

CHAPTER 2-1 RULES OF CRIMINAL PROCEDURE

GENERAL PROVISIONS

Rule 1 Definitions

- A. "Criminal action" means the proceedings by which a party charged with a public offense is accused and brought to trial and punishment, potentially including imprisonment, is imposed.
- B. "Probable cause" exists under this chapter when an officer or the Tribal Court has substantial objective basis for believing that a person has committed an offense. In determining whether probable cause exists, the officer or tribal judge may take into account all information which a prudent officer or judge would deem relevant to the likelihood that an offense has been committed and that the person charged has committed it.

Rule 2 Legal Conviction Necessary for Punishment

No person can be punished for an offense except upon a legal conviction, including a plea or admission of guilt in open court. No incarceration or other disposition of one accused of an offense prior to trial in accordance with these rules shall be deemed a punishment.

Rule 3 Rights of Defendant

- A. In a criminal action the defendant is entitled:
1. to a speedy and public trial;
 2. to be informed of the nature of the charges against him and to have a written copy of the charges;
 3. to appear and defend in person or by an attorney at the defendant's expense;
 4. to not be twice placed in jeopardy for the same offense by the Nez Perce Tribe;
 5. to not be compelled in a criminal action to be a witness against himself;
 6. to confront and cross examine all witnesses against him;
 7. to be subjected before conviction to no more restraint than is necessary to insure his appearance to answer the charge and/or to protect the public;
 8. to compel by subpoena the attendance of witnesses in his own behalf;
 9. to a trial by jury unless expressly waived;
 10. to appeal in all cases.

Rule 3 a. Right to a Speedy Trial (Section approved by NPTEC 1/27/15)

- A. Right of person in custody. Every person in custody for an alleged offense charged by the Nez Perce Tribal Prosecutor shall be tried by the Nez Perce Tribal Court within 180 days from the date he or she was arraigned following the filing of a complaint in the Tribal Court by the Prosecutor, unless delay is occasioned by the defendant, by an examination for fitness ordered by the Tribal Court, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed after the Court's determination of the defendant's physical incapacity for trial, or by an interlocutory appeal.
- B. Demand for trial. Delay shall be considered to be agreed to by the defendant unless he or she objects to the delay by making a written demand for trial or an oral demand for trial on the record. The provisions of this subsection do not apply to a person on bail or recognizance for an offense but who is in custody for a violation of his or her probation.
- C. Computing term for incarcerated persons. The 180-day term in (A) above must be one continuous period of incarceration. In computing the 180-day term, separate periods of incarceration may not be combined. For a defendant released from incarceration who is subsequently taken into custody for a violation of the conditions of release, the term will begin again at day zero.
- D. Right of person not in custody. Every person on bail or recognizance shall be tried by Tribal Court within 220 days from the date of arraignment unless delay is occasioned by the defendant, by an examination for fitness ordered by the Court, by a fitness hearing, by an adjudication of unfitness to stand trial, by a continuance allowed after the Court's determination of the defendant's incapacity for trial, or by an interlocutory appeal. The defendant's failure to appear for any court date set by the court operates to waive the defendant's right to speedy trial unless the court determines that the failure to appear was unavoidable.
- E. Computing term for persons released from custody. Every person who was in custody for an alleged offense and is subsequently released on bail or recognizance, shall be given credit for time spent in custody following the making of the demand while in custody and trial shall be held within 220 days of the person's arraignment.
- F. Continuing the term. If the Court determines that the Tribe has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the Court may continue the case on application of the Tribe for not more than an additional 60 days. If the court determines that the Tribe has exercised without success due diligence to obtain results of DNA testing that is material to the case and that there are reasonable grounds to believe that such results may be obtained at a later day, the Court may continue the cause on application of the Tribe for not more than an additional 120 days.
- G. Discharge or release. For every person not tried in accordance with subsections (a)-(f) of

this Section, the complaint against him or her shall be dismissed without prejudice.

