

**TITLE 2    RULES OF PROCEDURE**

**Ch. 2.10 Criminal Procedures**

**TABLE OF CONTENTS**

<b>PART I.</b>	<b>APPLICABILITY.....</b>	<b>1</b>
	Section 2.10.001 Interpretation.....	1
	Section 2.10.002 Definitions [Rule 1].....	1
	Section 2.10.003 Jurisdiction [cross-reference with 1-1-9 through 1-1-12].....	3
<b>PART II.</b>	<b>DEFENDANT’S RIGHTS .....</b>	<b>5</b>
	Section 2.10.010 Rights of a Defendant in Criminal Proceedings [Rule 3].....	5
	Section 2.10.011 Habeas Corpus [Rule 18].....	6
<b>PART III.</b>	<b>SEARCH, SEIZURE, AND ARREST.....</b>	<b>7</b>
	Section 2.10.015 Search and Seizure [Rule 19].....	7
	Section 2.10.016 Reserved.....	10
	Section 2.10.017 Method of Arrest [Rule 8].....	10
	Section 2.10.018 Arrest Without a Warrant [Rule 7].....	11
	Section 2.10.019 Arrest Procedure [Rule 8].....	11
	Section 2.10.020 Fresh Pursuit [Rule 9].....	11
	Section 2.10.021 Reserved.....	12
	Section 2.10.022 Defendant’s Presence.....	12
	Section 2.10.023 Reserved.....	12
	Section 2.10.024 Reserved.....	12
	Section 2.10.025 Commencing Criminal Prosecution [Rule 4].....	12
	Section 2.10.026 Arrest Warrant or Summons on a Complaint [Rules 5 & 6].....	15
	Section 2.10.027 Complaint, Warrant or Summons by Telephone or Other Reliable Electronic means.....	16
	Section 2.10.028 Reserved.....	18
	Section 2.10.029 Reserved.....	18
<b>PART IV.</b>	<b>ARRAIGNMENT .....</b>	<b>18</b>
	Section 2.10.030 Arraignment [Rule 10].....	18
	Section 2.10.031 Plea Procedures [Rule 10(c)].....	19
	Section 2.10.032 Reserved.....	22
	Section 2.10.033 Motions during Arraignment.....	22
	Section 2.10.034 Reserved.....	23
<b>PART V.</b>	<b>RELEASE FROM CONFINEMENT AND EXTRADITION .....</b>	<b>23</b>
	Section 2.10.035 Bail or Release on Own Recognizance [Rule 21].....	23
	Section 2.10.036 Bail or Release in Cases Involving Domestic Violence [Rules 21 (d) + 10a].....	24
	Section 2.10.037 Bail Form and Conditions.....	25
	Section 2.10.038 Reserved.....	27
	Section 2.10.039 Reserved.....	27
	Section 2.10.040 Extradition [Rule 20].....	27
	Section 2.10.041 Furlough Release.....	28
	Section 2.10.042 Reserved.....	29
	Section 2.10.043 Reserved.....	29

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

Section 2.10.044	Reserved.....	29
<b>PART VI.</b>	<b>PRE-TRIAL.....</b>	<b>29</b>
Section 2.10.045	Pre-Trial Motions [Rule 11].....	29
Section 2.10.046	Discovery [Rule 12] .....	30
Section 2.10.047	Subpoenas.....	31
Section 2.10.048	Reserved.....	32
Section 2.10.049	Reserved.....	32
<b>PART VII.</b>	<b>TRIAL.....</b>	<b>32</b>
Section 2.10.050	Procedures to Ensure a Speedy and Public Trial [Rule 3a] .....	32
Section 2.10.051	Trial Procedures [Rule 14].....	34
Section 2.10.052	Jury Pool Procedures [cross-reference 1-1-26 through 1-1-35] .....	35
Section 2.10.053	Trial by Jury.....	35
Section 2.10.054	Motions at Trial [Rules 14 + Rule 17].....	36
Section 2.10.055	Evidence.....	37
Section 2.10.056	Jury Deliberations and Verdict [Rule 15].....	37
Section 2.10.057	Findings of Fact, Conclusions of Law in Bench Trials .....	38
Section 2.10.058	Reserved.....	38
Section 2.10.059	Reserved.....	38
<b>PART VIII.</b>	<b>SENTENCING.....</b>	<b>38</b>
Section 2.10.060	Sentencing Procedure .....	38
Section 2.10.061	Misdemeanor Sentencing Limitations.....	38
Section 2.10.062	Felony Sentencing Limitations .....	39
Section 2.10.063	Reserved.....	39
Section 2.10.064	Reserved.....	39
<b>PART IX.</b>	<b>POST-SENTENCING .....</b>	<b>39</b>
Section 2.10.065	Revocation of Probation .....	39
Section 2.10.066	Reserved.....	40
Section 2.10.067	Reserved.....	40
Section 2.10.068	Reserved.....	40
Section 2.10.069	Reserved.....	40
<b>PART X.</b>	<b>CRIMINAL APPEALS .....</b>	<b>40</b>
Section 2.10.070	Procedures for Appeal [cross-reference Ch. 2-9] .....	40
Section 2.10.071	Record on Appeal [cross-reference 2-9-4].....	40
Section 2.10.072	Reserved.....	41
Section 2.10.073	Reserved.....	41
Section 2.10.074	Reserved.....	41
<b>PART XI.</b>	<b>GENERAL PROVISIONS.....</b>	<b>41</b>
Section 2.10.075	Time .....	41
Section 2.10.076	Contempt of Court [1-1-45].....	41
Section 2.10.077	Service and Filing of Papers [Rule 24] .....	42
Section 2.10.078	Filing Fees .....	42
Section 2.10.079	Court Costs .....	43
Section 2.10.080	Vacating Conviction – Marijuana Offenses.....	43

## TITLE 2 • RULES OF PROCEDURE

CHAPTER 2.10    CRIMINAL PROCEDURES
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### PART I.    APPLICABILITY

#### **Section 2.10.001 Interpretation**

These rules are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

#### **Section 2.10.002 Definitions [Rule 1]**

- A.    **Arraignment.** Proceeding in which the accused is brought before the Court to plead guilty or not guilty to the violation charged against them.
- B.    **Bail.** An amount of money set by the Judge which must be posted by a defendant in order to gain their release until trial, or appellate proceedings; the amount of bail is set at such amount as to reasonably ensure that the defendant comes to Court when he is required.
- C.    **Bail Bond.** Cash, some type of surety arrangement, or other type of security posted by a defendant to meet the bail set by the Judge as a prerequisite to defendant's release from custody until a trial or appellate proceedings.
- D.    **Civil Infraction.** An act or omission for which a sentence of incarceration is not authorized.
- E.    **Complaint.** A written statement of the essential facts constituting the offense charges.
- F.    **Crime.** An act or omission for which a sentence of incarceration is authorized.
- G.    **Criminal action** means a procedure by which a person is accused of committing a crime is charged, brought to trial, and judged.
- H.    **Dating Violence.** For purposes of the exercise of criminal jurisdiction over non-Indians, the term 'dating violence' means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- I.    **Domestic Violence.** For the purposes of exercising criminal jurisdiction over non-Indians, the term 'domestic violence' means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

**J. Firearm** means:

1. Any weapons (including a starter gun) which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive; but does not include an antique firearm or any device that expels a projectile by means of compressed air;
2. The frame or receiver of any such weapon;
3. Any firearm muffler or firearm silencer; or
4. Any destructive device shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

**K. In Lieu Fishing Sites (ILFS).** Those certain federal lands along the Columbia River designated by the federal government via Public Law 79-14 for Indian treaty fishing activities in lieu of usual and accustomed fishing places inundated by construction of Bonneville Dam.

**L. In Person.** For purposes of arraignments, pleas, sentencing, or other court hearings, ‘in person’ may, upon a judge’s approval and finding of good cause, include appearance by phone, video, or other appropriate electronic means.

**M. Motions.** Requests, either written or oral, made to the Court for an order.

**N. Offense.** A violation of criminal law.

**O. Personal Recognizance.** A promise by a defendant to appear at trial or appellate proceeding upon which promise the Judge orders their release from custody.

**P. Presence** means a defendant shall be present at all stages of the proceeding. The court may allow electronic attendance by phone, video, or other means only upon a finding of good cause and that the defendant’s rights will not be prejudicially affected.

**Q. Probable Cause** exists under this chapter when an officer or the court has substantial objective basis for believing that a person has committed an offense. In determining whether probable cause exists, the officer or 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.

