

**TITLE 2**  
**LUMMI NATION CODE OF LAWS**  
**TRIBAL COURT CRIMINAL ACTIONS**

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**Table of Contents**

**Chapter 2.01 General Provisions**

2.01.001 Civil Rights .....	1
2.01.003 Court Rules for Criminal Proceedings.....	1
2.01.004 Other Procedures Applicable .....	1
2.01.005 Procedure in the Absence of Rule or Code .....	1
2.01.010 Jurisdiction - Generally.....	1
2.01.020 Concurrent Jurisdiction.....	1
2.01.030 Extradition.....	1
2.01.040 Remand of Juvenile to Adult Court.....	2

**Chapter 2.02 Citation; Summons; Arrest Warrant; Search**

2.02.010 Citation in lieu of Detention.....	3
2.02.020 Citation - Contents.....	3
2.02.025 Summons in lieu of Citation .....	3
2.02.030 Warrants for Arrest – Generally .....	3
2.02.032 Warrants for Arrest on Finding of Probable Cause .....	4
2.02.035 Bench Warrants .....	4
2.02.050 Search Warrants.....	4

**Chapter 2.03 Arrest; Release from Custody; Bail**

2.03.005 Arrest .....	5
2.03.010 Bail and Release from Custody.....	5
2.03.015 Bail.....	6
2.03.030 Bail Schedule.....	6
2.03.045 Probable Cause Determination.....	6
2.03.050 Review of Bail; Amendment or Revocation of Order of Release .....	6

**Chapter 2.04 Commencement of Criminal Proceedings**

2.04.010 Complaints - Contents and Filing.....	7
2.04.020 Limitation on Filing of Complaints .....	7
2.04.030 Joinder of Offenses or Defendants .....	7

**Chapter 2.05 Pre-Trial Proceedings**

2.05.005 Management of Calendars and Caseloads .....	7
2.05.010 Arraignment .....	8
2.05.015 Service and Filing of Papers.....	8
2.05.020 Speedy Trial .....	8
2.05.030 Discovery .....	10
2.05.040 Pre-Trial Motions .....	12
2.05.045 Dismissal.....	12
2.05.050 Video and Telephonic Conference Proceedings .....	12
2.05.060 Material Witness Warrants.....	12
2.05.070 Insanity at the Time of Offense and Competency to Stand Trial.....	13

**Chapter 2.06 Pleas; Trial Procedure; Sentencing; and Probation**

2.06.020 Standard of Proof..... 16  
2.06.025 Defendant’s Voluntary Absence from Trial..... 16  
2.06.028 Trial on Stipulation ..... 16  
2.06.035 Plea Negotiations ..... 16  
2.06.040 Pleas ..... 16  
2.06.050 Compromise of Misdemeanor ..... 17  
2.06.060 Sentencing ..... 17  
2.06.070 Fines and Court Costs ..... 17  
2.06.080 Enforcement of Order for Restitution ..... 17  
2.06.090 Probation ..... 18

**Chapter 2.07 Habeas Corpus**

2.07.010 Who May Prosecute Writ..... 19  
2.07.020 Writ for Purpose of Bail..... 19  
2.07.030 Application for Writ - Contents..... 20  
2.07.040 Content of Writ - When and to Whom Issued..... 20  
2.07.050 Service of the Writ..... 20  
2.07.060 Return of Writ - Contents..... 20  
2.07.070 Hearing on Return ..... 20  
2.07.080 Judgment ..... 20

**Chapter 2.08 Motions for Reconsideration; Relief from Judgment; Appeal**

2.08.010 Motions for Reconsideration..... 20  
2.08.020 Relief from Judgment or Order ..... 20  
2.08.030 Appeal by Tribal Prosecutor ..... 21  
2.08.040 Discretionary Review by Court of Appeals ..... 21  
2.08.050 Procedure for Criminal Appeals ..... 22

**TITLE 2  
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**Chapter 2.01 General Provisions**

**2.01.001 Civil Rights**

All accused persons shall be guaranteed all civil rights secured under the Constitution of the Lummi Nation.

**2.01.003 Court Rules for Criminal Proceedings**

The Chief Judge of the Tribal Court may establish Rules of Court consistent with this Code and the Constitution of the Lummi Nation to regulate court decorum, court procedures, court records, court security, and other court matters so as to ensure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expenses and delay. Prior to adopting new or changed rules, the Chief Judge will offer the proposed rules for comment to the Lummi Nation Bar Association and the Law and Justice Commission.

**2.01.004 Other Procedures Applicable**

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

**2.01.005 Procedure in the Absence of Rule or Code**

(a) In interpreting this title, and other rules adopted by the Court pursuant to this title, the Court shall be guided by the common law of this jurisdiction. In the absence of a procedure established in this title, or a rule adopted under LCL 2.01.003, the Court may be guided by rules of procedure and common law of other jurisdictions in the order of priority set in LCL 4.07.010.

(b) The Court shall advise the parties of any procedure that it will apply when the rule is not otherwise stated in this title or its Rules adopted under LCL 2.01.003.

**2.01.010 Jurisdiction - Generally**

The Lummi Tribal Court shall have jurisdiction over all criminal offenses enumerated in this Code and all other ordinances and resolutions that may be passed by the Business Council

when committed by any person while

(1) on the lands and waters within the boundaries of the Lummi jurisdiction, as defined in Chapter 1.02 of this Code;

(2) on the lands outside the boundaries of the Reservation held in trust by the United States for individual Lummi Indians or for the Lummi Tribe;

(3) exercising treaty reserved rights, including but not limited to, fishing, hunting, and gathering pursuant to Article 1 of the Lummi Constitution; or

(4) in the lawful custody of the Lummi Nation.

**2.01.020 Concurrent Jurisdiction**

With respect to any of the offenses enumerated in this Code over which federal, state, tribal, or municipal courts may have lawful jurisdiction, the jurisdiction of the Lummi Tribal Court shall be concurrent and not exclusive. It shall be the duty of the Lummi Tribal Court to order delivery to the proper authorities of the other jurisdiction where such authorities consent to exercise jurisdiction lawfully vested in them over the offender.

**2.01.030 Extradition**

(a) If a person is charged with a criminal violation of the laws of another jurisdiction, a Lummi law enforcement officer may arrest and detain the person under the following conditions:

(1) the other jurisdiction has issued an arrest warrant on a felony charge;

(2) the federal government has issued an arrest warrant;

(3) the other jurisdiction has issued an arrest warrant on a gross misdemeanor charge, and the bail is over one thousand dollars (\$1,000), or the warrant is a "no bail" warrant;

(4) the other jurisdiction has issued one or more arrest warrants on misdemeanor charges involving crimes against persons or

property, and the total bail for the warrants is over one thousand dollars (\$1,000), not including traffic or parking infractions; or

(5) a law enforcement officer from another jurisdiction is in “hot pursuit” of a person based on probable cause to believe that the person has committed a felony offense, and the Lummi Police Department is requested to assist.

(b) The judge may issue a court order directed to the Lummi Chief of Police instructing him or her that the person named in the order shall be apprehended and delivered over to the proper authority in the appropriate jurisdiction

(1) if the Court receives a valid warrant as described in (a)(1)-(4) of this section; or

(2) upon a showing that an arrest warrant has been issued by another jurisdiction for a misdemeanor charge that has less than one thousand dollars (\$1,000) bail and that the person has a history of failure to appear or acts of violence.

(c) When a person is apprehended pursuant to (a) of this section, it shall be the duty of the Chief of Police or the arresting officer to promptly notify the Tribal Court and the proper authority in the appropriate jurisdiction. Upon receipt of a valid warrant or proof of its existence, the Tribal Court may issue an extradition order that the person be delivered to the proper authorities if extradition is in the best interests of justice. The subject may be detained pending extradition for a period not to exceed forty-eight (48) hours from the time of apprehension.

(d) If the lawful authority requesting the apprehension of the subject, after first being notified, does not take possession of the person within forty-eight (48) hours, the Court shall not honor the same warrant for the person but shall require a new warrant to be presented and shall require the requesting authority to take immediate custody of the person named on the warrant.

#### **2.01.040 Remand of Juvenile to Adult Court**

(a) On its own motion, or by motion of a party, the Tribal Court may set a hearing on whether a delinquency petition should be dismissed and

the matter remanded to adult criminal court pursuant to LCL 8.03.020.

(b) The Court shall designate a person to investigate and prepare a report containing the following information to be filed with the Court three days before the scheduled hearing:

(1) a description of the family situation in which the youth resides, including the strengths and problems of that situation;

(2) a description of the child’s school history and current status including any special strengths, problems, or learning needs;

(3) a description of any past or current problems of the youth including substance abuse, mental health issues, mental retardation, medical problems, education problems, and trauma history. If there are significant mental health issues, the Court may also order an evaluation by a mental health provider regarding the degree to which the child understands the charges;

(4) the record and previous history of the child including previous contacts with law enforcement agencies, juvenile courts and other jurisdictions, as well as prior periods of probation or prior commitments to juvenile institutions; and

(5) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services and facilities currently available under the jurisdiction of the juvenile court.

(c) the Court shall consider the factors set out in (b) of this section, as well as the following factors as applicable, to make a determination whether continuing the case as a delinquency proceeding will serve the best interests of the child or the public:

(1) the seriousness of the alleged offense to the community and whether the protection of the community requires that the matter be remanded to adult criminal court;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether there is probable cause to believe that the child committed the alleged offense; and

(4) the desirability of trial and dispositions of the entire offense in one court when the co-defendants are adults and being tried in adult court.

(d) In making its determination whether to continue the matter in juvenile court or to remand the matter to adult criminal court, the Court may rely on reports, affidavits, evaluations, and other documents having indicia of reliability. The burden of proof in this determination shall be on the Lummi Nation by a preponderance of the evidence.

(e) If the Court determines to remand the matter to adult criminal court, the Court shall dismiss the delinquency petition and set a time for arraignment in the adult criminal court. The Tribal Prosecutor shall file a complaint setting out the charges. The complaint may be filed beyond the limits set out in LCL 2.04.020 if the juvenile petition was filed within those limits.

## **Chapter 2.02 Citation; Summons; Arrest Warrant; Search**

### **2.02.010 Citation in lieu of Detention**

(a) Whenever a person is arrested for a violation of this Code or any other resolution, ordinance, or regulation of the Lummi Nation, the arresting officer, or any other authorized law enforcement officer, may serve upon the arrested person a citation and notice to appear in court in lieu of keeping the person in custody or requiring bail.

(b) In determining whether to issue a citation and notice to appear, the enforcement officer shall consider the same factors that are set out in LCL 2.03.010. To secure his or her release, the person must give his or her written promise to appear in court as required by the citation.

### **2.02.020 Citation - Contents**

(a) The citation written to the offender by the officer shall include the name of the person, his or her address, date of birth and sex, the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person(s) to sign a promise to appear.

(b) The citation shall also state the time and place at which the person is to appear in court

to hear the charges against him or her and post bail which shall be no less than seven (7) days and no more than twenty-one (21) days after the date of the citation.

### **2.02.025 Summons in lieu of Citation**

(a) At the time of filing a complaint under LCL 2.04.010, the Tribal Prosecutor may request the Court to issue a summons for the offender to appear before the Court.

(b) A summons shall be dated and signed by the Clerk of Court. It shall state the name of the defendant and the nature of the charge, and shall summon the defendant to appear before the Court at a stated time and place. The summons shall inform the defendant that failure to appear as commanded may result in the issuance of a warrant for the arrest of the defendant.

(c) A summons may be served by a peace officer who shall deliver a copy of the same to the defendant personally, or it may be served by mailing the same, postage prepaid, to the defendant at the defendant's last known address.

(d) If a person fails to appear in response to a summons, if service is not effected within a reasonable time, or if service is futile, a warrant for arrest may issue.

### **2.02.030 Warrant for Arrest - Generally**

(a) This section governs warrants on finding of probable cause under LCL 2.02.032 and bench warrants under LCL 2.02.035.

(b) The warrant shall be in writing and shall state the following:

- (1) the date when issued;
- (2) the name of the defendant, or if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
- (3) the offense charged against the defendant;
- (4) the reason for issuance;
- (5) the expiration date in accordance with (c) of this section; and
- (6) if the offense is bailable, the bail or other conditions of release.

(c) A warrant issued on charges that include a felony charge expire after two years, and warrants on all other matters expire after one year, unless and until it is quashed by the defendant, or the defendant is taken into custody on the warrant. The Court, upon its own motion, may renew the warrant, or the Tribal Prosecutor may request renewal of the warrant from the Court.

(d) No person arrested under a warrant or appearing in response to a summons shall be discharged from custody or dismissed because of any irregularity in the warrant or summons, but the warrant or summons may be amended so as to remedy any such irregularity.

### **2.02.032 Warrant for Arrest on Finding of Probable Cause**

Every judge of the Tribal Court may issue a warrant of arrest upon a determination that there is probable cause to believe that the defendant committed the offense alleged. Grounds for issuing a warrant must be established by a sworn statement or a declaration under penalty of perjury. Sworn oral testimony must be recorded electronically or stenographically and preserved for review. The finding of probable cause may be based on evidence which is hearsay in whole or in part, subject to limitations imposed by the Constitution of the Lummi Nation.

### **2.02.035 Bench Warrants**

(a) Failure to Appear. The Court may issue a bench warrant for the arrest of any defendant who has failed to appear before the Court in answer to a citation, summons, or an order of the Court. The amount of bail on such warrants shall be set in accordance with LCL 2.03.010 and 2.03.030. In lieu of a bench warrant, where the defendant has no pattern of failing to appear in court, the Court may issue an order that the defendant appear to show cause why he or she should not be held in contempt of court. Where the defendant fails to appear at an order to show cause, the Court shall issue a bench warrant unless good cause exists to reissue a subsequent order to show cause.

(b) Seven-Day Bench Warrants. In issuing a bench warrant pursuant to section (a) above, the Court, in its discretion, may issue a “seven-day bench warrant.” Such a warrant is immediately

active upon issuance and a defendant could be arrested on such warrant. However, the Clerk of the Court will not forward the warrant to the Lummi Nation Police Department until after the seven days have passed from the issuance of the warrant. The warrant may be served on the defendant by law enforcement but can be quashed without any quash fee or community work service, pursuant to section (c) below, for seven days after issuance.

(c) Quashing a Warrant. Any person who is the subject of a warrant of arrest because of his or her failure to appear before the Court at a scheduled hearing may submit a request that the Court quash or rescind the warrant. Such requests must be accompanied by payment of a fee established on a fee schedule approved by the Lummi Indian Business Council or its designee and a written promise to appear in Court on the date established by the Court. By approval of the Court, in lieu of payment of the fee, the defendant may submit proof of completion of eight hours of community work.

### **2.02.050 Search Warrants**

(a) Every judge of the Tribal Court shall have the authority to issue a warrant for search and seizure of the premises and property of any person under the jurisdiction of the Court upon request of a law enforcement officer or the Tribal Prosecutor.

(b) A warrant may be issued to search for and seize any

- (1) evidence of a crime;
- (2) contraband, the fruits of a crime, or other things criminally possessed;
- (3) weapons or other things which are alleged to have been used in the commission of a crime, including when it reasonably appears that a crime is about to be committed; or
- (4) a person who is unlawfully restrained, or for whose arrest there is probable cause.

(c) A search warrant may be issued only upon a determination by the Court that probable cause exists for the issuance of the warrant. Grounds for issuing a warrant must be established by a sworn statement or declaration under penalty of perjury. Sworn oral testimony shall be recorded electronically or stenographically and may be



given telephonically and preserved for review. The finding of probable cause may be based on evidence which is hearsay in whole or in part, subject to limitations imposed by the Constitution and Bylaws of the Lummi Nation

(d) If the Court finds probable cause exists for the issuance of a warrant, it shall issue a warrant or direct an individual to authorize a warrant by affixing the signature of the Court to a warrant identifying the property or person to be seized and naming or describing the person, place, or thing to be searched. The warrant shall state a specified period of time, not to exceed ten (10) days, in which the search may be conducted. Service of after the warrant may take place at any time after its issuance.

