SISSETON-WAHPETON OYATE

CODES OF LAW

CHAPTER 52 – Domestic Violence Ordinance

TITLE I - GENERAL PROVISIONS

52-01-01 Title.

This Ordinance shall be known and may be commonly cited as the Sisseton-Wahpeton Oyate (SWO) Domestic Violence Ordinance.

52-01-02 Purpose and intent.

The SWO Domestic Violence Ordinance is construed to promote the following:

1. That violence against intimate spouses and partners and/or family members is not in keeping with traditional Dakota values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The goal of this ordinance is to provide victims of domestic violence with safety and protection.

2. It is also the goal to be consistent with traditional Dakota values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Dakota values that hold women and children as sacred. These consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior and understand "WoDakota", i.e., an understanding of what it is to be Dakota or way of life.

3. The prevention of future violence among all intimate spouses and partners and/or families through prevention and public education programs that promote cultural teachings and traditional Dakota values so as to nurture non-violence within Dakota family and respect for Dakota men and women.

4. The purpose of this Chapter is to recognize domestic violence as a serious crime against our society and to assure the victim of domestic violence the maximum

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protection from violence which the law and those who enforce the law can provide. It is the intent of the Sisseton-Wahpeton Oyate Tribal Council that the official response to cases of domestic violence shall be that violent behavior is not to be excused or tolerated, whether or not the offender is intoxicated. Furthermore, it the intent of the Tribal Council that criminal laws be enforced without regard to whether the persons involved are family members, were or are married, cohabiting or involved in a relationship. It is also the intent of the Tribal Council that the Elders of this tribe be cherished and protected according to the traditions of the tribe.

52-01-03 Scope.

Authority of the Sisseton-Wahpeton Oyate to regulate domestic violence in its jurisdictional territory.

1. By treaty, the Sisseton-Wahpeton Oyate has the right to exclude non-members as well as an inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.

2. The problem of domestic violence within the boundaries of the Sisseton-Wahpeton Oyate is seriously impacting the ability of the tribe to provide for the health and well-being of its tribal members and threatens the political integrity of the Oyate.

3. Domestic violence is also perpetrated by or against persons who are not members of the Sisseton-Wahpeton Oyate. These activities of non-members and non-Indians, who have entered into consensual relations with tribal members, will be regulated under this ordinance just as the activities of tribal members.

4. The Sisseton-Wahpeton Oyate shall exercise criminal jurisdiction over non-Indian domestic violence offenders pursuant to: 1) its inherent authority to protect members from conduct that threatens and/or has a direct effect on their health and/or welfare, and 2) the Violence Against Women Reauthorization Act, which recognizes and affirms Tribes' inherent authority to exercise special domestic violence criminal jurisdiction over non-Indian offenders; see Chapter 20 (Jurisdiction).

52-01-04 Definitions.

Unless the context otherwise requires, as used in the SWO Domestic Violence Ordinance:

1. "**Bodily Injury**" means physical pain, illness, or an impairment of physical condition.

2. "**Causing Apprehension of Bodily Injury**" means any physical act which is intended to cause another person to reasonably fear imminent serious bodily injury or death.

3. "**Corroborating conduct**" means any admissible evidence of: harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, all forms of electronic communication (texts, emails, Facebook messages, etc.), or any other information, which would indicate a willful pattern of conduct or threat.

4. "**Credible Threat**" means a verbal or written threat, or a threat demonstrated by a pattern of conduct, or combination of such verbal/written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of his or her safety. The main criteria for establishing a credible threat is the victim's perception of a threat to his or her safety. The second criterion is the apparent ability of the defendant to carry out the threat, whether verbal, written, or implied through a willful pattern of conduct.

5. "**Dating Violence**" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, and the frequency of interaction between the persons involved in the relationship.

6. "**Domestic Violence**" means the occurrence of one or more of the following acts by a family or household member, a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or a person similarly situated to a spouse of the victim under the domestic - or family - violence laws of the Sisseton-Wahpeton Oyate:

a. Attempting to cause or causing bodily injury to the victim;
b. Placing the victim in fear or apprehension of bodily injury;
c. Causing the victim to engage involuntarily in sexual activity by force, threat of force, or duress.

This list will exclude any acts of self-defense.

7. "**Harass**" means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person. Harassing behavior can include but is not limited to:
    a. Vandalism, defined as willful or malicious destruction of private property;
    b. Annoying or threatening telephone calls, text messages, emails, or any other forms of electronic messages or communication;
    c. Following the victim or other violations of an order for protection;
    d. Actual assaults;
    e. Sending unwanted letters;
    f. Sending unwanted messages or threats through third parties;
    g. Showing up at a victim's home or workplace;
    h. Attempting to obtain private information about the victim through others;
    i. Leaving gifts for the victim;
    j. Disabling or otherwise tampering with the victim's vehicle;
    k. Taking mail from the victim's mailbox;
    l. Entering the victim's home or place of residence, whether the victim is there or not there;
    m. Parking near or driving by the victim's residence or workplace for no legitimate reason; and
    n. Using agencies or institutions that constitutes a pattern of conduct consistent with retaliation by initiating investigations, restrictions or sanctions against the victim.

8. "**Intimate spouses and partners and/or family or household members**" includes:
    a. Current or former spouses;
    b. Adults or minors who are dating or who have dated;
    c. Those who are engaged in or who have engaged in a sexual relationship;

d. Adults or minors who are related or formerly related by marriage as recognized by non-Indian or Dakota tradition;
e. Persons who reside together, or formerly resided together, in the same residence;
f. Persons who have a child in common; and
g. Minor children, including unborn children, of a person in a relationship that is described in paragraphs (a) through (f).

9. "**Juvenile**" means a person who has not yet attained his/her eighteenth birthday.

10. "**Pattern of conduct**" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e. to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer emotional distress or fear.

11. "**Program Advocate**" means an employee of or volunteer for a program for victims of domestic violence who:
    a. Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;
    b. Has undergone a minimum of 40 hours of training; and
    c. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

12. "**Program of intervention for offenders**" means a specialized program that accepts Court orders and voluntary participants that:
    a. Offers a domestic violence class;
    b. May utilize historical/cultural information in re-educating offenders of domestic violence regarding responsible Dakota behavior in the family/community/nation;
    c. May make available and integrate the specialized function, knowledge and expertise of elders and medicine people;

13. "**Program for victims of domestic violence**" means a specialized program for victims for domestic violence and their children that includes, but is not limited to: advocacy, shelter, crisis intervention, supportive services, referral, and may make available the specialized knowledge and expertise of elders and medicine people.

14. "**Protection Order**" as a term, means any injunction, restraining order, or other order issued by a civil or criminal Court for the purpose of preventing:
    a. violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
    b. Includes any temporary or final order issued by a civil or criminal Court, whether obtained by filing an independent action or as an order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

15. "**Safety plan**" means a written or oral outline of actions to be taken by a victim of domestic violence to secure protection and support after making an assessment of the dangerousness of the situation.

16. "**Special domestic violence criminal jurisdiction**" as defined in Chapter 20, Section 20-03-01 of the Sisseton-Wahpeton Oyate Codes of Law.

17. "**Spouse or intimate partner**" means:
    a. a spouse or former spouse of the offender, a person who shares a child in common with the offender, and/or a person who cohabitates or has cohabitated as a spouse with the offender; or
    b. a person who is of has been in a social relationship of a romantic or intimate nature with the offender, as determined by the Court to include: length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship; or
    c. any other person similarly situated to a spouse as defined by the laws of the Tribe.

52-01-05 SPECIFIC APPLICABILITY.

The Titles herein apply specifically to this Domestic Violence Ordinance and take precedence over any general laws of applicability.

52-01-06 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.

52-01-07 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.

52-01-08 AMENDMENT

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

52-01-09 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.

52-01-10 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 Part are specifically defined and shall control and prevail over any other definition.

TITLE II- CRIMINAL PENALTIES AND PROCEDURES

52-02-01 "CRIME INVOLVING DOMESTIC VIOLENCE" DEFINED

Crimes involving domestic violence as defined in 52-01-04 are oftentimes already defined under the existing Sisseton-Wahpeton Oyate Tribal Code. The purpose of this ordinance is to clarify that domestic violence is a separate and distinct crime punishable separate and apart from other potential underlying crime/s, and to acknowledge that when the following crimes are committed against a victim and/or victims, a finding of such shall trigger the application of this ordinance. The crime of domestic violence occurs

when an offender commits one or more of the following offenses, as defined in 52-01-04, against another victim and/or victims.

The use of alcohol in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence. The fact that the offender was under the influence at the time of the offense shall not be utilized by law enforcement, prosecution, or the Court to mitigate the severity of the violence. Voluntary intoxication, which is available as a legal defense only in cases involving specific intent crimes, shall not be available as a defense to an offender, nor shall it be utilized to lessen the consequences to the offender.

52-02-02 DOMESTIC VIOLENCE SENTENCES

Whoever makes a judicial admission of, pleads guilty to, or is found guilty of an offense of domestic violence, as defined by 52-01-04, #6, shall be sentenced as follows:

1st Offense:	Class C Misdemeanor
2nd Offense:	Class A Misdemeanor
3rd Offense:	Class 1 Misdemeanor
4th Offense:	Felony

The maximum sentence for a Class C Misdemeanor shall be: Three (3) months incarceration, a fine of $400.00, or both.

The maximum sentence for a Class A Misdemeanor shall be be: Eight (8) months incarceration, a fine of $1,000.00, or both.

The maximum sentence for a Class 1 Misdemeanor shall be: One (1) year incarceration, a fine of $5,000.00, or both.

The maximum sentence for a Felony shall be: Three (3) years incarceration, a fine of $15,000.00, or both.

