TITLE 6. CRIMINAL PROCEDURE

Chapters:

Chapter 6.1

PRETRIAL PROCEDURE

Sections:

6.1.32 Nonwaiver of Sovereign Immunity.

6.1.1. Complaint. (a) The complaint will contain:

(1) The name of the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense(s);

(2) The general location where the alleged offense was committed;

(3) The name, level of offense, and code citation of the alleged offense(s);

(4) A concise statement of the specific acts or omissions to act constituting an offense;

(5) The name or initials of the person, if any, against whom the alleged offense was committed, if known, except in the case of a sexual offense or an offense involving a minor;

(6) The date and approximate time of the commission of the alleged offense, if known; and

(7) Except as provided in §6.1.18, the signature of a tribal prosecutor.

(b) No minor omission from, or error in, the form of the complaint will be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.

(c) In the event of an amended complaint, the defendant will be arraigned on the amended complaint without unreasonable delay and will be given a reasonable period of time to prepare for trial on the amended complaint.

(1) A complaint may be amended in matters of substance at any time prior to trial readiness without leave of the Tribal Court. A complaint may be amended in matters of substance at any time before the commencement of trial with leave of the Tribal Court. If the motion is timely filed, the amended complaint is supported by probable cause, and there is not substantial prejudice to the defendant, the Court will grant leave to amend. When the prosecution seeks leave to amend a complaint as to a matter of substance, the prosecutor will file the following:

(A) A motion for leave to amend stating the nature of the proposed amendment;

(B) A copy of the proposed complaint, as amended; and

(C) An affidavit setting forth facts and circumstances sufficient to show probable cause exists to justify the amended complaint.

(2) The Court may permit a complaint to be amended as to form at any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced. No charge may be dismissed because of a defect in form which does not tend to prejudice any substantial right of the defendant. (Res. 87-015 §1, passed May 26, 1987; amended by Res.)

~~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. (a) Unless otherwise specified by statute, a prosecution will be commenced within the later of the following periods:

(1) Prosecution for any misdemeanor offense must be commenced within two (2) years after the alleged offense is committed;

(2) Prosecution for any gross misdemeanor offense must be commenced within five (5) years after the alleged offense is committed;

(3) Prosecution for any felony offense must be commenced within ten (10) years after the alleged offense is committed;

(4) Prosecution for an offense where the victim is a minor must be commenced within ten (10) years after its commission or up to the victim's thirtieth (30th) birthday, whichever is later.

(b) The period of limitation does not run under the following conditions:

(1) During any period in which the offender is not usually and publicly residing with the Port Madison Reservation or is beyond the jurisdiction of the Tribal Court; or

(2) During any period in which the offender is a public officer and the offense charged is any offense under S.T.C. Chapter 7.12 while in public office.

(c) There is no statute of limitations for the prosecution of:

(1) All offenses under S.T.C. Chapter 7.4;

(2) All offenses under S.T.C. Chapter 7.17.

(d) An offense is committed either when every element occurs or, if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. The time starts to run on the day after the offense is committed.

(e) A prosecution is commenced when a complaint is filed.

(f) This section applies to crimes that were committed on or after April 24, 2022, and to crimes for which the statute of limitations that was in effect before April 24, 2022 has not run as of April 24, 2024. (Res. 87-015 §2, passed May 26, 1987; amended by Res. 2024-111, passed Apr. 24, 2024)

6.1.3. Summons to Appear and Warrants for Arrest ~~Warrants~~. (a) The Court may, upon the request of the prosecutor, issue a summons instead of an arrest warrant for a defendant not already under arrest or otherwise in custody. A copy of the complaint will accompany the summons. If the accused is a juvenile, a summons and copy of the complaint will also be served upon the parent or legal guardian of the juvenile or upon the person with whom the juvenile resides.

~~(1)~~ A summons issued pursuant to this section must be signed by the clerk issuing it and contain the name of the defendant or, if the name is unknown, any name or description by which the defendant can be identified with reasonable certainty. The summons will ~~recite~~state the substance of the offense charged in the complaint. It will command the defendant to appear before the Court at a stated time and place.

(b) The Tribal Court may issue a warrant in any case except where the accused is a juvenile less than twelve (12) years of age. An arrest warrant will be issued by a judge, based on a sworn complaint or a declaration under risk of perjury attesting that there is probable cause to believe an offense has been committed, or that a mandate, sentence, or order of the Court has been violated, and that the named person has committed the offense. The decision to issue a warrant ~~may~~will be based upon the written motion and declaration of a prosecutor made to the Court that the defendant may not appear unless arrested or that the defendant is a risk to themselves or others. A hearing is not required to issue an arrest warrant. If the Court does not find probable cause then a written finding will be issued and provided to the prosecutor. If a defendant fails to appear in response to a summons or for any reason is not amenable to service, the prosecutor may request that a warrant issue or may re-summon the defendant.

(1) An arrest warrant issued pursuant to this section will be signed by the judge issuing it and will contain the name of the defendant or, if their name is unknown, any name or description by which they can be identified with reasonable certainty. The warrant will state ~~recite~~ the substance of the offense charged in the complaint. It will command that the defendant be arrested and brought before the Court.

(2) An arrest warrant will not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

(c) Once a complaint or declaration has been filed with the Court, and the judge is satisfied that there is probable cause to believe that the person has committed the crime specified in the complaint, the judge must issue a warrant of arrest or summons,

per STC §6.1.3(a) or (b).

~~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; amended by Res.)

6.1.4. Service of Summons and Execution of Warrants for Arrest ~~Warrants~~. (a) A summons will be served upon a defendant by delivering a copy to them personally, or by leaving it at their dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by the clerk mailing it by certified mail, postage prepaid, to the defendant's last known address.

(b) A warrant is executed by the arrest of the defendant. The arresting law enforcement officer need not have the warrant in their possession at the time of the arrest, but upon request the officer will show the warrant to the defendant as soon as possible. If the officer does not have the warrant in their possession at the time of the arrest, the officer will then inform the defendant that a warrant has issued and of the offense charged, but if the officer does not then know of the offense charged, they will inform the defendant thereof within a reasonable time after arrest.

(c) An arrest warrant may be executed by:

(1) A law enforcement officer~~,~~; which for the purposes of this Title means any person who by virtue of that person's office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of that person's authority; or

~~(i) For the purposes of this Title, "Law enforcement officer" means any person who by virtue of his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his or her authority; or~~

(2) A federal officer.

(d) An arrest may be made any day of the week and at any time of the day or night. A person charged with a misdemeanor offense can only be arrested at night in a private dwelling with a signed arrest warrant specifically permitting arrest at night, unless there is an immediate threat of harm to another person.

(e) The executing law enforcement officer and other officers accompanying and assisting the officer may use the degree of force, short of deadly physical force, as is

reasonably necessary for the execution of the warrant with all practicable safety.

~~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; amended by Res.)

6.1.5. Bench Warrants. (a) A bench warrant of arrest may be issued when a defendant fails to appear in court as required by law, including, but not limited to, the following situations:

(1) If the defendant is ordered by a judge to personally appear in court at a specific time and place.

(2) If the defendant is released from custody on bail and is ordered by a judge to personally appear in court at a specific time and place.

(3) If the defendant is released from custody on their own recognizance and promises to personally appear in court at a specific time and place.

(4) If the defendant is released from custody or arrest upon citation and the defendant has signed a promise to personally appear in court at a specific time and place.

(5) If a defendant is authorized to appear through counsel and the Court orders that the defendant personally appear in court at a specific time and place.

(6) If a complaint has been filed ~~in the superior court~~ and the Court has fixed the date and place for the defendant personally to appear for arraignment.

(7) The bench warrant may be served in the same manner as a warrant of arrest.

(b) The Court will establish a warrant quash calendar, and a warrant may not be quashed without notice and a hearing on the designated quash calendar, unless by agreed motion of the parties. (Res.)

6.1.6. Arrest without Warrant. (a) A law enforcement officer may arrest a person within the exterior boundaries of the Port Madison Reservation under the following circumstances:

(1) When the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction; or

(2) Without a warrant if any crime is committed in the officer's presence; or

(3) Without a warrant if the law enforcement officer has probable cause to believe that the person to be arrested has committed or is committing an offense proscribed by Suquamish law.

(b) A law enforcement officer must arrest, without a warrant, if:

(1) A person is restrained by a foreign protection order~~, as defined by STC 7.28.7(j)~~ and that person has knowledge of the foreign protection order, or

(2) A person is restrained by any protection order issued by the Suquamish Tribal Court pursuant to STC Title 5, and that person has knowledge of said protection order, and

(3) The officer has probable cause to believe that the person to be arrested has violated the terms of the foreign or Tribal protection order.

(4) The term "protection order" includes any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(c) A law enforcement officer must arrest and take into custody a person without a warrant if the officer has probable cause to believe:

(1) The person has been charged with an offense and is presently released as to that charge; and

(2) The person has failed to comply with a no contact condition of the release agreement.

