

TITLE 2

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TITLE 2

CRIMINAL ACTIONS

Chapter 2.01 Jurisdiction

2.01.01 Concurrent Prosecution

Any person charged with an offense for which he may be prosecuted under the laws of the Port Gamble S'Klallam Tribe and another jurisdiction may be prosecuted under applicable law in the Community Court whether or not the other jurisdiction prosecutes the person.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. This section replaces former Title VII Felony Jurisdiction. It is the intent of the Tribal Council to exercise felony and other types of concurrent jurisdiction through Tribal prosecution, in the Tribe's discretion.]

2.01.02 Extradition

a) Authority of the Port Gamble S'Klallam Police Department

A Tribal law enforcement officer may arrest and detain an individual based on a valid arrest warrant or on a reasonable belief that a warrant has been issued by a competent jurisdiction other than the Port Gamble S'Klallam Tribe. Upon notice or receipt of a valid warrant or a reasonable belief that a warrant has been issued, Tribal law enforcement may immediately apprehend and detain the person named in the warrant.

If law enforcement 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 PGST police department is requested to assist, a PGST law enforcement officer may detain the person within the jurisdiction of the Port Gamble S'Klallam Tribe without first receiving notice or receipt of a valid warrant or a reasonable belief that a warrant has been issued.

b) Request for Extradition - Requirement

The Port Gamble S'Klallam Police Department must receive verbal or written confirmation from the jurisdiction requesting extradition that a warrant is active and valid before initiating extradition.

If PGST law enforcement has detained a non-tribal member during a "hot pursuit" within the jurisdiction of the Port Gamble S'Klallam Tribe, PGST law enforcement may initiate extradition without receiving confirmation of an active and valid warrant.

c) Procedure for Extradition

When a Tribal police officer detains a person based on a valid arrest warrant or on a reasonable belief that a warrant has been issued by a competent jurisdiction, the officer shall notify the jurisdiction of the arrest and confirm that the jurisdiction requests extradition.

When Tribal law enforcement receives an extradition request from a competent jurisdiction to arrest a PGST Tribal member, the arresting Tribal police officer shall immediately contact a Judge from the PGST Court. The officer shall advise the Judge of the extradition request. Tribal law enforcement officers are not required to contact a judge for extradition requests of non-Tribal members.

Once the Judge is satisfied that an extradition request is consistent with applicable Tribal law and that the person in custody is the same person named in the extradition request, the Judge may authorize the person to be delivered to the proper authorities of the requesting jurisdiction. If the Judge is not satisfied that an extradition request is consistent with applicable Tribal law or that the person in custody is the same person named in the extradition request, the Judge may authorize the person to be released.

If a person is not yet under arrest but is known or suspected to be present on the PGST Reservation, Tribal law enforcement may coordinate with the requesting jurisdiction to execute a warrant. A Tribal police officer or representative must be present when any warrant is executed by an outside jurisdiction upon lands within the exclusive jurisdiction of the Port Gamble S'Klallam Tribe.

If a PGST Judge has any concerns with an extradition request, the Judge may order the person held on bail or released on his/her personal recognizance to appear at a fact-finding hearing within seventy-two (72) hours.

d) Confinement of Prisoner

Any person detained or arrested for extradition may be either transferred to representatives of the foreign jurisdiction immediately, or detained in a jail facility authorized by the Tribe to await transfer to the other jurisdiction for a period not to exceed forty-eight (48) hours from the time of arrest.

If the requesting jurisdiction cannot take custody of the person within forty-eight (48) hours, the person shall be immediately released.

e) Extradition From Other Jurisdiction to PGST Jurisdiction

The Port Gamble S’Klallam Tribal Council may request that the proper authorities of another competent jurisdiction deliver to the custody of the Port Gamble S’Klallam Tribe any person subject to PGST jurisdiction who is charged with having committed a crime within PGST jurisdiction and who has fled from the jurisdiction of the Port Gamble S’Klallam Court.

[HIST: Section 2.01.02 was approved by tribal council resolution 12-A-009 on January 9, 2012, amending the extradition process to remove discretion from the tribal council and requiring a fact finding hearing, when requested, to occur in 72 hours instead of a “reasonable” time. Resolution No. 14-A-123, passed 9/22/14, amended this section to remove the requirement to hold a hearing before extradition could take place and to include the ability of PGST law enforcement to detain and extradite a person when requested to do so by another jurisdiction that is in “hot pursuit” of the person.]

Chapter 2.02 Starting the Criminal Process

2.02.01 Complaints

Prosecution for violating the criminal laws of the Port Gamble 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 Community Court. A valid complaint must bear the signature of the Tribal prosecutor or other person authorized to represent the Tribe, or the signature of a complaining witness. The signature must be witnessed by a judge, judicial officer, court clerk, tribal officer, or notary public.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to clarify the complaint process.]

2.02.02 Limitation on Filing Complaints

Except as provided in paragraph (a) below, no complaint shall be filed charging the commission of a tribal offense after one (1) year from the date the commission of an offense is discovered. If a complaint has been filed within the one (1) year period, 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 the reservation.

- a) For offenses involving sexually explicit conduct with a minor, including but not limited to, rape or indecent liberties, no complaint shall be filed ten (10) years after the date the victim attains the age of majority.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarity. 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 a reasonable time after a complaint is filed, such reasonableness to be

measured by whether the Defendant has been injured by any delay. This section was amended to have the time run from the date of discovering the commission of a crime and tolling the statute if the person leaves the reservation. Section (a) was passed by Tribal Council Resolution No. 11-A-043 on December 13, 2011 to allow for a longer period for the prosecutor to bring a case against a child sexual abuse perpetrator]

2.02.03 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 a bench warrant and order any bail deposited by the defendant to be forfeited.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84. Resolution 15-A-96, passed 8/24/15, amended this section to change "arrest warrant" to "bench warrant" in order to refer to the new section 2.02.10 Bench Warrants.]

2.02.04 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;
- j) The time and place for the person to appear for arraignment.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section for clarity.]

2.02.05 Citation in Lieu of Detention

A citation may be issued by a Tribal police officer in lieu of keeping the person in custody or requiring a bail if, 1) committed in his presence or 2) if not committed in his presence but he has probable cause to believe an offense was committed by the person charged. A copy of the citation shall be filed immediately with the Community Court. In determining whether to issue a citation in lieu of detention, the officer may consider:

- a) Whether the person has identified himself satisfactorily;
- b) Whether detention is necessary to prevent harm to himself, 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 he will appear before Community Court;
- d) Whether the person has previously failed to appear before the Court in response to a citation; and
- e) Whether the Tribal police officer has reason to believe that there is a substantial likelihood that the person will not respond to the citation.

[HIST: Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, repealed that portion of this section making proof of enrollment prima facie evidence of assurance to appear before the Court. Amended by Resolution No. 05-A-054, passed 6/14/05.]

2.02.06 Amending Complaints and Citations

A complaint and summons or citation may be amended by the Court, tribal police 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.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. This section was added to prevent dismissal of a case when errors or omissions are discovered in a complaint, summons, or citation and amendment would not cause substantial harm to the Defendant.]

2.02.07 Arrest Warrants—General

- a) This section governs warrants on finding of probable cause under 2.02.08 and bench warrants under 2.02.10. A warrant shall be in writing and shall state the following:
 - 1) The date issued;
 - 2) The name of 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 against the defendant;
 - 4) The reason for issuance;
 - 5) The expiration date in accordance with (b) of this section; and
 - 6) If the offense is bailable, the bail or other conditions of release.
- b) A warrant issued on charges that include a felony charge expire after two (2) years and warrants on all other matters expire after one (1) year, unless and until quashed by the defendant or rescinded by the Court, or until 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.

The Court may renew a warrant as many times as it deems necessary.

- c) 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.

[HIST: Source - Resolution No. 15-A-96, passed 8/24/15, amended this section to clarify what must be included in an arrest warrant.]

2.02.08 Arrest Warrants on Finding of Probable Cause

Every judge and judicial officer of the Community Court shall have the authority to issue arrest warrants when there is probable cause to believe that the defendant committed an alleged offense.