In determining if a person shall be sentenced as a first, second, third, or fourth offense, the Court shall review that person's Tribal Court record for the past five (5) years.

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2. The problem of domestic violence within the boundaries of the Sisseton-Wahpeton Oyate is seriously impacting the ability of the tribe to provide for the health and well-being of its tribal members and threatens the political integrity of the Oyate.

3. Domestic violence is also perpetrated by or against persons who are not members of the Sisseton-Wahpeton Oyate. These activities of non-members and non-Indians, who have entered into consensual relations with tribal members, will be regulated under this ordinance just as the activities of tribal members.

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5. "**Dating Violence**" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, and the frequency of interaction between the persons involved in the relationship.

6. "**Domestic Violence**" means the occurrence of one or more of the following acts by a family or household member, a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or a person similarly situated to a spouse of the victim under the domestic - or family - violence laws of the Sisseton-Wahpeton Oyate:

a. Attempting to cause or causing bodily injury to the victim;
b. Placing the victim in fear or apprehension of bodily injury;
c. Causing the victim to engage involuntarily in sexual activity by force, threat of force, or duress.

This list will exclude any acts of self-defense.

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    a. Vandalism, defined as willful or malicious destruction of private property;
    b. Annoying or threatening telephone calls, text messages, emails, or any other forms of electronic messages or communication;
    c. Following the victim or other violations of an order for protection;
    d. Actual assaults;
    e. Sending unwanted letters;
    f. Sending unwanted messages or threats through third parties;
    g. Showing up at a victim's home or workplace;
    h. Attempting to obtain private information about the victim through others;
    i. Leaving gifts for the victim;
    j. Disabling or otherwise tampering with the victim's vehicle;
    k. Taking mail from the victim's mailbox;
    l. Entering the victim's home or place of residence, whether the victim is there or not there;
    m. Parking near or driving by the victim's residence or workplace for no legitimate reason; and
    n. Using agencies or institutions that constitutes a pattern of conduct consistent with retaliation by initiating investigations, restrictions or sanctions against the victim.

8. "**Intimate spouses and partners and/or family or household members**" includes:
    a. Current or former spouses;
    b. Adults or minors who are dating or who have dated;
    c. Those who are engaged in or who have engaged in a sexual relationship;

d. Adults or minors who are related or formerly related by marriage as recognized by non-Indian or Dakota tradition;
e. Persons who reside together, or formerly resided together, in the same residence;
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g. Minor children, including unborn children, of a person in a relationship that is described in paragraphs (a) through (f).

9. "**Juvenile**" means a person who has not yet attained his/her eighteenth birthday.

10. "**Pattern of conduct**" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e. to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer emotional distress or fear.

11. "**Program Advocate**" means an employee of or volunteer for a program for victims of domestic violence who:
    a. Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;
    b. Has undergone a minimum of 40 hours of training; and
    c. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

12. "**Program of intervention for offenders**" means a specialized program that accepts Court orders and voluntary participants that:
    a. Offers a domestic violence class;
    b. May utilize historical/cultural information in re-educating offenders of domestic violence regarding responsible Dakota behavior in the family/community/nation;
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13. "**Program for victims of domestic violence**" means a specialized program for victims for domestic violence and their children that includes, but is not limited to: advocacy, shelter, crisis intervention, supportive services, referral, and may make available the specialized knowledge and expertise of elders and medicine people.

14. "**Protection Order**" as a term, means any injunction, restraining order, or other order issued by a civil or criminal Court for the purpose of preventing:
    a. violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
    b. Includes any temporary or final order issued by a civil or criminal Court, whether obtained by filing an independent action or as an order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

15. "**Safety plan**" means a written or oral outline of actions to be taken by a victim of domestic violence to secure protection and support after making an assessment of the dangerousness of the situation.

16. "**Special domestic violence criminal jurisdiction**" as defined in Chapter 20, Section 20-03-01 of the Sisseton-Wahpeton Oyate Codes of Law.

17. "**Spouse or intimate partner**" means:
    a. a spouse or former spouse of the offender, a person who shares a child in common with the offender, and/or a person who cohabitates or has cohabitated as a spouse with the offender; or
    b. a person who is of has been in a social relationship of a romantic or intimate nature with the offender, as determined by the Court to include: length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship; or
    c. any other person similarly situated to a spouse as defined by the laws of the Tribe.

52-01-05 SPECIFIC APPLICABILITY.

The Titles herein apply specifically to this Domestic Violence Ordinance and take precedence over any general laws of applicability.

52-01-06 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.

52-01-07 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.

52-01-08 AMENDMENT

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

52-01-09 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.

52-01-10 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 Part are specifically defined and shall control and prevail over any other definition.

TITLE II- CRIMINAL PENALTIES AND PROCEDURES

52-02-01 "CRIME INVOLVING DOMESTIC VIOLENCE" DEFINED

Crimes involving domestic violence as defined in 52-01-04 are oftentimes already defined under the existing Sisseton-Wahpeton Oyate Tribal Code. The purpose of this ordinance is to clarify that domestic violence is a separate and distinct crime punishable separate and apart from other potential underlying crime/s, and to acknowledge that when the following crimes are committed against a victim and/or victims, a finding of such shall trigger the application of this ordinance. The crime of domestic violence occurs

when an offender commits one or more of the following offenses, as defined in 52-01-04, against another victim and/or victims.

The use of alcohol in the committing of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take precedence over the crime of domestic violence. The fact that the offender was under the influence at the time of the offense shall not be utilized by law enforcement, prosecution, or the Court to mitigate the severity of the violence. Voluntary intoxication, which is available as a legal defense only in cases involving specific intent crimes, shall not be available as a defense to an offender, nor shall it be utilized to lessen the consequences to the offender.

52-02-02 DOMESTIC VIOLENCE SENTENCES

Whoever makes a judicial admission of, pleads guilty to, or is found guilty of an offense of domestic violence, as defined by 52-01-04, #6, shall be sentenced as follows:

1st Offense:	Class C Misdemeanor
2nd Offense:	Class A Misdemeanor
3rd Offense:	Class 1 Misdemeanor
4th Offense:	Felony

The maximum sentence for a Class C Misdemeanor shall be: Three (3) months incarceration, a fine of $400.00, or both.

The maximum sentence for a Class A Misdemeanor shall be be: Eight (8) months incarceration, a fine of $1,000.00, or both.

The maximum sentence for a Class 1 Misdemeanor shall be: One (1) year incarceration, a fine of $5,000.00, or both.

The maximum sentence for a Felony shall be: Three (3) years incarceration, a fine of $15,000.00, or both.

In determining if a person shall be sentenced as a first, second, third, or fourth offense, the Court shall review that person's Tribal Court record for the past five (5) years.

In addition to the penalties stated above, any person convicted of domestic violence in violation of this Ordinance shall be ordered by the Court to complete an assessment with a program of intervention for offenders and comply with the recommendations of that assessment (attendance and completion of domestic violence classes, etc.).

Further, the Court may, in its discretion, order additional mandatory evaluation and counseling which includes, but is not limited to: alcohol/drug violence counseling, anger control, and family counseling.

52-02-03 ROLE OF THE COURT; SENTENCING; PROBATION CONDITIONS

In responding to the crime of domestic violence the Court shall:

1. 1st Offense: If the alleged offender pleads guilty, no contest or is found guilty, the judge shall order a mandatory minimum ten (10) days in jail and completion of a program of intervention for offenders and two years probation.

2. The offender is prohibited from substituting other services or activities such as individual counseling, alcohol treatment or participation in traditional healing practices for participation in a program as defined in 52-01-04 except when such activities may be offered through a program of intervention for offenders or sought out voluntarily in addition to the required program of intervention for offenders by the offender.

3. In the event the offender does not comply with the program of intervention for offenders and/or other conditions of probation, the Court will find the offender in contempt of Court and shall impose service of the original sentence during which time the offender must concurrently attend the program of intervention for offenders. Further, the Court will order that any resulting contempt of Court sentence be served consecutively.

4. Upon any second or subsequent offense, the offender shall be sentenced in accordance with 52-02-02. Prior probation time will not be considered as fulfilling any second or subsequent probationary period and/or any maximum sentencing, fine, rehabilitation, and community service remedies available to the Court. An offender shall participate in the program concurrent with any jail and fine sentences imposed by the Court.

5. The Court will advise the defendant when and where s/he will report to the Sisseton-Wahpeton Oyate Tribal Court probation office.

6. The victim is not available to the Court for any sentencing or Court-imposed requirements in relation to the offender's sentence for the crime of domestic violence although the Court may advise the victim of services available in the community through direct contact, the prosecution or probation office and program advocates.

7. Domestic violence offenders found to be in noncompliance will serve their full sentence and shall be subject to all rehabilitation efforts available to any offender on probation outlining the rehabilitation activity recommended for the offender, the offender shall fulfill the remaining sentence upon completion of the rehabilitation activity.. The probation officer shall petition the Court for release

8. While on probation an offender shall be subject to unannounced portable breath or intoxilyzer tests to determine whether the probationer has been consuming alcoholic beverages.

52-02-04 LOCATION OF OFFENDER NOT BAR TO PROSECUTION

1. The location of the threatening action by the offender, either directly or through a third party, as corroborated through telephone records, postmarks, or order/delivery records, and/or witnesses as being outside the boundaries of the Lake Traverse Reservation, will not bar prosecution under this section. The act is considered to be a credible threat when full transmittal of the threat has been completed to the victim, when said victim is within the jurisdiction of the Sisseton-Wahpeton Oyate.

2. Corroborated initial or intervening acts, used to establish a pattern of conduct for the purpose of probable cause under this section, but which occurred outside the boundaries of the Lake Traverse Reservation, may be used to establish and corroborate said pattern for prosecution of a violation under this section. However, initial or intervening acts occurring outside the jurisdiction of the Sisseton-Wahpeton Oyate are not prosecutable as separate offenses under this section.

