

**JAMESTOWN S'KLALLAM TRIBE  
TRIBAL CODE  
TITLE 15 – CRIMINAL ACTIONS**

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## **Chapter 15.01 Jurisdiction**

### **Sections:**

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#### **Section 15.01.02 Rules for Recognition and Enforcement of Foreign Court or Law Enforcement Requests, Actions, Warrants, Subpoenas, and Extradition**

#### **Section 15.01.03 Special Tribal Criminal Jurisdiction**

#### **Section 15.01.01 Concurrent Prosecution**

Any person charged with an offense for which they may be concurrently prosecuted under the laws of the Jamestown S'Klallam Tribe and another jurisdiction, may be prosecuted under applicable law in the Tribal Court whether or not the other jurisdiction prosecutes the person.

#### **Section 15.01.02 Rules for Recognition and Enforcement of Foreign Court or Law Enforcement Requests, Actions, Warrants, Subpoenas, and Extradition**

- A. The name of this section of the Title is “Rules for the Recognition of Foreign Court or Law Enforcement Requests, Actions, Warrants, Subpoenas and Extradition.”
- B. The purpose of this section of Court Rules is to supplement both Title 19 Rules of Court, Title 20 Civil Actions and Title 21 Law and Order, of the Tribal Code, incident to any actions in the recognition of foreign documents or judgments, and provides for the enforcement of court actions, warrants, subpoenas, and extradition requests of foreign courts, and other requests from foreign law enforcement agencies.
- C. Definitions - For the purposes of this section, the following definitions will be used:
  - 1. “Attorney” and “Lawyer” are synonymous and mean an individual who is admitted to practice before the Tribal Court beyond the level of Spokesperson.
  - 2. “Tribe” mean the Jamestown S’Klallam Tribe including its agents and enterprises. “Other Tribe” means tribe(s) other than the Jamestown S’Klallam Tribe.
  - 3. “Court” and “Tribal Court” are synonymous and mean the trial level court of the Tribe.
  - 4. “Day” means calendar day.
  - 5. “Foreign Court” means any court other than the Tribal Court of the Jamestown S’Klallam Tribe, including federal, state, or tribal courts or courts of any foreign country.
  - 6. “Foreign Law Enforcement” means any recognized law enforcement entity other than the law enforcement agents of the Jamestown S’Klallam Tribe, including federal, state, or tribal law enforcement entity of any foreign country.
  - 7. “Foreign Judgment” means any final judgment, decree, or order from any foreign court regardless of whether the judgment is for money, injunctive relief, declaratory or any other relief.
  - 8. “Final Judgment” means a decision of a trial court that settles the rights and obligations of the parties and disposes of all issues in controversy preventing re-litigation of the issues.
  - 9. “Party” means a person concerned with or having been subject to a judgment, order, decree, warrant, subpoena, or other law enforcement activity or judicial act of a foreign court.
  - 10. “Petitioner” means a party who has a judgment rendered in their favor.
  - 11. “Rendering Jurisdiction” means the jurisdiction in which the foreign judgment was entered.
  - 12. “Respondent” means the party against whom a judgment has been rendered.

13. “Subpoena” means a judicial or law enforcement order commanding a person to appear before a court to testify or produce other evidence, specific documents, records, or things, or to make a sworn statement at a time and place other than at a trial. A subpoena has a penalty for failing to comply with it.
14. “Warrant” means a judicial order directing or authorizing someone to do any act, including directing a law enforcement officer to make an arrest, search or seizure.

D. Recognition of Foreign Court Actions

1. Validity of Court Actions. The judgments, orders, warrants, decrees, subpoenas, records of a foreign court, and other judicial actions are presumed to be valid and will have the same effect as Tribal Court orders, judgments, decrees, warrants, subpoenas, records, and actions.
2. All foreign court orders, judgments, decrees, warrants, subpoenas, records, and actions shall be subject to the same procedures, defenses, and proceedings as those of the Tribal Court, subject to the provisions of this code.
3. Reciprocal Recognition. The recognition described in this section applies only if the foreign court provides reciprocal recognition and enforcement of Tribal Court judgments, orders, decrees, warrants, subpoenas, records, and other judicial acts.
4. Compliance Provision. Any person who seeks recognition of a foreign action must comply with the procedures set forth in this section.
5. Overcoming the Presumption. To overcome the presumption of validity a person objecting must demonstrate that they are subject to the foreign court action, and that the foreign court lacked personal or subject matter jurisdiction; or the judgment, order, decree, warrant, subpoena, record or other judicial action of the foreign court:
  - a. Was obtained by fraud, duress, or coercion;
  - b. Was obtained without reasonable notice;
  - c. Was obtained without a fair hearing;
  - d. Is repugnant to the public policy or laws of the Tribe, or
  - e. Is not final pursuant to laws and procedures of the foreign court.
6. Full Faith and Credit. This section does not apply to judgments or orders that federal law requires to be given full faith and credit.

E. Procedures for the Recognition of Foreign Court Actions Except for Subpoenas and Warrants.

1. Application. In accordance with the foreign court actions recognition provisions set forth in this section, a foreign action that is final is recognizable in the Tribal Court under the following procedure.
2. Registration of Foreign Court Action. Any person seeking recognition of a foreign court action shall:
  - a. File a copy of the foreign court action with the Tribal Court. The foreign court action must be authenticated by the clerk or registrar of the foreign court who must attest in writing that:
    - 1) they are the clerk, registrar, or administrator of the foreign court;

- 2) they are the custodian of the records of the foreign court;
    - 3) that the copy of the foreign court action to be a true copy of the original, and affix the seal of the foreign court to the copy.
  - b. File an affidavit which includes the following:
    - 1) the name and last known address of the Petitioner;
    - 2) the name and last known address of the Respondent;
    - 3) proof that the foreign court action to be entered is final with no appeal pending; and
    - 4) a statement that no subsequent orders vacating, modifying or reversing the foreign court action have been entered in the rendering jurisdiction.
  - c. Provide proof that the person against whom the foreign court action has been rendered (i.e. Respondent) is subject to the jurisdiction of the Tribal Court with regard to the enforcement of the foreign court action;
  - d. Provide a statement or other proof that the court from which the foreign court action was issued, provides or will provide, reciprocal recognition and entitlement to enforcement of the judgments, orders, decrees, and other judicial acts of the Tribal Court; and
  - e. Pay the filing fee for registering the foreign court action as set by the Tribal Court.
3. Notice of Registration of Foreign Court Actions
  - a. Upon the filing of the foreign court action, attestation, affidavit, and filing fee the Tribal Court Administrator shall within fourteen (14) days:
    - 1) Mail a notice of the foreign court action, the accompanying affidavit, and the attestation to the Respondent at the address provided by the Petitioner, by first-class mail; and
    - 2) Complete a proof of service.
  - b. Contents of the Notice. The notice of filing of the foreign court action shall include the following:
    - 1) The name and address of the Petitioner or the Petitioner's attorney, if any; and
    - 2) A statement giving notice to the Respondent that an "Order Granting Recognition of Foreign Court Action" shall be entered by the Tribal Court unless the Respondent files a written objection, with the Tribal Court within twenty-one (21) days of the date of service of the notice of the Respondent.
4. Objections to the Filing of a Foreign Action
  - a. Time Limit for Objecting. A Respondent has twenty-one (21) days after notice to file a written objection to the recognition of the foreign court action. Any objection filed must include statements setting the basis for the objection.
  - b. Entry of Order Absent an Objection. If no objection is filed by the Respondent within the twenty-one (21) day period, the Tribal Court will enter the "Order Granting Recognition

of Foreign Court Action.”

c. Hearing and Entry of Order or Objection. In the event that the Respondent files a written Objection, the Tribal Court Administrator shall:

- 1) Send by first-class mail a copy of the Objection to the Petitioner or the Petitioner’s Attorney;
- 2) Set a hearing for the Objections; and
- 3) Send a notice of the hearing to the Petitioner, the Respondent and their respective attorneys.

5. Burden of Proof. The Respondent at the Objection Hearing shall have the burden of proof by clear and convincing evidence to show why the foreign court action should not be recognized by the Tribal Court. An action that complies with this code is presumed valid.

6. Timeliness of Order. The Court shall enter an order either granting or denying recognition as soon as practicable but no later than seven (7) days after the close of proofs.

7. Post-Judgment Proceedings. Following the entry of an “Order Granting Recognition of Foreign Court Action” the Petitioner may enforce that order in any manner legally available to the Petitioner, including post-judgment proceedings.

F. Procedures for the Recognition and Enforcement of Foreign Court Subpoenas as to Non-Government based persons or entities.

1. Recognition of Court Issued Subpoenas. The Tribal Court will only recognize subpoenas issued by recognized foreign courts. Subpoenas issued by a party or an attorney for a party will not be recognized.

2. Tribal Court Order Required Before Service. Before any foreign court subpoena can be served on any Tribal member, or person under the jurisdiction of the Tribal Court, or custodian of Tribal papers and records, the Tribal Court shall issue an Order either allowing recognizing and enforcing the subpoena, or shall issue a Tribal subpoena or Tribal search warrant.

3. Registration of Foreign Subpoena. Any subpoena presented to the Court for recognition and enforcement must comply with the provisions set forth in this code.

4. Notification of Tribal Prosecutor or Attorney. The Tribal Clerk of the Court shall notify the Tribal attorney and/or the Tribal Prosecutor, within one (1) day when any subpoena is received requesting papers or records of the Tribe, or requesting that any Tribal officer or Tribal employee testify.

5. Notice of Registration of Foreign Subpoena. Upon the filing of the foreign court subpoena and receipt of any filing fee, the Tribal Clerk of the Court must within three (3) days, send by first-class mail, a notice of the filing of the foreign court subpoena along with a copy of the foreign court subpoena to the Respondent, Respondent’s attorney, and the Tribal Attorney and Prosecutor if appropriate, at the addresses provided by the Petitioner, and complete a proof of service.

6. The notice of the filing of the foreign court subpoena shall include the following:

- a. The name and mailing address of the Petitioner and Petitioner’s attorney, if any; and
- b. A statement giving notice that an “Order Granting Recognition of Foreign Court Subpoena” shall be entered by the Tribal Court unless the Respondent, the Respondent’s attorney, or the Tribal Attorney if appropriate files a written objection with the Tribal Court, within seven (7) days from the date of service of the notice for a subpoena of a

person or fourteen (14) days from the date of service of the notice for a subpoena for papers or records.

