

CHAPTER 3
CRIMINAL PROCEDURE

3-1 COMPLAINTS AND CITATIONS

3-1.01 Rules to Govern. These procedures govern criminal cases in the Tribal Court. They are intended to provide a fair and just determination in every criminal proceeding. They shall be construed to secure simplicity, fairness, and to eliminate unnecessary expense and delay. When appropriate, they shall be interpreted pursuant to Tribal custom. Where no custom exists, the Court may apply the federal or state law most appropriate to the situation.

3-1.02 Complaints and Citations. Every criminal proceeding shall be initiated by the filing of a complaint or citation, which shall state the following:

(1) The name of the complaining witness or the officer issuing a citation, the name of the defendant and address, if known;

(2) A short statement of the facts constituting the offense in ordinary language. If the acts constitute more than one offense, each offense shall be stated separately;

(3) A citation or complaint must be signed and dated by the issuing officer or the complaining witness.

3-1.03 Time of Complaint. No complaint or citation shall be filed charging the commission of any offense defined by this Code unless the offense charged was committed within one year of the date of the complaint.

3-2 SPEEDY TRIAL

3-2.01 Speedy Trial. Each person charged under this Code shall have the right to a speedy and public trial.

3-2.02 Time for Trial. A trial must begin within 180 days of the individual's arraignment, unless a longer period is requested or agreed to by the accused. The Court, on its own motion, may continue or postpone the case when justice so requires and the defendant will not be substantially prejudiced by the delay.

3-3 WAIVER OF TIME LIMITATIONS

3-3.01 Tolling of Time. A person accused of an offense who has intentionally avoided coming within the jurisdiction of the Court to escape prosecution shall be deemed to have waived the statute of limitations set forth in section 3-1.03 and the right to a speedy trial and the time during which the person remains outside the jurisdiction shall not count toward the time limits set forth above.

3-4 WARRANTS TO APPREHEND

3-4.01 Warrant to Apprehend.

(1) An arrest warrant shall be issued by the Court after a complaint and affidavit of the complaining party has been filed showing probable cause to believe that a violation was committed by the defendant.

(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 the signature of the Judge.

3-4.02 Summons in Lieu of a Warrant. When grounds otherwise exist to arrest a suspect, the Court may, in lieu of an arrest warrant, issue a summons or citation commanding the accused to appear before the Court at a stated time and place to answer the charge. The summons shall contain the same information as a warrant except that it may be signed by the Clerk of the Court. If a defendant fails to appear in response to a summons, a warrant for his or her arrest may be issued.

3-4.03 Execution of Warrant or Summons. A warrant or summons shall be executed or served by a law enforcement officer within the jurisdiction of the Court. Upon execution of the warrant or

summons or the failure to find the defendant, the law enforcement officer shall endorse the warrant and return it to the Clerk of the Court. An unexecuted warrant or summons may be canceled at any time by the Judge who issued it.

3-5 ARRESTS

3-5.01 Arrests by Law Enforcement. No tribal law enforcement officer shall arrest any person for any offense defined in this Code or by federal law except when the officer has a warrant commanding him to apprehend such person, or the offense occurs in the presence of the arresting officer, or he has probable cause to believe that the person arrested has committed an offense.

3-5.02 Citizen's Arrests. A tribal member or tribal employee may make a citizen's arrest for an offense which occurred in his presence. The use of force in a citizen's arrest is prohibited unless reasonable force is necessary to prevent immediate harm to a person or property.

3-5.03 Miranda Warnings. When a person is arrested or surrendered to the police after a citizen's arrest, he shall be informed of the following:

- (1) The right to remain silent and that any statement made by him may be used against him;
- (2) The charges against him;
- (3) The right to retain lay or professional counsel at his own expense;
- (4) If arrested pursuant to a warrant, the right to receive a copy of the warrant and complaint at the time of arrest or as soon thereafter as possible.

3-6 SEARCHES AND SEARCH WARRANTS

3-6.01 Who May Issue. Only a judge of the Tribal Court shall have authority to issue warrants for the search of any person or property within the jurisdiction of the Court.

3-6.02 Probable Cause. A tribal judge, upon a written and sworn affidavit and complaint, when satisfied there is probable cause, may issue a search warrant to search for and seize any evidence or contraband material to the investigation of a criminal offense within the jurisdiction of the Court.