- H. Persons in custody for more than one charge. If a person is simultaneously in custody upon more than one charge pending against him by the Tribe, and the charges are bifurcated, he shall be tried, or adjudged guilty after waiver of trial, upon at least one such charge before expiration relative to any of such pending charges of the period prescribed by subsections (a)-(f) of this Section. Such person shall be tried upon all of the remaining charges thus pending within 180 days from the date on which judgment relative to the first charge thus prosecuted is rendered or, if such trial upon such first charge is terminated without judgment and there is no subsequent trial of, or adjudication of guilt after waiver of trial, the person shall be tried upon all of the remaining charges thus pending within 180 days from the date on which such trial is terminated; if either such period of 180 days expires without the commencement of trial of, or adjudication of guilt after waiver of trial of, any of such remaining charges thus pending, such charge or charges shall be dismissed and barred for want of prosecution unless delay is occasioned by the defendant, by an examination for fitness ordered by the Court, by a fitness hearing, by an adjudication of unfitness for trial, by a continuance allowed after the Court's determination of the defendant's incapacity for trial, or by an interlocutory appeal; provided, however, that if the Court determines that the Tribe has exercised without success due diligence to obtain evidence material to the case and that there are reasonable grounds to believe that such evidence may be obtained at a later day the court may continue the cause on application of the Tribe for not more than an additional 60 days.
- I. Delay occasioned by the defendant. Delay occasioned by the defendant shall temporarily suspend for the time of the delay the period within which a person shall be tried as prescribed by subsections (a)-(f) of this Section and on the day of expiration of the delay the said period shall continue at the point at which it was suspended. Where such delay occurs within 60 days of the end of the period within which a person shall be tried as prescribed by subsections (a)-(f) of this Section, the Court may continue the case on application of the Tribe for not more than an additional 60 days beyond the period prescribed by subsections (a)-(f).
- J. Effective date. This subsection shall become effective on and apply to persons charged with alleged offenses committed on or after, the date of adoption of this Section by the Nez Perce Tribal Executive Committee pursuant to applicable requirements for said adoption.

PRELIMINARY PROCEEDINGS

Rule 4 Complaint

- A. The complaint is a written statement of the alleged facts constituting the offense charged and shall be filed by the tribal prosecutor. The complaint shall state:
1. the name of the person accused, and if known his address, date of birth, enrollment number and driver's license number;
 2. the location where the offense was committed and facts showing the offense to be

- within the original jurisdiction of the court;
 - 3. the offense committed;
 - 4. a short concise statement of the specific acts or omissions that constitute the elements of the offense;
 - 5. the person, if any, against whom or against whose property the offense was committed, if known; and
 - 6. the approximate date and time of the commission of the offense.
- B. Only one person and one violation may be charged by a single complaint. The court shall allow the complaint to be amended for good cause upon request of the prosecution until the date of trial.

Rule 5 Arrest Warrant

- A. Upon the submission of an arrest warrant application, by the tribal prosecutor or tribal police, the Nez Perce Tribal Court may issue an arrest warrant to bring the person named in the warrant before a judge of the court.
- B. An arrest warrant application shall:
- 1. be supported by affidavit or sworn testimony;
 - 2. include the name of the person accused, if known, or some other name if not known, plus whatever available description of the person accused;
 - 3. include the general location where the offense was committed and facts showing the offense to be within the original jurisdiction of the court;
 - 4. include the general name and code designation of the offense. If the facts show more than one offense, then each offense shall be stated separately;
 - 5. include a short concise statement of the specific act or omission to act complained of;
 - 6. include the name of the person against whom or against whose property the act was committed, if known;
 - 7. include the date and approximate time of the commission of the offense, if known; and
 - 8. include a request that the Tribal Court issue an arrest warrant for the person named in the application.
- C. Any testimony submitted in relation to a warrant application shall be simultaneously tape recorded. Upon reviewing the application for an arrest warrant, if the judge is satisfied of

the existence of the grounds of the application, and that it appears based on such review that probable cause exists to believe that an offense has been committed and that the person named in the application committed it, he shall issue a signed arrest warrant. The warrant of arrest shall be signed by the judge and shall contain the name of the person to be arrested or, if unknown, any name or description by which the defendant can be identified with reasonable certainty. It shall command that the person named in the warrant be arrested and brought before the judge.

