

CRIMINAL LAW OVERVIEW

NAVAJO NATION



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WHERE TO FIND THE LAW
GENERAL CRIMINAL TIMELINE
BAIL/RELEASE ISSUES
ARRAIGNMENT
DISCOVERY
PRETRIAL MOTIONS (I)
PRETRIAL CONFERENCE(S)
PRETRIAL MOTIONS (II)
TRIAL
SENTENCING

NAVAJO CRIMINAL LAW WHERE IS IT?

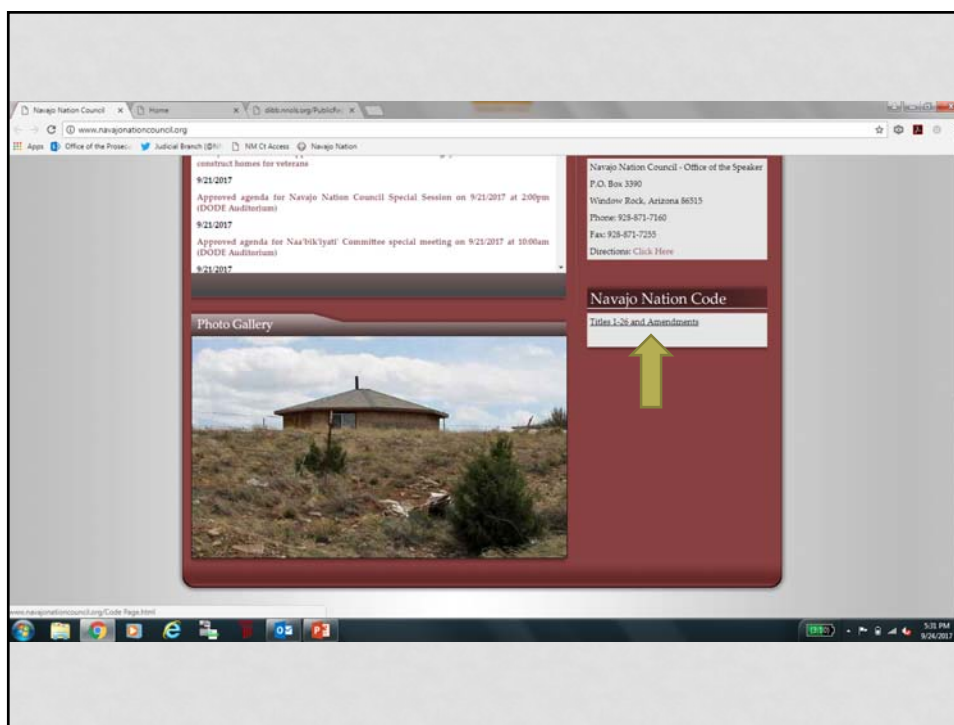
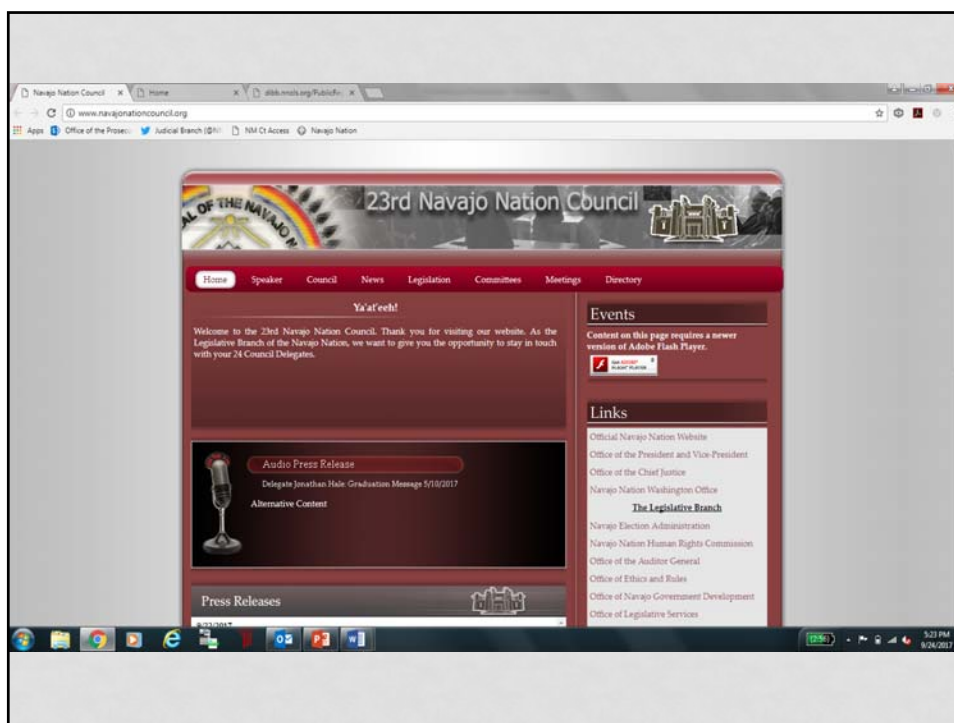
- 1 N.N.C. §§1-9: Navajo Bill of Rights & Indian Civil Rights Act
- Title 17: Navajo Nation Criminal Code
- Title 14: Motor Vehicle Code
- Navajo Rules of Criminal Procedure (And Civil Procedure)
- Navajo Nation Supreme Court opinions
- Diné Bi Beenahaz' áanii

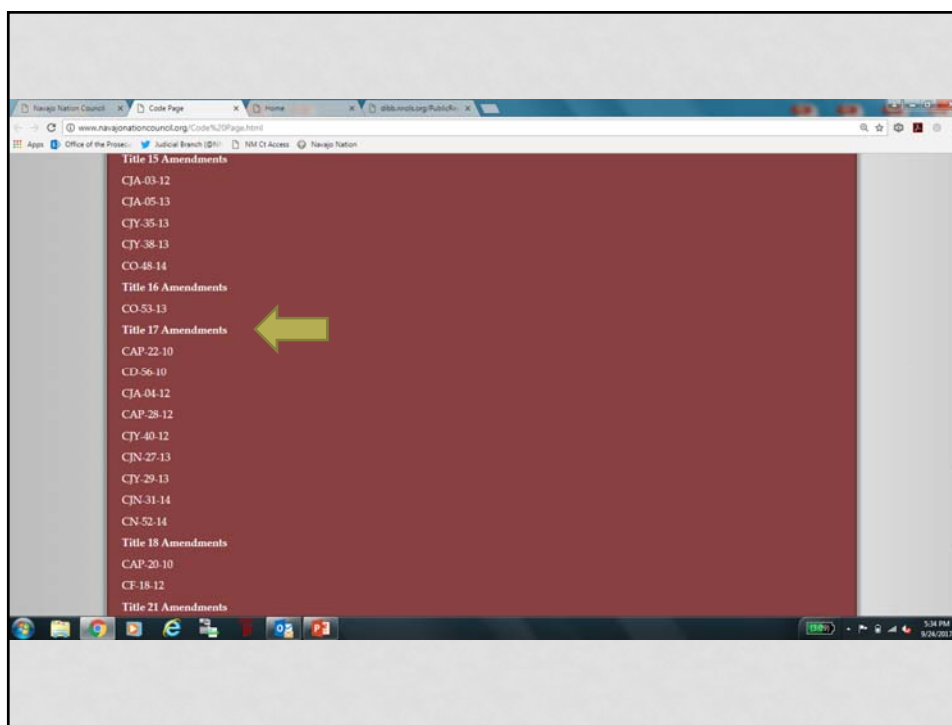
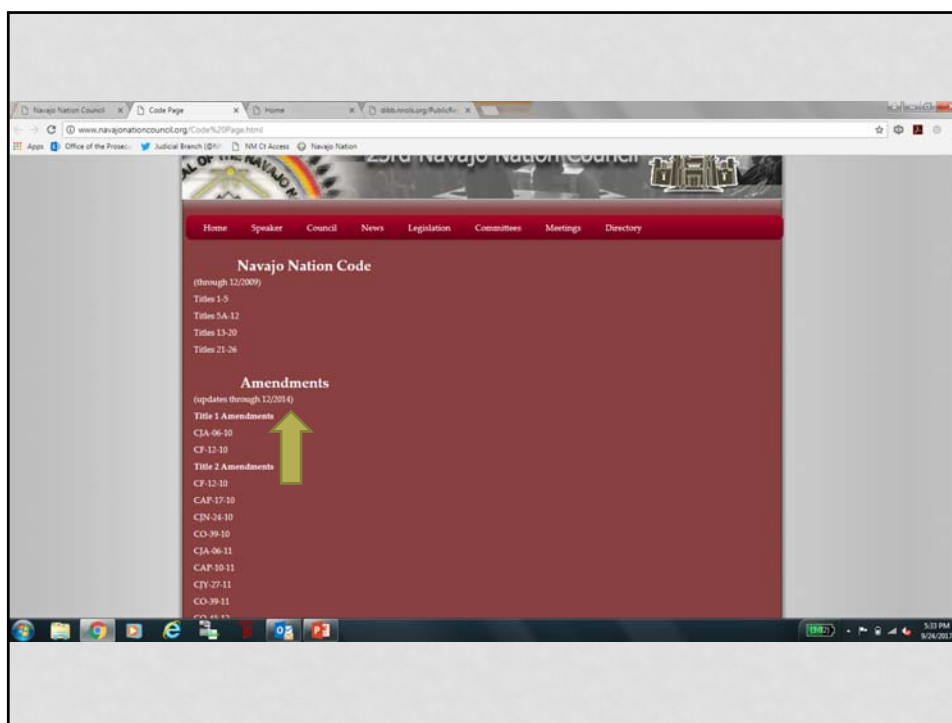
NAVAJO CRIMINAL LAW WHERE IS IT?

