

Subpart H Rules of Criminal Procedure

H-1 Complaints

(a) All criminal prosecutions for violation of the Law and Order Code shall be initiated by complaint. A complaint is a written statement sworn to by the complaining witness and charging that a named individual(s) has committed a particular criminal offense.

(b) Complaints shall contain:

1. The signature of the complaining witness sworn to before a Judge or an individual designated by the Judges;
2. A written statement by the complaining witness describing in ordinary language the nature of the offense committed including the time and place as early as may be ascertained;
3. The name or description of the person alleged to have committed the offense; and
4. The section of the Law and Order Code allegedly violated.

(c) The Tribal Court Judge may designate an individual who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Complaints shall then be submitted without unnecessary delay to a Judge to determine whether a warrant or summons should be issued.

(d) If the complaint or the complaint together with other sworn statements is sufficient to establish probable cause to believe that a crime has been committed by the person charged and the Tribal Court has jurisdiction over that person: the Tribal Court shall issue a warrant pursuant to Subpart H-24 of this Code instructing the police to arrest the named accused; or in lieu thereof, the Tribal Court shall issue a summons commanding the accused to appear before the court at a specified time and place to answer to the charge.

(e) When an accused has been arrested without a warrant, a complaint shall be filed with the Tribal Court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

H-2 Arrests

(a) Arrest is the taking of a person into police custody in order that he may be held to answer for a criminal offense.

(b) No police officer shall arrest any person for a criminal offense set out in the Law and Order Code except when:

1. The officer shall have a warrant signed by a Judge of the Pueblo of Pojoaque Tribal Court commanding the arrest of such person of the officer knows for a certainty that such a warrant has been issued; or

2. The offense shall occur in the presence of the arresting officer; or
3. The officer shall have probable cause to believe that an offense has been committed and that the person to be arrested has committed the offense.

H-3 RESERVED

H-4 RESERVED

H-5 Arrest Warrants

Repealed on October 16, 2008.

H-6 Notification of Rights at the Time of Arrest

Repealed on October 16, 2008.

H-7 Summons in Lieu of a Warrant

Repealed on October 16, 2008.

H-8 Hot Pursuit

Repealed on October 16, 2008.

H-9 Search Warrant – Defined

Repealed on October 16, 2008.

H-10 Issuance of Search Warrant

Repealed on October 16, 2008.

H-11 Execution and Return of Search Warrant

Repealed on October 16, 2008.

H-12 Search Without a Warrant

Repealed on October 16, 2008.

H-13 Contraband, Confiscated and Abandoned Property

Repealed on October 16, 2008.

H-14 Arraignment

(a) Arraignment is the bringing of an accused before the Tribal Court, informing him of his rights and of the charge against him, receiving his plea and setting bail as appropriate in acceptance with Subpart H-17 of this code.

(b) Arraignment shall be held in open court without unnecessary delay after the accused is taken into custody and in no instance shall the arraignment be later than the next regularly scheduled session of the Tribal Court.

H-15 Rights of Accused at Arraignment

Before an accused is required to respond to any criminal charge the Judge shall:

(a) Read to the accused and determine that he understands the complaint and the section of the Law and Order Code which he is charged with violating, including the maximum authorized penalty; and

(b) Advise the accused that he has the right to remain silent; that his silence will not be held against him; that anything he says may be used against him in a Court of Law; to be tried by a jury; and to be represented by counsel at his own expense and that the arraignment will be postponed should he desire to consult with counsel.

H-16 Receipt of Plea at Arraignment

(a) If the accused pleads “not guilty” to the charge, the Judge shall then inform him of a trial date and set conditions for bail prior to trial.

(b) If the accused pleads “guilty” to the charge, the Judge shall determine that the plea is made voluntarily and that the accused understands the consequence of the plea, including the rights which he is waiving by the plea. The Judge may then impose a sentence or defer sentencing for a reasonable time in order to obtain any information he deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to inform the Tribal Court of facts in mitigation of the sentence.

H-17 Bail – Release Prior to Trial

Every person charged with a criminal offense before the Tribal Court shall be entitled to be released from custody pending trial under whichever one or more of the following conditions are deemed necessary to reasonably assure the appearance of the person at any time lawfully required.

(a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.

