

§ 11.305

§ 11.305 Search warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue a warrant for the search of premises and for the seizure of physical evidence of a criminal violation under the regulations of this part located within the Indian country over which the court has jurisdiction.

(b) No warrant for search or seizure may be issued unless it is based on a written and signed statement establishing, to the satisfaction of the magistrate, that probable cause exists to believe that the search will lead to discovery of evidence of a criminal violation under the regulations of this part.

(c) No warrant for search or seizure shall be valid unless it contains the name or description of the person, vehicle, or premises to be searched, describes the evidence to be seized, and bears the signature of the magistrate who issued it.

(d) Warrants may be executed only by a BIA or tribal police officer or other official commissioned to enforce the regulations under this part. The executing officer shall return the warrant to the Court of Indian Offenses within the time limit shown on the face of the warrant, which in no case shall be longer than ten (10) days from the date of issuance. Warrants not returned within such time limits shall be void.

§ 11.306 Search without a warrant.

No law enforcement officer shall conduct any search without a valid warrant except:

(a) Incident to making a lawful arrest; or

(b) With the voluntary consent of the person being searched; or

(c) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband, stolen property, or property otherwise unlawfully possessed.

§ 11.307 Disposition of seized property.

(a) The officer serving and executing a warrant shall make an inventory of all seized property, and a copy of such inventory shall be left with every person from whom property is seized.

(b) A hearing shall be held by the Court of Indian Offenses to determine

the disposition of all seized property. Upon satisfactory proof of ownership, the property shall be delivered immediately to the owner, unless such property is contraband or is to be used as evidence in a pending case. Property seized as evidence shall be returned to the owner after final judgment. Property confiscated as contraband shall be destroyed or otherwise lawfully disposed of as ordered by the Court of Indian Offenses.

§ 11.308 Commitments.

No person may be detained, jailed or imprisoned under the regulations of this part for longer than 48 hours unless the Court of Indian Offenses issues a commitment bearing the signature of a magistrate. A temporary commitment shall be issued for each person held before trial. A final commitment shall be issued for each person sentenced to jail after trial.

§ 11.309 Arraignments.

(a) Arraignment is the bringing of an accused before the court, informing him or her of his or her rights and of the charge(s) against him or her, receiving the plea, and setting conditions of pretrial release as appropriate in accordance with this part.

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

(c) Before an accused is required to plead to any criminal charges the magistrate shall:

(1) Read the complaint to the accused and determine that he or she understands it and the section(s) of this part that he or she is charged with violating, including the maximum authorized penalty; and

(2) Advise the accused that he or she has the right to remain silent, to be tried by a jury if the offense charged is punishable by imprisonment, to be represented by counsel (which shall be paid for by the government if the accused is indigent) and that the arraignment will be postponed should he or she desire to consult with counsel.

(d) The magistrate shall call upon the defendant to plead to the charge: