SISSETON-WAHPETON OYATE

CODES OF LAW

CHAPTER 36—Alcohol and Drug Treatment Act

36-01-01 TITLE

This Chapter may be cited as the "Alcohol and Drug Abuse Treatment Act."

36-02-01 PURPOSE

The Sisseton-Wahpeton Oyate Tribal Council in order to prevent Alcohol and Drug Abuse declares:

1. Alcoholism and drug abuse are major health and social problems afflicting an alarmingly high percentage of the members of the Tribe; whereas treating it as a health problem permits early detection and prevention of alcoholism and drug abuse and effective treatment and rehabilitation relieves policy and other law enforcement agencies of an inappropriate burden that impedes their important work and better serves the interest of the public;

2. Alcohol and drug related offenses cost the Tribe and its members great human suffering in deaths injuries, suicide, sickness, crime, domestic violence, child abuse, neglect, incest, abandonment, and delinquency;

3. Alcohol and drug related offenses cost the Tribe and its member great economic loss.

4. Alcohol and drug related offenses seriously threatens the social and economic stability and security of the Tribe and many families;

5. Alcoholism and drug abuse are illnesses which require treatment and rehabilitation through the coordinated efforts of community health and social services, law enforcement agencies, employers, and concerned individuals; and

6. Alcohol and drug abuse presents a need for prevention and intervention programs designed to reach the members of the Tribe who are alcohol and drug abusers.

36-03-01 DEFINITION OF TERMS

Terms used in this chapter, shall mean the following:

36-03-02 Alcoholic – is a person who suffers the chronic progressive and potentially fatal disease of alcoholism, as characterized by tolerance, physical dependence, pathological, organic changes or both; all of which are the direct or indirect consequences of alcoholism.

36-03-03 Director – shall mean the Director of the Alcohol Program.

36-03-04 Alcohol Program – is the Tribal Alcohol Program.

36-03-05 Incapacitated by Alcohol or Drugs – means that a person, as a result of the use of alcohol or one or more other drugs is unconscious or has his judgement impaired so that he is incapable of making a rational decision in respect to a need for treatment.

36-03-06 Intoxicated Person – is a person whose mental or physical state is substantially impaired by the use of alcohol or drugs.

36-03-07 Treatment – shall mean the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, or vocational rehabilitation and career counseling which may be extended to alcohol or drug abusers.

36-04-01 DEVELOPMENT OF PROGRAMS
The Alcohol Program shall develop plans and programs for the prevention and treatment of alcoholism and drug abuse in cooperation with Tribal, State and national agencies.

36-05-01 STATISTICAL DATA
The Alcohol Program shall keep statistical information, on number of persons treated, frequency of admission and readmission, and duration of treatment.

36-06-01 CONTRACTS FOR USE OF PUBLIC TREATMENT FACILITIES
The Alcohol Program may contract, subject to the approval of the Tribal Council, any contracts necessary or incidental to the performance of its duties and the execution of its powers, with public, private, and Tribal agencies, for treatment services rendered.

36-07-01 RULES AND POLICIES FOR TREATMENT
The Alcohol Program shall adopt rules for the treatment of persons in the program.

36-08-01 APPLICATION FOR VOLUNTARY TREATMENT
Any person may apply for voluntary treatment directly to the Alcohol Program or other treatment facility.

36-08-02 A person who voluntarily admits him/her self for treatment must comply with all established procedures.

36-09-01 **PROTECTIVE CUSTODY**
Any person intoxicated or who appears to be in need of help in a public or private place shall be taken into protective custody by the police and taken to the Tribal detention center of a private facility. If the person is intoxicated, they should be held not less than twelve (12) hours and not more than seventy-two (72) hours after which time they shall be released upon recommendation by an alcohol counselor, or

36-09-02 Any person picked up the fifth time within one year under protective custody shall be brought before the court under Section 36-13-01, and transferred to an appropriate health care facility for proper treatment, at the time specified by the court.

36-09-03 Any pregnant woman using alcohol shall be brought before the Court under Section 36-13-01, and committed to an appropriate treatment facility, at the time specified by the Court.

36-09-04 Failure to comply with Section 36-09-02 above shall be grounds for the accused to be charged with disobedience to the lawful orders of the court which carries a maximum penalty of a one hundred and twenty dollar ($120.00) fine and three (3) months in jail.

36-10-01 **PROTECTIVE CUSTODY NOT AN ARREST**
Protective custody under this section is not an arrest. Except in the case of a pregnant mother, she may be arrested for offenses of abuse or neglect of her unborn child.

36-10-02 Pregnant Mothers: any pregnant mother who is arrested, charged, or convicted of an offense of abuse or neglect involving her unborn child shall be placed under the protective custody of the Tribal Court for placement in detox, treatment, or other appropriate facility. The protective custody shall be a mandatory six month period or until birth of the child. If the pregnant mother is not convicted there shall be no additional protective custody enforced.

36-11-01 **PROTECTIVE CUSTODY PROCEDURE**
The police shall notify the Alcohol Program promptly when a person is taken into protective custody. Upon notification, the Alcohol Program shall, within twelve (12) hours, determine when a person in Protective Custody shall be released.