(d) A law enforcement officer must arrest and take into custody if the officer has probable cause to believe the person to be arrested has assaulted an intimate partner, a family or household member, or a party to a dating relationship, as defined in STC Chapter 7.28 and:

(1) The assault has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or

(2) That any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death.

(e) When a law enforcement officer is called to the scene of a reported incident of child neglect or abuse, elder abuse, or domestic abuse, but does not make an arrest, the officer must file a written report with the Suquamish Police Department stating the

reasons that an arrest was not made.

~~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 S.T.C. 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 S.T.C. Chapter 7.25 has occurred. (Res. 87-015 §5, passed May 26, 1987; amended by Res. 94-174, passed Dec. 19, 1994; amended and renumbered by Res.)

6.1.76. Liability of Law Enforcement Officer Making Arrest. ~~Mandatory Arrest for Domestic Violence Crimes~~ No law enforcement officer may be held criminally or civilly liable for making an arrest pursuant to this chapter provided the law enforcement officer acts in good faith and without malice. ~~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; amended and renumbered by Res.)

6.1.87. ~~Mandatory Arrest for Serious Felonies~~Rights of Arrested Persons. (a) Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:

(1) That the person has the right to remain silent;

(2) That anything the person says can and will be used against the person in any subsequent court proceedings;

(3) That the person has the right to legal counsel or representation at the person's own expense prior to answering any questions; and

(4) That if, at any point during questioning, the person indicates that the person wishes to remain silent, the questioning will cease.

(b) Any statement obtained in violation of these rights will not be admitted into evidence. The fact that a person chooses to remain silent cannot be used against the person in any subsequent criminal proceedings.

~~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; amended and renumbered by Res.)

6.1.98. Arrests Pursuant to Foreign Warrants. A law enforcement officer in possession of a valid arrest warrant issued by an outside jurisdiction may, upon confirmation of the warrant, arrest and detain a person found within the Port Madison Reservation and deliver the alleged offender to a jurisdiction with authority to arrest that offender. ~~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; amended and renumbered by Res.)

6.1.109. ~~Rights of Arrested Persons.~~Stopping of Persons. (a) A law enforcement officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person and, after informing the person that the law enforcement officer is a law enforcement officer, make a reasonable inquiry.

(b) The detention and inquiry will be conducted in the vicinity of the stop and for no longer than a reasonable time.

(c) The inquiry will be considered reasonable if it is limited to:

(1) The immediate circumstances that aroused the officer's suspicion;

(2) Other circumstances arising during the course of the detention and inquiry that give rise to a reasonable suspicion of criminal activity; and

(3) Ensuring the safety of the officer, the person stopped or other persons present, including an inquiry regarding the name(s) of any person present and the presence of weapons.

(d) The inquiry may include a request for consent to search in relation to the circumstances specified in subsection (c) of this section or to search for items of evidence otherwise subject to search or seizure under this chapter only if the officer first informs the person that the person has the right to refuse the request.

(e) An officer who obtains consent to search under this subsection will ensure that there is a written, video or audio record that the person gave informed and voluntary consent to search.

(f) A law enforcement officer making a stop may use the degree of force reasonably necessary to make the stop and ensure the safety of the officer, the person stopped or other persons who are present.

(g) A law enforcement officer may frisk a stopped person for dangerous or deadly weapons if the officer reasonably suspects that the person is armed and dangerous to the officer or other persons present.

~~(1)~~ If, in the course of the frisk, the law enforcement officer feels an object that the ~~peace~~ officer reasonably suspects is a dangerous or deadly weapon, the officer may take such action as is reasonably necessary to take possession of the weapon.

~~A law enforcement officer who makes an arrest according to this code must immediately inform the person arrested of the following:~~

~~(a) That the person has the right to remain silent and that any statement the person makes may be used against that person;~~

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

~~(c) That the person has the right to know the charges against the person 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; amended and renumbered by Res.)

6.1.110. Search and Seizure Warrants. (a) Every judge of the Tribal Court has authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items within the Suquamish Tribe's jurisdiction. A warrant issued under this chapter will not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant. ~~for the search of any property or person and/or seizure of any property within the Suquamish Tribe's jurisdiction.~~

(b) A search warrant is not valid unless it:

(1) Is in writing;

(2) Is in the name of the Suquamish Tribe;

(3) Includes the identity of the judge issuing the warrant and the date the warrant was issued;

(4) Includes the period of time, not to exceed five (5) days, after execution of the warrant except as provided in subsection (g) of this section, within which the warrant is to be returned to the issuing judge; and

(5) Particularly describes the premises, property, place, or person to be searched and the instruments, articles, or items to be seized.

(c) No search warrant will issue except upon a written or oral sworn statement of a law enforcement officer or prosecutor that establishes probable cause to search for and seize any of the following:

(1) Evidence of a crime;

(2) Contraband, fruits of crime, or other items illegally possessed;

(3) Property designed for use, intended for use, or used in committing a crime; or

(4) A person whose arrest is authorized by law.

~~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.~~

(d) The warrant application will consist of a proposed warrant in conformance with this section and will be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that the objects of the search are in the places, or in the possession of the individuals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant will set forth facts bearing on any unnamed informant's reliability and will disclose, as far as possible, the means by which the information was obtained. A hearing is not required for a search warrant based on a written affidavit. If the court does not find probable cause then the Court will make a written finding and provide it to the prosecutor and the officer requesting the search warrant.

(e) Instead of the written affidavit described in subsection (d) of this section, a judge may take an oral statement under oath. The oral statement will be recorded and a copy of the recording submitted to the judge who took the oral statement. In such cases, the judge will certify that the recording of the sworn oral statement is a true recording of the oral statement under oath and will retain the recording as part of the record of proceedings for the issuance of the warrant. The recording will constitute an affidavit for the purposes of this section. The applicant will retain a copy of the recording and will provide a copy of the recording to the prosecutor if the prosecutor is not the applicant.

(1) When a warrant is requested and issued based on oral testimony, communicated by telephone or otherwise, a judge will:

(A) Enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;

(B) Sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and

(C) Direct the requesting party to:

(i) Prepare a document identical to the original warrant to be known as a duplicate original warrant;

(ii) Sign the duplicate original warrant on the judge's behalf; and

(iii) Enter the exact time of execution on the face of the duplicate original warrant.

(f) In addition to the procedures set out in this section, the proposed warrant and the affidavit may be sent to the court by facsimile transmission or any similar electronic transmission that delivers a complete printable image of the signed affidavit and

proposed warrant. The affidavit may have a sworn acknowledgment, or the affiant may swear to the affidavit by telephone. If the affiant swears to the affidavit by telephone, the affidavit may be signed electronically.

~~(1)~~ When the Court issues a warrant upon an application made under this subsection, the Court may transmit the signed warrant to the person making the application by means of facsimile transmission or similar electronic transmission. The Court will file the original signed warrant and a printed image of the application with the return. The person making application will deliver the original signed affidavit to the Court with the return. If the affiant swore to the affidavit by telephone, the affiant must so note next to the affiant's signature on the affidavit.

(g) A search warrant must be executed by a law enforcement officer. Except as otherwise provided herein, the search warrant will be executed between the hours of 7 a.m. and 10 p.m. and within five (5) days from the date of issuance. The judge issuing the warrant may, however, by indorsement upon the face of the warrant, authorize its execution at any time of the day or night and may further authorize its execution after five (5) days, but not more than ten (10) days from the date of issuance. Warrants not executed within the requisite timeframe are void.

(h) Only reasonable and necessary force may be used to execute a search warrant.

(i) Unless otherwise specified by the warrant, before entering the premises named in a search warrant, the law enforcement officer will give appropriate notice of the officer's identity, authority, and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer will show and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer will leave a copy of the warrant suitably affixed to the premises.

(j) The scope of any search will only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant.

(k) A tracking device warrant must be in writing, in the name of the Suquamish Tribe, identify the person or property to be tracked, and specify a reasonable length of time that the tracking device may be used. The time must not exceed thirty (30) days from the date the warrant was issued. The Court may, for good cause, grant one or more extensions for a reasonable period not to exceed thirty (30) days each.

(1) Any installation authorized by the warrant must occur within ten (10) days of issuance of the warrant. The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(2) Within ten (10) days after the use of the tracking device has ended, the officer executing the warrant must return it.

(3) Within ten (10) days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address.

(l) A person subject to an unlawful search and seizure of property, or if no crime is charged in connection with a lawful seizure, or if the seizure was not made under a warrant and no crime is charged in connection with the seizure, may move for the property's return. The Court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the Court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

~~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; amended and renumbered by Res.)

6.1.12~~1~~. Search and Seizure without Warrant. (a) Except as provided in this section and in STC §6.1.9, 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.

(b) In addition to Federally recognized exceptions to the warrant requirement, the following exceptions ~~shall~~ apply:

(1) When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:

(A) Protecting the officer from attack;

(B) Discovering and seizing the fruits of the crime;

(C) Discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or

(D) Preventing the person from escaping.