(b) Release to the custody of a designated person or organization agreeing to assure the accused’s appearance.

(c) Release with reasonable restrictions on the travel, association or place of residence of the accused during the period of release.

(d) Release after deposit by the accused or a bondman's bond in either cash or other sufficient collateral in an amount specified by the Judge or a bail schedule. The Judge, in his discretion, may require that the accused post only a portion of the total bond, the full sum to come due if the accused fails to appear as ordered.

(e) Release after execution of a bail agreement by two responsible members of the community.

(f) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

H-18 Bail – Release by Police Officer

Any Police Officer authorized to so by the Tribal Court may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. Police Officers shall have available a bail schedule prepared by the Tribal Court which shall be used for setting money bond where such condition of release is deemed necessary. Any Police Officer who refuses to release an accused on bail or who specifies a bail condition which the accused is unable to satisfy shall bring such accused before a Tribal Judge for review of the release conditions at the first available opportunity and without unnecessary delay.

H-19 Bail – Release Pending Appeal

Every person who has been convicted of an offense and who has filed an appeal or a petition for writ of habeas corpus shall be treated in accordance with the provisions of Subpart H-17, unless the Judge has substantial reason to believe that no conditions of release will reasonably assure the appearance of the accused or that release of the accused is likely to pose a danger to the community, to the accused, or to any other person. If the Judge finds such to be the case, he may order detention of the accused.

H-20 Withdrawal of Guilty Plea

The Tribal Court may, in its discretion, allow a defendant to withdraw a plea of guilty, whenever it appears that the interests of justice and fairness would be served by doing so.

H-21 Commitments

(a) No person shall be detained, jailed or imprisoned for more than thirty-six (36) hours pursuant to an arrest unless there be issued an express or conditional commitment order signed by a duly qualified Judge of the Court. Any person arrested on a Friday, Saturday, or a day before a legal holiday who does not provide bail may be held in custody pending arraignment until noon of the next regular business day of the Tribal Court.

(b) There shall be issued for each person held for trial a temporary commitment order, and for each person held after sentencing a final commitment order signed by a duly qualified Judge of the Tribal Court.

H-22 Taking Minor Children into Custody

(a) A child may be taken into custody:

1. Pursuant to an order of the Court in a juvenile proceeding;
2. For an act of delinquency pursuant to the laws of arrest;
3. By a police officer when he has reasonable grounds to believe that the child is suffering from illness or that the child's surroundings are such as to endanger his health, morals and welfare and that his removal is necessary;
4. By a police officer when he or she has reasonable grounds to believe that the child is a runaway from his parents, guardian or other custodian.

(b) Upon taking a juvenile into custody, the arresting officer must immediately advise the juvenile of his rights pursuant to Subpart H-24(a)1.B., and notify the juvenile's parents, guardian or other custodian.

(c) Unless a juvenile who is taken into custody is prosecuted as an adult, he or she may not be fingerprinted or photographed without the written consent of the Tribal Judge, and neither his name nor picture shall be made public by any medium of public information in connection with the juvenile proceedings.

(d) In all cases if the parents, guardian or custodian of a child taken into custody without a court order can be located and are willing and able to take the child under their care, the child shall be surrendered to their care pending any juvenile proceedings or other court orders.

H-23 Cooperation by Federal Employee

(a) No employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the Pueblo Courts or influence such functions in any manner except as permitted by the BIA regulations or in response to a request for advice or information from the Court.

(b) Employees of the Bureau of Indian Affairs, particularly those engaged in social, health or education services, shall assist the Courts upon their request in the preparation and presentation of the facts in a case and in the proper treatment of individual offenders.

H-24 Searches, Seizures and Forfeitures

Searches, seizures and forfeitures are reasonable when tribal sovereignty, customs, and traditions are honored, due process is accorded, the spirit of congressional acts are followed, the Pueblo of Pojoaque is not used as a safe haven for crime or criminals, and federal judicial decisions interpreting search and seizure in Indian country are considered.

(a) Warrants.