- D. An officer need not have the warrant in his possession at the time of arrest; but, if he does not, he shall inform the defendant that a warrant has been issued and the nature of the charge. The arrested person shall be provided with a copy of the arrest warrant and complaint as soon as practicable but not later than at the time of arraignment.

Rule 6 Summons (amended by NPTEC 1/8/08)

- A. In lieu of an arrest and upon a finding that it appears probable cause exists to believe an offense has been committed and that the defendant committed it, the Tribal Court may issue a summons directing the person accused to appear before a tribal judge at a stated date, time and place. The summons will also inform the defendant that a warrant of arrest will be issued if he fails to appear as directed. Issuance of a summons will initiate prosecution of an action under this chapter.
- B. If the summons is issued by the Tribal Court, it shall be served on the defendant as provided by this chapter. Should a defendant refuse service of a summons or should a defendant's whereabouts be unknown after a reasonable search, an arrest warrant shall issue.

Rule 7 Arrest without a Warrant

- A. A tribal officer may make an arrest without warrant if the officer has probable cause to believe a person has committed an offense within the jurisdiction of the Nez Perce Tribe or is named in an arrest warrant.

Rule 8 Arrest Procedure

Any arresting officer:

- A. Upon taking an arrested person into custody and before interrogation, shall inform the person that:
1. he has the right to remain silent; and
 2. anything he says can be used against him in court; and
 3. he has the right to talk to an attorney for advice before he is asked any questions and to have an attorney present during questioning.
 4. May use reasonable and necessary force to effect the arrest of a person.

Rule 9 Fresh Pursuit

- A. Any arresting officer may continue in fresh pursuit of a person including outside the boundaries of the Nez Perce Reservation, if the person:
 - 1. is reasonably believed by the officer to have committed an offense on the reservation;
 - 2. has committed, or attempted to commit, any offense or civil infraction on the reservation in the presence of the officer; or
 - 3. is named in an outstanding warrant of arrest for a criminal offense.
- B. When an arrest following fresh pursuit occurs outside of the boundaries of the Nez Perce Reservation but within the state of Idaho the arresting officer may return the arrested individual to the reservation. When an arrest following fresh pursuit occurs outside the state of Idaho, then the arresting officer shall turn the arrested person over to the local police officials pending extradition.

Rule 10 Arraignment

- A. Arrested persons shall be taken without unnecessary delay, but in no case later than three (3) business days, before a tribal judge for arraignment. In the event a summons has been issued, the defendant shall appear at the time designated in the summons. The schedule for arraignments shall be determined by the Tribal Court. If the defendant does not have counsel and desires to be represented, he shall be given a reasonable time to secure counsel before entering his plea or making any statement.
- B. During arraignment, the defendant shall be provided with a copy of the complaint if he has not received one. The complaint shall be read to the defendant and he will be asked to plead guilty or not guilty to the offense charged.
- C. Before accepting a plea of guilty, the court must:
 - 1. determine that the defendant understands that the plea is voluntary and is not the result of any force, threats, or promises apart from any plea agreement between the tribal prosecutor and the defendant;
 - 2. inform the defendant:
 - 3. of the nature of the charge to which the plea is offered;
 - 4. of the maximum penalty;
 - 5. if the defendant is not represented by an attorney, that the defendant has the right to be so represented at every stage of the proceedings at the defendant's expense; and
 - 6. that the defendant has the right to:

- a. confront and cross-examine all of the witnesses against him in person or by counsel;
 - b. have witnesses compelled by subpoena to appear and testify for him;
 - c. testify regarding the charges against him or to testify in his own behalf provided that once he takes the stand to testify he shall have waived the right to refuse to testify in any matter relevant to the immediate proceeding; and (iv) an impartial trial by an impartial judge or jury.
- D. Upon a plea of guilty the court may sentence the defendant or set a future date for sentencing. If a future date for sentencing is established, the court may release the defendant on bail, have the defendant committed or released without bail.
- E. If the defendant is silent or if the defendant pleads guilty and the judge determines that the plea is made involuntarily or that the defendant does not understand the nature of the charge, he shall enter a plea of not guilty for the defendant.

