TITLE 2 RULES OF PROCEDURE

CHAPTER 2-1 CRIMINAL ACTIONS

JURISDICTION

2-1-1 **Jurisdiction—Generally**

The Court shall have jurisdiction over all offenses enumerated in this Code, or in other enactments of the Council.

2-1-2 **Extradition**

(a) If a person is charged with a violation of the laws of any other tribe or reservation or the federal or a state government, the Court may order that he be delivered up to the proper authority, provided that a copy of a warrant, or proof of its existence, is presented to a judge of the Court, and that such appears to the Court to be in the best interest of justice.

(b) On receipt of a valid warrant, the judge may issue a Court order directed to the Chief of Police, instructing him that the person named shall be apprehended and delivered over to the proper authority.

(Amended 6/2/11, Certified 6/15/11, Resolution 2011-367)

CRIMINAL PROCEDURE, GENERALLY

2-1-30 **Complaints**

(a) "Initiation" except as otherwise provided in this Code section, all criminal proceedings shall be initiated by a complaint.

(b) "Contents" the complaint shall be in writing and shall set forth:

(1) The name of the Court;

(2) The title of the action and the name of the offense charged;

(3) The name of the person charged; and

(4) The offense charged, in the language of the statue, together with a statement as to the time, place, person, and property involved to enable the defendant to understand the character of the offense charged.

(c) "Certification" the complaint shall contain a form of certificate by the tribal prosecutor, or his or her designee, that he or she certifies, under penalty of perjury, that he or she has reasonable grounds to believe, and does believe, the person committed the offense contrary to law. The certificate need not be made before a judge, but shall be notarized.

(d) "Approval of form" the complaint shall be on a form prescribed or approved by the Administrator of the Court.

(e) "Citizen complaints" the judge may consider a complaint made by any person on the basis of an affidavit sworn to before the judge or Notary Public where the judge is satisfied that probable cause exists, that the complaining witness is aware of the gravity of initiating a criminal complaint, the necessity of a Court appearance for himself and witnesses, the possible liability for false arrest and consequences of perjury, such affidavit may be in substantially the form prescribed or approved by the Administrator of the Court.

(f) "Issuance of summons" if it appears from the complaint or from an affidavit filed that there is reasonable cause to believe that an offense has been committed and that the defendant has committed it, the judge may order service of the complaint upon the defendant either by criminal summons or by a warrant to apprehend

pursuant to Colville Tribal Code section 2-1-32. The judge shall issue a summons instead of a warrant unless there is reasonable cause to believe that the defendant will not appear in response to a summons, or that arrest is necessary to prevent serious bodily harm to the accused or another, or a person summoned fails to appear in response to the summons, or if service is unsuccessful, a warrant for his arrest may issue.

(Amended 4/17/86, Resolution 1986-172)

2-1-31 **Limitation on Filing of Complaints**

(a) Except as provided in subsection (b) and (c) of this section, no complaint shall be filed charging the commission of an offense as defined by this Code unless the offense shall have been committed within the time period for that class of offense as follows:

(1) Class A or those offenses listed in CTC 3-3-40(a).....Five (5) years

(2) Class B or those offenses listed in CTC 3-3-40(b).....Three (3) years

(3) Class C or those offenses listed in CTC 3-3-40(c).....One (1) year

(b) A complaint may be filed charging the commission of any of the following offenses as defined by this Code at any time after their commission:

(1) Criminal Homicide;

(2) Arson if a death results;

(3) Vehicular homicide;

(4) Vehicular assault if a death results (RCW 46.61.522 as incorporated under CTC 3-3-1);

(5) Hit-and-run injury-accident if a death results (RCW 46.52.020(4) as incorporated under CTC 3-3-1)).

(c) A complaint may be filed charging the commission of any of the following offenses as defined by this Code at any time:

(1) Rape of a child under CTC 3-1-10(a);

(2) Indecent liberties under CTC 3-1-9(b)(2);

(3) Incest.

(d) The periods of limitation prescribed in subsections (a), (b), and (c) of this section do not run during any time when the person charged is not usually and publicly resident within the exterior boundaries of the Colville Indian Reservation.

(e) In any prosecution for a sex offense as defined in CTC 3-1-265(b), the periods of limitation prescribed in subsections (a) and (c) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing, whichever is later.