(2) Roadblocks. Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense. Unless ~~exigent~~ emergency circumstances exist justifying a departure from the requirements given below, the minimum requirements law enforcement officers must meet when establishing roadblocks include:

(A) Establishing the roadblock at a point on the highway that is clearly visible at a distance of not less than one hundred (100) yards in either direction;

(B) Placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than fifty (50) yards in both directions either in daytime or darkness;

(C) Placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least one hundred (100) yards, on the side of the road at the point of the roadblock; and

(D) Placing warning signs, which will attract an oncoming driver's attention, at least two hundred (200) yards prior to the roadblock indicating that all vehicles should be prepared to stop.

(E) ~~Duration of Stop.~~ An authorized stop may not last longer than is necessary to ~~effectuate~~ accomplish the purpose of the stop.

(Res. 87-015 §10, passed May 26, 1987; renumbered by Res. 2020-038, passed Mar. 9, 2020; amended and renumbered by Res.)

6.1.13~~2~~. Subpoena Authority in Criminal Investigations. (a) Upon the prosecutor's application, the Tribal Court may issue a subpoena or subpoena duces tecum upon any person believed to have information or material relevant to an investigation. A subpoena may require that the person appear before the prosecutor or the prosecutor's designated agent at a reasonable time and place stated in the subpoena and give oral testimony concerning matters relevant to the investigation. A subpoena duces tecum may require, in addition to or ~~in lieu~~instead of giving testimony, that the person produce designated books, papers, documents or tangible items that constitute or contain materials relevant to the investigation for examination, copying or reproduction. A

subpoena duces tecum that only requires the production of materials must inform the person subpoenaed if the person must personally appear at the time and place designated in the subpoena.

(b) An investigative subpoena may only be issued by a judge when supported by an affidavit of the prosecutor or officer of the Suquamish Police Department sufficient to show that the administration of justice requires the testimony or information being sought.

(c) A person subpoenaed under this section may move to quash or modify the subpoena if it is oppressive or unreasonable. The motion must be made before the time specified in the subpoena for appearance or production of materials.

(d) No person subpoenaed to give testimony pursuant to this section may be required to make a statement or to produce evidence that may be personally incriminating. The prosecutor may grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution. Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity. After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena. Nothing in this section requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

(e) Before a judge, the prosecutor may examine under oath all witnesses subpoenaed pursuant to this section. Testimony must be recorded. The witness has the right to have counsel present at all times. Failure to obey, without just cause, a subpoena served under this section is punishable for contempt of court. Proceedings conducted under this section are closed and confidential except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of court. All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this section. (Res.)

6.1.14. Procedures for Execution of State, County, Municipal or Other Tribal Search Warrant. (a) Where a search and/or seizure is performed within the boundaries of the Port Madison Reservation, on any trust, ~~or~~ Suquamish Tribal member-owned, or Suquamish Tribally--owned land or buildings, vehicles, or vessels, for a crime committed within the issuing court's jurisdiction, such search and/or seizure must substantially comply with the procedural search and seizure requirements of Suquamish Tribal law and will be governed by the following process:

(1) The State, County, municipal or other Tribal law enforcement officer

must provide a copy of their judicially approved search warrant and probable cause affidavit, along with any other supporting documents, to a law enforcement officer from the Suquamish Police Department prior to the execution of the warrant. The Suquamish law enforcement officer will prepare an affidavit stating that the officer has received and is incorporating the State, County, municipal or other Tribal law enforcement officer's affidavit and judicially approved search warrant for presentation to a Suquamish Tribal Court judge. The Suquamish Tribal Court judge will review the State, County, municipal or other Tribal warrant and if the Tribal Court finds the warrant was issued with proper jurisdiction and substantially complies with the procedural search and seizure requirements of Suquamish Tribal law, ~~will~~may endorse the warrant for execution. Nothing in this section will be construed as a waiver of the Suquamish Tribe's sovereign immunity.

(2) Any search warrant issued pursuant to this section must be executed in the presence of and in coordination with a law enforcement officer from the Suquamish Police Department. Suquamish Tribal Police and other law enforcement agencies will cooperate to the fullest extent possible. (Res.)

6.1.15. Disposition of Seized Property. (a) 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; amended and renumbered by Res.)

6.1.1~~6~~3. ~~Procedure Following Warrantless Arrest~~Initial Appearance. (a) A person arrested, whether with or without a warrant, must be taken before a judge of the Tribal Court for an initial appearance within three (3) judicial days following the arrest. A person not arrested must appear for an initial appearance at the time and place designated in the citation or summons. A person who is arrested without a warrant will have a judicial determination of probable cause at the initial appearance. If probable cause is not found, the person will be released immediately without conditions.~~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) The judge will inform the defendant of:

(1) The charge or charges against the defendant;

(2) The maximum penalty allowed under Tribal law for the offense;

(3) The defendant's right to counsel at defendant's expense, or to have counsel appointed pursuant to the Suquamish Tribal Code;

(4) The right to call any witness on the defendant's behalf;

(5) The right to request a jury trial where the crime charged carries a possible jail sentence;

(6) The right to remain silent and that any statement made by the defendant may be used in evidence against the defendant at any subsequent court proceedings;

(7) The right to cross-examine the Tribe's witnesses;

(8) The right to have up to fourteen (14) judicial days before arraignment;

(9) The right to petition for a writ of habeas corpus; and

(10) The right to discuss bail and conditions of release.

(c) Unless the arraignment occurs at the initial appearance, arraignment will be scheduled within fourteen (14) judicial days of the initial appearance, unless waived by the defendant. If the defendant is not arraigned within this time limit, and the right to a speedy arraignment has not been extended, the defendant will be released without conditions. (Res. 2020-038, passed Mar. 9, 2020; amended and renumbered by Res.)

~~(d) 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)~~

6.1.174. ~~Initial Appearance.~~Rights of a Defendant in a Criminal Proceeding. (a) Unless otherwise set forth in this chapter, a defendant must be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel. The Court may permit a defendant to appear at a proceeding by simultaneous electronic transmission without the agreement of the Tribe or defendant if the type of simultaneous electronic transmission available allows the defendant to observe and/or hear the Court and the Court to observe and/or hear the defendant.

(b) In all criminal proceedings, the defendant has the following rights:

(1) To be free from excessive bail and cruel punishment;

(2) To defend in person or by counsel;

(3) To be informed of the nature of the charges pending against the defendant and to have a copy of those charges;

(4) To confront and cross-examine all prosecution or hostile witnesses;

(5) To compel by subpoena:

(A) The attendance of any witnesses necessary to defend against the charges; and

(B) The production of any books, records, documents, or other things necessary to defend against the charges;

(6) To have a speedy and public trial by judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;

(7) To appeal any final decision of the Tribal Court to the Tribal Court of Appeals;

(8) To be tried only once by the Tribal Court for the same offense;

(9) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and

(10) To petition for a writ of habeas corpus.

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

(c) During the initial appearance before the Court, every defendant must be informed of the right to have counsel at the defendant's own expense or the right to apply for appointment of counsel. If the defendant wishes to obtain counsel, or is found to be ineligible for appointed counsel, the Court will grant a reasonable time prior to arraignment for the defendant's attorney to enter an appearance in the cause.

(1) The defendant has the right be represented by an attorney who is a member of the Suquamish Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and

(2) If the defendant is indigent, the Court will, at the Tribe's expense, provide the defendant with an attorney meeting the qualifications in subsection (b)(1) of this section at all critical stages of the criminal proceeding.

(3) A "critical stage" includes any proceeding where potential substantial prejudice to the defendant's rights ~~inheres~~exists in the particular proceeding and the assistance of counsel would help avoid that prejudice. Critical stages include both pretrial and trial proceedings but generally end on judgment and sentence at the trial level, excepting deferred sentencing and/or sentencing a defendant to probation without fixing a term of imprisonment; in such a circumstance a

subsequent probation revocation proceeding would thus constitute a critical stage. Post-verdict motions made immediately after conclusion of trial are extensions of trial proceedings and are a critical stage as well. Additionally, a person has a due process right to counsel for a first appeal of right.

(d) A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six (6) fair and impartial jurors. A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(e) While a defendant may only be tried once for the same offense, a subsequent prosecution is allowed when:

(1) The subsequent prosecution is for an offense that was not completed when the former prosecution began;

(2) There was a transfer of jurisdiction to another authority; or

(3) The Tribal Court terminates the previous prosecution, without acquittal, when the Court finds that a termination is necessary because:

(i) It is impossible to proceed with the trial in conformity with the law;

(ii) There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribe;

(iv) The jury cannot agree upon a verdict; or

(v) A false statement of a juror on voir dire prevents a fair trial.

(4) The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without prejudice upon a pretrial motion; or discharge for want of prosecution without a judgment of acquittal.

(f) Except as provided in subsection (f)(1) of this section, every person within the Suquamish Tribe's jurisdiction who is imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(1) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal. Moreover, a person may not be released on a writ of habeas corpus due to any

technical defect in commitment not affecting the person's substantial right; nor may a writ of habeas corpus be issued in matters regarding the exclusion of an individual from the Port Madison Reservation or in any case or controversy regarding per capita distributions to tribal members.

