

CHAPTER 3 - CRIMINAL PROCEDURE

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Section 3-1 Complaints

Complaints.

- (a) Prosecution of violation of the Law and Order Code shall be by complaint, specifying the offense with which the accused is charged.
- (b) No complaint filed in the Spokane Tribal Court shall be valid unless it shall bear the signature of the complainant or the complaining witness, and be witnessed by 1 of the following: by a duly qualified Judge of the Court, the Clerk of the Court, the Tribal Executive Director, the Superintendent, or his authorized representative.

Readopted 8/01/06, Resolu. 2006-524.

Section 3-2 Complaint Limitation

3-2.01 Limitations of Actions.

- (a) Prosecutions for all offenses, other than those set out in subsection (b) herein, must commence with 2 years of the commission of the offense.
- (b) Prosecutions for the offenses of child abuse, child molestation, carnal knowledge, or other criminal charges wherein the victim is a minor, may be commenced at any time before such child reaches the age of 21 years.

Readopted 8/01/06, Resolu. 2006-524.

3-2.02 Tolling of Time For Complaint. If the person accused of an offense defined in this Code intentionally absents them self from the jurisdiction of the Tribal Court, the time within which filing of the complaint is to be made, or the trial to be conducted, is tolled for the duration of time that the individual absents them self from the jurisdiction of the Court.

Readopted 8/01/06, Resolu. 2006-524.

Section 3-3 Speedy Trial

3-3.01 Speedy Trial. The Spokane Tribal Court shall have the responsibility of insuring that each person charged with a crime under this Code shall receive a speedy trial.

Readopted 8/01/06, Resolu. 2006-524.

3-3.02 Length of Time. Trial must commence no more than 120 days after the defendant first appears in court, unless a longer period is agreed to or ordered by the Court.

Readopted 8/01/06, Resolu. 2006-524; Amended 11/06/07, Resolu. 2008-64; Amended 8/12/2011, Resolu. 2011-347

Section 3 - 4 Warrants to Apprehend

3-4.01 Warrant to Apprehend. Upon written complaint, under oath, before a Tribal Judge, charging any person of a crime of which this Court has jurisdiction, a warrant shall issue causing the individual so charged to be brought before the tribal Court for trial.

- (a) No warrant to apprehend shall be valid unless it shall bear the signature of a duly qualified Judge of the Tribal Court.
- (b) Such warrants shall be served by a duly qualified member of the Tribal Law Enforcement Office, a duly qualified Probation officer or a police officer of the United States Bureau of Indian Affairs.
- (c) Any unexecuted warrant may be cancelled by the Judge who issued it.

Readopted 8/01/06, Resolu. 2006-524; Amended 1/25/2013; Resolu. 2013-135

3-4.02 Summons in Lieu of a Warrant. When otherwise authorized to arrest a suspect, a Tribal Police Officer or a Judge may, in lieu of an arrest warrant, issue a summons commanding the accused to appear before the Tribal Court at a stated time and place to answer the charge.

- (a) The summons shall contain the same information as a warrant, except that it may be signed by a Tribal Police Officer.
- (b) If a defendant fails to appear in response to a summons, a warrant for defendant's arrest may be issued.

Readopted 8/01/06, Resolu. 2006-524.

Section 3- 5 Arrests

3-5.01 Arrests.

- (a) No member of the Indian Police shall arrest any person for any offense defined in this Code or by Federal Law except when the officer shall have a warrant commanding him to apprehend such person, or the offense shall occur in the presence of the arresting officer, or he shall have reasonable cause to believe that the person arrested has committed an offense.
- (b) Any probation officer appointed pursuant to this chapter may arrest a probationer without warrant, or may authorize any other officer with power to arrest to do so by a written statement setting forth that the probationer has, in the judgment of the probation officer, violated one or more of the terms or conditions upon which the probationer was released on probation. Such written statement by a probation officer delivered to the officer in charge of the jail shall be sufficient warrant for the detention of the probationer. Any officer authorized upon receipt of the written statement shall enter, or cause to be entered, the person's name and other appropriate information

required by the Spokane Tribal Police Department into the "information systems" known as Spillman, (or any other system hereafter adopted) established and maintained by the Spokane Tribal Police Department. Such information shall be deemed a warrant authorizing the arrest of the person anywhere on the Spokane Indian Reservation.