3. The present incarceration of the person making the threat shall not bar prosecution under this section.

52-02-05 VIOLATION OF CERTAIN ORDERS FOR PROTECTION IS A MISDEMEANOR

Violation of one of the following orders, issued as a part of a valid protection order in accordance with the SWO Domestic Violence Ordinance or in accordance with the laws of any other jurisdiction provided such laws comply with 18 U.S.C. 2265 (Full Faith and Credit), is a Class 1 misdemeanor.

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member.

2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating verbally or in writing with the petitioner directly or indirectly through family members, relations by marriage, friends, and co-workers.

3. An order removing and excluding the respondent from the residence of the petitioner.

4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member.

5. An order granting temporary custody and child support regarding children, denying visitation or outlining specific visitation conditions and restrictions, including supervised visitation.

6. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

7. An order requiring the respondent to attend a program of intervention for offenders;

8. An order requiring the respondent to obey all laws of the Sisseton-Wahpeton Oyate.

The petitioner who is granted an order for protection cannot violate or be arrested for a violation of her/his own order for protection.

Any person granted a civil or criminal order of protection from the Sisseton-Wahpeton Oyate Court or any other Court of competent jurisdiction cannot be punished for a violation of that order for protection under this ordinance. It shall not be a defense to a charge of violation of an order for protection under this section that the victim consented to the violation by encouraging contact or a violation of the order of protection.

A violation of an order for protection shall be a Class 1 misdemeanor.

52-02-06 DUTIES OF LAW ENFORCEMENT OFFICER TO VICTIM OF DOMESTIC VIOLENCE; REQUIRED NOTICE TO VICTIM

1. A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and has a duty to arrest an offender upon finding probable cause to believe that domestic violence has occurred. A law enforcement officer need not obtain a search warrant in order to enter a residence where the officer has probable cause to believe a crime of domestic violence is occurring or has just occurred, nor to seize property under this subsection. All reasonable means to protect the victim(s) includes but is not limited to:

    a. Taking the action necessary to provide for the safety of the victim and any family or household member.
    b. Confiscating any weapon involved in the alleged domestic violence.
    c. Transporting or obtaining transportation for the victim and any child(ren) to a shelter or any other place of safety.
    d. Assisting the victim in removing essential personal effects.
    e. Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility.
    f. Giving the victim immediate and adequate notice of the rights of victims and or the remedies and services available to victims of domestic violence.

2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give, in addition to verbal notification, written notice to the adult victim substantially as follows:

If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection that will provide for your immediate protection. You may also request that the officer assist you in obtaining your essential personal effects and taking you to a safe place, including but not limited to a shelter, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the incident report at no cost from the law enforcement department.

Please be advised that the prosecutor may choose to file a criminal complaint against your assailant. You also have the right to file a petition requesting a permanent order for protection from domestic violence which could include any of the following orders:

a. An order enjoining your abuser from threatening to commit or committing further acts of domestic violence;
b. An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly through family members, relations by marriage, friends, and co-workers.
c. An order removing your abuser from the residence regardless of ownership;
d. An order directing your abuser to stay away from you or any other designated household/family member's place of residence, school, place of employment, or any other specified place frequented by you.
e. An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court;
f. An order granting you possession and use of the automobile and other essential personal effects regardless of ownership;
g. An order granting you custody of your child or children;
h. An order denying your abuser visitation;
i. An order specifying arrangements for visitation, including requiring supervised visitation; and
j. An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, Court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from programs for victims of domestic violence, tribal advocates and/or the clerk of Court. The community services available to assist you in obtaining information relating to domestic violence,

treatment of injuries, and places of safety and shelter are program/s for victims of domestic violence and the tribal Court. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done through tribal Court.

3. The written notice:
    a. Must not include the addresses or locations of programs for victims of domestic violence.
    b. Must be provided in the Dakota language or, if practicable, the native language of the victim, when the native language of the victim is not English.

4. Any law enforcement officer who enforces this section in good faith shall be immune from suit by any person alleging a violation of this subsection or any other section of tribal law.

52-02-07 MANDATORY ARREST FOR CRIMES INVOLVING DOMESTIC VIOLENCE; DETERMINATION OF PREDOMINATE AGGRESSOR; REQUIRED REPORT

1. A law enforcement officer shall arrest any person, with or without a warrant, whom s/he has probable cause to believe committed any crime involving domestic violence as defined in 52-01-04, either in the presence of the officer or within 24 hours of a report to law enforcement of the commission of such offense, whether the offense is a felony or a misdemeanor.

2. The officer shall promptly file a detailed report of the circumstances of the arrest, including statements from the victim and other witnesses.

3. The perpetrator offender and victim shall not communicate in cases of domestic violence pending arraignment.

4. Whenever a law enforcement officer makes a warrantless arrest for a domestic violence offense, the offender shall be held without bail, in the custody of Sisseton-Wahpeton Oyate Law Enforcement, for a mandatory 24 to 72 hour hold. However, the presiding tribal judge or magistrate shall review the basis

for the arrest to assure that probable cause existed. If the presiding judge determines that probable cause did not exist, the defendant shall be released.

5. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the other person alleged to have committed domestic violence. In determining whether a person is the predominate aggressor, the officer shall consider:

    a. The intent to protect victims of domestic violence under this ordinance;
    b. The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
    c. The relative severity of the injuries inflicted on each person, i.e., who in this relationship poses the most danger to the other?
    d. The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
    e. Whether one of the persons acts in self-defense and/or in defense of others;
    f. The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or a third party.

6. A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.

7. A law enforcement officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence has been committed.

8. The employment, economic, educational, social, physical and/or mental health and political status of the alleged offender and/or victim shall not be considered in making an arrest.

9. The law enforcement officer is not required to make an arrest based on who hit who first but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to arrest.

10. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two or more persons for a crime involving domestic violence must submit a written report with his or her supervisor setting forth the grounds for not arresting or, in instances where both parties are arrested, separate reports for each party must be submitted that describe how the determination was made that both parties acted as predominant aggressors and that neither party acted primarily in self-defense.

11. Any reports shall be forwarded to an appropriate program/s for victims of domestic violence within 48 hours of reports of domestic violence, regardless of whether or not an arrest was made, arrests were made of two or more persons, or a predominate aggressor was identified and arrested.

52-02-08 MANDATORY ARREST FOR CERTAIN VIOLATIONS OF ORDERS FOR PROTECTION

When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the Court listed below and verifies the existence of the order, the officer shall, without a warrant, arrest the apparent violator whether the violation was committed in or outside the presence of the officer if the orders are issued in accordance with SWO Domestic Violence Ordinance, or in accordance with the laws of any other jurisdiction provided such laws comply with 18 U.S.C. 2265 (Full Faith and Credit). An officer making an arrest under this subsection shall be immune from suit provided s/he acted in good faith:

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household member; and/or

2. An order prohibiting the respondent from harassing, annoying, telephoning, text messaging, emailing, sending other forms of electronic messages, contacting or otherwise communicating with the petitioner, either directly or indirectly through family, relations by marriage, friends, and co-workers; and/or

3. An order removing and excluding the respondent from the residence of the petitioner; and/or

4. An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member; and/or

5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court; and/or

6. An order requiring the respondent to attend a program of intervention for offenders; and/or

7. An order requiring the respondent to abide by all laws of the Sisseton-Wahpeton Oyate.

The petitioner who is granted an order for protection cannot violate or be arrested for violation of her/his own order for protection.

52-02-09 OFFICIALS WHO BATTER, INCLUDING LAW ENFORCEMENT OFFICERS; PROCEDURE

Upon receiving notification that a law enforcement officer is a possible offender:

1. The dispatcher shall immediately notify the Chief and a duty supervisor or designate. The supervisor will either respond to the call or will notify the officer's supervisor.
2. Line officers may secure the scene and ensure the safety of all parties, if necessary, and await the response of a superior. However, under no circumstances will line officers investigate calls regarding other line officers or superior officers.
3. Someone of higher rank than the alleged offender must always be involved in responding.

Upon receiving notification that a public official is a possible offender: the dispatcher shall notify the on-call criminal investigator or designate who shall respond immediately.

Law enforcement officers and public officials who are suspected of committing the crime of domestic violence shall be subject to all provisions of the SWO Domestic Violence Ordinance, including mandatory arrest for probable cause and all laws involving firearms disqualification herein.

52-02-10 AUTHORITY OF LAW ENFORCEMENT OFFICER TO SEIZE WEAPONS

Incident to an arrest, or in the course of securing a crime scene involving domestic violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense.

2. Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to confiscation when officers conclude that the weapon must be confiscated to protect law enforcement, victims of domestic violence, or others.

52-02-11 IMMUNITY

1. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests based on probable cause, enforcement in good faith of a Court order, or exercising any other authority granted it under this section when domestic violence or any crimes involving domestic violence have been committed, if the law enforcement officer acts in good faith so as to provide protection for victims of domestic violence.

2. Law enforcement officers shall have the same immunity with respect to participation in any Court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

52-02-12 CONDITIONS OF PRE-TRIAL RELEASE

No person arrested for a crime of domestic violence or violation of an order for protection under this ordinance shall be released from detention until after the expiration of 24 to 72 hours from arrest, notwithstanding the ability to post cash or surety bond or the failure of the prosecutor to file a criminal complaint.

In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of an order for

protection, the Court may ask for a pretrial investigation and, regardless of whether or not any such investigation report and recommendations are asked for, the Court shall review the facts of arrest and detention of the person and determine whether the person:

1. Is a threat to the alleged -victim or other family or household member.
2. Is a threat to public safety, and;
3. Is reasonably likely to appear in Court.