Grounds for issuing a warrant must be established by a sworn statement or a declaration under penalty of perjury. A valid arrest warrant must bear the signature of the Tribal prosecutor or other person authorized to represent the Tribe, or the signature of a complaining witness. Persons who may make such a sworn statement or a declaration under penalty of perjury include, but are not limited to, the Prosecutor, a Probation Officer, a Tribal Police Officer, or a complaining witness. Sworn oral testimony must be recorded and preserved for review. The finding of probable cause may be based on evidence that is hearsay in whole or in part if the Community court judge or judicial officer is provided with facts supporting the credibility and reliability of any informant and the judge or judicial officer can make an independent judgment.

No more than one (1) warrant may be issued on the same complaint. No arrest warrant shall be valid unless it bears the signature of a judge, or judicial officer of the Community Court. The warrant shall be executed by

a Tribal police officer or other police officer of a valid jurisdiction under the authority of the Community Court.

[HIST: Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section clarifying the probable cause requirement. Resolution No. 15-A-96, passed 8/24/15, amended this section to expand who can sign a sworn statement or declaration beyond just a complaining witness, to allow probable cause evidence to be based on hearsay if the Tribal judge is provided with enough appropriate evidence, and to remove the BIA as the only other exclusive authority to execute a tribal warrant and replace with "a valid jurisdiction".]

2.02.09 Arrest Without Warrant

A police officer may arrest a person without a warrant when the officer has probable cause to believe that the person is committing or has committed an offense and:

- a) The offense involved physical harm or threats of harm to persons or property or the unlawful taking of property; or
- b) The officer has reasonable grounds to believe that the suspect will not be apprehended unless immediately arrested; or
- c) The officer has reasonable grounds to believe that the suspect may cause injury to himself or others or damage to property unless immediately arrested.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to clarify the circumstances for warrantless arrests. Amended again 11/13/1986.]

2.02.10 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 Chapter 2.04 of this Title. In lieu of a bench warrant, where the defendant has no pattern of failing to appear in court or where the defendant did not receive correct notice to appear, 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) Next-Court-Date Bench Warrants. In issuing a bench warrant under section (a) above, the Court, in its discretion, may issue a "next-court-date 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 Port Gamble S'Klallam Police Department until after the next Community Court date has passed from the issuance of the warrant. The warrant may be served on the defendant by law enforcement, but the defendant can quash it without any quash fee or community work service, under section (c) below, if the defendant acts to quash at the next Community Court date after the issuance of the warrant.

- 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 may be accompanied by payment of a fee established on a fee schedule approved by the Court 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 a fee, the defendant may submit proof of completion of eight hours of community work.

[HIST: Source - Resolution No. 15-A-96, passed 8/24/15, created this section to allow the Community Court to issue a bench warrant for the specific violation of failure to appear.]

2.02.11 Notification of Rights at Arrest

Every person arrested by a tribal police officer shall be told immediately by the arresting officer that he or she has the following rights:

- a) The right to remain silent; and
- b) The right to speak with and be represented by a lawyer or a representative.

The accused shall also be told that any statements he or she makes may be held against him or her in court.

[HIST: Source - Resolution No. 17-A-016, passed 1/23/17, created this section to ensure a defendant is informed of his or her rights at the time of arrest.]

Chapter 2.03 Searches

2.03.01 Authority to Issue Search Warrants

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

[HIST: Source - Port Gamble S'Klallam Law and Order Code.]

2.03.02 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.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84]

2.03.03 Search Warrants - Contents and Issue

A warrant shall issue only upon a written or oral sworn statement of a law enforcement officer or Tribal Prosecutor that contains reliable facts which establish probable cause to believe that seizable evidence will be found on the person or premises described in the affidavit. The warrant shall be directed toward the tribal police and shall command the officer to conduct the search within the time specified in the warrant.

Every Judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items. A warrant issued under this chapter shall not be held invalid due to minor irregularities in the warrant that do not substantially affect any rights of a person named in the warrant.

When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a Judge shall:

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

A Judge may require the applicant to furnish further testimony or

documentary evidence in support of the application for the warrant.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Resolution No. 15-A-003, passed 3/23/15, amended this section to allow tribal police to request a search warrant from a tribal judge by telephone or other verbal means.]