Rule 10 a. Pre-Trial Release (revised 6/22/99)

- A. In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall review the facts of the arrest and detention of the person and determine whether the person:
- 1. is a threat to the alleged victim;
 - 2. is a threat to public safety; and
 - 3. is reasonably likely to appear in court.
- B. Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the court shall make findings on the record if possible concerning the determination made in accordance with subsection 1 and may impose conditions of release and/or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
- 1. An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;
 - 2. An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;
 - 3. An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;
 - 4. An order prohibiting the person from using or possessing a firearm or other weapon as specified by the court.

5. An order suspending or revoking a person's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of the Treaty of June 11, 1855, 12 Stat. 957 and subsequent treaties and agreements;
 6. An order prohibiting the person from possession or consumption of alcohol or controlled substances.
 7. Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.
- C. The bond for the crimes of domestic violence and violation of a domestic protection order shall be a cash bond in an amount set by the court in the bond schedule.
 - D. The court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
 - E. If conditions of release are imposed without a hearing, the arrested or charged person may request a hearing before the court to review the conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

Rule 11 Pleadings and Motions Before Trial; Defenses and Objections

- A. Pleadings in criminal proceedings shall be the complaint and the pleas of guilty or not guilty.
- B. Any defense, objection, or request which is capable of determination outside of trial may be raised before trial by motion. Pre-trial motions may be written or oral at the discretion of the judge who may allow the parties to submit supporting and response briefs. Any supporting brief shall be filed at least twenty (20) business days and any response brief shall be filed at least ten (10) business days before trial unless other time periods are established by the judge.
- C. The following motions must be raised before trial:
 1. motions challenging the sufficiency of the complaint and those raising procedural errors and the claim that the proceedings are prejudicial to the civil rights of the defendant;
 2. discovery motions;
 3. motions demanding separate trials for multiple defendants or severance of multiple charges.
 4. defense and objection based on defects in the institution of the prosecution, or in the complaint other than the failure to show jurisdiction or to charge an offense.

- D. The failure to raise any motion under subsection (c) shall constitute waiver unless the court for cause shown determines that relief from the waiver will be granted. All rulings on such motions will be made before trial unless the court for good cause determines that the ruling will be made at trial, but no such determination will be made if a party's right to appeal will be adversely affected.

Rule 12 Discovery (Rule amended 12/9/03)

- A. At the expense of the defendant and upon his request, the prosecutor shall permit the defendant to inspect and copy or photograph the following items which are within the possession, custody or control of the prosecutor and/or tribal police:
1. relevant written or recorded statements made by the defendant or copies thereof;
 2. copies of the defendant's prior criminal record;
 3. books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case;
 4. results or reports of physical or mental examinations, scientific tests or experiments, or copies thereof made in connection with the defendant's case.
- B. Upon the written request of the defendant the prosecuting attorney shall furnish to the defendant a written list of the names and addresses of all persons having knowledge of relevant facts who may be called by the Tribe as a witness at trial. In the event that the Tribe discovers additional witnesses to be called at trial the prosecutor shall furnish those names and addresses to the defendant in a timely manner.
- C. Upon the request of the prosecutor and at the expense of the tribe, the defendant shall permit the prosecutor to inspect and copy or photograph:
1. results or reports of physical or mental examinations, scientific tests or experiments made in connection with the defendant's case;
 2. books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof obtained in connection with the defendant's case.
- D. Upon the written request of the prosecuting attorney, the defendant shall furnish the Tribe with a list of names and addresses of witnesses the defendant intends to call at trial. In the event that the defendant discovers additional witnesses to be called at trial, the defendant shall furnish those names and addresses to the prosecution in a timely manner.
- E. If, prior to or during trial, a party discovers additional evidence or material which is subject to discovery or inspection under this rule, such party shall promptly notify the other party or the court of the existence of the additional evidence or material.
- F. Except to the extent such material is otherwise subject to discovery, this rule shall not authorize the discovery or inspection of:

1. reports, memoranda, or other internal documents made by the defendant, an attorney for either party or agents of the either party in connection with the investigation, prosecution or defense in the case;
 2. statements made by the defendant, witnesses or prospective witnesses in connection with the case.
- G. Upon motion by a party, the court may deny or restrict discovery or issue such other order as is appropriate. If the court enters an order granting relief all items or documents reviewed in camera shall be sealed and preserved in the record of the court to be made available to the appellate court in the event of an appeal.
- H. Once the court determines that a party has failed to comply with this rule, it may grant a motion to compel submitted by the opposing party, grant a continuance, prohibit the party from introducing evidence not disclosed or it may enter such other order as it deems just. In addition to any other action taken by the court upon a finding that a party has failed to comply with this rule, the court may award attorney's fees and costs to the prevailing party resulting from procedures to compel discovery.

Rule 13 Subpoena

- A. All witnesses shall be subpoenaed to appear at the date and time set for trial. The parties shall notify the clerk of the court of the names and addresses of witnesses not less than fourteen (14) business days prior to the scheduled trial date.
- B. A subpoena shall be an order of the court requiring the attendance of a witness at trial and/or commanding the person to whom it is issued to produce books, papers, documents or other objects designated therein. It shall be signed by the judge and issued by the tribal court clerk. It shall state the name of the court and the name of the case and shall command the person to whom it is directed to attend and give testimony and/or produce or present evidence at the time and place specified. The clerk shall submit a signed, sealed and otherwise complete subpoena except for the name of the individual and items subpoenaed to the requesting party, who shall complete the subpoena before it is served.
- C. A subpoena shall be served in accordance with the provisions for service of process provided by this chapter. The party requesting the subpoena shall provide a \$10.00 fee for one day's attendance and mileage allowances as determined by the court to each witness following their compliance with the subpoena. The court shall pay the expenses of any witness subpoenaed by the defense upon a satisfactory showing that the defendant is unable to pay such expenses and the witness is necessary to the defense.
- D. The court on motion may quash or modify a subpoena if compliance would be unreasonable or oppressive.

TRIAL

Rule 14 Trial Procedures

A. Motions

1. Before opening statements, the court shall hear and rule on any remaining pre-trial motions. All arguments shall be made outside the presence of the jury in a trial by jury.

B. Rule of Exclusion

1. The exclusion of witnesses shall be allowed by the court upon motion of either party. Once a motion is made the court will invoke the rule excluding all witnesses for either party from the courtroom until they are called to testify.

2. If invoked, the court shall order that the witnesses remain outside and out of hearing of the courtroom until they are called as witnesses. The court shall also instruct the witnesses not to discuss their testimony with any other witnesses under penalty of contempt until the trial has been declared ended. The defendant is entitled to be present during the entire trial regardless of a motion to exclude witnesses.

C. Opening Statements

1. The court will allow opening statements by the prosecution and defendant. The prosecution will present its statement first followed by the defense who may preserve its opening statement until the end of the prosecution's case in chief. Either party may waive making a statement.

D. Burden of Proof

1. The burden of proof is upon the prosecution to show that the defendant committed all elements of the specific charge or charges in the complaint, beyond a reasonable doubt, and this burden remains with the prosecution at all times.

2. Following the prosecution's case in chief, the burden of going forward with the evidence shifts to the defense which then presents its witnesses, documents and other exhibits.