The use or abuse of alcohol and/or other chemicals by the alleged offender shall be considered, not only in relationship to the alleged assault but as alcohol and/or other chemicals relate to the alleged offender's overall lifestyle, in the likelihood that alcohol and/or other chemicals greatly increases the likeliness or unlikeliness of a person to appear in Court, potential for lethality, and enhances the possibility of further threats or injury to the victim or others.

The employment, economic, educational, social and political status of the alleged offender shall not be considered in making a determination regarding release.

Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of an order for protection, the Court shall make findings on the record, if possible, concerning the determination as to any threat to the victim of domestic violence or other family or household member and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent Court proceeding. The conditions may include:

1. An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household member.

2. An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends, or co-workers.

3. An order directing the person to vacate or stay away from the home of the alleged victim and/or child(ren) and to stay away from any location where the victim and/or child(ren) is likely to be.

4. An order prohibiting the person from using or possessing a firearm or other weapon specified by the Court.

5. An order prohibiting the person from possession or consumption of alcohol or controlled substances.

6. Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in Court.

If conditions of release are imposed, the Court shall:

1. Issue a written order for conditional release;
2. Immediately distribute a copy of the order to the prosecutor's office, Sisseton-Wahpeton Law Enforcement, and any involved program for victims of domestic violence, and;
3. Provide Sisseton-Wahpeton Law Enforcement with any available information concerning the location of the offender in a manner that protects the safety of the victim.

The Clerk of Courts or jail shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

When a person who is arrested for or charged with a crime involving domestic violence or a violation of an order for protection is released from custody, or has escaped from custody, the prosecutor and/or and/or the involved program for victims of domestic violence shall:

1. Use all reasonable means to immediately notify the victim of the alleged crime of the release; and
2. Furnish the victim of the alleged crime, at no cost, an official copy of any conditions of release.

The address of the victim is confidential and law enforcement and the Court are prohibited from divulging it.

52-02-13 SELF-DEFENSE: JUDICIAL SAFEGUARDS FOR VICTIMS

In the event of a dual arrest for domestic violence, the presiding judge will take judicial notice of all factors in the case, including determinants for predominate aggressor, before entering a guilty plea by an alleged offender. Indications of self-defense shall be sufficient reason for a judge to order a hearing to show cause before a proceeding with a domestic violence charge against the alleged offender. Such procedure and hearing shall take place to determine possible self defense, with or without concurrence of the prosecutor.

During such hearing to show cause, the presiding judge will entertain any pertinent information and/or expert testimony of domestic violence advocates pertaining to domestic violence or any other factors relating to the self-defense characteristics displayed in domestic violence cases.

52-02-14 MANDATORY ARREST FOR VIOLATION OF CONDITIONS OF RELEASE

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with 52-02-12, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

A sworn affidavit by a person to be protected under a domestic violence order for protection of such violation will constitute probable cause to arrest without warrant, under this section.

52-02-15 WRITTEN PROCEDURES FOR PROSECUTION OF DOMESTIC VIOLENCE CRIMES

Within 240 days following the enactment of the Domestic Violence Ordinance, the Prosecutor shall develop, adopt, and put into effect written procedures for the prosecution of domestic violence crimes to ensure the effective prosecution of domestic violence crimes, to include:

1. Mandatory "cooling off" period prior to arraignment.

2. The employment, economic educational, physical and/or mental health and political status of the alleged offender and victim shall not enter into determinations for domestic violence crimes.

3. A "no drop" policy, which prohibits victims from withdrawing, charges.

4. The prohibition of diversion, and deferred sentencing.

5. The use or abuse of alcohol by the alleged offender or victim shall not be a primary factor in determining the pursuit of domestic violence cases but shall be considered as it relates to the safety of the victim and potential lethality.

6. A process describing the utilization of program advocates during every phase of criminal justice proceedings.

7. Prosecution will not be dismiss a domestic violence case without prior consultation and review with the arresting officer and program advocate.

8. Prosecution shall expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off the reservation for safety.

9. The victim may, but shall not be required to, act as the primary witness. In instances requiring "victimless" prosecution, the prosecution is required to enlist any and all evidentiary avenues, including photographs, other witnesses, excited utterances and other law enforcement testimony, medical records, history of past abuse, etc.

10. The prosecution shall make every reasonable effort and shall include advocacy in an attempt to avoid charging victims with contempt in instances where victims refuse to testify or cooperate in the criminal justice process.

11. In recognizing domestic violence as a crime and not a relationship issue, the prosecution shall not recommend or promote any actions that require the victim to engage in any type or form of a mediation process with the alleged offender such as mediation, peace-making, alternative justice, restorative justice, family counseling, couple counseling, circle sentencing, etc.

12. Repeat offenders.

13. Any other policies and procedures that serve as reasonable efforts to ensure the protection and safety of victims of domestic violence.

52-02-16 RECORD OF DISMISSAL REQUIRED IN COURT FILE

When the Court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the Court file. The prosecutor shall indicate the specific reason why any witnesses are unavailable and the reasons the case cannot be prosecuted. Any dismissal of a complaint by the Court, for any reason other than insufficient evidence, may be appealed by the Tribe or the victim to the Sisseton-Wahpeton Oyate Appellate Court or other appellate Court competent to review the decisions of the Sisseton-Wahpeton Oyate Court.

52-02-17 DISMISSAL OF CRIMINAL CASE PROHIBITED BECAUSE CIVIL COMPROMISE REACHED

A Court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached. Evidence of a civil compromise or settlement shall not be admissible in the criminal proceeding as evidence of consciousness of guilt or innocence, or an admission against interest. It shall also not be used to impeach a victim's testimony.

52-02-18 DUTY OF PROSECUTOR TO NOTIFY AND INFORM VICTIM OF RIGHTS

1. A prosecutor shall:
    a. Make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.
        i. Release of a defendant from custody must not be delayed because of the above requirements.

    b. Notify a victim/s of domestic violence to all for their entitled rights. Notice of these rights shall be in writing. Further, for notice to be meaningful, it should be actual, timely, and written in a language in which the victim is competent. These rights include, but are not limited to:
        i. To be informed of all hearing dates and continuances;

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ii. To provide the Court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm;
iii. To be present at sentencing and address the Court;
iv. To advise the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
v. To restitution for losses sustained as a direct consequence of any criminal conduct;
vi. To apply for any available victims' compensation and to be informed of procedures for applying.

52-02-19 SECURITY AND CONFIDENTIALITY OF PROGRAMS FOR VICTIMS OF DOMESTIC VIOLENCE; RESTRICTIONS

The security and confidentiality of any program for victims of domestic violence within the jurisdiction of the Sisseton-Wahpeton Oyate shall be recognized by the Court, law enforcement, and other service agencies as existing for the safety of victims of domestic violence. Program advocates will not substantiate, verify, or deny placement information or the whereabouts of any domestic violence victim, or his/her children, under the privilege of 52-02-21.

Law enforcement officers and/or criminal investigators will contact the program for victims of domestic violence with any message for individual victims concerning investigations or victim information. Law enforcement officers will not attempt coercion, duress, or intimidation of program advocates to gain access to the program for victims of domestic violence or information on the whereabouts of any victim. Any such attempt will be considered a violation of 52-02-21 and any information gained from such an attempt will not be admissible in any tribal Court proceeding.

No judge or officer of the Sisseton-Wahpeton Oyate Court will issue or initiate any search warrant, pick-up order, summons, bench warrant or any notice of Court proceedings specifying the program for victims of domestic violence as the individual's residence and/or location. Nor shall the program for victims of domestic violence be named as a party in any Court action involving individual victims that may or may not be receiving advocacy services from the program for victims of domestic violence.

While the program for victims of domestic violence may not be named as party to any individual's Court proceedings, an individual may give permission for a program for

victims of domestic violence advocate to obtain Court paperwork on his/her behalf. Such action shall not be construed by the Court or law enforcement to mean that the program for victims of domestic violence is party to any Court proceedings, civil and/or criminal between the two parties.

52-02-20 SPOUSAL PRIVILEGES INAPPLICABLE IN CRIMINAL PROCEEDINGS INVOLVING DOMESTIC VIOLENCE

The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving domestic violence perpetrated by the other spouse:

1. The privilege of confidential communication between spouses.

2. The testimonial privilege of spouses.

52-02-21 PROGRAM ADVOCATE-VICTIM PRIVILEGE APPLICABLE IN CASES INVOLVING DOMESTIC VIOLENCE

A victim of domestic violence may refuse to disclose, and may prevent a program advocate, elder, or medicine person from disclosing, confidential oral communication between the victim and the program advocate and written records and reports concerning the victim unless the privilege is waived by the victim.

The privilege does not relieve a person from any duty imposed in the mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse or neglect.

52-02-22 RESIDENTIAL CONFINEMENT IN HOME OF VICTIM PROHIBITED; CULTURAL REMEDIES RESTRICTED

In cases involving domestic violence, the Court shall not order residential confinement for an offender in the home of the victim. Nor shall the Court order any action, even though the action might commonly be perceived by the community as a cultural remedy, that might jeopardize the safety of the victim.

52-02-23 DIVERSION PROHIBITED; DEFERRED SENTENCING PROHIBITED

The Court shall not approve a diversion or deferred sentencing recommendations for an offender of domestic violence.

52-02-24 CONDITIONS OF PROBATION FOR OFFENDER CONVICTED OF CRIME INVOLVING DOMESTIC VIOLENCE; REQUIRED REPORTS BY PROBATION DEPARTMENT

Before placing an offender who is convicted of a crime involving domestic violence on probation, the Court shall consider the safety and protection of the victim of domestic violence.

