

TITLE 3. CRIMINAL PROCEDURE

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Chapter 3.1 PRETRIAL PROCEDURE

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3.1.1. Complaint. Prosecution for violations of the Hoh Tribal Code shall be initiated by written complaint. Every complaint shall contain the name of the defendant, a short description of the acts constituting the offense, and the time and place of the offense. Except as provided in Section 3.1.18, no complaint shall be valid unless it bears the signature of the complaining witness or tribal prosecutor and is witnessed by a judge, clerk of the court, or notary public.

3.1.2. Limitation on Filing of Complaints. No prosecution for violation of the Hoh Tribal Code shall be initiated unless the offense charged was committed within the two years prior to the date the complaint is filed.

3.1.3. Arrest Warrants. (a) Every judge of the tribal court shall have authority to issue warrants for the arrest of persons charged with violating the Hoh Tribal Code. A judge

shall issue an arrest warrant only after determining, on the basis of a valid complaint filed with the tribal court, that there is probable cause to believe an offense has been committed by the person to be arrested.

(b) Every arrest warrant shall contain the following: the name of the person to be arrested or, if the name is unknown, a name or description by which the accused can be identified with reasonable certainty; the date, location, and nature of the offense or offenses charged in the complaint; the date of issuance and signature of the judge.

3.1.4. Service of Arrest Warrants. An arrest warrant shall be served by a law enforcement officer authorized to enforce this code. Upon execution of a warrant or failure to find the accused person, the officer shall indicate in writing on the warrant the action taken and return the warrant to the court clerk.

3.1.5. Arrest Without Warrant. A law enforcement officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A law enforcement officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (3) of this section.

(1) Any law enforcement officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving:

- (a) physical harm or threats of harm to any person or property; or
- (b) the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years pursuant to Hoh Tribal Code, Chapter 5.21; or
- (c) the officer reasonably believes the defendant will flee the jurisdiction of the tribe before a warrant may issue.

(2) A law enforcement officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge and the person has violated the terms of the order as it pertains to:

- (a) Restraining the person from acts or threats of violence; or
- (b) Excluding the person from a residence; or
- (c) Having no contact with a person or party; or
- (d) Conditions of release imposing any other restrictions or conditions upon the person.

(3) A law enforcement officer shall be authorized to arrest and take into custody any person when the officer has probable cause to believe that a violation of Hoh Tribal Code Chapter 5.25 has occurred.

3.1.6. Mandatory Arrest for Assault. When a law enforcement officer has probable cause to believe that a person not a minor has, within the preceding four hours, assaulted that person's spouse, former spouse, or anyone else with whom the person resides or has formerly resided, the officer shall arrest that person. A person arrested pursuant to this section may not be given a citation in the place of arrest as provided in Section 3.1.17.

3.1.7. Arrests Pursuant to Foreign Warrants. A law enforcement officer with a valid arrest warrant issued by an outside jurisdiction may, upon the request of such outside jurisdiction, arrest and detain a non-Indian found within Hoh Indian Reservation and deliver the alleged offender to a jurisdiction with authority to arrest him or her. The tribal officer shall not transport the alleged offender beyond the reservation boundaries unless it is impractical for an officer of the outside jurisdiction to come to the reservation to secure the offender. In any event, unless the tribal officer is also authorized to enforce the laws of the outside jurisdiction and the chief of the Hoh Tribal Police Department specifically permits it, the tribal officer shall not transport any persons arrested pursuant to this section farther than the detention facility in the City of Forks.

3.1.8. Rights of Arrested Persons. A law enforcement officer who makes an arrest pursuant to this code shall immediately inform the person arrested of the following:

- (1) That he has the right to remain silent and that any statement he makes may be used against him;
- (2) That he has the right to retain a lawyer or other representative at his own expense; and
- (3) That he has the right to know the charges against him and the right to a copy of the arrest warrant, if any.

3.1.9. Search and Seizure Warrants.

(a) Every judge of the tribal court shall have authority to issue warrants for the search of any property or person and/or seizure of any property within the jurisdiction of the Hoh Tribe. A judge shall issue a search and seizure warrant only after determining, on the basis of an affidavit filed with the tribal court, that there is probable cause to believe an offense has been committed. Search and seizure warrants shall be executed only by law enforcement officers authorized to enforce this code.

(b) A warrant may be issued under this rule to search and seize any:

- (1) Property that constitutes evidence of the commission of a crime, or;
- (2) Contraband, the fruits of crime, or things otherwise criminally possessed, or;
- (3) Property designed or intended for use, or which is or has been used, as the means of committing a criminal offense.

(c) Every search and seizure warrant shall contain the following: the name or description of the person or property to be searched, an itemized description of the articles to be seized, the reasons for issuance of the warrant, the date of issuance, and the signature of the judge.

(d) When circumstances require, a judge may issue a warrant over the telephone based on the testimony of a duly authorized law enforcement officer, so long as the other requirements of this section are met. When a telephonic warrant is issued, the officer executing the warrant must file the affidavit described in paragraph (a) of this section with the court with all possible speed after the execution of the warrant.

