

**SISSETON-WAHPETON OYATE  
OF THE LAKE TRAVERSE RESERVATION  
CHAPTER 24A  
CONTROLLED SUBSTANCES ACT**

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**SISSETON-WAHPETON OYATE**  
**CHAPTER 24A**  
**CONTROLLED SUBSTANCES ACT**  
**TITLE I – GENERAL PROVISIONS**

**24A-01-01 TITLE.**

This Chapter shall be known as the Sisseton-Wahpeton Oyate Controlled Substances Act.

**24A-01-02 PURPOSE AND INTENT.**

This Act shall be construed to promote the following:

1. Our most important resource is our people and the presence of methamphetamine use and trafficking in our communities poses an imminent and serious threat to the health, safety, and welfare of our people and the Sisseton Wahpeton-Oyate as a whole.
2. Methamphetamine use can lead to short and long term psychological, medical, and social damage to our people and communities, including increases in violent crime, anti-social behavior, and child neglect and abuse. The damaging effects of methamphetamine use on the brain are long-lasting and certain effects are irreversible. Methamphetamine use may also lead to paranoia and delusions, extreme weight loss, damage to the heart and brain, increased risk of stroke, dental problems, pregnancy complications, and damage to unborn children.
3. Methamphetamine use and trafficking are not in keeping with traditional Dakota values. We recognize that it is our solemn duty to combat the problems created by methamphetamine on all fronts.
4. The goal of this Act is to create specific provisions related to the manufacturing, distribution, conspiracy, aiding and abetting, possession, and ingestion of methamphetamine and other Schedule I drugs that can be used in our criminal justice system to impose serious consequences on offenders. These consequences are fashioned in such a way as to allow offenders the opportunity to make positive changes in their behavior and understand “WoDakota” (an understanding of what it is to be Dakota or way of life).
5. The purpose of this Act is to recognize and treat manufacturing, distribution, conspiracy, aiding and abetting, possession, and ingestion of methamphetamine and other Schedule I drugs as serious crimes against our society.

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**24A-01-03 SCOPE.**

The Sisseton-Wahpeton Oyate possesses the authority to regulate methamphetamine and Schedule I drugs based offenses on lands within its jurisdiction and to Tribal members within the Lake Traverse Reservation:

1. By treaty, the Sisseton-Wahpeton Oyate has the right to adopt laws, including laws “for the security of life and property” of its members.
2. The Sisseton-Wahpeton Oyate has the inherent power to exclude non-members. The Sisseton-Wahpeton Oyate has the inherent power to condition non-members entry, and condition non-members continued presence on lands within its jurisdiction, which includes being fined for manufacturing, distributing, conspiracy, aiding and abetting, ingesting and possessing methamphetamine or Schedule I drugs. The Sisseton-Wahpeton Oyate has the inherent power to detain and turn over to federal or state law enforcement those non-members violating criminal law.
3. The Sisseton-Wahpeton Oyate has the inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.
4. The problems created by methamphetamine and other Schedule I drugs within the boundaries of the Sisseton-Wahpeton Oyate are seriously impacting the ability of the tribe to provide for the health and wellbeing of its tribal members and threatens the political integrity of the Sisseton-Wahpeton Oyate.
5. The Sisseton-Wahpeton Oyate shall exercise criminal jurisdiction related to methamphetamine and Schedule I drug offenses pursuant to Chapter 20 of the Sisseton-Wahpeton Oyate Code of Law.

**24A-01-04 SPECIFIC APPLICABILITY.**

This Act shall apply to methamphetamine and Schedule I drug offenses and shall take precedence over any general laws of applicability.

**24A-01-05 EFFECTIVE DATE.**

This Act shall be in full force and effect on the date of formal approval and adoption by the Tribal Council. A drug conviction occurring prior to the effective date shall not be included as a prior offense.

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**24A-01-06 SOVEREIGN IMMUNITY NOT WAIVED.**

By the adoption of this Act the Tribe does not waive its sovereign immunity or consent to suit in any court, whether the court is federal, tribal, or state, and the adoption of this Ordinance shall not be construed to be a waiver of the sovereign immunity of the Tribe nor a consent to suit against the Tribe in any court.