The Court may condition the granting of probation to an offender in compliance with one or more orders of the Court, including but not limited to:

1. Enjoining the offender from threatening to commit or committing acts of domestic violence against the victim or other family or household member.

2. Prohibiting the offender from harassing, annoying, telephoning, text messaging, emailing, sending other forms of electronic messages, contacting, or otherwise communicating with the victim, directly or indirectly through family, relations by marriage, friends, or coworkers.

3. Requiring the offender to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member.

4. Prohibiting the offender from possessing or consuming alcohol or controlled substances.

5. Prohibiting the offender from possessing a firearm or other specified weapon.

6. Directing the offender to surrender any weapons owned or possessed by the offender.

7. Directing the offender to participate in and complete, to the satisfaction of the Court, a program of intervention for offenders, treatment for alcohol or substance abuse, or psychiatric or psychological treatment or any other program or service deemed applicable by the domestic violence program or probation officer.

8. Directing the offender to pay restitution to the victim.

9. Directing the offender to refrain from any violations of law for the duration of his/her problem.

10. Imposing any other condition necessary to protect the victim of domestic violence and any designated family or household member or to rehabilitate the offender.

The Prosecutor shall establish policies and procedures for responding to reports of nonattendance or noncompliance by an offender with any of the conditions of probation imposed pursuant to this section.

52-02-25 RELEASE OF OFFENDER PERMITTED UNDER CERTAIN CONDITIONS; NOTICE TO VICTIM; CONFIDENTIALITY OF VICTIM'S ADDRESS

The Court may release an offender of a crime involving domestic violence only under conditions that would protect the safety of a victim of domestic violence or other family or household member.

The jailer shall notify the program for victims of domestic violence who shall notify the victim of a crime of domestic violence of the escape of the offender or of the proposed release of the offender before the date of release of the offender, if the victim has provided program for victims of domestic violence staff with an address at which s/he can be notified.

52-02-26 THE ADDRESS OF A VICTIM OF A CRIME INVOLVING DOMESTIC VIOLENCE IS CONFIDENTIAL

Law enforcement, judicial officers, probation officers, prosecutors, other Court personnel, program advocates shall not reveal any address provided pursuant to this section. Law enforcement, criminal justice personnel, judicial officers, probation officers, prosecutors, other Court personnel program advocates shall be subject to any internal policies or procedures that address breach of confidentiality and could also be subject to §24-10-14 of the Penal Code, Disobedience to the Lawful Order of the Court, or any other criminal sanctions existing within the Sisseton-Wahpeton Oyate Codes of Law.

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52-02-27 REQUIRED WRITTEN POLICIES AND PROCEDURES

Within 240 days of the enactment of the Domestic Violence Ordinance, Sisseton-Wahpeton Law Enforcement shall develop or adopt and put into effect written policies and procedures concerning:

1. The effective response of the agency to cases involving domestic violence.

2. Enforcement of all applicable Sisseton-Wahpeton Oyate statutes concerning domestic violence.

3. Protection and safety of the victims of domestic violence and other family and household members.

4. The method or process for sanctions against officers or officials who fail to follow or enforce official protocols.

5. Coordination with hospitals and programs for victims of domestic violence.

52-02-28 PROBATION VIOLATIONS, PROCESS FOR REVOCATION, CONSEQUENCES

1. The Court shall recognize the signed affidavit of the Probation Officer and accompanying documentation outlining any violation of probation conditions as probable cause to issue a warrant for the offender's arrest.

2. Upon arrest for a probation violation, the person on probation will be held, without bond. The Probation Officer shall submit a probation investigation report and make recommendations to the Court regarding further sentencing for the probation violation. Upon review of the affidavit, accompanying documentation, and recommendations, the Court will determine whether or not a violation has occurred and enact a sentence of contempt of Court. Upon such finding, the Court shall enter any suspended sentence and the probationer shall be required to concurrently attend domestic violence classes. The Court may impose any additional conditions and consider the appropriateness of additional charges for disobedience to a lawful order of the Court. Further charges shall be served consecutively.

3. A person's economic, employment, educational, social, and political status shall not be considered in this process or in any consideration of further sentencing.

4. The jail shall notify the Probation Officer of any person on probation who is arrested for any crime.

5. In the event the person who is charged with a second offense of domestic violence and/or any other charge, the Probation Officer shall file an affidavit, accompanying documents, and recommendations to the Court. A violation of probation that occurs concurrently with other charges shall follow the, same process as outlined in subsection 2 and shall not preclude the prosecution from filing additional charges.

6. The Sisseton-Wahpeton Oyate Law Enforcement shall expedite service warrants to ensure the safety of the victim and community.

52-02-29 JUVENILE OFFENDERS

Any juvenile committing domestic violence as defined in 52-01-04 shall be subject to prosecution and all other conditions outlined under the SWO Domestic Violence Ordinance. Any such proceeding shall be closed and any imposition of days shall be served in a Juvenile Detention Center or other appropriate facility.

52-02-30 ETHICS; FAMILIAL RELATIONSHIPS OF LAW ENFORCEMENT, PROSECUTION, AND JUDGES TO DEFENDANT

All public servants shall be expected to perform their duties and proceed in accordance with this code no matter what the employment, educational, social and political status of the alleged offender and/or victim. Public servants shall be held to the highest professional standards in responding to the crime of domestic violence.

In instances where law enforcement officers respond to a call involving a relative by blood or marriage, the officer shall note the relationship on the case report.

In instances where law enforcement officers have responded to a call involving a relative by blood or marriage, the supervisor reviewing the report shall review the report for accuracy and ensure that appropriate action has been taken.

A law enforcement officer who fails to respond within the appropriate legal parameters when a relative by blood or marriage is suspected of committing the crime of domestic violence shall be subject to disciplinary action as prescribed in the Sisseton-Wahpeton Law Enforcement policies.

In instances where prosecutors and judges are involved in making decisions when the alleged offender and/or victim in a domestic violence crime is a relative by blood or marriage, the prosecutor and/or judge shall refrain from prosecuting or hearing a case of the crime of domestic violence in the event the alleged offender and/or victim is a relative by blood or marriage.

Any perceived improprieties shall be referred to the Sisseton-Wahpeton Oyate Legal Department for investigation and possible disciplinary or legal action.

TITLE III - CIVIL ORDERS FOR PROTECTION

52-03-01 ELIGIBLE PETITIONERS FOR ORDER

1. A person who is or has been a victim of domestic violence may petition for an order of protection against any person who has committed an act of domestic violence as defined in Section 52-01-04.

2. A parent, guardian, or other representative may petition for an order of protection on behalf of a child, or person under their legal guardianship, against a person who commits an act of domestic violence.

52-03-02 UNIFORM FORM REQUIRED FOR PETITIONS AND ORDERS; REQUIRED STATEMENTS IN PETITIONS AND ORDERS; DUTY OF CLERK TO PROVIDE PETITIONS AND CLERICAL ASSISTANCE

1. The Sisseton-Wahpeton Oyate Tribal Court system shall:
    a. Develop and adopt uniform forms for petitions and orders, including but not limited to such orders issued pursuant to divorce, custody, protection and other domestic relations hearings; and
    b. Provide the forms to the clerk of Court authorized to issue such forms.

2. In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
3. The following statements must be printed in **bold faced type** or in CAPITAL LETTERS on any order for protection:

a. "Consequences for violation of this order for protection include:..."
b. "If so ordered by the Court, the respondent is forbidden to enter or stay at the petitioner's residence, even if invited to do so by the petitioner or any other person. In no event is the order for protection voided."

4. The clerk of Court, and/or program for victims of domestic abuse staff shall provide to a person requesting an order for protection:

   a. The form adopted pursuant to subsection 1;
   b. All other forms required for an order for protection; and
   c. Clerical assistance in filling out the forms and filing the petition.

5. Except as otherwise provided in this Code, a petition for an order for protection must be in writing, verified, and subscribed to in the manner provided by tribal law.

6. All orders for protection must be issued on the form adopted in accordance with subsection 1.

52-03-03 JURISDICTION; RESIDENCY NOT REQUIRED TO PETITION

1. The Sisseton-Wahpeton Oyate Tribal Court, pursuant to its inherent sovereign authority and 18 U.S.C. 2265, as amended by the Violence Against Women Reauthorization Act of 2013, has full civil jurisdiction to issue and enforce civil protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the jurisdiction of the Sisseton-Wahpeton Oyate. Jurisdiction shall extend to lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867 15 Stat. 505, and those lands subsequently acquired by the Sisseton-Wahpeton Oyate. The Sisseton-Wahpeton Oyate reserves the right to exceed requirements set in certain federal laws for the greatest protection of tribal members and all those who live, work, visit, or attend school within the jurisdiction of the Sisseton-Wahpeton Oyate or any land owned or operated by the Sisseton-

Wahpeton Oyate, wherever located or otherwise within the authority of the Sisseton-Wahpeton Oyate.

2. All Court proceedings in reference to the order for protection shall be carried out where the original petition for an order of protection was filed.

3. There is no minimum requirement of residency to petition for an order for protection.

52-03-04 CONTINUING DUTY TO INFORM COURT OF OTHER PROCEEDINGS; EFFECT OF OTHER PROCEEDINGS; DELAY OF RELIEF PROHIBITED; OMISSION OF PETITIONER'S ADDRESS

1. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of each proceeding for an order for protection, any civil litigation, each proceeding in family or juvenile Court, and each criminal case involving the parties, including the case name, the file number, and the tribe, county, and/or state, including federal proceedings, if that information is known by the party.
2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking relief because of the existence of a pending action between the parties.