(e) A warrant shall be executed and returned as follows:

(1) the officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken, a copy of the warrant and a receipt for any property taken. If no such person is present, the officer may post a copy of the search warrant and receipt prominently on the premises;

(2) a return of the warrant shall be made promptly to the Tribal Court and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property is taken or in the presence of at least one person other than the officer; and

(3) the Lummi Police Department shall, upon request, deliver a copy of the inventory to the person from whose possession or premises the property was taken or to the applicant for the warrant.

(f) A person aggrieved by an unlawful search and seizure may move the Court for a return of the seized property on the grounds that the property was illegally seized and that the person is lawfully entitled to possess it. If a motion for return of property is made or comes on for hearing after a criminal complaint is filed with the Tribal Court, it shall be treated as a motion to suppress the seized property from use as evidence in proving the commission of the offense as charged in the complaint.

## **Chapter 2.03 Arrest; Release from Custody; Bail**

### **2.03.005 Arrest**

A law enforcement officer may not arrest any person for any offense defined by this Code or by federal or state law, except

- (1) when such offense occurs in the presence of the arresting officer;
- (2) the officer has probable cause to believe that the person has committed an offense; or
- (3) the officer has a warrant commanding him or her to apprehend such person.

### **2.03.010 Bail and Release from Custody**

(a) In accordance with Article VIII of the Lummi Constitution, the purpose of bail is to assure the presence of the person at trial or at other proceedings, to protect the community from risk of physical harm to persons, or to assure the integrity of the judicial process. In lieu of bail, a person charged with any offense may be released on his or her personal recognizance without posting bail, pursuant to the discretion of the Court.

(b) In determining release or the amount of bail, the Court may consider the following factors:

- (1) the person's ability to identify himself or herself satisfactorily and comply with court orders;
- (2) the circumstances of the person's family, employment, financial resources, character, mental condition, and ties to the community;
- (3) whether detention appears reasonably necessary to prevent imminent bodily harm to himself or herself or to another, injury to property, interference with the administration of justice, or breach of the peace, or to protect the public, alleged victims, and witnesses;
- (4) the person's record of convictions, flight to avoid prosecution, failures to appear at court proceedings, and whether the person was on probation or had pending cases at the time the current offense was committed. Under this section, the Court may consider records of any criminal

jurisdiction; and

(5) the seriousness of the offense.

(c) In order to secure his or her release from custody, the person must give his or her written promise to appear in Court at all scheduled hearings and to comply with other pre-trial conditions.

(d) If the Court sets bail, any person arrested and taken into custody for an offense may be released upon posting the specified bail with the Clerk or other person authorized by the Court to receive bail and giving a written promise to appear in Court as required.

### **2.03.015 Bail**

(a) Bail may only be paid by cash deposit.

(b) Except for felony offenses, the bail set by the Court may not exceed twice the maximum penalty set by the section of this Code for the offense for which the accused has been charged.

(c) Cash bail shall be paid to any bonded or insured employee authorized by the Lummi Indian Business Council to accept bail or to the Whatcom County Jail. Receipts for the payment of bail shall be promptly filed with the Clerk of Court.

(d) Bail may only be released upon order of a judge of the Tribal Court and will only be released to the person who posted the bail.

(e) If a defendant fails to appear, a judge shall proceed under LCL 2.02.035(a) and shall order the bail forfeited.

(f) Bail that is forfeited by order of the Tribal Court shall be deposited in the Lummi Indian Business Council General Fund.

### **2.03.030 Bail Schedule**

(a) The Chief Judge shall establish a bail schedule for all offenses under this Code and for any other regulations, resolutions or ordinances promulgated by the Business Council. The Chief Judge shall include a provision for standard bail to be used for all offenses not otherwise enumerated.

(b) A judge, in issuing a warrant or determining probable cause for arrest pursuant to LCL 2.03.045, may set bail lower or higher than the bail set in the standard bail schedule based on the probable cause evidence, and the standards

set out in LCL 2.03.010.

### **2.03.045 Probable Cause Determination**

(a) A person who is arrested and held in custody shall have a judge of the Tribal Court review the probable cause to arrest within forty-eight (48) hours following the person's arrest, including Saturday, Sunday and holidays, unless probable cause has been determined prior to such arrest.

(b) The Court shall determine probable cause on evidence presented by a peace officer or the Tribal Prosecutor in the same manner as provided for a warrant of arrest in LCL 2.02.032. The arrestee shall have no right to appear at such review, provided that the judge may permit the arrestee to appear at the discretion of the court.

(c) If the Court finds that probable cause for arrest exists, the Court shall then review the bail under which the arrestee is held in accordance with LCL 2.03.010 and 2.03.030.

(d) If the Court finds that no probable cause exists, it shall order the release of the arrestee. However, a finding of no probable cause shall not operate as a bar to future arrest or prosecution of the arrestee for the same offense upon presentation of evidence that an offense has been committed and that probable cause exists to believe that the arrestee is the individual who committed the offense.

(e) Any defendant detained in jail shall be brought before the Tribal Court as soon as practicable after the detention is commenced, but in any event within five (5) business days following the person's arrest. If the defendant cannot be brought before the Tribal Court within this time period, the Court may, for good cause shown, enlarge this time period.

### **2.03.050 Review of Bail; Amendment or Revocation of Order of Release**

(a) The Court shall schedule a hearing for review of bail or modification of a condition of release at the defendant's request if

(1) the defendant has not yet been heard on the issue of the amount of bail and conditions of release; or

(2) the defendant files a sworn statement alleging a basis for modification under (c) of

this section.

(b) Upon a sworn allegation filed by the Tribal Prosecutor that the bail should be increased, or that the order of release should be revoked or amended, under (c) of this section, the Court may order the defendant to appear for immediate hearing or may issue a warrant directing the arrest of the defendant.

(c) Upon a showing of a change of circumstances, new information, or other good cause to amend its order of release, the Court may revoke or grant release, impose or lift conditions for release, or amend the amount of bail.

## **Chapter 2.04 Commencement of Criminal Proceedings**

### **2.04.010 Complaints - Contents and Filing**

(a) Filing of Complaint. The Tribal Prosecutor shall commence a prosecution for violation of the Lummi Code of Laws by filing a complaint on behalf of the Lummi Nation with the Clerk of Court. No complaint filed in the Tribal Court shall be valid unless it shall bear the signature of the tribal prosecuting authority. The complaint shall be a plain, concise, and definite written statement of the essential facts that constitute the offense charged. The complaint shall identify for each count a citation to, and the language of, the particular code, regulation, rule, or other provision of law which the defendant is alleged to have violated, including a statement of maximum and minimum penalties for conviction of each offense. The complaint shall also contain the time period of the offense and the identity, if known, of the victim(s).

(b) Defendant's Information. The complaint filed with the Court shall contain, or have attached to it, the following information, if known:

- (1) the name, address, date of birth, and sex of the defendant; and
- (2) all known personal identification numbers for the defendant.

(c) Time Limits for Filing. If the defendant has been booked into custody for the Lummi Nation on this charge or there are pre-trial

release conditions, a complaint shall be filed no later than twenty-one (21) days following a finding of probable cause. If no complaint is filed, the Court shall order the release of that person on his or her own recognizance within twenty-four (24) hours.

(d) Defects and Variances. No complaint, or any count thereof, shall be dismissed or judgment arrested, or new trial granted on account of any defect in the form of the complaint unless the Court shall be of the opinion that the complaint is so vague, indistinct, and indefinite as to mislead the accused and prejudice him or her in the preparation of a defense or expose the accused after conviction or acquittal to substantial danger of a new prosecution for the same offense. An unnecessary allegation may be disregarded as surplusage and, on motion of the defendant, may be stricken from the pleading by the Court.