7. Objection. Only the person subject to the subpoena, their attorney, or the Tribal Attorney if appropriate may object to the subpoena under the following conditions:
  - a. Any objection must be filed in writing with the Court within the objection period of seven (7) days from the date of service of the notice for a subpoena of a person, or fourteen (14) days from the date of service of the notice for a subpoena for papers or records.
  - b. The objection must set forth the reasons for the objection to the enforcement of the subpoena and may include one or more of the following grounds:
    - 1) The foreign court lacks jurisdiction over the person subject to the subpoena; the subpoena was obtained by fraud, duress, or coercion;
    - 2) The subpoena is repugnant to the public policy or laws of the Tribe; or
    - 3) To honor the subpoena would place the person subject to it in reasonable fear of physical harm or injury.
  - c. The person filing the objection shall by first-class mail notify the foreign court that the issued subpoena is objected to within seven (7) days of the receipt of the subpoena.
  - d. If the subpoena is for papers or records, then the Clerk of the Court shall, upon the receipt of an objection from the person in possession of the papers or records notify all parties that an objection has been filed.
8. Objection Hearing. The Tribal Clerk of the Court shall schedule a hearing as soon as possible after a written objection is received. The Tribal Clerk of the Court shall:
  - a. Schedule a hearing on the objection.
  - b. Provide notice of the time, date, and place of the hearing to the issuing foreign court, the party requesting the subpoena, and the person objecting, by first-class mail.
  - c. At the hearing, the person objecting has the burden of persuasion that the subpoena should not be enforced.
9. Order. The Tribal Court shall issue an order either granting or denying recognition of the subpoena. The Tribal Court shall enter the order as soon as practicable after the hearing, but no later than seven (7) days of the hearing date.
10. Entry of Order Absent Objection. In the event that the Respondent, Respondent's attorney, the Tribal Prosecutor, or the Tribal Attorney does not file any written objection within the referenced seven (7) or fourteen (14) day period, an "Order Granting Recognition of Foreign Court Subpoena" shall be entered by the Tribal Court.

G. Procedures for the Presentation of Foreign Court Arrest Warrants.

1. Presentation of Foreign Court Arrest Warrant. A duly authorized law enforcement officer seeking recognition and enforcement of a foreign arrest warrant shall present the original, a copy, or a confirmed electronically valid warrant to the Tribal Police for presentation to the Tribal Court.
2. Warrant Requirements. Any arrest warrant that is presented to the Tribal Police for enforcement shall:

- a. Contain the signature of the issuing judge or magistrate; and
- b. Clearly set forth probably cause:
  - 1) To believe that an offense has been committed; and
  - 2) That the person named has committed the offense.
3. If the Tribal Court decides that the request should be complied with, a judge of the Tribal Court shall sign a Tribal warrant of arrest directed to a Tribal Enforcement officer authorizing them to apprehend the person named in the warrant. All established extradition rules shall be maintained.
4. Maintaining a Copy of Warrant and Inventory. The Tribal Court shall receive and maintain a copy of any arrest warrant.

H. Procedures for Presentation of Foreign Court Search Warrants.

1. Warrant Requirements. Any search warrant that is presented to the Tribal Court for enforcement shall:
  - a. Contain the signatures of the issuing foreign court judge or magistrate;
  - b. Clearly set forth probably cause that a search within Tribal Land will discover:
    - 1) Stolen property, embezzled property, contraband or otherwise unlawfully possessed property, or; property which has been or is being used to commit a criminal offense, or; property which constitutes evidence of the commission of a criminal offense, or: other evidence of a crime, or; a person for whom an arrest warrant has been issued or will be issued contemporaneously with the issuance of the search warrant; and reasonably describe the property to be seized and the place to be searched.
    - 2) Presentation of Foreign Court Search Warrant - A duly authorized law enforcement officer seeking recognition and enforcement of a foreign court search warrant shall present the original or a copy of the search warrant to the Tribal Police who shall utilize it as an attachment for an application for a Tribal Search Warrant to be presented to the Court through the Tribal Prosecutor.
    - 3) Issuance of Tribal Search Warrant in Conjunction with Recognition of Foreign Court Search Warrant - The Court shall authorize execution of a Tribal Search Warrant if probable cause is established and that the Court determines that none of the following conditions exists:
      - a) The foreign court lacks personal or subject matter jurisdiction incident to the investigation; or
      - b) The search warrant of the foreign court was obtained by fraud, duress, or coercion; is repugnant to the public policy or laws of the Tribe; or is not legal under the laws and procedures of the foreign court.
    - 4) Execution of Search Warrant on Tribal Lands. Warrants of search and seizure shall only be executed in the presence of a Tribal Law Enforcement Officer if the place to be searched is Tribal Land.
    - 5) Maintaining a Copy Warrant and Inventory. The Tribal Court shall receive and maintain a copy of any search warrant. Upon execution of any search warrant, a copy of the search warrant and itemized inventory of items seized shall be filed with the Tribal Court within the time limit shown on the face of the warrant, but



no later than ten (10) days from the date of the issuance of the warrant, absent justifiable delay as determined by the Tribal Court.

