SISSETON-WAHPETON OYATE

CODES OF LAW

CHAPTER 23- Amended Criminal Procedure Code

23-01-01 COMMENCEMENT OF CRIMINAL PROCEEDINGS

23-01-02 COMPLAINT.

A Complaint is the written statement of the essential facts constituting the offense charged. Criminal proceedings shall be commenced by filing a written Complaint with the Court. No Complaint shall be accepted by the Clerk of the Court for filing unless it satisfies the requirements of Section 23-01-03 hereof.

23-01-03 CONTENTS OF THE COMPLAINT.

The Complaint shall state the essential facts constituting the offense charged. It shall be sworn to and signed by the complainant or complaining witness before a Clerk of Courts and shall be signed by a Clerk of the Court.

23-01-04 LIMITATION OF TIME ON FILING COMPLAINTS.

No Complaint, charging the commission of an offense one (1) year or more prior to the date the Complaint is filed, shall be valid; provided, that the absence of the person charged, from the Reservation to avoid service of summons or arrest, shall toll the time and shall not count in computing the one year.

23-01-05 LIMITATION ON TIME TO PROSECUTE.

Under no circumstances shall a defendant's right to speedy trial be impinged by bringing a prosecution to trial more than 365 days after the time the complaint was filed, except when the Tribe can show good cause for such delay and the Court finds, at its discretion and in consideration of good cause shown by the Tribe, that the defendant has not been unfairly prejudiced.

23-02-01 SUMMONS TO APPEAR

23-02-02 <u>ISSUANCE OF SUMMONS</u>.

The Court may issue a Summons instead of a Warrant where the Court, in its discretion, deems that arrest is not essential. Such a Summons shall direct the defendant to appear before the Court at a stated time and place, to plead in response to the complaint. The Summons shall notify the defendant that a Warrant for his arrest will be issued in the event he fails to appear

23-02-03 <u>SERVICE OF SUMMONS</u>.

The Summons, together with a copy of the Complaint, shall be served by an authorized law officer, be delivering a copy to the defendant personally, or by leaving it at his dwelling place with a person of suitable age, residing there at the time of service. The Officer shall prepare a Return of Service which shall be filed with the records of the case.

23-03-01 ARREST WARRANTS

23-03-02 <u>ISSUANCE</u>.

Where the Court, in its discretion, that arrest is essential, or that a person has failed to appear before the Court after being lawfully ordered to do so, the Court shall issue a Warrant for Arrest upon the written complaint. The warrant shall name the defendant, or contain a description by which the defendant can be identified with reasonable certainty, and shall state the offense charged in the complaint, or if ordered by the Court, the reason for the issuance of such a warrant.

23-03-03 <u>EXECUTION OF WARRANT</u>.

The Warrant shall be executed by the arrest of the defendant. The officer should have the warrant in his possession at the time of the arrest, but upon reasonable grounds, can produce the warrant at a later time and show it to the defendant.

23-03-04 <u>LIMITS OF JURISDICTION</u>.

A warrant for arrest shall be void outside the limits of the Reservation, unless it conforms to the Extradition provisions of the Sisseton Wahpeton Codes of Law, or the laws of the relevant jurisdiction where the wanted person is residing or located.

23-03-05 ARREST WITHOUT A WARRANT.

(1) Authority to Arrest Without a Warrant -A Tribal Police Officer may arrest a person without a warrant if the Officer has reasonable cause to believe that such person has committed:

a. A felony;

b. A misdemeanor, and the Officer has reasonable cause to believe that such person:

i. Will not be apprehended unless immediately arrested; or

ii. May cause injury to himself or others or damage to property unless immediately arrested; or

c. A misdemeanor or petty offense in the Officer's presence.

(2) Reasonable Cause - Reasonable cause exists under this Section where there is substantial objective basis for believing that the person to be arrested has committed a crime. An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the Officer is unable to determine the particular crime which may have been committed.