1. Arrest warrants: Arrest warrants authorize the arrest of a specific person wherever that person can be found.

A. Procedure for issuing an arrest warrant.

i. The Tribal Judge shall have the authority to issue an arrest warrant whenever the Tribal Court is presented with a written and sworn statement by the Pueblo of Pojoaque Tribal Police that there is probable cause that a crime has been committed by an Indian within the jurisdiction of the Pueblo of Pojoaque and that the crime is included within the Pueblo of Pojoaque Law and Order Code.

ii. Arrest warrants shall be in writing and signed by the Tribal Judge.

B. Notification of rights at the time of arrest. Upon arrest, the accused shall be advised that he may remain silent and not answer any questions, that any statements made by him may be used against him in Court, that he has the right to obtain counsel at his own expense, and that he has the right to cease questioning at any time.

C. Summons in lieu of an arrest warrant.

i. The Tribal Judge may deem that an arrest is not required. In lieu of a warrant, the Tribal Judge may issue a summons commanding the accused to appear before the Tribal Court at a stated time and place for an arraignment.

ii. The summons shall contain the same information as the arrest warrant.

iii. If an accused fails to appear after receiving a summons, an arrest warrant shall be issued by a Tribal Judge.

2. Arrest without a warrant.

A. Tribal Police may arrest an Indian when they have probable cause that a crime has been committed by such individual.

B. Tribal Police may continue the hot pursuit and arrest an Indian beyond the exterior boundaries of the Pueblo whenever they have probable cause to believe that the Indian has committed a crime within the exterior boundaries of the Pueblo and is attempting to escape arrest.

3. Search warrants: A search warrant authorizes a search of a specific place for specific items.

A. Procedure for obtaining a search warrant.

i. Absent conditions contained below, in Paragraphs (4) and (5) of this Section, the Tribal Police Department shall request a search warrant for the search of any premises and seizure of property of any person within the Tribal Court's jurisdiction.

ii. A Tribal Judge shall have the authority to issue a warrant for the search of a premises and seizure of property as long as the request contains probable cause that the search will discover stolen, embezzled or contraband property criminally possessed or property that has been used, or will be used, to commit a crime.

iii. Contraband is defined as any property which is unlawful to produce or possess.

iv. Probable cause is supported by a duly signed, written and sworn statement based on reliable information by a duly authorized tribal law enforcement officer of the Pueblo.

v. The search warrant shall be in writing, signed by a Tribal Judge and describe in detail, the property or place to be searched and the property to be seized.

B. Execution and return of a search warrant. Search warrants shall only be executed by Tribal Police officers. A copy of the warrant and receipt for property seized shall be given to the person whose property was seized. The executing officer shall return the warrant, and an inventory of the property seized, to the Tribal Court no later than twenty-four (24) hours after the property was seized.

4. Search without a warrant.

A. A Tribal Police officer may conduct any search without a warrant when the search is made:

i. Incident to a lawful arrest;

ii. With the consent of the person being searched;

iii. Whenever there is probable cause to believe the person may be armed or dangerous;

iv. When the search is of a moving vehicle and there is probable cause to believe that it contains contraband, stolen or embezzled property or instruments used in a crime; or

v. When there is a probability that evidence of a crime may be disposed of before the issuance of a written search warrant.

5. Arrest or search without a warrant by the Tribal Police upon command of the Governor, Lieutenant Governor or Tribal Judge.

A. Under the traditional authority of the Tribal government, the Governor or, in his absence, the Lieutenant Governor, may orally, or in writing, command the Tribal Police to effect an arrest or search and seizure whenever there is written or oral evidence presented by the Tribal Police that a crime has been committed, an individual from another jurisdiction is using the Pueblo as a safe haven to escape law enforcement authorities, or there is an impending threat to the health, safety and welfare of the Pueblo, its members or its visitors. A Tribal Judge also has the authority to orally command the Tribal Police to effect an arrest or search and seizure when the conditions noted above are present.

B. It is the preferred option of the Pueblo of Pojoaque to use the traditional authority or oral approvals only when the circumstances surrounding the issuance of written arrest warrants or written search and seizure warrants may allow evidence of a crime to be destroyed, an individual to evade law enforcement authorities, a crime to be committed, or there is an impending threat to the health, safety and welfare of the Pueblo, its members or its visitors.

6. Arrests, searches and seizures conducted by outside law enforcement agencies.

A. The Pueblo of Pojoaque recognizes the authority, established by the U.S. Supreme Court, of an outside law enforcement agency to conduct an arrest or search and seizure within Indian country under limited conditions.