- I. Procedures for the Recognition and Enforcement of Foreign Court or Law Enforcement Subpoenas as to Government based Persons or Entities.
  1. Recognition of Court Issued or Law Enforcement Subpoenas. The Tribal Court will only recognize subpoenas issued by recognized foreign courts or law enforcement entities. Subpoenas issued by a party or an attorney for a party will not be recognized.
  2. Tribal Court Order Required Before Service. Before any foreign court or law enforcement subpoena can be served on any Tribal Officer, or Tribal Entity under the jurisdiction of the Tribal Court, or custodian of Tribal papers and records, the Tribal Court shall issue an Order either allowing recognizing and enforcing the subpoena, or shall issue a Tribal subpoena or Tribal search warrant.
  3. Registration of Foreign Subpoena. Any subpoena presented to the Court for recognition and enforcement must comply with the provisions set forth in this Title.
  4. Notification of Tribal Prosecutor or Tribal Attorney. The Tribal Clerk of the Court shall notify the Tribal attorney and/or the Tribal Prosecutor, within one (1) day when any subpoena is received requesting papers or records of the Tribe, or requesting that any Tribal officer or employee testify.
  5. Notice of Registration of Foreign Subpoena. Upon the filing of the foreign court subpoena and receipt of any filing fee, the Tribal Clerk of the Court must also within one (1) day, send by first-class mail, a notice of the filing of the foreign court subpoena along with a copy of the foreign court subpoena to the Tribal Attorney and/or the Tribal Prosecutor as appropriate, and complete a proof of service. [Note: Law enforcement subpoenas are exempt from any fee and notice requirements if associated with an active investigation.]
  6. The notice of the filing of the foreign court or law enforcement subpoena shall include the following:
    - a. The name and mailing address of the Petitioner; and
    - b. A statement giving notice that an “Order Granting Recognition of Foreign Court or Law Enforcement Subpoena” may be entered by the Tribal Court unless the Tribal Attorney or Tribal Prosecutor files a written objection with the Tribal Court within fourteen (14) days from the date of service of the notice for the subpoena.
  7. Objection. Only the Tribal Attorney or Tribal Prosecutor may object to the subpoena. Any objection will be filed in writing with the Court within the objection period of fourteen (14) days from the date of service of the notice for a subpoena.
    - a. The objection will set forth the reasons for the opposition to the enforcement of the subpoena and may include one or more of the following grounds:
      - 1) The foreign court lacks jurisdiction over the person subject to the subpoena;
      - 2) The subpoena was obtained by fraud, duress, or coercion;
      - 3) The subpoena is repugnant to the public policy or laws of the Tribe; or
      - 4) To honor the subpoena would place the person subject to it in reasonable fear of physical harm or injury.
    - b. The Clerk of the Court shall by first-class mail notify the foreign court that the issued subpoena has been objected to within seven (7) days of the receipt of the objection.

8. Objection Hearing. The Tribal Clerk of the Court shall schedule a hearing as soon as possible after a written objection is received. The Tribal Clerk of the Court shall:
  - a. Schedule a hearing on the objection.
  - b. Provide notice of the time, date, and place of the hearing to the issuing foreign court, or law enforcement agency requesting the subpoena, and the Tribal Attorney or Prosecutor objecting, by first-class mail.
  - c. At the hearing, the person objecting has the burden of persuasion that the subpoena should not be enforced.
9. Order. The Tribal Court shall issue an order either granting or denying recognition of the subpoena. The Tribal Court shall enter the order as soon as practicable after the hearing, but no later than seven (7) days of the hearing date.
10. Entry of Order Absent Objection. In the event that the Respondent, Respondent's attorney, the Tribal Prosecutor, or the Tribal attorney does not file any written objection within the referenced fourteen (14) day period, an "Order Granting Recognition of Foreign Court Subpoena" may be entered by the Tribal Court.

J. Appeal to the Appellate Court.

1. Appeal of Order Granting Recognition of a Foreign Court Action. Except a Foreign Court Subpoena - The Respondent or the Respondent's attorney may appeal an order granting recognition of foreign court action, except a subpoena, to the Tribal Appellate Court within seven (7) days of the date of the order upon the Respondent and the Respondent's attorney.
2. Appeal of Order Granting Recognition of Foreign Subpoena. The Respondent, Respondent's attorney or the Tribal Attorney or Tribal Prosecutor may appeal an order granting recognition of a foreign court subpoena to the Tribal Appellate Court within seven (7) days of the date of service of the order upon Respondent, Respondent's attorney, the Tribal Attorney, or the Tribal Prosecutor.
3. Appeal of Denial of Recognition of Foreign Court Action and Subpoena. The Petitioner or the Petitioner's attorney may appeal the denial of recognition of a foreign court subpoena to the Tribal Appellate Court within seven (7) days of the date of service of the order denying recognition upon Petitioner and the Petitioner's attorney.
4. Stay of Execution of Tribal Court Order. If an appeal is filed in any action, any party may request a stay of execution from the Tribal Court within seven (7) days after the date of service of any order or ruling of the Tribal Court.

K. Extradition.

1. Authority of the Tribal Court. Whenever the Jamestown S'Klallam Tribe receives a written request from the proper authorities of another Indian Tribe, the Federal Government, or any other state or local governments for the extradition of a person found within the exterior boundaries of any Jamestown S'Klallam Lands, who is charged with having committed a crime within the requesting jurisdiction, and who is using Tribal Lands as an asylum from prosecution, the Tribal Court may, in its discretion, have said person arrested and delivered up to proper authorities of the requesting jurisdiction.
2. Request for Extradition, Requirements. No request for extradition of a person charged with a crime in another jurisdiction shall be recognized by the Tribal Court unless it is in writing and accompanied by a valid warrant or proof thereof.

