

CHAPTER 41 - CRIMINAL PROCEDURE

Subchapter 1 - PRE-TRIAL PROCEDURE

Sec. 41.1 Rules to Govern

These rules govern the procedures in all criminal cases in the Courts of the Pueblo of Santa Clara. These rules are intended to provide for fair trial and the just determination of every criminal proceeding before the courts. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Formerly Sec. 8.1, Santa Clara Law and Order Code 1985.

Sec. 41.2 Complaint

Any criminal complaint filed in the Court to be valid shall state the following facts:

1. The name of the complaining witness, the name of the defendant and the statement whether the defendant is an Indian within the exterior boundaries of the Pueblo of Santa Clara or on the other lands under the jurisdiction of the Pueblo of Santa Clara.
2. A short statement of the acts constituting the offense in ordinary language, including the alleged acts and the time and place of the acts, making reference to the section of the Criminal Offenses. If the acts constitute more than one offense, each offense should be stated separately. Crimes may be charged using the language of this Code.
3. The name of the Judge before when the complaint was filed and the date of filing. A complaint shall be signed by the complaining witness and the Judge.
4. Prior to the signing of any complaint by the Judge involving a family dispute, the Judge may counsel with the parties, or refer them to someone designated by him as Peacemaker in an effort to resolve the dispute between the parties, or the Judge may divert the offending party to an appropriate treatment or rehabilitation center if the facts warrant.

Formerly Sec. 8.2, Santa Clara Law and Order Code 1985.

Sec. 41.3 Warrant to Apprehend

An arrest warrant shall be issued by a Judge.

1. After a complaint has been filed from which it appears that there is probable cause to believe that an offense in violation of this Code has been committed and that the defendant has committed it.
2. The warrant shall contain:
 - A. The name of the person to be arrested or if his name is unknown, any description by which he can be identified with reasonable certainty;
 - B. The offense or offenses charged in the complaint;

C. The date of issuance and signature of the Judge, and

D. No warrant shall be issued more than three (3) years after the commitment of any alleged offense or for more than one (1) year in the discretion of the Court.

3. In lieu of a warrant to apprehend, the Judge may issue a summons or citation naming the defendant and offense charged and ordering the person to appear before him at a specified time and place to enter a plea to the charge.

Formerly Sec. 8.3, Santa Clara Law and Order Code 1985.

Sec. 41.4 Execution of Warrant of Summons

The warrant, summons, or citation shall be executed or served by a Law Enforcement Officer within the jurisdiction of the Pueblo of Santa Clara or in “hot pursuit” of the person or persons. Upon execution of the warrant, summons, or citation or the failure to find the defendant, the Law Enforcement Officer shall endorse the warrant, summons, or citation and return it to the Clerk of the Court. Any unexecuted warrant, summons or citation may be cancelled at any time by the Judge who issued it.

Formerly Sec. 8.4, Santa Clara Law and Order Code 1985.

Sec. 41.5 Law Enforcement Officer

Law Enforcement Officers shall include any police officer, probation and parole officer, juvenile officer, game warden or Livestock or Range Inspector, or other officer commissioned by the Council of the Pueblo of Santa Clara or by the Federal Government to make arrests.

Formerly Sec. 8.5, Santa Clara Law and Order Code 1985.

Sec. 41.6 Arrests

No Law Enforcement Officer, or other officer commissioned to make arrests, shall arrest any person for any offense defined by this Code unless:

1. The offense was committed in the presence of the Officer, or
2. The Officer had probable cause to believe that the person has committed such an offense, or
3. A warrant has been issued for the arrest of the person.

Formerly Sec. 8.6, Santa Clara Law and Order Code 1985.

Sec. 41.7 Warnings

When any person is arrested, he shall:

1. Be informed of the right to remain silent and that any statement made by him may be used against him;
2. Be informed of the complaint against him;

3. Be informed of his right to retain lay counsel or professional attorney at his own expense;

4. If arrested pursuant to a warrant, receive a copy of the warrant and complaint at the time of arrest or as soon thereafter as possible.