3.1.10. Search and Seizure Without Warrant. No law enforcement officer shall search a person or property or seize property without a warrant unless the search is incident to a lawful arrest; the officer has probable cause to believe that a crime has been or is being

committed, and delay would allow the offender to flee the jurisdiction or destroy evidence or contraband; or other exigent circumstances make it unreasonable to require a warrant prior to search.

3.1.11. Disposition of Seized Property.

(a) An officer who seizes property pursuant to this code shall immediately file with the court an itemized description of the property with the time and place of its seizure. The items seized shall remain in the custody of the Hoh Police Department until the disposition of the prosecution to which the seizure is related. Upon such disposition, contraband items shall be destroyed and other property seized shall be returned to its owner, if the owner is known. If the owner of the property is unknown, the police shall sell the property at public auction to the highest bidder and remit the proceeds of the sale to the tribal court, except that the police may distribute bicycles and other toys to needy children.

(b) Only bids from licensed gun dealers may be accepted for the auction of guns or other weapons pursuant to this section.

3.1.12. Right to Bail. Every person arrested for a violation of the Hoh Tribal Code shall have the right to release before trial and after conviction when an appeal is pending, provided that he or she meets the conditions for release established by the tribal court pursuant to the chapter. Unless bail is earlier set as provided in Section 3.1.14, the defendant shall be brought before the judge as soon as is reasonably practicable and without delay, so that the judge may determine the conditions for release; but in no case shall any person be held without bail for more than seventy-two hours.

3.1.13. Conditions for Release. Pretrial or post-conviction release of a person accused of violating the tribal code may be conditioned on the deposit of cash bail, on a surety bond signed by two reliable members of the community, or on the defendant's written promise to appear. Bail, surety bond, and personal recognizance agreements shall be signed in the presence of a judge or any bonded person authorized by the chief judge to accept bail. All such agreements shall be filed promptly with the court clerk.

3.1.14. Amount of Bail. The amount of bail or of a surety bond required for the release of a person charged pursuant to this code shall be that which, in the opinion of the judge, will ensure the defendant's appearance on the date set for trial. In making this determination, the judge shall consider the nature and circumstances of the offense, the reputation and previous criminal record of the defendant, whether the defendant has ties to the community, and whether the defendant has ever failed to appear in response to other lawful process of the court. The chief judge may establish a standard bail schedule for all offenses under this code, and an arrested person may be released upon posting the specified bail unless, in the opinion of the arresting officer, the specified bail would not be sufficient to ensure the appearance of the person arrested. The tribal judge may also establish a standard bail to be used in those cases where no specific bail has been set for the offense or it is not possible to bring the person arrested before the judge within seventy-two hours.

3.1.15. Release Without Bail. Instead of requiring cash bail or a surety bond, the judge in his or her discretion may release a person charged with any offense upon the person's execution of a written promise to appear for trial.

3.1.16. Bail Forfeiture. Bail deposited with the court shall be returned when the defendant appears for trial. If the defendant fails to appear, the judge may issue a warrant for the defendant's arrest and order forfeiture of any bond or cash deposit.

3.1.17. Citation Rather Than Detention. Whenever a person is charged with a violation of the Hoh Tribal Code, the law enforcement officer who is authorized to arrest that person may instead, in the officer's discretion, serve upon the person a citation and notice to appear in court rather than taking the person into custody and requiring bail or bond. In determining whether to issue a citation rather than make an arrest, the officer shall consider the following factors: whether the person has identified himself satisfactorily; the nature of the offense charged, particularly the extent of injury done to persons or property; whether the person has ties to the community sufficient to provide reasonable assurance that he will appear in the tribal court as required; and whether the person has previously failed to appear in court in response to lawful process.

3.1.18. Form of Citation. Every citation issued pursuant to Section 3.1.17 shall contain the following: the name of the person charged; his address, date of birth, and sex; the date, time, place, and description of the offense charged; the date on which the citation was issued; the signature of the citing officer; a promise to appear in court signed by the person charged; and the time and place at which the person must appear for arraignment.

3.1.19. Procedure Upon Issuance of Citation.

(a) An officer who issues a citation pursuant to Section 3.1.17 shall promptly file the original with the tribal court. Such citation may serve as a complaint for the purpose of initiating a prosecution in the tribal court.

(b) A citation issued pursuant to Section 3.1.17 shall state a date and time for arraignment or that the tribal prosecutor will issue a summons setting a date and time for arraignment. Such date and time shall be not less than seventy-two hours nor more than forty days after the date of the citation.

(c) A person to whom a citation for a civil infraction has been issued pursuant to this article may enter a plea of guilty and pay a fine without appearing in court so long as he pays the fine prior to the time set for his appearance in court. He may pay the fine by bringing or mailing to the tribal court the amount specified in the bail schedule for the offense with which he is charged.

(d) The clerk of the court may change the date of appearance stated on the citation or schedule a date, if no date of appearance appears on the citation, by mailing a notice of hearing to the person cited at the address listed on the citation.