(3) Determining Reasonable Cause - In determining whether reasonable cause exists to justify an arrest under this Section, a Tribal Police Officer may take into account all information that a prudent Officer would deem relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it, including information derived from an informant whom it is reasonable, under the circumstances to believe, whether or not at the time of making the arrest, the Officer knows the informant's identity.

23-04-01 SEARCH AND SEIZURE

23-04-02 AUTHORITY TO ISSUE WARRANT.

Warrants may be issued by any Judge of the Court for the search and seizure of any premises, property, or persons subject to the jurisdiction of the Court

23-04-03 ISSUANCE AND CONTENTS.

A search warrant shall issue only on an affidavit, sworn to before the Court, by a duly authorized Tribal or Federal Law Officer, establishing the grounds for the warrant. If the Court is satisfied that grounds for issuance of the warrant exist, or that there is probable cause to believe that they exist, the Court shall issue a warrant identifying the property and naming or describing

the person or place, or both, to be searched and/or seized. All search warrants shall be signed by the Judge issuing the warrant, and shall designate the place the return shall be made, which writ shall include a list of the property seized.

(1) When the Tribal Court is not in session, a Tribal Judge may authorize a search warrant telephonically upon the sworn testimony of a law enforcement officer or other law enforcement official, but that warrant must be reduced to writing the next regularly-scheduled court day.

23-04-04 **SERVICE AND RETURN**. Warrants shall be served only by duly authorized Law Officers, and returned to the Court.

23-04-05 **WARRANTLESS SEARCHES**.

No Law Officer shall search and seize any premises, property or person without a warrant, unless such search and seizure is supported by probable cause and:

(1) Incident to arrest;

(2) Necessary due to exigent circumstances, including the possibility of destruction of evidence or danger of life or property;

(3) Of an object in plain view and the officer is lawfully in the position necessary to make the view; or

(4) In accordance with the subject's consent.

A person may be stopped and frisked by a Law Officer when that officer has Reasonable cause to believe:

(1) That criminal conduct is afoot;

(2) That the person being frisked may be armed and dangerous; and

(3) When such search is limited to the outer clothing of such person in an attempt to discover such weapons.

An unlawful search and seizure shall be deemed a trespass punishable as provided in Section 24-12-28 of the Penal Code.

23-05-01 RELEASE PRIOR TO ARRAIGNMENT

23-05-02 RELEASE.

Prior to arraignment, and only when the Court is not in session, Tribal Police shall be authorized to release a defendant in the following manner:

(1) Traffic Violations - In all traffic violations where there is no potential for jail time, the defendant can waive his appearance in Court by signing a waiver which will allow the Court to enter a plea of guilty on his behalf and Court costs may be paid in the following manner:

a. Non-residents: At the time of arrest, non-residents can pay their fine and court costs at the Tribal Jail by depositing the fine and courts costs in an envelope. Tribal Police shall give the defendant a receipt for their payment.

b. Residents: Any resident of the Lake Traverse Reservation may pay their fine and court costs any time prior to the set court date on the traffic ticket, thereby waiving their appearance in Court.

(2) Penal Code Violations - All defendants may be released on a cash bail bond only in accordance with the prescribed bail bond schedule.

(3) Cash Bail Agreement - A cash bail agreement is an agreement whereby a defendant agrees to pay the Court a specified amount if he fails to appear at the required time for arraignment.

Upon a defendant's release, Tribal Police shall serve a summons upon the defendant stating the date and time that said defendant is to appear in Court.

23-05-03 FAILURE TO PAY OR APPEAR.

Failure to pay the fine and court costs as required or failure to appear in Court at the prescribed time shall be grounds for the Court to issue a bench warrant or arrest for the defendant.

23-06-01 ARRAIGNMENT

23-06-02 ARRAIGNMENT AS BEING MANDATORY.

Any person arrested for an offense by the Tribal Police shall be arraigned at the next regular court session.

23-06-03 INTERPRETER.

At any time in the trial process, the Judge may appoint an interpreter of his own selection and may fix the reasonable compensation of such interpreter as may be necessary, at the expense of the Court. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the Judge.

Under this section, such an interpreter will be required when the Court finds that a defendant's English skills are so negligible so as to require a Dakota interpreter in the interests of justice and the defendant's right to a fair trial.

23-06-04 PROCEDURE AT ARRAIGNMENT.

Arraignment shall be conducted in open Court, and shall consist of:

(1) Reading the Complaint to the accused;

(2) Stating to him in Dakota or English, as may be required, the substance of the charges and the language of the law establishing the offense and fixing the penalty;

(3) Advising him of his rights as set forth in Section 23-06-05 and 23-08-02, 23-08-03, and/or 23-08-04; and

(4) Calling him to plead to the charges.

23-06-05 PLEAS.

A defendant may plead "guilty," "not guilty," or "no contest." Before any defendant is called upon to plead, the Judge before whom he appears shall advise the defendant:

(1) That the same defendant has the right to counsel at his own expense, as well as the right to consult with counsel before making any statement and before entering any plea;

(2) That if the defendant waives his right to counsel at any stage of the proceedings, and subsequently reasserts his right to counsel before trial, all proceedings shall stop until the defendant has an opportunity to locate and consult with counsel;

(3) That if the defendant wished to plead "not guilty", he may request a jury trial if the offense he is charged with is punishable by imprisonment;

(4) That if the defendant pleads "not guilty", he will be tried on a date set to allow sufficient time for him to prepare his defense;

(5) That the defendant does not have to testify at his own trial, and his refusal to testify cannot be used to show his guilt;

(6) That is the defendant does testify at his own trial, he must answer all questions asked by the prosecutor;

(7) That the defendant has a right to a speedy trial;

(8) That the defendant and any counsel that may represent him have the right to confront in Court all witnesses who testify against the defendant, and to question such witnesses under oath;

(9) That the defendant has the right to present witnesses and evidence for his side at trial, and that the Court will require that they come or be brought to the Court if the defendant so requests;

(10) That the defendant cannot be tried for the same crime twice; and

(11) Any other applicable rights.

23-06-06 PRETRIAL RELEASE.

At arraignment, the Court, in its discretion, may release a defendant pursuant to any of the following:

(1) Personal Recognizance - To insure the presence of the defendant in Court at the time of trial, a defendant may be released without any monetary amount and the following factors may be considered in order for a defendant to be released on a Personal Recognizance ("P.R.") Bond: nature and circumstances of offense charged, weight of the evidence against the defendant, employment, ties to the reservation, financial resources, character and mental condition, record of convictions, length of residence on the reservation, record of appearances in court proceedings, and the potential or previous flight to avoid prosecution, failure to appear at previous court proceedings.

(2) Cash Bail Bond - To insure the presence of the defendant in all subsequent court proceedings, a cash monetary amount may be required of a defendant prior to his release. Bail shall be fixed in such an amount and in such form as, in the judgment of the Court will insure presence of the defendant but in no case shall bail exceed the maximum cash penalty for each offense which the defendant has been charged.

(3) Bail Pending Appeal - Pending appeal, bail may be continued or allowed by the Court to run until the final determination of the case.

(4) Revocation of Bail - The Court, for good cause shown, may revoke bail at any time and order the defendant committed to custody. The defendant may request a hearing on the issue of whether there was good cause for the revocation.

23-06-07 WAIVER OF RIGHTS AGREEMENT.

As a condition of the defendant's release under a cash bail bond, personal recognizance bond, or cash bail agreement, he or she shall agree to sign a waiver of rights which stipulates that the Tribal Police shall apprehend the defendant within the original boundaries of the Lake Traverse Reservation to be brought to Tribal Court. The Defendant shall also be required to execute a Waiver of Extradition back to the jurisdiction of the Tribal Court should the person leave the jurisdiction and not return by the date of return of appearance.

23-07-01 PRESENCE OF DEFENDANT DURING PROCEEDINGS

23-07-02 PRESENCE OF THE DEFENDANT.

The defendant in a criminal case shall be present in Court at every stage of the trial, including the impaneling of the jury and return of the verdict where trial is by jury, and the imposition of sentence.

23-08-01 RIGHTS OF DEFENDANT IN CRIMINAL CASES

23-08-02 GENERALLY.

The Sisseton-Wahpeton Oyate Tribal Court shall provide the Defendant the following rights:

(1) No defendant shall be twice placed in jeopardy in Tribal Court for the same offense;

(2) No defendant shall be compelled in any criminal case to be a witness against himself;

(3) Every defendant shall have the right to a speedy and public trial, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor;

(4) Every defendant has the right to effective assistance of counsel, who shall be licensed by any jurisdiction in the United States, including tribes. Defendants shall be provided with assistance of counsel if requested and if available for any offense that may include time in jail;

(5) Any person, if accused of an offense or combination of offenses punishable by imprisonment, shall have the right to demand trial by an impartial jury of not less than six persons;

(6) The Sisseton-Wahpeton Oyate Tribal Court shall maintain a record of the criminal proceeding, including audio or other recording of the trial proceeding;

(7) No person shall be denied due process of law;

23-08-03 <u>ENHANCED SENTENCING.</u>

The Sisseton-Wahpeton Oyate Tribal Court may, upon conviction of any offense, impose a penalty or punishment up to a term of 3 years, but not to exceed 9 years for multiple counts, a fine up to $15,000.00, or both. In addition, Defendants are granted the following rights:

(1) All rights listed above, as a part of 23-08-02;

(2) The accused shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing

standards and professional responsibility of its licensed attorneys;

(3) The Tribe shall require that the judge presiding over the criminal proceeding: a) has sufficient legal training to preside over criminal proceedings; and b) is licensed to practice law by any jurisdiction in the United States;

(4) Prior to charging the defendant, the Tribe shall make publicly available the criminal laws, rules of evidence, and rules of criminal procedure.

23-08-04 <u>SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.</u>

When the Sisseton-Wahpeton Oyate Tribal Court exercises inherent special domestic violence criminal jurisdiction, defendants are granted the following rights:

(1) All rights listed above, as a part of 23-08-02;

(2) All rights listed above, as a part of 23-08-03;

(3) Defendant shall have all rights under the Indian Civil Rights Act and all other rights whose protection is necessary under the Constitution of the United States;

(4) The defendant, regardless of whether a term of imprisonment may be imposed, has the right to a trial by an impartial jury of no less than six persons, that is drawn from sources that: 1) reflect a fair cross section of the community, and 2) do not systematically exclude any distinctive group in the community; and

(5) The defendant shall be notified of his right to file a writ of habeas corpus after exhaustion of any available tribal court remedies.

23-09-01 JUDGES

23-09-02 <u>RECUSAL OF A JUDGE</u>.

Upon the filing of an affidavit of bias and prejudice setting forth satisfactory proof of facts establishing that the defendant cannot have a fair trial because of bias or prejudice of the Judge to whom the case is assigned, the Judge shall

disqualify himself. Any person who abuses this privilege, by filing affidavits of bias and prejudice without basis in fact, shall be in Contempt of Court.

23-09-03 TRIAL BY THE COURT WITHOUT A JURY

All trials shall be before the Court without a jury when the defendant waives his right to a jury trial at the time of arraignment. In trials without a jury, the Court shall hear and determine all issues of fact as well as all issues of law.

23-10-01 JURIES

23-10-02 ELIGIBILITY FOR JURY DUTY; GENERALLY

Any potential juror must meet the following requirements:

(1) They must be an adult resident member of the Tribe.