3. Following presentation of the case for the defense the prosecution may offer rebuttal witnesses.

4. After all of the evidence has been presented, the parties may make closing arguments. The prosecution will have the right to open, the defense to follow and the prosecution to close.

E. Motion for Judgment of Acquittal

1. The court on motion of a defendant or of its own motion shall order the entry of

judgment of acquittal of any offenses if the evidence is insufficient to sustain a conviction of such of tense. If a defendant's motion for judgment of acquittal at the close of evidence offered by the tribe is not granted, the defendant may proceed to offer evidence without having reserved the right to do so.

2. If a motion for judgment of acquittal is made at the close of all of the evidence, the court may either decide the motion or reserve decision on the motion, until after the jury verdict.

3. If the jury returns a verdict of guilty, no verdict or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed immediately after the jury is discharged, or within such further time as the court may fix. If the court grants the motion following a verdict of guilty, it may set aside the verdict and enter the judgment of acquittal.

F. Expert Witnesses and Interpreters

1. Either party may call expert witnesses of their own selection and each bears the cost of such witnesses.

2. The court may appoint an interpreter of its own selection through whom testimony is received from a defendant or witness or communicated to a defendant or witness. Such interpreter shall be put under oath to faithfully and accurately translate and communicate. In addition, each party may provide their own interpreters.

G. Jury Instructions

1. The court may request proposed jury instructions and either accept or reject each instruction.

2. In all criminal cases, the court will inform the jury that the defendant's plea of not guilty places upon the prosecution the burden of proving guilt beyond a reasonable doubt, that the defendant is presumed innocent until his guilt is established, and that if the defendant does not testify this may not be considered as any evidence of guilt.

Rule 15 Verdict

A. After the presentation of evidence in non-jury cases is completed and all motions have been ruled upon, the court shall render its decision as to the guilt or innocence of the defendant. The court may take the case under advisement rather than passing judgment immediately.

B. In jury trials:

1. the verdict shall be unanimous and shall be returned by the jury to the judge in open court;

2. if the verdict is not guilty the court will order the defendant released from custody;

3. if the verdict is guilty the court may impose sentence immediately or set a later date for sentencing.
- C. If the required number of jurors does not support the verdict or the jury is unable to make a decision, the court must declare a mistrial. Polling of the jury may take place upon the request of either party.
 - D. If there are multiple defendants, the trier of fact (judge/jury), at any time during its deliberations, may return a verdict or verdicts with respect to any charge.
 - E. The defendant may be found guilty of an offense necessarily included in the offense charged and the lesser included offense need not have been included in the original charge.

POST-TRIAL

Rule 16 Judgment and Sentencing

- A. A judgment of conviction shall set forth the plea, the verdict or findings, and sentence when imposed. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge and entered into record by the court clerk.
- B. If a motion for withdrawal of a plea of guilty is made before sentence is imposed, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. In order to correct manifest injustice, the court after sentence, may set aside the judgment of conviction and permit the defendant to withdraw his plea.

Rule 17 Post-Trial Motions

- A. Motion to Set Aside the Verdict
 1. The defendant may file a motion to set aside the verdict if he believes the jury verdict was contrary to the law or the evidence presented at trial. The court will set the jury verdict aside only where it finds there was insufficient evidence to support the verdict and there was reasonable doubt as to the defendant's guilt as a matter of law.
- B. Motion for New Trial
 1. The defendant may file a motion for a new trial based upon error or mistake by the court or on the basis of newly discovered evidence. The court may grant the motion only if the errors or mistakes substantially prejudice the defendant or if the newly discovered evidence could result in acquittal.
 2. A motion for a new trial based on:
 - a. newly discovered evidence shall be made within thirty (30) business days after final judgment, but if an appeal is pending, the court may grant the motion only once the appeal is resolved;

b. any other grounds shall be made within ten business (10) days after a guilty verdict is entered.

3. In the case of a non-jury trial, on motion of a defendant for new trial the court may vacate the judgment if entered, take additional testimony and enter a new judgment.