Formerly Sec. 8.7, Santa Clara Law and Order Code 1985.

Sec. 41.8 Bail

Every person charged with an offense before the Court may be admitted to bail, after photographing and fingerprinting, before conviction (or after conviction if an appeal is pending) as provided under these conditions.

1. Acceptance by the Tribal Court of a cash surety bond or undertaking as will in the opinion of the Judge ensure the appearance of the defendant on the date set for trial, giving consideration to the nature and circumstances of the offenses and the character, reputation, and previous criminal record of the defendant and his residence.

2. The amount of the bail shall not exceed twice the maximum fine for each offense charged, but in no event shall the bail be set for more than \$1,000.00.

3. The defendant also may be released by the Judge on or before the arraignment before the Court upon the defendant's own recognizance.

Formerly Sec. 8.8, Santa Clara Law and Order Code 1985.

Sec. 41.9 Forfeiture

Upon good cause shown, the Court may increase or decrease the bail originally set (but not over \$1,000.00). If the defendant fails to appear before the Court as lawfully required, the Court may direct on entry of such failure to be made in the record, order the forfeiture of the bond or cash deposit and issue a warrant for the arrest of the defendant.

Formerly Sec. 8.9, Santa Clara Law and Order Code 1985.

Sec. 41.10 Return of Surety

Any cash or other property given as security by the surety or defendant shall be returned by the court upon the entry of a not guilty verdict or the issuance of a commitment order unless the case is appealed in which cash bail or surety may be extended.

Formerly Sec. 8.10, Santa Clara Law and Order Code 1985.

Sec. 41.11 Detention

No person shall be detained, jailed or imprisoned under this Code for a period longer than seventy-two (72) hours (exclusive of Saturdays and Sundays and holidays) without a preliminary hearing before the Tribal Court and shall be released from custody after seventy-two (72) hours if no hearing is held and no temporary commitment order is issued. During the period of

detention, the person may be taken under protective custody to a treatment center if, in the opinion of the Officer, this procedure is necessary for the well-being of the arrested or detained party. If a longer time than seventy-two (72) hours is needed before being brought before a Judge, the person shall be released on his own recognizance or bail pending time of arraignment.

Formerly Sec. 8.11, Santa Clara Law and Order Code 1985.

Sec. 41.12 Arraignment Procedure

At the arraignment:

1. The complaint shall be read to the defendant who shall be properly identified.
2. The Judge shall explain the offense and the penalties prescribed by this Code to the Defendant and shall determine that the defendant understands the nature of the charge and possible penalties.
3. The Judge shall advise the defendant of his right to remain silent and (at his own expense) to lay counsel or a professional attorney admitted to practice before the Courts of the Pueblo of Santa Clara.
4. The Judge shall ask the defendant to plead not guilty, guilty, or no contest which shall be interpreted as an admission of guilt.
5. The Judge shall be satisfied that any plea is made at the free will of the defendant.
6. The Judge may defer any further action in the case and take the case under advisement upon defendant's agreement to enter a treatment or rehabilitation facility.

Formerly Sec. 8.12, Santa Clara Law and Order Code 1985.

Sec. 41.13 Failure to Plead

If the defendant fails to plead or if the Court does not accept a plea of guilty, the Court shall order the entry of a plea of Not Guilty.

Formerly Sec. 8.13, Santa Clara Law and Order Code 1985.

Sec. 41.14 Sentencing

If the Court is convinced that the defendant pleaded guilty of his free will or pleads no contest the Court shall accept the plea and shall sentence the defendant immediately or within a reasonable period during which time the defendant may be detained by temporary commitment, released on bail or on own recognizance. Before sentencing, the police report shall be read by the arraignment officer and the Judge shall acknowledge that the police report is sufficient for a finding of guilt. The Judge may also request a pre-sentence investigation by an officer of the Court, or Pueblo, an employee of the Bureau of Indian Affairs or State.