(f) If, before the end of a period of limitation prescribed in subsections (a), (b), or (c) of this section, a complaint has been filed, and the complaint is set aside or dismissed without prejudice, then the period of

limitation is extended by a period equal to the length of time from the filing to the setting aside or dismissal without prejudice.

(Amended 12/15/11, Certified 12/21/11, Resolution 2011-898)
(Amended 8/17/89, Resolution 1989-610)

2-1-32 **Warrants to Apprehend**

Every judge of the Court shall have the authority to issue warrants to apprehend, the warrants to issue upon a showing of probable cause only after a written complaint shall have been filed bearing the signature of the complaining witness. Service of warrants shall be made by an officer. No warrant to apprehend shall be valid unless it shall bear the signature of a judge of the Court.

2-1-33 **Arrests**

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

2-1-34 **Hot Pursuit**

Any police officer who observes any person inside the Reservation committing an offense defined by this Code or by federal law or who has probable cause to believe that the person has committed an offense, may pursue and capture the person or seize and impound the property in his possession if he attempts to flee the Reservation.

2-1-35 **Search Warrants**

~~Every judge of the Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court. However, no warrant of search and seizure shall be issued except upon a presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation and charging the commission of an offense against the Tribes. No warrant for search and seizure shall be valid unless it contains the name or description of the person or property to be searched and seized and bears the signature of a judge of competent jurisdiction. Service of warrants of search and seizure shall be made by an officer.~~

(a) Except as provided in section 2-1-36 of this Chapter, no law enforcement officer may search or seize persons or property under the jurisdiction of the Colville Tribes except pursuant to a valid search warrant. A search warrant shall not be valid unless:

(1) Signed by a judge of the court; and

(2) Describes with reasonable detail the person, property, or place to be searched and the property to be seized.

(b) No judge of the Court shall sign a search warrant except upon presentation by a Tribal, federal, state, county, or municipal law enforcement officer of a written or oral complaint, supported by oath or affirmation, establishing probable cause to believe the proposed search will discover property that:

(1) Is possessed in violation of any applicable Tribal, federal, or state law;

(2) Has been or is being used to commit a violation of any applicable Tribal, federal, or state law; or

(3) Constitutes evidence of a violation of any applicable Tribal, federal, or state law.

(c) Any search warrant issued pursuant to this section to a federal, state, county, or municipal law enforcement officer shall be executed in the presence of and in coordination with a Tribal law enforcement officer. Colville Tribal Police and other Tribal law enforcement agencies shall cooperate to the fullest extent feasible in the execution of such a warrant.

2-1-36 **Search Without Warrant**

An officer may search or seize property without a warrant in circumstances under which warrantless searches are permitted by federal criminal law.

2-1-37 **Crime Involving Domestic Violence**

(a) The provisions in Chapter 5-5 shall be used in cases involving domestic violence. To the extent that procedural and other relevant provisions in other parts of the Code are not inconsistent with the provisions of Chapter 5-5 those other procedures and provisions shall apply.

(b) To invoke the provisions of Chapter 5-5, the charging document shall expressly state that the charge is being brought under that Chapter as well as under Chapter 3-1.

(Amended 6/3/04, Resolution 2004-385)

CITATIONS

2-1-70 **Citation in Lieu of Detention**

Whenever a person is arrested for a violation of this Code, the arresting officer, or any other officer, may serve upon the arrested person a citation and notice to appear in Court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:

(a) Whether the person has identified himself satisfactorily;

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

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

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

2-1-71 **Citation—Contents**

(a) The citation written to the offender by the officer shall include the name of the person, his address, the date of birth and sex, the date, time and place and description of the offense charged, the date on which the citation was issued, the name of the citing officer, and a certification that the defendant has been personally served with the citation.

(b) To secure his release, the person must accept service of the citation.

(c) The citation shall also state the time and place at which the person is to appear in Court to hear the charges against him and post bail, which shall be not less than seventy-two (72) hours after the date of the citation, nor more than fifteen (15) days after the date of citation.

(Amended 03/26/09, Resolution 2009-232)

2-1-72 **Citation—Effect, Procedure**

(a) The citation when completed by the officer shall serve as the complaint for the purposes of prosecution in Court.

(b) If a defendant fails to appear, the judge may issue a warrant of arrest and may order any bail deposited by the defendant as hereinafter set forth forfeited.