3. A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner must provide the Court a mailing address or, in the event the petitioner is utilizing a program for victims of domestic violence, the name of a program advocate that has the knowledge to be able to contact the petitioner. If disclosure of petitioner's address is necessary to determine jurisdiction, the Court may order the disclosure to be made:

    a. After receiving the petitioner's consent;
    b. Orally and in chambers, out of the presence of the respondent and a sealed record be made; or
    c. After a hearing, if the Court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice.

52-03-05 ORDER FOR PROTECTION; MODIFICATION OF ORDERS; RELIEF AVAILABLE EX PARTE; RELIEF AVAILABLE AFTER HEARING; DUTIES OF THE COURT; DURATION OF ORDER

1. If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence has occurred or a modification of an order for protection is required, the Sisseton-Wahpeton Oyate Tribal Court may:

    a. Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner.
    b. Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.

2. The Court may grant the following relief without notice and hearing in an order for protection or a modification issued ex parte; the Court may grant the following relief in a permanent order for protection or a modification of a permanent order for protection:

    a. Enjoin the respondent from threatening to commit or committing acts of domestic violence against the petitioner and any designated family or household member;
    b. Prohibit the respondent from harassing, annoying, telephoning, texting, messaging, contacting, or otherwise communicating with the petitioner directly or indirectly through friends, relatives, or co-workers;
    c. Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
    d. Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
    e. Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the Court;
    f. Order possession of parties residence and use of or ownership of vehicle and other essential personal effects, regardless of the ownership, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

g. Prohibits the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets or property of the petitioner;
h. Grant temporary custody of any minor child(ren) to the petitioner, and
i. Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.

3. The Court may grant the following relief in an order for protection or a modification of an order after notice and hearing, whether or not the respondent appears:

    a. Grant the relief available in accordance with subsection 2.
    b. Specify arrangements for visitation of any minor child(ren) by the respondent and require supervision of that visitation by an independent third party or deny visitation if necessary to protect the safety of the petitioner or child(ren).
    c. In specifying visitation arrangements, the Court shall consider the respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use.
    d. Order the respondent to:
        i. Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child(ren),
        ii. Reimburse the petitioner or other person for any expenses associated with the domestic violence incident, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property, and
        iii. Pay any costs and fees incurred by the petitioner in bringing the action.
        iv.
4. The Court shall:

    a. Cause the order to be delivered to Sisseton-Wahpeton Law Enforcement and/or other appropriate person or agency for service;
    b. Make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;

c. Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local agencies designated by the petitioner; and
d. Transmit a copy of the order to the appropriate entity for placement in the tribal registry.

5. An order for protection issued ex parte or upon notice and hearing (protection order) or a modification of an order for protection issued ex parte or upon notice and hearing (permanent order) is effective until further order of the Court. If an ex parte order is entered, a hearing shall be scheduled within 14 days to allow the respondent to respond to the petition. It shall be noted in **bold** or CAPITAL LETTERS on the ex parte order:

THAT RESPONDENT BE ADVISED THAT IF A PERMANENT ORDER FOR PROTECTION IS GRANTED AT A HEARING, THIS EX PARTE ORDER SHALL REMAIN IN EFFECT UNTIL SERVICE IS COMPLETED OF THE PERMANENT ORDER FOR PROTECTION. THAT RESPONDENT BE ADVISED THAT IF S/HE FAILS TO APPEAR AT THE HEARING ON A PERMANENT ORDER FOR PROTECTION, THE COURT MAY GRANT THE RELIEF REQUESTED, AND BE FURTHER ADVISED THAT IF A RESPONDENT FAILS TO APPEAR, SUCH FAILURE SHALL NOT BE USED AS A DEFENSE BY THE RESPONDENT OF VIOLATION OF RIGHTS.

6. Sisseton-Wahpeton Law Enforcement, through the Chief of Police, shall provide expedited service for orders for protection.

52-03-06 REQUIRED HEARINGS; SERVICE; DUTY OF COURT WHEN ORDER FOR PROTECTION DENIED

1. Except as otherwise provided in subsection 2, if a Court issues an order for protection ex parte or a modification of an order for protection ex parte and the Court provides relief pursuant to section 52-03-05, the Court shall set a date for a permanent order for protection hearing regarding the ex parte order for protection within 14 days. If personal service cannot be completed, the Court shall notify the respondent by mail, at the last and best known address of the respondent and/or petitioner, of the date and time of the hearing for a permanent order for protection.

2. Upon approval of an ex parte order, the clerk of Court shall set a hearing date scheduled for within 14 days and immediately serve the petitioner regardless of the involvement or lack of involvement of a program advocate.

3. If applicable, the respondent shall be served upon arraignment. The clerk of Courts shall be responsible for forwarding a copy of the ex parte order to the jail for service.

4. In the event that service is not successful, the judge shall ask the petitioner, under oath at the hearing for the permanent order for protection, if s/he believes the respondent is avoiding service by concealment or otherwise, does not know his/her whereabouts or current residence. If the petitioner so states, the judge shall direct the clerk of Courts to set another hearing date within 14 days and to initiate service by mail to the last and best known address of the respondent.

5. At a second hearing for a permanent order for protection and in the event the respondent again does not appear, regardless of service, the judge shall issue a permanent order for protection if warranted and grant relief as the Court deems appropriate.

6. At a second hearing for a permanent order for protection and having made reasonable efforts to contact the respondent, and in the event the petitioner requests or the Court provides relief in accordance with section 52-03-05, concerning custody of a minor child or the petitioner requests relief pursuant to section 52-03-05, (c), or (d), such a hearing determining the above cited relief must be given precedence over all matters including older matters of the same character and involving the same petitioner and respondent.

7. In a hearing held pursuant to subsection 1 or 2 of this section:

    a. If the petitioner seeks further relief concerning an issue not outlined by the ex parte order for protection, the Court may grant the relief or continue the hearing or the petitioner may request a continuance.

8. Whether or not the respondent has been arrested or charged with domestic violence, the judge shall order the respondent to participate in a domestic violence intervention program in the event that a protection order is ordered. Further, should the Court determine that an assault has occurred or the threat of assault has occurred, the Prosecutor shall be notified. If the program receives

such a referral, then the program shall be responsible for initiating a civil contempt action should the respondent fail to comply with the program.

9. The Sisseton-Wahpeton Law Enforcement shall expedite service of permanent orders for protection. If the respondent is not able to be served in person after 30 days, the Sisseton-Wahpeton Law Enforcement shall notify the clerk of Courts and the permanent order for protection shall be mailed to the last and best known address of the respondent.

10. Any person against whom a permanent order for protection is granted, and notice was sent to the last and best known address of the respondent, may petition the Court to set aside the terms of that order for protection upon a showing by clear and convincing evidence that the respondent did not willingly and knowingly evade service and that there is a meritorious defense to the action. Upon such a showing, the Court may grant another ex parte order to protect the petitioner and schedule a hearing within 14 days.

11. If the Court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the Court shall inform the petitioner, in person or by mail, of his or her right to request a hearing upon notice to the respondent. The Court must state in the Court record why the request was denied.

52-03-07 PETITIONER CANNOT VIOLATE ORDER FOR PROTECTION

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection. Further, the petitioner cannot violate or be arrested for a violation of his or her own order of protection, ex parte or permanent.

52-03-08- DENIAL OF RELIEF PROHIBITED

The Court shall not deny a petitioner relief requested pursuant to section 52-03-05 or 52-03-06 solely because of a lapse of time between an act of domestic violence and the filing of the petition.

52-03-09 MUTUAL ORDERS FOR PROTECTION PROHIBITED

The Court shall not grant a mutual order for protection, ex parte or permanent, to opposing parties.

52-03-10 COURT-ORDERED AND COURT-REFERRED MEDIATION OF CASES INVOLVING DOMESTIC VIOLENCE PROHIBITED

The Court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, peace-making, circle sentencing, traditional Dakota ceremonies, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent, even if the petitioner has the right to refuse to participate, for resolution of the issues in a petition for an order for protection.

52-03-11 COURT COSTS AND FEES

Fees for filing and service of process must not be charged for any proceeding seeking only the relief provided in this chapter.

52-03-12 COURT RESPONSIBILITIES; NOTIFICATION OF ASSISTANCE AVAILABLE TO VICTIMS OF DOMESTIC VIOLENCE

The Court shall inform the victim of domestic violence about local services and advocacy available through programs for victims of domestic violence without regard to the victim's employment, economic, educational, mental or physical health, social, or political status.

52-03-13 ENFORCEMENT OF FOREIGN ORDERS FOR PROTECTION

1. A copy of an order for protection issued by another tribal, state, county, or other Court jurisdiction shall be given full faith and credit by Sisseton-Wahpeton Law Enforcement authorities as having the same force and effect as one issued by the Sisseton-Wahpeton-Oyate Tribal Court.

2. Law enforcement officers shall attempt to verify the existence and/or validity of any foreign order for protection. In the event that the victim does not have a copy of the order, the officer cannot verify the order or the copy is not clear enough to determine its validity, the officer should arrest the subject on an applicable violation of the Sisseton-Wahpeton Oyate Law and Order Code and shall assist the victim in obtaining verification of the order and/or explaining the

procedure for obtaining an Sisseton-Wahpeton Oyate Order for Protection. The law enforcement officer shall also offer other assistance as provided in Section 52-02-06.

3. Valid foreign orders for protection shall be upheld as to the conditions of the order whether or not those remedies or conditions are available through the Sisseton-Wahpeton Oyate Law and Order Code.

4. In accordance with this section, any violations of a foreign order for protection shall be acted upon in the same manner as if the order for protection were issued by the Sisseton-Wahpeton Oyate Tribal Court and in accordance with the Violence Against Women Reauthorization Act of 2013.

5. Law enforcement and criminal justice system personnel shall enter valid foreign orders for protection in the tribal registry.