(e) Amendments. The Court may permit a complaint to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

### **2.04.020 Limitation on Filing of Complaints**

Except as otherwise provided in this Code, a complaint may not be filed under LCL 2.04.010 to commence a criminal prosecution more than five years after the discovery of the commission of the offense. If the complaint has been filed within the five year period, there shall be no time limitation on further proceedings in the prosecution of the complaint, including apprehension, arrest, trial, and sentencing, as provided in this Code.

### **2.04.030 Joinder of Offenses or Defendants**

(a) A defendant may be jointly tried for two or more offenses if the offenses charged are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.

(b) The trial of two or more defendants may be joined 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.

(c) If the joinder of offenses or defendants

appears to unreasonably prejudice a defendant or the Lummi Nation, the Court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires.

## **Chapter 2.05 Pre-Trial Proceedings**

### **2.05.005 Management of Calendars and Caseloads**

(a) Court Calendar. Control over the trial calendar, and over all other calendars on which a case may be placed, shall be vested in the Court. The Court should exercise responsibility for case scheduling and for the expeditious resolution of all cases beginning at the time of arraignment, taking account of information relevant to case scheduling that may be provided by both the prosecutor and defense counsel.

(b) Continuances. Only a judicial officer should grant continuances. The Court should grant a continuance only upon a showing of good cause and only for so long as is necessary. In ruling on requests for continuances, the Court should take into account not only the request or consent of the prosecution or defense, but also the public interest in timely resolution of cases. If a ruling on the request for a continuance will have the effect of extending the time within which the defendant must be brought to trial, the judge should state on the record the new speedy trial time limit date and should seek confirmation of this date by the prosecution and the defense.

### **2.05.010 Arraignment**

(a) When the defendant is initially brought before the judge, the complaint shall be read and explained to the defendant, and he or she shall plead guilty or not guilty. If the defendant refuses to plead, the judge shall enter the fact and a plea of "not guilty" on his or her behalf. The judge shall allow the defendant a reasonable time and opportunity to consult a spokesperson. The judge shall determine whether to set bail or conditions of release and shall assign a trial date and next appearance date.

(b) The judge shall inform the defendant of the following:

- (1) the charges against him or her;
- (2) the defendant's right to appear and defend against the charges either in person or with a spokesperson;
- (3) the defendant's right to remain silent and the fact that any statements he or she does make may be used against him or her; and
- (4) the defendant's right to a jury trial if the offense with which he or she is charged is punishable by imprisonment and that the right to a jury trial is waived if a jury is not requested within twenty-one (21) days prior to trial. With agreement of the Tribal Prosecutor, the defendant may waive his or her presence at the first scheduled court appearance date and submit a written waiver of arraignment. The waiver shall be in writing, be signed by the defendant, contain all the advisements required in (b) of this section, and be signed by any attorney who has assisted the defendant in executing the waiver.

### **2.05.015 Service and Filing of Papers**

(a) Unless the Court otherwise instructs, once the defendant has been arraigned and served with the original complaint, every pleading, paper relating to discovery, written motions except for ex parte motions, written notice, appearance, demand, or petition for Order to Show Cause, including those filed while the defendant is on probation, and all other similar papers shall be served upon each of the parties.

(b) Whenever service is required, service shall be made upon the Nation, defense attorney, spokesperson, or pro se defendant, by personal delivery, mailing by regular first class mail to his or her last known address, placement in a designated Lummi Courthouse mailbox, or by facsimile or electronic delivery. Proof of service must be provided to the Court. A certificate of service by the attorney will constitute prime facie evidence of proof of service.

(c) After being arraigned on a charge, the defendant must at all times keep the Court informed of the defendant's current mailing address. The defendant is presumed to have received any document mailed to the last known address maintained by the Court. If a

document is returned and undeliverable to the defendant's last known address, the Court may issue a bench warrant.

(d) If the presence of the defendant is required and service cannot be effected by a method under this section, the Court shall issue a warrant for the apprehension of the defendant and require his or her presence in Court.

### **2.05.020 Speedy Trial**

A defendant has the right to speedy trial as guaranteed by Article VIII of the Lummi Constitution. In addition to the constitutional right to speedy trial, every person charged with a crime shall be brought to trial within a specified time period. For purposes of this subsection, "in custody" means held in custody of a correctional facility pursuant to the pending charge at issue and "pending charge" means the charge for which the allowable time for trial is being computed.

(a) Misdemeanors. All misdemeanor cases shall be brought to trial within ninety (90) days after the applicable commencement date specified in this section if out of custody and sixty (60) days after the commencement date specified in this section if in custody. If the defendant is released from custody before the sixty-day time limit has expired, the limit shall be extended to ninety days.

(b) Felonies. All felony cases, as defined in LCL 5.10.090, shall be brought to trial within one-hundred and twenty (120) days after the applicable commencement date specified in this section if out of custody and ninety (90) days after the commencement date specified in this section if in custody. If the defendant is released from custody before the ninety-day time limit has expired, the limit shall be extended to one hundred and twenty days.

(c) Initial Commencement Date. The initial commencement date shall be the date of arraignment.

(d) Resetting the Commencement Date. On the occurrence of one of the following events, a new commencement date shall be established and the elapsed speedy trial time shall be reset to zero:

(1) Failure to Appear at Scheduled Hearing. A defendant's failure to appear at

any scheduled hearing. The new speedy trial commencement date shall be the date that the defendant next appears before the Court on that case to set a new trial date. Failure to issue or renew a warrant based on a defendant's failure to appear after arraignment shall not result in violation of this section;

(2) New Trial. The entry of an order granting a mistrial, a new trial, or allowing the defendant to withdraw a plea of guilty. The new commencement date shall be the date the order is entered.

(e) Excluded Periods. The following periods shall be excluded in computing the time for trial. If any period of time is excluded pursuant to subsection (e), the allowable time for trial shall not expire earlier than 30 days after the end of the excluded period.

(1) Competency. All proceedings relating to the competency of a defendant to stand trial on the pending charge, beginning on the date when the competency examination is ordered and terminating when the court enters a written order finding the defendant to be competent.

(2) Insanity. All examinations or hearings to determine insanity of the defendant beginning on the date when the written notice of intent to rely on such a defense is filed with the Court and terminating when both parties certify their examinations are complete.

(3) Period Between Dismissal and Filing. The time between the dismissal of a charge and the refiling of the same or related charge.

(4) Pre-Trial Review. All interlocutory appeals, pre-trial motion for reconsideration and pre-trial discretionary review beginning on the date that written notice is filed with the Court and terminating when the Court enters a written order determining the interlocutory appeal, motion for reconsideration, or discretionary review.

(5) Defendant outside Jurisdiction. The time during which a defendant is incarcerated for another jurisdiction outside of the Whatcom County Jail. When the

defendant is not able to attend Lummi Tribal Court appearances because he or she is detained by other jurisdictions, the Court upon its own motion or at the request from the Nation, may issue a warrant. When possible, the Court shall send notice of issuance of the warrant to the defendant at the institution where he or she is incarcerated.

(f) Continuances. The period of time between the date the continuance is granted and the new trial date shall be excluded from the calculation from speedy trial. The Court may grant a continuance by agreement of the parties, at the request of the defendant or the defendant's attorney, or for good cause on motion by a party or by the Court. Good cause may be established by, but is not limited to, any of the following occurrences:

(1) when a defendant has caused major delay or disruption of preparation of proceedings, as by preventing the attendance of witnesses or otherwise;

(2) disqualification or necessary withdrawal of defense counsel;

(3) a necessary witnesses has been prevented from attending a hearing for which their presence is necessary due to sickness, accident, or other absence for good cause;

(4) a showing by the Nation that the case is unusual and complex, because of the number of defendants, or the nature of the prosecution, or otherwise, that it is unreasonable to expect adequate investigation or preparation within the periods of time established by this section;

(5) a natural disaster, civil disorder, or act of God;

(6) unavailability of jurors or judge;

(7) when more than one trial is scheduled for the same trial date in the Lummi Tribal Court and a higher priority trial goes forward; or

(8) when the Court grants a request to sever criminal charges for the purpose of separate trials.