3-6.03 Return of Search Warrant. An unexecuted search warrant shall be invalid after a period of seven (7) days from the date of issuance.

3-6.04 Warrant Content and Service. No warrant for search and seizure shall be valid unless it contains, with specificity, the name or description of the person or property to be searched and the articles of property to be seized. Warrants for search and seizure shall be executed only by tribal or federal law enforcement officers and, unless good cause exists otherwise, may be executed only during daylight hours.

3-6.05 Search Without a Warrant. No tribal law enforcement officer shall conduct any search without a valid warrant except under the following circumstances:

- (1) When the officer knows, or has probable cause to believe, that a suspect is engaged in the commission of an offense under this Code;
- (2) The search is incident to a lawful arrest, provided the scope of a search is for the safety of the arresting officer and does not extend beyond the suspect and the area under his immediate control;
- (3) When voluntary consent has been given by the suspect or some person who reasonably appears to have authority to give consent;
- (4) When probable cause exists to believe that the person searched may be armed and dangerous; or
- (5) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband or stolen or embezzled property.

3-6.06 Disposition of Seized Property. The police shall inventory 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 Court Clerk. After its use as evidence, illegal substances shall be destroyed. All other property shall be returned to the defendant after trial or, if left unclaimed for a period of one year, shall be sold at auction by the Court.

3-7 ARRAIGNMENT

3-7.01 Commitment and Arraignment. No person arrested shall be detained or imprisoned under this Code for a period exceeding 72 hours, or the next day the Court is in session, which ever is shorter, without being arraigned before the Court or released from custody. At the arraignment the following procedure shall be observed:

(1) The defendant shall be read the complaint.

(2) The Judge shall explain the offense charged and the penalties prescribed and shall determine that the defendant understands the nature of the charges and possible penalties.

(3) The Judge shall advise the defendant of the right to remain silent and, at the defendant's own expense, to be represented by counsel of the defendant's own choosing.

(4) The Judge shall inform the defendant of the right to plead not guilty, guilty or no contest and shall request a plea. The plea, if given, shall be recorded by the Clerk. If the defendant does not enter a plea, the failure to do so shall be recorded as a plea of not guilty. The defendant shall be informed that a plea may be changed in an appearance before the Court any time prior to sentencing or trial.

(5) The Judge shall inform the defendant of other rights he/she may have before the Tribal Court.

3-8 BOND

3-8.01 Bail or Bond. A defendant may be admitted to bail based on the bond schedule approved by Council. Bail may only be in the form of cash bond.

3-8.02 Forfeiture. If the defendant fails to appear as lawfully required, the Court may direct an entry of such failure be made in the record, order the forfeiture of the cash bond, and may issue a warrant for the arrest of the defendant.

3-9 EXTRADITION

3-9.01 Extradition to Other Jurisdictions. If an accused is charged with a violation of the laws of any other tribe or Indian reservation or the federal or

state government, the Tribal Court may order that such person be delivered to the proper authorities, provided that a copy of the warrant, or proof of its existence, is presented to the Court.

3-9.02 Extradition Request to Tribal Jurisdiction. The Tribal Court shall request that any tribal member or other federally recognized Indian charged with a violation of this Code who is outside the jurisdiction of the Court be delivered by appropriate authorities to Tribal law enforcement for arrest and prosecution.

3-9.03 Extradition Arrest and Hearing. On receipt of a valid warrant from another jurisdiction, the Court may issue an order directing tribal law enforcement to apprehend and deliver the person named in the warrant to the proper authority, provided that, on the petition of the person named in the warrant, or on the Court's own motion, the judge may conduct a hearing to determine if there is probable cause to justify extradition.

3-9.04 Detention. The supervising law enforcement officer or the arresting officer immediately shall notify the Court of the apprehension of the subject of a warrant issued for extradition. The person apprehended may not be detained for a period longer than forty-eight (48) hours. If the requesting authority does not take custody within the time specified, the Court shall require a new warrant to be presented and that the requesting authority's representative accompany the tribal law enforcement officer to apprehend the person on the warrant and to take immediate custody after such apprehension.

3-10 TRIBAL PROSECUTOR

3-10.01 Appointment by Council. The Council shall appoint a person to act as tribal prosecutor and to represent the interests of the Tribe in any matter before the Court on a case by case basis at such compensation as determined by the Council. The prosecutor may be the tribal attorney if the defendant is represented by a professional attorney.

3-11 PROOF

3-11.01 Proof Beyond a Reasonable Doubt. No defendant shall be convicted of a criminal offense, as defined by this Code, unless the evidence presented shows beyond a reasonable doubt the defendant committed the offense charged.

3-12 COURT TRIALS

3-12.01 Trials Before the Tribal Judge. Unless a jury is requested by the defendant, all trials before the Court shall be heard without a jury. All rules and procedures applicable to the conduct of trials except those specifically applicable only to jury trials shall apply to court trials.

3-13 JURY TRIALS

3-13.01 Right to a Jury Trial. Any party to a criminal trial shall have the right to a trial by a jury of six (6) persons.

3-13.02 Requests for Jury. Requests for jury trials must be made by either party no later than three days after the arraignment. Requests made at the arraignment need not be in writing. All other requests must be in writing.

3-14 JURY SERVICE

3-14.01 Eligibility for Jury Service. Any member of the Kootenai Tribe of Idaho or other federally recognized Indian residing on the Kootenai Reservation who is eighteen (18) years of age or older, shall be eligible to serve as a juror.

3-14.02 Jury Panel. The Clerk of the Court, or in the Clerk's absence the Secretary of the Council, shall be responsible for maintaining an up-to-date list of potential jurors and, upon notice from the Court that a jury trial is pending, shall convene, by random selection and through use of a summons for jury duty, a panel of twelve (12) jurors on the day set for trial. Jurors may be excused from reporting at the discretion of the Clerk or Secretary but only for good reason, which shall not include financial hardship.

3-14.03 Jury Selection. The Clerk of Court or the presiding judge shall select at random the names of six (6) prospective jurors from the panel. These individuals shall constitute the jury unless either party upon questioning the jurors, objects to one or more of those selected. Parties are expected to challenge only for good reason. Each party may challenge two (2) jurors without cause. A party who has used two challenges may make a further challenge only upon demonstrating that a member of the panel has extreme bias against the party. After each successful challenge, the Clerk or judge

shall draw the name of one of the remaining panel at random to take the place of the challenged juror.

3-14.04 Compensation for Jury Service. Each member of the original panel of twelve (12) prospective jurors shall receive five dollars (\$5.00) upon reporting to the Court at the time set for trial. Jurors selected to hear the case shall receive an additional five dollars (\$5.00) per day for further service.

3-14.05 Limitation on Service. No person shall be summoned for jury service more than three (3) times in any twelve (12) month period.

3-14.06 Ineligibility for Service. No person may serve as a juror who has been convicted of, or pleaded guilty to, a felony or has a felony charge pending or who has been convicted of, or pleaded guilty to, a misdemeanor offense three (3) or more times, except traffic violations, if one such misdemeanor conviction or plea was within the previous twelve (12) months.

3-14.07 Circumstances Excusing Service. Persons may be excused from jury service for the following reasons:

- (1) Absence from employment will cause extreme hardship to the employer.
- (2) Illness.
- (3) Physical or mental impairment affecting ability to serve.
- (4) Death in the family.
- (5) Other good cause as determined by the Clerk or Secretary.

3-14.08 Sanctions. Any person who fails to report for jury service without valid excuse, avoids or attempts to avoid service by knowingly giving false information, or refuses to release an employee for service without just cause, shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00).

3-15 SENTENCING

3-15.01 Sentences. A defendant who has pleaded guilty to an offense or who has been convicted by a jury or the Court shall be sentenced or fined or a

combination of sentence and fine not to exceed the limitations set forth in this Code. If a sentence is not provided as part of a specified crime or other provision, the sentence shall not exceed one year in jail and/or a \$5,000.00 fine.

3-15.02 Execution of Sentences. Unless the Tribal Court grants credit for time served, jail sentences shall commence from the date of sentencing, unless the defendant is granted a stay, pending appeal. In such case, the sentence shall commence to run on the date the defendant is incarcerated after the appeal is denied. Unless otherwise provided by law, the Tribal Court may delay the imposition of jail time if the situation should warrant it. All jail sentences shall be served in the Boundary County Jail in Bonners Ferry, Idaho or at such other place of incarceration as may be determined by the Tribal Court.

