

TOHONO O'ODHAM RULES OF COURT

Section 6b: Rules of Children's Court

Chapter 2. Juvenile Justice

Rule 1. Closed Proceedings; Confidentiality.

Children's Court proceedings are closed to the public. A victim in the matter may, under Title 7, Section 4102(F) of the Tohono O'odham Code, request an advocate, parent, or other relative whose testimony is not required, to be present. A person present in a Children's Court proceeding must not divulge information identifying the child or the family involved in the proceeding.

Rule 1.1. Initial Appearance.

(a) Timeliness of Appearance. A child who remains in custody must be brought before a judge for an initial appearance without unnecessary delay. A detained child's initial appearance must be held within 36 hours of arrest unless the Court issues an order extending temporary detention. The extension must not exceed 72 hours from the time of arrest. If the initial appearance is not held within 36 hours of the arrest, or 72 hours if the detention time is extended, then the child must be released.

(b) Setting of a Time for Initial Appearance. The Chief Judge will ensure that a judge is available every day of the week to hold initial appearances. The Chief Judge will also set the schedule for conducting initial appearances and notify the Tohono O'odham Police Department and Prosecutors' Office of the schedule and any changes.

Rule 1.2. Speedy Adjudicatory Hearing; Excluded Periods; Continuances.

(a) Speedy Adjudicatory Hearing - Pursuant to 3 T.O.C. Ch. 2, art. 13, § 21302.

(1) Child Remains In Custody: If the child remains in custody, the adjudicatory hearing must be held within 30 days of receipt of the Child Offender Petition by the Children's Court. This may be extended if good cause is shown to the Court, the parties agree to waive the 30-day limit, or the parties agree to stay the adjudicatory hearing.

(2) Child is Out of Custody: If the child is released from custody, or was not taken into custody, the adjudicatory hearing must be held within 180 days of receipt of the Child Offender Petition by the Children's Court. This may be extended if the Court finds that good cause exists or the parties agree to stay the adjudicatory hearing.

(b) Excluded Periods. These periods will be excluded from the computations of the time limit in Subsection (a).

- (3) Delays occasioned by the respondent or on the respondent's behalf by the respondent's counsel, including delays caused by an examination and hearing to determine competency or intellectual disability, the respondent's absence or incompetence, or his or her inability to be arrested or taken into custody within the Tohono O'odham Nation;
- (4) Delays resulting from requesting a new probable cause determination;
- (5) Delays resulting from the extension of the time granted by the Court for disclosure;
- (6) Delays resulting from congestion of the Court's docket, but only when the congestion is attributable to extraordinary circumstances in which the Chief Judge suspends any of the Rules of Children's Court; and
- (7) Delays resulting from joinder for adjudication with another respondent for whom the time limits have not expired when there is good cause for denying severance. In all other cases, severance should be granted to preserve the applicable time limits.

(c) Continuances of Adjudicatory Hearing Dates.

- (1) **Form of Motion.** A continuance of an adjudicatory hearing may be granted on the motion of a party. Any such motion must be in writing and specify the reason(s) justifying the continuance.
- (2) **Grounds for Motion.** A continuance of any adjudicatory hearing date will be granted if it is shown that extraordinary circumstances exist and that the delay is indispensable to the interests of justice. In ruling on a motion for continuance, the Court must consider the rights of the respondent and any victim to a speedy disposition. If the continuance is granted, the Court must state the specific reasons for the continuance on the record.

Rule 2. Victims' Rights.

At the start of any proceeding, the judge will:

- (a)** Ask the prosecutor or otherwise determine if the victim has requested notice or has been notified of the proceeding.
- (b)** Determine if the victim is present and wishes to address the Court.
- (c)** Determine if the victim has been advised of his or her rights as a victim and has received a copy of the victim's rights. The Court may recess the hearing to permit the Nation to tell the victim of his or her rights and provide a copy of the victim's rights.