(g) Waiver. A defendant may waive his or her rights under this section. The waiver may

either specify a new commencement date for speedy trial or may specify an excluded period of time from calculation of speedy trial. For a waiver to be valid, a written waiver signed by the defendant or the defendant's attorney certifying that he or she has consulted with the defendant and has the defendant's express approval for the waiver shall be filed with the Court. If no date is specified in the waiver, the new date of trial contemporaneously or subsequently set by the Court shall be the last allowable date for trial under the waiver, unless further waivers are filed with the Court.

(h) Failure to Try Defendant Within Specified Time. If the trial does not commence within the periods of time established in this section, the defendant may file a separate pleading entitled "Notice of Expiration of Speedy Trial Time" and serve a copy on the Nation. Unless the Court finds that one of the reasons set out in this section exists, the defendant shall be forever discharged from the crime.

(i) Nothing in this section shall limit the Court's ability to calendar cases in an efficient and judicious manner.

#### **2.05.030 Discovery**

(a) Disclosure by the Prosecution. Upon the filing of a written notice of appearance and demand for discovery, the Nation shall give the defendant the following items:

(1) copies of any relevant written or recorded statements made by the defendant which are in the possession, custody, or control of the Nation;

(2) copies of written summaries of any oral statements which the Nation intends to offer as evidence against the defendant, made by the defendant in response to any interrogation, before or after arrest, made by a person the defendant knew was a government agent;

(3) copies of or access to any documents, photographs, recordings, results of examinations or tests and objects which are within the custody and control of the Nation;

(4) copies of police reports that have been completed in conjunction with the

particular investigation for which a defendant is charged with a crime;

(5) list of any prior criminal convictions of a specified defense witness or the defendant, which the prosecutor intends to offer as impeachable evidence;

(6) the names and addresses of witnesses the Nation intends to call in their case-in-chief;

(7) reports or results of physical or mental examinations or of scientific tests or experiments which are intended for use as evidence at trial by the Nation, are in possession, custody or control of the Nation, and would affect preparation of defendant's defense; and

(8) disclosure of whether the Nation has any material or information that has been provided by a confidential informant.

(b) Prosecutor's Absolute Duty to Disclose. Except as is otherwise provided in a protective order, the Nation shall provide to the defendant any material or information within the prosecutor's knowledge which tends to negate a defendant's guilt as to the offense charged, regardless of whether a written demand for discovery has been filed.

(c) Disclosure by the Defendant. Upon written request of the Nation, the defendant shall give the Nation the following items:

(1) written notice specifying any defense under LCL 5.10.070, alibi or insanity defense which the defendant will introduce at trial in the defendant's case-in-chief;

(2) copies of or access to any documents, photographs, recordings, results of examinations or tests and objects that the defendant intends to introduce as evidence at trial;

(3) the names and addresses of witnesses the defendant intends to call at trial together with all sworn statements made by them in connection with the particular case;

(4) results or reports of physical or mental examinations or scientific tests or experiments which are intended for use as evidence at trial by defendant, in the possession, custody or control of the defendant; and

(5) physical evidence. Subject to constitutional limitations, at any time after the filing of the complaint, upon motion of the prosecutor and order of the Court, the defendant, with defense counsel present if the defendant so desires, in connection with the particular crime with which he or she is charged, shall:

(A) appear for a line-up;

(B) speak for identification by witnesses;

(C) be fingerprinted, palm-printed, footprinted or voiceprinted;

(D) pose for photographs not involving re-enactment of an event;

(E) try on clothing;

(F) permit the taking of samples of his or her hair, blood, saliva, urine, or other specific materials which involve no unreasonable intrusions of his or her body;

(G) provide specimens of his or her handwriting; or

(H) submit to reasonable physical or medical inspection of his or her body, provided such inspection does not include psychiatric or psychological examination.

(d) Continuing Duty to Disclose. The obligations imposed by this rule are continuing. If additional material or information is discovered during trial, the Court shall also be notified.

(e) Protective and Modifying Orders. At any time the Court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief. The Court may permit a party to show good cause by a written statement that the Court will inspect ex parte. If relief is granted, the entire text of the party's statement and the full material restricted or deferred shall be preserved under seal in the records of the Court, to be made available to the appellate court in the event of an appeal

(f) Limits of Discovery. The parties are not authorized discovery of reports, memoranda or other internal strategy documents made by

the parties or their counsel in connection with investigation or preparation of the case.

(g) Confidential Informants. Disclosure of a confidential informant shall not be required unless the confidential informant is to be produced at a hearing or trial or a failure to disclose the informant's identity will infringe the constitutional rights of the defendant.

(h) Sanctions. Where the defendant or prosecutor fails to comply with this rule, the Court may

- (1) order that party to permit the discovery or inspection;
- (2) grant a continuance;
- (3) prohibit that party from introducing the undisclosed evidence; or
- (4) enter any other order that is just under the circumstances.

(i) Timeliness. Both the defendant and the prosecution shall duly comply with any written request for discovery as soon thereafter as practicable but shall complete all discovery no less than seven days before trial.

#### **2.05.040 Pre-Trial Motions**

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(a) Motion Requirements. A written motion, other than one which may be heard ex parte, and notice of the hearing on the motion, shall be served not later than five (5) days before the time set for the hearing, unless a different period is fixed by this title, a rule of the Court, or order of the Court. Such an order may for cause shown be made on ex parte application. When a motion is supported by a sworn statement, the sworn statement shall be served with the motion. A certificate of service must accompany the filing of any pleading. Except as otherwise provided, opposing sworn statements may be served not later than one day before the hearing, unless the Court permits them to be served at some other time.

(b) Motions to Suppress. Motions to suppress physical, oral or identification evidence, shall be in writing supported by a sworn statement or statements contained within the police report, setting forth the facts the moving party submits in support of the motion. If the opposing party disputes the facts as submitted, the opposing party shall file an opposing sworn statement or

statements contained in the police report. If the Court determines that there is a dispute of relevant facts, the Court shall set the matter over for an evidentiary hearing. If the Court determines that no evidentiary hearing is required, the Court shall set forth its reasons for not conducting an evidentiary hearing.

(c) After an evidentiary hearing on a motion, the Court shall state separately findings of fact and conclusions of law.

(d) Defense objections to be raised before trial. The Court shall have the discretion to limit motions that should have been foreseeable and were not brought in a timely fashion. Defense objections seeking suppression of evidence, dismissal of a warrant or complaint based on a speedy trial violation, double jeopardy, Lummi law void for vagueness, or insufficiency of a complaint shall be raised in writing before trial. The motions or objections shall be filed and notice given to opposing counsel prior to confirming for trial. The Court may, however, for good cause shown and in the interest of justice, permit the motions or objections to be raised at a later time.

#### **2.05.045 Dismissal**

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(a) On Motion of Prosecution. Upon motion of the prosecuting authority setting forth the reasons therefore, the Court may dismiss a complaint or citation and notice.

(b) On Motion of Court. The Court, in the furtherance of justice after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The Court shall set forth its reasons in a written order.

#### **2.05.050 Video and Telephonic Conference Proceedings**

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(a) The Chief Judge of the Lummi Trial Court may adopt rules, in accordance with LCL 2.01.003, for the defendant's participation in pre-trial and post-trial court proceedings through video and telephonic participation. Such proceedings shall be deemed held in open court and in the defendant's presence. All videoconference hearings conducted pursuant to this rule shall be conducted on the record in open court.



(b) The Court is authorized to conduct arraignments, bail hearings, and other preliminary matters by videoconference without the consent of the parties. The defendant must have access to an attorney with whom the defendant may consult in confidence at those proceedings. With the permission of the parties, the Court may conduct telephonic conference hearings for those proceedings, as well as video or telephonic conference hearings for other pre-trial or post-trial court proceedings.