2.03.04 Search Without a Warrant

No police officer shall search or seize any property without a warrant unless: 1) he knows or has probable cause to believe that the person is engaged in the commission of an offense; 2) the search is made incident to a lawful arrest; 3) emergency circumstances exist, such as a situation where evidence might be destroyed or removed; 4) objects seized are in the officer's plain view; or 5) the persons consents to the search.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section to clarify and expand the permissible range of warrantless search.]

Chapter 2.04 Bail

2.04.01 Bail - Generally

Bail is the security given for the purpose of insuring the presence of the defendant in a pending criminal trial. Bail cannot be posted in lieu of appearing in Court. Any person charged with an offense before the Community Court is entitled to bail, except the Court may, in exceptional circumstances, deny a person release on bail if it appears reasonably certain that the person will pose a serious threat to the safety and well-being of himself, the Reservation or its residents if released or if there is a substantial likelihood that the person will not appear for trial. Bail shall be posted by cash.

The cash bail agreement and promise to appear shall be signed in the presence of the judicial officer or any bonded employee authorized by the Tribal Council to accept bail. Failure to appear at any scheduled court hearing will result in forfeiture of bail.

At any time and with a reasonable basis, the Court may impose additional or different conditions of release, including but not limited to additional bail, a deduction of bail, or conditions in lieu of bail. The Court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for the protection of any person in the community. The Court may act upon its own motion or upon the motion of either party. Failure to follow conditions of release may result in forfeiture of bail.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended the language in this section for clarity. The bail

provisions of this chapter do not apply to any Title with its own bail provisions such as Titles 17 and 18 pertaining to hunting and fishing. Amended by Resolution No. 05-A-054, passed 6/14/05. Amended by Resolution No. 15-A-071, passed 6/8/15, to add specific language that clarifies that the Court has the power to impose release conditions on someone charged with a crime.]

2.04.02 Personal Recognizance

A person charged with an offense may be released on his 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 2.02.05 (a) - (d) and any other factors the Court considers relevant. The person must give his written promise to appear to secure his releases.

[HIST: Source - Port Gamble S'Klallam Law and Order Code.]

2.04.03 Bail – Domestic Violence, Class A and Class B and Where No Schedule Exists

- a) When a person is arrested for an offense which is
- b) Classified as domestic violence,
- c) Any Class A or Class B offense and
- d) Any offense for which no bail has been specified, the person shall be brought before a judge or judicial officer so the judge may determine bail.

A person shall be brought before a judge or a telephone hearing may be held for this purpose as soon as practicable but in no case shall a person be held without bail more than two (2) Port Gamble S'Klallam work days. The judge or judicial officer may establish a standard to be used where no specific bail has been set.

[HIST: Port Gamble S'Klallam Law and Order Code. Amended by Resolution No. 05-A-054, passed 6/14/05. The effect of this provision is that any person held for a domestic violence offense, a Class A offense or a Class B offense cannot be released prior to a bail hearing.]

2.04.04 Bail Schedule – Class C and Class D Offenses

The bail for all Class C offenses, except any Class C offense which is classified as domestic violence, shall be \$500.00. The bail for all Class D offenses, except any Class D offense which is classified as domestic violence, shall be \$250.00.

A person arrested for a Class C or Class D offense may request a bail hearing to ask the Court to reduce the amount of bail. The Court has the discretion to decrease or increase the amount of bail based on the degree to which the defendant is more likely or less likely to appear for Court.

[HIST: Port Gamble S'Klallam Law and Order Code. Amended by Resolution No. 05-A-054, passed 6/14/05.]

2.04.05 Violation of Conditions of Release – Mandatory Arrest

A law enforcement officer shall arrest without a warrant and take into custody a person who the officer has probable cause to believe violated the conditions of release imposed by the Court under Section 2.04.01.

[HIST: Resolution No. 15-A-071, passed 6/8/15, added this new section to coincide with the mandatory arrest without a warrant requirement in Section 2.10.07 under Chapter 2.10 Domestic Violence Criminal Procedure.]

2.04.06 Probable Cause Determination

A person who is arrested without a warrant shall have a judicial determination of probable cause no later than forty-eight (48) hours following the person's arrest. The arrestee shall have no right to appear at such determination, provided that the judge may permit the arrestee to appear at the discretion of the Court.

