CHAPTER 29-06.1
TRIBAL ARREST WARRANTS

29-06.1-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Tribal arrest warrant" means any document issued by a court of a tribe in this state which authorizes a peace officer to take custody of a person.
2. "Tribe" means any of the federally recognized Indian nations, tribes, or bands in this state.

29-06.1-02. Arrest with or without warrant.

1. A peace officer may arrest a person subject to a tribal arrest warrant if presented with the warrant and may arrest a person without a tribal arrest warrant upon probable cause to believe that the person is the subject of such a warrant. An arrest is authorized under this subsection only if the arrest warrant is issued for commission of a crime punishable as a misdemeanor under the applicable tribal ordinance or resolution.
2. The arrested person may waive the right to appear before a judge and consent to transfer of custody to the applicable tribal authority by executing a written waiver in the presence of a peace officer or correctional officer. Before executing a written waiver, the arrested person must be informed of the name of the tribe that issued the arrest warrant, the right to assistance of counsel, and the right to appear before a district judge before transfer of custody to the applicable tribal authority. If a waiver is executed, the court shall issue an order transferring custody of the arrested person to the applicable tribal authority or, with the consent of the applicable tribal authority, authorize the voluntary return of the arrested person to the applicable tribal authority.
3. If the arrested person does not waive appearance before a judge under subsection 2, the arrested person must be brought without unnecessary delay before the nearest available district judge.
4. The district judge shall issue an order continuing custody upon presentation of the tribal arrest warrant or, if the arrest is made without a warrant, upon testimony or affidavit showing probable cause to believe the person is the subject of such a warrant.

29-06.1-03. Court appearance.

1. The district judge shall inform the person appearing under section 29-06.1-02 of the name of the tribe that has subjected the person to an arrest warrant, the basis for the arrest warrant, the right to assistance of counsel, and the right to require a judicial hearing before transfer of custody to the applicable tribal authority.
2. After being informed by the district judge of the effect of a waiver, the arrested person may waive the right to require a judicial hearing and consent to return to the applicable tribal authority by executing a written waiver in the presence of the judge. If the waiver is executed, the judge shall issue an order to transfer custody under section 29-06.1-04 or, with the consent of the applicable tribal authority, authorize the voluntary return of the person to that authority.
3. If a hearing is not waived under subsection 2, the district judge shall hold a hearing within three days, excluding weekends and holidays, after the appearance. The arrested person and the state's attorney of the county in which the hearing is to be held must be informed of the time and place of the hearing. The judge shall release the person upon conditions that will reasonably assure availability of the person for the hearing or direct a law enforcement officer to maintain custody of the person until the time of the hearing. Following the hearing, the judge shall issue an order to transfer custody under section 29-06.1-04 unless the arrested person establishes by clear and convincing evidence that the arrested person is not the person identified in the warrant.

4. If the judge does not order transfer of custody, the judge shall order the arrested person to be released.

29-06.1-04. Order to transfer custody.

1. A judicial order to transfer custody issued under section 29-06.1-03 must direct a law enforcement officer to take or retain custody of the person until an agent of the applicable tribal authority is available to take custody. If the agent has not taken custody within three days, excluding weekends and holidays, the judge may order the release of the person upon conditions that will assure the person's availability on a specified date within seven days, excluding weekends and holidays. If the agent has not taken custody within the time specified in the order, the person must be released. Thereafter, an order to transfer custody may be entered only if a new arrest warrant is issued.
2. The judge in the order transferring custody may authorize the voluntary return of the person with the consent of the applicable tribal authority.
3. An order to transfer custody is not appealable. An order denying transfer is appealable.