#### **2.05.060 Material Witness Warrants**

(a) On motion of the Tribal Prosecutor or the defendant, the Court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant shall issue only on a showing, by sworn statement or on the record in open court, that the testimony of the witness is material and that

- (1) the witness has refused to submit to a deposition ordered by the Court;
- (2) the witness has refused to obey a lawfully issued subpoena; or
- (3) it may become impracticable to secure the presence of the witness by subpoena.

(b) After the arrest of the witness, the Court shall hold a hearing no later than the next court day. The witness shall be entitled to be represented by a lawyer.

(c) Upon a determination that the testimony of the witness is material and that one of the conditions set forth in section (a) exists, the Court shall set conditions for release that will ensure the availability of the witness to provide testimony in the matter. A material witness shall be released unless the Court determines that the testimony of such witness cannot be secured adequately by deposition and that further detention is necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken.

#### **2.05.070 Insanity at the Time of Offense and Competency to Stand Trial**

(a) Competency. No person who lacks substantial mental capacity to understand the proceedings, appreciate the consequences of the proceedings, or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

(b) Insanity Defense. A defendant who intends to assert a defense of insanity at the time of the alleged offense must file a written notice of his or her intent to rely on such a defense no later than pretrial conference or at a later time as the Court may for good cause permit. Insanity is a defense which the defendant must establish by a preponderance of the evidence. No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute insanity. If the Court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact.

(c) Psychiatric or Psychological Examination.

(1) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the Court on its own motion or on the motion of any party shall appoint an impartial examiner.

(2) For purposes of the examination, when determined to be necessary by the examiner(s), the Court may order the defendant committed to a mental health facility for a period of time necessary to complete the examination. However, the period of time for which the defendant may be committed for evaluation purposes shall not exceed fifteen (15) days.

(3) A psychiatric or psychological examination ordered pursuant to this section shall be conducted by a licensed or certified psychiatrist or a licensed, clinical psychologist. The signed order of the Court shall serve as authority for the examiner to be given access to all records held by any mental health, medical, educational, law enforcement, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant.

(4) Either party may introduce expert testimony to rebut the Court-appointed examiner's findings, and that examiner shall be permitted to have reasonable access to the defendant for purposes of the examination.

(5) The Court, the defendant, and the Nation may contract or enter into a Memorandum of Understanding with a qualified agency to provide such mental health evaluations.

(d) Inadmissibility of a Defendant's Statement. No statement made by a defendant in the course of any examination conducted under this section, no testimony by the examiner or expert based on the statement, and no fruits of the statement may be admitted into evidence against the defendant at a criminal trial on any issue other than that of the person's mental condition. It is admissible on the issue of the person's mental condition, whether or not it would otherwise be considered a privileged communication, only when and after the defendant presents evidence that due to a mental disorder the defendant could not appreciate the criminality of his or her conduct.

(e) Competency - Mental Condition Evaluation and Proceedings. The report of any competency examination shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to capacity; specifically the defendant's capacity to

(A) assist in his or her own defense

(B) appreciate the charges or allegations against the defendant;

(C) appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the defendant;

(D) understand the adversarial nature of the legal process;

(E) disclose to counsel facts pertinent to the proceedings at issue;

(F) manifest appropriate courtroom behavior;

(G) testify relevantly; and

(H) any other factor deemed relevant by the examiner.

(4) if the defendant has indicated his or her intention to rely on the defense of insanity pursuant to an opinion as to the defendant's sanity at the time of the act;

(5) when directed by the Court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(6) the treatment or treatments appropriate for the mental illness of the defendant and an explanation of each of the possible treatment alternatives in order of choices. This evaluation should include whether voluntarily or involuntarily commitment is appropriate and whether the defendant has the capacity to be a voluntary participant in his or her treatment;

(7) the availability of acceptable treatment and, if treatment is available in the community, the examiner shall so state in the report;

(8) the likelihood of the defendant's attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the defendant will attain competence to proceed in the foreseeable future;

(9) an opinion as to whether the defendant should be evaluated by another designated mental health professional; and

(10) an opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the Court or other persons or institutions.

(f) Competency Hearing and Periodic Reviews. At a hearing ordered pursuant to this section, the person whose mental condition is the

subject of the hearing shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his or her behalf, and to confront and cross-examine witnesses who appear at the hearing. Where the defendant has been found incompetent, the Court shall set periodic reviews of the defendant's fitness to proceed.

(g) Insanity Mental Condition Evaluation and Proceedings. The report of any insanity examination shall include the following:

- (1) a description of the nature of the examination;
- (2) a diagnosis of the mental condition of the defendant;
- (3) if the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to competency;
- (4) if the defendant has indicated his or her intention to rely on the defense of insanity and an opinion as to the defendant's sanity at the time of the act;
- (5) when directed by the Court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;
- (6) an opinion as to whether the defendant should be further evaluated by a mental health professional; and
- (7) an opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the Court or other persons or institutions.

(h) Determining Bail after Mental Evaluation. After completion of a mental evaluation under this section, the Court shall consider the factors in LCL 2.03.010 and the following additional factors in determining bail:

- (1) recommendations of the examiner or professional persons regarding the defendant's competency, sanity, or diminished capacity;
- (2) whether the defendant has a recent history of one or more violent acts;

(3) whether the defendant has previously been acquitted by reason of insanity or found incompetent.

(i) Treatment.

(1) If after evaluation, the defendant is determined by the Court or jury to be incompetent to stand trial or not guilty by reason of insanity, the Court may order the following:

- (A) order the defendant to undergo any out-patient treatment recommended by the examiner; and
- (B) order the defendant to be committed to a mental health facility for treatment.

(2) Where the Court orders a defendant to be committed for mental health treatment, the Court may enter into a Memorandum of Understanding with a qualified agency to provide such mental health treatment and competency restoration.

(j) Maximum Term of Commitment or Treatment. Whenever a defendant has been:

(a) committed to a correctional facility or inpatient treatment under any provision of this section; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the following time periods:

- (1) for competency restoration, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense; and
- (2) for competency restoration or treatment for insanity, the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity.

(k) Developmentally Disabled. When appropriate and subject to available funds, if the defendant is determined to be an individual with a developmental disability, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant shall have the right to habilitation according to an individualized service plan specifically developed for the

particular needs of the defendant. A copy of the evaluation shall be sent to the program. The program shall be separate from programs serving persons involved in any other treatment or habilitation program, and the program shall provide an environment affording security appropriate with the charged criminal behavior and necessary to protect public safety.

(l) Notification of Release. Whenever any person committed under any provision of this chapter has not been released within seven days of the maximum possible penal sentence, and the professional person in charge of the facility believes that the person presents a likelihood of serious harm or is gravely disabled due to a mental disorder, the professional person shall, prior to the expiration of the maximum penal sentence, notify the Court, the Lummi Nation, and the defense counsel or spokesperson of the impending expiration and provide a copy of all relevant information regarding the person, including the likely release date and shall indicate why the person presents a serious harm or is gravely disabled.

(m) Dismissal. At the end of the mental health treatment and restoration period, the defendant shall be returned to Court for a hearing. If, after notice and hearing, competency has been restored, a scheduling order will be entered. If competency has not been restored, the proceedings shall be dismissed. If the Court concludes that competency has not been restored, but that further treatment is likely to restore competency, the Court may order that treatment for purposes of competency restoration be continued so long as the treatment does not continue beyond the time limits established in (j) of this section.

(n) Cultural Questions. If any questions arise as to issues of culture in the treatment of the defendant, the Court may consult with the Cultural Commission.

## **Chapter 2.06 Pleas; Trial Procedure; Sentencing; and Probation**

### **2.06.020 Standard of Proof**

The Court shall require the charge to be proven beyond a reasonable doubt. The defendant shall be afforded a full opportunity to present his or her defense, including the right to have witnesses brought to court by the Tribe for his or her defense, so long as these witnesses are within the territorial and personal jurisdiction of the Tribe.

