

## **Title 15**

### **CRIMINAL ACTIONS**

#### **Chapters:**

- 15.01 Jurisdiction**
- 15.02 Starting the Criminal Process**
- 15.03 Searches**
- 15.04 Bail**
- 15.05 Arraignment**
- 15.06 Trial**
- 15.07 Sentencing**
- 15.08 Habeas Corpus**
- 15.09 Codification**

#### **Chapter 15.01**

##### **Jurisdiction**

#### **Sections:**

- 15.01.01 Concurrent Prosecution**
- 15.01.02 Extradition**

##### **Section 15.01.01 Concurrent Prosecution**

Any person charged with an offense for which they may be concurrently prosecuted under the laws of the Jamestown S'Klallam Tribe and another jurisdiction, may be prosecuted under applicable law in the Tribal Court whether or not the other jurisdiction prosecutes the person.

##### **Section 15.01.02 Extradition**

A. Authority of the Tribal Council - Whenever the Jamestown S'Klallam Tribal Council receives a written request from the proper authorities of another Indian Tribe, the Federal Government, or any other state or local governments for the extradition of a person found within the exterior boundaries of the Jamestown S'Klallam Reservation who is charged with having committed a crime within the requesting jurisdiction, and who is using the reservation as an asylum from prosecution, the Jamestown S'Klallam Tribal Council may, in its discretion, have said person arrested and delivered up to proper authorities of the requesting jurisdiction;

B. Request for Extradition, Requirements - No request for extradition of a person charged with a crime in another jurisdiction shall be recognized by the Tribal Council unless it is in writing and accompanied by a valid warrant or proof thereof;

C. Investigation of Request - When a request is made to the Tribal Council by the proper authorities of another jurisdiction to surrender a person charged with a crime in said other jurisdiction, the Tribal Council

may request that a Tribal enforcement officer assist them in investigating the request and report to them the circumstances of the person so charged and whether they ought to be surrendered;

D. Warrant of Arrest - If the Tribal Council decides that the request should be complied with, they shall present the request and accompanying warrant to a Judge of the Tribal Court who shall sign a warrant of arrest directed to a Tribal enforcement officer and authorizing them to apprehend the person named in the warrant;

E. Rights of Person Arrested, Hearing - When said person is apprehended, the arresting officer shall so notify the authorities of the requesting jurisdiction and shall take them forthwith before a judge of the Tribal Court. The judge shall inform the arrested person of the request made for their surrender and of the crime with which they are charged. The judge shall also inform the person that they have the right to legal counsel at their own expense and the right to test the legality of their arrest. If the arrested person or their counsel says that they desire to test the legality of the arrest, the judge shall allow the person a reasonable time within which to apply for a writ of Habeas Corpus and shall set a date for a hearing on said writ;

F. Warrant to Deliver - If from the hearing it appears that the person held is the person charged with having committed the alleged crime in the other jurisdiction, and that they are using the Reservation as an asylum from prosecution, the judge shall issue a warrant directing a Tribal enforcement officer to deliver said person to the duly authorized agent of the requesting jurisdiction at the Reservation border;

G. Confinement of Prisoner - If the person arrested does not request a hearing, they may be detained in the Tribal or contract jail for a period not to exceed twenty-four (24) hours from the time of apprehension. A person requesting a hearing shall be deemed to have waived the twenty-four (24) hour limit and may be held in jail for a reasonable time pending the hearing. Bail shall be set at such a sum as the judge deems proper and shall be conditioned on the person's appearance in the Tribal Court at a specified time;

H. Discharge from Custody, New Warrant Required - Provided there is no request for a hearing to oppose extradition, if the authority which issued the warrant does not take custody of the person arrested within twenty-four (24) hours after their apprehension by the Jamestown S'Klallam enforcement officers, the arrested person shall be discharged from custody. In such a case, the Tribal Court shall not honor the same warrant for the same person, but shall require a new warrant to be issued by the requesting jurisdiction and shall require the issuing authority's representative to accompany the Jamestown S'Klallam enforcement officer to apprehend the person and take immediate custody after apprehension by the Jamestown officer;

I. Extradition from Other Jurisdiction to Reservation - The Jamestown S'Klallam Tribal Council may request the proper authorities of the Federal, other state, or local governments to deliver to the custody of the Jamestown S'Klallam Tribe any person subject to the jurisdiction of said Tribe who is charged with having committed a crime within the jurisdiction of the Jamestown S'Klallam Tribe and has fled into such other jurisdiction to avoid prosecution.