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

- R. **Spouse or Intimate Partner.** For purposes of exercising criminal jurisdiction over non-Indians, the term ‘spouse or intimate partner’ has the meaning given the term in 18 U.S.C. § 2266.
- S. **Summons.** A notice to appear before the Court.
- T. **Summons and Complaint.** A single document containing all the requisites of both a summons and complaint.
- U. **Treaty Fishing Access Sites (TFAS).** Those certain federal lands along the Columbia River designated or acquired by the federal government via Public Law No. 100-581 to provide access for Indian treaty fishing activities.
- V. **Warrant, Arrest/Search.** Document issued by the Court expressly authorizing and directing an officer to execute an arrest or conduct a search specifically delineated premises.

**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. **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.

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

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.

**D. Criminal Jurisdiction Over Protection Order Violations committed by Non-Indians.** The Nez Perce Tribal Court is vested with criminal jurisdiction to enforce all provisions of this Code related to violations of protection orders against a non-Indian that has sufficient ties to the Tribe as identified above in paragraph C(1), and who has violated a protection order within the Nez Perce Tribe’s Indian country provided the protected person is an Indian, and following conditions are met.

1. The protection order was issued against the non-Indian;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

2. The protection order is consistent with 18 U.S.C. § 2265(b); and
3. The violation relates to that portion of the protection order that provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, the protected person.

**Sections 2.10.04 through 2.10.09 Reserved**

**PART II. DEFENDANT'S RIGHTS**

**Section 2.10.010 Rights of a Defendant in Criminal Proceedings [Rule 3]**

**A. Defendant's Rights.**

1. To be free from excessive bail and cruel punishment;
2. To defend in person or by counsel;
3. To be informed of the nature of the charges pending against them and to have a copy of those charges;
4. To confront and cross-examine all witnesses;
5. To compel by subpoena;
6. The attendance of witnesses necessary to defend against the charges; and
7. The production of any books, records, documents, or other things necessary to defend against the charges;
8. To have a public and speedy trial, unless the right to a speedy trial is waived by the defendant;
9. To have a jury trial, unless the right to a jury trial is waived by the defendant;
10. To appeal any final decision of the Nez Perce Tribal Court to the Nez Perce Tribal Court of Appeals;
11. To not be subjected to Double Jeopardy within the Nez Perce Tribal Court;
12. To not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
13. To petition for a writ of habeas corpus.

**B. Presence of the Defendant.** A defendant shall be present at all stages of the proceeding. The court may allow electronic attendance by phone, video, or other means only upon a finding of good cause and that the defendant's rights will not be prejudicially affected.

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

- C. **Right to Counsel.** During the arraignment before the court, every defendant must be informed of the right to have court appointed counsel or pay for one at their own expense. If the defendant wishes to obtain counsel, the court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the case.
- D. **Attorney Qualifications.** The defendant shall have the right to be represented by an attorney who is a member of the Nez Perce Tribal Bar and who is licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- E. **Right to a Jury Trial.** The defendant shall have a right to a trial by an impartial jury of no less than six (6) persons, that is drawn from sources that reflect a fair cross section of the community; and do not systematically exclude any distinctive group in the community, including non-Indians.
- F. **Right to a Speedy Trial. [Rule 3a]** To have a speedy trial unless waived by the defendant.
- G. **Right Against Double Jeopardy.** The defendant shall not to be subject to subsequent prosecution in the Nez Perce Tribal Court for the same offense arising out of the same act.
- H. **Writ of Habeas Corpus.** 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 for a writ of habeas corpus.

**Section 2.10.011 Habeas Corpus [Rule 18]**

- 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.

**Sections 2.10.12 through 2.10.14 Reserved**

**PART III. SEARCH, SEIZURE, AND ARREST**

**Section 2.10.015 Search and Seizure [Rule 19]**

**A. Judge's Authority.**

1. Every judge has the authority to issue warrants for the search of or persons, premises, and property and the seizures of goods, instruments, articles, or items. A warrant issued under this part shall not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.
2. A judge may require the applicant to furnish testimony or documentary evidence in support of the application for the warrant.

**B. Search Warrants.** A search warrant shall not be valid unless it:

1. Is in writing;
2. Is in the name of the Nez Perce Tribe;
3. Is signed by a judge of the Nez Perce Tribal Court; and
4. Particularly describes the premises, property, place, or person to be searched and the instruments, articles, or items to be seized.

**C. Grounds for a Search Warrant.** No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or prosecutor that establishes probable cause to search for and seize any of the following:

1. Evidence of a crime;
2. Contraband, fruits of a crime, or other items illegally processed;
3. Property designed for use, intended for use, or used in committing a crime, or
4. A person whose arrest is authorized by law.

**D. Warrant on Sworn Testimony.** When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a judge shall:

1. Immediately place the requesting person(s) under oath;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

2. Record by voice recording device if available, or otherwise make a verbatim record, of the requesting person's statement and certify the accuracy of this record;
3. Enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;
4. Sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and
5. Direct the requesting party to:
  - a. Prepare a document identical to the original warrant to be known as a duplicate original warrant;
  - b. Sign the duplicate original warrant on behalf of the judge; and
  - c. Enter the exact time of execution on the face of the duplicate original warrant.

**E. Exception to the Warrant Requirements.** [Rule 19 (e)] In addition to federally recognized exceptions to the warrant requirement, the following exceptions shall apply:

1. When the search is incident to a lawful arrest, conducted on the person arrested and within the area of the person's immediate reach and control;
2. By consent of the person being searched;
3. When there is a reasonable belief that the person searched may be armed and dangerous;
4. When the search is of a vehicle actually moving or temporarily stopped and the officer has probable cause to believe that it contains contraband, stolen, or embezzled property;
5. Search of a vehicle is made incident to completion of a regular and routine inventory;
6. When there are reasonable grounds to believe that contraband or evidence is present and there is no time to obtain a warrant without it being destroyed; or
7. Objects seized are in the officer's plain view.

**F. Execution of a Search Warrant.** [Rule 19 (c)-(d)]

1. Generally. Search warrants shall be executed between the house of 6:00 a.m. and 10.00 p.m., unless the issuing judge otherwise authorizes. A warrant shall be executed within fourteen (14) days of the date of issuance and warrants not executed within this time limit are void.

  
**NEZ PERCE TRIBE REVISED CODES**

*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*

*NP 24-506 (Sept. 24, 2024)*

2. Return of Warrant. The executing officer shall return the warrant to the court promptly, and under no circumstances more than seven (7) days following execution of the warrant, unless a greater time allowance is provided in the warrant. The warrant return shall include the time and date the warrant was executed, and an inventory of any property seized. Upon request, the court must give a copy of the inventory to the person from whom, or from whose premises, the property was taken.
  3. Reasonable Force. Only reasonably necessary force may be used to execute a search warrant.
  4. Notice. Unless otherwise specified by the warrant, before entering the premises named in the search warrant, the law enforcement officer shall give appropriate notice of their identity, authority, and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall show and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched, if reasonably available. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.
  5. Receipt for Seized Items. If the warrant is executed, a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of an officer and the person from whose possession or premises the property was taken, if present, or in the presence of at least one other credible person. Failure to give or leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the receipt suitably affixed to the premises.
- G. **Scope of Search Pursuant to Warrant.** The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant. Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant. If, in the course of an authorized search, the law enforcement officer discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

- H. **Extensions of Delay.** Any period of delay authorized by this section may be extended by the court for good cause shown, subject to the condition that extensions should only be granted upon an updated showing of the need for further delay and that each additional delay should be limited to periods of thirty (30) days or less, unless the facts of the case justify a longer period of delay.
- I. **Procedures for Execution of State, County, Municipal, or other Tribal Search Warrant.** Where a search and/or seizure is performed within the boundaries of the Nez Perce Reservation, or any trust, or Nez Perce tribal member or Nez Perce tribally owned land or buildings, vehicles, or vessels, for a crime committed within the jurisdiction of the issuing court, such search and/or seizure must substantially comply with the procedural search and seizure requirements of Nez Perce tribal law and shall be governed by the following process:
1. Nez Perce Tribal Court Approval. The state, county, municipal or other tribal law enforcement officer shall provide a copy of their judicially approved search warrant and probable cause affidavit, along with any other supporting documents, to a law enforcement officer from the Nez Perce Tribal Police Department prior to the execution of the warrant. The Nez Perce law enforcement officer shall prepare an affidavit stating that they have received and are incorporating the state, county, municipal, or other tribal law enforcement officer's affidavit and judicially approved search warrant for presentation to a Nez Perce Tribal Court Judge. The Nez Perce Tribal Court Judge shall review the state, county, municipal, or tribal warrant and if the court finds the warrant was issued with proper jurisdiction and substantially complies with the procedural search and seizure requirements of Nez Perce tribal law, shall endorse the warrant for execution.
  2. Coordination. Any search warrant issued pursuant to this section shall be executed in the presence of and in coordination with a law enforcement officer from the Nez Perce Police Department. Nez Perce Tribal Police and other law enforcement agencies shall cooperate to the fullest extent possible.