(2) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(A) That the petitioner is unlawfully imprisoned or restrained of liberty;

(B) Why the imprisonment or restraint is unlawful; and

(C) Where or by whom the petitioner is confined or restrained.

(3) The parties to a writ, namely the Suquamish Tribal Prosecutor, Chief Judge of the Tribal Court, and the Suquamish Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

(4) The petition must be verified by the oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief of the party making the application.

(5) Any justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the justice's jurisdiction. If it appears to such justice that a writ ought to issue, it will be granted without delay, and may be made returnable to the Court of Appeals.

(6) A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the prosecutor and to the officer or party having the person under restraint.

(7) The writ must be served by a Suquamish Tribal Police officer, or any other person directed to do so by the justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the justice, the Court, or the employee of any correctional facility in which the petitioner is held.

(8) The prosecutor or prosecutor's designee will make a return, signed and verified by affirmation or affidavit, and state in that return:

(A) Whether the person is in custody or under that person's power of restraint; and

(B) If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(C) If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

(9) The Chief Judge commanded by the writ will cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer or transport officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health~~.~~, the Court will immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the Tribal Code governing criminal procedures and evidence.

(10) If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

(11) If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

~~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; amended and renumbered by Res.)

6.1.1~~8~~5. Bail. (a) Except as provided by subsection (a)(1) of this section, a person charged with any offense is bailable before conviction and will be released from custody by the Court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person unless otherwise provided by ordinance. Bail must not be excessive.

(1) Offenses that are not bailable are any offenses defined in STC Chapter 7.4.

(2) The Chief Judge of the Tribal Court may, if needed, establish and post a schedule of bail for offenses to be used by law enforcement officers. The schedule may be revised yearly, at the Chief Judge's discretion. Bail may be specifically set by a judge for any offense not listed on the posted bail schedule.

(b) The conditions of release of the defendant must be determined immediately upon the defendant's initial appearance. The criteria for determining the conditions of

release include, but are not limited to, the following:

(1) The defendant's employment status and work history;

(2) The defendant's financial resources;

(3) The nature and extent of the defendant's family relationships and ties to the reservation community;

(4) The defendant's past and present place of residence;

(5) The availability of persons who are willing to assume third party custody of the defendant; where that

~~(i) a~~ third party custodian is an individual who agrees to assume supervision and to report any violation of a release condition to the Court and to reasonably assure the Court that the defendant will appear as required and will not pose a danger to the safety of any other person or the community.

(6) The nature and circumstances of the current charge, including whether the offense involved the use of force or violence;

(7) The defendant's prior criminal record, if any, 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;

(8) The defendant's record of appearance at court proceedings;

(9) The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release;

(10) The defendant's reputation, character and mental condition;

(11) The defendant's past record of threats to victims or witnesses or interference with witnesses or the administration of justice;

(12) Whether or not there is evidence of present threats or intimidation directed to witnesses;

(13) The defendant's past record of committing offenses while on pretrial release, probation or parole;

(14) The defendant's past record of use or threatened use of deadly weapons or firearms, especially to victims or witnesses; and

(15) The willingness of the defendant to take drug or alcohol tests ordered by the Court at initial appearance; provided, however, that any results of such tests or statements made by the defendant during such tests may not be used as

evidence against the defendant in the current or any future criminal prosecutions.

(c) The Court may impose any condition that will reasonably ensure the appearance of the defendant as required, and that will ensure the safety of any person or the community, including, but not limited to the following conditions:

(1) Require the defendant to post bail, conditioned on compliance with all conditions of release;

(2) Require the defendant to remain in the custody of a designated person; if that person is reasonably able to assure the Court that the defendant will appear as required. The designated person must agree to supervise the defendant and report any violation of a release conditions to the Court;

(3) The defendant must not commit a criminal offense during the period of release;

(4) Require the defendant to maintain employment or, if unemployed, actively seek employment;

(5) Require the defendant to maintain or commence an educational program;

(6) Require the defendant to abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(7) Require that the defendant will not drive a motor vehicle without a valid driver's license and proof of current liability insurance;

(8) Require that the defendant will have no contact with an alleged victim and any potential witness who may testify concerning the offense;

(9) Require the defendant to comply with a specified curfew;

(10) Require that the defendant not possess a firearm, destructive device, or other dangerous weapon;

(11) Require the defendant to not use or possess alcohol, marijuana, or any dangerous drug or other controlled substance, any prescribed drug without a legal prescription, or any other intoxicating substance;

(12) Require the defendant to undergo available medical, psychological or psychiatric treatment, including chemical dependency and mental health treatment, and remain in a specified facility, if required, for that purpose;

(13) Require the defendant to attend a designated number of self-help meetings and provide proof to the courts;

(14) Require the defendant to report on a regular basis to a designated agency or individual, or both;

(15) Require the defendant comply with GPS or other electronic monitoring requirements of the Court;

(16) Require the defendant to return to custody for specified hours following release for employment, schooling, or other approved purposes;

(17) No Contact Order. Because of the likelihood of repeated violence directed at those who have been victims of domestic violence, family violence or sexual assault, when any person is charged with a crime of domestic violence, family violence or sexual assault, the Court may issue a no contact order prohibiting the defendant from having any contact with the victim.

(A) The protected party in a no contact order will be provided with a certified copy of the order.

(B) In issuing a no contact order, the Court will consider whether the firearms prohibition provisions apply.

(C) The Court will not deny issuance of a no contact order based on the existence of an applicable civil protection order preventing the defendant from contacting the victim.

(D) By the next judicial day after the order is issued, the court clerk will forward a copy of the criminal no contact order to the Suquamish Police Department and any other appropriate law enforcement agency specified in the order. Upon receiving the order, the Suquamish Police Department will enter the order into any computer-based criminal intelligence information system available to the agency. The Suquamish Police Department must remove expired orders from the computer system. Entry into the law enforcement information system constitutes notice to all law enforcement agencies that the order exists.

A no contact order will not be vacated without notice to the prosecutor and a hearing;

(18) Require that the defendant satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(d) The Court will subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the Court may, upon a change in circumstances, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party. GPS monitoring, if

available as an option, is at the discretion of the Court and upon meeting the eligibility requirements as determined by Suquamish Probation.

(e) Any person in custody, if otherwise eligible for bail, may be released on their own personal recognizance subject to such conditions as the Court may reasonably prescribe to assure their appearance when required.

(f) Bail may be furnished by a deposit with the Jail or Court of an amount equal to the required bail of cash.

(g) Upon a change in circumstances and application by the Tribe or the defendant, or by its own motion, the Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail. Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.
~~Except as set forth in §§6.1.6 and 6.1.7, a person arrested may be admitted to bail under the following:~~

(h) If a defendant violates a condition of release, including failure to appear, the prosecutor or probation officer may make a written or oral motion to the Court for revocation of the order of release. Notice to the defendant or defense counsel is not required. The Court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be revoked. Upon arrest, the defendant must be brought before the Court without unnecessary delay, and the Court will conduct a hearing and redetermine bail. On finding probable cause that the defendant has violated a Tribal, State, or Federal law, or on finding a violation of any other release condition by a preponderance of the evidence, the Court may:

(1) Reinstate the original release order on the same conditions and amount of bail; or

(2) Revoke the original bail, increase the amount of the bail, and modify the conditions of release; or

(3) At the defendant's request, revoke the defendant's release for any period of time, up to ten (10) days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate, but such time may not be credited as time served.

(i) Sanctions may be given for violating an order without revoking the agreement in its entirety.

(j) At any time before the forfeiture of bail, ~~:~~ the defendant may surrender to the Court or any Suquamish Tribal law enforcement officer. The law enforcement officer will detain the defendant. The Court may then order the bail exonerated.

~~(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; amended and renumbered by Res.)

6.1.1~~9~~6. Bail Forfeiture. (a) If a defendant fails to appear as required and bail has been posted, the prosecutor may move and the Court may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the poster at their last-known addresses within five (5) days of issuance of the order.

(b) If at any time within sixty (60) days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the Court may direct the forfeiture to be vacated. (Res. 87-015 §16, passed May 26, 1987; amended by Res. 2020-038, passed Mar. 9, 2020; amended and renumbered by Res.)

~~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)~~

6.1.20. Emergency Criminal No Contact Orders. A police officer has the authority to request from the on-call judge an emergency criminal no contact order prohibiting contact with the victim, including third party contact, on a form approved by the Court, if the officer has probable cause to believe that a crime involving domestic violence, family violence, or a sex offense has occurred. One of the following methods will be used:

(a) The officer will call the on-call judicial officer at time of booking and provide the judicial officer with enough information for a finding of probable cause. The officer will then sign the order on the judge's behalf and serve it on the defendant.

(b) The officer will call the judicial officer from the scene once arrest has been made and follow the same procedure as above, providing the victim with copy of the order at the scene if possible.