The Court shall determine probable cause on evidence presented by a police officer or prosecuting authority in the same manner as provided for a warrant for arrest. The evidence shall be preserved and may consist of an electronically recorded telephone statement.

For the purpose of this section, Saturday, Sunday, and holidays shall be considered judicial days.

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.

[HIST: Resolution No. 13-A-137, passed December 19, 2013, to require a probable cause hearing within 48 hours of arrest when arrested without a warrant.]

Chapter 2.05 Arraignment

2.05.01 Arraignment Procedure

After a defendant is arrested, he or she shall have a probable cause or bail hearing within seventy-two (72) hours after arrest, under Chapter 2.04 Bail, of this Code. Whether the defendant is out on bail or is in custody, he or she shall be brought before a judge for an arraignment hearing at the next regularly scheduled court session. At a defendant's request, all or part of the arraignment may be postponed to the following court session.

At arraignment, the judge shall first read the charges to the defendant, including the section of the Tribal Code that the defendant is accused of

violating. The judge shall make sure that the defendant understands what has been read. The judge shall also tell the defendant the maximum penalty that may be given if the defendant is convicted.

At arraignment, the judge shall advise the defendant that he or she has the following rights:

- 1) The right to remain silent;
- 2) The right to be tried by a jury of six people, upon the defendant's request;
- 3) The right to be represented by a lawyer or other spokesperson at defendant's expense;
- 4) The right to be represented by a licensed attorney at the Tribe's expense if the defendant is indigent;
- 5) The right to have the rest of the arraignment postponed if the defendant wants to talk with a representative first;
- 6) The right to have the Court order the witnesses against the defendant to appear and testify at trial;
- 7) The right to question all witnesses against defendant;
- 8) The right to call witnesses on defendant's behalf; and
- 9) The right to a speedy, public trial.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84 amended this section to state the specific rights given at arraignment. Resolution 17-A-013, passed 1/23/17, modified this section to clarify the arraignment process and to include additional rights, including the right to be represented by an attorney if a defendant is indigent, the right to postpone the arraignment upon request, and the right to a speedy, public trial.]

2.05.02 Entering a Plea

At arraignment, or as soon after that as the defendant has a chance to talk with a representative, the accused person shall state how he or she pleads in response to the charge(s). The accused may plead "guilty" or "not guilty."

If the defendant pleads guilty, the judge shall make sure that the plea is made voluntarily and that the defendant understands what will happen as a result of the guilty plea. The judge may then either impose a punishment immediately or put sentencing off to allow the parties to bring in information that will help the judge to determine a fair sentence.

If the accused person pleads not guilty, the judge shall set a trial date and a schedule for pre-trial motions and discovery. The judge shall also set bail or other conditions for the defendant's release before trial.

If the defendant refuses to plead to the charges, the judge shall enter a plea of guilty on the defendant's behalf.

A representative for the defendant may appear at arraignment in place of the defendant and may enter a plea on the defendant's behalf.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84, codifies the custom of the Community Court in this area. Resolution 17-A-013, passed 1/23/17, modified this section to clarify the plea process.]

2.05.03 Withdrawal of Guilty Plea

A defendant who has pleaded guilty may be allowed to withdraw that plea and substitute a plea of not guilty at any time up until sentencing if it appears that otherwise an injustice will be done.

[HIST: Source – Resolution No. 17-A-013, passed 1/23/17, created this section to allow the Community Court the discretion to grant a defendant’s plea change from guilty to not guilty at any time up until the time of sentencing.]

Chapter 2.06 Trial

2.06.01 Time of Trial

A case shall be set for trial within ninety (90) days of the date on which a plea is entered to the charge unless:

- a) Waived by the defendant in writing or in open court, or
- b) A longer time is requested by the defendant in writing or in open court, or
- c) The court continues the case upon motion of a party or on its own motion, when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense, or
- d) The defendant fails to appear at the time and date for any mandatory court appearance.
- e) The defendant is in custody on the charge, in which case the trial shall be set within 60 days.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Resolution No. 00 A 44 , passed 6/12/00 amended this section to increase the time to 90 days with specific exceptions set forth. Resolution No. 84 A 03, passed 2/14/84, amended this section to increase the permissible time to forty-five (45) days.]