#### **Section 2.10.016 Reserved**

#### **Section 2.10.017 Method of Arrest [Rule 8]**

- A. An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest. All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person. All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an

arrest authorized by search warrant or by exemption to the warrant requirements. An arrest made outside the boundaries of the Nez Perce Reservation shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred.

- B. Advisement of Miranda Rights prior to Interrogation.** Upon taking a person into custody and before interrogation (questioning), the police officer shall inform the arrested person that:
1. The arrested person has right to remain silent;
  2. Anything the arrested person says can be used against them in court; and
  3. The arrested person has the right to talk with an attorney before they are asked any questions and to have an attorney present during questioning.

#### **Section 2.10.018 Arrest Without a Warrant [Rule 7]**

A law enforcement officer may make an arrest without a 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.

#### **Section 2.10.019 Arrest Procedure [Rule 8]**

Upon taking an arrested person into custody and before interrogation, any arresting law enforcement officer shall inform the arrested person of their “Miranda Rights” as noted above in Section 2.10.009 Method of Arrest. Those rights are:

- A. The arrested person has right to remain silent;
- B. Anything the arrested person says can be used against them in court; and
- C. The arrested person has the right to talk with an attorney before they are asked any questions and to have an attorney present during questioning.

#### **Section 2.10.020 Fresh Pursuit [Rule 9]**

- 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. 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.

**Section 2.10.021 Reserved**

**Section 2.10.022 Defendant's Presence**

A defendant shall be present at all stages of the proceeding. The court may allow electronic attendance by phone, video, or other means only upon a finding of good cause and that the defendant's rights will not be prejudicially affected. If the defendant fails to be present, the court may issue a bench warrant. Appearance by counsel is insufficient to avoid issuance of a bench warrant.

**Section 2.10.023 Reserved**

**Section 2.10.024 Reserved**

**Section 2.10.025 Commencing Criminal Prosecution [Rule 4]**

- A. **Complaint.** A formal criminal proceeding shall be initiated on behalf of the Nez Perce Tribe when the prosecutor files a criminal complaint against a person.
1. **Content.** The complaint must be supported by probable cause and shall contain:
    - a. The name of the person accused, and if known, their address, date of birth, and tribal enrollment number;
    - b. The general location where the alleged offense was committed and facts showing the offense to be within the original jurisdiction of the court;
    - c. The name, class, and code citation of the alleged offense committed; special notice shall be given to the defendant for Class F offenses that the charged offense is a felony crime for which the defendant may be subject to the maximum sentence authorized by the resolution codified in this section;
    - d. A concise statement of the specific acts or omissions to act constituting an offense;
    - e. The name of the persons, if any, against whom the alleged offense was committed. For offenses involving a minor or for sexual offenses the use of initials is sufficient to identify.
    - f. The approximate date and time of the commission of the alleged offense, if known; and
    - g. The signature of the prosecutor.

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

2. Minor Omissions. No minor omission from, or error in, the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.
  3. Amending the Complaint. The defendant shall be arraigned on the amended complaint without unreasonable delay and shall be given a reasonable period of time to prepare for trial on the amended complaint.
    - a. Amendments as to Substance. A complaint may be amended in matters of substance at any time prior to arraignment without leave of the court. If after arraignment, a motion for leave to amend as to substance must state the nature of the proposed amendment and the facts and circumstances showing good cause to amend the complaint as to substance. If the motion is timely filed, the amended complaint is supported by probable cause, and there is no undue prejudice to the defendant, the court shall grant leave to amend.
    - b. Amendments as to Form. The court may permit a complaint to be amended as to form any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced. No charge may be dismissed because of a defect in form which does not tend to prejudice any substantial right of the defendant.
- B. Joinder of Defendants.** Two or more defendants may be joined at the discretion of the prosecutor if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count. Two or more defendants may be joined at the discretion of the prosecutor if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses. The defendants may be charged in one or more counts together or separately. All defendants need not be charged in each count.
- C. Joinder of Offenses.** Any two or more offenses committed by the same defendant may be joined in one accusatory instrument—the complaint—with each offense stated in a separate count. The complaint may charge a defendant in separate counts with two or more offenses if the offenses charged whether felonies or misdemeanors or both are of the same or similar character or are based on the same act or criminal episode or are connected with or constitute parts of a common scheme or plan.
1. Prosecution of Multiple Offenses. When the conduct of an offender establishes the commission of more than one offense, the offender may

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

- a. One offense included in the other;
- b. One offense consists only of conspiracy or some other form of preparation for committing the charged offense;
- c. Inconsistent findings of fact are required to establish the commission of the offenses;
- d. The offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other is prohibit a specific instance of such conduct; or
- e. The offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

D. **Subsequent Prosecutions.** A subsequent prosecution is allowed when the previous prosecution was properly terminated under any of the following circumstances:

1. The defendant consents to the termination or waives, by motion, an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;
2. The court finds that a termination, other than by acquittal, is necessary because:
  - a. It is impossible to proceed with the trial in conformity with the law;
  - b. There is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;
  - c. Prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribe;
  - d. The jury cannot agree upon a verdict; or
  - e. A false statement of a juror;
3. The subsequent prosecution was for an offense which was not completed when the former prosecution began; or
4. The exercise of authority by another jurisdiction impedes the Tribe's ability to proceed on the matter.
5. The following actions will not constitute an acquittal of the same offense: dismissal for insufficiency in form; dismissal without



prejudice upon a pretrial motion; or discharge for want of prosecution without a judgement of acquittal.

- E. **Lesser-Included Offenses.** An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense.
1. An offense is included when:
    - a. It is established by proof of the same or less than all the facts required to establish the commission of the offense charged;
    - b. It consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or
    - c. It differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or tribal interest, or a lesser kind of culpability suffices to establish its commission.
  2. The court need not instruct the jury with a charge to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser-included offense.

#### **Section 2.10.026 Arrest Warrant or Summons on a Complaint [Rules 5 & 6]**

- A. **Issuance.** If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue a summons to a person authorized to serve it. Upon request by the prosecutor, an arrest warrant shall issue instead of a summons. A judge may issue more than one warrant or summons on the same complaint. If an individual defendant fails to appear in response to a summons, a judge may and upon a request of the prosecutor must issue an arrest warrant.
1. If a summons is issued by the 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, the judge shall issue an arrest warrant.
- B. **Form.**
1. Warrant. [**Rule 5**] A warrant must:
    - a. Contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;
    - b. Describe the offense charged in the complaint;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

- c. Include the general location where the offense was committed and facts showing the offense to be within the original jurisdiction of the court;
  - d. 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;
  - e. Include a short concise statement of the specific act or omission to act complained of;
  - f. Include the name of the person against whom or against whose property the act was committed, if known; and
  - g. Include the date and approximate time of the commission of the offense, if known;
  - h. Be supported by affidavit or sworn testimony;
  - i. Command that the defendant be arrested and brought without unnecessary delay before the judge; and
  - j. Be signed by a judge of the Nez Perce Tribal Court.
2. **Summons.** [**Rule 6**] A summons must:
- a. Direct the person accused to appear before a judge at a certain date, time, and place;
  - b. Be served with a copy of the criminal complaint(s); and
  - c. Inform the defendant that a warrant of arrest will be issued if he fails to appear as directed.

**Section 2.10.027 Complaint, Warrant or Summons by Telephone or Other Reliable Electronic means**

In general. A judge may consider information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue a warrant or summons.

- A. **Procedures.** If a judge decides to proceed under this rule, the following procedures apply:
1. **Taking Testimony Under Oath.** The judge must place under oath and may examine the applicant and any person on whose testimony the application is based.
  2. **Creating a Record of the Testimony and Exhibits.**
    - a. **Testimony Limited to Attestation.** If the applicant does no more than attest to the contents of a written affidavit submitted by reliable electronic means, the Judge must acknowledge the attestation in writing on the affidavit.