(2) They must be able to speak and understand the English language.

(3) They must not have an interest in the case, or be related as spouse, parent, brother, sister, or child to any of the parties or their attorneys.

(4) They must not have been convicted of a felony within one (1) year prior to appointment.

(5) Any felony conviction of the appointee must not bear a similarity to the crime with which the defendant is charged.

(6) They must not be a member of the Tribal Council; a Judge, Officer or employee of the Court or Jail; a Tribal Law Enforcement Officer; or admitted to practice before the Court.

(7) Elders of 65 years of age or older, who would be unduly burdened by serving on a jury may contact the Court to be excused.

23-10-03 ELIGIBILITY FOR JURY DUTY; SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION

With the exception of 23-10-02(1) above, any potential juror for a special domestic violence criminal jurisdiction case must be an adult member 18 years or older. In such a case, the juror must be drawn from sources that reflect a fair cross section of the community.

23-10-04 JURY LIST; GENERALLY

A list of at least twenty-one (21) resident enrollees of the Tribe and other persons as designated herein who are eligible for jury duty shall be prepared and maintained by the Clerk. Each voting district on the Reservation shall be represented on the list. Potential jurors may be selected from a variety of sources including but not limited to enrolled members of the Sisseton-Wahpeton Oyate, residents within the jurisdiction of Lake Traverse Reservation pursuant to 20-02-02 and 20-01-07, full-time employees of the Tribe or its entities (educational institutions, businesses, agencies, subdivisions, or instrumentalities) who have completed the required probationary period, and persons leasing lands from the Tribe. Each potential juror selected from the above sources will also comply with the eligibility requirements (23-10-02 and 23-10-03) and will be eliminated if the requirements are not met.

23-10-05 TRIAL JURIES - HOW CONSTITUTED

Under the supervision of the presiding Judge, a panel of jurors shall be drawn by lot from the jury list. A trial jury shall consist of six (6) qualified jurors selected from a panel of no less than twelve (12) eligible persons taken from the jury list.

23-10-06 POWER TO SUBPOENA JURORS

The Judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Such subpoenas shall be signed by the Judge issuing them.

23-10-07 POWER TO EXCUSE ANY PERSON FROM JURY DUTY

The Judge assigned to the case shall have the power to excuse person from jury duty on account of sickness, disability or for other good cause.

23-10-08 EXAMINATION OF JURORS

Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.

23-10-09 CHALLENGES

In criminal cases, in addition to disqualifying the prospective jurors for cause, the prosecution and the defense shall each be entitled to three peremptory challenge without assigning any cause.

23-10-10 COMPENSATION TO JURORS

Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at minimum rates set by the Court administrator of five dollars ($5.00) per day and mileage at the rate of twenty-five cents ($.35) per mile. All such payments shall be paid in order of presentation from available Court funds.

23-10-11 FAILURE TO APPEAR FOR JURY DUTY

Any prospective Juror summonsed for jury duty who fails to appear for jury duty, may be subject to Contempt proceedings.

23-11-01 WITNESSES AND PRODUCTION OF EVIDENCE

23-11-02 ISSUANCE OF SUBPOENAS

On motion of good cause shown by any party to the case, or on the Court's own motion, the Court shall issue subpoenas to compel the attendance of witnesses, or the production of books, records, documents, papers, and things necessary to the determination of the case, over which the Court has jurisdiction. Subpoenas shall be served at least 48 hours before attendance in Tribal Court is required.

23-11-03 PAYMENT OF WITNESSES

Each party shall pay for its own witnesses. The Tribe shall pay all witnesses subpoenaed on its behalf at minimum rates set by the Court administrator at five dollars ($5.00) per day and mileage at the rate of twenty-five cents ($.35) per mile. Upon showing of the defendant's indigency, the Court shall make appropriate provisions for the appearance of witnesses on behalf of the indigent party.