- (c) A Tribal member may make a citizen's arrest for an offense, which occurred in his presence.

Readopted 8/01/06, Resolu. 2006-524. Amended 1/25/2013; Resolu. 2013-135

Section 3–6 Search Warrants

3-6.01 Who May Issue. Only a Judge of the Spokane Tribal Court shall have authority to issue warrants for the search of any person or the premises and property of any person under the jurisdiction of the Tribal Court or of any Indian person or their premises or property on the Spokane Reservation who is under the jurisdiction of any court other than the Tribal or Federal Court.

Readopted 8/01/06, Resolu. 2006-524.

3-6.02 Probable Cause. Such Tribal Judge, when satisfied there is probable cause, may issue a search warrant, upon complaint under oath in writing, to search for and seize any evidence or contraband, material to the investigation of a criminal violation within the jurisdiction of this Court.

Readopted 8/01/06, Resolu. 2006-524.; Amended 8/12/2011, Resolu. 2011-347

3-6.03 Warrant Content and Service. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and the article of property to be seized. Service of warrants of search and seizure shall be made only by members of the Tribal Indian Police, police officers of the Bureau of Indian Affairs or other Federal Officers.

Readopted 8/01/06, Resolu. 2006-524.

3-6.04 Return of Search Warrant. An unexecuted search warrant shall be invalid after a period of 7 days from the date of issuance.

Readopted 8/01/06, Resolu. 2006-524.

3-6.05 Search Without a Warrant. No Tribal law enforcement officer shall conduct any search without a valid warrant except:

- (a) When s/he shall know, or have probable cause to believe, that the person apprehended is engaged in the commission of an offense under this Code, or

Amended 8/12/2011, Resolu. 2011-347

- (b) Incident to the making of a lawful arrest, the scope of the search shall be limited to the arrestee's person and the area under his immediate control, or

- (c) With voluntary written consent of the person being searched, or

- (d) When s/he has probable cause to believe that the person searched may be armed and dangerous, or

- (e) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen or embezzled property.

Readopted 8/01/06, Resolu. 2006-524.

3-6.06 Disposition of Seized Property. The police shall make an inventory of all property seized by warrant or otherwise and copies of such inventory shall be left with the person from whom the property was taken and with the Tribal Court Clerk.

Readopted 8/01/06, Resolu. 2006-524.

Section 3–7 Commitment

3-7.01 Commitment and Arraignment.

- (a) No person shall be detained, jailed, or imprisoned under this Code for a period longer than seventy-two (72) hours excluding holidays and weekends following arrest without being arraigned before a Judge of the Spokane Tribal Court or released from custody.

Readopted 8/01/06, Resolu. 2006-523; Amended 8/12/2011, Resolu. 2011-347

- (b) At the arraignment the following procedure shall be observed:
 - (1) The defendant shall have the complaint read to him/her.
 - (2) The Judge shall explain the offense charged and the penalties prescribed by this Code to the defendant and shall determine that the defendant understands the nature of the charges and possible penalties.
 - (3) The Court shall advise the defendant of the defendant's right to remain silent and to have legal counsel, at defendant's own expense.
 - (4) The Judge shall inform defendant of his right to plead not guilty, guilty, or no contest and ask him if he is ready to plead.
 - (5) The Clerk of Court shall record the defendant's plea, if the defendant enters a plea.
 - (6) If the defendant elects not to enter a plea, the Court shall enter a plea of not guilty for the defendant.
 - (7) The Court shall advise the defendant that the defendant may change their plea in an appearance before the Court at any time before trial or sentencing.

Readopted 8/01/06, Resolu. 2006-524.

Section 3–8 Bail or Bond

3-8.01 Bail or Bond. Each person charged with an offense before the Spokane Tribal Court may be admitted to bail upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person. Bail shall not be excessive.

Readopted 8/01/06, Resolu. 2006-524; Amended July 3, 2013; Resolution 2013-324.