### **2.06.025 Defendant's Voluntary Absence from Trial**

The defendant's voluntary absence after the trial has commenced in the defendant's presence shall not prevent continuing the trial and including the return of the verdict.

### **2.06.028 Trial on Stipulation**

A defendant, with the approval of the Tribal Prosecutor, may submit a case for trial upon the police report and other materials by stipulating to admissibility of those materials in lieu of testimony.

### **2.06.035 Plea Negotiations**

(a) A plea agreement may be entered into anytime prior to a verdict or finding of guilt by judge or jury.

(b) 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 and shall make a determination that the defendant understands and agrees to its terms, that the written document contains all the terms of the agreement, and that the plea is entered in conformance with LCL 2.06.040.

(c) The Court will not be bound by any provision of the plea agreement.

(1) In those cases where the Court accepts a plea agreement, the Nation thereafter is bound by such agreement.

(2) Where the Court rejects a plea agreement, the defendant will be advised of such and given an opportunity to withdraw the plea after advisement that disposition may be less favorable than was offered under the agreement.

(d) If no agreement is reached, or if the agreement is revoked, rejected by the Court, or withdrawn, or if the judgment arising from the plea is later vacated or reversed, neither the plea discussion nor any resulting agreement, plea or judgment, nor statements made at a hearing on the plea, shall be admissible in any criminal or civil action or administrative proceeding.

#### **2.06.040 Pleas**

(a) A defendant may plead guilty, not guilty, or, in accordance with this section, a plea of no contest.

(b) Before accepting a plea of no contest, the Court must consider the parties' views and the public interest in the effective administration of justice.

(c) A defendant may enter a conditional plea of guilty or no contest, reserving in writing the right to have an appellate court review an adverse determination of a specified pretrial motion. A defendant who prevails on appeal may then withdraw the plea.

(d) A plea of guilty or no contest shall be accepted by the Court only when made by the defendant in open court, voluntarily and intelligently made, not the result of force, threats, or promises (other than a plea agreement), there is a factual basis for the plea, and the defendant has been informed in open court, understands, and wishes to give up the following rights:

- (1) the nature of the charge to which the plea is offered;
- (2) the nature and range of possible sentence for the offense to which the plea is offered;
- (3) the right to counsel at no expense to himself or herself;
- (4) the right to trial;
- (5) the right to plead not guilty;
- (6) the right to a jury trial;
- (7) the right to confront and cross-examine his or her accusers; and
- (8) the right to subpoena witnesses.

#### **2.06.050 Compromise of Misdemeanor**

(a) For defendants charged with certain criminal actions, in lieu of criminal prosecution and with acceptance by the Court, the parties may settle the criminal action before it goes to trial with a civil monetary payment for damages suffered by the victim. A misdemeanor compromise shall only be accepted by the Court in accordance with subsections (b) and (c) below.

(b) Compromise of a misdemeanor is permitted only where the defendant is charged with a property crime, except when committed:

- (1) by or upon an officer while in the execution of the duties of his or her office;
- (2) riotously;
- (3) with intent to commit a felony; or
- (4) by one family or household member against another as defined in LCL 5A.01.040(f) and was a crime of domestic violence as defined in LCL 5A.01.040(c).

(c) If presented with a Misdemeanor Compromise Agreement, the Court may dismiss the criminal action with prejudice. The terms of the agreement shall

- (1) be presented to the Court before final judgment;
- (2) include a written and notarized agreement signed by the prosecutor, the party injured, and the defendant;
- (3) acknowledge that the party injured has received full payment for all damages incurred and is in support of dismissal of the criminal action, and
- (4) state that the defendant will pay court costs in the amount established by the Court schedule in effect at the time.

#### **2.06.060 Sentencing**

Upon a plea or finding of guilty, the judge shall impose sentence, in accordance with Chapter 11, Title 5 of this Code, at once or at a later hearing within twenty-eight (28) days unless continued for good cause.

#### **2.06.070 Fines and Court Costs**

(a) If a judgment of conviction is entered

against a defendant, the defendant shall be assessed court costs to defray the costs of operation of the Lummi Tribal Court in an amount established on the Court Fee Schedule. Failure to pay court costs as assessed shall constitute a violation of this Code. An additional fee for court costs may be imposed for each hearing where a defendant fails to appear.

(b) Fines and court costs imposed by the Court shall be paid to any bonded or insured employee of the Lummi Indian Business Council authorized to receive the funds. Receipts for payment shall be promptly filed with the Clerk of Court. The funds collected shall be deposited in the Lummi Indian Business Council General Fund.

(c) An obligation for payment of fines or court costs remains in effect until paid, even if the defendant is released from probation or other conditions of the judgment.

#### **2.06.080 Enforcement of Order for Restitution**

A party who is the beneficiary of an order for restitution or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may enforce that portion of the judgment and order under the procedures set out in Chapter 3.10 of this Code. Such an action must be brought within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement, whichever is later.

#### **2.06.090 Probation**

Lummi Probation is a privilege and alternative to immediate imposition of the full terms of a criminal sentence while continuing to hold defendants accountable for their criminal actions. The purpose is to deter future criminal behavior, provide reparation to crime victims, and help offenders rehabilitate and participate in the Lummi Community with a sense of wellness and respect.

(a) Role of Probation. Lummi Probation Officers serve as officers of the Lummi Tribal Court system. Their responsibilities require them to work with judges, court professionals,

prosecutors, defense attorneys, jail officials, law enforcement agencies, treatment providers, community leaders, and other service providers that will be beneficial to the community and the defendant.

(b) Duties of Probation Officers. Probation Officers have a duty to provide objective and truthful investigation and supervision services to the Court.

(1) Investigation. The officer conducts presentence reports that help the Court determine the appropriate sentence pursuant to LCL 5.11.090.

(2) Supervision. The officer monitors offenders in the community to make sure they comply with court-ordered conditions of release and conditions of a suspended sentence. Supervision responsibilities include, but are not limited to

(A) making personal contact with the defendant on a regular basis at regularly scheduled probation appointments, home visits, and other means of contact, and when necessary, altering the frequency of personal contact that the officer has with the defendant;

(B) requiring the defendant to undergo drug and alcohol testing;

(C) verifying employment, school, and vocational training;

(D) locating and using community resources to address the defendant's needs, including referrals for drug and alcohol treatment, mental health treatment, educational or vocational training, medical care, and employment and housing assistance;

(E) monitoring fines and restitution owed, conditions of a suspended sentence, and jail report dates and coordinating jail alternatives such as electronic home and Lummi Jail Alternatives program;

(F) keeping records of supervision contacts and maintaining copies of all documentation that are provided to the officer by the defendant; and

(G) filing revocation proceedings with the Court on defendants who do not comply with supervision conditions.

(c) Failure to Comply. Where a convicted person fails to comply with conditions of probation, such conduct will be brought before the Court upon a probation officer or prosecutor filing a petition, supported by affidavit or declaration, for revocation of the probation and imposition of the suspended sentence.

(1) A petition for revocation must be filed during the period of probation or within five (5) days after the period of probation ends if the offender's violations of conditions occurred within the final forty-eight (48) hours prior to the end of the period. Once a petition for revocation has been timely filed, any expiration of the probation period does not deprive the Court authority to hear the matter and to impose the full terms of the sentence.

(2) Upon receipt of a petition for revocation of probation, the Court shall issue an order to the alleged offender to appear at a stated date and time to show cause to the Court why the full terms of the sentence should not be imposed for failure to comply with probation.

(3) The hearing on the petition for revocation shall be limited to issues related to the defendant's compliance or noncompliance with the conditions of probation.

The probation revocation hearing shall be held before a judge, without jury, and witnesses will not be summoned, except upon permission of the Court. The hearing will be conducted pursuant to Rule 1101(d) of the Federal Rules of Evidence.

(d) The Probation Office shall advise the Tribal Prosecutor's Office of a failure by a defendant who has been convicted of a felony to comply with the terms of probation. For all cases, a probation officer may present probation violations before the Court, or may request the assistance of a prosecutor.