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

- b. Additional Testimony or Exhibits. If the judge considers additional testimony or exhibits, the Judge must:
  - i. Have the testimony recorded verbatim by an electronic recording device, by a court reporter, or in writing;
  - ii. Have any recording or reporter's notes transcribed, have the transcription certified as accurate, and file it;
  - iii. Sign any other written record, certify its accuracy, and file it; and
  - iv. Make sure that the exhibits are filed.
3. Preparing a Proposed Duplicate Original of a Complaint, Warrant, or Summons. The applicant must prepare a proposed duplicate original of a complaint, warrant, or summons, and must read or otherwise transmit its contents verbatim to the judge.
4. Preparing an Original Complaint, Warrant, or Summons. If the applicant reads the contents of the proposed duplicate original, the judge must enter those contents into an original complaint, warrant, or summons. If the applicant transmits the contents by reliable electronic means, the transmission received by the judge may serve as the original.
  - a. Modification. The judge may modify the complaint, warrant, or summons. The judge must then:
    - i. Transmit the modified version to the applicant by reliable electronic means; or
    - ii. File the modified original and direct the applicant to modify the proposed duplicate original accordingly;
  - b. Issuance. To issue the warrant or summons, the judge must:
    - i. Sign the original documents;
    - ii. Enter the date and time of issuance on the warrant or summons; and
    - iii. Transmit the warrant or summons by reliable electronic means to the applicant or direct the applicant to sign the judge's name and enter the date and time on the duplicate original.
5. Suppression Limited. Absent a finding of bad faith, evidence obtained from a warrant issued under this rule is not subject to suppression on the ground that issuing the warrant in this manner was unreasonable under the circumstances.

**Section 2.10.028 Reserved**

**Section 2.10.029 Reserved**

**PART IV. ARRAIGNMENT**

**Section 2.10.030 Arraignment [Rule 10]**

- A. **Timing.** ~~Arrested persons~~ Persons arrested for all offenses except domestic violence or violations of domestic violence no contact orders shall be taken without unnecessary delay, but in no case later than two (2) business days, before a judge for arraignment. In the event a summons has been issued, the defendant shall appear at the time designated in the summons. A person who is arrested without a warrant shall have a judicial determination of probable cause at the arraignment. If probable cause is not found, the person shall be released immediately without conditions. The schedule for arraignments shall be determined by the 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 their plea or making any statement. Timing for arraignments for persons arrested for domestic violence or violations of domestic violence no contact orders shall be governed by 2.10.035 A.
- B. **Procedure upon Arraignment.** A defendant shall be arraigned in open court whenever a complaint has been filed by a prosecutor. Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of the complaint to the defendant, and calling on the defendant to plead to the charge. Prior to accepting any plea at the time of arraignment, the presiding judge must:
1. Verify that the person appearing before the court is the defendant named in the complaint, and that the defendant's true name appears on the complaint, and if different from the name used on the complaint, order the complaint amended to reflect the true name; and
  2. Determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed.
  3. The judge shall inform the defendant of their rights, which shall include, but not be limited to, the following:
    - a. The right to counsel and the right to a reasonable continuance to obtain counsel. If the defendant cannot afford counsel, one will be appointed for them at the expense of the Nez Perce Tribe.
    - b. The right to be informed of the charges against them.
    - c. The right to confront the witnesses against them.

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

- d. The right to cross-examine and question the witnesses against them.
  - e. The right to call witnesses in their own behalf and to have the court issue subpoenas within its jurisdictional limits ordering the witnesses to appear.
  - f. The right to a speedy and public trial.
  - g. The right to a jury trial.
  - h. At trial, the right to testify or not to testify in their own behalf, because he has the privilege against self-incrimination.
  - i. If found guilty, the right to appeal.
  - j. The right to file a writ of habeas corpus.
  - k. The right to be considered for bail or released on their own recognizance pending trial.
  - l. The reading of any or all of these rights may be waived by a defendant represented by legal counsel.
- C. Before the defendant is called upon to plead guilty or not guilty, the following proceedings shall be conducted by the judge:
1. The complaint shall be read to the defendant, or the substance of the charge contained in the complaint shall be stated to them.
  2. The defendant shall be given a copy of the complaint or summons and complaint if one has not been previously served.
  3. The defendant shall be advised of the maximum penalty which the judge may impose in the event of a conviction.
- D. Joint Defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.
- E. Entry of Plea. A defendant shall enter a plea of guilty, not guilty, or if the judge agrees, no contest, to each charge contained in the complaint. All pleas shall be entered in open court. The court, upon a finding of good cause and finding that the defendant's rights will not be prejudicially affected, may accept a defendant's change of plea via electronic attendance by phone, video, or other means.

**Section 2.10.031 Plea Procedures [Rule 10(c)]**

**A. Pleas.**

1. NOT GUILTY. A plea of not guilty puts in issue every element of the charged offense, and the case shall proceed according to the case management schedule. A defendant pleading not guilty must inform the judge at the time of arraignment if a jury trial is requested.

2. **GUILTY.** A plea of guilty may be accepted by a judge only after due consideration of the views of the parties and interest of the Nez Perce Tribe in the effective administration of justice. The court may not accept a plea of guilty without first determining:
- a. That the plea is made voluntarily and not the result of force, threats, or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney;
  - b. That the defendant understands the following:
    - i. The nature of the charge for which the plea is offered, the maximum penalty; and, when applicable, that the court may require the defendant or the defendant's attorney;
    - ii. The defendant will be giving up the right to a trial and the right to remain silent;
  - c. That if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may be entitled to withdraw the plea if the agreement is not accepted.
  - d. That, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea; and
  - e. If a defendant voluntarily enters a plea of guilty, the judge may impose a sentence at that time or, on the court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

**B. Alternatives to Pleas: Deferred Prosecution Agreement.** Deferred prosecutions may not be agreed to in cases of domestic violence.

1. **Conditions for Agreement.** At any time, the prosecutor, and a defendant, who has counsel, or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:
- a. That the defendant shall not commit any new offense(s);
  - b. That the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

- c. That the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;
    - d. That the defendant shall make restitution in a specified manner for harm or loss caused by the offense, or any other reasonable conditions, including voluntary exclusion from the Nez Perce Reservation; or
    - e. The defendant's participation in the Healing to Wellness Court.
  2. Contents of Agreement. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for an additional sixty (60) days past the end of the deferral period. The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement shall be filed with the court.
  3. Violations of Agreement. The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms. Sanctions can be imposed for violation of the agreement, without revoking the agreement in its entirety. The conditions of the agreement shall be monitored by the Probation Department.
  4. Expungement of Records. After expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the court, the defendant, or the defendant's counsel, the court shall allow the expungement of the court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.
  5. Stipulated Order of Continuance. In certain circumstances, a stipulated order of continuance may be available.
- C. **Plea Negotiations and Recommendations.** A prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do one of the following
  1. Move for dismissal of other charges; or
  2. Make a recommendation to agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the court; or
  3. Reduce the charges.

- D. A plea bargain agreement may be entered into any time prior to a verdict or finding of guilt by judge or jury. If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court at the time the plea is offered.

### **Section 2.10.032 Reserved**

### **Section 2.10.033 Motions during Arraignment**

- A. **Defenses and Objections Which May Be Passed by Motion.** Any defense or objection which is capable of determination without the trial of the general issue may be raised.
- B. **Defenses and Objections Which Must Be Raised.** The following defenses and objections must be raised by motion during arraignment.
1. Generally, defenses and objections based upon defects in the institution of the prosecution or in the complaint including but not limited to;
  2. Motions to dismiss for defective complaint (other than that it fails to show jurisdiction in the court or to charge an offense), defective warrant, defective service, or unnecessary delay in arraignment.
- C. **Disqualification of Judge.** A party may move to disqualify a judge pursuant to the Nez Perce Tribal Code.
- D. **Waiver of Defenses or Objections Required to be Raised.** Failure to present any defense or objections required to be raised during arraignment constitutes a waiver of such defense or objection, but the judge for cause shown may grant relief from the waiver.
- E. **Notice of Lack of Jurisdiction or Defect in Complaint by Court.** Lack of jurisdiction or failure of the complaint to charge an offense or civil infraction may be noticed by the judge at any time pending final disposition of the case.
- F. **Time and Manner of Making Motion.** Motions under this rule shall be made orally before any plea is entered by the defendant. The judge, however, may require that a motion and argument may be put in writing.
- G. **Hearing on Motion.** Motions under this rule shall be determined by the judge during arraignment proceedings unless the judge orders that it be deferred for determination at a later date.