- Title 14 has not been amended since 1988
 - Title 17 (a little more problematic)
- Code Books/Website current through 2009
 - Supreme Court Cases

WHERE DO YOU FIND UPDATES TO TITLE 17 SINCE 2009?

- Two Places:
 - Navajo Nation Council Website
 - <http://www.navajonationcouncil.org/>
 - Navajo Nation Office of Legislative Services
 - DIBBS
 - <http://dibb.nnols.org/PublicReporting.aspx>





WHERE DO YOU FIND UPDATES TO TITLE 17 SINCE 2009?

- Two Places:
 - Navajo Nation Council Website
 - <http://www.navajonationcouncil.org/>
- **CAP-22-10 – Internet Sex Offenses Act**
- CD-56-10 – Cross Commissions Agreement Act
- **CJA-04-12 – Violence Against Family Act**
- **CAP-28-12 – Sex Offender Registration & Notification Act**
- CJY-40-12 – Amending 17 NNC § 412 (exceptions) - Liquor
- CJN-27-13 – Amending 17 NNC § 412 (exceptions) - Liquor
- CJY-29-13 – Amending Extradition & Detainer statute
- **CJN--31-14 – Amending SORNA (addressing absconders)**
- **CN-52-14 – Amending sentencing provision of Title 17**

WHERE DO YOU FIND UPDATES TO TITLE 17 AFTER 2014?

- Navajo Nation Office of Legislative Services
 - DIBBS
- <http://dibb.nnols.org/PublicReporting.aspx>

Navajo Nation Council x Home x ddb.mnols.org/PublicRe...

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Activity Date	Legislation No.	Title	Sponsor	Status	View
09/21/2017, 05:23 pm	0389-17	An Action Relating to the Resources and Development Committee: Approving a Budget Reallocation in the Total Amount of \$125,000 from a Business Unit in the Navajo Division of Natural Resources to a Business Unit to be created for the Leupold Little Colorado River Irrigation Project Market Feasibility Study	Walter Phelps	Ready for Resources & Development Committee (1 of 1)	View
09/21/2017, 01:20 pm	0388-17	An Act Relating To Law And Order And Naabik'iyat' Committees And The Navajo Nation Council: Amending The Navajo Nation Code Title 2 And Enacting The Navajo Nation Open Meetings Act.	Jonathan Hale	Ready for Law & Order Committee (1 of 6)	View
An Action Relating To Resources And Development: Approving The Grant Of Right-Of-Way To					

3:25 PM 9/26/2017

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Search: Title 17 Show 10 entries

Activity Date	Legislation No.	Title	Sponsor	Status	View
09/05/2017, 10:38 am	0347-17	An Act Relating to Health, Education and Human Services, Resources and Development, Law and Order and Naabik'iyat' Committees and the Navajo Nation Council: Enacting the Revenge Porn Act and Amending Title 17 Sexual Offenses at 17 N.N.C. § 440 and Adding 17 N.N.C. § 445	Jonathan Hale	In Resources & Development Committee (2 of 5)	View
05/16/2017, 09:40 am	0177-17	An Action Relating to Law and Order and Naabik'iyat' and the Navajo Nation Council: Amending Title 17 of the Navajo Nation Code	Otto Tso	Tabbed in Navajo Nation Council (3 of 3)	View
04/03/2017, 03:52 pm	0117-17	An Act Relating To Health, Education And Human Services, Law And Order, Naabik'iyat' Committee And Navajo Nation Council: Amending Navajo Nation Code, Title 17 And Enacting The Law Against Human Trafficking 2017	Nathanie	Resolution	View
03/28/2017, 02:08 pm	0114-17	An Action Relating to Law and Order and Naabik'iyat' Committees and Navajo Nation Council: Amending Title 17 of the Navajo Nation Code and Enacting the Navajo Nation Firearms Act	Davis Filfred	In Law & Order Committee (1 of 3)	View
01/12/2016, 01:55 pm	0016-16	An Act Relating to Law and Order, Naabik'iyat' Committees and Navajo Nation Council: Amending Navajo Nation Code, Title 17: Amending the Navajo Nation Sex Offender Registration and Notification Act of 2012	Edmund	Resolution	View

Previous 1 Next Showing 1 to 5 of 5 entries (filtered from 1,126 total entries)

5:50 PM 9/26/2017

WHERE DO YOU FIND UPDATES TO TITLE 17 AFTER 2014?

- Navajo Nation Office of Legislative Services
 - DIBBS
- <http://dibb.nnols.org/PublicReporting.aspx>
- CJA-11-16 – SORNA Amendments (Clarifying Tiers)
- **CJY-48-17 – Law Against Human Trafficking**

UPDATE

On 10/17/17 the Council passed legislation
0177-17 aka “White Collar Crime
Amendments” to Title 17

Amend Title 17 of the Navajo Nation Code at 17
N.N.C. 205, 209, 301, 302, 330, 331, 333, 335-337, 340 -
344, 360-365 370, 374, 376, 470-477 and 2002

Awaiting the President's Signature

RULES

Navajo Nation Judicial Branch Website

- <http://www.navajocourts.org/index.htm>
- Rules of Criminal Procedure
 - <http://www.navajocourts.org/Rules/criminalpro.htm>
- Rules of Evidence
 - <http://www.navajocourts.org/Rules/evidence.htm>
- Supreme Court Opinion
 - Navajo Reporter – Opinions from 1969-2005
 - Versus Law & West Law (opinions 2006-present)
 - Opinions 2013- present can be located at:
<http://www.navajocourts.org/suctopinions.html>

NAVAJO SUPREME COURT OPINIONS

- ✓ *Navajo Nation v. Aaron John*, No. SC-CR-01-09 (Nav. Sup. Ct. October 30, 2009)
- ✓ *Navajo Nation v. Kayenta District Court*, No. SC-CV-50-13 (Nav. Sup. Ct. March 4, 2014)
- ✓ *Apachito v. Navajo Nation*, 8 Nav. R. 339 (Nav. Sup. Ct. 2003)
- ✓ *Wood v. Window Rock District Court, the Navajo Nation, Real Party in Interest*, No. SC-CV-20-09 (Nav. Sup. Ct. July 1, 2009)
- ✓ *Bitsie v. Delores Greyeyes, Director, Navajo Nation Department of Corrections*, No. SC-CV-55-11 (Nav. Sup. Ct. December 29, 2011)
- ✓ *Seaton v. Greyeyes*, No. SC-CV-04-06 (Nav. Sup. Ct. March 28, 2006)
- ✓ *Navajo Nation v. Lee*, 4 Nav. R. 185 (W.R. Dist. Ct. 1983)
- ✓ *Navajo Nation v. MacDonald, Jr.*, 7 Nav. R. 1 (Nav. Sup. Ct. 1992)
- ✓ *Navajo Nation v. Rodriguez*, 8 Nav. R. 604 (Nav. Sup. Ct. 2004)
- ✓ *Navajo Nation v. Judge James Atcitty*, 4 Nav. R. 130 (Nav. Ct. App. 1983)
- ✓ *Navajo Nation v. Morgan*, 8 Nav. R. 732 (Nav. Sup. Ct. 2005)
- ✓ *Curley v. Navajo Nation*, 8 Nav. R. 269 (Nav. Sup. Ct. 2002)

