

## TITLE 6. CRIMINAL PROCEDURE

### Chapter 6.2

#### TRIAL PROCEDURE

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**6.2.1.** Trial by Jury. (a) Every defendant has the right to be tried by a panel of eligible jurors.

(b) The defendant may waive the right to be tried by a jury, provided that the judge determines after a colloquy that such waiver is knowing and voluntary, and the defendant signs a written waiver, which **must** be filed with the Court. If there is more than one defendant, each must waive the right to trial by jury, unless the judge exercises discretion to sever the cases. The judge may refuse to approve such a waiver for any good and sufficient reason provided that such refusal is given in open court and on the record.

(c) If after jeopardy attaches there is at any time during the progress of a trial less than a full jury remaining, a defendant may waive the right to be tried by a full jury, provided that the judge determines after a colloquy that such waiver is knowing and voluntary. The defendant must sign a written waiver, which will be filed with the Court. If there is more than one defendant, each must waive the right to be tried by a full jury unless the judge exercises discretion to sever the cases. (Res.)

**6.2.2.** Juror Panel. (a) The jury will be chosen from a panel of prospective jurors chosen by lot. The jury will consist of six (6) persons and one (1) alternate, consisting

of Suquamish tribal members and tribal spouses who reside in Jefferson, King, Kitsap, Mason, Pierce, and Snohomish counties, Washington; and tribal employees with a minimum of one (1) year of employment with the Suquamish Indian Tribe. Jurors must be eighteen (18) years of age or older.

(1) If at any stage of the trial prior to commencement of jury deliberations a juror is unable to continue and an alternate juror has been seated, the alternate juror will become the sixth regular juror.

(2) If more than one juror is unable to continue or if no alternate juror has been seated, the Court will declare a mistrial unless the defendant or defendants waive the right to a full jury pursuant to §6.2.1(c) of this chapter.

(b) Either party may challenge the jury panel composition by a motion for appropriate relief. A challenge to the jury panel composition may be made only on the ground that the prospective jurors were not selected or drawn according to the Suquamish Tribal Code. Challenges to the jury panel composition will be made and decided before any individual juror is examined unless the Court orders otherwise. A challenge to the jury panel composition will be in writing supported by affidavit and will specify the facts constituting the ground of the challenge. The Court will hear challenges to the jury panel composition and may, in its discretion, decide such challenges solely on the basis of the affidavit filed with the challenge. Upon the hearing of a challenge to the jury panel composition, the Court and either party may examine a witness on oath. If the challenge to the jury panel composition is sustained, the Court will discharge the panel.

**6.2.3. Voir Dire.** (a) Following selection of tentative jurors and an alternate if required by the Court as provided above, the selected persons will be questioned for the purpose of disclosing any basis for a challenge for cause.

(1) The Court will, or upon motion, the parties or their attorneys may under the Court's direction, examine on oath a person who is called as a juror in a case to learn whether that person is related to either party, has any interest in the case, has expressed or formed an opinion, or is sensible of any bias or prejudice. The objecting party may, with the Court's approval, introduce other competent evidence in support of the challenge for cause.

(2) Either party may challenge an individual prospective juror before the juror is sworn to try the case. The Court may, for cause shown, permit a challenge to be made after the juror is sworn but before any evidence is presented. When a juror is challenged for cause, the ground of the challenge must be stated. The Court will hear a challenge of a prospective juror and the statement of the grounds thereof outside the presence of the jury and jury panel. The Court will determine the validity of each such challenge.

(b) After all jurors including the alternate, if any, have been passed by all parties for cause, each party will have the right to challenge up to two (2) jurors without a showing of cause, in which case the Court will excuse such juror and instruct the clerk to choose another juror by lot from the panel. Such juror will then be questioned as provided above and will be seated unless challenged for cause or through exercise of a peremptory challenge. Peremptory challenges will be exercised alternately by each party, commencing with the prosecution. This process will continue until a jury of six (6) persons and one (1) alternate, if required, has been chosen without objection by either party.