- (a) Bail may be by cash, corporate surety bond or by 1 or more reliable residents of the Reservation who shall appear before a Tribal Judge and there execute an agreement in accordance with the form provided therefore.
- (b) The Court's determination of bail and appropriate conditions of release shall be based on the following considerations:

- (1) The nature of the circumstances of the offense charged, including whether there is a victim or whether the offense is a crime of violence;
- (2) The nature and seriousness of the danger to any person or the community that would be posed by the defendants release;
- (3) The weight of the evidence against the defendant, including any mitigating or aggravating facts that may bear on the likelihood of conviction and the possible penalty;
- (4) The defendant's prior criminal record, if any, in any jurisdiction, and whether at the time of the current arrest or offense the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;
- (5) The defendant's record of appearance at Court proceedings;
- (6) Any drug or alcohol test ordered by the Court.

Amended 8/14/2013; Resolution 2013-370.

- (7) Any facts indicating the possibility of violations of law if defendant is release without restrictions;
 - (8) The nature and extent of defendants family relationships and ties to the Spokane Indian Reservation;
 - (9) Defendant's character and reputation;
 - (10) Defendant's employment status and work history;
 - (11) Names of individuals personally agreeing to assure defendant's Court appearance;
 - (12) Defendants's financial condition;
 - (13) What reasonable restrictions, conditions and prohibitions should be placed upon defendants activities, movements, associations, and residence.
- (c) The Tribal Judge may exercise discretion to order or authorize the release of the person charged without posting bail or bond after determining conditions of release pursuant to subsection (b).
- (d) The Chief Judge of the Spokane Tribal Court shall establish and post a bail schedule for victimless offenses to allow defendants to post bail prior to arraignment.

Readopted 8/01/06, Resolu. 2006-524; Amended July 3, 2013; Resolution 2013-324.

Section 3–9 Corporation of Federal Employees

3-9.01 Corporation of Federal Employees. No field employee of the Bureau of Indian Affairs shall be permitted to obstruct, interfere with, or control the functions of the Spokane Tribal Court, or to influence such functions in any manner, except as permitted in this Code or in response to a request for advice or information from the Court.

Readopted 8/01/06, Resolu. 2006-524.

3-9.02 Assistance from Agencies of State and Federal Government. The Court may seek assistance from employees of the Bureau of Indian Affairs, particularly those who are engaged in Social Service, Health and Educational work, in the presentation of facts in a case and in the determination of proper treatment of individual offenders.

Readopted 8/01/06, Resolu. 2006-524.4

Section 3-10 Extradition

3-10.01 Extradition. If a person is charged with a violation of the laws of any other Tribe or Reservation or the Federal or State government, the Tribal Court shall order, unless good cause is shown to the contrary

that such person be made available for pick up by the proper authorities, provided, that a copy of the warrant, or proof of its existence, is presented to a Judge of the Spokane Tribal Court.

Readopted 8/01/06, Resolu. 2006-524.

3-10.02 Arrest and Hearing. On receipt of a valid warrant, the Judge may issue a court order directing the Spokane Police Chief to apprehend the person or persons named in the warrant.

Upon the written or oral request of the accused or upon the Judge's own motion, a hearing shall be conducted to determine if there is good reason or probable cause for an order of extradition.

- (a) Upon such a finding, the individual shall be made available for pick up by the proper authorities.
- (b) The accused shall always be informed of his or her right to an extradition hearing prior to deliverance to the authorities.
- (c) Written evidence of such disclosure shall be preserved as a part of the record of the proceeding.

Readopted 8/01/06, Resolu. 2006-524.

3-10.03 Detention.

(a) When such person is apprehended, it shall be the duty of the Chief of Police or the arresting officer to notify the proper authorities of the apprehension of the subject, and said subject may be detained in the Tribal jail for a period not to exceed 48 hours from the time of apprehension, unless an extradition hearing is ordered.

(b) If the lawful authority requesting the apprehension of the subject, after first being notified, does not take possession of the person within 48 hours, the Court shall require a new warrant to be presented.

Readopted 8/01/06, Resolu. 2006-524.

Section 3-11 Proof Beyond a Reasonable Doubt

3-11.01 Proof Beyond a Reasonable Doubt. Conviction of a criminal offense, as defined by this Code, shall be by a finding that the evidence shows beyond a reasonable doubt that the offender has committed the offense with which he is charged.

Readopted 8/01/06, Resolu. 2006-524.