B. However, the Pueblo of Pojoaque also recognizes that arrests or searches, by any law enforcement agency, may lead to breaches of the peace and unsafe conditions for the law enforcement agency officers involved and the public at large.

C. In order to preserve the peace, protect law enforcement officers, and to ensure that the Pueblo of Pojoaque is not a safe haven for suspected criminals, the Pueblo of Pojoaque will continue to work closely with state and federal law authorities to ensure effective law enforcement protocol.

D. Currently, the Pueblo of Pojoaque enjoys close communications and relations with outside law enforcement agencies. These communications and relations enable effective law enforcement protocol.

E. In the event that an outside law enforcement agent attempts to present an arrest or search warrant to an Indian within the exterior boundaries of the Pueblo of Pojoaque or to a tribally-owned business, the law enforcement agent should be asked to speak directly with the Pueblo of Pojoaque Tribal Police.

F. In order to ensure that arrest and search warrants are legally served within the Pueblo of Pojoaque, the Pueblo of Pojoaque Tribal Police shall be

immediately contacted whenever any outside law enforcement agent attempts to serve an arrest or search warrant without a Tribal Police Officer present.

G. The Tribal Police phone number is 505.455.2295.

H. The Tribal Police shall immediately attempt to contact the serving law enforcement agent and all relevant Tribal authorities to ensure that effective law enforcement protocol is followed.

7. Welfare checks.

A. Under the traditional authority of the Governor, or in his absence the Lieutenant Governor, he may orally command the Tribal Police or Social Services Department to conduct a welfare check of a Tribal Member or person living within the Pueblo of Pojoaque-owned land within the exterior boundaries or a person living within land placed in federal trust for the Pueblo of Pojoaque.

B. A Tribal Judge also has the authority to orally command the Tribal Police to conduct a welfare check of a Tribal Member or person living within the Pueblo of Pojoaque-owned land within the exterior boundaries or a person living within land placed in federal trust for the Pueblo of Pojoaque.

C. A welfare check is defined as a physical visit to a person, or their home, to determine whether the person's health, safety or welfare is in danger.

D. In no circumstances is a welfare check to be conducted as a pretext for a search and seizure.

E. Whenever a welfare check is conducted, the Tribal Police or Social Services Department shall, in writing, notify the Governor or Tribal Court of their findings.

(b) Forfeiture of contraband, confiscated property, abandoned property, property used in commission of a crime, property acquired from proceeds of illegal activity or property presenting a danger to the public health, safety and welfare.

1. The Tribal Police may make a written request to the Tribal Court for the forfeiture of property.

A. Property subject to forfeiture includes contraband, confiscated property, abandoned property, property used in commission of a crime, property acquired from the proceeds of an illegal activity or property presenting a danger to the public health, safety and welfare.

B. Requests for forfeiture may be made any time after the property is in the possession of the Tribal Police.

- C. The request shall include the name and address of any party with a known interest in the property. The written petition shall include any Court's case number under which the property was seized and a detailed list of the property requested to be forfeited.
 - D. The Tribal Court shall conduct a hearing regarding the disposition of the property.
2. The owner of property that is in the possession of the Tribal Police may make a written request to the Court for the return of the property.
- A. The written request shall list when the Tribal Police came into possession of the property and a detailed description of the property.
 - B. The Tribal Court shall conduct a hearing regarding the disposition of the property.
3. The Tribal Court hearing for disposition of property.
- A. Prior to the scheduled Tribal Court hearing, the Court shall send a Notice of Hearing to all persons with a known interest in the property.
 - B. During the Tribal Court hearing all persons shall be accorded due process before the Tribal Court determines the status of the property.
 - C. If the property was not property used in commission of a crime, property acquired from proceeds of an illegal activity or property presenting a danger to the public health, safety and welfare and the claimant proves by a preponderance of evidence that they are the lawful owner, the property shall be returned as soon as the property is no longer needed as evidence in a pending legal proceeding.
 - D. All other property shall be destroyed, forfeited to the Pueblo of Pojoaque, or sold at public auction and the proceeds delivered to the Pueblo of Pojoaque.