**24A-01-07 SEVERABILITY.**

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

**24A-01-08 AMENDMENT.**

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

**24A-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 Act.

**TITLE II – DEFINITIONS**

**24A-02-01 DEFINITIONS.**

The following definitions shall apply to this Act:

1. “Aiding and Abetting” means when a person who, with the intent to promote or facilitate the commission of a crime, aids, abets, or advises another person in planning or committing the crime.
2. “Child” means any person under the age of 18.
3. “Community Service” means court ordered labor under the supervision of law enforcement that must produce a tangible benefit to the Tribe and its members.
4. “Conspiracy” means agreeing with one or more persons to engage in or cause to be performed such criminal conduct and any one of them commits an overt act in pursuance of such conduct.

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5. "Distribution" means to sell, give away, deliver, exchange, distribute, or dispose of to another.
6. "Elder or Elderly" means any person 55 years of age or older.
7. "Enhanced Punishment" means the punishment imposed for a particular offense shall be enhanced to the punishment imposed in the next level of offense if there are Aggravating Factors.
8. "Exclusion, Banishment and Removal" shall not be distinguished in this Ordinance and each shall mean the temporary expulsion of a person from the Tribe's jurisdiction pursuant to the requirements of this Act.
9. "First Offense" means the first time a person is convicted of a crime or comparable crime in any federal, state, or tribal jurisdiction.
10. "Indian" means any person who is a member of a federally recognized Indian tribe, band, group, pueblo, or community.
11. "Ingestion" means to willfully and knowingly ingest, inhale, or otherwise take into the body any substance for the purpose of becoming intoxicated.
12. "Jurisdiction" or "Jurisdiction of the Tribe" means the Tribe's criminal, regulatory, and adjudicatory jurisdiction exercised on all lands located within the original boundaries of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation as defined in the Treaty of February 19, 1867, regardless of whether such land is held in trust, fee, or subject to restrictions; provided that as to non-members the jurisdiction of the Tribe extends to such lands within the Reservation that are held in trust, have been allotted, or are subject to restrictions.
13. "Member" means an enrolled member of the Tribe as required by the Constitution of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.
14. "Methamphetamine and Schedule I related offense" means a criminal offense that relates to methamphetamine and Schedule I drug manufacturing, distribution, possession, ingestion, or aiding and abetting the manufacturing or distribution of methamphetamine. The provisions of this Act shall govern methamphetamine and Schedule I related offenses and supplant the SWO Penal Code.
15. "Manufacture" means and includes the production, cultivation, packing, repacking, tableting, encapsulating, labeling, relabeling, filling, or otherwise processing, of drugs.

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16. “Non-Indian” means a person who is not an enrolled member of a federally recognized Indian tribe, band, group, pueblo, or community.
17. “Non-member” means a person who is not an enrolled member of the Tribe.
18. “Offense” means, for purposes of this Act, a conviction of a crime involving methamphetamine or a Schedule I drug by a Federal, State, or Tribal Court, including Tribal Courts of any federally-recognized Indian tribe. For purposes of a second or third offense the prior conviction must have occurred after the effective date of this Ordinance.
19. “Possession” means to have methamphetamine or a Schedule I drug in one’s physical control, including joint control with others, and knowledge or intention that the drug was in their custody or control.
20. “Prior Conviction” means that an individual was found guilty by a jury or court of a crime in any federal, state, or tribal jurisdiction or the individual pled guilty to a crime and such plea was accepted and recorded by a court in any federal, state, or tribal jurisdiction. For purposes of a second or third offense the prior conviction must have occurred after the effective date of this Act.
21. “Schedule I drug” means the list of Schedule I drugs maintained by the U.S. Attorney General, through the Drug Enforcement Agency, pursuant to the Controlled Substances Act, 21 U.S.C. § 801 et seq., which is updated from time to time in the Federal Register. A Schedule I drug does not include peyote used by a member of the Native American Church and used for religious or ceremonial purposes, but is still unlawful as provided by § 24-09-08. A Schedule I drug does not include marijuana, which is an illegal drug but is not treated as a Schedule I drug for purposes of this Act.
22. “Second Offense” or “Subsequent Offense” means the second time a person is convicted of a crime involving methamphetamine or a Schedule I drug by a Federal, State, or Tribal jurisdiction provided that the prior conviction occurred after the effective date of this Act.
23. “Third Offense” means the third time, or more than third time, a person is convicted of a crime involving methamphetamine or a Schedule I drug by a Federal, State, or Tribal jurisdiction provided that the prior convictions occurred after the effective date of this Act.
24. “Tribal Court” means the Sisseton-Wahpeton Oyate Tribal Court of the Lake Traverse Reservation.
25. “Tribe” refers to the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation and includes its activities, programs, agencies, departments, divisions, instrumentalities, economic development enterprises, and their respective officials.

