

**Bureau of Indian Affairs, Interior**

**§ 11.304**

person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness, or witnesses, sworn before a magistrate, a court clerk, a prosecutor, or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation, describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged and the section of the code allegedly violated.

(c) Complaints must be submitted without unnecessary delay by a law enforcement officer to the prosecutor and, if he or she approves, to a judge to determine whether an arrest warrant or summons should be issued.

(d) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the 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.

**§ 11.301 Arrests.**

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

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a magistrate commanding the arrest of such person, or 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 the person arrested has committed an offense.

**§ 11.302 Arrest warrants.**

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue warrants to apprehend any person the magistrate has probable cause to believe has committed a

criminal offense in violation of the regulations under this part based on a written complaint filed with the court by a law enforcement officer and bearing the signature of the complainant.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing magistrate.

(c) Such warrants may be served only by a BIA or tribal police officer or other officer commissioned to enforce the regulations of this part.

**§ 11.303 Notification of rights prior to custodial interrogation.**

Prior to custodial interrogation, the suspect shall be advised of the following rights:

(a) That he or she has the right to remain silent.

(b) That any statements made by him or her may be used against him or her in court.

(c) That he or she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her.

**§ 11.304 Summons in lieu of warrant.**

(a) When otherwise authorized to arrest a suspect, a law enforcement officer or a magistrate may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court of Indian Offenses at a stated time and place and answer to the charge.

(b) The summons shall contain the same information as a warrant, except that it may be signed by a police officer.

(c) The summons shall state that if a defendant fails to appear in response to a summons, a warrant for his or her arrest shall be issued.

(d) The summons, together with a copy of the complaint, shall be served upon the defendant by delivering a copy to the defendant personally or by leaving a copy at his or her usual residence or place of business with any person 18 years of age or older who also resides or works there. Service shall be made by an authorized law enforcement officer, who shall file with the

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record of the case a form indicating when the summons was served.

**§ 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

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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