ARRAIGNMENTS & PLEAS; TRIAL DATES

2-1-100 **Arraignment**

As soon as reasonably possible after arrest, whether an initial arrest or upon warrant, but not more than seventy-two (72) hours thereafter, exclusive of Saturdays, Sundays or holidays, or within the period designated on the citation, the defendant shall appear or be brought before a judge and the defendant shall again be informed of his rights under the Colville Civil Rights Act, including his or her right to counsel at his or her own expense. If the defendant desires, but does not presently have a spokesman, he or she will be given a reasonable time to secure a spokesman before entering his plea. The Tribal Public Defender's Office shall be appointed to represent all indigent criminal defendants who request counsel. The Public Defender's Office shall move for substitution of counsel only when an actual conflict exists or when the criminal defendant requests a change of counsel. These motions shall provide a factual basis supported by affidavit or testimony on the record and shall be subject to review. Further, conflict counsel's billing shall be approved by the Office of Reservation Attorney in consultation with Tribal Public Defender so long as such consultation is appropriate to avoid any appearance of undue influence on the independence of the defense function by any other branch of tribal government.

(Amended 6/2/11, Certified 6/15/11, Resolution 2011-368)
(Amended 6/1/06, Certified 6/6/06, Resolution 2006-256)

2-1-101 **Reading of Complaint and Defendant's Plea**

When the defendant is brought before the judge the complaint shall be read and explained to the defendant, and he shall plead "guilty" or "not guilty". If the defendant refuses to plead, the judge shall enter the fact and a plea of "not guilty" on his behalf. The judge shall cause the defendant to be informed of the charge against him and the defendant's right to appear and defend against the charge either in person or with a spokesman. The defendant shall be provided with a copy of the complaint if he has not before received one.

2-1-102 **Time of Trial**

(a) When the defendant is brought before the judge upon a warrant of arrest, the cause shall be set for trial within ninety (90) days unless continued for cause or at the request of the defendant. Bail shall then be set in accordance with the subchapter on Bail, Bonds and Fines under this Chapter.

(b) When the defendant is summoned before the judge pursuant to a citation as provided herein, the defendant shall appear on the date indicated on the citation to hear the charges against him, post bail, enter a plea, and be assigned a trial date. Trial shall be set within ninety (90) days unless continued for cause or at the request of the defendant.

(c) A defendant may post bail, enter a plea, and request a trial date prior to the return date of the citation if the defendant so desires, provided, that bail or other bond satisfactory to the judge is posted. A trial date shall be set within ninety (90) days of the return date on the citation unless continued for cause or at the request of the defendant.

(d) Provided, a defendant not released from jail pending trial shall be brought to trial not later than sixty (60) days after the date of arraignment.

(Amended 5/19/88, Resolution 1988-264)

2-1-103 **Sentencing**

Upon a plea of "guilty", the judge may impose sentence at once or at a later date not to exceed sixty (60) days at his discretion.

(Amended 5/19/88, Resolution 1988-265)

2-1-104 **Pre-dismissal Hearing**

(a) Purpose: The purpose of the pre-dismissal hearing will be to determine if the case should be closed for compliance or if the matter should be set for a show cause hearing for non-compliance with a Tribal Court order.

(b) When scheduled: The pre-dismissal hearing shall be set at the time of sentencing and the date and time of the hearing shall be included in the Tribal Court order.

(c) Date of hearing: The pre-dismissal hearing shall be scheduled for not less than two weeks prior to the termination date of the condition(s) imposed.

(d) Proof required: It will be the defendant's responsibility to serve all jail time, pay all fines and court costs, and submit to the Court written documentation that he/she has complied with the conditions set out in the Tribal Court order by the date of his/her pre-dismissal hearing. This documentation must be signed by:

(1) The program counselor assigned to the defendant;
(2) The defendant's immediate supervisor and a probation officer, if community service hours are ordered;
(3) Any other person directly associated with a program utilized by the defendant to comply with the Court order; or
(4) The defendant's probation officer.

If more than one program is being utilized, written documentation must be submitted for each, except if the defendant is on probation, his/her probation officer may verify compliance with the other programs involved.
If sufficient written documentation is submitted to the Court prior to the pre-dismissal hearing verifying the defendant's compliance with the program(s) assigned, the defendant may be excused from appearing at the hearing.