3-15.03 Reduction of Sentence for Labor. Any person who is incarcerated shall have the option, with the permission of the Court, to perform labor for the Tribe to reduce the time of incarceration. The nature of the labor shall be disclosed to the Court prior to its determination. Two (2) days for each one (1) day of labor performed shall be subtracted from the sentence, provided the person is confined to jail when not performing labor. Labor shall be performed under the supervision of an authorized agent of the Tribal Council.

3-15.04 Reduction of Fine for Labor or Jail Time. Any person who has been sentenced to pay a fine shall have, in lieu of the fine, the option to perform labor for the benefit of the Kootenai Tribe of Idaho or to serve time in jail. Labor shall be credited at the rate of \$15.00 per day for each day of labor performed, provided the person is confined to jail when not performing labor. In the person elects to remain in jail without performing labor, he shall be entitled to a credit on the at the rate of \$10.00 for each day in jail.

3-15.05 Confinement in Lieu of Fine Prohibited. No person shall be confined solely because of an inability to pay a fine. A jail sentence may be imposed upon any person who is able but refuses to pay a fine.

3-15.06 Restitution. In addition to any other sentence, the Court may require an offender who has inflicted injury upon the person or property of another to make restitution or to compensate the

party so injured through the surrender of property or the payment of money damages.

3-15.07 Community Service. In addition to any other sentence, the Court may require an offender who has damaged tribal property or otherwise harmed the interests of the Kootenai Tribe of Idaho to perform such community service work as deemed appropriate by the Court. Community service work is such work as will result in a public benefit.

3-15.08 Character and Duration of Sentence. In determining the character and duration of the sentence, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, and whether the offender voluntarily has attempted to make restitution. The Court shall give consideration to the extent of the defendant's resources and the needs of his dependents. The Court shall consider all of the circumstances of each case to determine whether a lesser penalty or the maximum is to be imposed.

3-15.09 Credit. An offender shall receive full credit for any time served prior to final commitment in connection with the same offense, and further shall be given one (1) day credit each week for good time served.

3-15.10 Court Costs. The Court is authorized to impose the actual court costs associated with the action on any convicted defendant and such costs shall not be considered in addition to any fine imposed.

3-15.11 Assistance from State & Federal Government. The Court may seek assistance from employees of the Bureau of Indian Affairs, particularly those who are engaged in Social Services, Health and Education work, in the presentation of facts in a case and in the determination of proper treatment of offenders.

3-16 PROBATION

3-16.01 Probation. Where sentence has been imposed upon any person who has not previously been convicted of a felony under federal or state law within five (5) years of the date of his conviction or of any offense under this Code or gross misdemeanor under state or federal law within one (1) year of his

conviction, the Tribal Court may, in its discretion suspend the sentence imposed and allow the offender his freedom on probation, upon his signing a pledge of good conduct during the period of probation.

3-16.02 Violation of Pledge. Any person who shall violate his pledge shall be required to serve the original sentence in its entirety.

3-16.03 Terms and Conditions of Probation. The Tribal Court shall have the same power to provide for terms and conditions of probation as do the Courts of the State of Idaho.

3-16.04 Probation Officer. The Tribal Court may hire and define the duties of a probation officer.

3-17 PAROLE

3-17.01 Parole. Any person incarcerated by the Tribal Court who shall have served, without misconduct, one-half the sentence imposed by such Court shall be eligible for parole. Parole shall be granted in the discretion of the Judge who imposed the original sentence, if available and presently in office. In the event the Judge imposing sentence is unavailable or no longer in office, parole may be granted by the Chief Judge or his alternate after making an independent review of the facts and circumstances of the case.

3-17.02 Violation of Parole. Any person who shall violate any of the provisions of his/her parole shall be entitled to a hearing thereon and if the Court finds that the provisions and terms of such parole were violated and were of sufficient gravity the Court may require the person to serve the remainder of the original sentence.

3-18 UTILIZATION OF FINES

3-18.01 Deposit and Disposition of Fines. All fines and court costs collected shall be used to pay Tribal Court expenses. Such expenses shall include the payment of fees provided for in these ordinances to jurors and to witnesses answering a subpoena, and the payment of salaries of officers of the Court. The fines assessed shall be paid to the Treasury of the Tribal Council and credited to the account of the Court.

3-19 CLEARING A CRIMINAL RECORD

3-19.01 A convicted offender may request that his/her criminal record be expunged if the conviction is seven (7) years old and he/she has no later convictions.