

TITLE 2
LUMMI NATION CODE OF LAWS
TRIBAL COURT CRIMINAL ACTIONS

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Chapter 2.01 Jurisdiction

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 within the boundaries of the Lummi jurisdiction, as defined in Chapter 1.02, or when committed while in the custody of a Lummi law enforcement officer or probation officer.

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 federal, state, or municipal government or of any other tribe or reservation for prosecution of any offender, 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 any other tribe or reservation or of the federal or a state government, a Lummi law enforcement officer may arrest and detain the person if

- (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 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, but that the person has a history of failure to appear or of 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.

Chapter 2.02 Criminal Procedure - Generally

2.02.010 Complaints - Contents and Filing

(a) The Tribal Prosecutor shall commence a prosecution for violation of the Lummi Code of Laws by complaint. 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 penalties for conviction of each offense.

(b) Contents: The complaint shall contain, or have attached to it, the following information, when it is filed with the court:

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

(c) Filing: The original copy of the complaint or citation and notice shall be filed with the Clerk of the Tribal Court.

2.02.020 Limitation on Filing of Complaints

No complaint shall be filed charging the commission of any offense defined by this Code unless such offense shall have been committed within a five year period of the discovery of the commissions 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.

2.02.030 Warrants of Arrest to Apprehend

Every judge of the Tribal Court shall have the authority to issue warrants of arrest. Such

warrants shall only issue upon a showing of probable cause upon affidavit or sworn testimony or a declaration under penalty of perjury. Upon a defendant's failure to comply with an order issued by the Tribal Court, the Court, in its discretion, may issue an order to show cause why the party should not be held in contempt or issue a warrant of arrest. Service of warrants shall be made by a duly qualified officer.

2.02.035 Motion to Quash Warrant of Arrest

Any person who is the subject of a warrant of arrest because of his failure to comply with the Court's order may submit a request that the court quash or rescind the warrant. Such requests must be filed with the court by the person who is the subject of the warrant or by his or her spokesperson, and shall be accompanied by payment of a fee established on a fee schedule approved by the Lummi Indian Business Council or its designee.

2.02.040 Arrests

No member of the police shall arrest any person for any offense defined by this Code or by federal or state law, except when such offense shall occur in the presence of the arresting officer, or he shall have probable cause to believe that the person arrested has committed an offense, or the officer shall have a warrant commanding him to apprehend such person.

2.02.050 Search Warrants - Authority - Subject Matter - Issuance - Execution - Remedy

(a) Authority to issue: Every judge of the Tribal Court shall have the authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court.

(b) Property and persons subject to seizure with a warrant: 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 have been

used in the commission of a crime, including when it reasonably appears that a crime is about to be committed;

(4) a person lawfully restrained, or for whose arrest there is probable cause, or a warrant has been issued.

(c) Issuance and contents: A search warrant may be issued only upon a determination by the court that probable cause exists for the issuance of a warrant. Grounds for issuing a warrant must be established by affidavit(s) or sworn testimony. Sworn testimony may be by an electronically-recorded telephonic statement. The recording or a duplication of the recording shall be a part of the court record. 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. If the court finds that 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 warrants of search and seizure may take place at any time after issuance.

(d) Execution and return with inventory:

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

(2) 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.

(3) Tribal law enforcement shall, upon request, deliver a copy of the inventory to the person from whom, or from whose premises,

the property was taken or to the applicant for the warrant.

(e) Motion for return of property: A person aggrieved by an unlawful search and seizure may file a petition with the court requesting that it rule on a motion to return 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 in the court in which the motion is pending, 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.

2.02.060 Search Without Warrants

No officer shall search or seize any property without a warrant unless he or she shall know or have probable cause to believe that the person in possession of such property is engaged in the commission of an offense under this Code or federal law.

Chapter 2.03 Bail, Fines, Sentencing Guidelines, and Court Costs

2.03.010 Bail - Generally - Posting Bail - Limits - Release of Bail

(a) A person charged with any offense before the Tribal Court may be eligible for bail unless the Court finds that it cannot be reasonably assured that the person will appear for further proceedings, or that there is a likely danger that the person will commit a violent crime, seek to intimidate witnesses, or otherwise unlawfully interfere with the administration of justice. The Court may impose conditions on release to protect the public and the administration of justice.

(b) Bail will be by cash deposit.

(c) In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of this Code for the offense for which the accused has been charged.

(d) 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.

(e) 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.

(f) If a defendant fails to appear, a judge may issue a warrant of arrest and shall order the bail forfeited.