- (d) Determine if the victim has been notified about the hearing. If the victim has not been notified, the judge may reschedule the hearing so long as it does not violate the law or public policy.

Rule 3. Service of Process in Child Offender Cases.

Rule 3.1. Issuance of Summons and Warrant.

- (a) **Filing.** Where the Nation files a child offender petition, the Nation must also file a prepared summons for a respondent and the respondent's parent or legal guardian if the respondent is not in custody. The Nation may also file a motion requesting a warrant for the respondent.
- (b) **Preference for Summons; Contents of Motion.** Unless good cause exists for issuing a warrant, a summons must be issued if the respondent is not in custody. If a warrant is requested by the Nation, the Nation must state in the motion the reasons why a warrant should be issued.
- (c) **Arrest Warrant.** Before issuing an arrest warrant, the judge must determine that probable cause exists that the respondent committed the offense or that such a determination has previously been made. An arrest warrant will be issued to secure the respondent's appearance if:
 - (1) a respondent who has been summoned, fails to appear, or
 - (2) there is good cause to believe that the respondent will fail to appear, or
 - (3) the summons cannot readily be served or delivered.
- (d) **In Custody.** If the respondent is in custody, the Nation may file a complaint and include a motion requesting that the Court set an initial appearance. If necessary, the Nation may request that the Court hold the respondent until the scheduled initial appearance.

Rule 3.2. Content of Warrant or Summons

- (a) **Warrant.** A judge will sign the warrant. The warrant will have the name and any additional identifying information of the respondent. If the respondent's name is unknown, any name or description by which the respondent can be identified with reasonable certainty may be used. The warrant will state the offense with which the respondent is charged, and will command that the respondent be arrested and brought before the Children's Court.
- (b) **Summons.** Separate summonses must be prepared for the respondent and each parent/legal guardian to be summoned. The summons must have the name and address of the individual being summoned and command the individual to appear at the respondent's arraignment at the Tohono O'odham Justice Center. If no warrant is requested, a clerk will fill in the time and date of the arraignment at the time of filing, and the clerk will sign and date the summons.

Rule 3.3. Execution and Return of Warrant.

- (a) **By Whom.** The warrant will be directed to, and may be executed by, all Tohono O'odham

police officers or other officials having authority to execute warrants.

- (b) **Manner of Execution.** A warrant must be executed by arrest of the respondent. The arresting officer need not have the warrant in possession at the time of the arrest, but the officer must show the warrant to the respondent or the respondent's parent/legal guardian as soon as possible upon request.
- (c) **Return.** Return of the warrant will be made to the judge before whom the respondent makes his or her initial appearance.

Rule 3.4. Service of Summons.

A party may serve the summons like the summons in a civil action, except that service may not be by publication. Proof of service will be the same as in a civil action.

Rule 3.5. Defective Warrant.

The Court will not invalidate an arrest warrant or release a person in custody because of a defect in the warrant's form. The Court may amend the warrant to remedy the defect.

Rule 4. Duties of Counsel; Withdrawal.

- (a) **Notice of Appearance.** Counsel for the respondent, whether privately retained or provided by the Tohono O'odham Nation, must file a Notice of Appearance with the Court before filing any documents or appearing in any matter before the Court.
- (b) **Duty of Continuing Representation.** Counsel representing a respondent must continue to represent the respondent in all further proceedings, including the filing of a notice of appeal, unless the Court permits counsel to withdraw, or a limitation of representation was in the notice of appearance.
- (c) **Duty Upon Withdrawal.** All requests to withdraw as Counsel for a respondent must be filed as a written motion. If granted, the withdrawing counsel must give prompt notice of the entry of such order to the Nation. No counsel representing a respondent may withdraw after a case has been set for an adjudicatory hearing except upon a written motion including:
 - (1) a signed statement by the substituting counsel (with the counsel's contact information) that he or she will be prepared for the hearing;
 - (2) a signed statement by the client and the client's parent(s) or legal guardian(s) stating that they will be prepared for the hearing; or
 - (3) where the Court is satisfied for good cause shown that counsel should be allowed to withdraw.