**Section 2.10.034 Reserved**

**PART V. RELEASE FROM CONFINEMENT AND EXTRADITION**

**Section 2.10.035 Bail or Release on Own Recognizance [Rule 21]**

- A. **Right to Bail or Release in non-DV cases.** [Rule 21/compare Rule 10a] A defendant who is charged with a crime must be admitted to bail or released on the defendant's own recognizance at any time before a guilty plea or verdict of guilt. Bail shall not be excessive. In the discretion of the court, bail or release on the defendant's own recognizance may be allowed in the following cases:
1. After a defendant pleads guilty or is found guilty and before sentencing;
  2. While an appeal is pending;
  3. On a charge of violations of the terms of probation; or
  4. On a finding of a violation of the conditions of release.
- B. Bail shall be set at the close of arraignment, unless exceptional circumstances require it being set at an earlier proceeding.
- C. **Confinement.** [Rule 21 (c)] No person shall be detained or jailed for more than three business days unless there has been a commitment bearing the signature of a judge of the Nez Perce Tribal Court.
- D. **Amount.** [Rule 21 (b)] The amount of bail shall reflect the gravity and nature of the offense(s) charged and the defendant's ability to pay. If the defendant is committed in lieu of bail, then he may be credited for such time spent in jail.
- E. **Factors to be considered in granting release.** The determination of whether a defendant should be released on the defendant's own recognizance or admitted to bail, and the determination of the amount and conditions of bail, if any, may be made after considering the following factors.
1. Defendant's employment status and work history;
  2. Defendant's financial status;
  3. The nature and extent of defendant's family relationships and ties to the Nez Perce Tribe's Reservation community;
  4. Defendant's past and present residence;
  5. Names of individuals personally agreeing to assure defendant's court appearance.
  6. The nature and circumstances of the current charge, including whether the offense involved the use of force or violence;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

7. The defendant's prior criminal record, if any and whether, at the time of the current arrest of offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for on offense; and
  8. The nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.
- F. **Conditions of Release generally.** The conditions of release for a defendant must be determined immediately upon the defendant's arraignment. The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community. At any time and upon a reasonable basis, the court may amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

**Section 2.10.036 Bail or Release in Cases Involving Domestic Violence**  
**[Rules 21 (d) + 10a]**

- A. **No Bail before Arraignment.** [Rule 21 (d)] Any person arrested for a crime involving domestic violence or a violation of a domestic violence no-contact order or protection order shall not be released on bail or their own recognizance prior to being arraigned. ~~Such arraignment shall not occur less than 48 business hours or more than 72 business hours following arrest.~~ Such arraignment shall not occur less than 2 business days or more than 3 business days following arrest.
- B. **Cash only bail.** [Rule 10a (c)] The bail for a crime involving domestic violence or a violation of a domestic violence no-contact order or protection order shall be a cash bail in an amount set by the court on the bail schedule.
- C. **Pre-Trial Release in cases involving domestic violence.** [Rule 10a]
1. In making a decision concerning the pre-trial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic violence no-contact order or protection order, the court shall review the facts of arrest and detention of the person, considering factors in 5.70.024(A) to ~~and~~ determine whether the person:
    - a. Is a threat to the alleged victim;
    - b. Is a threat to public safety; and
    - c. Is reasonably likely to appear in court.
  2. Before releasing a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic violence no-contact order or protection order, the court shall make findings on the record concerning the determination made in accordance with the

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

above subsection 1 and may impose conditions of release and/or bail on the person to protect the alleged victim and to ensure the appearance at a subsequent court proceeding. Conditions may include:

- a. An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;
  - b. An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;
  - c. 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;
  - d. An order prohibiting the person from using or possessing a firearm or other weapon as specified by the court;
  - e. 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;
  - f. An order prohibiting the person from possession or consumption of alcohol or controlled substances; or
  - g. Any other order needed to protect the safety of the alleged victim and to assure the appearance of the person in court.
3. Copies. The court shall provide a copy of the conditions to the arrested or charged person upon their 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.
4. Hearing. If conditions of release are imposed without a hearing, a defendant may request a hearing before the court to review the conditions.
- D. ~~[Insert cross reference to DV chapter and victim notification requirements]~~. Please refer to DV chapter 5.70 and victim notification requirements.

### **Section 2.10.037 Bail Form and Conditions**

- A. This definition applies to this section only: **Defaulter** means a person who fails to fulfill a duty, obligation, or undertaking, especially to pay a debt.
- B. **Bail Schedule**. The Chief Judge of the Nez Perce Tribal Court shall establish and post a schedule of bail for offenses to be used by law enforcement officers prior to first appearance/arraignment. The schedule may be revised yearly, at the discretion of the Chief Judge. Bail shall be

specifically set by a judge for any offense not listed on the posted bail schedule.

- C. **Amount.** A defendant shall be admitted to bail in an amount which in the judgment of the judge is necessary and sufficient to ensure the defendant's presence at future court proceedings at which defendant's presence is required.
- D. **Form of Bail Bonds and Place of Deposit.** A defendant admitted to bail shall execute a bond for this appearance in court on a designated day, and from day to day thereafter as the judge may deem appropriate. The bail bond may be in the form of cash, some type of surety arrangement, or other kind of security as may be acceptable in the judgment of the judge. A personal or own recognizance bond may be allowed by the judge at their discretion in lieu of cash, surety or other kind of security bond. The bond shall be made and deposited in the office of the clerk of the court.
- E. **Disposition of Bail.**
1. **Forfeiture.** If there is a breach of conditions, of a bond, the judge may declare a forfeiture of the bail. The judge may direct that a forfeiture be set aside, upon such conditions as the judge may impose, if it appears that justice does not require the enforcement of the forfeiture.
    - a. **Enforcement.** By entering into a bond, each defaulter, whether defendant or surety, submits to the jurisdiction of the court. The defaulter liability under the bond may be enforced, without the necessity of an independent action. Upon an initial finding of failure to comply with the terms of the bond, the judge shall order the issuance of a notice directed to the defaulter that he has fifteen (15) days to request in writing a hearing at which he may show cause why judgment should not be entered against them. Said notice shall be served personally upon the defaulter at the address given in the bond. If a hearing is requested by defaulter within the time allowed, hearing shall be held not less than twenty (20) days after service of the notice. The defendant and the prosecutor shall be given notice of the hearing, and be allowed to present evidence and argument. At the conclusion of the hearing, if the judge finds by a preponderance of evidence that the terms of the bond have been violated, a judgment and execution shall issue thereon as on other judgments. Judgment may be for contempt of court and bail posted may also be forfeited.
  2. **Exoneration of the Defaulter.** The defaulter shall be exonerated when the condition of the bond has been satisfied; or, when forfeiture has been declared, the amount of forfeiture has been paid; or upon

surrender of the defendant into custody before judgment upon an order to show cause and upon payment of all costs occasioned thereby.

3. Continuation of Bond. In the discretion of the judge and with the consent of surety, the same bond may be continued until the final disposition of the case on appeal.

**Section 2.10.038 Reserved**

**Section 2.10.039 Reserved**

**Section 2.10.040 Extradition [Rule 20]**

- A. **Extradition Agreements.** In the event a written and duly authorized agreement exists between the Nez Perce Tribe and another governmental entity, the Nez Perce Tribe shall authorize extradition of individuals from the Nez Perce Reservation in accordance with the terms of the agreement.
- B. **State Warrant for Arrest of Indian Located on the Nez Perce Reservation.**
  1. Any warrant for the arrest of an individual who is located within the boundaries of the Nez Perce Reservation which is issued by a court of competent jurisdiction shall be presented to a judge of the Nez Perce Tribal Court prior to being executed.
  2. Upon presentation, a judge of the Nez Perce Tribal Court shall authorize execution of the warrant by officers of the Nez Perce Tribal Police Department alone or in the company of the officers of the presenting agency. If the judge of the Nez Perce Tribal Court after receiving the extradition request is satisfied as to its validity, the judge shall issue an arrest warrant.
  3. Upon execution of the warrant, the person arrested shall be held pending a hearing in the Nez Perce Tribal Court on the validity of the warrant.
- C. **Extradition Hearing.**
  1. The Nez Perce Tribal Court shall hold a hearing on the validity of a warrant for extradition with seventy-two (72) business hours from the time of the arrest.
  2. At the hearing the court shall advise the person arrested of their rights and ask the person if he is willing to waive extradition. If extradition is waived the court shall inform the person of their right to habeas corpus and issue an order releasing the person to the requesting jurisdiction.
  3. If the person being held does not waive extradition the court shall proceed with the extradition hearing by determining whether:

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

- a. A certified, exemplified copy of the warrant has been transmitted from the requesting jurisdiction;
  - b. The person named in the warrant is in fact the person being held for extradition.
4. If the court determines that the warrant is valid and that the person identified in the warrant is the person being held for extradition, an extradition order shall be issued, and the person immediately turned over to the custody of the appropriate authorities.
  5. If the court determines that the warrant is not valid, or that the person being held is not the person identified in the warrant, the court shall issue an order releasing the person from custody.