(e) Failure to comply: If the defendant has not served his jail time, or paid his fines, or complied with a given program or has failed to provide written documentation to the Court, a show cause hearing shall be scheduled for within ten (10) days of the pre-dismissal hearing for the purpose of determining if the suspended fine and/or jail term should be reinstated or modified.

(f) Failure to Appear: If the defendant fails to appear for the pre-dismissal hearing without good cause and has failed to provide written documentation to the Court of his/her compliance with the Court order, the Court may issue a bench warrant to bring the defendant before the Court.

(g) If the defendant was to have performed community service hours in lieu of a fine, and has failed to perform those hours or to provide written documentation that the hours had been performed by the date of the show cause hearing, the unpaid fine shall become due and payable by cash only. The court shall order that any future per capita payment be withheld and payable to the Colville Tribal Court until this judgment is satisfied.

(Amended 07/09/09, Resolution 2009-517)

2-1-105 **<u>Deferred Prosecution</u>**

(a) In any motion for deferred prosecution, the defendant must:

(1) Waive his/her right to trial within 60/90 days;

(2) Stipulate to the truth of the police report;

(3) Agree to pay the current Court costs; and

(4) Agree with the other terms and conditions included in the proposed order of deferred prosecution.

(b) The Court shall grant a motion for deferred prosecution when presented by the Tribes.

(c) Unless the Court finds that it is not in the interest of justice, the Court shall grant a motion for deferred prosecution when presented by a defendant in any case where the defendant has no known criminal conviction in any jurisdiction for the preceding ten (10) years and the current crime(s) charged does/do not

include:

(1) Serious injury or threat thereof, or

(2) Sexual assault or threat thereof, or

(3) Sale of delivery of a controlled substance.

(d) If at the end of the period of the deferred prosecution, the Court finds that the defendant has complied with the requirements and conditions of the order of deferred prosecution, the charge(s) shall be dismissed with prejudice and expunged from the defendant's criminal record.

(Adopted 7/23/96, Resolution 1996-313)

2-1-106 **Waiver of Speedy Disposition**

Waiver of the 90/60 rule regarding trial, sixty (60) day rule regarding sentencing and other speedy disposition rights signed by an attorney of record, are valid provided that:

(a) The litigant personally signs a waiver on the next date when he personally appears in Court; and

(b) Any waiver states that the litigant knowingly and voluntarily agrees to the waiver of counsel.

(Adopted 10/5/95, Resolution 1995-675)

BAIL, BONDS AND FINES

2-1-130 **Bail and Bonds—Generally**

Except as provided herein, every person charged with any offense before the Court may be admitted to bail. Bail shall be by cash deposit or by bond. In no case shall the bail specified in the agreement exceed twice the maximum penalty set by the section of this Code for the offense for which the accused has been charged. The cash or bond agreement shall be executed before the Clerk or any bonded employee authorized by the Court to accept bail. All such bonds shall be promptly filed with the Clerk.

(Codified 3/10/11, Resolution 2011-136)

2-1-131 **Bail—Personal Recognizance**

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

(a) Whether the person has identified himself satisfactorily;

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

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

(d) In any case, to secure his release, the person must give written promise to appear in Court as required by the citation.

2-1-132 **Bail Schedule**

The Chief Judge may establish a bail schedule for all offenses under this Code. Any person arrested and taken into custody for violation of this Code may be released upon posting the specified bail with the Clerk, or other person authorized by the Court to receive bail, unless release on personal recognizance or detention is ordered by the Court.

2-1-133 **Denial of Bail, Detention**

The judge may 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.

2-1-134 **Fine Schedule**

The Chief Judge may also establish a schedule for fines for specified violations of this Code, within the limits prescribed by this Code and the section establishing the offense.

TRIAL PROCEDURE

2-1-170 **Prosecution**

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

2-1-171 **Evidence**

The Court shall not be bound by common law rules of evidence, but shall use its own discretion as to what evidence it deems necessary and relevant to the charge and the defense.

2-1-172 **Standard of Proof**

The Court shall require the charge to be proved beyond a reasonable doubt. The defendant shall be afforded a full opportunity to present his defense.

2-1-173 **Trial by Court**

In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

2-1-174 **Jury**

Any person accused of an offense punishable by imprisonment may demand a jury trial. The demand may be made by oral demand in open Court or by filing a written demand with the Clerk. In any case, the demand must be made at least fourteen (14) days before the date set for trial, or the right shall be deemed waived. The verdict of the jury shall be unanimous and shall be returned by the jury to the judge in open Court.

2-1-175 **Lesser Offenses**

The defendant may be found guilty of a lesser offense necessarily included in the offense charged, without the necessity of having been formally charged with the lesser offense.

2-1-176 **Sentencing**

A sentence shall be imposed at once or, in the discretion of the judge, at a later date not to exceed sixty (60) days from the day of judgment. The judge may suspend all or any part of the fine or sentence imposed by him upon a person found guilty of violating any of the provisions of this Code as provided in section 3-1-263. Pending sentence, the judge may commit the defendant to jail or continue the bail. Before imposing sentence, the judge shall allow a spokesman or the defendant to speak on behalf of the defendant and to present any information which would help the judge in setting the punishment.

(Amended 8/17/89, Resolution 1989-612)

2-1-177 **Other Procedures**

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

2-1-178 **Civil Rights**

All accused persons shall be guaranteed all civil rights secured under the Tribal Constitution and federal laws specifically applicable to Indian Tribal Courts.

2-1-179 **Incarceration**

(a) Court Authority to Sentence: The Colville Tribal Court has the duty and authority to set the duration, starting date, and time of incarceration of criminal sentences. In determining an appropriate sentence, the Court shall not consider where or how defendant's sentence will be carried out by the Jail Board.

(b) Jail Board: A board is hereby established to exercise the authority of the Colville Tribes to execute any jail sentence imposed. The board shall be appointed by the Colville Business Council resolution

(c) Authority of Jail Board: The board shall have the authority and duty to establish policies and procedures for incarceration of tribal inmates as authorized under this section. That duty shall include, but not be limited to the following:

(1) To approve jail facilities for the tribes, including the use of unsecured or minimal security facilities and to assign inmates to a facility.

(2) To establish the policy regarding home detention and to assign inmates to home detention and to establish policy regarding part time release for work, community service work, school, family obligations, and to assign inmates such part-time release.

(A) Prior to assigning inmates tot he alternative forms of incarceration in this subsection, the board shall consider the following factors:

(i) Whether defendant is likely to comply with conditions of release.

(ii) Defendant's behavior and/or compliance with the current or prior sentence and/or conditions of incarceration.

(iii) Defendant's interest in and ability for rehabilitation.

(iv) Whether an alternative form of incarceration will assist defendant's rehabilitation;

(v) Defendant's ability to obtain employment;

(vi) Danger posed by defendant tot he community if allowed an alternative form of incarceration; including danger apparent from defendant's criminal history.

(B) The board may consider any other factors it deems relevant, except the board shall not consider whether the number of days of incarceration imposed by the Court was appropriate.

(C) The board has the authority to set any reasonable conditions on part-time release and home detention, including, but not limited to:

(i) Random drug and/or alcohol testing;

(ii) Days and hours that defendant is permitted to be or required to be at the jail, home, or any other location;

(iii) Persons defendant is allowed to have contact with or restricted from having contact with; or

(iv) Dates and times defendant is to report to the Probation Department.

(D) The board is further authorized to require that an inmate pre-pay or make wage assignment and/or authorized to request that an inmate make a voluntary per capita assignment to pay fees set out under subsection (E).

(E) The board may require that any individual who is unable to pay the costs of home monitoring, but who is able to perform community service work shall perform two (2) hours of community service work for each day of home monitoring.

(F) To establish policy for furlough from detention for personal reasons, including funerals, medical or dental appointments, job interview, serious illness of family members, and to grant furloughs.

(G) To set monetary fees to inmates for incarceration, home monitoring, and part-time release and to collect such charges. The maximum fee shall be the costs to the tribes for the incarceration and/or monitoring. The board shall consider the inmate's ability to pay in setting the fee for incarceration, and may consider other relevant factors, except the board shall not consider the fine set by the Court in the same matter. Fees set may be collected in the same manner as other debts to the Colville Tribes.

(H) Decisions of the board shall be made by majority vote of the board, except the board

may designate to any one member the authority to approve furloughs under subsection (D).

(d) Violations of alternative forms of incarceration: The Department of Probation and Parole shall monitor each individual permitted an alternative form of incarceration. Probation officers shall have authority to request a warrant of arrest for defendant for any violation of conditions place on such alternative forms of incarceration.