3. Investigation of Request. When a request is made to the Tribal Police by the proper authorities of another jurisdiction to surrender a person charged with a crime in said other jurisdiction, the Tribal Police shall without delay notify the Tribal Attorney, or Tribal Prosecutor. Tribal Law Enforcement shall investigate the foreign request and report to the Tribal Attorney or Prosecutor the circumstances of the person so charged, and whether they ought to be brought before the Tribal Court.
  4. Warrant of Arrest. If the Tribal Court decides that the request should be complied with in accordance with the requirements contained in Section 15.01.02 G. of this Title, a judge of the Tribal Court shall sign a warrant of arrest directed to a Tribal enforcement officer authorizing them to apprehend the person named in the warrant.
  5. Rights of Person Arrested – Hearing.
    - a. When said person is apprehended, the arresting officer shall so notify the authorities of the requesting jurisdiction and shall take them forthwith before a judge of the Tribal Court.
    - b. The judge shall inform the arrested person of the request made for their surrender and of the crime with which they are charged.
    - c. The judge shall also inform the person that they have the right to legal counsel, at their own expense, and the right to test the legality of their arrest.
    - d. If the arrested person or their counsel says that they desire to test the legality of the arrest, the judge shall allow the person a reasonable time within which to apply for a writ of Habeas Corpus and shall set a date for a hearing on said writ.
  6. Warrant to Deliver. If from the Habeas Corpus hearing it appears that the person held is the person charged with having committed the alleged crime in the other jurisdiction, and that they are using Tribal Lands as an asylum from prosecution, the judge shall issue a warrant directing Tribal Law Enforcement to deliver said person to the duly authorized agent of the requesting jurisdiction at the border of the Tribal Land.
  7. Confinement of Prisoner. If the person arrested does not request a hearing, they may be detained in the Tribal or contract jail for a period not to exceed twenty-four (24) hours from the time of apprehension. A person requesting a hearing shall be deemed to have waived the twenty-four (24) hour limit and may be held in jail for a reasonable time pending the hearing. Bail shall be set at such a sum as the judge deems proper and shall be conditioned on the person's appearance in the Tribal Court at a specified time.
  8. Discharge from Custody - New Warrant Required.
    - a. Provided there is no request for a hearing to oppose extradition, if the authority which issued the warrant does not take custody of the person arrested within twenty-four (24) hours after their apprehension by the Jamestown S'Klallam Law Enforcement Officers, the arrested person shall be discharged from custody.
    - b. In such a case, the Tribal Court shall not honor the same warrant for the same person but shall require a new warrant to be issued by the requesting jurisdiction and shall require the issuing authority's representative to accompany Jamestown S'Klallam Law Enforcement Officers to apprehend the person, and take immediate custody after apprehension by the Jamestown Officer.
- L. Extradition from Another Jurisdiction to the Jurisdiction of the Jamestown S'Klallam Tribal Court.

The Jamestown S'Klallam Tribal Court may request the proper authorities of the federal, other state, other tribe, or local governments to deliver to the custody of the Jamestown S'Klallam Tribal Court, any person

subject to the jurisdiction of said government who is charged with having committed a crime within the jurisdiction of the Jamestown S'Klallam Tribe and has fled into such other jurisdiction to avoid prosecution.

### **Section 15.01.03 Special Tribal Criminal Jurisdiction**

Special Tribal Criminal Jurisdiction:

- A. The Jamestown S'Klallam Tribe has Special Tribal Criminal Jurisdiction as a participating tribe, as defined within 25 U.S.C. §§ 1302 through 1304, as presently constituted or hereafter amended, subject to applicable exceptions defined therein.
- B. Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by 25 U.S.C. §§ 1302 through 1304, the powers of self-government of the Jamestown S'Klallam Tribe include the inherent power to exercise Special Tribal Criminal Jurisdiction over all persons.
- C. In all proceedings in which the Tribal Court is exercising Special Tribal Criminal Jurisdiction as a participating tribe, all defendants shall have all rights afforded by this Title 15, in addition to the rights enumerated in the Indian Civil Rights Act, 25 U.S.C. §§ 1302 through 1304. Should there be any inconsistency between this Title and 25 U.S.C. §§ 1302 through 1304, those of 25 U.S.C. §§ 1302 through 1304 shall apply.
- D. Whether the elements of an offense are sufficient to also prove the jurisdictional requirements of Special Tribal Criminal Jurisdiction is a question of law for the judge to decide at arraignment.
- E. Criminal Conduct. The Tribe exercises Special Tribal Criminal Jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories as they are defined in Title 21 – Law and Order Code of the Tribal Code, which includes:
  1. Domestic Violence;
  2. Child Violence;
  3. Sexual Violence;
  4. Sex Trafficking;
  5. Violation of a Protection Order;
  6. Stalking;
  7. Assaults Against Justice Personnel; and
  8. Obstruction of Justice.

## **Chapter 15.02 Starting the Criminal Process**

### **Sections:**

#### **Section 15.02.01 Complaints**

#### **Section 15.02.02 Limitation on Filing Complaints**

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#### **Section 15.02.07 Arrest Warrants**

#### **Section 15.02.08 Arrest Without a Warrant**

### **Section 15.02.01 Complaints**

Prosecution for violating the criminal laws of the Jamestown S'Klallam Tribe shall be initiated by written complaint. The complaint shall state the essential facts constituting the offense charged and must be filed in the Tribal Court. A valid complaint must bear the signature of the person authorized to represent the Tribe, or the signature of a complaining witness. The signature of a complaining witness who is not the Tribal Prosecutor must be witnessed by a judge, judicial officer, court clerk, Tribal officer, or notary public.

### **Section 15.02.02 Limitation on Filing Complaints**

No complaint shall be filed charging the commission of a Tribal offense after the time periods described in Title 21, Section 2.3 of the Tribal Code. If a complaint has been filed within those time periods, there shall be no time limitation on further proceedings, except a defendant's right to a speedy trial shall not be abridged. The time shall not run during the person's absence from Tribal lands. It is the intent of the Tribal Council that the term "speedy trial" shall mean the right of a defendant to have the trial process commence within a reasonable time after a complaint is filed, such reasonableness to be measured by whether the defendant has been injured by any delay.

### **Section 15.02.03 Citation as Complaint**

A citation, conforming to the requirements of this chapter, shall be deemed to be a summons and complaint for the purpose of initiating a criminal prosecution. If a defendant fails to appear as directed by the citation, the judge shall issue an arrest warrant and order any bail deposited by the defendant to be forfeited.