CRIMINAL TIMELINE

Prosecutor files complaint(s)

ARRAIGNMENT

(discovery)

PRETRIAL CONFERENCE(S)

(more discovery; pretrial motions)

TRIAL

SENTENCING

POST-TRIAL WORK

THE COMPLAINT

- No joinder of offenses (Rule 7)
- No joinder of defendants (Rule 7)
- Check content of complaint (Rule 8)
 - Client's name (or description that IDs w/ reasonable clarity)
 - Client's census #, if any
 - Client's address
 - Essential facts, including jurisdictional facts
 - Statutory name of offense
 - Section of Code allegedly violated
 - No unnecessary allegations

SUMMONS & SERVICE - 9(C)

- Was your client served by a Navajo Nation Police officer?
- Was your client served within the territorial jurisdiction of the Navajo Nation?
- Was the summons and complaint handed directly to your client?

BAIL

17 N.N.C. §1807

"Every person arrested for an alleged offense against the Navajo Nation shall, within a period of 18 hours from the time of commitment, be given an opportunity to be released on bail."

SO WHO OFFERS/DECIDES BAIL?

Judges

- ✓ Specific bail in each case (not to exceed maximum fine)
- ✓ Bail *schedule* for various offenses (majority of judges w/ Chief Justice's concurrence)
 - ✓ Police officers authorized by the Director of the Department of Law Enforcement could implement the schedule
 - ✓ Department of Corrections could implement the schedule
- ✓ 17 N.N.C. §1815 Director of the Department of Law Enforcement is authorized and directed to authorize officers to admit persons to bail when Court is not in session
- ✓ 17 N.N.C. §1815 Director of the Department of Law Enforcement is directed to assure that an officer authorized to admit persons to bail be on duty at each jail facility during said times
- ✓ "Consent decree" (1992) and *Navajo Nation v. Holmes* (2013)

BAIL/RELEASE

17 N.N.C. §1805

"No person shall be detained, jailed or imprisoned under any law of the Navajo Nation for a longer period than 36 hours, unless there be issued a commitment bearing the signature of a duly qualified judge of the Court of the Navajo Nation...."

BAIL/RELEASE (FRIDAY, WEEKENDS, HOLIDAYS)

17 N.N.C. §1805

"...however, that a person arrested on a Friday, Saturday, Sunday, or a day before a holiday, who, having been given an opportunity within 36 hours after arrest to be released on bail does not provide bail, may be held in custody pending commitment for a reasonable additional period not to exceed eight hours following the opening of court on the next day it is in session."

BAIL/RELEASE

"...there is a legal presumption for release by personal recognizance unless the Navajo Nation objects and a judge makes 'certain findings' to the contrary at the defendant's initial appearance."

*Wood v. Window Rock Dist. Ct.
slip op. No. SC-CV-20-29
(Nav. Sup. Ct. July 1, 2009)*

BAIL/RELEASE

"Certain findings"

The court has reason to believe:

- ✓ Defendant is dangerous to public safety (Rule 15(d))
- ✓ Defendant will commit a serious crime (Rule 15(d))
- ✓ Defendant will seek to intimidate any witness (Rule 15(d))
- ✓ Defendant will otherwise unlawfully interfere with the administration of justice (Rule 15(d))
- ✓ "For any other reason allowed by law" (Rule 15(d))
- ✓ Defendant is unable to care for his or her personal safety (17 N.N.C. §1812)
- ✓ Defendant will pose a danger to any other person (17 N.N.C. §1812)
- ✓ Defendant will leave the lands subject to the jurisdiction of the Navajo Nation and fail to appear (17 N.N.C. §1812)

BAIL/RELEASE

Rule 15(b) & 17 N.N.C. §1812 findings

Must be made by CLEAR AND CONVINCING evidence

ONE MORE "CERTAIN FINDING"

17 N.N.C. §1812(A)(4)

"When the person charged has allegedly done or committed acts as part of the same design or transaction upon which the alleged offense against the Navajo Nation is charged which would in the officer's or the judge's belief constitute a felonious offense, which shall be for the purposes of this Section, an offense under 18 U.S.C. §1153."

