

CRIMINAL COURT OF THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Criminal Court Directive

Subject: VAWA 2013 Implementation clarifications re: indigent defense determinations, indigent representation on appeal, retention of court hearing records, transcripts fees for indigent defendants, protection order jurisdictional requirements, burden of proof, and bail schedule.

Effective Date: January 22, 2014

- 1. Public Defender Eligibility.** Every indigent criminal defendant has a right to be represented by an attorney free of charge. Typically the Court will appoint a public defender regardless of income if a defendant requests representation. However, in the event future resources limit the ability of the Court to provide counsel to everyone, the following schedule will apply to the determination of eligibility for a public defender. It is based on 150% of the 2014 federal poverty level. The Court also reserves the right to appoint a public defender to any criminal defendant even if they exceed income qualifications.

# of Persons in Family/Household	150% of Poverty Level
1	\$17,235
2	\$23,265
3	\$29,295
4	\$35,325
5	\$41,355
6	\$47,385
7	\$53,415
8	\$59,445
For Each Additional Person Add	\$6,030

- 2. Representation on Appeal.** Pursuant to Criminal Code §3.42 every criminal defendant has a right to appeal any final order of the court. A public defender will be provided to any indigent defendant on appeal. 25 U.S.C. §1302(c) requires that a public defender be provided in any "criminal proceeding" in which a defendant is facing a felony charge. 25 U.S.C. §1304(d)(2) incorporates the requirements of §1302(c) with regard to exercising criminal jurisdiction over non-Indians. Criminal Code §3.28 incorporates 25 U.S.C. §1302(c) by reference and applies that right to all criminal defendants in the Umatilla Tribal Court regardless of race, citizenship, or nature of the charge.
- 3. Record Retention.** All criminal proceedings are electronically recorded. All such recordings will be retained by the Court for a minimum of 10 years.
- 4. Recordings on Appeal.** Every criminal defendant who appeals their case, and qualifies for a public defender, is entitled to a copy of the trial court recording of their proceedings free of

charge. If the Appellate Court requires that the recording be transcribed, the transcription will be provided to the indigent defendant free of charge.

5. **Burden of Proof Regarding VAWA 2013 Jurisdiction.** For purposes of exercising criminal jurisdiction over non-Indians, pursuant to Criminal Code §3.03, the Prosecution must allege and prove certain jurisdictional elements. These jurisdictional elements will be treated as elements of the offense and must be proved beyond a reasonable doubt.
6. **Non-Indian Protection Order Violation Crimes.** When charging non-Indians for crimes involving the violation of a protection order, in addition to the requirements in Criminal Code §3.03(B)(8), the prosecution must allege and prove beyond a reasonable doubt that the defendant has sufficient ties to the Confederated Tribes as detailed in Criminal Code §3.03(B)(7)(d). This is required by 25 U.S.C. §1304(b)(4)(B).
7. **Bail Schedule.** Pending arraignment, or other court hearing on the issue of bail, the bail schedule is \$5,000 for all misdemeanors and \$6,500 for all felonies. The Court will accept a 10% security in lieu of the full amount. Commercial bail bonds are not accepted. Bail on serious felony crimes will be determined on a case by case basis.

Dated: January 22, 2014



**Hon. William Johnson, Chief Judge
Umatilla Tribal Court**