6. Law enforcement and criminal justice system personnel shall encourage persons possessing foreign orders for protection to file the foreign order with the tribal registry and initiate comity proceedings with the Sisseton-Wahpeton Oyate Tribal Court.

7. Verified FAX copies of orders shall be recognized as valid.

52-03-14 TRIBAL REGISTRY FOR ORDERS FOR PROTECTION

1. The Sisseton-Wahpeton Oyate Tribal Court shall maintain a registry of all orders for protection issued by the Sisseton-Wahpeton Oyate Tribal Court. The clerk of Court shall provide Sisseton-Wahpeton Law Enforcement dispatch center with certified orders for protection within 24 hours after issuance.

2. The clerk of Court shall also provide the dispatch center with any modifications, revoked, withdrawn, and/or expired orders for protection.

3. The information contained in the registry is available at all times to a Court, a law enforcement agency, and programs for victims of domestic violence.

4. Verified FAX copies of orders shall be recognized.

52-04-01 PRESUMPTIONS CONCERNING CUSTODY

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence. It is irrelevant, in determining whether the presumption applies, that the domestic violence occurred in the presence or outside the presence of the child.

52-04-02 FACTORS IN DETERMINING CUSTODY AND VISITATION.

1. In addition to other factors that the Court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic violence:

    a. The Court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence.

    b. The Court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

    c. The Court shall also consider the perpetrator's overall lifestyle, including alcohol and other chemical use in determining custody and/or visitation.

2. If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

52-04-03 PRESUMPTION CONCERNING RESIDENCE OF CHILD

1. In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence in the location of that parent's choice, within or outside the confines of the Lake Traverse Reservation.

52-04-04 CHANGE OF CIRCUMSTANCES

In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

52-04-05 CONDITIONS OF VISITATION IN CASES INVOLVING DOMESTIC VIOLENCE

1. The Court may award visitation by a parent who committed domestic violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made.

2. In a visitation order, a Court may:

    a. Order an exchange of a child to occur in a protected setting.
    b. Order visitation supervised by an independent third person or agency.
    c. Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators as a condition of visitation.
    d. Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the Court, a program for chemical dependency.
    e. Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and the 24 hours preceding the visitation.
    f. Order the perpetrator of domestic violence to pay a fee to defray the costs of supervised visitation.
    g. Prohibit overnight visitation.
    h. Require a bond from the perpetrator of domestic violence for the return and safety of the child.
    i. Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, or other family or household member.

3. Whether or not visitation is allowed, the Court may order the address of the child and the victim to be kept confidential.

4. The Court may refer but shall not order an adult who is a victim of domestic violence to attend counseling or seek support services relating to the victim's

status or behavior as a victim, individually or with the perpetrator of domestic violence as a condition of receiving custody of a child or as a condition of visitation.

5. Supervised visitation shall be conducted by an independent third party as approved jointly by the Court and the victim.

52-04-06 SPECIALIZED VISITATION CENTER FOR VICTIMS OF DOMESTIC VIOLENCE

1. Programs for victims of domestic violence shall provide for visitation centers for victims of domestic violence and their children to allow Court-ordered visitation in a manner that protects the safety of all family members. Programs for victims of domestic abuse shall coordinate and cooperate with local governmental agencies in providing the visitation centers.

2. A visitation center must provide:

    a. A secure setting and specialized procedures for supervised visitation and the transfer of children for visitation; and
    b. Supervision by a person trained in security and the avoidance of domestic violence.

52-04-07 MEDIATION PROHIBITED IN CASES INVOLVING DOMESTIC VIOLENCE

The Court shall not order parties into mediation or any type of counseling, alternative justice, peace-making, circle sentencing, traditional Dakota ceremonies or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues in a petition for custody, even if the petitioner has the right to refuse to participate.

52-04-08 DUTIES OF SISSETON-WAHPETON OYATE CHILD PROTECTION PROGRAM

1. Within 240 days of the enactment of the Domestic Violence Ordinance, the SISSETON-WAHPETON OYATE Child Protection Program shall develop written procedures when abuse or neglect of a child is involved to assess

whether abuse of another family or household member is also occurring. The assessment must include but is not limited to:

a. Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic violence, if not a parent of the child; and
b. Inquiry concerning the existence of orders for protection issued to either parent.

2. The Sisseton-Wahpeton Oyate Child Protection Program shall utilize any relevant children's social and/or protective services and/or any involved program for victims of domestic violence, in conducting the assessment.

3. If it is determined in an investigation of abuse or neglect of a child:

a. That the child or another family or household member is in danger of domestic violence and that removal of one of the parties is necessary to prevent the abuse or neglect of a child, the Sisseton-Wahpeton Oyate Child Protection Program shall seek the removal of the alleged perpetrator of domestic violence whenever possible.
b. That if a parent of the child is a victim of domestic violence, services must be offered to the victimized parent and the provision of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

TITLE V - PREVENTION AND INTERVENTION

52-05-01 PUBLIC HEALTH PLAN FOR REDUCING DOMESTIC VIOLENCE

1. The Sisseton-Wahpeton Oyate Human Services Board shall: Assess the impact of domestic violence on the public's health; write a public health plan for reducing the incidence of domestic violence within the tribal community;

2. The public health plan:
   a. Must include but is not limited to public education, including use of the various communication media to set forth the public health perspective on domestic violence.

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b. Must be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children.
c. Must be completed within 240 days of the enactment of the Domestic Violence Ordinance.

3. The Human Services Board shall:
   a. Transmit a copy of the public health plan to the Tribal Council; and
   b. Annually review and update the plan.

52-05-02 CONTINUING EDUCATION FOR TRIBAL EMPLOYEES WHO WORK WITH DOMESTIC VIOLENCE CASES AND ARE REQUIRED TO REPORT ABUSE AND NEGLECT OF CHILDREN

1. The Sisseton-Wahpeton Oyate Human Services Board shall provide courses of continuing education concerning domestic violence for tribal employees:

   a. Who work with cases of domestic violence; and
   b. Who are required by law to report abuse or neglect of children.

2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for offenders, and program advocates for victims.

3. The courses must include but are not limited to the following topics:
   a. The nature, extent, and causes of domestic violence;
   b. Practices designed to promote safety of the victim and other family and household members, including safety plans;
   c. Resources available for victims and offenders of domestic violence;
   d. Sensitivity to gender bias and cultural, racial, and sexual issues; and
   e. The lethality of domestic violence.

4. As used in this section, tribal employees working with cases of domestic violence include, but are not limited to:

   a. Probation officers;
   b. Workers in Child Protection Program;
   c. Psychologists;

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d. Social workers;
e. Advocates;
f. CHR;
g. Ambulance Service;
h. Chemical Dependency personnel;
i. IHS;
j. Tribal Court personnel;
k. Teachers.

52-05-03 STANDARDS FOR IHS AND HEALTH CARE FACILITIES, PRACTITIONERS, AND PERSONNEL; SPECIALIZED PROCEDURE AND CURRICULA CONCERNING DOMESTIC VIOLENCE

1. Within 240 days of the enactment of the Domestic Violence Ordinance, the Indian Health Service shall promulgate standards for health care facilities, practitioners, and personnel in the facilities including specialized procedure and curricula concerning domestic violence.

2. The procedures and curricula must be developed in consultation with public and private agencies that provide programs for victims of domestic violence, program advocates for victims, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children.

52-05-04 NOTICE OF RIGHTS OF VICTIMS AND REMEDIES AND SERVICES AVAILABLE; REQUIRED INFORMATION

1. The Indian Health Service and any other health care facility shall make available to practitioners and health care facilities a written notice of the rights of victims and remedies and services available to victims of domestic violence in accordance with subsection 3.

2. A practitioner who becomes aware that a patient is a victim of domestic violence shall provide to the patient and every healthcare facility shall make available to all patients the notice provided pursuant to subsection 3.

3. The notice to victims of domestic violence must be substantially as follows:

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If you are a victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that an officer assist in providing for your safety, including asking for an emergency order for protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place including but not limited to a shelter, family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department. You may ask the prosecutor to file a criminal complaint. You also have the right to file a petition in the Sisseton-Wahpeton Oyate Tribal Court requesting an order for protection from domestic violence which could include any of the following orders:

a. An order enjoining your abuser from threatening to commit or committing further acts of domestic violence;
b. An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
c. An order removing your abuser from your residence, regardless of ownership of the residence;
d. An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member,
e. An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court;
f. An order granting your possession and use of the automobile and other essential personal effects, regardless of ownership;
g. An order granting you custody of your child or children,
h. An order denying your abuser visitation;
i. An order specifying arrangements for visitation, including requiring supervised visitation; and
j. An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, Court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from the resources available in the community for information relating to domestic violence, treatment of injuries, and places of safety and shelters are: You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving

expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property.

4. The written notice:

    a. Must not include the addresses of shelters, unless the location is public knowledge.
    b. Must be provided in the native language of the victim, if practicable, when the first language of the victim is not English.

52-05-06 HOSPITAL/CLINIC REQUIRED TO PROVIDE CERTAIN INFORMATION TO PARENTS

Hospitals and clinics shall provide information concerning domestic violence to parents of newborn infants and to parents of hospitalized minors. The information must include but is not limited to the effect of domestic violence on children and available services for the prevention and intervention services available.

52-05-07 REGULATION OF PROGRAMS FOR INTERVENTION FOR OFFENDERS; REQUIRED PROVISIONS; DUTIES OF PROVIDERS.

1. Within 240 days of the enactment of the Domestic Violence Ordinance, Women's Circle, Inc., shall promulgate rules or regulations for programs of intervention for offenders of domestic violence. The rules or regulations must be promulgated after consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for offenders, with advocates for victims, and with persons who have demonstrated expertise and experience in providing services to victims and offenders of domestic violence and their children.