Rule 5. Diversion Program.

Rule 5.1. Purpose; Eligibility; Definition.

- (a) **Purpose.** The Diversion Program provides a community-based alternative to the formal court process for eligible child offenders.
- (b) **Eligibility.** First time offenders between the ages of 10 to 17 years who are cited into Children's Court for committing an offense designated as an offense appropriate for diversion may be eligible to participate in the diversion program.
- (c) **Probation Officer Definition.** As used in this Rule, "probation officer" also includes diversion officers.

Rule 5.2. Referral; Continuance.

- (a) **Referral.** At ~~arraignment~~ any time after the filing of a child offender petition, and before the entry of judgment, upon Motion ~~request~~ of the Nation or counsel for the child, a ~~probation officer~~, the Children's Court may ~~suspend the proceedings and~~ order ~~that~~ a child offender to participate in the diversion program. ~~This order will be a "consent decree."~~ ~~upon a finding that~~ The following requirements ~~must be~~ ~~are~~met:
 - (1) the child is a first time offender who is accused of committing an offense in ~~violation of the Nation's Criminal Code;~~
~~the child has knowingly and voluntarily waived his or her rights and entered a plea of responsible to the child offender petition(s);~~
 - (2) the child has knowingly and voluntarily chosen to enter into the diversion program;
 - (3) the child's parent(s)/legal guardian(s) has/have knowingly and voluntarily chosen to permit the child to participate in the diversion program and agree(s) to participate as required with the child; and
 - (4) the Nation has conferred with ~~any the~~ victim/s, ~~if any~~, regarding placement of the child in the diversion program.
- (b) **Continuance.** Upon motion by the Nation, the child's counsel, the child, or his or her parent or legal guardian, or upon the Court's own motion, the arraignment may be rescheduled for up to two weeks to permit:
 - (1) a referral to the division program for a review of the child's eligibility to participate in the program, and/or
 - (2) more time for the Nation to confer with the victim/s.

Rule 5.3. Stay of Disposition; Time Periods; Review Hearings.

- (a) **Stay of Disposition.** A child offender who participates in the diversion program will have his or her disposition stayed.
- (b) **Time Period.** The Court will order the disposition stayed for six months. The Court may shorten or lengthen the stay upon a finding of good cause, or upon request by the parties or the probation officer. Good cause includes, but is not limited to:
 - (1) a request to end the child's participation in diversion and set for disposition because the child has violated his or her conditions of diversion and/or committed new

- offenses;
- (2) a request for more time for the child to complete diversion; or
- (3) a request for early discharge because the child has excelled in the program.

(c) **Review Hearings.** The Court will set a review hearing every three months to check on the child's progress.

Rule 5.4. Additional Conditions and Terms.

The Children's Court may impose additional conditions and terms for the child and child's parent or legal guardian to participate in the diversion program. Additional conditions and terms may include:

- (a) community service;
- (b) restitution in cases where property loss or damage is compensable in a monetary value. Work projects can be substituted for actual dollar payments, but must have the victim's consent;
- (c) letter of apology; or
- (d) counseling, education, and/or other informational or holistic classes or services.

Rule 5.5. ~~Eligible Offenses.~~ (Reserved)

- ~~(a) Public Nuisance (T.O.Crim.Code § 3.1);~~
- ~~(b) Disturbing the Peace (T.O.Crim.Code § 3.5);~~
- ~~(c) Disorderly Conduct (T.O.Crim.Code § 3.6);~~
- ~~(d) Loitering Around a School (T.O.Crim.Code § 3.12);~~
- ~~(e) Criminal Damage to Private/Personal Property (T.O.Crim.Code § 5.2);~~
- ~~(f) Malicious Mischief (T.O.Crim.Code § 5.10);~~
- ~~(g) Shoplifting (T.O.Crim.Code § 10.5);~~
- ~~(h) Public Intoxication (T.O.Crim.Code § 12.2);~~
- ~~(i) Underage Possession of Liquor (T.O.Crim.Code § 12.3);~~
- ~~(j) Unlawful Possession of Marijuana (T.O.Crim.Code § 13.1);~~
- ~~(k) Inhaling Toxic Vapors (T.O.Crim.Code § 13.8);~~
- ~~(l) Furnishing Tobacco to a Minor (T.O.Crim.Code § 13.10).~~

Rule 5.6. Disposition; Dismissal.

- (a) **Disposition.** The Children's Court will set a disposition hearing when a child offender has not successfully completed the diversion program.
- (b) **Dismissal.** The Children's Court will dismiss the case of a child offender who successfully completes the diversion program.

Rule 6. Setting of Hearings.

- (a) **Hearings Set At Arraignment.** For child offender arraignments, these hearings will be set as closely as possible to the time frames stated below upon a plea denying the allegation(s) in a child offender petition:
 - (1) *Pre-Adjudication Conference.* The pre-adjudication conference date will be set two weeks after the arraignment on a date proposed by the Nation.
 - (2) *Pre-Adjudication Hearing.* The pre-adjudication hearing will be set two weeks after the pre-adjudication conference.
- (b) **Adjudicatory Hearing Date.** The adjudicatory hearing will be set at the pre-adjudication hearing or at any subsequent hearing where it is determined that the matter will proceed to an adjudicatory hearing.

Rule 7. Pre-Adjudicatory Conference; Disclosure; Pre-Adjudicatory Conference Case Status Report.

- (a) **Pre-Adjudicatory Conference.** Although the pre-adjudicatory conference is a date established in court, that date may be rescheduled by agreement of the parties without prior court approval.
- (b) **Disclosure.** Disclosure by the parties will be governed by Rules 7.2, 8, and 9 of the Tohono O'odham Rules of Criminal Procedure.
- (c) **Pre-Adjudicatory Conference Case Status Report.** The Nation must file a case status report with the Court after any scheduled, or rescheduled, pre-adjudicatory conference at least three days before the pre-adjudicatory hearing. The case status report must state:
 - (1) Whether the pre-adjudicatory conference took place.
 - (2) If the pre-adjudicatory conference took place, the case status report must identify the reports, other documents, and any other evidence, including any witnesses, disclosed to the respondent.
 - (3) If the scheduled pre-adjudicatory conference did not take place, the case status report must state the reason why the pre-adjudicatory conference did not occur. The case status report must also state any rescheduled date, and whether the information under Rule 7(b) was delivered or sent to the respondent, the respondent's parent/legal

guardian, or the respondent's counsel on the original scheduled date.

- (d) Upon motion of a party and for good cause shown, the Court must dismiss the case without prejudice if the primary police report, the investigative report, or a comparable report was not provided to the respondent at the pre-adjudicatory conference.

Rule 8. Pre-Adjudicatory Hearings; Purpose; Attendance.

- (a) **Purpose.** The purpose of the pre-adjudicatory hearing includes: providing a forum for changes of plea; providing a forum for the parties to notify the Court about disclosure and discovery problems; verifying readiness to proceed to adjudication; and setting an adjudication date.
- (b) **Attendance.** The attendance of the respondent, the respondent's parent or guardian, defense counsel (if any), and the prosecutor are required.

Rule 9. Subpoenas.

Subpoenas in child offender cases must substantially comply with the form in the Tohono O'odham Rules of Criminal Procedure and are subject to the rules governing subpoenas in a civil action.

Rule 10. Extradition.

Rule 10.1. Applicability.

These Rules apply to persons under the age of eighteen who are charged in a criminal action or order in the demanding jurisdiction. This includes escape from confinement or violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding. No child as defined by Tohono O'odham law will be subject to extradition based upon proceedings in the demanding jurisdiction for juvenile delinquency, truancy, dependency, or any other action or proceeding that is not criminal. *See 7 T.O.C. Ch. 2.*

Rule 10.2. Requirement of Certified Documents.

