

TITLE 6. CRIMINAL PROCEDURE

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Chapter 6.1

PRETRIAL PROCEDURE

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6.1.1. Complaint. Prosecution for violation of the Suquamish Tribal Code will be initiated by written complaint. Every complaint must 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 §6.1.18, no complaint will be valid unless the complaining witness or tribal prosecutor has signed it and it is witnessed by a judge, clerk of the court, or notary public. (Res. 87-015 §1, passed May 26, 1987)

6.1.2. Limitation on Filing of Complaints. No prosecution for violation of the Suquamish Tribal Code may be initiated unless the offense charged was committed within the two (2) years before the date the complaint is filed. (Res. 87-015 §2, passed May 26, 1987)

6.1.3. Arrest Warrants. (a) Every judge of the Tribal Court has authority to issue warrants for the arrest of persons charged with violating the Suquamish Tribal Code. A

judge will 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 the person to be arrested has committed an offense.

(b) Every arrest warrant must 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 the warrant was issued; and the judge's signature. (Res. 87-015 §3, passed May 26, 1987)

6.1.4. Service of Arrest Warrants. An arrest warrant must 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 must indicate in writing on the warrant the action taken and return the warrant to the court clerk. (Res. 87-015 §4, passed May 26, 1987)

6.1.5. Arrest without Warrant. A law enforcement officer who has probable cause to believe that a person has committed or is committing a felony has 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 officer's presence except as provided in §6.1.5(a-c).

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

(1) Physical harm or threats of harm to any person or property; or

(2) The acquisition, possession, or consumption of alcohol by a person under the age of twenty-one (21) years pursuant to Suquamish Tribal Code Chapter 7.21; or

(3) The officer's reasonable belief that the defendant will flee the Tribe's jurisdiction before a warrant may issue.

(b) A law enforcement officer will arrest a person and take him or her into custody, pending release on bail, personal recognizance, or court order, when the officer has probable cause to believe that an order has been issued, that the person has knowledge of the order, and the person has violated the terms of the order as it relates to:

(1) Restraining the person from acts or threats of violence; or

(2) Excluding the person from a residence; or

(3) Having no contact with a person or party; or

(4) Conditions of release imposing any other restrictions or conditions upon the person.

(c) A law enforcement officer is authorized to arrest and take into custody any person when the officer has probable cause to believe that a violation of Suquamish Tribal Code Chapter 7.25 has occurred. (Res. 87-015 §5, passed May 26, 1987; amended by Res. 94-174, passed Dec. 19, 1994)

6.1.6. Mandatory Arrest for Domestic Violence Crimes. When a law enforcement officer has probable cause to believe that a person has committed a domestic violence crime under Chapter 7.28, the officer will arrest that person. A person arrested according to this section may not be given a citation in the place of arrest as provided in §6.1.17, and will be held without bail pending an initial appearance. (Res. 87-015 §6, passed May 26, 1987; amended by Res. 2020-038, passed Mar. 9, 2020)

6.1.7. Mandatory Arrest for Serious Felonies. When a law enforcement officer has probable cause to believe a person has committed a serious felony the officer will arrest that person. A person arrested according to this section may not be given a citation in the place of arrest as provided in §6.1.17 and will be held without bail awaiting an initial appearance. Serious felonies are murder, manslaughter, kidnapping, felony sex crimes, assault in the first degree, assault in the second degree, arson, burglary, and robbery. (Res. 2020-038, passed Mar. 9, 2020)

6.1.8. Arrests Pursuant to Foreign Warrants. A law enforcement officer in possession of a valid arrest warrant issued by an outside jurisdiction may, upon the request of that outside jurisdiction, arrest and detain a non-Indian found within the Port Madison Indian Reservation and deliver the alleged offender to a jurisdiction with authority to arrest him or her. The tribal officer will 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 Suquamish Tribal Police Department specifically permits it, the tribal officer will not transport any persons arrested according to this section farther than the detention facility in the City of Poulsbo. (Res. 87-015 §7, passed May 26, 1987; renumbered by Res. 2020-038, passed Mar. 9, 2020)

6.1.9. Rights of Arrested Persons. A law enforcement officer who makes an arrest according to this code must immediately inform the person arrested of the following:

(a) That he or she has the right to remain silent and that any statement he or she makes may be used against him or her;

(b) That he or she has the right to retain a lawyer or other representative; and

(c) That he or she has the right to know the charges against him or her and the right to a copy of the arrest warrant, if any. (Res. 87-015 §8, passed May 26, 1987; renumbered by Res. 2020-038, passed Mar. 9, 2020)

6.1.10. Search and Seizure Warrants. (a) Every judge of the Tribal Court has authority to issue warrants for the search of any property or person and/or seizure of any property

within the Suquamish Tribe's jurisdiction. A judge will 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 will 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;

(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 must 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 the warrant's issuance, the date of issuance, and the judge's signature.