2. The rules or regulations must include:

    a. Standards of treatment for programs of intervention;
    b. Criteria concerning an offender's appropriateness for the program;
    c. Systems of communication and evaluation among the referring Court, the public and private agencies that provide programs for victims of domestic violence and the programs of intervention for offenders; and
    d. Required education and qualifications of providers of intervention.

3. The standards must include but are not limited to the following principles:

    a. The focus of the program must be stopping the acts of violence and ensuring the safety of the victim and children or other family or household members.
    b. Recognition that violence is a behavior for which the offender must be held accountable.
    c. Recognition that substance abuse is a problem separate from domestic violence which requires specialized treatment.

4. Providers of programs of intervention for offenders:
    a. Shall require an offender who is ordered into the program by a Court to sign the following releases:
        i. Allowing the provider to inform the victim and victim's advocates that the offender is in treatment with the provider, and to provide information of safety to the victim and victim's advocates;
        ii. Allowing prior and current treating agencies to provide information about the offender to the provider; and
        iii. Allowing the provider to provide information about the offender to relevant legal entities, including Courts, probation officers, parole officers, and children's protective services.
    b. Shall report to the Court and the victim any assault, failure to comply with the program, failure to attend the program, and threat of harm by the offender.
    c. Shall report to the Court if the offender is not eligible for the services ordered, including the reasons why ineligibility has occurred. If there is another program believed to be better suited to the offender, it should be identified.

52-05-08 CONTINUING EDUCATION FOR LAW ENFORCEMENT OFFICERS CONCERNING DOMESTIC VIOLENCE; CONTENT OF COURSE.

1. The Sisseton-Wahpeton Law Enforcement must provide forty (40) hours of initial education to all prospective, newly hired, or law enforcement officers who have not had the required training concerning domestic violence.

2. The Sisseton-Wahpeton Law Enforcement shall provide eight (8) hours a year of continuing education concerning domestic violence to law enforcement officers each year.

3. The course of instruction and the objectives in learning and performance of the education of law enforcement officers required pursuant to subsections 1 and 2 must be developed and presented in consultation with public and private providers of programs of victims of domestic violence and programs of intervention for offenders, persons who have demonstrated expertise in training and education concerning domestic violence, as it relates to Dakota culture and the implementation of a coordinated systems and community response to enhance the safety and respect for Dakota women and families on the Lake Traverse Reservation.

4. The course of instruction must include but is not limited to:
    a. The investigation and management of cases involving domestic violence and writing of reports in such cases;
    b. Training on the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, and evidence gathering;
    c. The nature, extent, dynamics, and causes of domestic violence;
    d. The impact of victimization;
    e. Practices designed to promote the safety of the victims of domestic violence and other family and household members, including safety plans;
    f. The legal rights and remedies available to victims of domestic violence including but not limited to rights and compensations of victims of crime and enforcement of civil and criminal remedies;
    g. The services available to victims of domestic violence and their children;
    h. The services available to offenders;
    i. Coordinated systems response in order to facilitate the implementation of this ordinance;
    j. Sensitivity to cultural, racial, and sex issues and the effect of cultural, racial and gender bias on the response of law enforcement officers and the enforcement of laws relating to domestic violence; and
    k. The provisions of the Sisseton-Wahpeton Oyate Tribal Law and Order Code and any other laws and statutes applicable.

5. Failure to participate in the required training shall result in disciplinary action with a minimum of a written reprimand placed in the personnel file and monitoring to ensure the attendance at training.

52-05-09 CONTINUING EDUCATION OF JUDGES AND COURT PERSONNEL; PROSECUTORS; CONTENT OF COURSE

1. Judicial officers, probation officers, prosecutors, and other Court personnel must periodically participate in continuing education courses on the topic of domestic violence.

2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for offenders, and advocates for victims.

3. Each judicial officer and each Court employee who comes into contact with either party in domestic violence cases must have sixteen (16) hours forty (40) hours of initial education in domestic violence and eight (8) hours sixteen (16) hours annually.

4. The courses must include but are not limited to the following topics:

    a. The nature, extent, dynamics, and causes of domestic violence;
    b. The impact of victimization;
    c. Practices designed to promote safety of the victim and other family and household members, including safety plans;
    d. Resources available for victims and offenders of domestic violence;
    e. Coordinated systems response in order to facilitate the implementation of this ordinance;
    f. Sensitivity to gender bias and cultural, racial, and sexual issues; and
    g. The lethality of domestic violence.

5. Failure to participate in the required training shall result in disciplinary action with a minimum of a written reprimand placed in the personnel file and monitoring to ensure attendance at training.

52-05-10 CONTINUING EDUCATION FOR ATTORNEYS

Passed: March 5, 2015
Motion No. 8
Resolution No. SWO-15-018

1. In order to be licensed to practice in the Sisseton-Wahpeton OyateTribal Court, attorneys or legal advocates must participate in two (2) hours of continuing legal education in domestic violence for attorneys every three years.

2. The courses must be prepared and presented in consultation with persons who have demonstrated expertise and experience in providing legal assistance to victims and offenders of domestic violence, and advocates for victims.

3. The courses must include but are not limited to the following topics:

    a. The nature, extent, and causes of domestic violence;
    b. Practices designed to promote the safety of the victim and other family and household members, including safety plans;
    c. Resources available for victims and offenders of domestic violence;
    d. Sensitivity to gender bias and cultural, racial, and sexual issues;
    e. The lethality of domestic violence; and
    f. The SWO Domestic Violence Ordinance and any other applicable laws and statutes.

52-05-11 REQUIRED CURRICULA FOR LAKE TRAVERSE RESERVATION EDUCATION SYSTEM

1. The Sisseton-Wahpeton Oyate School Boards (Tiospa Zina Tribal School, Enemy Swim Day School, and Sisseton-Wahpeton Community College) shall select or develop within one year:

    a. Curricula for pupils concerning domestic violence that are appropriate for various ages; and
    b. Curricula for school counselors, health-care personnel, administrators, and teachers concerning domestic violence.

2. The curricula must be selected or developed in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for offenders of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in education and domestic violence.

3. The curricula must include but are not limited to:

a. The nature, extent, and causes of domestic violence;
b. Issues of domestic violence concerning children;
c. The prevention of the use of violence by children,
d. Sensitivity to gender bias and cultural, racial, and sexual issues;
e. Violence in dating and other social relationships of boys and girls;
f. Practices designed to promote safety of the victim and other family and household members, including safety plans; and
g. The SWO Domestic Violence Ordinance and any other applicable laws and statutes.

52-05-12 CONTINUING EDUCATION FOR SCHOOL PERSONNEL WHO ARE REQUIRED TO REPORT ABUSE AND NEGLECT OF CHILDREN.

1. The Sisseton-Wahpeton Oyate School Boards shall provide courses of continuing education concerning domestic violence for employees who are required by law to report abuse or neglect of children.

2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence, persons who have demonstrated expertise in education and domestic violence and advocates for victims.

3. The courses must include but are not limited to the following topics:

    a. The nature, extent, and causes of domestic violence;
    b. Practices designed to promote safety of the victim and other family and household members, including safety plans;
    c. Issues of domestic violence concerning children;
    d. Sensitivity to gender bias and cultural, racial, and sexual issues; and
    e. The lethality of domestic violence.

52-05-13 REPORTING STATISTICS

In all cases of Domestic Violence, the officer involved shall make a written report and the numbers of such cases shall be tabulated. A quarterly report shall be made by the Police department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to appropriate agencies and the public.

TITLE VI - FIREARMS DISQUALIFICATION

Passed: March 5, 2015
Motion No. 8
Resolution No. SWO-15-018

52-06-01 PURPOSE.

It shall be the purpose of this section to prohibit any person who have been convicted of a felony or misdemeanor offense of domestic violence/abuse, as defined under 52-01-04 of this Domestic Violence Ordinance, under tribal, state or federal law, or any person who is subject to an order of protection based upon a finding that the person represents a credible threat of violence to the victim, under tribal, state or federal law, to possess a firearm.

52-06-02 UNLAWFUL TO POSSESS FIREARM UNDER CERTAIN CONDITIONS

It shall be unlawful for any person to possess a firearm who:

1. Is subject to any Court order from a Court of competent jurisdiction that restrains such person from harassing, stalking or threatening an intimate spouses and/or partners and/or family or household member as defined in 52-01-04 or engaging in any other conduct that would place an intimate spouse and/or partner and/or family or household member in reasonable fear of bodily injury to the intimate spouse and/or partner and/or household or family member, except that this paragraph shall apply only to those orders that:

    a. Were issued after a hearing of which such person received actual notice and had the opportunity to participate; and,
    b. Includes a finding that such person represents a credible threat to the physical safety of such intimate spouse and/or partner and/or household or family member; or,
    c. By its terms explicitly prohibits the use, attempted use or threatened use of physical force against such intimate spouse and/or partner and/or household or family member.

2. Has been convicted in state, federal or tribal Court of any crime involving domestic violence/abuse, as defined in Section 52-01-04 of this code, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against an intimate spouse and/or partner and/or household or family member as defined at 52-01-04.

52-06-03 CLASS B MISDEMEANOR FOR VIOLATION OF THIS TITLE

Violation of this Title VI, Firearms Disqualification, is a Class B Misdemeanor. Any related domestic violence sentences for a violation of this section and any other section of the SWO Domestic Violence Ordinance shall be served consecutively.

This Code was revised and amended in 2014. Chapter 57 was merged into this Chapter in the interest of creating a more comprehensive domestic violence code. This code also was revised and amended pursuant to the VAWA/TLOA. Chapter 57 has been repealed.

This Code was amended on March 5, 2015 with changes to section 52-01-04 per Tribal Council Resolution No. SWO-15-018.