**Section 2.10.041 Furlough Release**

- A. An incarcerated person may move the court for temporary release (furlough). The court shall base its decision on the following:
  1. The existence of protection or no-contact orders that restrain the incarcerated person. If the court finds that release is likely to result in an order violation, the motion shall be denied.
  2. The seriousness of the offense for which the moving party is charged or has been convicted. If the crime is a crime of violence and release would put the victim or community in danger, the motion shall be denied.
  3. Release for the purpose of serious illness of an immediate family member shall consider the prognosis. In motions for release to visit an immediate family member, the imminence of the family member's death and the likelihood that release presents the only opportunity for a meaningful visit shall be considered.
- B. An incarcerated person shall be placed on furlough only when there has been made:
  1. An administrative verification of the reason for which the incarcerated person requests furlough;
  2. Arrangements for supervision, maintenance, and care (if applicable) while on furlough;
  3. A determination of the leave duration, provided, however, that such leave may not exceed seventy-two (72) hours except in the case of a medical furlough for the purpose of diagnosis or treatment of a serious illness or injury;
  4. Provision for signing a waiver of extradition;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

5. A determination and establishment in writing of any and all other conditions, terms and incidents requisite to such furlough; and
  6. There are no detainers against said incarcerated person.
- C. Furlough may be authorized for diagnosis or treatment of a serious illness or injury, funerals, serious illness, or accidents of the immediate family of the incarcerated person, family visitation, to seek employment, and such other purposes that contribute to and promote a transition from confinement to the free society.
1. An immediate family member shall be defined according to the bereavement leave section of the Nez Perce Tribe Human Resources Manual.
- D. Due consideration will be given to law enforcement input.

**Section 2.10.042 Reserved**

**Section 2.10.043 Reserved**

**Section 2.10.044 Reserved**

**PART VI. PRE-TRIAL**

**Section 2.10.045 Pre-Trial Motions [Rule 11]**

- A. **Form of Motions.** An application to the court for an order shall be by written motion. A motion need not be in any special form, but must be such as to enable a person of common understanding to know what is intended. The general rules of pleading shall apply to all motions.
1. Judicial copy. A copy of any motion, response, or supporting documentation filed and served under this section shall be provided to the judge at the time it is filed. The judicial copy shall contain the date and time of the hearing and the judge assigned to the matter.
  2. Timing. The court shall set the time frames for any motions not covered by this section. Notice of any hearing date or other deadline shall be given to all parties.
- B. **Pre-trial motions include, but are not limited to the following:**
1. Motion for use of interpreter;
  2. Motion for continuance of trial date. The court must state one on the record or in writing the reasons for the continuance;
  3. Motion to dismiss complaint for lack of jurisdiction or for failure to charge an offense;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

4. Motion for relief from prejudicial joinder. If it appears the defendant or their case is unfairly prejudiced by a joinder of offenses or by joinder of defendants in a complaint, the judge may order separate trials for offenses, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by defendant for severance, the judge may order the prosecutor to deliver to them, for inspection privately in their chambers, any statements or confession made by defendants which the prosecutor intends to introduce in evidence at the trial.
  5. Motion for pre-trial conference. At any time after the filing of the complaint, the court, upon motion of any party or upon its own motion, may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference, if any matters have been agreed upon, such agreement shall be noted on the record or a in a written memorandum.
  6. Motion to suppress evidence. A motion to suppress evidence may be made when it is learned through discovery or other pretrial procedures that an opposing party intends to introduce evidence that is inadmissible under these rules.
- C. **Time and Manner of Making and Opposing Motions.** Motions made under this rule shall be written and supported by reasons therefore and shall be filed not later than fifteen (15) days before the trial date. Such motions shall be served on the opposing party simultaneously with filing thereof. Response in opposition to such motions shall be made in writing and supported by reasons therefore and shall be filed not later than five (5) days before the trial date. Responses in opposition shall be served simultaneously with the filing thereof. The judge, at their discretion, may direct that any motion be made orally.
- D. **Determination of Motions.** The judge may enter judgment on pretrial motions solely on papers filed, or they may set a date and time for hearing of pretrial motions.

**Section 2.10.046 Discovery [Rule 12]**

- A. **Attorney Work Product Exception.** Attorney work product of the prosecutor's office and defense counsel is not subject to disclosure and production.
- B. **Disclosure by Prosecution.** At the time of the arraignment and upon request, the prosecutor shall furnish to the defendant the name of the person, if any, against whom the offense was committed if it is not disclosed in the complaint. Any of the following information or evidence which is within the possession, custody or control of the prosecutor is subject to disclosure and



  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

production and may be copied or photographed, as appropriate of the item, by the defendant:

1. Any relevant written or recorded statement made by the defendant or co-defendant while in the custody of the Nez Perce Tribe;
  2. The names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief;
  3. The record of defendant's convictions that is in the possession of the prosecutor;
  4. Any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence obtained in connection with the defendant's case;
  5. Any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons;
  6. All material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence;
  7. Whether there has been any electronic surveillance of any conversation to which the defendant was a party;
  8. Whether an investigation subpoena has been executed in connection with the case; and
  9. The prosecutor shall provide written notice of any evidence of any prior wrongs, acts, or crimes it may introduce in the case in chief at least two weeks prior to the trial readiness hearing. The notice shall describe the prior wrong or act, the closest approximation possible as to when and where it occurred and who witnessed it, unless the prior crime is confirmed as a conviction, in which case the court and date of conviction must be disclosed. The prosecutor must also disclose the purpose for which the evidence would be offered.
- C. **Continuing Duty to Disclose.** If a party, subject to compliance with an order issued pursuant to this rule, discovers prior to or during trial additional evidence or decides to use additional evidence, and the evidence is or may be subject to discovery or inspection under this rule, he must promptly notify the attorney for the other party of the existence of the additional evidence.

#### **Section 2.10.047 Subpoenas**

- A. **Issuance.** A judge of the Nez Perce Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the court's own motion or on the request of any party to

a case, which shall bear the signature of the judge issuing the subpoena. The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pre-trial hearing, or for a trial or post-trial proceeding.

- B. **Service.** Service of subpoena shall be made by a police officer or other person appointed by the court for such purposes. As soon as practicable, proof of service of subpoena shall be filed with the clerk of court indicating the date, time, and place of services. The court, in its discretion, may assess reasonable costs.
- C. **Failure to Obey.** In the absence of justification satisfactory to the court, a person who fails to obey a subpoena may be subject to a bench warrant to compel their attendance.

**Section 2.10.048 Reserved**

**Section 2.10.049 Reserved**

**PART VII. TRIAL**

**Section 2.10.050 Procedures to Ensure a Speedy and Public Trial [Rule 3a]**

**A. General.**

- 1. **In-custody.** A defendant not released from jail pending trial shall be brought to trial no later than one-hundred eighty (180) days after the date of arraignment.
- 2. A defendant released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than two-hundred ten (210) days after the date of arraignment.

**B. The following extensions of time limits apply, notwithstanding the preceding time limits.**

- 1. **Revocation of Release.** A defendant whose release has been revoked by the court shall be brought to trial no later than one hundred eighty (180) days following the revocation or previously scheduled trial date, whichever is sooner.
- 2. **Failure to Appear.** When a defendant fails to appear for any hearing, all future hearings shall be stricken from the court calendar and a bench warrant will issue. Such failure to appear constitutes a waiver of the right to speedy trial. When the defendant next appears before the judge, the speedy trial clock beings at zero.
- 3. **Trial Preparation Time.** The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

4. Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the court or the parties, the court, even if the time for trial has expired, may extend the time within which trial must be held in increments of not more than twenty (20) business days unless the defendant will be substantially prejudiced in their or her defense. The court must state on the record or in writing the reasons for the extension.
5. Continuances. The court may continue a trial beyond the speedy trial period as follows:
  - a. Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement shall be effective when approved by the court on the record in writing.
  - b. On its own or on motion of a party, the court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The court must state on the record or in writing the reasons for the continuance. The bringing of such motion by or on behalf of any party waives that party's objection to the requested delay.
6. Computation of Time. The following periods shall be excluded in computing the time for arraignment and the time for trial:
  - a. All proceedings relating to the competency of the defendant to stand trial, terminating when the court enters a written order finding the defendant to be competent;
  - b. Preliminary proceedings and trial on another charge;
  - c. The time during which a defendant is detained in jail or prison by authorities other than the Nez Perce Tribe and the time during which a defendant is subjected to conditions or release not imposed by the court;
  - d. All proceedings in the Nez Perce Tribe's Juvenile Court;
  - e. Continuances requested by the defendant; and
  - f. Delays caused by defendant's failure to appear.
7. Waiver. A defendant may waive the right to a speedy trial. Such waiver shall be in writing and shall be signed by the defendant. The waiver shall be to a date certain.

**Section 2.10.051 Trial Procedures [Rule 14]**

- A. **Burden of proof.** The prosecution has the burden of proving beyond a reasonable doubt that the defendant is guilty of an offense as charged.
- B. Trial shall be by jury for all criminal offenses, unless the defendant knowingly and voluntarily waives the right to jury trial, in which case the criminal offense shall be tried before a judge (also known as a bench trial). All civil infractions shall be tried before a judge.
- C. **Opening Statements.** Both parties shall have the right to make an opening statement to summarize for the court the facts, evidence and arguments each will present and rely on during trial. The prosecution shall present its statement first and the defense shall have the option of making its opening statement at that time or after the prosecution has completed the presentation of its case. Either side may waive the opening statement.
- D. **Presentation of the Prosecutor's Case.** Upon the completion of the opening statements, the prosecution shall present to the court, all of the evidence and testimony of witnesses on the prosecution's side of the case.
- E. **Presentation of the Defendant's Case.** Upon the completion of the presentation of the prosecution's case and after making any appropriate motions, the defense may present to the court all the evidence in accordance and testimony of witnesses for the defendant's case.
- F. **Reopening Case (Rebuttal).** After the presentation of both sides of the case either side may ask that the case be reopened to allow presentation of rebuttal evidence or testimony or evidence or testimony what was inadvertently omitted, unavailable or non-existent earlier in the trial. Whether such evidence or testimony will be received is in the discretion of the court.
- G. **Closing Arguments.** After the presentation of both sides of the case, both parties shall have the right to make closing arguments in which they may interpret the facts and argue the law and generally summarize the case as they interpret it. Either side may waive the right to making closing arguments. The prosecution proceeds first with their closing argument; the defense may go next; and then the prosecution may rebut the defense's closing argument.
- H. **Objections.** Objections may be made by either party to test the validity of any procedural, substantive, or evidentiary matter before the court during any hearing or trial. All objections shall be made at the time the objectionable matter arises and the specific grants therefor shall be stated. The court shall either rule immediately on the objection or take the matter under advisement for a later ruling in its discretion.

- I. **Lesser-included offense.** 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.

**Section 2.10.052 Jury Pool Procedures [cross-reference 1-1-26 through 1-1-35]**

- A. **Eligibility, List, Record of Service.** A list of eligible jurors shall be kept by the Clerk of the Court and a record of each juror's service as a juror shall be noted thereon.
1. Any tribal member within the boundaries of the Nez Perce Reservation of the age of eighteen (18) or over is eligible to be a juror regardless of race or tribal citizenship, and
  2. Any tribal employee eighteen (18) years or older.
- B. **Selection of Jury Panel.** In January of each year, the judge shall select at least fifty (50) names from the list of eligible jurors, and each shall be notified of their or her selection. This selected list shall comprise the trial jury list for the ensuing year from which jury panels shall be selected from time to time. A jury panel shall consist of not less than eighteen (18) names.
- C. **Time and Manner of Notification.** Those persons who are selected to serve on a jury panel shall be notified at a reasonable time prior to the trial date and the notice shall state the date, time, place, and title of the proceeding for which they shall serve.
- D. **Exemption From Jury Service.** For good cause shown, the judge may exempt any person from jury service. The judge shall order the exemption be either permanent or for a specified period of time. If the exemption is temporary, the name of the prospective juror shall be returned to the annually selected jury list for possible selection for another panel at the expiration of the exemption. In the court's discretion, the name of the person with a temporary exemption may be removed for that year from the selected list of jurors. If the exemption is permanent, the name of the person shall be removed from the list of eligible jurors.

**Section 2.10.053 Trial by Jury**

A defendant shall have the right to a trial by a jury of their peers composed of not less than six (6) persons and one (1) alternate juror unless such right has previously been waived. The prosecution has the burden of proving beyond the reasonable doubt that the defendant is guilty as charged.

- A. **Jury Selection.**
1. The prosecution and defense, in that order, shall have the opportunity to ask questions of the prospective jurors as they are individually called upon by the court to determine if there is any reason why a

particular candidate should not be seated as a juror. Either party may question the propriety of any question asked by the other party of a prospective juror and it shall be within the discretion of the court to rule on the propriety of the question.

2. Challenges. When both sides have completed their questions of the six prospective jurors and the one alternate, they shall confer privately with the judge and state all challenges they have to make against any prospective juror.
  - a. Preemptory Challenges.
    - i. In misdemeanor cases, both parties shall have two (2) preemptory challenges with which the parties may disqualify any prospective juror and need not state any reason for doing so.
    - ii. In cases involving a felony-level offense(s), both parties shall have three (3) preemptory challenges with which the parties may disqualify any prospective juror and need not state any reason for doing so.
  - b. Challenges for Cause. When it is established that any prospective juror is prejudiced, biased or otherwise unable to sit as a fair and impartial juror, he may be disqualified by a challenge for cause by either side. The allowance or disallowance of a challenge for cause shall be within the discretion of the court. The number of challenges for cause by either party is unlimited.
3. Oath to Jury. [1-1-35] After the six members and one alternate of the jury have been selected and seated, the court shall administer an oath by which the jury swears that it will act fairly and impartially in the trial it will hear.

### **Section 2.10.054 Motions at Trial [Rules 14 + Rule 17]**

Either party may make motions, outside the presence of the jury, all of which shall be oral unless otherwise directed by the court, throughout the course of the trial. Both parties shall have the opportunity to argue their respective positions on any motion made. The motions that can be made shall include but not be limited to the following.

- A. **Motions for Exclusion of Witnesses**. A motion to exclude all witness who have not yet testified may be made by either party or done by the court on its own initiative, prior to the time any witness has testified to ensure that the testimony of all witnesses is their own independent recollection of the facts and that he does not adopt the testimony of a prior witness. It shall be within

the discretion of the court to grant or deny a motion to exclude a witness made by either party.

- B. **Motion for a Directed Verdict.** At the close of the prosecution's case, the defense may move that the court direct a verdict of not guilty. Defendant's motion shall be granted only if the prosecution has failed to present evidence supporting each element of a crime charged.
- C. **Motion for Mistrial.** A motion for a mistrial can be made at a time during the trial and can be granted in the court's discretion. A party may make a motion for a mistrial when any action by any person other than the moving party, has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.
- D. **Motion for Judicial Notice.** Either party may, during the presentation of its case, move the court to take judicial notice of matters which by their nature, are not properly the subject of testimony or which are universally regarded as established by common notoriety. Granting or denying the motion shall be within the discretion of the court.
- E. **Motion for a New Trial.** The defendant may make a motion for a new trial after a verdict of guilty has been rendered against them. The motion must specifically allege the errors made by the court during the trial which forms the basis for the motion. The motion shall be granted or denied as justice dictates.
- F. **Motion to Dismiss for Unnecessary Delay in Prosecution.** A motion to dismiss for unnecessary delay in prosecution may be made by the defendant prior to the commencement of the trial proceedings and shall be granted if an unreasonable amount of time has elapsed since the defendant was arraigned and if the delay was not requested or acquiesced in by the defendant.
- G. **Motion to Exclude Evidence.** A motion to exclude evidence may be made during the course of a trial when an opposing party introduces evidence that is inadmissible under the Rules of Evidence.