(1) In cases with more than one defendant joined in a single trial, each defendant will be entitled to two (2) peremptory challenges of the jurors called to try the case. The Suquamish Indian Tribe will be entitled to as many peremptory challenges as equal the whole number to which all the defendants in the case are entitled.

(2) A defendant in a case in which several complaints are consolidated for trial is not entitled to more peremptory challenges than the number to which they would have been entitled upon trial of any one of the complaints alone. (Res.)

6.2.4. Disabled Juror. If, at any time after the final submission of the case by the Court to the jury but before the jury has agreed on a verdict, a juror dies, becomes ill, or is unable to perform their duty for any other cause, the judge may order the juror to be discharged and will direct an alternate juror to take the place of the discharged juror on the jury, which will renew its deliberations with the alternate juror.

6.2.5. Regulation and Separation of Jurors. (a) After the jurors have been sworn they will hear the case as a body and, within the judge's discretion, may be sequestered.

(b) Unless the jurors have been sequestered for the duration of the trial, the judge after the final submission of the case, may order that the jurors be permitted to separate for a definite time to be fixed by the judge and then reconvene in the courtroom before retiring for consideration of their verdict.

(c) After final submission of the case to the jury and after deliberations have commencedbegun, the judge may allow the jurors, under proper instructions, to separate for a definite time to be fixed by the judge and to reconvene in the courtroom before retiring for further deliberation of their verdict. (Res.)

6.2.6. Objections. (a) A party preserves a Court ruling or order for appeal by timely objecting to that ruling or order.

(b) If a party objects to a Court ruling or order, they may state the precise legal grounds of the objection, but may not argue or further discuss such grounds unless the Court calls upon them for such argument or discussion.

(c) if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice the party. (Res.)

6.2.7. Stipulations. (a) Any stipulation to an essential element of a charged offense entered by the parties before or during trial must be in writing and signed by the prosecutor, the defendant, and defense counsel. Any such stipulation will be read to the jury before the close of the Tribe's case and may be introduced into evidence.

(b) Any other stipulation will be placed on the record before the close of evidence and may be read or otherwise communicated to the jury or introduced into evidence in the Court's discretion. (Res.)

6.2.8. Order of Trial. (a) Preliminary Instructions. In a jury trial, after selecting and empanelling the jurors, the Court will state the nature of the charges and generally instruct the jurors as to their duties.

(b) Opening Statements. The prosecution and the defense will be afforded an opportunity to make an opening statement prior to the presentation of any evidence or testimony, unless waived. The defense may reserve its opening statement until after the prosecution has presented its case in chief.

(c) Prosecution. The prosecution must offer evidence supporting the allegations contained in the complaint. The defense will ~~be given~~ have an opportunity to cross-examine any witness called by the prosecution.

(d) Defense. After the prosecution has rested its case, the defense may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The prosecution ~~shall be given~~ will have an opportunity to cross-examine any witness called by the defense.

(e) Rebuttal. The prosecution may present rebuttal evidence, at the prosecution's discretion, after the conclusion of the defense case when appropriate. Upon motion to the Court, the defense may offer surrebuttal evidence.

(f) Evidence. No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the judge in the interest of justice, such as for basic elements of an offense, like the date or location of the offense or tribal enrollment.

(g) Jury Instructions. In a trial by jury, after the close of evidence and before the closing arguments are given, the Court will give final instructions. All instructions will be in writing and filed as part of the record. No party may assign as error the giving or the failure to give an instruction unless they object before the jury retires to consider its verdict, specifying the matter to which they object and the grounds of the objection. Upon request, reasonable time will be given to each party to object to the charge before the jury retires. Where either party wishes to object to the charge or to request

additional instructions, the objection or the request will be made out of the jury's hearing, or where appropriate, out of the jury's presence.

(h) Closing Arguments. After the judge reads the instructions to the jury, the prosecution and then the defense may make closing arguments. The prosecution may also make a rebuttal closing argument.

(i) Verdict or Judgment. Upon the conclusion of the case, the jury will deliberate. If the case is tried by a jury, a verdict will be rendered; if tried by a judge, a judgment will be rendered. (Res.)

**6.2.9. Disruptive Defendant.** (a) A judge may direct that a defendant be removed from the courtroom during trial if the defendant's behavior becomes so disruptive that the trial cannot proceed in an orderly manner. The judge will make findings on the record describing the disruptive behavior and explaining how the trial cannot proceed in an orderly manner. At the defendant's request, the judge will instruct the jury not to consider the defendant's removal and absence.

(b) If a defendant in custody refuses to be brought into the courtroom or requests to be absent from the courtroom, the trial may proceed without the defendant's presence, in the judge's discretion.

(c) If the defendant's prior actions provide a substantial basis for the judge to believe that the defendant's behavior will be so disruptive that the trial cannot proceed in an orderly manner, the judge may request an assurance of good behavior from the defendant. If the defendant declines to provide an assurance of good behavior, the trial may proceed without the defendant's presence, in the judge's discretion.

(d) At the defendant's request, the judge will instruct the jury not to consider the defendant's absence.

(e) A defendant absent from trial under this rule will be advised that the defendant will be admitted to the courtroom upon request and assurances of good behavior. The judge must periodically inquire of the defendant, outside the presence of the jury, whether the defendant wishes to be admitted to the courtroom and is willing to provide assurances of good behavior. The defendant must be provided with the means to contemporaneously hear and, whenever possible, view the proceedings remotely. (Res.)

**6.2.10. Burden of Proof.** A defendant in a criminal action is presumed to be innocent until the contrary is proved. A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the defendant committed every element of the crime alleged. (Res.)

**6.2.11. Motion for a Finding of Not Guilty.** (a) The Court on its own motion or the motion of a defendant will enter a finding of not guilty of the offense charged in a

complaint or any part thereof after the evidence on either side is closed if the evidence is insufficient as a matter of law to sustain a conviction on the charge. If a defendant's motion for a finding of not guilty is made at the close of the Tribe's evidence, it will be ruled upon at that time. If the motion is denied or allowed only in part by the judge, the defendant may offer evidence in the defendant's defense without having reserved that right.

(b) If a motion for a finding of not guilty is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury, and decide the motion before the jury returns a verdict, after the jury returns a verdict of guilty, or after the jury is discharged without having returned a verdict.

(c) If the motion is denied and the case is submitted to the jury, the motion may be renewed within five (5) days after the jury is discharged and may include in the alternative a motion for a new trial. If a verdict of guilty is returned, the Court may on motion set aside the verdict and order a new trial, or order the entry of a finding of not guilty, or order the entry of a finding of guilty of any offense included in the offense charged in the complaint.

(d) The Tribe has the right to appeal a decision of the Court granting a motion for a finding of not guilty after the jury has returned a verdict of guilty. A successful appeal on the Tribe's part does not violate any rights of the defendant or defendants.

**6.2.12. Lesser Included Offenses.** (a) In all cases, the defendant may be found guilty of any crime the commission of which is necessarily included in that with which the defendant is charged in the accusatory instrument or of an attempt to commit such crime.

(b) Upon a charge for a crime consisting of different degrees, the jury may find the defendant not guilty of the degree charged in the accusatory instrument and guilty of any degree inferior thereto or of an attempt to commit the crime or any such inferior degree thereof.

(c) The jury will first consider the charged offense. Only if the jury finds the defendant not guilty of the charged offense may the jury consider a lesser included offense. If there is more than one lesser included offense, the jury may consider the lesser included offenses in order of seriousness. The jury may consider a less serious lesser included offense only after finding the defendant not guilty of any more serious lesser included offenses.