(e) If, by a preponderance of the evidence, the Court finds that the accused person has failed

to comply with the conditions of probation, the Court may

(1) impose part of the sentence originally ordered and allow the defendant to continue on probation on the same or additional conditions, or

(2) impose a final sentence and terminate the defendant's period of probation.

(f) The parties may negotiate and present to the Court for approval a proposed judgment on the probation violation. By agreement, the parties can extend the probation period beyond the original expiration date. The Court may accept or reject the proposed judgment and impose its own remedy consistent with this section.

(g) Sentencing after Revocation. A sentence imposed after the revocation of probation must comply with the mandatory minimum and maximum penalties set out in the Lummi Code of Laws. In determining the appropriate sentence, the Court shall consider, but is not limited to the following factors:

(1) the seriousness of the criminal conviction;

(2) the severity of the probation violations;

(3) the history of previous probation violations;

(4) new criminal activity;

(5) the probation officer's assessment of the seriousness of the violation, and of the defendant's compliance and completion of the terms of probation and efforts towards rehabilitation;

(6) whether the defendant seeks termination over the probation department's recommendation to continue; and

(7) when the probation violations occurred in relation to the original probation term; and mitigating circumstances of the probation violation.

(h) Reinstatement. If the Court terminates probation and imposes a final sentence, the defendant may petition the Court to reinstate probation and the original criminal judgment

less any jail days served or fines paid subsequent to revocation, as follows:

- (1) the defendant must show good cause for reinstatement and that the interests of justice warrant the reinstatement of probation;
- (2) the petition must be filed prior to the completion of the sentence imposed on revocation;
- (3) the defendant must serve the Prosecutor's Office and the Probation Office with notice and opportunity to consent or oppose the reinstatement of probation; and
- (4) the defendant may only be reinstated on probation one time on a criminal judgment, but in no case, shall the defendant be entitled to automatic probation reinstatement.

## **Chapter 2.07 Habeas Corpus**

### **2.07.010 Who May Prosecute Writ**

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

### **2.07.020 Writ for Purpose of Bail**

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

### **2.07.030 Application for Writ - Contents**

- (a) Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person on his or her behalf.
- (b) The petition must specify that the person on whose behalf the writ is applied for is unlawfully imprisoned or restrained of his or her liberty, why the imprisonment or restraint is unlawful, the place where the person is restrained or imprisoned, and the officer or person by whom he or she is so confined or

restrained, naming all the parties if they are known, or describing them if they are not known.

- (c) The petition must be verified by the oath or affirmation of the party making the application.

### **2.07.040 Contents of Writ - When and to Whom Issued**

- (a) When the judge is satisfied that the writ ought to be issued, it must be issued without delay.
- (b) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him or her to have the body of such person before the Tribal Court at a time and place therein specified.
- (c) The issue or issues to be determined upon return of the writ may be stated either in the writ, in an order attached to the writ, or in a copy of the petition attached to the writ.

### **2.07.050 Service of the Writ**

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

### **2.07.060 Return of Writ - Contents**

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

- (1) whether he or she has the party in his or her custody or under his or her power or restraint and the authority for so holding the person.
- (2) if he or she previously had the party in his or her custody or under his or her power or restraint, the return must state particularly to whom the party was released, at what time and place, for what cause, and by what means.
- (3) the return must be signed by the person making the same, and except when such person is a sworn public official and makes such return in his or her official capacity, it must be verified by his or her oath.

### **2.07.070 Hearing on Return**



(a) The detained person shall be brought before the Court by the person commanded by the writ when possible.

(b) The hearing must be held on the day set and may be summary in nature.

(c) Evidence may be produced and compelled as in civil actions.

### **2.07.080 Judgment**

(a) If the detained person is in official custody, he or she may not be released on a writ of Habeas Corpus for any technical defect in commitment not affecting his or her substantial rights.

(b) Following the hearing, the judge shall make such judgment regarding the custody of the detained person as the facts and circumstances warrant and such order shall be effective immediately.

## **Chapter 2.08 Motions for Reconsideration; Relief from Judgment; Appeal**

### **2.08.010 Motions for Reconsideration**

A motion for reconsideration shall be clearly labeled and shall be noted for hearing on the merits. A motion for reconsideration for any pre-trial judicial decision must be filed within five (5) business days of the decision. Post-adjudicatory reconsideration motions shall be filed within five (5) business days of the judgment. A final judgment on the motion of reconsideration shall constitute the final entry of judgment for purposes of appeal under Chapters 1.07 and 2.08 of this Code.

### **2.08.020 Relief from Judgment or Order**

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; Etc. On motion and upon such terms as are just, the Court may relieve a party from a final judgment, order, or proceeding for the following reasons:

(1) mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;

(3) fraud, misrepresentation, or other misconduct of an adverse party; or

(4) the judgment is void.

The motion shall be made within a reasonable time and for reasons (1) and (2) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this section does not affect the finality of the judgment or suspend its operation.

### (c) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion stating the grounds upon which relief is asked, and supported by affidavits setting forth a concise statement of the facts or errors upon which the motion is based.

(2) Initial Consideration. The Court may deny the motion without a hearing if the facts alleged in the affidavits do not establish grounds for relief. Otherwise, the Court shall enter an order fixing a time and place for hearing and directing the adverse party to appear and show cause why the relief asked for should not be granted.

### **2.08.030 Appeal by Tribal Prosecutor**

The Tribal Prosecutor may appeal an order of the Court as follows, but only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information.

(2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.

(4) New Trial. An order granting a new trial.

(5) Sentence in a Criminal Case. A sentence in a criminal case that is outside the mandatory minimum established in this Code for the offense, or otherwise violates a provision in this Code.

#### **2.08.040 Discretionary Review by Court of Appeals**

(a) A party may seek discretionary review of any act of the Court not appealable as a matter of right by filing a short statement of the factual and legal basis for the request. The statement may not exceed three (3) pages in length. The party opposing discretionary review may file an opposition within three (3) business days.

(b) Discretionary review may be accepted only in the following circumstances:

(1) the Tribal Court has committed an obvious error that renders further proceedings useless;

(2) the Tribal Court has committed probable error and the decision of the Court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) the Tribal Court has so far departed from the accepted and usual course of judicial proceedings, as to call for review by the Appellate Court; or

(4) the Tribal Court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

(c) The Chief Justice of the Lummi Court of Appeals shall determine whether to grant discretionary review. Upon accepting a case for discretionary review, the Chief Justice shall specify the issue or issues as to which review is granted. The Chief Justice shall establish a schedule for filing briefs and hearing arguments before the Lummi Court of Appeals. The trial court proceedings are stayed during a discretionary review by the Court of Appeals, and the time for trial, under LCL 2.05.020 recommences after the Court of Appeals issues its decision on the

discretionary appeal.

(d) Effect of Denial of Discretionary Review. The denial of discretionary review of a Tribal Court decision does not affect the right of a party to obtain later review of the trial court decision or the issues pertaining to that decision.

#### **2.08.050 Procedure for Criminal Appeals**

(a) The procedures in this section apply to appeals of criminal judgments taken under Chapter 1.07 of this Code.

(b) The criminal appeal is perfected by filing a written notice of appeal with the trial court in compliance with LCL 1.07.040(a-d), and payment of the filing fee or the filing and approval of a request for waiver of filing fee.

(c) Upon perfection of the appeal, the Clerk of the Tribal Court shall provide to each party a recording of the proceedings that can be reviewed on standard office equipment.

(d) The appellant's brief is due three (3) weeks after receipt of the recording of the proceedings. The appellee's brief is due three (3) weeks after receipt of the appellant's brief. The appellant may file a reply brief within one (1) week of receipt of the appellee's brief. The Chief Justice may extend the briefing schedule upon good cause shown.

(e) Within five (5) days of the completion of the briefing schedule set out in (d) of this section, the party shall advise whether oral argument is requested under LCL 1.07.060. The Chief Justice shall notify the parties of a determination that the Court of Appeals wishes oral argument at the time of the hearing under LCL 1.07.060.

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