### **Section 2.10.055 Evidence**

All evidence which the court deems proper and necessary for reaching a true and just verdict or which is in accordance with Nimiipuu customs and traditions, provided it is otherwise admissible under the tribal code's rules of evidence, shall be admitted subject to rules governing the permissible scope of search and seizure. In reaching a decision on the admissibility of any evidence, the court may avail itself of any materials, books, or documents prior to ruling.

### **Section 2.10.056 Jury Deliberations and Verdict [Rule 15]**

After the presentation of evidence in a bench trial (non-jury case) 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.

**A. 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. The court may detain or set bail on an individual found guilty of an offense until sentencing.

**B. Mistrial.** 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.

**C.** Polling of the jury may take place upon the request of either party.

**Section 2.10.057 Findings of Fact, Conclusions of Law in Bench Trials**

In a bench trial (non-jury case), the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion.

**Section 2.10.058 Reserved**

**Section 2.10.059 Reserved**

**PART VIII. SENTENCING**

**Section 2.10.060 Sentencing Procedure**

On a date set for sentencing, the defendant shall appear before the court and sentence shall be pronounced.

**A. Pre-Sentence Investigation.** The court may, in its discretion, order that a pre-sentence investigation report shall inquire into the characteristics, attitude, circumstances, needs, and potential of the defendant, their criminal and social history, circumstances of the offense and any other information pertinent to sentencing.

1. Availability to Defendant. A pre-sentence investigation, if ordered, shall be available to defendant and he shall have an opportunity to rebut the contents thereof and offer information in addition thereto prior to sentencing

**Section 2.10.061 Misdemeanor Sentencing Limitations**

Any offense not classified as a felony shall be subject to a term of imprisonment of not more than 1 year or a fine of \$5,000, or both.



### **Section 2.10.062 Felony Sentencing Limitations**

Any offense expressly classified as a felony shall be subject to a term of imprisonment of not more than one (1) year or a fine of \$5,000, or both.

- A. **Enhanced Sentencing Authority.** [Cross-reference draft section 4.10.034] Felony crimes, Class F offenses, within the Nez Perce Tribal Code are considered eligible for Enhanced Sentencing Authority under the Tribal Law and Order Act, 25 U.S.C § 1301 et seq. A total term of imprisonment for any criminal proceeding involving a felony-level offense shall not exceed 9 years.

### **Section 2.10.063 Reserved**

### **Section 2.10.064 Reserved**

## **PART IX. POST-SENTENCING**

### **Section 2.10.065 Revocation of Probation**

Probation Revocation Hearing. A probationer is entitled to a hearing before the court prior to revocation of probation on the date set in any notice of revocation unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

- A. A probationer who is arrested for a probation violation shall appear before a judge no later than two (2) business days for a probation violation hearing.
- B. The supervised offender shall be entitled to notice of the date and time of the hearing, and the grounds for the proposed revocation. Notice to the probationer may be accomplished by personal service to the probation's mailing address on record with the court.
- C. A violation of a condition is deemed to be a knowing violation if the probationer signed and was given a copy of the conditions of probation.
- D. Supervised offenders do not have a right to a jury trial at a revocation hearing.
- E. If the probationer admits to violating a condition of probation, the court may revoke the probation after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation.
- F. If the probationer does not admit to violating a condition of the probation, the prosecutor or probation office has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself. The judge may issue an order that any testimony or information from the

defendant may not be used against the defendant in any criminal case arising from the same charge or incident that is basis for revocation.

- G. Revocation may be based on demonstrably reliable hearsay evidence unless the judge request witnesses present on the issue. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.
- H. The court shall determine the appropriate disposition of a petition of revocation. An order revoking probation shall be in writing.

**Section 2.10.066 Reserved**

**Section 2.10.067 Reserved**

**Section 2.10.068 Reserved**

**Section 2.10.069 Reserved**

**PART X. CRIMINAL APPEALS**

**Section 2.10.070 Procedures for Appeal [cross-reference Ch. 2-9]**

- A. **Grounds for Appeal.** A party may appeal a final order of the Nez Perce Tribal Court to the Nez Perce Tribal Court of Appeals upon an allegation, made in good faith, that an error was made by the Nez Perce Tribal Court that prejudiced the outcome of the proceedings before that Court or that an error was made by that court in the interpretation of law.
- B. **Notice of Appeal.** The party wishing to appeal shall file a notice of appeal with both the court and opposing party within thirty (30) days after the decision being appealed is rendered.
- C. **Appeal Bond.** The party filing that notice of appeal shall accompany the notice of appeal to the Nez Perce Tribal Court with a bond in the amount of \$50.00 which will be returned if they prevails on appeal or forfeited if they do not.

**Section 2.10.071 Record on Appeal [cross-reference 2-9-4]**

- A. **Record on Appeal.** The record on appeal shall consist of the recording or transcript of proceedings in the Nez Perce Tribal Court and all documents, exhibits, motions, briefs, and memoranda filed therein in that case along with all rulings, opinion, findings of fact, and conclusions of law issued by the court therein.
- B. **Transcript, Cost.** Any party requesting a transcript of the proceedings before the Nez Perce Tribal Court shall bear the cost thereof. In the event, the appellate court requires that a written transcript be provided on appeal, it will be provided to an indigent criminal defendant free of charge.

**Section 2.10.072 Reserved**

**Section 2.10.073 Reserved**

**Section 2.10.074 Reserved**

**PART XI. GENERAL PROVISIONS**

**Section 2.10.075 Time**

A. **Computation.** In computing any period of time, the date of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

1. As used in these rules, “legal holiday” means those holidays designated by the NPTEC, including but not limited to: New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, National Indian Day, Memorial Day, Whitebird War Memorial, Juneteenth, Independence Day, Big Hole War Memorial, Labor Day, Bears Paw War Memorial, Veterans Day, Thanksgiving Day and day after Thanksgiving, and Christmas Day.

B. **Enlargement.** The judge may for cause shown at any time in its discretion, with or without motion, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by a previous order. If a request is made after the expiration of the prescribed period, the judge may permit the act to be done if failure to act is in the opinion of the judge excusable.

**Section 2.10.076 Contempt of Court [1-1-45]**

A. Any person or persons found guilty of any of the following acts shall be adjudged to be in contempt of court and shall be punished as the court may direct.

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceeding;
2. A breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge, or in the immediate vicinity of the court held by them, tending to interrupt the due course of a trial or other judicial proceeding;
3. Disobedience or resistance to the carrying out of a lawful order or process made or issued by the judge;

  
**NEZ PERCE TRIBE REVISED CODES**  
*As Amended through Resolutions NP 22-212 and NP 22-214 (March 22, 2022)*  
*NP 24-506 (Sept. 24, 2024)*

4. Disobedience to a subpoena duly serviced, or refusing to be sworn or to answer as a witness;
  5. Rescuing or interfering with any person or property in the custody of a police officer acting under an order of the court or process of the court;
  6. Failure to appear for jury duty when properly notified.
- B. When a contempt is committed in the immediate view and presence of the judge, it may be punished summarily. To that end, an order must be made reciting the facts as they occurred and adjudging that the person proceeded against is thereby guilty of the contempt, and that he be punished as therein prescribed.
- C. When a contempt is not committed in the immediate view and presence of the judge, a warrant of arrest may be issued by such judge, whereupon the person who is charged may be forthwith arrested and brought before the judge at which time the accused must be given an opportunity to be heard in their defense or excuse of their action or actions. The judge may thereupon convict or discharge them of the charge.

**Section 2.10.077 Service and Filing of Papers [Rule 24]**

- A. This section shall apply to any service of process required under this chapter. Service of process in criminal cases shall be by 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 their 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.

**Section 2.10.078 Filing Fees**

Filing fees shall be established by the chief judge and the clerk of the court in an amount they deem property. Said amount may be reviewed and revised periodically.

**Section 2.10.079 Court Costs**

The court shall award court costs in such cases and in such amounts as is deemed prior in the discretion of the court.

**Section 2.10.080 Vacating Conviction – Marijuana Offenses**

Any person convicted of a marijuana possession offense, who was 21 years of age or older at the time of the offense, may apply to the Nez Perce Tribal Court to vacate the applicant's record of conviction for the offense. If an applicant qualifies under this subsection, the court shall vacate the record of conviction.

A. A marijuana possession offense is any conviction of the Tribal Code:

1. For possessing less than 40 grams of marijuana; or
2. For possessing paraphernalia used solely for marijuana.