2.06.02 Prosecution

The Port Gamble S’Klallam Tribe shall prosecute the charge by presenting evidence against the defendant. In prosecuting a case the Tribe may be represented by a spokesperson of its choice.

[HIST: Source - Port Gamble S’Klallam Law and Order Code.]

2.06.03 Standard of Proof

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

[HIST: Source - Port Gamble S’Klallam Law and Order Code].

2.06.04 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 - 1303 as it may be amended from time to time and as interpreted by the Community Court.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section adding “as interpreted by the Community Court.”]

2.06.05 Trial Procedure

All applicable procedures in Titles 1 and 4 of this code will be followed in any criminal action. The following civil sections shall apply in criminal actions: 3.06.04 Evidence; 3.06.05 Applicable Law.

[HIST: Source - Port Gamble S’Klallam Law and Order Code.]

2.06.06 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 the Court. In no case shall a request be made less than two weeks before the trial date.

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section to allow two (2) weeks before trial.]

Chapter 2.07 Sentence

2.07.01 Sentencing - Time

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

[HIST: Source - Port Gamble S’Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section to allow the court greater flexibility in scheduling.]

2.07.02 Sentencing - Imposition

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

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section, adding the pronouncement of the right to appeal.]

2.07.03 Community Service-Work in Lieu of Fine

A person sentenced for an offense by the Community Court may be ordered by the Court to perform community service work in lieu of any fines assessed. Such order shall issue only when: a) The defendant requests it; and b) The Tribe agrees in writing, such writing must include the number of hours it is willing to supervise, who will supervise, the nature of the work and be signed by both the person who will supervise and the Court Administrator or designee. The Juvenile Justice Officer may request community service for a juvenile. The Tribe assumes no liability for community service performed. The Court shall set a deadline for completion of community service hours. Each hour of community service shall reduce the fine by \$8.00 in 2005, to increase in subsequent years by a rate set by the Court Administrator, based on the annual employee cost of living increase established by the Tribal Council, if any.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section to define the hourly rate and to require tribal recommendation for imposing such sentence. Amended by Resolution No. 05-A-054, passed 6/14/05.]

2.07.04 Alternative to a Fine

If a person convicted of any crime under this code 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, based on a hearing if the evidence 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 crime.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 2.08 Probation

2.08.01 Establishment of Department of Tribal Probation

The Port Gamble S'Klallam Tribe has established a Probation Department (hereafter "the Department") for the purpose of protecting the community by providing for the custody, supervision, and rehabilitation of offenders placed on probation by the Tribal Court. The Court has the authority to use probation as a sentencing option.

The Department shall be a division of the Court and shall consist of at least one probation officer and such other personnel as may be deemed necessary by the Court and approved by Tribal Council.

[HIST: Source - Resolution No. 15-A-004, passed on 3/23/15, created Chapter 2.08 Probation to assist and guide the Port Gamble S'Klallam Tribe's current Probation Department and to recognize the importance of the probation program in offering an alternative to immediate imposition of the full terms of a criminal sentence.]

2.08.02 Purpose and Policy

Port Gamble S'Klallam probation is a privilege. The PGST probation program offers an alternative to immediate imposition of the full terms of a criminal sentence while continuing to hold defendants accountable for their criminal actions.

The Port Gamble S'Klallam Tribe finds and declares that probation is a desirable disposition of appropriate criminal cases for the following reasons:

- a) Probation provides a framework by which the Tribe can supervise positive rehabilitative measures imposed on an offender by the Court, with the goals of freedom from chemical dependency and of deterring future criminal behavior;
- b) The offender remains under the authority of the Court while engaging in the educational, therapeutic, and community restorative pursuits that add up to a successful rehabilitation;
- c) Probation affirmatively promotes the rehabilitation of the offender by continuing community contacts;
- d) Probation provides a means to hold the offender accountable in a less restrictive setting than incarceration; and
- e) Probation minimizes the impact of the conviction upon innocent dependents of the offender.

[HIST: Source - Resolution No. 15-A-004, passed 3/23/15.]

