 29.1. Appellate Jurisdiction, Notice of Appeal, Filing Fees, Preparation of the Records and Transcripts, Briefs, Copies and Service of Papers, Expedited Appeals, Oral Arguments, Scope of Review, Opinions, Motions for Rehearing or Clarification, and Mandates.

Appellate Jurisdiction, Notice of Appeal, Filing Fees, Preparation of the Records and Transcripts, Briefs, Copies and Service of Papers, Expedited Appeals, Oral Arguments, Scope of Review, Opinions, Motions for Rehearing or Clarification, and Mandates shall be subject to the requirements in the GRIC Code §§ 4.501, 4.504, 4.505, 4.506, 4.507, 4.508, 4.509, 4.511, 4.512, 4.513, 4.514, 4.515, and 4.516.

COMMENT:

GRIC Code §§4.501, 4.504, 4.505, 4.506, 4.507, 4.508, 4.509, 4.511, 4.512, 4.513, 4.514, 4.515, 4.516.

Rule 29.2. Docketing; Time Limits for Decision.

Docketing shall be subject to the requirements in the GRIC Code § 4.510; however, the notice of docketing shall be filed within five days after the time period for the reply brief has passed.

COMMENT:

GRIC Code §4.510.

Rule 29.3. Stay Pending Appeal.

Stay pending appeal shall be subject to the requirements in the GRIC Code § 4.517; however, the hearing shall be held within five days after the notice of appeal is filed.

COMMENT:

GRIC Code §4.517.

Rule 29.4 Right to Assistance of Counsel for Purposes of Appeal.

- a. For appeals of criminal convictions:

1. If the sentence of imprisonment was one year or less, the defendant has the right to counsel as provided in Rule 6.1(a).
2. If the sentence of imprisonment was more than one year, the defendant has a right to counsel as provided in Rule 6.1(b) and if the defendant is unable to obtain counsel as provided in Rule 6.2(d) counsel will be appointed as provided in Rule 6.2.

COMMENT:

GRIC Code §§4.501-20, 5.1505.

RULE 30. NEW TRIAL.

The court may grant a new trial subject to the requirements in the GRIC Code § 5.1526.

COMMENT:

GRIC Code §5.1526.

RULE 31. EXTRAORDINARY WRITS AND WRITS OF HABEAS CORPUS.

- a. Extraordinary Writs shall be subject to the requirements in the GRIC Code § 4.518.
- b. Writs of Habeas Corpus shall be subject to the requirements in the GRIC Code § 4.519.

COMMENT:

GRIC Code §§4.518, 4.519.

IX. POWERS OF COURT

RULE 32. POWERS OF THE COURT.

Rule 32.1. Contempt of Court.

- a. Criminal Contempt of Court may be issued pursuant to GRIC Code § 5.510.

b. A person shall not be found in criminal contempt without a hearing held after notice of the charge. The hearing shall be set so as to allow a reasonable time for the preparation of defense; the notice shall state the time and place of the hearing; and the essential facts constituting the contempt charged, the notice may be given orally by the judge in open court in the presence of the person charged, or by an order to show cause. The defendant is entitled to subpoena witnesses on his behalf and to release under Rule 7.

COMMENT:

GRIC Code §§5.510, 5.1501.

Rule 32.2. Subpoenas.

a. **Content.** A subpoena must state the court's name and title of the proceeding, and command the witness to attend and testify at the time and place the subpoena specifies. The party requesting the subpoena must provide the clerk of court with the name and the current address of the witness(es). The party must submit the request for subpoena at least 15 days prior to the trial or hearing date or by any deadlines set by the court.

1. A clerk of court may issue subpoenas for the attendance of witnesses on the request of any parties to the case, which shall bear the signature of the clerk issuing the subpoena.
2. A clerk of court may issue a blank subpoena, signed and sealed, to a defendant requesting a subpoena, and the defendant must fill in the blanks before the subpoena is served.
3. A clerk of court may issue a blank subpoena to a prosecutor requesting a subpoena, and the prosecutor must sign and fill in the blanks before the subpoena is served.

b. **Producing Documents and Objects.**

1. **In General.** A subpoena duces tecum may order the witness to produce any books, papers, documents, data or other objects the subpoena designates. A judge may direct the witness to produce the designated items in court before trial or before they are offered in evidence.
2. **Quashing or Modifying a Subpoena.** On motion made promptly, the court may quash a subpoena if compliance would be unreasonable or oppressive. Any motion to quash or modify a subpoena shall be set for a hearing within 15 days of the filing of the motion, during which time

compliance with the subpoena shall not be required until ordered by a judge. A judge shall quash or modify a subpoena if it:

- i. Fails to allow reasonable time for compliance;
- ii. Requires disclosure of privileged or other protected matter and no exception or waiver applies;
- iii. Is unreasonable, oppressive, or unduly burdensome; or
- iv. Exceeds the scope of discovery otherwise permitted under the criminal rules.

3. A subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the judge must require giving notice to the victim and the prosecutor so that the victim and/or the prosecutor as authorized under GRIC Code § 5.1701.C.3 can move to quash or modify the subpoena or otherwise object.

- c. **Service.** Subpoenas shall be served by a Gila River Indian Community law enforcement officer or such other person authorized to serve subpoenas within the Community.

1. Subpoenas served within the exterior boundaries of the Community shall be served in the same manner as civil summons and complaints are served, and if the witness resides outside the exterior boundaries of the Community the subpoena may be served by either personal service or by certified return receipt.
2. Written return of service of the original subpoena must be filed with the court within five days of service, stating the time and place of the service and by affidavit of the person serving the subpoena.
3. If a subpoena has not been served at least five days before trial, the party requesting the subpoena shall be notified of the non-service.

- d. **Contempt.** A judge may hold in contempt any person who, without adequate excuse, disobeys a subpoena issued by the Gila River Indian Community Court and issued in compliance with Rule 32.2(a)(1)-(3).

COMMENT:
GRIC Code §5.1523.

Rule 32.3. Arrest Warrants, Search Warrants and Summons.

a. **Arrest Warrants.** Arrest warrants shall be issued and executed pursuant to GRIC Code § 5.1605.

b. **Search Warrants.** Search warrants shall be issued and executed pursuant to GRIC Code § 5.1604.

c. **Summons.** A summons must: contain the defendant's name, or if it is unknown, a name or description by which the defendant can be identified with reasonable certainty; describe the offense charged in the complaint; command that the defendant appear at a designated date and time before a judge; and be signed by a judge. A summons may be served in the same manner as a civil summons and complaint or may be served by Community law enforcement officials, Bureau of Indian Affairs law enforcement officials, or some other officer authorized by law or by the Community Council.

COMMENT:
GRIC Code §§5.1501, 5.1604, 5.1605.

RULE 33. DIVERSIONARY PROSECUTION.

a. A judge shall have the discretion in sentencing a defendant charged with a first misdemeanor offense, except where prohibited by these rules, to accept a defendant's plea of guilt and defer entering the plea into the record and defer imposition of sentence for a specified time upon the condition of the defendant successfully completing drug and/or alcohol treatment, and/or any other appropriate conditions which promote rehabilitation, of which shall be specifically stated.

b. Eligibility for diversionary prosecution shall be determined pursuant to GRIC Code § 5.405.B.1-3.

c. Monitoring under diversionary prosecution shall be pursuant to GRIC Code § 5.405.C.

d. At any time after the defendant has satisfactorily completed one-half of the original diversion period, the defendant may petition the court to reduce or terminate the

supervision if the defendant proves successful completion of the stated condition(s). The court shall schedule a hearing to terminate diversionary prosecution and shall promptly notify the defendant, defense counsel if any, prosecutor's office, and Probation Office of the date and time of the hearing.

e. If a judge finds based on evidence presented at the hearing to terminate diversionary prosecution that the defendant satisfactorily fulfilled all conditions of the diversion condition(s), including no subsequent criminal charges against the defendant while on diversion, the judge shall dismiss the offense.

f. If the defendant fails to successfully complete the stated condition(s) of diversionary prosecution the prosecutor may file a written motion requesting that the order suspending the prosecution be vacated. The prosecutor shall serve a copy of the written motion to the defendant and defense counsel if any. The court shall schedule a hearing to determine whether the court should reinstate prosecution, enter the defendant's plea of guilty and reinstate the conditions and shall promptly notify the defendant, defense counsel if any, prosecutor's office of the date and time of the hearing. The hearing shall be held in conformance with the requirements in the GRIC Code § 5.405.E

g. If a judge finds, by preponderance of the evidence, based on evidence presented at the hearing to reinstate prosecution defendant failed to fulfill the conditions of the deferred sentence or was charged with subsequent criminal charges, the judge shall enter the defendant's plea of guilt into the record and sentence the defendant pursuant to these rules.

h. At the expiration of the time period for diversionary prosecution, the court shall order the prosecution dismissed with prejudice.

COMMENT:
GRIC CODE §5.405.

RULE 34. EXTRADITION.

Extradition shall be subject to the requirements in the GRIC Code § 5.1603.

COMMENT:
GRIC Code §5.1603.

RULE 35. VICTIMS' RIGHTS.

At every hearing the judge shall inquire with the prosecutor to ensure compliance with the GRIC Code § 5.1701.

COMMENT:

GRIC Code §5.1701.

RULE 36. TRANSFER OF JUVENILE FOR PROSECUTION.

The prosecution of juveniles in Community Court shall be subject to the requirements in the GRIC Code § 5.1538.

COMMENT:

GRIC Code §5.1538.

RULE 37. COMMUTATION.

- a. A defendant may file for commutation of sentence, pursuant to GRIC Code § 5.411, during any time period regularly designated by the court for commutation review hearings.
- b. The court shall forward a copy of the defendant's motion to the Probation Office and the Office of the Prosecutor within five days of receipt of the motion.
- c. The court shall set the matter for hearing and provide timely notice to the defendant, the Probation Office, and the Office of the Prosecutor.
- d. The Probation Office shall file a written report with the court at least 10 days prior to the hearing, with a copy simultaneously provided to the defendant, defense counsel if any, and the Office of the Prosecutor. The report shall include recommendations for approval or denial of the motion for commutation; written reports from the jail on the defendants conduct; any release conditions; victim contact and victim statement, if any; and any other recommendations concerning release. The Office of the Prosecutor may file a response to the motion for commutation at least five days prior to the commutation hearing.
- e. Any 'work time credit' shall be issued pursuant to GRIC Code § 5.403.E.1 - 4.

f. If a judge is satisfied that justice will best be served by reducing a sentence, a judge may commute to a lesser period of incarceration any sentence for a misdemeanor offense imposed upon a defendant, upon proof that during the period of incarceration the defendant served without misconduct. The defendant may be placed on probation for the remainder of the sentence pursuant to Rule 26, and if the defendant is not placed on probation the court shall issue a release order specifying any conditions of release, a copy of which shall be provided to the defendant before the defendant is released from incarceration.

g. If a judge is satisfied that justice will best be served by reducing a sentence, a judge may commute to a lesser period of incarceration any sentence for a felony offense imposed upon a defendant, upon proof that the defendant has served at least half his sentence of incarceration and has served without misconduct. The defendant may be placed on probation for the remainder of the sentence pursuant to Rule 26, and if the defendant is not placed on probation the court shall issue a release order specifying any conditions of release, a copy of which shall be provided to the defendant before the defendant is released from incarceration.

COMMENT:

GRIC Code §§5.407, 5.411.

RULE 38. EXPUNGEMENT.

a. Expungement shall be subject to the requirements in the GRIC Code § 5.409.

b. The court shall set a hearing within 60 days of filing a motion to set aside judgment of a convicted person and shall promptly notify the person applying for expungement and his attorney or advocate, if any; and the Office of the Prosecutor of the hearing date and time.

c. The Office of the Prosecutor may file a response to the application at least five days prior to hearing, with a copy simultaneously provided to the applicant and his attorney or advocate, if any.

d. If the judge grants the application, the judge shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction.

COMMENT:

GRIC Code §5.409.

RULE 39. FORFEITURE WEAPONS, EXPLOSIVES, AND DRUGS.

The forfeiture of weapons, explosives and drugs shall be subject to the requirements in the GRIC Code § 5.1530.A.

COMMENT:

GRIC Code §5.1530.

RULE 40. SEX OFFENDER REGISTRATION AND NOTIFICATION.

Rule 40.1. Purpose.

The procedures under this rule are intended to comply with the requirements of Sex Offender Registration and Notification Ordinance (GR-04-11), codified at Title 8, Chapter 8 of the GRIC Code.

Rule 40.2. Custody of an Unregistered Sex Offender.

If, during arraignment or initial hearing, the judge finds probable cause that an in custody person has previously been convicted of a registerable sex offense pursuant to the Title 8, Chapter 8, and that person is not currently registered with the Gila River Police Department, the person must register prior to being released from incarceration and may be detained for purposes of completing registration for a period not exceed 24 hours.

Rule 40.3. Sentencing of an Adult Defendant to a Sex Offense.

In every adult criminal prosecution, including the prosecution of a juvenile who is being tried as an adult, in which a defendant is convicted of, admits under oath, or pleads guilty or no contest to a violation, attempted violation, facilitation, conspiracy, or solicitation of a sex offense as defined in GRIC Code § 8.802.P. and § 8.803.B, but excluding those offenses provided in GRIC Code § 8.803.K, the judge who presides at the sentencing proceeding shall notify the sex offender of his or her requirement to register as a sex offender with the Gila River Police Department pursuant to GRIC Code § 8.804. The judge shall also obtain the sex offender's signature, acknowledging such notification on a form utilized by the court for such purpose.

Rule 40.4. Sentencing of a Juvenile Offender to a Sex Offense.

In every juvenile offender matter in which a juvenile 14 years of age or older at the time the offense is committed and the offense adjudicated is comparable to, or more severe than, aggravated sexual abuse (as described in either (a) or (b) of section 2241 of Title 18 of the

United States Code), or was an attempt or conspiracy to commit such an offense, the judge who presides at the sentencing proceeding shall notify the sex offender of his or her requirement to register as a sex offender with the Gila River Police Department pursuant to GRIC Code § 8.804. The judge shall obtain the sex offender's signature, acknowledging such notification on a form utilized by the court for such purposes.

Rule 40.5. Timing of Registration.

a. A person sentenced under Rule 40.3 or 40.4 who is not in custody at the time of sentencing, and who will not be taken immediately into custody or ordered by the court to immediate commitment into a residential treatment program or facility, must register as a sex offender with the Gila River Police Department within three business days of sentencing, and notification of such registration requirement shall be included the acknowledgment form referenced in Rules 40.3 and 40.4.

b. A person sentenced under Rule 40.3 or 40.4 who is in custody at the time of sentencing must register as a sex offender with the Gila River Police Department prior to being released from incarceration but in any event incarceration for purposes of completing registration shall not exceed 24 hours.

Rule 40.6. Notification to Gila River Police Department.

a. If the judge finds that probable cause exists that a person is an unregistered sex offender under Rule 40.2, the court shall notify the Gila River Police Department on the same day that probable cause was found.

b. The acknowledgement form referenced in Rules 40.3 and 40.4 shall be provided by the court to the Gila River Police Department on the same day that the form is signed by the sex offender.

c. Upon timely receipt of notice from the court that an incarcerated person is required to register as a sex offender prior to release from custody, the Gila River Police Department shall ensure that any incarcerated person is registered as a sex offender prior to release from custody.

COMMENT:

GRIC Code §1504.C.8.; GRIC Code Title 8, Chapter 8.

RULE 41. JUDICIAL EDUCATION.

Rule 41.1 Purpose.

The protection of the rights of Community members depends upon the existence of an independent and competent judiciary. The task of maintaining judicial competence depends on the willingness of the judiciary itself to assure that its members are knowledgeable and skilled and that the judges are trained in the application of legal principles. For purposes of Rule 41 a judge shall include the chief judge; associate judges; appellate court judges, and judges pro tempore (or visiting judges) appointed on a full-time, part-time or on-call basis to preside over criminal proceedings.

Rule 41.2 Educational Requirements.

a. **Initial Educational Requirements.** Before initial case assignment, a judge shall have completed a minimum of 30 hours of instruction in substantive, procedural and evidentiary laws, including at least two hours of judicial ethics, from an accredited program.

b. **On-Going Educational Requirements.** Each fiscal year after the initial year of taking office or of initial appointment, a judge shall complete a minimum of 15 hours of instruction in substantive, procedural and evidentiary laws, including at least two hours of judicial ethics, from an accredited program.

c. **Enhanced Sentencing Requirements.** A judge presiding over criminal proceedings where a defendant is subject to more than one year of incarceration shall:

1. Be licensed to practice law by any jurisdiction in the United States; and
2. Have sufficient legal training to preside over criminal proceedings. Sufficient legal training is considered satisfied after completing a minimum of 40 hours in criminal substantive, procedural and evidentiary laws, from an accredited program.

d. **Program Accreditation.** Attendance at an education program sponsored by the following shall be presumed to meet standards and be accredited:

1. Judicial College of Arizona;
2. National Judicial College;
3. National Tribal Judicial Center;

4. Programs accredited by Arizona's Committee on Judicial Education and Training;
 5. Any accredited law school;
 6. Local, state or national bar association.
- e. Judicial education shall address relevant areas such as judicial competence, performance, case management, opinion writing and administration.
- f. **Certification.**
1. A judge shall file an affidavit certifying compliance with Rule 41.2(a) and (b) with the court administrator, or designee, for each fiscal year beginning October 1 and ending September 30, not later than October 31 of each fiscal year.
 2. The court administrator, or designee, shall forward to the Legislative Standing Committee no later than November 30 of every fiscal year, the names of any judge that does not fulfill the requirements of Rule 41.2(a) and (b), and thereafter upon request by the Community Council or any Community member.
 3. For appointment of cases under Rule 41.2(c), a judge shall forward a copy of his/her license to practice law issued by any jurisdiction in the United States and an affidavit certifying compliance with Rule 41.2(c)(2), which shall be substantiated by certificates of attendance, to the court administrator, or designee, prior to appointment.
 4. The court administrator, or designee, shall notify the chief judge when a judge does not meet the requirements of Rule 41.2(c). The chief judge, in consultation with the court administrator, shall ensure that all judges appointed to cases where a defendant is subject to more than one year of incarceration, meet the requirements under Rule 41.2(c), and may reappoint case assignments to ensure compliance with Rule 41.2(c).
- g. The effective date for any references to felony offenses or felony procedure shall be May 1, 2014.