(c) The order will be effective until the first court appearance or as vacated or amended by Court order.

(d) Upon issuance of such an order, the officer will serve a copy on the perpetrator and file the order with the Court by noon on the next judicial day. The officer will provide a copy of the order to the victim and assist the victim in securing any essential personal effects. (Res.)

6.1.2117. Reserved. ~~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 the person 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; previous §6.1.17, Citation Rather than Detention, renumbered and deleted by Res.)

6.1.2218. Form of Citation. Reserved. ~~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; previous §6.1.18, Form of Citation, renumbered and deleted by Res.)

6.1.2319. Reserved. ~~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 the person pays the fine before the time set for the person's appearance in court. The person may pay the fine by bringing or mailing to the Tribal Court the amount specified in the bail schedule for the offense with which the person 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; previous §6.1.19, Procedure upon Issuance of Citation, renumbered and deleted by Res.)

6.1.240. Arraignment. (a) A person will be arraigned within fourteen (14) days of the initial appearance, unless waived by the defendant. ~~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 summons or citations.~~ . A defendant must be arraigned in open court whenever a complaint has been filed by a Tribal Prosecutor. Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of it to the defendant, informing the defendant of all warnings and advisories required by law, determininge or readdressing the conditions of the defendant's release, and calling on the defendant to plead to the charge. Prior to accepting any plea at the time of arraignment, the judge must:

(1~~b~~) Verify that the person appearing before the Tribal Court is the defendant named in the complaint, and that the defendant's true name appears on the complaint, and if different from the name used on the complaint, order the complaint amended to reflect the true name; and ~~At arraignment the judge will:~~

(2) Determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed.

(b) If the Court finds that the defendant is indigent, or indigent but able to contribute, and has not knowingly waived the right to counsel, the Court will assign legal counsel to provide representation for the defendant.

(c) If a trial date is set, the Court will order a case management schedule at the arraignment, which will include the following: assignment of trial judge, pretrial hearing, discovery deadline, trial readiness hearing, trial date, and speedy trial deadline.

(d) Defendants who are jointly charged may be arraigned separately or together in the Court's discretion.

~~(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.~~

(~~e~~c) A defendant will enter a plea of guilty or not guilty to each charge contained in the complaint. All pleas will be entered in open court. If at arraignment the defendant fails or refuses to enter a plea, a plea of not guilty will be entered for the defendant. 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; amended and renumbered by Res.)~~.~~

6.1.25. Joinder of Offenses or Defendants; Lesser Included Offenses. (a) If two or more related offenses are of the same or similar character, they may be charged in the same complaint, with each offense stated in a separate count.

~~(1)~~ Two or more offenses are related offenses if they are based on the same criminal conduct or episode or arise out of a course of criminal conduct or series of criminal episodes connected together or constituting parts of a single scheme or plan.

(b) If a defendant is charged with two or more related offenses, either party may move for joinder of such charges. The Court will join the charges for trial unless the Court determines that joinder is not in the interests of justice.

(c) Upon the written motion of a defendant, or with the defendant's written consent, the Court may join for trial two or more charges of unrelated offenses upon a showing that failure to try the charges together would constitute harassment or unduly consume the time or resources of the parties. The Court will join the charges for trial unless it is determined that joinder is not in the interests of justice.

(d) Two or more defendants may be joined in the same complaint if the charges against them arise out of the same criminal conduct or episode or out of a course of criminal conduct or series of criminal episodes so connected as to constitute parts of a single scheme, plan, conspiracy or joint enterprise. The defendants may be charged separately or together in one or more counts; all of the defendants need not be charged in each count.

(e) The Court may order two or more complaints to be tried together if the offenses and the defendants, if more than one, could have been joined in a single complaint. The procedure will be the same as if the prosecution were under a single complaint.

(1) If it appears that a joinder of offenses or of defendants is not in the interests of justice, the Court may upon its own motion or the motion of either party order an election of separate trials of counts, grant a severance of defendants, or provide whatever other relief justice may require.

(2) A motion of the defendant for relief from prejudicial joinder must be in writing and made before trial and must be supported by an affidavit setting forth the grounds upon which any alleged prejudice rests, except that a motion for severance may be made before or at the close of all the evidence if based upon a ground not previously known.

(f) A complaint for conspiracy to commit a substantive offense will not be tried simultaneously with a complaint for the commission of the substantive offense, unless the defendant moves for joinder of such charges pursuant to subsection (a) of this section.

(g) An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:

(1) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(2) It consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(3) It differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission. (Res.)

6.1.26. Right to a Speedy Trial Date. (a) Misdemeanors. A defendant will be brought to trial no 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 unless the defendant has agreed in writing or on the record to a later date.

(b) Felonies. A defendant will be brought to trial no later than one hundred twenty (120) days after arraignment for defendants in custody and no later than one hundred and eighty (180) days after arraignment for defendants not in custody unless the defendant has agreed in writing or on the record to a later date.

(c) The Court may continue a trial beyond the speedy trial period as follows:

(1) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement is effective when approved by the Court on the record or in writing.

(2) On motion of the prosecutor, the Court, or a party, the Court may continue the case for good cause if the Court finds the defendant will not be substantially prejudiced in the presentation of the defense by the continuance.

(3) The Court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.

(4) For purposes of this section, "good cause" includes, but is not limited to:

(A) A co-defendant has been granted a continuance.

(B) Unavailability of a witness.

(C) A public health crisis is extant.

(D) Defendant's attorney is unavailable due to another hearing or trial.

(E) Defendant's attorney needs time to prepare.

(F) Following the testimony of the defendant at trial.

(b) A defendant whose release the Court has revoked will be brought to trial no later than sixty (60) days for a misdemeanor trial or one hundred twenty (120) days for a felony trial following the revocation or the previously scheduled trial date, whichever is sooner.

(c) When a defendant fails to appear for any hearing, all future hearings will be stricken from the Court calendar and a bench warrant will issue, unless the prosecutor agrees to note the failure to appear and set another hearing instead of issuing a warrant. A failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the judge, the speedy trial clock begins at zero.

(d) In computing the time periods for arraignment and/or trial, the following periods will be excluded:

(1) The period of pendency of any competency proceeding to determine whether the defendant is competent to stand trial.

(2) The period of any continuance by agreement of the parties or granted by the Court on motion of the defendant, including but not limited to continuance of the arraignment.

(3) The period of time wherein the defendant has removed the defendant's person from the jurisdiction of the Suquamish Tribal Court.

(4) The period between dismissal of a charge without prejudice and the defendant's arraignment upon a refiled charge.

(5) The time during which a defendant is detained in jail or prison by authorities other than the Suquamish Tribe and the time during which a defendant is subjected to conditions of release not imposed by the Suquamish Tribal Court.

(6) All proceedings in Suquamish Family Court.

(e) A defendant may waive the right to a speedy trial. Such waiver must be in writing and must be signed by the defendant. The waiver will be to a date certain. (Res.)

6.1.27. Plea Procedures. (a) A defendant may plead not guilty or guilty to any crime with which the defendant has been charged and over which the Court has jurisdiction. A plea of guilty may be received only from the defendant personally. Pleas will be received in open court and the proceedings must be recorded. If a defendant refuses to plead or if the judge refuses to accept a plea of guilty, a plea of not guilty will be entered.

(1) Not Guilty. A plea of not guilty puts in issue every element of the charged offense, and the case will proceed according to the case management schedule. A defendant pleading not guilty must inform the judge at the time of arraignment if a jury trial is requested.

(2) Guilty. A plea of guilty may be accepted by a judge only after due consideration of the views of the parties and interest of the Tribe in the effective administration of justice. The Court may not accept a plea of guilty without first determining:

(A) That the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court will also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney;

(B) That the defendant understands the following: (A) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the Court may require the defendant to make restitution to the victim, and (B) the defendant will be giving up the defendant's right to a trial and right to remain silent;

(C) That if the defendant pleads guilty in fulfillment of a plea agreement, the Court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted;

(D) That, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea; and

(E) If a defendant voluntarily enters a plea of guilty, the judge may impose a sentence at that time or, on the Court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

(b) With the written agreement of the prosecutor, the defendant may ~~tender~~ offer a plea of guilty or an admission to sufficient facts while reserving the right to appeal any ruling or rulings that would, if reversed, render the Tribe's case not viable on one or more charges. The written agreement must specify the ruling or rulings that may be appealed, and must state that reversal of the ruling or rulings would render the Tribe's case not viable on one or more specified charges. The Court, in an exercise of discretion, may refuse to accept a plea of guilty or an admission to sufficient facts reserving the right to appeal. If the defendant prevails in whole or in part on appeal, the defendant may withdraw the guilty plea or the admission to sufficient facts on any of the specified charges. If the defendant withdraws the guilty plea or the admission to sufficient facts, the judge will dismiss the complaint on those charges, unless the prosecutor shows good cause to do otherwise.