Formerly Sec. 8.14, Santa Clara Law and Order Code 1985.

Sec. 41.15 Trial Date

If the defendant enters any other plea, the Court shall set a date for trial which shall be not less than five (5) days nor, unless based on due cause, more than sixty (60) days from the date of arraignment.

Formerly Sec. 8.15, Santa Clara Law and Order Code 1985.

Sec. 41.16 Release

The defendant may be eligible for release from custody while awaiting trial in accordance with the provisions of this Code.

Formerly Sec. 8.16, Santa Clara Law and Order Code 1985.

Sec. 41.17 Order for Detention

Unless so released, the Judge may order the detention of the defendant by signing a temporary commitment to that effect.

Formerly Sec. 8.17, Santa Clara Law and Order Code 1985.

Sec. 41.18 Commitments

There shall be issued for each person held for trial or sentencing a temporary commitment and for each person held after sentence has been passed a final commitment.

Formerly Sec. 8.18, Santa Clara Law and Order Code 1985.

Sec. 41.19 Search and Seizure; Warrant

Every Judge of the Tribal Court shall have the power to issue warrants for search and seizure of property within the jurisdiction of the Court provided that no warrant shall be issued except:

1. Upon probable cause that an offense has been committed supported by oath or affirmation signed by the complaining witness naming or describing the person and particularly describing the items or articles to be seized, the place to be searched and the reasons for its issuance.

2. To an Officer to be served between 7:00 a.m. and 10:00 p.m., unless the Judge for good cause authorizes service at another time and such authorization is noted on the warrant.

Formerly Sec. 8.19, Santa Clara Law and Order Code 1985.

Sec. 41.20 Search and Seizure; No Warrant

No Law Enforcement Officer shall search or seize any property without a warrant, nor shall any property seized be admitted into evidence unless:

1. The Officer has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense.

2. The search is incidental to a lawful detention of a motor vehicle or lawful arrest or is reasonably related to the offense for which the defendant is taken into custody.

3. The Officer has probable cause to believe that the person has in possession contraband or fruits of the crime and the time to get a warrant would endanger the Officer's safety or seriously risk the destruction of the evidence.

Formerly Sec. 8.20, Santa Clara Law and Order Code 1985.

Subchapter 2 - TRIAL PROCEDURE

Sec. 41.21 Right to Jury

Criminal cases shall be tried by the Court unless the defendant demands a jury trial. Any defendant charged with a criminal offense under this Code which could, by law and custom, result in punishment by confinement, is entitled to a jury trial on demand. The demand may be made orally at the preliminary hearing or arraignment or by written application to the court three (3) days thereafter.

Formerly Sec. 9.1, Santa Clara Law and Order Code 1985.

Sec. 41.22 Trial

After the jury has been empaneled as provided by the Rules of the Court and sworn by the Judge or, if no jury trial is demanded, the trial shall proceed, and Federal Rules of Evidence shall be followed as applicable.

1. The Clerk shall read the complaint and state the defendant's plea.
2. The Court shall give all of its rulings on motions already filed and accept any pre-trial motions for ruling by the Court. All arguments on motions shall be made outside the hearing of the jury in a trial by jury.
3. The opening statements shall be made by the Prosecutor or person acting in such capacity followed by the defendant or his lay counsel or professional attorney. The Prosecutor may waive an opening statement and the defendant may waive an opening statement or reserve the right to make an opening statement after the prosecution has rested its case.
4. Evidence shall be presented in support of the charge, and the defendant, lay counsel or professional attorney shall have the right to cross-examine any witnesses called by the Prosecutor.
5. The testimony of witnesses shall be taken orally in open Court, but upon motion of prosecutor or defendant, lay counsel or professional attorney, witnesses may be sequestered or excluded until called upon to testify. Testimony can also be given as evidence by properly executed sworn affidavits, dispositions or written interrogatories. Physical evidence shall be introduced and admitted only after a proper foundation has been laid as to its relevancy.
6. The defendant may make a motion for judgment of not guilty or directed verdict of acquittal at the close of the evidence offered by the prosecution. If the evidence is not sufficient

to support a conviction of the offense charged (beyond a reasonable doubt), the Court shall order the entry of judgment of not guilty or a directed verdict of acquittal of the offense charged.