23-11-04 ORAL TESTIMONY

In all trials, the testimony of witnesses shall be given orally on oath in open court, subject to the right of cross-examination.

23-11-05 DOCUMENTARY AND TANGIBLE EVIDENCE; GENERALLY

All evidence which the Court deems proper and necessary for reaching a true and just verdict or which is in accordance with Sisseton-Wahpeton Oyate customs and traditions, provided it is otherwise admissible under the Court's rules of evidence, shall be admitted and received in open court if properly identified. Such evidence shall be open and available to the defendant for inspection and copying. In reaching a decision on the admissibility of any evidence, the Court may avail itself of any materials, books, or documents prior to ruling, which may include the Federal Rules of Evidence.

23-11-06 DOCUMENTARY AND TANGIBLE EVIDENCE; SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.

All special domestic violence criminal jurisdiction cases shall utilize the Federal Rules of Evidence.

23-11-07 INTOXILYZER TEST

Under no circumstances shall the results of an intoxilyzer test be admissible into evidence in any criminal action unless the officer who administered the test has been certified by a source recognized by the Court. Also, in order for the results to be admissible in such a case, a maintenance record shall be available for the particular test in question.

23-11-08 ORDER OF PRESENTATION

The case of the plaintiff or prosecution shall be presented first, followed by the case of the defendant and by rebuttal and surrebuttal as required.

23-11-09 CLOSING ARGUMENTS

At the conclusion of the evidence, the prosecution and defendant shall each in turn summarize the proof and make any final arguments, with the prosecution having the right of final rebuttal.

23-11-10 INSTRUCTIONS TO JURY

At the close of evidence or at such earlier time during the trial as the Judge directs, counsel for any party may file with the Judge written instructions on the law which the party requests the Judge to deliver orally to the jury. At the same time, copies of such requests shall be furnished to opposing counsel. The Judge shall inform counsel of his proposed action upon each request prior to the arguments to the jury, but the Judge shall deliver his instructions to the jury after arguments are completed. No party may assign as error any portion

of the Judge's charges or omission there from unless he makes his objection before the jury retires to consider its verdict. The objection shall be distinctly stated and the grounds for objection set forth. Opportunity shall be given to make the objection out of the hearing of the jury.

23-11-11 JURY VERDICTS IN CRIMINAL CASES

After deliberation in private, the jury in criminal cases shall return to the Judge in open court a verdict of "Guilt/' or "Not Guilty' with respect to each charge the defendant faces.

23-12-01 COSTS

23-12-02 COSTS IN CRIMINAL CASES

The judgment of conviction in criminal cases shall include court costs in an amount not to exceed fifty ($50.00) dollars for jury trials and twenty-five dollars ($25.00) for bench trial, plus applicable law enforcement costs and witness service fees of twenty-five dollars ($25.00).

23-13-01 APPEALS

23-13-02 APPEALS

Upon conviction, a party hereto may file a timely appeal in accordance with Chapter 21 and any applicable rules and procedures of the SWO Supreme Court.

23-14-01 GENDER

For purposes of clarity only, male pronouns are used throughout this chapter. When such a pronoun is used, it would be just as appropriate to use a female pronoun as this chapter is equally applicable to all tribal members, regardless of gender.

23-15-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this Code shall, for any reason be adjudicated by the Tribal or Appellate Court to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof, directly involved in the controversy in which the judgment shall have been rendered.

23-16-01 CONSTRUCTION

This Code shall be interpreted and applied in a manner consistent with all other Codes, Laws, Resolutions, and Regulations of the Sisseton-Wahpeton Oyate.

23-17-01 AMENDMENT

This Code may be amended only upon an affirmative vote of a majority of the Council of the Sisseton-Wahpeton Oyate.

23-18-01 EFFECT OF HEADINGS

Headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any portion of this Code.