### **Section 15.02.04 Citation, Contents**

A citation shall be deemed a summons and complaint under this chapter if it contains:

- A. The name, address, date of birth, sex, and driver's license number of the accused;
- B. The general location where the offense was committed;
- C. The name and number of the law allegedly violated;
- D. A brief statement of the specific acts or omissions complained of;
- E. The victim's name, if known;
- F. The date and approximate time the offense was committed;
- G. The date and approximate time the citation was issued;
- H. The name of the citing officer;
- I. A space for the person to sign a promise to appear; and
- J. The time and place for the person to appear for arraignment.

### **Section 15.02.05 Citation in Lieu of Detention**

A citation may be issued by a Tribal enforcement officer in lieu of keeping the person in custody or requiring a bail

or bond if the alleged offense was 1) committed in their presence, or 2) if not committed in their presence, the officer has probable cause to believe an offense was committed by the person charged. A copy of the citation shall be filed immediately with the Tribal Court. In determining whether to issue a citation in lieu of detention, the officer may consider:

- A. Whether the person has identified themselves satisfactorily;
- B. Whether detention is necessary to prevent harm to themselves, to others, to property or to prevent a breach of peace;
- C. Whether the person has ties to the community sufficient to provide reasonable assurance they will appear before Tribal Court;
- D. Whether the person has previously failed to appear before the Court in response to a citation; and
- E. Whether the Tribal enforcement officer has reason to believe that there is a substantial likelihood that the person will not respond to the citation.

#### **Section 15.02.06 Amending Complaints and Citations**

A complaint and summons or citation may be amended by the Court, Tribal enforcement officers, or Tribal prosecutor provided that no substantial right of the accused is breached. Any amendments shall be filed with the Court and promptly served on the defendant.

#### **Section 15.02.07 Arrest Warrants or Summons on a Complaint**

- A. Every judge of the Tribal Court shall have the authority to issue arrest warrants.
- B. Issuance. If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it.

At the request of the prosecutor for the Tribe, the judge must issue a summons, instead of a warrant, to a person authorized to serve it. A judge may issue more than one warrant or summons on the same complaint. If an individual defendant fails to appear in response to a summons, a judge may, and upon request of the prosecutor for the Tribe must, issue a warrant.

- C. Forms.
  - 1. Warrant. A warrant must:
    - a. Contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;
    - b. Describe the offense charged in the complaint;
    - c. Command that the defendant be arrested; and
    - d. Be signed by a Tribal Judge.

Tribal arrest warrants shall remain active until the subject of the warrant is apprehended or until the Tribal Prosecutor files a motion to dismiss or recall the warrant.

The statute of limitations is tolled for any crime(s) described in the arrest warrant.

- 2. Summons. A summons must be in the same form as a warrant except that it must require the defendant to appear before the Tribal Court Judge at a stated time and place.
- D. Execution or Service and Return.

1. **By Whom.** Only a Tribal Police Officer or other authorized officer may execute a warrant. Any person authorized to serve a summons in a Tribal civil action may serve a summons.
2. **Location.** A warrant may be executed, or a summons served, within the jurisdiction of the Jamestown S'Klallam Tribe or the United States or anywhere else a tribal or federal statute authorizes an arrest. A summons to an organization under Subsection 15.02.07 D.3.d., below, may also be served at a place not within a judicial district of the Tribe.
3. **Manner.**
  - a. A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the original or a duplicate original warrant to the defendant as soon as possible.
  - b. A summons is served on an individual defendant:
    - 1) by delivering a copy to the defendant personally; or
    - 2) by leaving a copy at the defendant's residence or usual place of abode with a person of suitable age and discretion residing at that location and by mailing a copy to the defendant's last known address.

If the defendant cannot be found on the trust, reservation, or fee lands of the Tribe, service may be accomplished by sending a copy of the summons by prepaid first-class US Mail or by certified mail return receipt requested to the last known address of the defendant, or to the address the defendant provided to law enforcement.

- c. A summons served on an organization is accomplished by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. If the agent is one authorized by statute and the statute so requires, a copy must also be mailed to the organization.
  - e. A summons is served on an organization not within a judicial district of the Tribe:
    - 1) by delivering a copy, in a manner authorized by the foreign jurisdiction's law, to an officer, to a managing or general agent, or to an agent appointed or legally authorized to receive service of process; or
    - 2) by any other means that gives notice, including one that is:
      - (a) stipulated by the parties; or
      - (b) permitted by an applicable jurisdictional agreement.
3. **Return**
  - a. After executing a warrant, the officer must return it to the judge before whom the defendant is to be brought. The officer may do so by reliable electronic means at the request of an attorney for the Tribe.
  - b. The person to whom a summons was delivered for service must return it on or before the return day.
    - 1) **Summons/Notice Proof of Service.** The Clerk of the Court or the person serving the summons shall file with the Court certification that they have served the defendant, describing the type of service and the date and place of service.

- 2) If service was made on a person other than the defendant, as provided in Subsection D.3.b.2), above, the certification shall state the name of the person served, the date and place of service, and the instructions given.
- 3) In case of service by first class US Mail, or certified mail, the fact that the summons was not returned as undeliverable, or that the return receipt was processed shall constitute proof of service.
- 4) In case of service by first class US Mail, or certified mail sent to the last known address of the defendant, or to the address the defendant provided to law enforcement, be returned as undeliverable, or that the return receipt was not processed, if a valid address for a defendant cannot be determined, the Clerk of the Court in receipt of returned mail, or undeliverable mail may prepare and file a Statement Regarding Certain Undeliverable or Returned Mail that lists the name of the defendant, person or the entity not served, references each address at which service was attempted but not made, identifies each document for which good service has not been made, and summarizes the resources used to attempt to obtain a good address.

Filing this statement provides a clear record of the service attempts made therein discounting any arguments that the Tribe failed to adequately attempt service of process.