(d) If the jury is unable to reach a decision on the original charge, the Tribe and defendant may stipulate that the jury may consider any lesser included offense. (Res.)

**6.2.13. Confessions.** A confession alone is insufficient to warrant a defendant's conviction without some other proof that the crime has been committed unless the Court

finds that there are sufficient indicia-indicators to establish the confession's trustworthiness. (Res.)

6.2.14. Witnesses. (a) For the attendance of a witness, the parties may issue subpoenas under their own signature directing the witness to appear at the specified date, time, and location of trial; provided, however, that copies of those subpoenas and their return of service be filed with the Court.

(b) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The Court on motion may quash or modify the subpoena if compliance would be unreasonable or oppressive or if the subpoena is being used to subvert the discovery rules of this title. The Court may direct that books, papers, documents, or objects designated in the subpoena be produced before the Court within a reasonable time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, objects, or portions thereof to be inspected and copied by the parties and their attorneys if authorized by law.

(c) A subpoena may be served by any person authorized to serve a subpoena in a civil action or to serve criminal process. A subpoena may be served upon a witness by delivering a copy to the witness personally, by leaving it at the witness' dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it to the witness' last known address.

(d) If a person served with a subpoena pursuant to this rule fails to appear at the time and place specified therein and the Court determines that such person did receive actual notice to appear, a warrant may issue to bring that person before the Court. (Res.)

6.2.15. New Trial. (a) The Court may grant a new trial upon its own motion or motion of the defendant, with or without a hearing, if it finds that any substantial right of the defendant was materially infringed by any of the following causes:

(1) Receipt or use by the jury of any evidence, paper, document, or book not entered in evidence or contained in testimony at the trial.

(2) Misconduct by the prosecution or the jury.

(3) Disobedience of any order or instruction given by the Court to the jury or any juror.

(4) Newly discovered evidence which the defendant could not have discovered by reasonable diligence in time for introduction at the trial.

(5) Accident or surprise.

(6) Procedural irregularity or abuse of discretion.

(7) Verdict contrary to law or evidence.

(b) If the motion is based on matters outside the record, such matters **must** be shown by affidavit.

(c) A defendant must file a motion for a new trial within **twenty (20)** days of a guilty verdict or judgment. **(Res.)**

**6.2.16. Jury Verdict.** After the charge, the jury will retire to determine a verdict. The jury must render a verdict on every allegation in the complaint. The verdict of the jury or the judgment will be rendered in open court. After the **jury's** verdict has been announced to the judge, **the judge will** discharge the jury. (Res. 88-048 (part), passed July 11, 1988; **amended and renumbered by Res.**)

**6.2.17. Acquittal.** If the Court finds for the defendant or the jury brings in a verdict of not guilty on all counts of the complaint, **the Court will announce** a judgment of acquittal. **The clerk will enter the judgment** in the official records along with the names of the jurors in the case, and the defendant **will** be immediately discharged. (Prior code Ch. III, Art. III, §3; **amended and renumbered by Res.**)

**6.2.18. Conviction or Acquittal of One or More Defendants.** In a complaint against joined defendants, any one or more may be convicted or acquitted. **(Res.)**

~~Directed Verdict.~~ At any time after the close of the evidence, the Court may direct a verdict of acquittal. (Prior code Ch. III, Art. III, §1)

~~**6.2.2. Jury Verdict.** After the charge, the jury shall retire to determine a verdict. The jury must render a verdict on every allegation in the complaint. After the verdict of the jury has been announced to the judge, he or she shall discharge the jury. (Res. 88-048 (part), passed July 11, 1988)~~

~~**6.2.3. Acquittal.** If the Court finds for the defendant or the jury brings in a verdict of not guilty on all counts of the complaint, a judgment of acquittal shall be announced by the Court and entered in the official records by the clerk, along with the names of the jurors in the case, and the defendant shall be immediately discharged. (Prior code Ch. III, Art. III, §3)~~