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

2.03.020 Bail - Release on Personal Recognizance in lieu of Bail

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

(a) Whether the person has identified himself satisfactorily;

(b) Whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property, interference with the administration of justice, or breach of the peace;

(c) Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Tribal Court, or whether there is substantial likelihood that he will refuse to appear for trial; and

(d) Whether the person previously has failed to appear in response to a citation issued pursuant to this Code or to other lawful process of the Lummi Tribal Court.

(e) In any case, to secure his release, the person must give his written promise to appear in court as required.

2.03.030 Bail Schedule

The Chief Judge may establish a bail schedule for all offenses under this Code and for any other regulations, resolutions or ordinances

promulgated by the Business Council. Any person arrested and taken into custody for violation of such code and regulations 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. This shall not prevent a judge from ordering or authorizing the release of such persons without bail if he is satisfied that such persons meet the standards set forth in section 2.03.020 of this code.

2.03.040 Bail - Where No Schedule

When any person is arrested for a violation of this Code or any other resolution, ordinance or regulation for which no specified bail has been established, such person shall be brought before a judge as soon as reasonably practicable, and without delay, so that the judge may determine bail pursuant to Chapter 2.03 herein, but in no case shall any person be held without bail for more than forty eight (48) hours. The Chief Judge may establish a standard bail to be used in those cases where no specific bail has been set and it is not possible to bring the person arrested before a judge within forty eight (48) hours.

2.03.045 Probable Cause Determination - Review of Bail No Bar to Future Action

(a) A judge of the Tribal Court shall review the probable cause to arrest any person held in custody within forty-eight (48) hours after his arrest. 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.

(b) If the court finds that probable cause for arrest exists, the Court shall then review the bail under which the arrestee is held. In determining the amount of bail, the court may schedule a hearing at the defendant's request, and, where appropriate, revise the bail as the interests of justice may require.

(c) 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.

2.03.050 Fine Schedule

The Chief Judge may also establish a schedule for fines for specified violations of this Code or any other resolutions, ordinances or regulations of the Lummi Nation within the limits prescribed by this Code and the section establishing the offense. Fines shall be paid to any bonded or insured employee of the Lummi Indian Business Council authorized to receive fines. Receipts for the payment of fines shall be promptly filed with the Clerk of Court. Fines paid by order of the Tribal Court shall be deposited in the Lummi Indian Business Council General Fund.

2.03.060 Sentencing Guidelines

Each year, the Chief Judge shall review the guidelines to be used for sentencing upon a judgment of conviction, including aggravating and mitigating circumstances, and shall either authorize continued use of the previous year's guidelines, or shall establish new or amended guidelines based on the needs and experience of the Lummi Indian community. Sentencing guidelines shall be consistent with, and within the limits of, the penalties established in the Constitution and laws of the Lummi Nation.

2.03.070 Court Costs

In any criminal action in which the judgment of conviction shall be entered against the defendant, the defendant shall be assessed and pay court costs to defray the costs of operation of the Lummi Tribal Court in an amount established on the Court Fee Schedule. These court costs shall be assessed whenever a judgment of conviction is entered. Failure to pay court costs as assessed shall constitute a violation of Code. An additional fee for court costs shall be imposed for each hearing where a defendant fails to appear. Court costs shall be paid to any bonded or insured employee of the Lummi Indian Business Council authorized to receive court costs. Receipts for the payment of court costs shall be promptly filed with the Clerk of Court. Court costs paid by order of the Tribal Court shall be deposited in the Lummi Indian Business Council General Fund.

Chapter 2.04 Criminal Procedure - Citations

2.04.010 Citation In Lieu of Detention

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 or bond. In determining whether to issue a citation and notice to appear, the enforcement officer may consider the following factors:

- (a) Whether the person has identified himself satisfactorily.
- (b) Whether detention appears reasonably necessary to prevent imminent bodily harm to himself, to another, injury to property, or breach of the peace.
- (c) Whether the person has ties to the community or is a local resident, so as to provide reasonable assurance of his appearance before the Tribal Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and
- (d) Whether the person previously has failed to appear in response to a citation issued pursuant to this Code or to other lawful process of the Lummi Tribal Court.
- (e) To secure his release, the person must give his written promise to appear in court as required by the citation.

2.04.020 Citation - Contents

(a) The citation written to the offender by the officer shall include the name of the person, his address, the date of birth and sex, the date, time, place and description of the offense charged, the date on which the citation was issued, and the name of the citing officer. A space shall be provided for the person(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 Tribal Court to hear the charges against him and post bail, which shall be not less than fourteen (14)

days after the date of the citation, nor more than twenty eight (28) days after the date of the citation.