C. Motion for Stay

1. While an appeal is pending, the court may stay the execution of the sentence pending the filing and conclusion of an appeal. The court may order the defendant released on bail, released without bail or continued in detention.

HABEAS CORPUS

Rule 18 Right to Apply for Writ

A. Any person detained or imprisoned by order, authority or action of the Nez Perce Tribe may challenge the legality of that detention or imprisonment by application to the Nez Perce Tribal Court for a writ of habeas corpus. The application shall be heard by a judge who has not participated in any proceeding related to the detention or imprisonment of the applicant.

B. The application for writ of habeas corpus shall be in writing and must include:

1. the facts concerning the person's commitment or detention;
2. the cause or reason why detention is illegal; and
3. a copy of the warrant of commitment or other documentary authority, if any, or an affidavit that such copy has been requested and refused.

C. Upon receipt of a writ of habeas corpus the court may:

1. issue an order directing the person(s) alleged to be detaining the petitioner to show cause why the writ should not be issued; or
2. deny the writ.

D. If an order to show cause is issued it will be served on the person(s) alleged to have custody of the petitioner. Once served, the person(s) to whom the order is directed shall make a return of such order to the court certifying the true cause for detention. Following service, the court shall hear the petition and order the petitioner be brought before it for the hearing. If the writ is granted, it shall be served on the person(s) having custody of the petitioner.

GENERAL PROVISIONS

Rule 19 Search and Seizure

- A. Upon the request of any law enforcement officer the Tribal Court may issue a written search warrant to search for and seize evidence of a criminal offense.
- B. A search warrant shall be supported by affidavit or sworn testimony and must particularly describe the person or place to be searched and the item(s) to be seized. If probable cause exists to believe that a crime has been committed and that evidence of the crime is present at the place or on the person to be searched the warrant shall issue. The search warrant shall direct police officers to search the location or person described for the items specified.
- C. A search warrant shall be served during the hours of 6:00 a.m. to 10:00 p.m., unless a night search is expressly provided for in the warrant. The officer taking property under a search warrant shall provide a copy of the warrant and a receipt for the property taken to the person from whom it was taken or in the absence of any such person, he shall leave it in the place where the property was found.
- D. A search warrant shall be executed within fourteen (14) days after issuance. Upon execution of the warrant, a return shall be executed and filed with the court along with an inventory of the items seized.
- E. A search warrant will not be required in the following situations:
1. the evidence is in plain view and can be seen by the officer(s) from a place where the officer has a right to be;
 2. a person who has authority to do so voluntarily consents to the search and the search is limited to the scope of the consent given;
 3. the search is incident to a lawful arrest and is conducted on the person arrested and within the area of the person's immediate reach and control for any evidence, contraband or weapons;
 4. the officer(s) reasonably believe that a person is armed and presents a danger to the officer or the public in which case the officer may conduct a pat down of the person's outer clothing in search of weapons;
 5. the officer(s) enter a residence or structure in fresh pursuit of a fleeing suspect;
 6. the area to be searched is an automobile actually moving or temporarily stopped, as long as the officer(s) have probable cause to believe that it contains items which are subject to seizure.
 7. there are reasonable grounds to believe that the delay in obtaining a search warrant would endanger the physical safety of the police officers or third persons or allow the destruction, dissipation or removal of seizable evidence.