- c. At the request of the prosecutor for the Tribe, a judge may deliver an unexecuted warrant, an unserved summons, or a copy of the warrant or summons to the Tribal Police or other authorized person for execution or service.

- E. Warrant by Telephone or Other Reliable Electronic Means. A judge may issue a warrant or summons based on information communicated by telephone or other reliable electronic means when reviewing a complaint or deciding whether to issue an arrest warrant, search warrant or summons.

#### **Section 15.02.08 Arrest Without a Warrant**

An enforcement officer shall arrest a person without a warrant only when the offense occurs in the presence of the arresting officer and there has been a breach of the peace.



## **Chapter 15.03 Searches**

### **Sections:**

#### **Section 15.03.01 Authority to Issue Search Warrants**

#### **Section 15.03.02 Property Which May Be Seized**

#### **Section 15.03.03 Search Warrants, Contents and Issue**

#### **Section 15.03.04 Search Without a Warrant**

#### **Section 15.03.01 Authority to Issue Search Warrants**

A warrant for search and seizure may be issued by any judge of the Tribal Court upon request of a Tribal enforcement officer or Tribal prosecutor.

#### **Section 15.03.02 Property Which May Be Seized**

A warrant may be issued to search for and seize any evidence of a crime, contraband, or weapons used in the commission of a crime.

#### **Section 15.03.03 Search Warrants, Contents and Issuance**

A warrant may only be issued on an affidavit containing reliable facts which establishes probable cause to believe that sizeable evidence will be found on the person or premises described in the affidavit. The warrant shall be directed toward the Tribal officer and shall command the officer to conduct the search within the time specified in the warrant.

#### **Section 15.03.04 Search Without a Warrant**

No enforcement officer shall search or seize any property without a warrant unless:

- A. They know or have probable cause to believe that the person is engaged in the commission of an offense; or
- B. The search is made incident to a lawful arrest; or
- C. Emergency circumstances exist, such as a situation where evidence might be destroyed or removed; or
- D. Objects to be seized are in the officer's plain view; or
- E. The person(s) consents to the search.

## **Chapter 15.04 Bail**

### **Sections:**

#### **Section 15.04.01 Bail and Bail Bonds, Generally**

#### **Section 15.04.02 Personal Recognizance**

#### **Section 15.04.03 Bail Where No Schedule Exists**

#### **Section 15.04.01 Bail and Bail Bonds, Generally**

Every person charged with an offense before the Tribal Court is entitled to bail. Bail shall be posted by cash deposit or by the signed agreement of two (2) reliable persons that they are willing and able to pay the bail if the defendant fails to appear. The case or bond agreement shall be signed in the presence of any bonded employee authorized by the Tribal Council to accept bail. All such bonds shall be filed promptly with the Clerk of the Court.

#### **Section 15.04.02 Personal Recognizance**

A person charged with an offense may be released on their personal recognizance in lieu of bail, in the Court's discretion. In determining whether to grant personal recognizance, the Court may consider those factors set forth in Section 15.02.05, Subsections A. - E., of this Title and any other factors the Court considers relevant. The person must give their written promise to appear to secure their release.

#### **Section 15.04.03 Bail Where No Schedule Exists**

When a person is arrested for an offense for which no bail has been specified, the person shall be brought before a judge for a bail determination. In such a case, the bail set by the judge shall not exceed twice the maximum fine established for the offense. A person shall be brought before a judge for this purpose as soon as practicable but in no case shall a person be held without bail more than forty-eight (48) hours. The judge may exercise reasonable discretion to establish a standard to be used where no specific bail has been set.

## **Chapter 15.05 Arraignment**

### **Sections:**

#### **Section 15.05.01 Arraignment Procedure**

#### **Section 15.05.02 Entering a Plea**

#### **Section 15.05.01 Arraignment Procedure**

When the defendant is brought before the judge of the Tribal Court for arraignment, the complaint shall be read and explained to the defendant. The judge shall advise the defendant of their right to appear and defend against the charge, to have an attorney or spokesperson represent them at the arraignment and all subsequent judicial proceedings, that the person has the right to cross examine witnesses against them, that the person may remain silent and that any statements they do make may be used against them, that the person has the right to a trial by jury, and that they may have witnesses testify on their behalf.

#### **Section 15.05.02 Entering a Plea**

The defendant shall be asked by the Court to enter a plea after the charges and defendant's rights have been read and the defendant has been given a reasonable opportunity to secure counsel, if they wish to have counsel. The defendant may plead guilty or not guilty. The Court shall not accept a plea of guilty unless it determines that it is made voluntarily, and with an understanding of the nature of the charge and the consequences of the plea. The Court shall not enter a judgment on a plea of guilty unless it is satisfied that there is a factual basis for the plea. The Court shall allow a defendant to withdraw a guilty plea when necessary to prevent a manifest injustice.

## **Chapter 15.06 Trial**

### **Sections:**

#### **Section 15.06.01 Time of Trial**

#### **Section 15.06.02 Prosecution**

#### **Section 15.06.03 Standard of Proof**

#### **Section 15.06.04 Civil Rights**

#### **Section 15.06.05 Trial Procedure**

#### **Section 15.06.06 Jury**

#### **Section 15.06.01 Time of Trial**

A case shall be set for trial within sixty (60) days of arraignment if the defendant is incarcerated and ninety (90) days if the defendant is not incarcerated, unless continued for cause or at the defendant's request.

#### **Section 15.06.02 Prosecution**

The Tribal prosecutor shall prosecute the charge by presenting evidence against the defendant.

#### **Section 15.06.03 Standard of Proof**

The Tribal prosecutor must prove each element of the offense charged beyond a reasonable doubt.