(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 §6.1.10(a) with the Court with all possible speed after the execution of the warrant. (Res. 87-015 §9, passed May 26, 1987; renumbered by Res. 2020-038, passed Mar. 9, 2020)

6.1.11. Search and Seizure without Warrant. No law enforcement officer may 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 immediate circumstances make it unreasonable to require a warrant before the search. (Res. 87-015 §10, passed May 26, 1987; renumbered by Res. 2020-038, passed Mar. 9, 2020)

6.1.12. Disposition of Seized Property. (a) An officer who seizes property according to this code must immediately file with the Court an itemized description of the property with the time and place it was seized. The items seized will remain in the custody of the Suquamish Police Department until the disposition of the prosecution to which the seizure is related. Upon that disposition, contraband items will be destroyed and other property seized will be returned to its owner if the owner is known. If the property's owner is unknown, the police will sell the property at public auction to the highest bidder and turn over 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. (Res. 87-015 §11, passed May 26, 1987;

renumbered by Res. 2020-038, passed Mar. 9, 2020)

6.1.13. Procedure following warrantless arrest. (a) A person who is arrested without a warrant will have a judicial determination of probable cause no later than forty-eight (48) hours following the person's arrest.

(b) A prosecuting attorney or a police officer will present evidence in the same manner as provided for an arrest warrant in §6.1.3. (Res. 2020-038, passed Mar. 9, 2020)

6.1.14. Initial Appearance. (a) A person detained, jailed, or imprisoned under this chapter will have an initial appearance within seventy-two (72) hours, excluding weekends and holidays, after he or she has been arrested and placed into custody.

(b) The initial appearance will consist of a probable cause determination, if probable cause has not already been determined, and review of bail and conditions for release. (Res. 2020-038, passed Mar. 9, 2020)

6.1.15. Bail. Except as set forth in §§6.1.6 and 6.1.7, a person arrested may be admitted to bail under the following:

(a) The Tribal Court has discretion to set bail required for release of a person arrested.

(b) The Tribal Court may impose conditions upon the person's release in addition to or instead of posting bail to ensure the appearance of the defendant and protect the tribal community. The Court may authorize release of the person on personal recognizance without posting bail.

(c) The Tribal Court may deny a person release on bail if:

(1) It appears reasonably certain that the person will pose a serious threat to the safety and well-being of the reservation, or its residents, if released; or

(2) If there is a high likelihood that the person poses a flight risk.

(d) The Chief Judge has the discretion to set a bail schedule for use by tribal police. (Res. 2020-038, passed Mar. 9, 2020)

6.1.16. Bail Forfeiture. 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. (Res. 87-015 §16, passed May 26, 1987; amended by Res. 2020-038, passed Mar. 9, 2020)

6.1.17. Citation Rather than Detention. Whenever a person is charged with a violation of the Suquamish 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

will consider the following factors: whether the person has identified him- or herself 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 or she will appear in the Tribal Court as required; and whether the person has previously failed to appear in court in response to lawful process. (Res. 87-015 §17, passed May 26, 1987)

6.1.18. Form of Citation. Every citation issued pursuant to §6.1.17 must contain the following: the name of the person charged; his or her 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. (Res. 87-015 §18, passed May 26, 1987)

6.1.19. Procedure upon Issuance of Citation. (a) An officer who issues a citation according to §6.1.17 must promptly file the original with the Tribal Court. Such citation may serve as a complaint for the purpose of beginning a prosecution in the Tribal Court.

(b) A citation issued according to §6.1.17 must 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 may not be less than fourteen (14) days nor more than forty (40) days after the date of the citation.

(c) A person to whom a citation for a civil infraction has been issued according to this chapter may enter a plea of guilty and pay a fine without appearing in court so long as he or she pays the fine before the time set for his or her appearance in court. He or she 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 or she 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. (Res. 87-015 §19, passed May 26, 1987; amended by Res. 94-091 (part), passed July 12, 1994; amended by Res. 2020-038, passed Mar. 9, 2020)

6.1.20. Arraignment. (a) A person who has been arrested and remains in custody for a violation of the Suquamish Tribal Code must be arraigned on the charges within fourteen (14) days. At arraignment, the judge may address bail, if any, and any other conditions of release. All other persons charged with offenses will be arraigned no later than forty (40) days after their arrests or citations.

(b) At arraignment the judge will:

(1) Read the complaint and explain to the defendant the offense charged and the possible penalties if the defendant is found or pleads guilty;

(2) Determine whether the defendant understands the nature of the charges and the possible penalties;

(3) Advise the defendant that he or she has the right to appear in court and defend him- or herself, that he or she has a right to be represented by an attorney or other spokesperson, and that he or she has a right to remain silent but that any statements he or she does make may be used against him or her;

(4) Request and receive the defendant's plea of guilty or not guilty; and

(5) 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 will be entered for him or her. If the defendant pleads guilty, the judge may either impose a sentence at once or set a time not later than forty-five (45) days after arraignment for sentencing. If the defendant pleads not guilty, the judge will set a date for trial that is not later than sixty (60) days after arraignment for defendants in custody and not later than ninety (90) days after arraignment for defendants not in custody, although the trial date may be postponed for cause or at the defendant's request. (Res 87-015 §20, passed May 26, 1987; amended by Res. 94-091 (part), passed July 12, 1994; amended by Res. 2020-038, passed Mar. 9, 2020)

Note 1: In §6.1.1, "Section 18 of this article" has been changed to "§6.1.18" because the Tribal Code does not use "article" as a designation. (Res. 2016-090, Jun. 20, 2016)

Note 2: The following subsections renumbered for consistency. (Res. 2016-090, Jun. 20, 2016; §6.1.8 renumbered to §6.1.9, Res. 2020-038, passed Mar. 9, 2020)

6.1.5(1)(a)-(c) changed to 6.1.5(a)(1)-(3)

6.1.5(2)(a)-(d) changed to 6.1.5(b)(1)-(4)

6.1.5(3) changed to 6.1.5(c)

6.1.8(1)-(3) changed to 6.1.8(a)-(c)