Rule 20 Extradition

- A. A written request seeking the extradition of any individual found within the exterior boundaries of the Nez Perce Reservation to any state, tribal or federal jurisdiction shall be submitted to the chief judge of the Nez Perce Tribal Court and shall be accompanied by:
1. a certified exemplified copy of the warrant; or
 2. other reliable information that the warrant exists.
- B. If the chief judge, after receiving the extradition request is satisfied as to its validity, he shall issue an arrest warrant. If the request is oral, and the judge determines an emergency exists due to the individual's record, risk of reoffending, or risk of flight, he/she may authorize the warrant verbally for immediate detention. The person named in the warrant shall be taken into custody by the tribal police officers with the assistance of the other law enforcement officials involved if requested and held by tribal police for arraignment by the Tribal Court. (Amendment authorized by NPTEC 10/14/14)
- C. Once the person suspected of being the one named in the extradition request is in custody of the tribal police, the police shall notify the jurisdiction which issued the request.
- D. Within three (3) business days after arrest, the person arrested shall be brought before the chief judge of the Tribal Court. The court shall inform the person of the demand for his surrender and of the crime with which he is charged, that he has a right to representation of legal counsel at his own expense and to request a hearing to challenge the extradition request. If a hearing is requested, the judge shall fix a reasonable time for the hearing release the person on bail, release the person without bail or hold him in custody until the date of the hearing. If the hearing is waived, the person shall be promptly turned over to the custody of the appropriate authorities.
- E. Following an extradition hearing conducted by the chief judge of the Tribal Court, if the judge determines that the person brought before the court is in fact the person named in the extradition request and that there is probable cause to believe that he committed the offense complained of, an extradition order shall be issued and the person immediately turned over to the custody of the appropriate authorities.

Rule 21 Bail; Release without Bail; Confinement

- A. To insure defendant's appearance at any court proceeding or to protect the public, the court may:
1. set bail in lieu of confinement;
 2. turn the defendant over to the tribal police for confinement;
 3. release the defendant on his own recognizance upon his promise to appear; or
 4. impose any other reasonable condition deemed necessary to assure the appearance of the accused as required.

- B. The amount of bail shall reflect the gravity and nature of the offense charged and the defendant's ability to pay. Other factors to be considered by the court in setting bail include: the location of the defendant's permanent residence, family responsibilities, and past criminal record. If the defendant is committed in lieu of bail, then he may be credited for such time spent in jail.
- C. No person shall be detained or jailed for more than three (3) business days unless there has been a commitment bearing the signature of a judge of the Nez Perce Tribal Court.
- D. Any person arrested for a crime involving domestic violence or a violation of a domestic protection order shall not be released on bond or on his/her own recognizance prior to being arraigned. Such arraignment shall not occur less than 48 business hours or more than 72 business hours following arrest. (added 6/22/99)

Rule 22 Motions

- A. Unless made at trial or hearing or otherwise provided, an application to the court for an order shall be by written motion. The motion shall state the grounds upon which it is made and shall specify the relief order sought. It shall be supported by a memorandum of points and authorities.

Rule 23 Signing of Pleadings, Motions, and Other Papers

- A. For those parties represented by an attorney, all pleadings, motions and other papers shall be signed by at least one attorney of record in his individual name, who shall also state his address. A party who is not represented by an attorney shall sign the pleading, motion or other paper himself and state his address.
- B. A person's signature constitutes a certification by the signer that:
 - 1. he has read the pleading, motion, or other paper;
 - 2. to the best of his knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and
 - 3. that it is not interposed or introduced for any improper purpose.

Rule 24 Service and Filing of Papers

- A. This section shall apply to any service of process required under this chapter. Service of process in criminal cases shall be by tribal police, court employee or any other person designated by the chief judge, who is at least eighteen (18) years of age and is not a party. Service shall be made upon the defendant, by delivering to the defendant a copy of the documents to be served in person, by registered or certified mail, or after first appearance, by first class postage pre-paid with certificate of mailing.
- B. Service may be accomplished at any place within the exterior boundaries of the Nez Perce Reservation. The person conducting service of process on another shall make a

return to the clerk stating the name of the case, the name of the person served, the place, date and time of service, and shall subscribe his name thereto under penalty of perjury for the intentional making of a false return.

- C. All written pleadings and motions, notices and similar papers other than those which are heard ex-parte, shall be served on each party as provided in civil actions and filed with the court. The party filing the motion or pleading shall certify the date and method of service upon the opposing party.

Current Rules of Criminal Procedure