MAJOR CRIMES ACT

18 U.S.C. §1153

Any Indian who commits against the person or property of another Indian or other person:

- ✓ Murder
- ✓ Manslaughter
- ✓ Kidnapping
- ✓ Maiming
- ✓ Felony under chapter 109A
- ✓ Incest
- ✓ Assault w/ intent to commit murder
- ✓ Assault w/ a dangerous weapon
- ✓ Assault resulting in serious bodily injury
- ✓ Assault against someone under 16 years old
 - ✓ Felony child abuse or neglect
 - ✓ Arson
 - ✓ Burglary
 - ✓ Robbery
- ✓ Felony under section 661 in Indian Country

EGREGIOUSNESS OF ALLEGED OFFENSE NOT SUFFICIENT

"...mere seriousness of the alleged offense does not, by itself, justify continued detention."

"To hold a defendant merely because the complaint *alleges* a serious offense improperly treats the defendant as guilty before the trial, by assuming the allegations are true and essentially punishing him or her before the Nation has established beyond a reasonable doubt that the offense occurred. This clearly violated Seaton's right to due process."

Seaton v. Greyeyes

CLEAR AS MUD?

- ✓ A Defendant must be offered bail
 - ✓ Bail Agreement – third party release (17 N.N.C. §1808)
 - ✓ Cash bond (17 N.N.C. §1809)
- ✓ Prosecutor must request denial of bail and findings must be made by clear and convincing evidence
 - ✓ Motion to deny bail (written or verbal at arraignment or bail hearing)
 - ✓ "Certain findings" by clear and convincing evidence to deny bail
- ✓ Most writs are filed because of bail/release issues

ARRAIGNMENT - PURPOSE

Rule 12

- ✓To bring the defendant before the Court
- ✓To advise the defendant of the specific nature of the charges against him or her
- ✓To advise the defendant of his rights under the law
 - ✓To ask the defendant to enter a plea

NOT GUILTY

GUILTY

NO CONTEST

ARRAIGNMENT - PROCEDURE

English(for the record); Navajo (if necessary)

- ✓Defendant is given a copy of the complaint
- ✓Case name and number is called
- ✓Defendant stands and faces the Bench
- ✓Court asks Defendant's name, DOB, tribal membership, C#, and SS#
- ✓Court reads complaint to defendant and asks if defendant understands
- ✓Judge informs Defendant of rights
- ✓Judge informs Defendant of maximum penalty if found guilty or pleads guilty
- ✓Defendant enters a plea

PLEAS

Pleas must be knowingly, voluntarily and intelligently made.

- ✓ Some judges routinely enter not guilty pleas for Defendants
- ✓ Some judges accept a guilty plea
- ✓ Some judges colloquy well with Defendants

DISCOVERY

(RULES 24-28)

DISCLOSURE BY THE NAVAJO NATION

AT THE TIME OF ARRAIGNMENT

- ✓ **GIVE TO DEFENDANT** List of witnesses with their addresses which Navajo Nation intends to use against Defendant
- ✓ "No other witnesses shall be allowed to testify against him except on notice to the defendant and with permission of the court." Rule 25(a)

DISCLOSURE BY THE NAVAJO NATION

NO LATER THAN 10 DAYS AFTER ARRAIGNMENT

- ✓ **MAKE AVAILABLE TO THE DEFENDANT FOR EXAMINATION AND REPRODUCTION THE FOLLOWING MATERIAL AND INFORMATION WITHIN THE PROSECUTION'S POSSESSION OR CONTROL:**

(Rule 25(b))

DISCLOSURE BY THE NAVAJO NATION

NO LATER THAN 10 DAYS AFTER ARRAIGNMENT

1. All statements of the defendant
2. Names and addresses of any experts who have examined the defendant or any evidence in the case; results of physical examinations or tests; written reports or statements made by those experts
3. List of all papers, documents, photographs or tangible objects which Prosecutor intends to use or which were obtained from or purportedly belonged to the defendant

DISCLOSURE BY THE NAVAJO NATION

NO LATER THAN 10 DAYS AFTER ARRAIGNMENT

4. A list of all prior convictions of the defendant which Prosecutor will use at trial
5. A list of all prior acts of the defendant which Prosecutor intends to use to prove motive, intent, knowledge or otherwise use at trial
6. All material or information, which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce his punishment thereof, including all prior convictions of witnesses whom the prosecutor expects to call at trial

MORE DISCLOSURE BY THE NAVAJO NATION

WITHIN 10 DAYS AFTER ARRAIGNMENT
Rule 25(c) POSSIBLE COLLATERAL ISSUES

MAKE AVAILABLE TO DEFENDANT information as to whether:

- ✓there was any electronic surveillance of the defendant, or defendant's business/residence
- ✓Whether a search warrant has been executed in connection with the case
- ✓Whether or not the case has involved an informant

EXTENT OF PROSECUTOR'S DUTY TO OBTAIN INFORMATION

Rule 25(e)

The prosecutor's obligation under this Rule extends to material and information in the possession or control of members of his 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.