## **Chapter 15.02**

### **Starting the Criminal Process**

#### **Sections:**

- 15.02.01 Complaints**
- 15.02.02 Limitation on Filing Complaints**
- 15.02.03 Citation as Complaint**
- 15.02.04 Citation, Contents**
- 15.02.05 Citation in Lieu of Detention**
- 15.02.06 Amending Complaints and Citations**
- 15.02.07 Arrest Warrants**

## **15.02.08 Arrest Without a Warrant**

### **Section 15.02.01 Complaints**

Prosecution for violating the criminal laws of the Jamestown S'Klallam Tribe shall be initiated by written complaint. The complaint shall state the essential facts constituting the offense charged and must be filed in the Tribal Court. A valid complaint must bear the signature of the person authorized to represent the Tribe, or the signature of a complaining witness. The signature must be witnessed by a judge, judicial officer, court clerk, Tribal officer, or notary public.

### **Section 15.02.02 Limitation on Filing Complaints**

No complaint shall be filed charging the commission of a Tribal offense after one (1) year from the date the commission of an offense is discovered. If a complaint has been filed within the one (1) year period, there shall be no time limitation on further proceedings, except a defendant's right to a speedy trial shall not be abridged. The time shall not run during the person's absence from the Reservation. It is the intent of the Tribal Council that the term "speedy trial" shall mean the right of a defendant to have the trial process commence within a reasonable time after a complaint is filed, such reasonableness to be measured by whether the defendant has been injured by any delay.

### **Section 15.02.03 Citation as Complaint**

A citation, conforming to the requirements of this chapter, shall be deemed to be a summons and complaint for the purpose of initiating a criminal prosecution. If a defendant fails to appear as directed by the citation, the judge shall issue an arrest warrant and order any bail deposited by the defendant to be forfeited.

### **Section 15.02.04 Citation, Contents**

A citation shall be deemed a summons and complaint under this chapter if it contains:

- A. The name, address, date of birth, sex, and driver's license number of the accused;
- B. The general location where the offense was committed;
- C. The name and number of the law allegedly violated;
- D. A brief statement of the specific acts or omissions complained of;
- E. The victim's name, if known;
- F. The date and approximate time the offense was committed;
- G. The date and approximate time the citation was issued;
- H. The name of the citing officer;
- I. A space for the person to sign a promise to appear; and
- J. The time and place for the person to appear for arraignment.

### **Section 15.02.05 Citation in Lieu of Detention**

A citation may be issued by a Tribal enforcement officer in lieu of keeping the person in custody or requiring a bail or bond if the alleged offense was 1) committed in their presence; or 2) if not committed in their presence, but the officer has probable cause to believe an offense was committed by the person charged. A copy of the citation shall be filed immediately with the Tribal Court. In determining whether to issue a citation in lieu of detention, the officer may consider:

- A. Whether the person has identified them-self satisfactorily;
- B. Whether detention is necessary to prevent harm to them-self, to others, to property or to prevent a breach of peace;
- C. Whether the person has ties to the community sufficient to provide reasonable assurance they will appear before Tribal Court;
- D. Whether the person has previously failed to appear before the Court in response to a citation; and
- E. Whether the Tribal enforcement officer has reason to believe that there is a substantial likelihood that the person will not respond to the citation.

#### **Section 15.02.06 Amending Complaints and Citations**

A complaint and summons or citation may be amended by the Court, Tribal Enforcement Officers, or Tribal Prosecutor provided that no substantial right of the accused is breached. Any amendments shall be filed with the Court and promptly served on the Defendant.

#### **Section 15.02.07 Arrest Warrants**

Every judge of the Tribal Court shall have the authority to issue arrest warrants when:

- A. A written complaint has been filed bearing the signature of a complaining witness; and
- B. There is probable cause to believe that an offense has been committed and that the defendant has committed it.

No more than one (1) warrant may be issued on the same complaint. No arrest warrant shall be valid unless it bears the signature of a judge of the Tribal Court. The warrant shall be executed by a Tribal enforcement officer or police officer of the United States or the Bureau of Indian Affairs.

#### **Section 15.02.08 Arrest Without a Warrant**

An enforcement officer shall arrest a person without a warrant only when:

- A. The offense occurs in the presence of the arresting officer and there has been a breach of peace.

## **Chapter 15.03**

### **Searches**

#### **Sections:**

**15.03.01 Authority to Issue Search Warrants**

**15.03.02 Property Which May Be Seized**

**15.03.03 Search Warrants, Contents and Issue**

#### **15.03.04 Search Without a Warrant**

##### **Section 15.03.01 Authority to Issue Search Warrants**

A warrant for search and seizure may be issued by any judge of the Tribal Court upon request of a Tribal enforcement officer or Tribal prosecutor.

##### **Section 15.03.02 Property Which May Be Seized**

A warrant may be issued to search for and seize any evidence of a crime, contraband, or weapons used in the commission of a crime.

##### **Section 15.03.03 Search Warrants, Contents and Issue**

A warrant may only be issued on an affidavit containing reliable facts which establishes probable cause to believe that seizable evidence will be found on the person or premises described in the affidavit. The warrant shall be directed toward the Tribal officer and shall command the officer to conduct the search within the time specified in the warrant.

##### **Section 15.03.04 Search Without a Warrant**

No enforcement officer shall search or seize any property without a warrant unless:

- A. They know or have probable cause to believe that the person is engaged in the commission of an offense;
- B. The search is made incident to a lawful arrest;
- C. Emergency circumstances exist, such as a situation where evidence might be destroyed or removed;
- D. Objects seized are in the officer's plain view; or
- E. The person(s) consents to the search.

## **Chapter 15.04**

### **Bail**

#### **Sections:**

**15.04.01 Bail and Bail Bonds, Generally**

**15.04.02 Personal Recognizance**

**15.04.03 Bail Where No Schedule Exists**

#### **Section 15.04.01 Bail and Bail Bonds, Generally**

Every person charged with an offense before the Tribal Court is entitled to bail. Bail shall be posted by cash deposit or by the signed agreement of two (2) reliable persons that they are willing and able to pay the bail if the defendant fails to appear. The case or bond agreement shall be signed in the presence of any bonded employee authorized by the Tribal Council to accept bail. All such bonds shall be filed promptly with the Clerk of the Court.

### **Section 15.04.02 Personal Recognizance**

A person charged with an offense may be released on their personal recognizance in lieu of bail, in the Court's discretion. In determining whether to grant personal recognizance, the Court may consider those factors set forth in section 15.02.05 (A) - (D) and any other factors the Court considers relevant. The person must give their written promise to appear to secure their release.

### **Section 15.04.03 Bail Where No Schedule Exists**

When a person is arrested for an offense for which no bail has been specified, the person shall be brought before a judge so the judge may determine bail. Bail shall not exceed twice the maximum fine established for the offense. A person shall be brought before a judge for this purpose as soon as practicable but in no case shall a person be held without bail more than forty-eight (48) hours. The judge may establish a standard to be used where no specific bail has been set.

## **Chapter 15.05**

### **Arraignment**

#### **Sections:**

#### **15.05.01 Arraignment Procedure**

#### **15.05.02 Entering a Plea**

### **Section 15.05.01 Arraignment Procedure**

When the defendant is brought before the judge of the Tribal Court for arraignment, the complaint shall be read and explained to the defendant. The judge shall advise the defendant of their right to appear and defend against the charge, to have an attorney or spokesperson represent them at the arraignment and all subsequent judicial proceedings, that the person has the right to cross examine witnesses against them, that the person may remain silent and that any statements they do make may be used against them, that the person has the right to a trial by jury, and that they may have witnesses testify on their behalf.

### **Section 15.05.02 Entering a Plea**

The defendant shall be asked by the Court to enter a plea after the charges and defendant's rights have been read and the defendant has been given a reasonable opportunity to secure counsel if they wish to have counsel. The defendant may plead guilty or not guilty. The Court shall not accept a plea of guilty unless it determines that it is made voluntarily, and with an understanding of the nature of the charge and the consequences of the plea. The Court shall not enter a judgment on a plea of guilty unless it is satisfied that there is a factual basis for the plea. The Court shall allow a defendant to withdraw a guilty plea when necessary to prevent a manifest injustice.

## **Chapter 15.06**

### **Trial**

#### **Sections:**

#### **15.06.01 Time of Trial**

#### **15.06.02 Prosecution**

#### **15.06.03 Standard of Proof**

#### **15.06.04 Civil Rights**

#### **15.06.05 Trial Procedure**

### **15.06.06 Jury**

#### **Section 15.06.01 Time of Trial**

A case shall be set for trial within forty-five (45) days of arraignment unless continued for cause or at the defendant's request.

#### **Section 15.06.02 Prosecution**

The Tribe shall prosecute the charge by presenting evidence against the defendant. In prosecuting a case, the Tribe may be represented by a spokesperson of its choice.

#### **Section 15.06.03 Standard of Proof**

The Tribe must prove each element of the offense charged beyond a reasonable doubt.