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26. “Vulnerable adult” means any person 18 years of age or older who possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the individual’s ability to care for themselves.

### **TITLE III – CRIMINAL PENALTIES AND PROCEDURES**

#### **24A-03-01 METHAMPHETAMINE AND SCHEDULE I RELATED OFFENSES.**

Methamphetamine and Schedule I drug related offenses may already be addressed under the Sisseton-Wahpeton Oyate Penal Code. The purpose of this Act is to supplant the drug offenses listed in the Sisseton-Wahpeton Oyate Penal Code for criminal charges specifically related to methamphetamine and Schedule I drugs. The specific provisions related to methamphetamine and Schedule I drug possession, distribution, manufacturing, ingestion, conspiracy, or aiding and abetting included in this Act shall supersede the general provisions included in the Sisseton-Wahpeton Oyate Penal Code. If this Act does not specifically address a topic, the applicable provisions of Tribal law shall apply. The offenses addressed in this Chapter shall be prosecuted according to the applicable provisions of Tribal law.

#### **24A-03-02 MANUFACTURING.**

Any person that manufactures methamphetamine or a Schedule I drug, in any amount, with or without intent to distribute, shall be guilty of Manufacturing of Methamphetamine or Schedule I Drug. A violation of this section is a Felony and shall be punishable according to the following provisions:

1. First Offense – A person convicted under this section for a first offense shall be sentenced to:
  - (a) imprisonment for not less than one (1) year and not more than three (3) years;
  - (b) supervised probation for one (1) year or until all the terms of sentencing are complete, whichever is longer. Probation shall include testing the convict’s residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (c) 120 hours of community service;
  - (d) restitution; and
  - (e) payment of a fine of not less than \$5,000.
2. Second Offense – A person convicted under this section for a second offense shall be sentenced to:

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- (a) imprisonment for not less than two (2) years and not more than three (3) years;
  - (b) supervised probation for two (2) years or until all the terms of sentencing are complete, whichever is longer. Probation shall include testing the convict's residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (c) 240 hours of community service;
  - (d) restitution; and
  - (e) payment of a fine of not less than \$10,000;
3. Third Offense – A person convicted under this section for a third offense or more shall be sentenced to:
- (a) imprisonment for not less than three (3) years;
  - (b) 320 hours of community service;
  - (c) restitution; and
  - (d) payment of a fine of not less than \$15,000;
  - (e) temporary exclusion by the Tribal Council for five (5) years after imprisonment, which may only be lifted after the five (5) year term has expired and the individual completes all sentencing requirements or exclusion requirements.
4. Aggravating Factors – An individual may be sentenced to enhanced punishment listed in subpart 3 of this section for an offense if:
- (a) the offense was committed in the presence of child, elder, or vulnerable adult;
  - (b) the offense was committed in a household in which child, elder, or vulnerable adult normally reside;
  - (c) the individual utilized a minor to distribute drugs;
  - (d) the individual used or carried a firearm during and in relation to the offense, possessed a firearm in furtherance of the offense, or had a firearm in their possession at the time of arrest; or
  - (e) the individual had over \$500.00 in their possession at the time of arrest.

**24A-03-03 DISTRIBUTION.**

Any person that distributes methamphetamine or a Schedule I drug or possesses methamphetamine or a Schedule I drug with intent to distribute in any amount shall be guilty of Distribution of Methamphetamine or Schedule I drug. A violation of this section is a Felony and shall be punishable according to the following provisions:

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1. First Offense – A person convicted under this section for a first offense shall be sentenced to:
  - (a) imprisonment for not less than one (1) year and not more than three (3) years;
  - (b) supervised probation for one (1) year or until all the terms of sentencing are complete, whichever is longer. Probation shall include testing the convict’s residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (c) 120 hours of community service;
  - (d) restitution; and
  - (e) payment of a fine of not less than \$5,000.
  