EXHIBIT 1: SENTENCING WORKSHEET

Gila River Indian Community Court
Sentencing Computation Worksheet

OFFENDER ENTRY					SENTENCING JUDGE ENTRY														
Last Name					Judge Name (Last, First)														
First Name		Middle Name		Suffix	Expected Sent. Date														
Date of Birth		Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female			<input type="checkbox"/> Probation Revoked?														
COURT CASE (S) ENTRY [ATTACH ADDITIONAL SHEET AS NECESSARY]																			
Court Case No. & Conviction / Plea Date					Court Case No. & Conviction / Plea Date														
Court Case No. & Conviction / Plea Date					Court Case No. & Conviction / Plea Date														
OFFENSE ENTRY					ADDITIONAL OFFENSE ENTRY														
Case No.	Count #	M / F	Cat. Level	Presum. Sent.	Case No.	Count #	M / F	Cat. Level	Presum. Sent.										
Offense Statute (include property value / drug type / drug amount)					Offense Statute (include property value / drug type / drug amount)														
If Applicable, Mandatory Minimum Sentence / Offense Statute					If Applicable, Mandatory Minimum Sentence / Offense Statute														
Aggravating Factors (Check): <input type="checkbox"/> Causing serious physical injury <input type="checkbox"/> Conduct danger to Community <input type="checkbox"/> Extensive property damage <input type="checkbox"/> Use deadly weapon <input type="checkbox"/> Prior criminal conviction <input type="checkbox"/> Accomplice(s) present <input type="checkbox"/> Ringleader <input type="checkbox"/> Induced minor to participate <input type="checkbox"/> Heinous / depraved crime <input type="checkbox"/> Financial gain <input type="checkbox"/> Public servant <input type="checkbox"/> Victim suffered physical, emotional, financial harm <input type="checkbox"/> Death of unborn child <input type="checkbox"/> Wearing body armor <input type="checkbox"/> Victim elderly, disabled, vulnerable <input type="checkbox"/> Position of fiduciary/trust <input type="checkbox"/> Hate crime <input type="checkbox"/> Committing murder/neg homicide / manslaughter .15 BAC <input type="checkbox"/> Presence of child <input type="checkbox"/> Retaliation for reporting crime <input type="checkbox"/> Impersonating law enforcement officer <input type="checkbox"/> Prior probation revocation <input type="checkbox"/> Committed on probation <input type="checkbox"/> Multiple victims <input type="checkbox"/> Continued criminal activity subsequent to arrest <input type="checkbox"/> Involved planning, sophistication, professionalism <input type="checkbox"/> Victim tied, binded, confined <input type="checkbox"/> Offender not conducive to supervision in less restrictive setting <input type="checkbox"/> Any other relevant factor					Mitigating Factors (Check): <input type="checkbox"/> Offender's ability to appreciate crime impaired <input type="checkbox"/> Substantial duress or provocation <input type="checkbox"/> Played minor role in offense <input type="checkbox"/> Complied with duties required in stopping for traffic accident <input type="checkbox"/> Assisted law enforcement with resolution of other crimes <input type="checkbox"/> Reasonably amenable to supervision <input type="checkbox"/> Imprisonment would entail excessive hardship on offender or dependents <input type="checkbox"/> Lack of criminal history, extended period arrest free <input type="checkbox"/> Offender suffered from repeated abuse from victim <input type="checkbox"/> Prior good history on probation <input type="checkbox"/> Not a danger to the Community <input type="checkbox"/> Serious medical condition; terminal illness <input type="checkbox"/> Any other relevant factor					Aggravating Factors (Check): <input type="checkbox"/> Causing serious physical injury <input type="checkbox"/> Conduct danger to Community <input type="checkbox"/> Extensive property damage <input type="checkbox"/> Use deadly weapon <input type="checkbox"/> Prior criminal conviction <input type="checkbox"/> Accomplice(s) present <input type="checkbox"/> Ringleader <input type="checkbox"/> Induced minor to participate <input type="checkbox"/> Heinous / depraved crime <input type="checkbox"/> Financial gain <input type="checkbox"/> Public servant <input type="checkbox"/> Victim suffered physical, emotional, financial harm <input type="checkbox"/> Death of unborn child <input type="checkbox"/> Wearing body armor <input type="checkbox"/> Victim elderly, disabled, vulnerable <input type="checkbox"/> Position of fiduciary/trust <input type="checkbox"/> Hate crime <input type="checkbox"/> Committing murder/neg homicide / manslaughter .15 BAC <input type="checkbox"/> Presence of child <input type="checkbox"/> Retaliation for reporting crime <input type="checkbox"/> Impersonating law enforcement officer <input type="checkbox"/> Prior probation revocation <input type="checkbox"/> Committed on probation <input type="checkbox"/> Multiple victims <input type="checkbox"/> Continued criminal activity subsequent to arrest <input type="checkbox"/> Involved planning, sophistication, professionalism <input type="checkbox"/> Victim tied, binded, confined <input type="checkbox"/> Offender not conducive to supervision in less restrictive setting <input type="checkbox"/> Any other relevant factor					Mitigating Factors (Check): <input type="checkbox"/> Offender's ability to appreciate crime impaired <input type="checkbox"/> Substantial duress or provocation <input type="checkbox"/> Played minor role in offense <input type="checkbox"/> Complied with duties required in stopping for traffic accident <input type="checkbox"/> Assisted law enforcement with resolution of other crimes <input type="checkbox"/> Reasonably amenable to supervision <input type="checkbox"/> Imprisonment would entail excessive hardship on offender or dependents <input type="checkbox"/> Lack of criminal history, extended period arrest free <input type="checkbox"/> Offender suffered from repeated abuse from victim <input type="checkbox"/> Prior good history on probation <input type="checkbox"/> Not a danger to the Community <input type="checkbox"/> Serious medical condition; terminal illness <input type="checkbox"/> Any other relevant factor				
Departure (Misd Cannot Exceed Year; Fel Cannot Exceed 3 Years) <input type="checkbox"/> Aggravated/Upward <input type="checkbox"/> Mitigated/Downward					Departure (Misd Cannot Exceed Year; Fel Cannot Exceed 3 Years) <input type="checkbox"/> Aggravated/Upward <input type="checkbox"/> Mitigated/Downward														