36-12-01 **POLICE NOT CRIMINALLY OR CIVILLY LIABLE**

The police when in compliance with this chapter acting in the course of their official duty shall not be subject to criminal or civil liability.

36-13-01 TREATMENT PETITION

Proceedings for the involuntary treatment of a person in need or treatment may be started by any person eighteen (18) years or older by supplying necessary information alleging that the person is incapacitated by alcohol and/or drugs. The petition shall contain the following:

1. Name, address, age of petitioner.

2. Name, address, age, marital status and occupation of the person in need of treatment.

3. Names, addresses, enrollments, and relationships, of the person's nearest relatives, or of a friend.

4. The allegations shall include statements by the petitioner, statements by the Tribal Police or other persons having knowledge of that person's drug and/or alcohol abuse, and a statement of the person's condition, and other information to support the need for treatment.

36-14-01 REVIEW OF THE PETITION

The court shall review the petition to determine if it meets the requirements of Section 36-13-01. The court shall determine whether the petition establishes probable cause to believe that the respondent meets the criteria of a person requiring treatment, as defined in Section 36-13-01, subsection 4.

1. If probable cause is established, the court shall order a suitable person(s) to submit written background report upon which the petition is based.

2. If probable cause is not established, the petition shall be dismissed.

36-15-01 APPOINTMENT OF COUNSEL

If the person cannot employ his own counsel, suitable counsel shall be appointed by the Tribal Judge. Assignment of counsel shall be made within twelve (12) hours prior to the hearing or immediately in the case of a person requiring emergency treatment.

36-16-01 IMMEDIATE APPREHENSION OF PERSON REQUIRING TREATMENT

After reviewing the petition for treatment and if probable cause is shown, the court shall enter an order for immediate apprehension and detention of respondent

for the purposes of examination if a certificate of examination does not accompany petition, and for respondent's presence at the hearing. The person may be detained at an appropriate facility no longer than seventy-two (72) hours, excluding Saturdays, Sundays and holidays if evaluation services are not available on those days.

36-17-01 CERTIFICATE OF EXAMINATION

A certificate of examination shall be attached to the petition, or if none is attached, a statement shall be included in the petition why one could not be obtained. The certificate of examination of the individual requiring treatment and shall be conducted by a physician within seventy-two (72) hours after apprehension of respondent in the case of respondent requiring Emergency Treatment. It shall contain the following information:

1. Evaluation of the respondent's physical and mental condition.

2. Conclusion as to whether the respondent meets the criteria of a person requiring treatment with a clear explanation of how that conclusion was derived.

3. Signature of the examining physician.

4. A record of all drugs, medication or other treatment prescribed within the seventy-two (72) hour period.

36-18-01 NOTICE OF HEARING

Upon filing the petition, accompanied by the certificate of examination, the Clerk of Courts shall set the time and date for the hearing no longer than five (5) days after the petition is filed. A copy of the petition, certification of examination, and summons, shall be personally serve upon the respondent, a notice of hearing, along with a copy of the petition, and certificate of examination shall be issued to the petitioner and to the respondents relatives named in the petition. Summons shall, also include the respondent's right to have witnesses appear and testify on his behalf or other documentation he/she have to support his/her case.

36-19-01 EXAMINATION BY THE COURT

In the event the respondent upon receiving notice of the hearing refuses to be examined by a qualified mental health professional or a physician, the court may issue a warrant and detain the person at a facility it may designate as long as is necessary to complete the examination, and hold a hearing, but in no event longer than seventy-two (72) hours, excluding Saturdays, Sundays and holidays, if, evaluation services are not available on those days.

36-20-01 **PRECAUTIONS AGAINST DRUGS HAMPERING DEFENSE**
After an examination, the examining mental health professional physician shall transmit a certificate to the court and personally appear at the hearing. The alleged mentally ill person has the right to obtain an additional examination at his own expense, which may be placed in evidence before the Court.

36-21-01 If personal service cannot be made on respondent, the summons shall be published for _3_ weeks(s).

36-22-01 If, after personal service has been made on respondent, or after the expiration of the publication period, respondent fails and refuses to appear for the hearing, the court shall issue a Bench Warrant to show cause, why he/she should not be held in Contempt of Court.

36-23-01 **PRESENCE OF RESPONDENT AT THE HEARING**
The person requiring treatment shall be present at all hearings with counsel.

36-24-01 **CLEAR AND CONVINCING EVIDENCE REQUIRED**
If the court finds by clear and convincing evidence that the respondent is in need of treatment, in order to prevent respondent from endangering himself or others the court may order him/her to undergo appropriate treatment. The person committed shall complete the full cycle of treatment at the designated facility.

36-25-01 **RECORDS TO BE CONFIDENTIAL**
All records and information of persons committed to treatment shall remain confidential and privileged except to the person committed. Any breach of confidentiality shall be grounds for possible termination of employment.

36-26-01 **NO WAIVER OF IMMUNITY**
Nothing in this Code shall be construed as a waiver of sovereign immunity for the Sisseton-Wahpeton Oyate, its departments, agencies, entities, employees, or agents.

36-27-01 **SEVERABILITY**
If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by the Tribal Court or Tribal 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.

36-28-01 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.

36-29-01 AMENDMENT

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

36-30-01 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.

36-31-01 INTERPRETING DEFINITIONS

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

Legislative History: