

TITLE 2: CRIMINAL ACTIONS

Chapter 1 Jurisdiction

§ 2.1.01 Jurisdiction - Generally

The Makah Tribal Court shall have jurisdiction over all offenses enumerated in this Code, or in other law and order ordinances that may be passed by the Tribal Council, when committed by any person within the Makah jurisdiction, as defined in this Code.

§ 2.1.02 Extradition

- (a) If a person is charged with a violation of the laws of any other tribe or reservation or the federal or a state government, the Tribal Court may order that such person be delivered up to the proper authorities, provided, that a copy of warrant or proof of its existence, is presented to a judge of the Makah Tribal Court, and that such appears to be in the best interest of justice.
- (b) On receipt of a valid warrant, the judge may issue a court order directed to the Chief of the Makah Reservation Police, instructing him that the person named shall be apprehended by a member of the reservation police and delivered over to the proper authority.
- (c) When such person is apprehended, it shall be the duty of the Chief of Police or the arresting officer to notify the proper authority of the apprehension of the subject, and the subject may be detained in the tribal jail for a period not to exceed 24 hours from the time of apprehension. If the lawful authority requesting the apprehension of the subject, after first being notified, does not take possession of the person within 24 hours, the Court shall not honor the same warrant for the person but shall require a new warrant to be presented and shall require the requesting authority's representative to accompany the tribal officer to apprehend the person on the warrant and take immediate custody over the apprehension by the Tribal officer.

CHAPTER 2

Criminal Procedure, Generally

§ 2.2.01 Complaints

Prosecution for violation of the Law and Order Code shall be by complaint. No complaint filed in the Tribal Court shall be valid unless it shall bear the signature of the plaintiff or complaining witness, witnessed by a duly qualified judge of the Tribal Court, the Court Clerk, reservation police officer or tribal police employee, provided, that citations issued pursuant to this Code shall satisfy this section.

§ 2.2.02 Limitation on Filing of Complaints

No complaint shall be filed charging the commission of any offense defined in this Code unless such offense shall have been committed within a one-year period prior to the date of the complaint, except as to a Class A offense for which the period of limitation shall be a two-year period. If the complaint has been filed within the limitation period, there shall be no time limitation on further proceedings in the prosecution of the complaint, including apprehension, arrest, trial and sentencing, except as provided for in this Code.

§ 2.2.03 Warrant to Apprehend

Every judge of the Tribal Court shall have the authority to issue warrants to apprehend, such warrants to issue upon a showing of probable cause only after a written complaint shall have been filed bearing the signature of the complaining witness. Service of such warrants shall be made by a duly qualified officer. No warrant to apprehend shall be valid unless it shall bear the signature of a judge of the Tribal Court.

§ 2.2.04 Arrests

No member of the police shall arrest any person for any offense defined by this Code or by federal law, except when such offense shall occur in the presence of the arresting officer or he shall have probable cause that the person arrested has committed an offense or the officer shall have a warrant commanding him to arrest such person. At the time of such arrest, such person shall be informed of his applicable civil rights secured under federal laws specifically made applicable to Tribal Courts.

§ 2.2.05 Search Warrants

Every judge of the Tribal Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court. However, no warrant of search and seizure shall be issued except upon presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation and charging the

commission of an offense against the Tribe. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be seized and bears the signature of a judge of the Tribal Court. Service of warrants of search and seizure shall be made by law enforcement officers.

§ 2.2.06 Search Without Warrant

No officer shall search or seize any premises, property or person without a search warrant unless he knows or has reasonable cause to believe that the person in possession of such property is engaged in the commission of an offense or such is done incident to a lawful arrest or under such other circumstances in which it would not be reasonable to require the obtaining of a warrant prior to the search.

**CHAPTER 3
Citations**

§ 2.3.01 Citation in Lieu of Detention

Whenever a person is arrested for a violation of this Code or any other resolution, ordinance or regulation of this Code or any other resolution, ordinance or regulation of the Makah Tribe, the arresting officer or any other authorized law enforcement officer in the field may serve upon such person a citation and notice to appear in court in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the enforcement officer may consider the following factors:

- (a) Whether the person has identified himself satisfactorily;
- (d) Whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property or breach of the peace;
- (e) Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Tribal Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and
- (f) Whether the person previously has failed to appear in response to a citation issued pursuant to this section or to other lawful processes of the Tribal Court.

§ 2.3.02 Citation In Lieu of Detention: Contents

- (a) The citation written to the offender by the officer shall include the name of the person, his address, the date of birth and sex, the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear.
- (b) To secure his release in the field, the person must give his written promise to appear in court as required by the citation.
- (c) The citation shall also state the time and place at which a person is to appear in Tribal Court to hear the charges against him, be arraigned and post bail, which shall not be less than 72 hours after the date of the citation, not more than 15 days after the date of the citation.

§ 2.3.03 Citation in Lieu of Detention: Effect, Procedure

- (d) The citation, when completed by the officer, shall serve as the complaint for the purposes of prosecution in Tribal Court.
- (e) If a defendant fails to appear for arraignment, the Judge may issue a warrant of arrest, and the defendant may be charged with an offense.

**CHAPTER 4
Arraignments and Pleas; Trial Dates**

§ 2.4.01 Arraignment

As soon as reasonably possible after arrest, but not more than 36 hours thereafter, or within the period designated on the citation in lieu of detention, the defendant shall appear or be brought before a Tribal Court Judge and the defendant shall again be informed of his rights under the Tribal Constitution and under federal law, including his right to counsel at his own expense. If the defendant desires, but does not presently have a spokesman, he will be given a reasonable time to secure such spokesman before entering his plea.

§ 2.4.02 Reading of Complaint and Defendant's Plea

When the defendant is brought before the judge, the complaint shall be read and explained to the defendant, and he shall plead guilty or not guilty. If the defendant refuses to plead, the judge shall enter the fact and a plea of "not guilty" on his behalf. The judge shall

cause the defendant to be informed of the charge against him and the defendant's right to appear and defend the charge either in person or with a spokesman. The defendant shall be provided with a copy of the complaint if he has not before received one.

§ 2.4.03 Time of Trial

- (a) When the defendant is brought before the judge after arrest and detention, the case shall be set for trial within a reasonable time; unless continued for good cause. Bail shall then be set in accordance with Chapter 5, below.
- (b) When the defendant is summoned before the judge pursuant to a citation in lieu of detention as provided herein, the defendant shall appear on the date indicated on the citation to hear the charges against him, be arraigned, post bail as provided in Chapter 5 herein, enter a plea, and be assigned a trial date. Trial shall be set within a reasonable time, unless continued for good cause.
- (c) A defendant may post bail, enter a plea, and request a trial date prior to the return date on the citation if the defendant so desires, provided, that bail or other bond satisfactory to the Court is posted. A trial date shall be set within a reasonable time after the return date on the citation unless continued for cause or at the request of the defendant.

§ 2.4.04 Sentencing

Upon a plea of guilty, the judge may impose sentence in accordance with section 2.7.07 at once or at a later date not to exceed thirty (30) days at his discretion.

§ 2.4.05 Informal Dispute Resolution

At an arraignment or on the return date of a citation, if it appears that the alleged offense arises from or is caused by a dispute as to which the Court finds that informal dispute resolution would be in the best interests of the Tribe, the alleged offender, and the complaining witness, the Tribal Court may continue the arraignment or trial setting procedure for a period not to exceed thirty (30) days to allow an opportunity for informal resolution of the dispute, unless the informal dispute resolution process is not applicable to such matter as set forth below. The Court may order a conciliation conference, an informal hearing, or some other form of conciliation counseling in an attempt to resolve the dispute. If, at the end of the thirty (30) day period, there has not been an amicable resolution of the underlying dispute to the satisfaction of the Court, the continued arraignment or trial setting procedure shall be reset for a date within ten (10) days following the Court's determination that the informal resolution cannot be accomplished, provided that the Court may extend such thirty (30) day period for an additional thirty (30) days if the Court determines that such extension would be in the best interests of all parties.

If the Court determines that the dispute has been resolved to the satisfaction of the Court, the Court may dismiss any charges brought against the alleged offender or the Court may order deferred prosecution in accordance with the provisions of this Code. The decision of the Court to refer a matter to informal dispute resolution, to extend the informal resolution period, to proceed with a criminal prosecution, or to dismiss or conditionally defer prosecution shall be final and shall not be appealable. No statement of any person made during an informal dispute resolution process or proceeding under this section may be admitted into evidence at any proceeding against such person under this Code.

This informal dispute resolution process shall not be utilized in any matter in which: (a) the complaining party and the defendant have not agreed in writing to submission of such matter to such process, or (b) the alleged offender has, within the six (6) month period preceding the date of the alleged offense, been convicted of a similar offense under this Code, provided that the provisions of this subsection (b) shall not include past Class C traffic offenses.

CHAPTER 5

Bail, Bonds and Fines

§ 2.5.01 Bail and Bonds – Generally

Except as provided herein, every person charged with any offense before the Tribal Court may be admitted to bail. Bail shall be by cash deposit or by assurance of two reliable members of the community resident within the boundaries of the Reservation who shall execute an agreement in compliance with the form provided therefor to the effect that they will pay any bail forfeited. In no case shall the bail specified in the agreement exceed twice the maximum fine set by the section of this Code for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the Court Clerk, or any bonded employee authorized by the Tribal Council to accept bail. All such bonds shall be promptly filed with the Clerk of the Court.

§ 2.5.02 Bail: Personal Recognizance

In lieu of bail, a person charged with any offense may be released on his personal recognizance (PR) without posting bail or bond, pursuant to the discretion of the Court. In determining whether to grant PR, the Court may consider the following factors:

- (a) Whether the person has identified himself satisfactorily;
- (b) Whether detention appears necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of the peace;

- (c) Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before a Tribal Court, or whether there is substantial likelihood that he will refuse to appear for trial; and
- (d) In any case, to secure his release, the person must give his written promise to appear in Court as required by this citation.

§ 2.5.03 Bail Schedule

The Chief Judge may establish a bail schedule for all offenses under this Code and any other regulations, resolutions or ordinances promulgated by the Makah Tribal Council. Any person arrested and taken into custody for violation of such Code or regulations may be released before arraignment upon posting the specified bail with the Clerk or other person authorized by the Court to receive bail, unless release on personal recognizance or detention is ordered by the Court. As a condition to any release under this section, such person shall sign a written promise to appear in court at the time set for arraignment. Failure to appear may result in forfeiture of bail and arrest.

§ 2.5.04 Denial of Bail, Detention

The Court may deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Reservation, or its residents if released or if there is a substantial likelihood that the person will not appear for trial.

§ 2.5.05 Fine Schedule

The Chief Judge may also establish a schedule for fines for specified violations of this Code or any other resolutions, ordinances or regulations of the Makah Tribe within the limits prescribed by this Code and the section establishing the offense.

§ 2.5.06 Payment of Fine Without Trial

The Court in its discretion may allow the payment of a fine without trial. A fine may be paid by the defendant advising the Court, either in person, by telephone or in writing that he is willing to enter a guilty plea and pay the stated fine. In such cases, no court appearance shall be required, provided, the fine must be paid prior to the date set for the defendant's trial.

CHAPTER 6

Traffic Violations

§ 2.6.01 Traffic Citation

Whenever a person is arrested for a violation which would be a Class C offense under the Traffic Code Title of this Code, the arresting officer, or any other authorized law enforcement officer, may serve upon the arrested person a traffic citation and notice to appear in court, in lieu of keeping the person in custody or requiring bail or bond. The citation shall include the name of the person, his address, the date of birth and sex, the date, time and place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person to sign a promise to appear. To secure his release, the person must give his written promise to appear in court as required by the citation. The citation shall also state the time and place by which the person is to (a) contact the Tribal Court to plead not guilty and receive a trial date, or (b) plead guilty and pay the fine as set forth below, or (c) plead guilty with an explanation and receive a hearing date.

§ 2.6.02 Effect and Procedure

- (a) The citation, when completed by the officer, shall serve as the complaint for the purposes of prosecution in Tribal Court.
- (b) Prior to the date established in the citation, the defendant shall have the opportunity to (1) plead guilty and pay, at such time the fine established pursuant to section 2.5.05 above, in which event, no further court appearance shall be required, provided, that such fine has been paid within the time period set forth above, or (2) plead guilty with an explanation and request a date for a hearing regarding reduction of the fine. In the event of such payment, no further court appearance shall be required, provided, that such fine has been paid within the time period set forth above.
- (c) If the defendant wishes to plead not guilty, the defendant shall, within the time period set forth in the citation, contact the Tribal Court, at which time a trial date shall be set.
- (d) If the defendant fails to pay the fine or to appear for the setting of a trial date or fine reduction hearing date within the requisite time period, the defendant may be charged with an offense and an arraignment date shall be set for the original traffic offense.
- (e) No bail shall be required for the procedure established under this Chapter.

CHAPTER 7 Trial Procedure

§2.7.01 Prosecution

The Tribe shall prosecute the charge by presenting the evidence against the defendant by the testimony of the law enforcement officer and any other witnesses called to support the charge, and in presenting such evidence, the Tribe may make use of either a Tribal official or a professional attorney approved as a spokesman pursuant to this Code.

§ 2.7.02 Evidence

The Court shall not be bound by common law rules of evidence, but shall use its own discretion as to what evidence it deems necessary and relevant to the charge and the defense.

§ 2.7.03 Standard of Proof

The Court shall require the charge to be proved beyond a reasonable doubt. The defendant shall be afforded a full opportunity to present his defense.

§ 2.7.04 Trial by Court

In a case tried without a jury, the Judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which shall be embodied in a written decision.

§ 2.7.05 Jury

Any person accused of an offense punishable by imprisonment may demand a jury trial. Such demand shall be made by filing a written demand with the Clerk. In any case, such jury demand must be made by the time that the demand for trial is made or the right to trial by jury shall be deemed waived. The jury trial shall be set within a reasonable time after the defendant's jury demand, unless continued for good cause. The verdict of the jury shall be unanimous and shall be returned by the jury to the judge in open court.

§ 2.7.06 Lesser Offenses

The defendant may be found guilty of a lesser offense, necessarily included within the offense charged without the necessity of having been formally charged with such lesser offense.

§2.7.07 Sentencing

A sentence shall be imposed at once or, in the discretion of the judge, at a later date not to exceed thirty (30) days from the day of judgment. The judge may suspend all or any part of the fine or sentence imposed by him upon any person found guilty of violating any of the provisions of this Code. The Court may defer all or any portion of a sentence or fine on such terms and conditions as the Court may determine, including the requirement of a reimposition of such sentence or fine in the event of violation of such terms or conditions. Pending sentence, the Court may commit the defendant to jail or continue the bail. Before imposing sentence, the Court shall allow a spokesman and/or the defendant to speak on behalf of the defendant and to present any information which would help the Court in setting the punishment.

§ 2.7.08 Court Costs

The Court may assess the accruing costs of the case against the defendant if the defendant is found guilty. Such costs shall consist of the expenses of voluntary witnesses, the fees of jurors, and any further incidental expenses or fees connected with the procedure required by this Code before the Court as the Court may direct.

§ 2.7.09 Other Procedures

All additional procedures as set out in this Code will be followed in any criminal action to the extent they are applicable.

§ 2.7.10 Civil Rights

All accused persons shall be guaranteed all civil rights secured under the Tribal Constitution and under federal laws specifically made applicable to Tribal Courts.

**CHAPTER 8
Deferred Prosecution**

§ 2.8.01 Request

Upon arraignment in Tribal Court, a person charged with an offense may request the Court to consider a deferred prosecution program. The request shall allege that the wrongful conduct charged is the result of or caused by alcohol problems, drug problems, or mental problems for which the person is in need of treatment. The request shall also include a case history of the person supporting the allegations.