(c) A prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do one of the following:

(1) Move for dismissal of other charges; or

(2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the Court; or

(3) Reduce the charges.

(d) A plea bargain agreement may be entered into any time prior to a verdict or finding of guilt by judge or jury. If the parties have reached a plea agreement, the Court will, on the record, require a disclosure of the agreement in open court at the time the plea is offered.

(e) If applicable, the Court will inquire of the prosecutor as to compliance with the requirements of the Rights of Victims of Crimes provisions in this chapter. The prosecutor is not required to state more than whether or not they have complied, and the Court may not inquire further. At any time prior to imposing sentence, the judge will give any person entitled to make an oral and/or written victim impact statement the opportunity to do so.

(f) Except as otherwise provided in this subdivision, evidence of a plea of guilty, or an admission, or of an offer to plead guilty or an admission to the crime charged or any other crime, later withdrawn, or statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceedings against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty, later withdrawn, or an admission or an offer to plead guilty or an admission to the crime charged or any other crime, is admissible in a criminal proceeding for perjury if the statement was made by the defendant under oath, on the record, and in the presence of counsel, if any. (Res.)

6.1.28. Plea Alternatives, Deferrals, and Alternative Court Programs. (a) Deferred Prosecutions. At any time, the Prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time.

(1) The following terms may be imposed:

(A) That the defendant may not commit any offense;

(B) That the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(C) That the defendant will participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(D) That the defendant will make restitution in a specified manner for harm or loss caused by the offense, or any other reasonable conditions, including voluntary exclusion from the Reservation; and

(E) Participation in Wellness Court, a Victim's Panel, or other alternative court programs that the Court may establish.

(2) Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes. "Violent crimes" means an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

(3) A deferred prosecution agreement is subject to approval by the Tribal Court. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for an additional ninety (90) days past the end of the deferral period. The agreement will include stipulations concerning the admissibility of the police report(s), specified testimony, or dispositions if the deferred prosecution is revoked. The agreement will be filed with the Court.

(4) Violations of Agreement. The prosecution must be deferred for the

period specified in the agreement unless there has been a violation of its terms. Sanctions may be imposed for violation of the agreement, without revoking the agreement in its entirety. If the prosecutor moves to revoke the agreement and proves by a preponderance of the evidence that the defendant violated the terms of the agreement, the Court will revoke the deferred prosecution. Suquamish Probation will monitor the conditions of the agreement.

(5) Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court will dismiss the charges and seal the record.

(6) A person is only eligible for one deferred prosecution in the Suquamish Tribal Court and may not enter a deferred prosecution on subsequent prosecutions. Separate offenses in pretrial status at the same time may be consolidated into one deferred prosecution.

(b) Stipulated Orders of Continuances. In certain circumstances, a stipulated order of continuance (SOC) may be available. An SOC may be to individual or multiple charges in a complaint. An SOC is subject to Court approval, and must be in writing, signed by the parties, and must state that the defendant waives the right to speedy trial for an additional ninety (90) days past the end of the deferral period. The agreement will include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement will be filed with the Court.

(1) Violations of Agreement. Sanctions ~~can~~ may be imposed for violation of the agreement, without revoking the agreement in its entirety. Suquamish Probation will monitor the conditions of the agreement. If the prosecutor moves to revoke the SOC and proves by a preponderance of the evidence that the defendant violated the terms of the agreement, the Court must revoke the SOC.

(2) Modification of Agreement. An SOC may only be modified with the parties' agreement and the Court's approval. Modification includes extension of the period of the SOC to permit completion of the agreement.

(3) Completion of Agreement. After expiration of the period of the SOC, the Tribe or the defendant may move to dismiss, or amend the charge(s) per the terms of the agreement. If the defendant has successfully completed the agreement the Court will dismiss the charges and/or amend the charge(s) per the terms of the agreement.

(c) Wellness Court Diversion. The Suquamish Tribe hereby establishes the Suquamish Healing to Wellness Court (Wellness Court).

(1) The purpose of this court is to provide the support and resources necessary for participants to begin living sober lives and reconnecting with their families, community, and culture, with a focus on prioritizing mental health and

overall well-being.

(2) ~~Steering Committee.~~ A steering committee will provide leadership and support to Wellness Court. The steering committee's primary responsibilities are to evaluate program effectiveness; identify and propose solutions to service gaps; and address political, financial, and other barriers to program vitality and growth. The steering committee will also assist in establishing, maintaining, and improving interdepartmental partnerships; provide a forum for identifying common goals and opportunities for collaboration; and educate the community, elected officials, and the public at large about the Wellness Court's successes and needs. The steering committee is comprised of agency representatives and public officials committed to further developing and enhancing the Wellness Court's goals and objectives. Members include the following:

(A) A Suquamish Court Judge;

(B) The Suquamish Executive Director;

(C) Selected Tribal Council member(s);

(D) A Suquamish prosecutor;

(E) The Wellness Court defense attorney;

(F) Suquamish behavioral health representative(s); and

(G) The Wellness Court program manager or Court Director.

(3) The Wellness Court may exercise jurisdiction over individuals who:

(A) Are charged with a crime in the Suquamish Tribal Court;

(B) Meet the eligibility criteria established in policies and procedures by the Wellness Court; and

(C) Are accepted for admission by the Wellness Court team; or

(D) Any individual who satisfies subsections (3)(B) and (C) of this section, but has been referred to the Court by another jurisdiction and has consented to the supervision of the Wellness Court. The Wellness Court will develop policies and procedures for transferring participants from another jurisdiction to Wellness Court.

(4) Entry into Wellness Court.

(A) Pretrial Diversion – Deferred Judgment – Entry of Guilty Plea – Deferred Acceptance of Plea. In any pretrial case where the prosecutor offers Wellness Court, the defendant will be required to enter a plea of

guilty to the charges. The Court will make a determination whether the plea was entered knowingly, intelligently, and voluntarily and find a factual basis for the plea. However, the Court will defer acceptance and entry of the guilty plea into the record and order the defendant to the Wellness Court for successful completion. The Court will advise the defendant that if they fail to successfully complete the Wellness Court program, the Court will, upon notification and at a hearing, formally accept the guilty plea and set the matter for sentencing.

(B) Probation Diversion. In any probation revocation where Wellness Court is offered, the defendant will be required to admit to the pending violations. The Court will accept the probationer's admission and sanction them to Wellness Court in lieu of imposition of their sentence. Failure to graduate from Wellness Court will constitute a violation of their probation. The probationer must agree to extend their probation to allow for the completion of Wellness Court to participate in Wellness Court.

(5) Termination from Wellness Court.

(A) Termination will be discussed by the Wellness Court team, which should strive for consensus. The judge will determine if the participant will be terminated if the team cannot reach consensus.

(B) When a participant is terminated from Wellness Court, the prosecutor will provide the participant with a notice of termination. The notice will contain the grounds for termination.

(C) If the participant contests the grounds for termination from the program, a contested termination hearing will be set within ten (10) judicial days, unless good cause for delay exists. The Tribe has the burden of proof in a contested termination hearing; the burden of proof is a preponderance of the evidence.

(D) After termination and acceptance of the defendant's guilty plea the Court will set the case for sentencing on the Wellness Court docket, unless sentencing is better suited for the regular criminal docket. Sentencing will comply with STC Chapter 6.3.

(E) Probation Diversion. After termination, the Court will set the case for sanctioning on the Wellness Court Docket, unless the sanctioning is better suited for the regular criminal docket. The sanction will comply with STC Chapter 6.3.

(6) Rules of Evidence and Procedure.

(A) Wellness Court is a court of record.

(B) Rules of evidence may be relaxed in Wellness Court, including

sentencing, and testimony is not required.

(C) The Court may adopt court rules for Wellness Court termination, sentencing, and other relevant stages of Wellness Court proceedings.

(7) The provisions of this subsection will apply to any other criminal alternative court established by the Suquamish Tribal Court. (Res.)

6.1.29. Pretrial. (a) At the time of the initial appearance and upon request, the prosecutor will furnish to the defendant the name of the person, if any, against whom the offense was committed if it is not disclosed in the complaint. At the arraignment, or as soon thereafter as ~~practicable~~possible, the defendant will be furnished all evidence the prosecutor intends to use in the prosecution's case in chief at trial. Any of the following information or evidence that is within the prosecutor's possession, custody, or control is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant:

(1) Any written or recorded statement, and the substance of any oral statement, made by the defendant while in the custody of the Tribe and of any person who will be tried with the defendant;

(2) The names and statements of all persons whom the prosecutor may call as witnesses in the case in chief;

(3) The record of defendant's convictions that is in the prosecutor's possession;

(4) Any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence that the prosecution intends to use at trial;

(5) Any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons;

(6) All material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence;

(7) Whether there has been any electronic surveillance of any conversation to which the defendant was a party;

(8) Whether an investigative subpoena has been executed in connection with the case; and

(9) The prosecutor must provide written notice of any evidence of any prior wrongs, acts, or crimes it may introduce in the case in chief at least two (2)

weeks prior to the trial readiness hearing. The notice will describe the prior wrong or act, the closest approximation possible as to when and where it occurred and who witnessed it, unless the prior crime is confirmed as a conviction, in which case the court and date of conviction must be disclosed. The prosecutor must also disclose the purpose for which the evidence would be offered.