23-19-01 INTERPRETING DEFINITIONS

Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common useage for the Sisseton-Wahpeton Oyate and to give this Code it's most reasonable application. The words and phrases in this Part are specifically defined and shall control and prevail over any other definition.

This Code was revised and amended in 2014 (VAWA/TLOA) and condensed from two separate chapters. Formerly, the provisions contained herein were located in Chapter 22 - Proceedings Before Trial, and Chapter 23 - Trials. These sections have been condensed and revised, with some key additions, in the interest of a creating a more complete, consistent and uniform Tribal Criminal Procedure Code that will better serve the interests of justice and the people of the Sisseton-Wahpeton Oyate.

Passed: August 28, 2014
Motion No. 82
Resolution No. SWO-14-080

Sisseton Wahpeton Oyate
LAKE TRAVERSE RESERVATION
P.O. Box 509
100 Veterans Memorial Drive
Agency Village, South Dakota 57262-0509
Phone: (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. SWO-14-080

SISSETON-WAHPETON OYATE CODES OF LAW
CHAPTER 23 – CRIMINAL PROCEDURE CODE

WHEREAS, The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and

WHEREAS, The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (e) to hire employees and agents, including legal counsel, directly or as independent contractors, and to compensate them for their services; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and

WHEREAS, On July 29, 2010, the federal government enacted the Tribal Law and Order Act of 2010 (TLOA), to allow, in part, Tribal Courts to increase jail sentences imposed by Tribal Courts; and

WHEREAS, On March 7, 2013, the federal government enacted the Violence Against Women Reauthorization Act of 2013 (VAWA), which recognized the Tribes' inherent right to exercise, "special domestic violence criminal jurisdiction" (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit act of domestic violence or dating violence or violate certain protection orders in Indian Country; and

WHEREAS, The Tribal Council responded to each of these Federal Laws by directing the SWO Legal Department and entities of the Sisseton-Wahpeton Oyate to work together in implementing each of these laws (SWO-10-112, SWO-14-039); and

WHEREAS, Pursuant to the above TLOA and VAWA provisions, the Sisseton-Wahpeton Oyate (SWO) applied for and received a grant from the National Congress of American Indians (NCAI) to implement the provisions of VAWA and TLOA; and

WHEREAS, In addition, the SWO has been designated by the federal government as a voluntary "Pilot Project", in order to allow the SWO to begin the process of implementing the provisions of VAWA on an accelerated basis and in conjunction, the provisions of TLOA; and

WHEREAS, In order to implement the provisions of federal law, the SWO Judicial Committee has recommended the amendment of Chapter 23, Criminal Procedure Code to incorporate certain provisions of the federal laws and allow the SWO to exercise jurisdiction to the fullest extent possible; and

WHEREAS, The SWO Judicial Committee presented the proposed amendments to the seven (7) districts in order to solicit comments and recommendations of Chapter 23, Criminal Procedure Code and now recommends passage of the amendments.

NOW THEREFORE, BE IT RESOLVED that the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, hereby approves of the revised and amended Chapter 23, Criminal Procedure Code and all previous versions of Chapter 23, Criminal Procedure Code are hereby repealed and superseded by passage of the amended Chapter 23, Criminal Procedure Code; and

BE IT FURTHER RESOLVED that the SWO Legal Department is hereby authorized to post Chapter 23, Criminal Procedure Code on the Tribe's website for public information purposes; and

BE IT FINALLY RESOLVED that the Chairman and Secretary of the Sisseton-Wahpeton Tribal Council are hereby authorized and instructed to sign this Resolution for and on behalf of the Tribal Council.

CERTIFICATION

We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 10 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, August 28, 2014, by a vote of 17 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 28th day of August 2014.

Robert Shepherd, Tribal Chairman
Sisseton-Wahpeton Oyate

ATTEST:

Robin Quinn, Tribal Secretary
Sisseton-Wahpeton Oyate