When, under these Rules, a certified document from a demanding jurisdiction is required, the document must bear an original seal or electronic stamp from the demanding jurisdiction.

Rule 10.3. Children's Court Jurisdiction.

The Children's Court will have jurisdiction over the extradition of a child who is not under the jurisdiction of the Adult Criminal Division of the Court at the time of filing of the petition or warrant.

- (a) **Motion.** The Nation may file a motion for domestication of a foreign arrest warrant by:

- (1) Following the process listed in Rule 2.1 of the Tohono O'odham Rules of Recognition and Enforcement of Foreign Judgments; or

(2) Filing a motion stating that:

- (i) Probable cause exists to believe that the child is subject to Rule 10.1;
- (ii) The child is within the exterior boundaries of the Tohono O'odham Nation or is subject to the Nation's jurisdiction;
- (iii) The child is charged with a crime in the demanding jurisdiction or convicted of a crime in the demanding jurisdiction; and
- (iv) The child has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding jurisdiction.

(b) Order. The Court will recognize the foreign arrest warrant after determining that the Nation has established probable cause on the allegations in its motion and issue an arrest warrant to obtain the appearance of the child.

Rule 10.4. Petition for Extradition and Warrant.

(a) Petition. The Nation may file a motion for the extradition of a child if:

- (1) Probable cause exists to believe that the child is subject to Rule 10.1;
- (2) The child is within the exterior boundaries of the Tohono O'odham Nation or is subject to the Nation's jurisdiction;
- (3) The child is charged with a crime in the demanding jurisdiction or convicted of a crime in the demanding jurisdiction; and
- (4) The child has escaped from confinement or violated any term of bail, probation, parole, or an order arising out of a criminal proceeding in the demanding jurisdiction

(b) Contents. The petition must have allegations supporting the requirements of Subsection

(a). The petition must have: the name of the demanding jurisdiction, the crime charged or other basis for the demand, a copy of any applicable waiver of extradition hearing signed by the respondent, and a certified copy of the foreign arrest warrant, and it must include one of these:

- (1) a statement by the issuing authority that the arrest warrant is based on probable cause that a crime has been committed and the respondent committed the crime, together with a copy of the law defining the crime;
- (2) a certified copy of the charging instrument upon which the arrest warrant is based;
- (3) a statement by the issuing authority that the arrest warrant was issued after a determination of probable cause to believe that the respondent has violated any term of bail, probation, or an order arising out of a criminal proceeding; or

- (4) a certified copy of a judgment of conviction or a sentencing order accompanied by a statement by the issuing authority that the respondent has escaped from confinement or violated any term of parole.

(c) Additional Requests. If a respondent is being prosecuted, is in custody, is on parole or probation, or is subject to an order arising out of a Children's Court proceeding on the Tohono O'odham Nation, the Nation may request:

- (1) extradition upon conditions, including a provision that the respondent must be returned to the Tohono O'odham Nation immediately after completion of the demanding jurisdiction's prosecution;
- (2) delay of the pending action on the Tohono O'odham Nation; or
- (3) process the extradition, but waive the respondent's immediate return to the Nation. The waiver will be filed before an order to transfer custody is issued.

(d) Warrant. The Nation's warrant must have the name of the demanding jurisdiction and the crime charged or other basis for the demand. The warrant will become valid upon the signature of a judge of the Tohono O'odham Court.

Rule 10.5. Initial Appearance.

(a) Initial Appearance. A respondent arrested under these Rules must be brought before a judge of the Tohono O'odham Courts within 36 hours for an initial appearance.