(b) The prosecutor will further disclose to the defense, and permit the defense to discover, inspect, and copy, all items and information favorable to the defense in the possession, custody, or control of the prosecutor, the prosecuting office, or any member of the prosecution team. Items and information subject to this section must be disclosed without regard to whether the prosecutor considers the items or information credible, reliable, or admissible and without regard to whether any such information has been reduced to tangible form. The disclosure of any unwritten or intangible information will be memorialized as soon as there is a reasonable opportunity, manner, and means to do so. Items and information favorable to the defense are items or information that tend to:

(1) Cast doubt on an aspect of guilt as to an element of any count of a charged or lesser included offense;

(2) Cast doubt on the credibility or accuracy of any evidence, including identification or scientific evidence, the prosecutor may introduce;

(3) Cast doubt on the credibility of the testimony of any witness the prosecutor may call;

(4) Cast doubt on the admissibility of any evidence or testimony the prosecutor may introduce;

(5) Support the suppression or exclusion of any evidence or testimony the prosecutor may introduce;

(6) Mitigate the charged offense or offenses or any lesser included offense or offenses, diminish the defendant's culpability, or mitigate the sentence;

(7) Establish a defense theory or recognized affirmative defense or exemption to the charged offense or offenses or any lesser included offense or offenses, regardless of whether the defendant has presented such theory or raised such affirmative defense or exemption; or

(8) Corroborate the defense version of facts or call into question a material aspect of the prosecution's version of facts, even if this aspect is not an element of the prosecution's case.

(c) If the prosecution team subsequently obtains possession of items or information subject to disclosure under this section, the prosecutor will promptly disclose to or notify the defense of its acquisition of such additional items or information

in the same manner as required for initial discovery.

(d) As soon as possible~~practicable~~, and prior to trial readiness or any discovery deadline, whichever occurs first, the defendant or defendant's counsel will make available to the prosecutor for testing, examination, or reproduction:

(1) The names, contact information, if known, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense's case in chief;

(2) The names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case;

(3) All papers, documents, photographs, and other tangible objects that the defendant may use at trial; and

(4) By the close of discovery, as set forth in the case scheduling management order, or at such other time as set forth in that order, the defendant will provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or of any affirmative defenses. The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement, or the witness who made it, at trial.

(A) If a defendant intends to rely upon a defense of alibi, the defendant will so notify the prosecutor, in writing, by the pretrial hearing. The defendant's notice of alibi defense will state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

(B) Upon the failure of the defendant to comply with the requirements of this rule, the judge may exclude the undisclosed evidence and/or testimony of any undisclosed witness offered by the defendant. This rule will not limit the right of the defendant to testify.

(C) Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with that intention, is not admissible in any civil or criminal proceeding against the person who gave notice of that intention.

(D) Any affirmative defenses not noted by the defendant as

required by this section will be deemed waived and inadmissible absent a showing of good cause.

(e) At any time after the filing of a complaint, the defendant, in connection with the particular offense charged, will, upon the prosecutor's written request and the Court's approval:

(1) Appear in a lineup;

(2) Speak for identification by witnesses;

(3) Be fingerprinted, palm printed, footprinted, or voice printed;

(4) Pose for photographs not involving reenactment of an event;

(5) Try on clothing;

(6) Provide handwriting samples;

(7) Permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and

(8) Submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation.

(e) Depositions. A party may move that a prospective witness be deposed in order to preserve testimony for trial. The Court may grant the motion because of exceptional circumstances and in the interest of justice, but may not violate a victim's right to refuse a pretrial interview. If the Court orders the deposition to be taken, it may also require the deponent to produce at the deposition any designated material that is not privileged, including any book, paper, document, record, recording, or data.

(1) A party seeking to take a deposition must give every other party reasonable written notice of the deposition's date and location. The notice must state the name and address of each deponent. If requested by a party receiving the notice, the Court may, for good cause, change the deposition's date or location.

(2) If a defendant is in custody, the officer having custody of the defendant must be notified by the party seeking the deposition of the time and place set for the taking of the deposition, and the officer will produce the defendant at that time and place and keep the defendant in the presence of the witness during the taking of the deposition. A defendant not in custody must have the right to be present at the taking of a deposition, but the defendant's failure to appear after notice and without cause constitutes a waiver of the right to be present and of all objections based upon that right.

(3) Unless these rules or a court order provides otherwise, a deposition must be taken and filed in the same manner as a deposition in a civil action, except that:

(A) A defendant may not be deposed without that defendant's consent.

(B) The scope and manner of the deposition examination and cross-examination must be the same as would be allowed during trial.

(C) The government must provide to the defendant or the defendant's attorney, for use at the deposition, any statement of the deponent in the government's possession to which the defendant would be entitled at trial.

(4) An order authorizing a deposition to be taken under this rule does not determine its admissibility. A party may use all or part of a deposition as provided by the Rules of Evidence.

(5) A party objecting to deposition testimony or evidence must state the grounds for the objection during the deposition.

(6) The Court must use the Court's indigent defense fund for the Tribe to pay:

(A) Any reasonable travel and subsistence expenses of the defendant and the defendant's attorney to attend the deposition; and

(B) The costs of the deposition transcript.

(C) The obligations imposed by this section are continuing on all parties.

(g) At any time, the Court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The Court may permit a party to show good cause by a written statement that the Court will inspect ex parte. If relief is granted, the Court must preserve the entire text of the party's statement under seal.

(1) If a party fails to comply with the requirements of discovery, the Court may:

(2) Order that party to permit the discovery or inspection; specify its time, place and manner; and prescribe other just terms and conditions;

(3) Grant a continuance;

(4) Prohibit that party from introducing the undisclosed evidence; or

(5) Enter any other order that is just under the circumstances.

(h) Any materials furnished to a lawyer pursuant to these rules will remain in the exclusive custody of the lawyer and be used only for the purposes of conducting the party's side of the case, unless otherwise agreed by the parties or ordered by the Court, and will be subject to such other terms and conditions as the parties may agree or the Court may provide. A defense lawyer will be permitted to provide a copy of the materials to the defendant after making appropriate redactions which are approved by the prosecutor.

(i) A judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which will bear the signature of the judge issuing the subpoena. The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post-trial proceeding. For witness appearances at pretrial hearings and trial, the parties may issue subpoenas under their own signature directing the witness to appear at the specified date, time, and location of such hearing or trial; provided, however, that copies of those subpoenas and their return of service be filed with the Court.

(1) Service of subpoena will be made by a Tribal police officer or other person appointed by the Court for such purposes, or by a competent person who is at least eighteen (18) years of age and not a party to the action. As soon as practicable, proof of service of subpoena will be filed with the court clerk, indicating the date, time, and place of service. The Court, in its discretion, may assess reasonable costs.

(2) In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be subject to a bench warrant to compel their attendance.

(3) On motion made promptly, the Court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(4) After a complaint is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the Court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(j) On motion of the prosecutor or the defendant, the Court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant may issue only on a showing, by affidavit or on the record in open Court, that the testimony of the witness is material and that:

(1) The witness has refused to submit to a deposition ordered by the

Court; or

(2) The witness has refused to obey a lawfully issued subpoena; or

(3) It may become impracticable to secure the presence of the witness by subpoena. Unless otherwise ordered by the Court, the warrant will be executed and returned in the same manner as an arrest warrant.

(4) After the arrest of the witness, the Court must hold a hearing no later than the next Court day. The witness will be entitled to be represented by counsel at the witness' own expense or as appointed at the Court's discretion.

(5) Upon a determination that the testimony of the witness is material and that one of the conditions set forth in this subsection exists, the Court will set conditions for release of the witness. Release of a material witness may be delayed for a reasonable period of time until the testimony or deposition of the witness can be taken.

(k) The ~~Trial~~ Court will hold a pretrial hearing to consider such matters as will promote a fair and expedient trial. At the hearing:

(1) The defense will certify to the Court that they have received the Tribe's discovery;

(2) The defense will certify they have notified the Tribe of any affirmative defenses in writing as required by STC §6.1.24(d)(4);

(3) All parties will note any motions in writing and request an order setting a briefing and hearing schedule for such motions; and

(4) The parties may raise other issues of importance that should be addressed by the Court.

(l) Failure of a party to raise defenses or objections or to make a request that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense, which must be noticed by the Court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The Court, for good cause shown, may grant relief from any waiver provided in this subsection.

(m) Attorney work product of the Tribal Prosecutor's Office and defense counsel is not subject to disclosure and production. (Res.)

6.1.30. Motions. (a) A pretrial motion will be in writing and signed by the party making the motion or the attorney for that party. A motion need not be in any special form, but must be such as to enable a person of common understanding to know what is intended. A pretrial motion must state the grounds on which it is based. The Court will set the time frames for any motions not covered by this section. Notice of any hearing date or other deadline will be given to all parties.

