

**Section 2.10.003 Jurisdiction [cross-reference with 1-1-9 through 1-1-12]**

- A. **Criminal Jurisdiction – generally.** The Nez Perce Tribal Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the same within the boundaries of the Tribe’s Indian country, including any person at any In Lieu Fishing Site or Treaty Fishing Access Site and against any tribal member exercising treaty hunting and fishing rights beyond the boundaries of the Nez Perce Reservation. In the cases where the person in violation of this Code is not an Indian and is not covered by paragraphs C or D in this Section, the Court’s exercise of power shall be civil rather than criminal and punishment subject only to the applicable fine. The Court is also vested with the power to impose protection orders against non-Indians in accordance with the provisions of this Code.
- B. **Jurisdiction over Felony Crimes.** The Nez Perce Tribal Court shall have jurisdiction over specific offenses that may be subject to punishment greater than one year or a fine of \$5,000 or both under specific circumstances and conditions. Such offenses are considered felony crimes and classified as a Class F crime under the resolution codified in this section. [Cross-reference with Criminal Code, Title 4, Chapter 4.10, Part VII].
- C. ~~**Criminal Jurisdiction Over Non-Indian Offenders of Domestic or Dating Violence.** The Nez Perce Tribal Court is vested with jurisdiction to enforce all provisions of this Code against a non-Indian who has committed an act of Dating Violence or Domestic Violence against an Indian victim within the Tribe’s Indian country provided the non-Indian has sufficient ties to the Nez Perce Tribe.~~
1. ~~A non-Indian has sufficient ties to the Nez Perce Tribe for purposes of criminal jurisdiction if they:~~
    - a. ~~Reside in the Nez Perce Tribe’s Indian country;~~
    - b. ~~Are employed in the Tribe’s Indian country; or~~
    - c. ~~Are a spouse, intimate partner, or dating partner of either~~
      - i. ~~— A member of the Nez Perce Tribe; or~~
      - ii. ~~— A non-member Indian who resides in the Tribe’s Indian country.~~
- D. Special Tribal Criminal Jurisdiction. The Nez Perce Tribe exercises Special Tribal Criminal Jurisdiction over all persons for Covered Crimes to the fullest extent possible as permitted by federal law. Whether the elements of an offense are sufficient to also prove the jurisdictional requirements of Special Tribal Criminal Jurisdiction is a question of law. If additional facts, beyond the elements of an offense, must be proven beyond a reasonable doubt

to assert Special Tribal Criminal Jurisdiction, those questions of fact must be submitted to the fact finder.

1. A criminal complaint exercising jurisdiction under this section shall provide sufficient alleged facts showing the offense to be within the Special Tribal Criminal Jurisdiction of the court.
2. Except for Obstruction of Justice or Assault of Tribal Justice Personnel Covered Crimes, the exercise of Special Tribal Criminal Jurisdiction requires that either the defendant or the victim be an Indian. The term 'victim' includes a person specifically protected by a protection order that the defendant allegedly violated.
3. In all proceedings in which Special Tribal Criminal Jurisdiction is exercised the defendant shall:
  - a. Have all rights afforded by the Nez Perce Civil Rights Act and the Indian Civil Rights Act, 25 U.S.C. § 1302. Should there be any inconsistency between the Nez Perce Civil Rights Act and 25 U.S.C. § 1302, those of 25 U.S.C. § 1302 shall apply.
  - b. Have the right to trial by an impartial jury that is drawn from sources that reflect a fair cross section of this community and do not systematically exclude any distinctive group in the community, including non-Indians.
  - c. Be given notice in writing as required by 25 U.S.C. § 1304(g) of their right to file for a writ of habeas corpus in federal court to test the legality of their detention by order of the Nez Perce Tribe, and they may petition the tribal court to stay further detention pending the habeas corpus proceeding.
    - i. The court shall grant a stay if the court:
      - (1) Finds that there is a substantial likelihood that the federal habeas corpus petition will be granted; and
      - (2) After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.