2.08.03 Probation Officer Authority

Port Gamble S'Klallam Tribal probation officers who supervise adult offenders are vested with the authority to:

- a) Make personal contact with the offender on a regular basis at regularly scheduled probation appointments, at home visits, and at other means of contact.
- b) When necessary, alter the frequency of personal contact that the officer has with the offender.
- c) Require the offender to undergo drug and alcohol testing.
- d) Verify offender's employment, school, and vocational training.
- e) Conduct a search in accordance with the provisions of Chapter 2.03 of this Title. Additionally, a probation officer may also request a warrantless search by law enforcement of the supervised offender's person or personal effects, or any vehicle or residence that is under the custody and control of the offender, if the supervised offender has consented to such searches in writing as a condition of probation.
- f) Request orders from the Court that are necessary to carry out the functions of the Probation Department. Requested orders include, but are not limited to, a motion to the Court to issue a warrant for the arrest of a supervised offender for offenders who do not comply with supervision conditions.

[HIST: Source - Resolution No. 15-A-004, passed 3/23/15.]

2.08.04 Failure to Comply

Where a supervised offender fails to comply with conditions of probation, a probation officer or tribal prosecutor may file a motion for revocation, supported by affidavit or declaration, to the Court for revocation of the probation and imposition of the suspended sentence.

A supervised offender who is arrested for a probation violation and who remains incarcerated after the arrest shall appear at a probation revocation hearing on the first court date after arrest, unless good cause for delay exists. If incarcerated, a supervised offender shall be served notice of revocation when brought to court on the date of the hearing. The burden to show that good cause exists is on the party asking for the delay.

A supervised offender is entitled to a hearing before the Court revokes the offender's probation. Supervised offenders do not have a right to a jury

trial at a revocation hearing. The Court must give permission for a supervised offender to call witnesses.

The Court shall determine the appropriate disposition of a motion for revocation by balancing the supervised offender's interest in liberty, employment, family ties, responsibilities, health, community ties, or other interest(s) against the Tribe's interest in rehabilitation, public safety, victim(s)' rights, and the offender's duty to comply with each condition of probation.

[HIST: Source - Resolution No. 15-A-004, passed 3/23/15.]

2.08.05 Failure to Comply—Automatic Pickup

If Tribal law enforcement or probation officers have probable cause to believe that a supervised offender is in violation of any condition of the offender's probation, including but not limited to, refusal to consent to a Portable Breath Test (PBT) or other testing procedure, then Tribal law enforcement or probation officers are authorized to immediately arrest the offender without a warrant or further court order. The arresting officer shall notify the Tribal Prosecutor as soon as possible after the offender's arrest. An offender who is arrested without a warrant shall have a judicial determination of probable cause no later than forty-eight (48) hours following the arrest, under 2.04.06 of this Code.

Upon finding of probable cause, the Court may, in its discretion:

- 1) Set bail, or
- 2) Order additional conditions, or both, or
- 3) Order that the offender remain incarcerated until a probation revocation hearing.

A probation revocation hearing shall be held on the first court date after the arrest.

[HIST: Source - Resolution No. 15-A-168, passed 12/9/15, created Section 2.08.05 Failure to Comply—Automatic Pickup to allow tribal law enforcement and probation officers to arrest probation offenders for failure to comply with probation requirements and for probation violations.]

2.08.06 Probation Revocation Hearing

A probation revocation hearing shall include the following:

- a) Upon receipt of a motion 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. The supervised offender shall be entitled to notice of the revocation hearing at least five days prior to the date set for the hearing. Notice to the offender may be accomplished by personal service or service by first class mail to the offender's mailing address on record with the Court or the Probation Department. Notice shall also be served on the victim if the motion for revocation was filed for failure to pay restitution.

- b) A motion for revocation must be filed during the period of probation or within five (5) days after the period of probation ends if the supervised offender's violation of conditions occurred within the final forty-eight (48) hours prior to the end of the period. Once a motion 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.
- c) The hearing on the motion for revocation shall be limited to issues related to the supervised offender's compliance or noncompliance with the conditions of probation.

[HIST: Source - Resolution No. 15-A-004, passed 3/23/15.]

2.08.07 Penalty Upon Revocation of Probation

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:

- a) Impose the entire suspended sentence or a substantial portion to satisfy the judgment;
- b) Impose a portion of the suspended sentence originally ordered and allow the defendant to continue on probation on the same, changed, or additional conditions;
- c) Impose sanctions, including incarceration, and impose a final sentence and terminate the defendant's period of probation.