EXHIBIT 1: SENTENCING WORKSHEET

List Reason(s) to Depart from Presumptive Sentence:	List Reason(s) to Depart from Presumptive Sentence
Total Sentence: (Cannot Exceed Nine Years)	Judge's Signature / Date:

EXHIBIT 1: SENTENCING WORKSHEET

ADDITIONAL OFFENSE ENTRY					ADDITIONAL OFFENSE ENTRY														
Case No.	Count #	M / F	Cat. Level	Presum. Sent.	Case No.	Count #	M / F	Cat. Level	Presum. Sent.										
Offense Statute (include property value / drug type / drug amount)					Offense Statute (include property value / drug type / drug amount)														
Penalty Statute					Penalty Statute														
If Applicable, Mandatory Minimum Sentence / Offense Statute					If Applicable, Mandatory Minimum Sentence / Offense Statute														
Aggravating Factors (Check): <input type="checkbox"/> Causing serious physical injury <input type="checkbox"/> Conduct danger to Community <input type="checkbox"/> Extensive property damage <input type="checkbox"/> Use deadly weapon <input type="checkbox"/> Prior criminal conviction <input type="checkbox"/> Accomplice(s) present <input type="checkbox"/> Ringleader <input type="checkbox"/> Induced minor to participate <input type="checkbox"/> Heinous / depraved crime <input type="checkbox"/> Financial gain <input type="checkbox"/> Public servant <input type="checkbox"/> Victim suffered physical, emotional, financial harm <input type="checkbox"/> Death of unborn child <input type="checkbox"/> Wearing body armor <input type="checkbox"/> Victim elderly, disabled, vulnerable <input type="checkbox"/> Position of fiduciary/trust <input type="checkbox"/> Hate crime <input type="checkbox"/> Committing murder/neg homicide / manslaughter .15 BAC <input type="checkbox"/> Presence of child <input type="checkbox"/> Retaliation for reporting crime <input type="checkbox"/> Impersonating law enforcement officer <input type="checkbox"/> Prior probation revocation <input type="checkbox"/> Committed on probation <input type="checkbox"/> Multiple victims <input type="checkbox"/> Continued criminal activity subsequent to arrest <input type="checkbox"/> Involved planning, sophistication, professionalism <input type="checkbox"/> Victim tied, binded, confined <input type="checkbox"/> Offender not conducive to supervision in less restrictive setting <input type="checkbox"/> Any other relevant factor					Mitigating Factors (Check): <input type="checkbox"/> Offender's ability to appreciate crime impaired <input type="checkbox"/> Substantial duress or provocation <input type="checkbox"/> Played minor role in offense <input type="checkbox"/> Complied with duties required in stopping for traffic accident <input type="checkbox"/> Assisted law enforcement with resolution of other crimes <input type="checkbox"/> Reasonably amenable to supervision <input type="checkbox"/> Imprisonment would entail excessive hardship on offender or dependents <input type="checkbox"/> Lack of criminal history, extended period arrest free <input type="checkbox"/> Offender suffered from repeated abuse from victim <input type="checkbox"/> Prior good history on probation <input type="checkbox"/> Not a danger to the Community <input type="checkbox"/> Serious medical condition; terminal illness <input type="checkbox"/> Any other relevant factor					Aggravating Factors (Check): <input type="checkbox"/> Causing serious physical injury <input type="checkbox"/> Conduct danger to Community <input type="checkbox"/> Extensive property damage <input type="checkbox"/> Use deadly weapon <input type="checkbox"/> Prior criminal conviction <input type="checkbox"/> Accomplice(s) present <input type="checkbox"/> Ringleader <input type="checkbox"/> Induced minor to participate <input type="checkbox"/> Heinous / depraved crime <input type="checkbox"/> Financial gain <input type="checkbox"/> Public servant <input type="checkbox"/> Victim suffered physical, emotional, financial harm <input type="checkbox"/> Death of unborn child <input type="checkbox"/> Wearing body armor <input type="checkbox"/> Victim elderly, disabled, vulnerable <input type="checkbox"/> Position of fiduciary/trust <input type="checkbox"/> Hate crime <input type="checkbox"/> Committing murder/neg homicide / manslaughter .15 BAC <input type="checkbox"/> Presence of child <input type="checkbox"/> Retaliation for reporting crime <input type="checkbox"/> Impersonating law enforcement officer <input type="checkbox"/> Prior probation revocation <input type="checkbox"/> Committed on probation <input type="checkbox"/> Multiple victims <input type="checkbox"/> Continued criminal activity subsequent to arrest <input type="checkbox"/> Involved planning, sophistication, professionalism <input type="checkbox"/> Victim tied, binded, confined <input type="checkbox"/> Offender not conducive to supervision in less restrictive setting <input type="checkbox"/> Any other relevant factor					Mitigating Factors (Check): <input type="checkbox"/> Offender's ability to appreciate crime impaired <input type="checkbox"/> Substantial duress or provocation <input type="checkbox"/> Played minor role in offense <input type="checkbox"/> Complied with duties required in stopping for traffic accident <input type="checkbox"/> Assisted law enforcement with resolution of other crimes <input type="checkbox"/> Reasonably amenable to supervision <input type="checkbox"/> Imprisonment would entail excessive hardship on offender or dependents <input type="checkbox"/> Lack of criminal history, extended period arrest free <input type="checkbox"/> Offender suffered from repeated abuse from victim <input type="checkbox"/> Prior good history on probation <input type="checkbox"/> Not a danger to the Community <input type="checkbox"/> Serious medical condition; terminal illness <input type="checkbox"/> Any other relevant factor				
Departure (Misd Cannot Exceed Year; Fel Cannot Exceed 3 Years) <input type="checkbox"/> Aggravated/Upward <input type="checkbox"/> Mitigated/Downward					Departure (Misd Cannot Exceed Year; Fel Cannot Exceed 3 Years) <input type="checkbox"/> Aggravated/Upward <input type="checkbox"/> Mitigated/Downward														
List Reason(s) to Depart from Presumptive Sentence:					List Reason(s) to Depart from Presumptive Sentence														
Attach to Page 1																			

EXHIBIT 1: SENTENCING WORKSHEET

CRIMINAL HISTORY	
Prior Juvenile Adjudications	Disp. Date
Prior Misdemeanor Convictions	
Prior Felony Convictions	

EXHIBIT 2: BAIL SCHEDULE

Felony Offense Bail Computation Worksheet

1. Name of Arrestee: _____

2. List of All Offenses: _____

Base Bail

3. For each offense list code and section number: _____

List the presumptive bail for each offense listed in number 3

NOTE: Use separate Worksheets for separate offenses

Felony Enhancements (Based on 5.1509(B)(1)-(6))

4. Was the offense committed for the benefit of a gang?

If yes, add \$10,000.