3.1.20. Arraignment.

(a) A person who has been arrested and remains in custody for a violation of the Hoh Tribal Code must be arraigned on the charges within seventy-two hours of the arrest, excluding weekends and tribal holidays. At arraignment, the judge may determine bail amount, if any, and any other conditions of release. All other persons charged with offenses shall be arraigned no later than forty days after their arrests or citations.

(b) At arraignment the judge shall: read the complaint and explain to the defendant the offense charged and the possible penalties if the defendant is found or pleads guilty; ascertain whether the defendant understands the nature of the charges and the possible penalties; advise the defendant that he has the right to appear in court and defend himself, that he has a right to be represented by an attorney or other spokesperson at his own expense, and that he has a right to remain silent but that any statements he does make may be used against him; request and receive the defendant's plea of guilty or not guilty; and set or review the conditions for the defendant's release before trial.

(c) If at arraignment the defendant fails or refuses to enter a plea, a plea of not guilty shall be entered for him. If the defendant pleads guilty, the judge may either impose a sentence at once or set a time, not later than forty-five days after arraignment, for sentencing. If the defendant pleads not guilty, the judge shall set a date for trial which is not later than sixty days after arraignment, although the trial date may be postponed for good cause or at the request of the defendant.

3.1.21 Speedy Trial. Every Defendant shall have the right to a speedy and public trial.

(a) In Custody. For any Defendant in custody pending adjudication, speedy shall require a trial within sixty (60) days from the date of arraignment.

(b) Not in Custody. For any Defendant not in custody pending adjudication, speedy shall require a trial within ninety (90) days from the date of arraignment.

(c) Continuances. These times may be extended by the Defendant if a Motion for Continuance is presented to the Court, or if an agreed continuance is presented jointly by the Parties. When justice requires, the Court may enter a continuance over the objection of either the Plaintiff or Defendant.

(d) Tolling Speedy Trial. Speedy trial is tolled (suspended) in the event a Defendant absconds from the Tribe's jurisdiction. Speedy will re-start upon the return of the Defendant to court.

Chapter 3.2 TRIAL PROCEDURE

Sections:

3.2.1 Directed Verdict.

3.2.2 Jury Verdict.

3.2.3 Acquittal.

3.2.1. Directed Verdict. At any time after the close of the evidence, the court may direct a verdict of acquittal.

3.2.2. Jury Verdict. After the charge, the jury shall retire to determine a verdict. The jury must render a verdict on every allegation in the complaint. After the verdict of the jury has been announced to the judge, he shall discharge the jury.

3.2.3. Acquittal. If the court finds for the defendant or the jury brings in a verdict of not guilty on all counts of the complaint, a judgment of 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.

Chapter 3.3 SENTENCING

Sections:

- 3.3.1 Judgment of Conviction.
- 3.3.2 Discretion of Court.
- 3.3.3 Payment of Fine.
- 3.3.4 Probation.
- 3.3.5 Violation of Probation.

3.3.1. Judgment of Conviction. Within a reasonable time after a verdict or plea of guilty and after such pre-sentencing investigation as the judge may direct, the judge shall sentence the defendant in conformity with the applicable provisions of this title and deliver to the law enforcement officer a signed copy of the sentence. 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 judgment shall direct that the prisoner be held in custody until the prisoner has satisfied the sentence according to law.

3.3.2. Discretion of Court. Any confinement order of the judge may provide for the serving of sentence on weekends, labor for public purposes while confined or in lieu thereof, or confiscation of any material substance or equipment used in wrongful and illegal acts.

3.3.2.1 Alternative Sentencing. The Court may, with approval of the Hoh Tribal Business Committee (HTBC), impose a more traditional sentence than a straight fine and/or jail. It shall be the responsibility of the Defendant to request alternative sentencing and request approval from the HTBC. A recommendation for sentencing shall be provided to the Prosecutor at least one week prior to sentencing.

3.3.3. 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 installments thereof shall be payable to the clerk. A fine may be garnished from any per capita to which the liable party (Defendant) is entitled.

3.3.4. Probation. After conviction of an offense, the court may, upon such reasonable terms and conditions as it considers necessary, suspend any sentence and release the prisoner on probation. In granting probation, the judge shall consider the prior criminal record of the prisoner; his background, character, financial conditions, family obligations, and other reasonable and relevant circumstances; and other conditions as specified in the Rules of Court, Chapter. 1.8.

3.3.5. Violation of Probation. If any person shall violate his probation, he may be required to serve his original sentence plus an additional penalty for violation of his probation; but the court shall not revoke probation except after a hearing at which the defendant shall be present and advised of the grounds on which such action is proposed. The defendant may be admitted to bail pending such hearing.

Chapter 3.4 POST-TRIAL PROCEDURE

Sections:

- 3.4.1 Motion for New Trial.
- 3.4.2 Right of Appeal.

3.4.1. Motion for New Trial. A motion for a new trial to be held in the trial court may be made by the defendant within seven days after judgment. The court shall grant a motion for a new trial for the causes set forth in Code Section 1.8.25, if such trial is required in the interest of justice.

3.4.2. Right of Appeal. After imposing sentence in a case which has gone to trial on a plea of not guilty, the court shall advise the defendant of his right of appeal. All appeals shall be made in accordance with this code.