§ 2.8.02 Arraignment Continued - Referral to Treatment Facility

The arraigning judge on consideration of the request may continue the arraignment to refer such person for a diagnostic evaluation to an alcohol, drug, or mental health program, as indicated. Such program shall conduct an investigation and examination to determine whether the person suffers from the problem alleged, whether the problem is such that if not treated there is a probability that similar misconduct will occur in the future, whether extensive and long term treatment is required, and whether effective treatment for the person's problem is available. The program shall make a written report to the Tribal Court stating its findings and recommendations and, if the findings and recommendations support treatment, including a treatment plan setting out the type, nature, length, and treatment time schedule. This report shall be filed with the Tribal Court and a copy given to the defendant.

§ 2.8.03 Review of Plan by Court

If the report recommends treatment, the Court shall examine the plan. If the Court approves the plan and the defendant agrees to comply with its terms and conditions, the Court shall note on the Court docket that the person has been accepted for deferred prosecution. If treatment is either not recommended or not approved by the Tribal Court judge, or the defendant declines to accept the treatment plan, the defendant shall be arraigned on the charge. Evidence pertaining to or resulting from the request or the investigation is inadmissible at trial but may be available for use after a conviction in determining a sentence.

§ 2.8.04 Procedure Upon Breach of Treatment Plan

If a defendant who has been accepted for deferred prosecution fails or neglects to carry out and fulfill any term or condition of the treatment plan, the program shall immediately report such breach to the Court. The Court shall then hold a hearing to determine whether the defendant should be removed from the deferred prosecution program. At the hearing, evidence shall be taken of the defendant's alleged failure to comply with the treatment plan and the defendant shall have the right to present evidence on his own behalf. The Court shall either order that the defendant continue in the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the defendant shall be arraigned on the original charge. Delay in bringing a case to trial caused by a defendant requesting deferred prosecution shall not be grounds for dismissal.

§ 2.8.05 Conviction of Similar Offense

If a defendant is convicted in any court of an offense similar and committed subsequent to the one for which the defendant is in a deferred prosecution program, the Court shall, upon notice of such conviction, terminate the deferred prosecution and require the defendant to enter a plea to the original charge.

§ 2.8.06 Dismissal of Charges

Two years from the date of the Court's approval of deferred prosecution for a defendant, if the deferred prosecution has not been terminated as provided for above, the Court shall dismiss the charges and remove from the Court records any indication of the charge.

**CHAPTER 9
Habeas Corpus**

§ 2.9.01 Who May Prosecute Writ

Every person imprisoned or otherwise restrained of his liberty on the Reservation may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom.

§ 2.9.02 Writ for Purpose of Bail

When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

§ 2.9.03 Application For - How Made

Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

- (a) That the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty, why the imprisonment or restraint is unlawful, the officer or person by whom he is so confined or restrained, and the place where, naming all parties if they are known, or describing them if they are not known.
- (b) The petition must be verified by the oath or affirmation of the party making the application.

§ 2.9.04 Content of Writ

When the Chief Judge is satisfied that the writ ought to be issued, it must be issued without delay.

- (a) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command him to have the body of such person before the Tribal Court at a time and place therein specified.
- (b) The issue or issues to be determined upon return of the writ may be stated, either in the writ or in an order attached to the writ or in a copy of the petition attached to the writ.

§ 2.9.05 Service of the Writ

The writ must be served upon the person to whom it is directed and must be served in the same manner as a summons.

§ 2.9.06 Return, What to Contain

The person upon whom the writ is served must make a return to the Court and state in the return:

- (a) Whether he has the party in his custody or under his power or restraint and the authority for so holding the person.
- (b) If he had the party in his custody or under his power or restraint, the return must state particularly to whom, at what time and place, for what cause, and by what authority custody was released.
- (c) The return must be signed by the person making the same, and except when such person is a sworn public official and makes such return in his official capacity, it must be verified by his oath.

§ 2.9.07 Hearing on Return

- (a) The detained person shall be brought before the Court by the person commanded by the writ when possible.
- (b) The hearing must be held on the day set and may be summary in nature.
- (c) Evidence may be produced and compelled as in civil actions.

§ 2.9.08 Judgment

- (a) If the detained person is in official custody, he may not be released on a writ of habeas corpus for any technical defect in commitment not affecting his substantial rights.
- (b) Following the hearing, the Chief Judge shall make such judgment regarding the custody of the detained person as the facts and circumstances warrant and such order shall be effective immediately.