2. Second Offense – A person convicted under this section for a second offense shall be sentenced to:
  - (a) imprisonment for not less than two (2) years and not more than three (3) years;
  - (b) supervised probation for two (2) years or until all the terms of sentencing are complete, whichever is longer. Probation shall include testing the convict’s residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (c) 240 hours of community service;
  - (d) restitution; and
  - (e) payment of a fine of not less than \$10,000;
  
3. Third Offense – A person convicted under this section for a third offense shall be sentenced to:
  - (a) imprisonment for not less than three (3) years;
  - (b) 320 hours of community service;
  - (c) restitution;
  - (d) payment of a fine of not less than \$15,000; and
  - (e) temporary exclusion by the Tribal Council for five (5) years after imprisonment, which may only be lifted after the five (5) years has expired and the individual completes all sentencing requirements or exclusion requirements.
  
4. Aggravating Factors – An individual may be sentenced to enhanced punishment listed in subpart 3 of this section for an offense if:
  - (a) the offense was committed in the presence of a child, elder, or vulnerable adult;

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- (b) the offense was committed in a household in which a child, elder, or vulnerable adult normally resides;
- (c) the individual utilized a minor to distribute drugs;
- (d) the individual used or carried a firearm during and in relation to the offense, possessed a firearm in furtherance of the offense, or had a firearm in their possession at the time of arrest; or
- (e) the individual had over \$500.00 in their possession at the time of arrest.

**24A-03-04 CONSPIRACY.**

Any person that intends for conduct constituting manufacturing or distribution of methamphetamine or a Schedule 1 drug to be performed and agrees with one or more persons to engage in or cause to be performed such conduct and any one of them commits an overt act in pursuance of such conduct shall be guilty of Conspiracy to Manufacture or Distribute Methamphetamine or a Schedule 1 drug. A violation of this section is a Felony and shall be punishable according to the following provisions:

1. First Offense – A person convicted under this section for a first offense shall be sentenced to:
  - (a) imprisonment for not less than six (6) months and not more than three (3) years;
  - (b) supervised probation for six (6) months or until all the terms of sentencing are complete, whichever is longer. Probation may include testing the convict’s residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (c) 60 hours of community service;
  - (d) restitution; and
  - (e) payment of a fine of not less than \$1,000 and not more than \$5,000.
  
2. Second Offense – A person convicted under this section for a second offense shall be sentenced to:
  - (a) imprisonment for not less than one (1) year and not more than three (3) years;
  - (b) supervised probation for one (1) year or until all the terms of sentencing are complete, whichever is longer. Probation may include testing the convict’s residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (c) 120 hours of community service;
  - (d) restitution; and
  - (e) payment of a fine of not less than \$5,000;

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3. Third Offense – A person convicted under this section for a third offense shall be sentenced to:
  - (a) imprisonment for not less than two (2) years and not more than three (3) years;
  - (b) 240 hours of community service;
  - (c) restitution;
  - (d) payment of a fine of not less than \$10,000; and
  - (e) temporary exclusion by the Tribal Council for three (3) years after imprisonment, which may only be lifted after the three (3) years has expired and the individual completes all sentencing requirements or exclusion requirements.

**24A-03-05 AIDING AND ABETTING.**

Any person who promotes or facilitates the commission of an offense related to the manufacturing or distribution of methamphetamine or a Schedule I drug shall be deemed guilty of Aiding and Abetting the Distribution or Manufacture of Methamphetamine or a Schedule I drug. A violation of this Section shall be a Felony punishable to the same degree as Conspiracy to Manufacture or Distribute Methamphetamine or a Schedule 1 drug.