AMOUNT
3.a. _____

4. _____

5. Was the offense a financial offense involving loss exceeding \$10,000? If yes, add the amount of loss to 5.

5. _____

6. Was a weapon involved? If yes, add only the greatest of 6a-6d. If no weapon, move to 7

a. Did the arrestee personally discharge a firearm, causing Grave Bodily Injury (GBI) or death? If yes, add \$10,000.

6.a. _____ OR

b. Did the arrestee personally discharge a firearm, not causing GBI or death? If yes, add \$7,000.

6.b. _____ OR

c. Did the offense involve possession, use or discharge of a firearm? If yes, add \$7,000.

6.c. _____ OR

d. Did the arrestee use a weapon other than a firearm? If yes, add \$5,000.

6.d. _____

7. Did the offense involve infliction of GBI? If yes, add \$10,000.

7. _____

8. Does the arrestee have any prior convictions? If no prior convictions, move to 9

a. Is the arrestee charged with a current controlled substance sale

AND does the arrestee have a prior conviction for controlled substances?

If yes, add \$15,000.

8.a. _____

b. Does the arrestee have a prior conviction for a serious or violent felony or enumerated sex offense?

If yes, add \$5,000 per conviction.

8.b. _____

c. Is the arrestee charged with a serious or violent felony AND does the arrestee have two or more convictions for serious or violent felonies? If yes, add \$5,000.

8.c. _____

d. Has the arrestee served a jail term during the past 5 years? If so, add \$1,000

8.d. _____

9. Are there any other enhancements to be added? If no other enhancements move to 10

a. Is the victim over 65, under 15, or disabled?

If yes, add \$10,000.

9.a. _____

b. Are there other felony charges pending against arrestee, or is the arrestee on probation (add only once). If yes, add \$10,000.

9.b. _____

10. Add lines 3a. through 9.b.

10. _____

EXHIBIT 2: BAIL SCHEDULE

11. If there are multiple offenses add each line 10 from each worksheet

11. _____

12. Add lines 10 and 11.

Line 10. _____ plus Line 11. _____ =

This is your Total Bail

12. _____

**NOTE: Total Bail cannot exceed three times maximum fine amount for each offense.
Maximum for Felony Offense is \$45,000. Maximum for Misdemeanor Offense is \$15,000.**

Name of person completing form

Department

Date

EXHIBIT 2: BAIL SCHEDULE

Misdemeanor Offense Bail Computation Worksheet

1. Name of Arrestee: _____
2. List of All Offenses: _____

Base Bail

3. For each offense list code and section number: _____

List the presumptive bail for each offense listed in number 3

AMOUNT
3.a. _____

NOTE: Use separate Worksheets for separate offenses

Misdemeanor Enhancements (Based on 5.1509(B)(1)-(6))

4. Was the offense committed for the benefit of a gang?
If yes, add \$5,000. 4. _____
5. Was the offense a financial offense involving loss exceeding \$5,000 if yes,
add the amount of loss to 5. 5. _____
6. Was a weapon involved? If yes, add only the greatest of 6a-6d. If no weapon, move to 7
 - a. Did the arrestee personally discharge a firearm, causing
Grave Bodily Injury (GBI) or death? If yes, add \$5,000. 6.a. _____ **OR**
 - b. Did the arrestee personally discharge a firearm, not causing GBI or death?
If yes, add \$3,500. 6.b. _____ **OR**
 - c. Did the offense involve possession, use or discharge of a firearm?
If yes, add \$3,500. 6.c. _____ **OR**
 - c. Did the arrestee use a weapon other than a firearm?
If yes, add \$2,500. 6.d. _____
7. Did the offense involve infliction of GBI? If yes, add \$5,000. 7. _____
8. Does the arrestee have any prior convictions? If no prior convictions, move to 9
 - a. Is the arrestee charged with a current controlled substance sale
AND does the arrestee have a prior conviction for controlled substances?
If yes, add \$7,500. 8.a. _____
 - b. Does the arrestee have a prior conviction for a serious or violent
felony or enumerated sex offense?
If yes, add \$2,500 per conviction. 8.b. _____
 - c. Is the arrestee charged with a serious or violent felony AND does
the arrestee have two or more convictions for serious or violent
felonies? If yes, add \$2,500. 8.c. _____
 - d. Has the arrestee served a jail term during the past 5 years?
If so, add \$500. 8.d. _____
9. Are there any other enhancements to be added? If no other enhancements move to 10
 - a. Is the victim over 65, under 15, or disabled? If yes, add \$5,000. 9.a. _____
 - b. Are there other felony charges pending against arrestee, or is the
arrestee on probation (add only once). If yes, add \$5,000. 9.b. _____
10. Add lines 3a. through 9.b. 10. _____

EXHIBIT 2: BAIL SCHEDULE

11. If there are multiple offenses add each line 10 from each worksheet **11.** _____

12. Add lines 10 and 11.

Line 10. _____ plus Line 11. _____ =

This is your Total Bail **12.** _____

**NOTE: Total Bail cannot exceed three times maximum fine amount for each offense.
Maximum for Felony Offense is \$45,000. Maximum for Misdemeanor Offense is \$15,000.**

Name of person completing form

Department

Date

EXHIBIT 2: BAIL SCHEDULE

Presumptive Bail

Felony (\$0 - \$45,000)

Category I \$11,200

Category II \$2,800

Category III \$700

Misdemeanor

Category I \$3,700

Category II \$900

Category III \$200

EXHIBIT 2: BAIL SCHEDULE

Felony Bail Schedule (effective date May 1, 2014)

Presumptive Bail

Category I (Offense, Code Section):

\$11,200

1. Homicide, 5.601.B
2. Aggravated Assault, 5.603.B
3. Kidnapping, 5.607.B
4. Child Abuse, 5.705.E
5. Elderly/Vulnerable Adult abuse, 5.706.D
6. Sexual Assault, 5.801.D
7. Sex Abuse, 5.802.C
8. Sexual Conduct with Minor, 5.803.D
9. Molestation of a Child, 5.804.C
10. Arson, 5.909.B.2
11. Participating in or Assisting a Criminal Street Gang, 5.1005.K
12. Drive By Shooting, 5.1010.E

Category II (Offense, Code Section):

\$2,800

1. Bribery, 5.501.C
2. Perjury, 5.502.C
3. Obstructing a Criminal Investigation or Prosecution, 5.517.C
4. Possession of Contraband by a Jail Inmate, 5.518.C
5. Delivery of Contraband, 5.519.C
6. Stalking, 5.608.C
7. Incest, 5.805.B
8. Aggravated Burglary, 5.903.B
9. Robbery, 5.904.C
10. Arson, 5.909.B.1, B.3, or B.4
11. Theft by Extortion, 5.912.D
12. Receiving Stolen Property, 5.913.C
13. Forgery, 5.1101.D
14. Possession, Use or Manufacture of Controlled Substances, 5.1201.F
15. Endangering Human Life While Illegally Manufacturing Controlled Substances, 5.1202.C
16. Maintaining Drug Involved Premises, 5.1203.C
17. Distribution of Controlled Substances to Persons Under Age 21, 5.1204.C
18. Employment or Use of Persons under 18 Years of Age in Drug Operations, 5.1205.C
19. Distribution or Manufacturing A Controlled Substance In or Near Schools or Playgrounds, 5.1206.C
20. Possession, Use, Production, Sale or Transportation of Marijuana, 5.1207.C
21. Misconduct Involving Weapons, 5.1301.E
22. Misuse of Firearms, 5.1302.D

Category III (Offense, Code Section):

\$700

1. False Reporting, 5.503.E
2. Resisting Arrest, 5.506.C
3. Tampering with Public Record, 5.511.C
4. Escape from Lawful Custody, 5.512.E

EXHIBIT 2: BAIL SCHEDULE

5. Witness Tampering, 5.513.C
6. Receiving Bribe as a Witness, 5.514.C
7. Jury Tampering, 5.515.C
8. Receiving a Bribe by a Juror, 5.516.C
9. Theft, 5.905.E
10. Criminal Damage to Property, 5.908.E
11. Riot, 5.1001.C
12. Fraud by Person Authorized to Provide Goods or Services, 5.1103.E
13. Fraudulent Use of Credit Card, 5.1104.D
14. Fraudulent Schemes and Practices Against the Community, 5.1108.C
15. Possession, Manufacture, Delivery, Advertisement of Drug Paraphernalia, 5.1208.F

Misdemeanor Bail Schedule

Presumptive Bail

Category I (Offense, Code Section):

\$3,700

1. Bribery, 5.501.B
2. Perjury, 5.502.B
3. Interfering with Law Enforcement or Jail Employee, 5.504.B
4. Resisting Arrest, 5.506.CB
5. Escape from Lawful Custody, 5.512.D
6. Jury Tampering, 5.515.B
7. Obstructing a Criminal Investigation or Prosecution, 5.517.B
8. Possession of Contraband by a Jail Inmate, 5.518.B
9. Delivery of Contraband, 5.519.B
10. Homicide, 5.601.C (effective dates January 1, 2014 through April 30, 2014)
11. Assault, 5.602.B
12. Aggravated Assault, 5.603.C (effective dates January 1, 2014 through April 30, 2014)
13. Threatening, 5.605.B
14. Kidnapping, 5.607.C (effective dates January 1, 2014 through April 30, 2014)
15. Stalking, 5.608.B
16. Harassment, 5.609.D
17. Bigamy, 5.701.B
18. Contributing to the Delinquency of Minor, 5.708.B
19. Child Abuse, 5.705.D
20. Elderly/Vulnerable Adult Abuse, 5.706.C
21. Sexual Assault, 5.801.E (effective dates January 1, 2014 through April 30, 2014)
22. Sexual Abuse, 5.802.D (effective dates January 1, 2014 through April 30, 2014)
23. Sexual Conduct with Minor, 5.803.E (effective dates January 1, 2014 through April 30, 2014)
24. Molestation of a Child, 5.804.D (effective dates January 1, 2014 through April 30, 2014)
25. Causing or Taking a Child for Prostitution, 5.808.B
26. Incest, 5.805.C (effective dates January 1, 2014 through April 30, 2014)
27. Indecent Exposure, 5.806.C
28. Criminal Trespass, 5.901.B
29. Burglary, 5.902.B
30. Robbery, 5.904.B

EXHIBIT 2: BAIL SCHEDULE

31. Theft, 5.905.D
32. Shoplifting, 5.906.C
33. Criminal Damage to Property, 5.908.D
34. Arson, 5.909.D
35. Theft by Extortion, 5.912.C
36. Receiving Stolen Property, 5.913.B
37. Criminal Polluting, 5.915.B
38. Riot, 5.1001.B
39. Cruelty to Animals, 5.1004.C
40. Participating in Criminal Street Gang, 5.1005.J
41. Wearing or Displaying Criminal Street Gang Clothing or Attire, 5.1006.B
42. Defacement, 5.1007.C
43. Drive By Shooting, 5.1010.D
44. Forgery, 5.1101.C
45. Obtaining Signature by Deception, 5.1102.B
46. Fraud by Person Authorized to Provide Goods or Services, 5.1103.D
47. Fraudulent Use of Credit Card, 5.1104.C
48. Possession, Use or Manufacture of Controlled Substance, 5.1201.E
49. Endangering Human Life While Illegally Manufacturing Controlled Substances, 5.1202.B
50. Maintaining Drug Involved Premises, 5.1203.B
51. Distribution of Controlled Substances to Persons Under Age 21, 5.1204.B
52. Employment or Use of Persons under 18 Years of Age in Drug Operations, 5.1205.B
53. Distribution or Manufacturing A Controlled Substance In or Near Schools or Playgrounds, 5.1206.B
54. Possession, Use, Production, Sale or Transportation of Marijuana, 5.1207.B
55. Possession, Manufacture, Delivery, Advertisement of Drug Paraphernalia, 5.1208.E
56. Unlawful Possession, Sale, Use of Vapor Releasing Substances, 5.1209.D
57. Furnishing Marijuana to a Minor, 5.1210.B
58. Misconduct Involving Weapons, 5.1301.D
59. Misuse of Firearms, 5.1302.C
60. Negligent use of a Deadly Weapon, 5.1303.C
61. Dangerous Use of Explosives, 5.1304.B
62. Misconduct Involving Explosives, 5.1306.C
63. Unlawful Sale of Liquor, 5.1403.C
64. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.1
65. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.2
66. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.3