#### **Section 15.06.04 Civil Rights**

All accused persons shall be guaranteed all civil rights secured by the "Indian Civil Rights Act," United States Code Title 25 Sections 1601 - 1606, as it may amended from time-to-time and as interpreted by the Tribal Court and federal courts.

#### **Section 15.06.05 Trial Procedure**

All applicable procedures in this Title will be followed in any criminal action. The following civil sections of this Code shall also apply in criminal actions: 20.06.04 Evidence; and 20.06.05 Applicable Law.

### **Section 15.06.06 Jury**

Request for a jury trial may be made by oral demand in open court or by filing a written demand with the Clerk of Court. In no case shall a request be made less than two (2) weeks before the trial date.

## **Chapter 15.07**

### **Sentencing**

#### **Sections:**

**15.07.01 Sentencing, Time**

**15.07.02 Sentencing, Imposition**

**15.07.03 Work in Lieu of Fine**

**15.07.04 Alternative to a Fine**

#### **Section 15.07.01 Sentencing, Time**

Upon a plea or finding of guilty, the Court may impose sentence at once or schedule sentencing for the next regularly scheduled court date.

#### **Section 15.07.02 Sentencing, Imposition**

The Court shall impose sentence on a defendant within the limits prescribed by this Title. The Court may suspend all or parts of the sentence on such conditions as to the Court seem just. The Court shall advise convicted defendants of their right to appeal upon pronouncing a guilty verdict.

#### **Section 15.07.03 Work in Lieu of Fine**

Any person sentenced for an offense by the Tribal Court may be ordered by the Court to perform community service work in lieu of any fines assessed. Such order shall issue only upon recommendation of the Tribe, through its spokesperson, to the Court. Each hour of community service shall reduce the fine by the amount of the federal minimum wage at the time of sentencing.

#### **Section 15.07.04 Alternative to a Fine**

If a person convicted of any crime under this Title has gained money or property or caused a victim to lose money or property or caused a victim to lose money or property through the commission of the crime, the court may order the defendant to pay an amount to the victim as restitution. In such a case, the court shall make the finding as to the amount of the defendant's gain or the victim's loss, based on a hearing if the evidence is not sufficient to determine the amount. The amount of restitution ordered by the Court shall be in lieu of the fine provided for the crime and shall not exceed double the amount of the defendant's gain or the victim's loss from the commission of the crime.

### **Chapter 15.08**

#### **Habeas Corpus**

##### **Sections:**

**15.08.01 Habeas Corpus, Grounds for Granting**

**15.08.02 Application for Writ of Habeas Corpus**

**15.08.03 Response**

**15.08.04 Briefs**

**15.08.05 Decision of the Court**

**15.08.06 Service of the Writ**

#### **Section 15.08.01 Habeas Corpus, Grounds for Granting**

Every person imprisoned or otherwise restrained of their liberty may petition for a writ of habeas corpus to inquire into the reasons for the imprisonment or restraint. If the reasons are found to be illegal, the detainee shall be released from custody by order of the Tribal Court.

#### **Section 15.08.02 Application for Writ of Habeas Corpus**

Application for the writ shall be made by a petition to the Tribal Court. It must be signed and verified under oath or affirmation by or on behalf of the person imprisoned or restrained. The petition shall include:

- A. The place of restraint or custody, the party imposing restraint or custody, the order or authority on which restraint or custody is based, any appeals from the order;
- B. A statement of the facts on which application for the writ is based, argument on why the restraint or custody is unlawful and why other remedies are inadequate; and
- C. A statement of the relief desired.

**Section 15.08.03 Response**

The respondent must file a petition responding to the application for a writ of habeas corpus and stating the authority for restraining the petitioner within ten (10) days after the application is served.

**Section 15.08.04 Briefs**

Briefs may be filed with the application and response at the time those documents are filed. Briefs are not mandatory unless ordered by the Tribal Court which may be done at any stage in the consideration of the application. Briefs must be accompanied by an affidavit of service on the other party.

**Section 15.08.05 Decision of the Court**

The Tribal Court will dismiss the case if the issues are found to be frivolous. If the issues are not frivolous, the Court shall decide the case on the basis of the record, if any, the brief and oral argument which may be ordered by the Court. The writ of habeas corpus shall be issued without delay after a favorable determination by the Court.

**Section 15.08.06 Service of the Writ**

The writ shall be directed to the person having custody of or restraining the applicant and shall command that person to have the applicant before the Tribal Court at the time, date, and place specified. The writ shall be served in the same manner as a summons.

**Chapter 15.09****Codification****Section 15.09.01 Date of Codification**

This title was codified at a Tribal Council meeting on November 8, 2005 with Resolution #38-05.