**24A-03-06 POSSESSION.**

Any person who possesses methamphetamine or a Schedule I drug shall be guilty of Possession of Methamphetamine or a Schedule I drug. A violation of this section is a Felony and shall be punishable according to the following provisions:

1. First Offense – A person convicted under this section for a first offense shall be sentenced to:
  - (a) imprisonment for not less than six (6) months and not more than three (3) years;
  - (b) drug evaluation and mandatory follow-up in accordance with the recommendations of the evaluator;
  - (c) supervised probation for six (6) months or until all the terms of sentencing are complete, whichever is longer. Probation may include testing the convict's residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (d) 60 hours of Community service;
  - (e) payment of a fine of not less than \$1,000 and not more than \$5,000.
2. Second Offense – A person convicted under this section for a second offense shall be sentenced to:

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- (a) imprisonment for not less than nine (9) months and not more than three (3) years;
  - (b) drug evaluation and mandatory follow-up in accordance with the recommendations of the evaluator;
  - (c) supervised probation for nine (9) months or until all the terms of sentencing are complete, whichever is longer. Probation may include testing the convict's residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (d) 90 hours of Community service; and
  - (e) payment of a fine of not less than \$5,000.
3. Third Offense – A person convicted under this section for a third offense shall be sentenced to:
- (a) imprisonment for not less than one (1) year and not more than three (3) years;
  - (b) 120 hours of community service;
  - (c) payment of a fine of not less than \$10,000;
  - (d) temporary exclusion by the Tribal Council for two (2) years after imprisonment, which may only be lifted after the two (2) year term has expired and the individual completes all sentencing requirements or exclusion requirements.
4. Aggravating Factors – An individual may be sentenced to enhanced punishment listed in subpart 3 of this Section for an Offense if the person possessed more than 2 grams of methamphetamine or a Schedule I drug.
5. Suspended Imposition - The Tribal Court may suspend the imposition of any sentence for a first offense for possession upon condition that the individual complies with such reasonable terms as the Court deems necessary. When considering suspending imposition of a sentence, the Tribal Court shall consider the prior record of the individual, his or her background, character, financial condition, family and work obligations, and circumstances of the offense and attempts at restitution. If the individual violates the terms of the suspended imposition, the Tribal Court may order any sentence within the range of punishments included in this section. If the individual successfully completes the terms of the suspended imposition, the charges will be dismissed and nothing will go on the individual's criminal record.
6. Suspended Sentence – The Tribal Court may suspend any sentence for a second offense for possession upon condition that the individual complies with such reasonable terms and conditions as the Court deems necessary. When considering

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suspending any sentence, the Tribal Court shall consider the prior record of the individual, his or her background, character, financial condition, family and work obligations, and circumstances of the offense and attempts at restitution.

**24A-03-07 INGESTION.**

Any person that ingests methamphetamine or a Schedule I drug shall be guilty of Ingestion of Methamphetamine or a Schedule I drug. A violation of this section is a Felony and shall be punished according to the following provisions:

1. First Offense – A person convicted under this section for a first offense shall be sentenced to:
  - (a) imprisonment for not less than six (6) months and not more than three (3) years;
  - (b) drug evaluation and mandatory follow-up in accordance with the recommendations of the evaluator;
  - (c) supervised probation for three (3) months or until all the terms of sentencing are complete, whichever is longer. Probation may include testing the convict’s residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (d) 60 hours of Community service; and
  - (e) payment of a fine of not less than \$1,000 and not more than \$5,000.
  
2. Second Offense – A person convicted under this section for a second offense shall be sentenced to:
  - (a) imprisonment for not less than nine (9) months and not more than three (3) years;
  - (b) drug evaluation and mandatory follow-up in accordance with the recommendations of the evaluator;
  - (c) supervised probation for six (6) months or until all the terms of sentencing are complete, whichever is longer. Probation may include testing the convict’s residence, vehicle, or other property on a monthly basis in accordance with § 24A-06-02;
  - (d) 90 hours of Community service; and
  - (e) payment of a fine of not less than \$5,000.
  