7. The Court may also enter judgment of not guilty on its own motion after the evidence on either side is close, and shall do so if the evidence is not sufficient to support a conviction of the offense charged beyond any reasonable doubt.

8. After the prosecution has rested its case, the defendant, lay counsel or professional attorney shall have the burden to proceed with the defense and evidence in support thereof, and the prosecution shall have the right to cross-examine any witnesses called by the defendant, lay counsel or professional attorney.

9. The parties may then offer rebutting testimony only on matters relating to direct testimony, except that the Court may, in the interest of justice permit the introduction of newly discovered evidence.

10. The prosecution and the defendant, lay counsel or professional attorney may then present final arguments in the case, the prosecution having the right to open and close.

11. The Judge shall charge the jury orally or in writing stating the law as applicable to the case. At any time during the trial, the Judge may give the jury such instruction as to the law as he considers necessary. The Judge shall instruct the jury that the defendant is presumed to be innocent, that the burden of proof rests on the prosecution, that the evidence must show beyond a reasonable doubt that the defendant has committed the crime charged, that if the defendant did not testify, that his failure to testify shall not be considered as evidence that he is guilty, and that the verdict of the jury must be a majority vote, meaning that all but one (1) jury member must agree to the verdict.

12. Objections to the instructions not made before the jury determines its verdict shall be deemed waived.

Formerly Sec. 9.2, Santa Clara Law and Order Code 1985.

Sec. 41.23 Rights of Defendant.

In all criminal prosecutions, the defendant shall have the following rights:

1. The right to be present throughout the proceeding and to defend himself in person, by lay counsel or professional attorney at his own expense.

2. The right to know the nature and cause of the charge and to receive a copy of the complaint.

3. The right to meet the witnesses against him face to face.

4. The right to compulsory process to obtain the testimony of witnesses and physical evidence in his behalf.

5. The right to a speedy public trial and by an impartial jury if a prison sentence is usual

under this Code upon conviction.

6. The right not to testify. The failure of the defendant to testify shall not be construed against him or be commented upon by the prosecution.

Formerly Sec. 9.3, Santa Clara Law and Order Code 1985.

Subchapter 3 - POST-TRIAL PROCEDURE

Sec. 41.24 Directed Verdict

At any time after the close of the evidence, the Court may direct a verdict of acquittal. If no directed verdict of acquittal is ordered, the Court shall charge the jury as to the law and the jury shall retire to determine a verdict. The jury must render a verdict by majority vote of five (5) on each charge in the complaint. After the verdict of the jury has been announced by the Judge, he shall discharge the jury. If the trial is without a jury, the finding of guilt or innocence shall be made by the Court.

Formerly Sec. 10.1, Santa Clara Law and Order Code 1985.

Sec. 41.25 Acquittal

If the Court finds the defendant not guilty or the jury brings in a verdict of not guilty on all counts of the complaint, a judgment of not guilty or acquittal shall be announced by the Court and entered in the official records by the Clerk, along with the names of the jurors in the case, and the defendant shall be immediately discharged.

Formerly Sec. 10.2, Santa Clara Law and Order Code 1985.