Category II (Offense, Code Section):

\$900

1. False Reporting, 5.503.D
2. Refusing to Aid Law Enforcement Officer, 5.505.C
3. Refusing to Assist in Fire control, 5.507.C
4. Failure to Obey Court Order, 5.508.B
5. Failure to Obey Restraining Order, 5.509.B
6. Criminal Contempt of Court, 5.510.D
7. Tampering with Public Record, 5.511.B

EXHIBIT 2: BAIL SCHEDULE

8. Witness Tampering, 5.513.B
9. Receiving a Bribe as a Witness, 5.514.B
10. Receiving a Bribe as a Juror, 5.516.B
11. Tampering with Physical Evidence, 5.520.B
12. Impersonating a Law Enforcement Officer, 5.521.B
13. Endangerment, 5.604.B
14. Unlawful Restraint, 5.606.B
15. Abandonment of a Child, 5.704.B
16. Criminal Nuisance, 5.1003.B
17. Delivery of Graffiti Material to a Minor, 5.1008.C
18. Fraudulent Use of Per Capita Payments, 5.1106.B
19. Making or Permitting a False Claim for Reimbursement for Community Assistance Services, 5.1107.C
20. Fraudulent Schemes and Practices Against the Community, 5.1108.B
21. Telecommunication Fraud, 5.1109.C
22. Unlawful Pyramid Promotional Scheme, 5.1111.G
23. Delivery of Liquor to a Minor, 5.1402.B
24. Extreme Driving Under Influence or Actual Physical Control, 6.602.B
25. Extreme Driving Under Influence or Actual Physical Control, 6.602.C

Category III (Offense, Code Section):

\$200

1. Refusing to Provide Truthful Name when Lawfully Detained, 5.522.C
2. Adultery, 5.702.B
3. Criminal Nonsupport, 5.703.E
4. Failure to Send Minor to School, 5.707.B
5. Interference with Custody, 5.709.C
6. Prostitution, 5.807.B
7. Promotion of Prostitution, 5.809.B
8. Joyriding, 5.907.B
9. Reckless Burning, 5.910.C
10. Setting Brush Fires, 5.911.C
11. Criminal Littering, 5.914.C
12. Disorderly Conduct, 5.1002.B
13. Failure to Adequately Supervise Minor, 5.1009.B
14. Tapping Electrical or Gas Lines, 5.1110.B
15. Furnishing Tobacco to a Minor, 5.1211.B
16. Unlawful Sale or Use of Fireworks, 5.1305.E
17. Underage Possession of Liquor, 5.1401.B
18. Possession of Alcohol Near Hospital, Medical Clinic, School or Church, 5.1405.B
19. Driving or Actual Physical Control While Under the Influence, 6.601.C
20. Driving or Actual Physical Control While Under the Influence, 6.601.D
21. Possession of Alcoholic Beverage in a Motor Vehicle, 6.607

EXHIBIT 2: BAIL SCHEDULE

ENHANCEMENTS – FELONY OFFENSES

(Based on 5.1509(B)(1)-(6))

	Add to Presumptive Bail (Worksheet #)	
Gangs		
Any Offense for the benefit of a street gang	\$10,000	(4.)
Loss		
Amount of Loss Exceeds \$10,000	Amount of loss	(5.)
Weapons		
Personal use of a weapon other than a firearm	\$5,000	(6.d.)
Offense involved possession/use/discharge of firearm	\$7,000	(6.c.)
Personal discharge of a firearm not causing SBI	\$7,000	(6.b.)
Personal discharge of a firearm causing SBI or death	\$10,000	(6.a.)
Injury		
Infliction of Serious Bodily Injury (SBI)	\$10,000	(7.)
Controlled Substances		
Charged with current controlled substance sale and has prior conviction for controlled substance	\$15,000	(8.a.)
Prior Convictions		
Prior conviction for serious/violent felony or sex offense	\$5,000	(8.b.)
Current serious/violent or sex offense with two or more prior convictions for serious/violent or sex offenses	\$5,000	(8.c.)
Defendant served a prior jail term in past 5 years	\$1,000	(8.d.)
Other		
Offense against victim over 65, under 14, or disabled	\$10,000	(9.a.)
Other felony charges pending against defendant, or on probation	\$10,000	(9.b.)

EXHIBIT 2: BAIL SCHEDULE

ENHANCEMENTS – MISDEMEANOR OFFENSES

(Based on 5.1509(B)(1)-(6))

	Add to Presumptive Bail (Worksheet #)	
Gangs		
Any Offense for the benefit of a street gang	\$5,000	(4.)
Loss		
Amount of Loss Exceeds \$5,000	Amount of loss	(5.)
Weapons		
Personal use of a weapon other than a firearm	\$2,500	(6.d.)
Offense involved possession/use/discharge of firearm	\$3,500	(6.c.)
Personal discharge of a firearm not causing SBI	\$3,500	(6.b.)
Personal discharge of a firearm causing SBI or death	\$5,000	(6.a.)
Injury		
Infliction of Serious Bodily Injury (SBI)	\$5,000	(7.)
Controlled Substances		
Charged with current controlled substance sale and has prior conviction for controlled substance	\$7,500	(8.a.)
Prior Convictions		
Prior conviction for serious/violent felony or sex offense	\$2,500	(8.b.)
Current serious/violent or sex offense with two or more prior convictions for serious/violent or sex offenses	\$2,500	(8.c.)
Defendant served a prior jail term in past 5 years	\$500	(8.d.)
Other		
Offense against victim over 65, under 14, or disabled	\$5,000	(9.a.)
Other felony charges pending against defendant, or on probation	\$5,000	(9.b.)