3. Third Offense – A person convicted under this section for a third offense shall be sentenced to:
  - (a) imprisonment for not less than one (1) year and not more than three (3) years;

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- (b) 120 hours of community service;
  - (c) payment of a fine of not less than \$10,000; and
  - (d) temporary exclusion by the Tribal Council for one (1) year after imprisonment, which may only be lifted after the one (1) year term has expired and the individual completes all sentencing requirements or exclusion requirements.
4. Suspended Imposition - The Tribal Court may suspend the imposition of any sentence for a first offense for ingestion upon condition that the individual complies with such reasonable terms as the Court deems necessary. When considering suspending imposition of a sentence, the Tribal Court shall consider the prior record of the individual, his or her background, character, financial condition, family and work obligations, and circumstances of the offense and attempts at restitution. If the individual violates the terms of the suspended imposition, the Tribal Court may order any sentence within the range of punishments included in this section. If the individual successfully completes the terms of the suspended imposition, the charges will be dismissed and nothing will go on the individual's criminal record.
  5. Suspended Sentence – The Tribal Court may suspend any sentence for a second offense for ingestion upon condition that the individual complies with such reasonable terms and conditions as the Court deems necessary. When considering suspending any sentence, the Tribal Court shall consider the prior record of the individual, his or her background, character, financial condition, family and work obligations, and circumstances of the offense and attempts at restitution.

**24A-03-08 PROSECUTORIAL DISCRETION AND REPORTS TO TRIBAL COUNCIL**

If any person is charged with possessing more than 2 grams of methamphetamine or a Schedule I drug, then the Tribal prosecutor must consider adding a charge of distribution, in addition to possession and/or ingestion. Should the Tribal prosecutor determine not to add to the charge of possession and/or ingestion, then the Tribal prosecutor must explain the reasons in a written report to the Tribal Court with a copy to the Tribal Council.

The Tribal Prosecutor shall prepare an annual written report to the Tribal Council summarizing the charges, convictions, and acquittals of every charge pertaining to methamphetamine or a Schedule I drug. The annual report is due in January of every year.

**24A-03-09 CRIMES SUBJECT TO FEDERAL PROSECUTION.**

The Sisseton-Wahpeton Oyate or tribal law enforcement officers shall immediately notify the appropriate federal law enforcement official when it becomes aware of a crime committed by an

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Indian or non-Indian on tribal land that may be subject to criminal prosecution by the federal government. Tribal law enforcement officers and authorized personnel shall assist in investigating, prosecuting, and detaining and transporting individuals that they believe may be committing a crime in Indian Country that may be subject to criminal prosecution by the federal government.

**24A-03-10 COMMUNITY SERVICE.**

The Tribal Council shall designate tribal programs and departments for which community service hours may be satisfied for convictions under this Ordinance. The Tribal Council may order community service as a provision of revocation of an exclusion order.

**24A-03-11 RESTITUTION.**

Regardless of the ability to pay, the Tribal Court must order a person convicted under the Act to pay restitution to the Sisseton-Wahpeton Oyate for the cleanup or reimbursement for cleanup of any property within the Tribe's jurisdiction that has been contaminated by methamphetamine or a Schedule I drug. Restitution shall include clean-up of property, restoring property to its original condition, and any other costs necessary to make any victim whole, including, but not limited to, reasonable expenses pertaining to lodging and food for any and all displaced victims or displaced dependents caused by the contamination to the property. Any restitution that is left over after cleanup shall be used for law enforcement activities by the Sisseton-Wahpeton Oyate.

Restitution under this section is mandatory, shall be treated as a non-dischargeable debt until completely paid off regardless of any bankruptcy proceedings in any forum. Restitution under this section shall be treated by the Tribal Court as the first priority in debt collection.

**24A-03-12 FORFEITURE OF MONEY OR PERSONAL PROPERTY.**

A law enforcement officer must seize any personal property that was used in the commission of an offense related to methamphetamine or a Schedule I drug as described in this Act, including without limitation, all money and property of any kind, which is used, intended for use, or assisted in the manufacturing, distribution, transportation, or possession of methamphetamine or a Schedule I drug. Sisseton-Wahpeton Oyate law enforcement shall retain possession of all money or property. If the prosecution results in a conviction, the Tribal Court shall have no authority or discretion, except as provided for herein, to return the money or property to the convict or the convict's family and the Tribal Court must direct and order the Sisseton-Wahpeton Oyate law enforcement to retain the money and sell the personal property seized at a public auction. The money seized and all proceeds from the auction shall be deposited in the Tribe's treasury and shall be used for law enforcement activities.

Should any person make a claim to personal property seized by law enforcement, such person must produce legal title to the property in question and must produce witness testimony to

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demonstrate, beyond a reasonable doubt, that the personal property is owned by such person and the person was not involved in the crime. No person may claim money seized from any offense related to methamphetamine or a Schedule I drug.