2.04.030 Citation – Effect - Procedure

(a) The citation, when completed by the officer, shall serve as the complaint for the purposes of prosecution in Tribal Court and section 2.02.010 of this Title.

(b) If a defendant fails to appear, the Chief Judge may issue a warrant of arrest and may order any bail deposited by the defendant forfeited.

Chapter 2.05 Arraignment, Pleas, and Trial Dates

2.05.010 Reading of Complaints-Defendant’s Plea - Advisement of Rights

When the defendant is brought before the judge, the complaint shall be read and explained to the defendant, and he shall plead guilty or not guilty. If the defendant refuses to plead, the judge shall enter the fact and a plea of “not guilty” on his behalf. The judge shall cause the defendant to be informed of the charges against him and of the defendant’s right to appear and defend against the charges either in person or with a spokesperson, and the judge shall allow the defendant a reasonable time and opportunity to consult a spokesperson. The judge shall also advise the defendant of his right to remain silent and of the fact that any statements he does make may be used against him. The judge shall also advise the defendant of his right to a jury trial, if the offense with which he 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.

2.05.020 Time of Trial

(a) When the defendant is brought before the judge upon a warrant of arrest, or is summoned to appear and remains in custody, the case shall be set for trial within fifty six (56) days unless continued for cause or at the request of the defendant.

(b) When the defendant is summoned before the judge pursuant to a citation as provided herein, the defendant shall appear on the date indicated on the citation to hear the charges

against him, post bail, enter a plea, and be assigned a trial date. Trial shall be set within eighty-four (84) days unless continued for cause or at the request of the defendant.

(c) A defendant may post bail, enter a plea, and request a trial date prior to the return date on the citation if the defendant so desires, provided that bail or other bond satisfactory to the court is posted. A trial date shall be set within eighty-four (84) days of the return date on the citation unless continued for cause or at the request of the defendant.

2.05.030 Sentencing

(a) Upon a plea or finding of guilty, the judge may impose sentence at once or at a later date not to exceed twenty eight (28) days at his discretion.

(b) The judge may suspend, for a period not to exceed five (5) years, all or any part of the fine or sentence imposed by him upon any person found guilty of violating any of the provisions of this Code or any regulation, resolution, or ordinance promulgated by the Business Council, upon such condition as the Court may deem just, unless such suspension is not permitted by the regulation, resolution or ordinance.

(c) In addition to, or in lieu of, any fines or imprisonment provided by law, or authorized under a fine schedule or sentencing guidelines established by the Tribal Court, the judge may fashion a remedy appropriate to the offense(s) which is in the best interests of justice, or which is in keeping with the historical, governmental, and cultural values of the Lummi Nation.

Chapter 2.06 Trial Procedure

2.06.010 Prosecution

The Tribe shall prosecute the charge by presenting the evidence against the defendant by the testimony of the law enforcement officer and any other witnesses called to support the charge, and in presenting such evidence the Tribe may make use of either a tribal officer or a professional attorney approved as a spokesperson pursuant to Chapter 1.07.

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 defense, including the right to have witnesses brought to court by the Tribe for his defense, so long as these witnesses are within the territorial and personal jurisdiction of the Tribe.

2.06.030 Jury

Any person accused of an offense punishable by imprisonment may demand a jury trial. Such demand may be made by oral demand in open court or by filing a written demand with the clerk. In any case, such demand must be made at least twenty-one (21) days-before the date set for trial, or the right shall be deemed waived.

2.06.040 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.

2.06.050 Civil Rights

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

Chapter 2.07 Habeas Corpus

2.07.010 Who May Prosecute Writ

Every person imprisoned or otherwise restrained of his 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 petition, without alleging that he is illegally confined.

2.07.030 Application for Writ - Contents

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 behalf, and must specify:

(a) That the person on whose behalf the writ is applied for is unlawfully imprisoned or restrained of his 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 is so confined or restrained, naming all the parties if they are known, or describing them if they are not known.

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

2.07.040 Contents of Writ - When and to Whom Issued

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

(a) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him or her to have the body of such person before the Tribal Court at a time and place therein specified.

(b) The issue or issues to be determined upon return of the writ may be stated, either in the writ or in an order attached to the writ, or in a copy of the petition attached to the writ.

2.07.050 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:

(a) Whether he has the party in his custody or under his power or restraint and the authority for so holding the person.

(b) If he previously had the party in his custody or under his 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.

(c) The return must be signed by the person making the same, and except when such person

is a sworn public official and makes such return in his official capacity, it must be verified by his oath.

2.07.070 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 may not be released on a writ of Habeas Corpus for any technical defect in commitment not affecting his substantial rights.

(b) Following the hearing, the 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.

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