Sec. 41.26 Conviction and Sentencing

Within a reasonable time or immediately after a plea of guilty, a finding of the guilt by the Court, or a verdict of guilty by the jury, and after such pre-sentencing investigation as the Court may direct, the Court shall sentence the defendant in its discretion pursuant to the applicable provisions of this Code, and deliver to the Law Enforcement Officer a signed copy of the final commitment. The judgment of conviction shall state the charge, the plea, the verdict, and the sentence. The judgment shall be signed by the Judge and entered in the official records by the Clerk. The final commitment shall direct that the prisoner be held in custody until the prisoner has satisfied the sentence according to law or be held in suspension provided the convicted person follows a course of treatment and rehabilitation or other order of the Court.

Formerly Sec. 10.3, Santa Clara Law and Order Code 1985.

Sec. 41.27 Motion for New Trial

A motion for a new trial to be held in the Tribal Court may be made by the defendant within seven (7) days after judgment. The Court shall grant a motion for a new trial for the cause set forth in the Rules of the Court, if such trial, in the discretion of the Court, is required in the interest of justice.

Formerly Sec. 10.4, Santa Clara Law and Order Code 1985.

Sec. 41.28 Right of Appeal

Upon imposing sentence in a case which has gone to a trial after a plea of not guilty, the Court shall advise the defendant upon conviction by the Court or jury, if the defendant has not already been so advised, of his right to file an appeal within ten (10) days. All appeals shall be made in accordance with the Rules of the Court.

Formerly Sec. 10.5, Santa Clara Law and Order Code 1985.

Sec. 41.29 Probation

After conviction of an offense by the Court or jury, the Court may, upon such reasonable terms and conditions as it considers necessary, at any time suspend (all or) any part (of the remainder of) the sentence and release the prisoner on probation under the rules of the Court. In granting probation, the Judge shall consider the prior criminal record of the prisoner, his background, character, financial conditions, family obligations, and other conditions as specified in the Rules of the Court.

Formerly Sec. 10.6, Santa Clara Law and Order Code 1985.

Sec. 41.30 Violation of Probation and Parole

If any person shall violate probation or parole, that person may be required to serve the balance of the original sentence (plus an additional sentence for probation or parole violation), but the Court shall not revoke probation or parole except after a hearing at which the defendant shall be present, advised of the charges on which revocation is proposed, and defend against the charges. The defendant may be admitted to bail pending such hearing.

Formerly Sec. 10.7, Santa Clara Law and Order Code 1985.

Subchapter 4 - SENTENCING

Sec. 41.31 Discretion of Court

Any final commitment of the Court may include:

1. Serving of sentence on weekends or in any other appropriate manner.
2. Labor for public purposes of the Pueblo while in confinement or in lieu thereof.
3. Confiscation of any material substance or equipment used in wrongful and illegal acts and making appropriate disposition thereof pursuant to this Code.

Formerly Sec. 11.1, Santa Clara Law and Order Code 1985.

Sec. 41.32 Credit

The convicted person shall receive full credit toward his sentence for any time spent in confinement prior to final commitment in connection with the same offense, and further, shall be given one (1) additional day credit each week for good time served.

Formerly Sec. 11.2, Santa Clara Law and Order Code 1985.

Sec. 41.33 Confinement In Lieu of Fine

No convicted person shall be confined solely because of inability to pay a fine, however, sentence may be imposed upon any convicted person who is able but refuses to pay a fine.

Formerly Sec. 11.3, Santa Clara Law and Order Code 1985.

Sec. 41.34 Payment of Fine

When the defendant is sentenced to pay a fine, the Court may permit payment within a definite period or by installment. In the absence of such permission, a fine shall be payable forthwith. Fines and any installment thereof shall be payable to the Court Clerk, properly receipted for, and entered upon the trial record and docket, and deposited daily with the Pueblo Treasury.

Formerly Sec. 11.4, Santa Clara Law and Order Code 1985.

Sec. 41.35 Work Credit

Any prisoner who performs work for the Tribe during the period of his sentence shall be given two (2) days credit for each one (1) day of satisfactory work performed.

Formerly Sec. 11.5, Santa Clara Law and Order Code 1985.