## **TITLE IV – TEMPORARY EXCLUSION**

### **24A-04-01 STATEMENT OF PUROSE, FINDINGS, AND AUTHORITY**

1. Purpose. The Sisseton-Wahpeton Oyate enacts this chapter to provide for the safety and well-being of the tribal community by providing parameters for the temporary exclusion of persons who are considered a danger to the community from lands under the jurisdiction of the Sisseton-Wahpeton Oyate due to that person's convictions involving methamphetamine and Schedule I drugs. An order for temporary exclusion shall generally bar the individual from accessing, using, or being located on lands within the jurisdiction of the Tribe and receiving services or benefits from the Tribe.
2. Findings. The Sisseton-Wahpeton Oyate Tribal Council finds that this chapter is necessary to protect the social, economic, and political welfare of the Sisseton-Wahpeton Oyate and its tribal members, as well as to protect the lands and assets of the Sisseton-Wahpeton Oyate. The Tribal Council further finds that drug use and trafficking, as well as other serious criminal offenses, are negatively impacting our communities and require a stern response. It shall be understood by Tribal members and their elected government that temporary exclusion from the Tribe's jurisdiction shall be utilized only after all reasonable efforts and other means of resolution have been tried but the conduct giving rise to such efforts has remained unabated and continues to threaten the peace, health, safety and welfare of the Tribe.
3. Jurisdiction. The exercise of jurisdiction pursuant to this Chapter shall conform with Chapter 20 of the Sisseton-Wahpeton Oyate Code of Law. Except as otherwise noted in this Ordinance, the Tribal Council shall have exclusive jurisdiction to order temporary exclusion. The decision of the Tribal Council shall be final.

### **24A-04-02 GROUNDS FOR TEMPORARY EXCLUSION**

The Sisseton-Wahpeton Oyate may temporarily exclude members and non-members from the Territory of the Tribe for any of the following reasons:

1. Conviction of a methamphetamine or Schedule I drug related offense in Tribal Court for which temporary exclusion has been authorized pursuant to this Act;
2. Conviction of a methamphetamine or Schedule I drug related offense in any other federal, state, or tribal jurisdiction for which exclusion would have been authorized pursuant to this Act had the conviction occurred in Tribal Court;

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3. The successful civil prosecution of a non-Indian that violates the Code of Conduct outlined in Chapter V of this Act; or
4. Convictions for other criminal offenses for which temporary exclusion has been authorized pursuant to the Sisseton-Wahpeton Penal Code or other tribal laws.

**24A-04-03 NOTICE OF GROUNDS FOR TEMPORARY EXCLUSION.**

Written notice shall be provided to the Tribal Council that grounds exist for temporary exclusion by:

1. The Tribal Prosecutor following the successful prosecution of an individual for any of the grounds listed in part 24A-04-02. An individual convicted of any of the grounds listed in part 24A-04-02 shall be deemed to have received actual notice that they are subject to temporary exclusion pursuant to this Title.
2. Any Tribal employee that is aware of an individual with a conviction of a methamphetamine or Schedule I drug related offense in any other federal, state, or tribal jurisdiction for which exclusion would have been authorized pursuant to this Act had the conviction occurred in Tribal Court shall report such conviction to the Tribal Council. An individual convicted of any of the grounds listed in part 24A-04-02 shall be deemed to have received actual notice that they are subject to temporary exclusion pursuant to this Title.

**24A-04-04 TRIBAL COUNCIL DETERMINATION ON TEMPORARY EXCLUSION.**

The Tribal Council shall issue a temporary exclusion order upon receiving satisfactory evidence that a criminal conviction or civil prosecution occurred for which exclusion applies unless it adopts a resolution that includes explicit findings that the individual's continued presence on lands within the Tribe's jurisdiction will not endanger the health, safety, and welfare of the Sisseton Wahpeton Oyate or its members.

**24A-04-05 TEMPORARY EXCLUSION ORDER.**

1. A temporary exclusion order shall be written and shall identify the person who is subject of the order, the grounds for exclusion, the date the order was issued, the length of the temporary exclusion, and any special conditions that must be satisfied before the temporary exclusion order will be eligible for revocation. The temporary exclusion order may premise revocation upon satisfaction of all the conditions of the criminal conviction and any other conditions deemed appropriate by the Tribal Council.