#### **Section 15.06.04 Civil Rights**

All accused persons shall be guaranteed all civil rights secured by the "Indian Civil Rights Act," United States Code Title 25 Sections 1301 et seq., as it may be amended from time-to-time and as interpreted by the Tribal Court and federal courts.

#### **Section 15.06.05 Trial Procedure**

All applicable procedures in this Title will be followed in any criminal action. The following sections of Title 20 – Civil Actions of the Tribal Code shall also apply in criminal actions: Section 20.06.04 - Evidence and Section 20.06.05 – Applicable Law.

#### **Section 15.06.06 Jury**

Request for a jury trial may be made by oral demand in open court or by filing a written demand with the Clerk of Court. In no case shall a request be made less than two (2) weeks before the trial date.

## **Chapter 15.07 Sentencing**

### **Sections:**

#### **Section 15.07.01 Time of Sentencing**

#### **Section 15.07.02 Imposition of Sentence; Notice of Appeal Rights**

#### **Section 15.07.03 Work in Lieu of Fine**

#### **Section 15.07.04 Alternative to a Fine**

#### **Section 15.07.01 Time of Sentencing**

Upon a plea or finding of guilty, the Court may impose sentence at once or schedule sentencing for the next regularly scheduled court date.

#### **Section 15.07.02 Imposition of Sentence; Notice of Appeal Rights**

The Court shall impose a sentence on a defendant within the limits prescribed by this Title. The Court may suspend all or any part of the sentence on such conditions as to the Court seems just. The Court shall advise convicted defendants of their right to appeal upon pronouncing a guilty verdict.

#### **Section 15.07.03 Work in Lieu of Fine**

Any person sentenced for an offense by the Tribal Court may be ordered by the Court to perform community service work in lieu of any fines assessed. Such order shall issue only upon recommendation of the Tribe, through its prosecutor, to the Court. Each hour of community service shall reduce the fine by the amount of the federal hourly minimum wage at the time of sentencing.

#### **Section 15.07.04 Alternative to a Fine**

If a person convicted of any crime under this Title has gained money or property or caused a victim to lose money or property through the commission of the crime, the court may order the defendant to pay an amount to the victim as restitution. In such a case, the court shall make the finding as to the amount of the defendant's gain or the victim's loss. This finding by the Court shall be based on a hearing if the evidence of record is not sufficient to determine the amount. The amount of restitution ordered by the Court shall be in lieu of the fine provided for the crime and shall not exceed double the amount of the defendant's gain or the victim's loss from the commission of the crime.

## **Chapter 15.08 Habeas Corpus**

### **Sections:**

#### **Section 15.08.01 Habeas Corpus, Grounds for Granting**

#### **Section 15.08.02 Application for Writ of Habeas Corpus**

#### **Section 15.08.03 Response**

#### **Section 15.08.04 Briefs**

#### **Section 15.08.05 Decision of the Court**

#### **Section 15.08.06 Service of the Writ**

#### **Section 15.08.01 Habeas Corpus, Grounds for Granting**

Every person imprisoned or otherwise restrained of their liberty may petition for a writ of habeas corpus to inquire into the reasons for the imprisonment or restraint. If the reasons are found to be illegal, the detainee shall be released from custody by order of the Tribal Court.

#### **Section 15.08.02 Application for Writ of Habeas Corpus**

Application for the writ shall be made by a petition to the Tribal Court. It must be signed and verified under oath or affirmation by or on behalf of the person imprisoned or restrained. The petition shall include:

- A. The place of restraint or custody, the party imposing restraint or custody, the order or authority on which restraint or custody is based, and any appeals from the order;
- B. A statement of the facts on which application for the writ is based, argument on why the restraint or custody is unlawful and why other remedies are inadequate; and
- C. A statement of the relief desired.

#### **Section 15.08.03 Response**

The respondent must file a petition responding to the application for a writ of habeas corpus and stating the authority for restraining the petitioner within ten (10) days after the application is served.

#### **Section 15.08.04 Briefs**

Briefs may be filed with the application and response at the time those documents are filed. Briefs are not mandatory, unless ordered by the Tribal Court, and may be done at any stage in the consideration of the application. Briefs must be accompanied by an affidavit of service on the other party.

#### **Section 15.08.05 Decision of the Court**

The Tribal Court will dismiss the case if the issues are found to be frivolous. If the issues are not frivolous, the Court shall decide the case on the basis of the record, if any, the brief and oral arguments which may be ordered by the Court. The writ of habeas corpus shall be issued without delay after a favorable determination by the Court.

#### **Section 15.08.06 Service of the Writ**

The writ shall be directed to the person having custody of, or restraining, the applicant and shall command that person to have the applicant before the Tribal Court at the time, date, and place specified. The writ shall be served in the same manner as a summons.

**Chapter 15.09**  
**Codification and Amendments**

**Sections:**

**Section 15.09.01 Date of Codification**

**Section 15.09.02 Amendments**

**Section 15.09.01 Date of Codification**

Title 15 Criminal Action was codified as a Title in this code on November 8, 2005, at a Tribal Council meeting by Resolution #38-05.

**Section 15.09.02 Amendments**

Title 15 Criminal Action was amended on May 10, 2011 by Resolution #20-11 and amended November 6, 2012 by Resolution #52-12; and further amended on February 22, 2017, by Resolution #08-17; and further amended on March 28, 2018 by Resolution#11-18; and further amended on April 30, 2019 by Resolution #22-19; and further amended on June 1, 2021 by Resolution #19-2021; and further amended on January 30, 2023 by Resolution #03-2023; and further amended on July 17, 2023 by Resolution #26-2023.