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.

[HIST: Source - Resolution No. 15-A-004, passed 3/23/15.]

2.08.08 Failure to Pay Restitution

In cases of restitution nonpayment probation violations, if the Court determines that (1) the offender's nonpayment was not attributable to an intentional refusal to pay, or (2) the offender did make a good faith effort to make the ordered payments, the Court may modify the original sentence, judgment, or order to give the offender additional time to pay the fine or restitution.

[HIST: Source - Resolution No. 15-A-004, passed 3/23/15.]

2.08.09 Reinstatement

A defendant may file a motion for reinstatement of revoked probation if the original order permits such filing. The defendant must serve at least six months of an ordered sentence before filing a motion to the Court to reinstate probation and the original criminal judgment, less any days served or fines paid subsequent to revocation. The defendant's motion must:

- a) Show good cause for reinstatement and that the interests of justice warrant the reinstatement of probation;
- b) Be filed prior to the completion of the sentence imposed on revocation; and
- c) Be served to the Prosecutor and the Probation Office with notice and opportunity to consent or oppose the reinstatement of probation.

The defendant may only be reinstated on probation one time on a criminal matter, but in no case shall the defendant be entitled to automatic probation reinstatement.

[HIST: Source - Resolution No. 15-A-004, passed 3/23/15.]

Chapter 2.09 Habeas Corpus

2.09.01 Habeas Corpus - Grounds for Granting

Every person imprisoned or otherwise restrained of his 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 Community Court.

[HIST: Source - Port Gamble S'Klallam Law and Order Code.]

2.09.02 Application for Writ of Habeas Corpus

Application for the writ shall be made by a petition to the Community 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, 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.

[HIST: Source - Port Gamble S'Klallam Law and Order Code. Amendments - Resolution No. 84 A 03, passed 2/14/84, amended this section to specify the required contents of the application.]

2.09.03 Filing

The petitioner must file the application in the Community Court by an affidavit proving service on the restraining or custodial party (respondent).

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84, amended this section to require service of the application on the respondent.]

2.09.04 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.

[HIST: Source - Resolution No. 84 A 03 passed 2/14/84, amended this section to permit a response prior to hearing.]

2.09.05 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 Community Court which 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.

[HIST: Resolution No. 84 A 03, passed 2/14/84.]

2.09.06 Decision of the Court

The Community Court will dismiss the case if the issues are found to be frivolous, the Court shall decide the case on the basis of the record, if any; the brief and oral argument which may be ordered by the Court. The writ

of habeas corpus shall be issued without delay after a favorable determination by the Community Court.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

2.09.07 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 Community Court at the time, date, and place specified. The writ shall be served in the same manner as a summons.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

2.09.08 Hearing

A hearing shall be held as directed by the writ and may be summary in nature. Evidence may be produced and compelled as in civil actions. The judge or judicial officer shall make a judgment regarding the custody of the detained person. The order shall be effective immediately.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 2.10 Domestic Violence Criminal Procedures - REPEALED

[HIST: Source Resolution 04 A 089, passed 9/14/04. Cross Reference: Chapter 16.06, Domestic Violence. Resolution 18-A-101, passed 9/17/18, created new Title 15 Domestic Violence and repealed Chapter 2.10 Domestic Violence Criminal Procedures and Chapter 16.06 Domestic Violence.]

CHAPTER 2.11 Child Sexual Abuse Criminal Procedures

2.11.01 Child Victim Protections

Child victims of sexual abuse will not be compelled to engage in any pre-trial interrogations or interviews, regardless of any discovery requests made by the defendant, his counsel or any other party to the proceedings.

[Legislative History: Section 2.11.01 (previously Section 2.10.01—changed on March 23, 2015) was passed by Tribal Council Resolution No. 11-A-043 on December 13, 2011 to protect victims of child sexual abuse from unwanted interrogations during discovery in criminal child sexual assault cases.]

[Legislative History: Section 2.12 Sexual Offender Registration moved to Chapter 6.01 on June 27, 2016, Resolution 16-A-085.]