(b) Rights. The respondent must be informed of:

- (1) the name of the jurisdiction demanding extradition;
- (2) the crime charged or other basis for the demand;
- (3) the right to the assistance of counsel at the person's expense;
- (4) the right to an extradition hearing before a transfer of custody to the demanding jurisdiction, and that this right may be waived if the respondent consents to the extradition or if the respondent signed a waiver in the demanding jurisdiction;
- (5) the right to be represented by counsel at the respondent's expense or the expense of the respondent's parent or guardian;
- (6) the right to appointed counsel at the Court's discretion if the child is indigent and counsel was not retained by or for the child at the initial hearing;
- (7) the right of the respondent or respondent's parent or guardian at all hearings to introduce evidence, be heard on his or her own behalf, and to examine witnesses;

- (8) that the general public will be excluded from all proceedings, except persons whom the respondent requests and that no person admitted to a Children's Court proceeding will divulge information identifying the respondent or his or her family;
- (9) the right against self-incrimination;
- (10) that evidence of an extrajudicial statement that is illegally seized or is obtained contrary to the standard applicable in adult criminal proceedings will not be used against the respondent;
- (11) that no extrajudicial statement made by a child in custody is admissible unless it would have been admissible in an adult criminal proceeding and the statement was made in the presence of the respondent's parent or guardian who was not then requesting or agreeing to a removal of the child;
- (12) that an "extrajudicial statement" means a statement, including a confession, admission, or other statement against interest, made to a prosecutor, a law enforcement official, an official of the Nation or a political subdivision, or a person acting on behalf of those official(s).

(c) Setting Extradition Hearing. If the respondent does not waive the extradition hearing, the hearing will be set within 10 days after the initial appearance. The Court will give notice of the time and place of the hearing in open court.

(d) Release Pending Hearing.

- (1) *Mandatory Custody.* The respondent must be held in custody pending the extradition hearing unless the exception in Rule 10.5(d)(2), below, applies.
- (2) *Discretionary Custody.* The Court may release the respondent on conditions in Rule 10.5(d)(3), if the arrest was made under Rule 10.4 and the Nation does not attach the documents as required under Rule 10.4(b); and the Nation fails to establish reasonable cause to believe that:
 - (A) the respondent will commit injury to persons or the property of others, commit self-injury, or be subject to injury by others; or
 - (B) the respondent has no parent, guardian, or custodian able or willing to provide adequate supervision and care for the respondent; or
 - (C) the respondent will run away or be taken away so as to be unavailable for court proceedings.
- (3) *Conditions of Release.* If ordered, any conditions of release will also include posting a bond not less than any bond set in the demanding jurisdiction. An order setting release conditions under this subsection will not affect any custody or conditions of release ordered in a Children's Court action brought by the Nation.

- (4) *Detention Hearing Not Required.* A separate detention hearing under Title 3, Chapter 2, Article 10 of the Tohono O'odham Code is not required.

Rule 10.6. Waiver.

- (a) **Prior Waiver.** If the respondent has previously executed a waiver of extradition hearing as a condition of probation, parole, or otherwise, the Court will allow the transfer. The Court may, with the consent the demanding jurisdiction, allow the voluntary return of the respondent. No previously executed waiver of extradition will be recognized unless the copy of the filed waiver was signed by the respondent.
- (b) **Waiver at Initial Appearance.** If, after being informed of the right to an extradition hearing, the respondent waives the right to a hearing, the respondent and the respondent's parent or guardian must sign a written waiver in the presence of the judge. Upon signing the waiver, the Court will transfer custody under Rule 10.9, or with the consent of the demanding jurisdiction allow the voluntary return of the respondent.

Rule 10.7. Extradition Hearing.

- (a) **Transfer Order; Defense.** Upon a finding that a petition and warrant comply with Rule 10.5, the Court will issue an order to transfer custody under Rule 10.10 unless the respondent establishes by clear and convincing evidence that the respondent is not the demanded person.
- (b) **No Inquiry Into Guilt.** The Court will not inquire into the guilt or innocence of the respondent except as may be necessary in identifying the respondent as the person demanded.
- (c) **Voluntary Return.** The Court may allow the voluntary return of the respondent if the Nation consents.
- (d) **No Appeal.** Neither an order to transfer custody nor an order to deny transfer is appealable.

Rule 10.8. Transfer of Custody.

- (a) **Order to Transfer.** The Court's order to transfer custody will direct a law enforcement officer to take or retain custody of a respondent until an agent of the demanding jurisdiction is available to take custody. *See* 7 T.O.C. Ch. 2 § 4.1(A).
- (b) **Time Limits.** If the demanding jurisdiction has not taken custody of the respondent within five business days, the Nation may file a written motion requesting an extension of time for the transfer. The motion will be filed before the close of business on the fifth business day following the Court's original transfer order. The Court may extend the original order for an additional 10 days upon showing good cause by the Nation for the failure of the demanding jurisdiction to take custody.
- (c) **Release.** If the respondent has not been taken into custody by the demanding jurisdiction

within the time specified in the order, the respondent will be released. No order to transfer custody may be entered unless a new arrest warrant to obtain the appearance of the respondent is issued because of a new demand for extradition.

(d) Effect on Tribal Proceedings. An order releasing the respondent from custody under these Rules will not affect any custody or conditions of release ordered in a separate Children's Court child offender action brought by the Nation. Any Children's Court child offender action pending in the Court will be stayed pending a hearing in the Court after the respondent's return to the Tohono O'odham Nation.

(e) Financial Liability. A respondent who is acquitted of the charge(s) and returned to the Nation may petition the Nation to pay for the cost of the respondent's subsistence and transportation to the place of the respondent's initial arrest or residence. The Nation will have 10 days in which to respond, and the Court will schedule a hearing on the merits of the petition.

Rule 11. Federal Habeas Corpus.

Rule 11.1. Applicability.

These Rules apply to persons under the age of eighteen who are charged with a criminal action or order in the demanding jurisdiction. This includes escape from confinement or violation of any term of bail, probation, parole, or an order arising out of a criminal proceeding. No child as defined by Tohono O'odham law will be subject to transfer based upon proceedings in the demanding jurisdiction for juvenile delinquency, truancy, dependency, or any other action or proceeding that is not criminal.

Rule 11.2. Requirement of Certified Documents.

When, under these Rules, a certified document from a foreign jurisdiction is required, the document must bear an original seal or electronic stamp from the demanding jurisdiction.

Rule 11.3. Motion to Grant Comity.

The Nation's motion to grant comity must include the federal writ of habeas corpus and a certified arrest warrant.

Rule 11.4. Transfer Order.

(a) No Pending Tohono O'odham Criminal Matters. If a respondent does not have pending matters, the Court will grant comity and issue a transfer order, directing that the respondent be held in custody until transferred to an agent of the United States within five days.

(b) Pending Tohono O'odham Criminal Matters. If a respondent has pending matters, the Court will only grant comity and issue a transfer order, directing that the respondent be held in custody until transferred to an agent of the United States within five days, upon finding that:

- (1) the federal writ requires the respondent to be returned to the custody of the Tohono O'odham Nation immediately after completion of the federal prosecution, or
- (2) the Nation files a written waiver of the respondent's immediate return with the Court.

Rule 11.5. Time Limits.

If an agent of the United States has not taken custody within five days of issuing the transfer order, the Nation may file a written motion requesting an extension of time for the transfer. A party must file the motion before the close of business on the fifth business day following the Court's original transfer order. The Court may extend the original order for an additional 10 days upon showing good cause by the Nation for the failure of the United States to take custody.

Rule 11.6. Release.

If the respondent has not been taken into custody by the United States within the time specified in the order, the respondent will be released. No order to transfer custody may be entered unless a new arrest warrant is issued because of a new writ of habeas corpus.

Rule 11.7. Effect on Tribal Proceedings.

If the Court grants comity to the federal writ, the Court will stay the Nation's proceedings pending a hearing after the respondent returns to the Tohono O'odham Nation.

Rule 12. Restitution

Rule 12.1. Information Provided to Respondents and Victims.