(e) The Tribal Court shall issue such arrest warrant where the probation officer files an affidavit and request for warrant.

(f) Severability: Each portion of this section is severable, if any provisions of this section is held invalid, the remainder of the section shall not be affected.

(g) Implementation: Until such time as the members of the Jail Board are appointed, and the Jail Board certifies to the Court that it is assembled and has procedures in place to begin receiving referrals from the Court, the Court shall continue its authority over all aspects of sentencing including the manner in which sentences will be served.

(Enacted 7/15/99, Resolution 1999-427)
(Certified 2/17/2000)
(Repealed 6/3/99, Resolution 1999-307)
(Re-enacted 6/3/99, Resolution 1999-307)
(Adopted 11/13/97, Resolution 1997-714)

HABEAS CORPUS

2-1-210 **Who May Prosecute Writ**

Every person imprisoned or otherwise restrained of his liberty on the Reservation may prosecute a Writ of Habeas Corpus to inquire into the cause of his imprisonment or restraint and, if it be illegal, to be delivered therefrom.

2-1-211 **Writ for Purpose of Bail**

When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is

entitled to a Writ of Habeas Corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

2-1-212 **Application For—How Made**

Application for the Writ is made by petition, signed either by the person for whose relief it is intended, or by some person in his behalf, and must specify:

(a) That the person in whose behalf the Writ is applied for is unlawfully imprisoned or restrained of his liberty, why the imprisonment or restraint is unlawful, the officer or person by whom he is confined or restrained, and the place where, naming all the parties if they are know, or describing them if they are not known.

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

2-1-213 **Content of Writ**

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

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

2-1-214 **Service of the Writ**

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

2-1-215 **Return, What to Contain**

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

(a) Whether he has the detained person in his custody or under his restraint, and the authority for holding the detained person.

(b) If he had the detained person in his custody or under his restraint, the return must state particularly to whom, at what time and place, for what cause, and by what authority custody was released.

(c) The return must be signed by the person making it and unless he is a sworn public official and makes the return in his official capacity, it must be verified by his oath.

2-1-216 **Hearing on Return**

(a) The detained person shall be brought before the Court by the person commanded by the Writ as soon as possible.

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

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

2-1-217 **Judgment**

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

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

RECIPROCAL CRIMINAL JURISDICTION - COLVILLE TRIBAL MEMBERS -MEMBERS OF OTHER FEDERALLY RECOGNIZED TRIBES

2-1-250 **Reciprocal Jurisdiction**

The Confederated Tribes of the Colville Reservation in exercise of its retained sovereignty over its enrolled members hereby grants to the Tribal Courts of any said federally recognized Indian tribe, band, or nation, the right to try and punish any enrolled member of the Confederated Tribes of the Colville Reservation who is alleged to have committed an offense within the jurisdiction of the said federally recognized Indian tribe, band or nation pursuant to the written tribal Code of laws of the said federally recognized Indian tribe, band or nation, provided;

(a) That the said Indian tribe, band or nation has, prior to charging the enrolled member of the Colville Tribe of the Colville Reservation with a criminal offense under its tribal Code, effectively authorized by ordinance, statute or compact, the Courts of the Confederated Tribes of the Colville Reservation to try and punish members of the said federally recognized Indian tribe, band, or nation who are alleged to have committed an offense within the jurisdiction of the Confederated Tribes of the Colville Reservation pursuant to the Colville Tribal Code; and

(b) That the said Indian tribe, band, or nation provides effective protection for the civil rights of criminal defendants before its Tribal Courts by recognizing and enforcing the provisions of the Indian Civil Rights Act, 25 USC §1302 or recognizes protection of the rights of criminal defendants in its Courts by enforcing a tribal civil rights act which provides the same or broader protection than the Indian Civil Rights Act.

(Adopted 6/7/90, Resolution 1990-350)
(Certified 6/18/90)

2-1-251 **Filing**

Tribal Governments seeking authority to criminally prosecute members of the Confederated Tribes of the Colville Reservation pursuant to this Chapter shall file documents bearing a certification or seal showing compliance with CTC § 2-1-250(a) and (b) with the Administrator of the Colville Tribal Courts and shall receive, in return, from the said Administrator a copy of this Chapter and the Colville Tribal Civil Rights Act under Seal of the Colville Tribal Court.

(Chapter enacted-original code 5/7/79)