REQUEST FOR ADDITIONAL DISCLOSURE

Rule 25(d)

Defendant may request additional disclosure from the prosecution by a motion.

MOTION MUST SPECIFY:

- ✓ Nature of the additional disclosure
- ✓ Need for the additional disclosure

Practice Tip: *call* the prosecutor before seeking intervention from the Court

DISCLOSURE BY DEFENDANT

Rule 26

WITHIN 20 DAYS OF ARRAIGNMENT

Must serve Prosecutor notice of any affirmative defenses and identify witnesses in support of affirmative defenses

ALIBI

ENTRAPMENT

SELF-DEFENSE

COMPETENCY (BUT SEE RULE 29(c))

CONTINUING DUTY TO DISCLOSE

Rule 24(d)

Both parties have ongoing duty of disclosure
throughout the discovery process

STATEMENT OF COMPLIANCE

Rule 25(f)

Prosecutor must file statement of compliance w/in 20
days of trial.

"We have fully met our obligations in disclosing
discovery."

OTHER DISCOVERY ISSUES

“Open File” Rule
Depositions – Rule 27
Subpoenas
Motions to compel
Motions to suppress

See the recent Supreme Court Case:
Navajo Nation v. Roy Tso, Jr., No. SC-CR-03-16 (Nav.
Sup. Ct. October 25, 2016)

PRETRIAL MOTIONS (I)

WITHIN 15 DAYS OF ARRAIGNMENT – RULE 29(b)

- ✓ Change of venue
- ✓ Jury Demand
- ✓ Conditions of pretrial release
- ✓ Defective complaint
- ✓ Amend the complaint

GENERAL MOTIONS PRACTICE

- ✓ Responding party has 10 days from service to respond
- ✓ Continuances granted for "good cause shown"
- ✓ Trial continuances less than 10 days before trial require "unforeseeable or exigent circumstances," with no unreasonable delay in seeking the continuance
- ✓ Rule 29(d): waiver because of untimeliness may be rebutted by 1) good cause for lateness and 2) interest of substantial justice

PRETRIAL CONFERENCE(S)

Rule 31
 Discretionary except when jury demand
 Defendant's presence mandatory(?) (Rule 31(d)(4))
 Specify/argue pretrial motions
 Stipulations of fact or legal issues to be tried
 Jury instructions
 Finalize lists of witnesses
 Finalize lists of exhibits

PRETRIAL MOTIONS (II)

AT LEAST 20 DAYS BEFORE TRIAL – RULE 29(c)

- ✓Discovery motions
- ✓Disqualification of judge
- ✓Name additional witnesses
 - ✓Speedy trial
- ✓Evidentiary motions (including to suppress)
 - ✓Raising mental capacity

JURISDICTION MAY BE CHALLENGED AT ANY TIME

TRIAL

Rules 34-46

Order of proceedings

- ✓Complaint read into record and plea stated
- ✓Prosecutor makes opening statement
- ✓Defense makes opening statement or defers
- ✓Prosecutor offers evidence
- ✓Defense offers evidence in rebuttal
- ✓Parties present closing arguments

SENTENCING

Rule 50

Sentence shall be imposed "without unreasonable delay."

Court may order a presentence report by PPS

- ✓ Defendant receives copy and may comment on it

Defendant has the right to make a statement

- ✓ Present any information, even hearsay, in mitigation

Defendant's counsel and Prosecutor have the right to speak

Court may continue bail or commit Defendant prior to sentencing

APPEALS

Defendant has 30 days to appeal a *final* judgment or order

- ✓ Cannot appeal if client "sentenced to imprisonment or labor for less than fifteen days or a fine of less than \$26, or both." N.R.A.P. 2(e)

Can request stay of jail, fine or probation pending appeal