(b) Within the time provided for the filing of pretrial motions by this chapter or within such other time as the Court may allow, a defendant may request or the Court upon its own motion may order that the prosecution file a statement of such particulars as may be necessary to give both the defendant and the Court reasonable notice of the crime charged, including time, place, manner, or means.

(c) A defendant may move for severance of defendants or charges. Such motion must be filed no later than trial readiness unless otherwise directed by the Court. If it appears that the defendant is prejudiced by a joinder of related prosecutions or defendants in a single charge, or by a joinder of separate charges or defendants for trial, the Court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

(d) A defendant may move to suppress as evidence anything obtained by unlawful search and seizure. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving this time restriction. The motion must identify the evidence sought to be suppressed and the grounds upon which the motion is based. The prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure were valid. If the motion is granted, the evidence is not admissible at trial.

(e) A defendant may move to suppress as evidence any confession or admission given by the defendant on the ground that it was not voluntary or that it was otherwise obtained in violation of the defendant's rights. The motion must be filed no later than the pretrial hearing, unless good cause is shown for waiving this time restriction. The Court will conduct a hearing on the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was not obtained in violation of the defendant's rights. The issue of admissibility of the confession or admission may not be submitted to the jury. If the confession is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission. If the motion to suppress is granted, the confession or admission may not be admitted into evidence by the prosecution at the time of trial, except on cross examination as a prior voluntary inconsistent statement to impeach the defendant.

(f) Any party may file a written motion for continuance, or the Court may continue the proceedings on its own motion. This section, however, will be applied in a manner that ensures criminal cases are tried in consistence with the rights of the defendant to a speedy trial and effective representation at trial.

(g) Motions in limine should be made at least five (5) days before trial, unless good cause is shown.

(h) The Court may, in its discretion, upon written motion of the prosecutor, dismiss a citation or complaint or one or more charges within a complaint.

(1) The Court will set out its reasons for granting or denying the motion in a written order. The Court must consider:

(A) The seriousness and circumstances of the offense;

(B) The impact of a dismissal or lack of dismissal on the safety or welfare of the community (the defendant is part of the community); and

(C) The impact of a dismissal or lack of dismissal upon the confidence of the public in the criminal justice system.

(i) The Court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The Court must set forth its reasons in a written order.

(j) The defendant may, prior to trial, move to dismiss a criminal charge due to insufficient evidence establishing a prima facie case of the crime charged.

(1) The defendant's motion must be in writing and supported by an affidavit or declaration alleging that there are no material disputed facts and setting out the agreed facts, or by a stipulation to facts by both parties. The stipulation, affidavit, or declaration may attach and incorporate law enforcement reports, witness statements, or other material to be considered by the Court when deciding the motion to dismiss.

(2) The prosecutor may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements, or other material to be considered by the Court when deciding defendant's motion to dismiss.

(3) The Court will grant the motion if there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt. In determining the defendant's motion, the Court will view all evidence in the light most favorable to the Tribe and the Court will make all reasonable inferences in the light most favorable to the Tribe. The Court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The Court must not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. A decision denying a motion to dismiss under this rule is not subject to appeal. A defendant may renew the motion to dismiss if the Trial Court subsequently rules that some or all of the Tribe's evidence is inadmissible.

(4) If the defendant's motion to dismiss is granted, the Court will enter a written order setting forth the evidence relied upon and conclusions of law. The granting of the defendant's motion to dismiss will be without prejudice.

(l) A motion for reconsideration must be plainly labeled as such. The motion

must be filed within ten (10) judicial days after the order to which it relates is filed. The motion will be noted for consideration as soon as practicable after it is filed. The motion will describe with specificity the matters which the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time, and the particular modifications being sought to the Court's prior ruling. Failure to comply with this subsection may be grounds for denial of the motion. The pendency of a motion for reconsideration must not stay discovery or any other procedure mandated by these rules. (Res.)

6.1.31. Victim's Rights. (a) A victim of a crime under the laws of the Suquamish Tribe has the following rights:

(1) To be treated fairly and with respect for the victim's dignity and privacy. The Court will refrain from inquiring about the level of communication between a victim and prosecution or specific requests made or not made by the victim while on the record or in the presence of the defendant. Victim contact information will be protected from unnecessary disclosure.

(2) To be informed. To be promptly informed by the Tribe of these rights and, upon request, to be informed of conditions of the defendant's release and escape from custody.

(3) To be present. To be present at and, upon request, to be timely informed of all criminal proceedings where the defendant has the right to be present. The right not to be excluded from any such public court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

(4) To be protected. To be reasonably protected from violence, intimidation, uninitiated contact, and harassment by the defendant or individuals acting in concert with or at the behest of the defendant.

(5) To be supported. To bring a support person with them through all stages of the case including, but not limited to, court hearings and interviews.

(6) To assistance with crime victim compensation. Tribal advocates will assist eligible crime victims in preparing a crime victim compensation application.

(7) To be heard. To be reasonably heard, upon request, at any public Court proceeding and to provide a victim impact statement if there is a nexus to the immediate crime or a related or underlying crime.

(8) To refuse. To refuse a pretrial interview request. Any person requesting an interview with a victim must clearly identify themselves and their role, inform the victim that the victim has the right to refuse to speak or provide discovery absent a court order, and that the victim has a right to have a support person, advocate, prosecutor, or other attorney present during any interview or

contact.

(9) To consult. To consult with the prosecution, upon request, before or after the crime against the victim has been charged, before trial or before any disposition of the case and to be reasonably informed of the disposition.

(10) To read reports. To read, upon request, police, pre-sentence, and post-conviction compliance reports related to the crime involving the victim when they are available, and to receive police reports, at no cost, for the purposes of applying for a protection order, custody order, and/or divorce decree.

(11) To receive restitution. To receive full and timely restitution as provided in law and to the expeditious return of personal property seized as evidence whenever possible.

(12) To prompt proceedings. To civil and criminal proceedings free from unreasonable delay.

(b) Enforcement and Limitations.

(1) Rights. The victim or the victim's lawful representative, or an attorney for the Tribe may assert the rights described above. The person accused of the crime may not obtain any form of relief under this section.

(2) Motion for Relief and Writ of Mandamus. The rights described in subsection (1) of this section will be asserted first in the Suquamish Tribal Court. The Court will take up and decide expeditiously any motion after notice has been provided to the defendant asserting a victim's right. If the Court denies the relief sought, the movant may petition the Court of Appeals for a writ of mandamus. The Court of Appeals will take up and decide such application within thirty (30) days after the petition has been filed and notice has been provided to the defendant. In no event will proceedings be stayed or subject to a continuance more than thirty (30) days for purposes of enforcing this chapter. If the Court of Appeals denies the relief sought, the reasons for the denial must be clearly stated on the record in a written opinion, and, when warranted, will include directives to the Trial Court regarding the motion. If the Court of Appeals grants the relief sought, it will issue a written opinion with directives to the Trial Court.

(3) Error. In any appeal in a criminal case, the Tribe may assert as error and seek a declaratory judgement on the Court's denial of any crime victim's right in the proceeding to which the appeal relates, provided such denial was raised on the record before the Trial Court.

(4) Limitation on Relief. In no case will the exercise of a right or a failure to afford a right under this chapter provide grounds for a new trial, dismissal of charges, setting aside a conviction or sentence, or dismissing or denying a victim's filing of a civil petition for protection against the defendant. A victim may make a motion to modify a sentence only if:

(A) The victim has asserted the right to be heard before or during the proceeding at issue and such right was denied; or

(B) The victim petitions the Court of Appeals for a writ of mandamus within ten (10) days of the plea or sentence and the Court of Appeals issues the writ.

(5) No Cause of Action. Nothing in this chapter will be construed to waive the provisions of STC §7.28.20 (nonwaiver of sovereign immunity) or authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the Tribe or any of its officers or employees could be held liable in damages. Nothing in this chapter will be construed to impair the prosecutorial discretion of the Office of Tribal Attorney.

(c) Definition. As used in this section, "victim" means a person:

(1) Against whom an offense is committed.

(A) If the victim is deceased or incapacitated, the following relations in descending order of preference, so long as the relation is not the defendant:

(i) Spouse,

(ii) Parent,

(iii) Child(ren) over fifteen (15) years of age,

(iv) Sibling; or

(v) Grandparent.

(B) If the victim is a minor under fifteen (15) years of age, the victim's parent or guardian may exercise victim's rights, so long as the parent or guardian is not the defendant, or a person acting in concert with or at the behest of the defendant; or

(2) Who is directly and proximately harmed by the commission of an offense for which restitution may be ordered.

(d) These rights apply both pretrial and post-conviction. (Res.)

6.1.32. Nonwaiver of Sovereign Immunity. Nothing in this chapter will be deemed to constitute a waiver by the Suquamish Tribe of its sovereign immunity for any reason whatsoever. (Res.)

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)