- (a) **Respondents.** The Nation must provide a copy of the Respondent Restitution Information and Instruction document to respondents at their pre-adjudicatory conference as part of disclosure when restitution is a potential penalty. The documents must be in substantial compliance with the form in the Tohono O'odham Rules of Criminal Procedure.
- (b) **Victims.** Before any request for restitution as part of disposition or a plea agreement, the Nation must provide a copy of the Victim Restitution Information and Instruction document to the victim. The document must be in substantial compliance with the form in the Tohono O'odham Rules of Criminal Procedure.

Rule 12.2. Restitution Form; Redaction; Payment Plan.

- (a) The Nation must file a completed Restitution Form with any plea agreement in which restitution is requested or before any disposition hearing where restitution will be requested.
- (b) The Nation must provide a conformed copy to the respondent with all attachments.
- (c) If the victim has opted to keep his or her contact information confidential, the Nation must redact all contact information from the form, except for the victim's name, on the copy

delivered to the respondent. The Nation must file both the redacted copy and a full copy with the Court.

- (d) If the respondent cannot pay restitution in full, the Court will set a payment plan at the restitution hearing. The parties may submit a proposed payment plan with the plea agreement.

Rule 12.3. Restitution Orders.

- (a) When ordering restitution, the Court will specify in the order the restitution due to each victim in each case or charge and set a date by which restitution is due, or order a payment schedule.
- (b) If a restitution amount has not been submitted before the disposition/plea hearing, the Court may waive restitution or may order restitution with an upper cap and set a restitution hearing within 30 days. If a restitution amount is not provided at the restitution hearing, the Court may waive the payment of restitution or reschedule the restitution hearing.

Rule 12.4. Restitution Payment Form.

For each restitution payment, a respondent must complete a Restitution Payment Form that complies with the restitution form in the Tohono O'odham Rules of Criminal Procedure.

Rule 13. Imposition of Detention Time.

- (a) **Presumption of Consecutive Sentences.** Any time the Court imposes a sentence for two or more offenses, it is presumed that the respondent will serve the sentences consecutively. The Court may order concurrent sentences at the discretion of a judge.
- (b) **Credit for Time Served.** If the Court orders credit for time served, it will be credited against the respondent's total detention time after accounting for consecutive or concurrent sentencing. If credit for time served is not ordered, it is presumed that the sentence does not include credit for time served.

Rule 14. Relocation of Juvenile Offenders Upon the Age of Majority.

- (a) A juvenile offender who has not completed the term of detention will be transferred to the Tohono O'odham Adult Corrections Facility to serve the rest of his or her sentence immediately after reaching his or her eighteenth birthday.
- (b) Upon receipt of notice that a juvenile offender will reach the age of majority, the Court will order the offender transferred to the Tohono O'odham Adult Corrections Facility to serve the rest of his or her term.

Rule 15. Conversion of Fines to Community Service.

- (a) The Court will convert all community service imposed in lieu of a fine based on the applicable federal minimum wage at the time the community service is ordered. Except as

otherwise prohibited, and at the Court's discretion, the respondent may be granted conversion of supervised, certified hours worked to benefit the Tohono O'odham Nation and not otherwise credited as payment for any fines, restitution, or as community service hours required as part of any sentence. If granted, the respondent will receive two hours' time credit for every one hour worked.

Section History

Adopted by Administrative Order 01-96 on March 1, 1996. Amended December 18, 2007 by Administrative Order 06-07. Amended, reorganized, and renumbered to combine the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended March 12, 2014, to follow 3 T.O.C. Ch. 2 §§ 21004, 21301, and 2150. Amended by the 2023 Tohono O'odham Rules of Court. Section name changed to Juvenile Justice by the 2023 Tohono O'odham Rules of Court. Amended by the 2024 Tohono O'odham Rules of Court. Amended Rules 5.2 and 5.5 by Administrative Order 2024-10, dated May 16, 2024. Amended by adding Rules 1.1 and 1.2 by Administrative Order 2025-04, dated June 4, 2025.