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2. The Tribal Council shall have the temporary exclusion order served on the excluded person and send copies to the Police Department, the members filing the petition, and any tribal departments directly impacted, if known. Temporary exclusion orders shall be effective upon issuance.
3. A copy of the temporary exclusion order, as well as other records related to the exclusion proceedings shall be maintained by the Tribal Council Secretary or designee. Such records shall be maintained for at least the duration of the temporary exclusion plus three (3) years.

#### **24A-04-06 IMPLEMENTATION OF TEMPORARY EXCLUSION ORDER.**

1. Time to Vacate Tribal Land. While temporary exclusion orders are effective upon issuance, persons normally shall be provided reasonable time to voluntarily vacate tribal land in compliance with the temporary exclusion order. However, if warranted by circumstances, a person may be immediately removed from the Tribe's jurisdiction by law enforcement.
2. Personal Property. If a person requires time to remove or dispose of personal property from tribal land following the issuance of a temporary exclusion order, then that person must make arrangements with law enforcement to access the Tribe's jurisdiction for such purpose.

#### **24A-04-07 EXCEPTIONS TO A TEMPORARY EXCLUSION ORDER.**

Persons subject to a temporary exclusion order may enter the Tribe's jurisdiction for the following purposes on the condition that such entry is in strict compliance with Tribal law:

1. Funerals. Persons subject to a temporary exclusion order may enter tribal for purposes of a family member's funeral on the day of the funeral and during funeral hours. The person must notify the Tribe's Police Department at least four (4) hours prior to entering the Tribe's jurisdiction for the funeral. The person is only permitted access to go directly to the funeral and must exit immediately after the funeral. A person may be denied entry for a funeral if there is a substantial threat of harm or injury to the community or a person.
2. Voting. Persons subject to a temporary exclusion order may enter tribal land for purposes of a voting in a Tribal election. The person must notify the Tribe's Police Department at least four (4) hours prior to entering tribal land for the voting. The person is only permitted access to go directly to the voting place and must exit immediately after voting.
3. Employment. Unless specifically authorized by special condition of the temporary exclusion order, persons subject to an exclusion order are not authorized to access tribal

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land for the purpose of employment.

4. Business. Unless specifically authorized by special condition of the temporary exclusion order, persons subject to a temporary exclusion order are not authorized to conduct business with the Tribe or operate or conduct any other business activities on Tribal land.

#### **24A-04-08 REVOCATION OF TEMPORARY EXCLUSION ORDER.**

The Tribal Council may reconsider and revoke a temporary exclusion order upon its own motion or based upon a request of a member or the person who is the subject of the exclusion. The temporary exclusion order may be revoked by the Tribal Council by resolution that explicitly finds that the individual's continued presence on lands within the Tribe's jurisdiction will benefit the health, safety, and welfare of the Sisseton Wahpeton Oyate or its members. The Tribal Council may act to revoke a temporary exclusion order at any time following its issuance. A person who is the subject of the temporary exclusion may not submit a request to the Tribal Council to have a temporary exclusion order revoked until at least one (1) year has passed since the order was issued. In addition, the person must be able to show that the person has successfully taken actions to rehabilitate the conduct that provided the grounds for the temporary exclusion.

#### **24A-04-09 ENFORCEMENT OF TEMPORARY EXCLUSION.**

1. Law enforcement officers are authorized to take reasonable measures to remove persons from the Tribe's jurisdiction who are the subject of temporary exclusion orders under this ordinance.
2. Law enforcement officers are authorized to take reasonable measures to remove persons who have been banned from the premises of tribal buildings or facilities.
3. Persons who are the subject of a temporary exclusion order are trespassing when they refuse to comply with such exclusion order and may be subject to prosecution under applicable laws.
4. Law enforcement officers shall refer individuals found in violation of a valid temporary exclusion order to the federal government for prosecution under federal trespassing laws.

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**TITLE V  
CODE OF CONDUCT FOR NON-INDIANS**

**24A-05-01 AUTHORITY.**

The Sisseton-Wahpeton Oyate has the inherent authority to exclude non-members from the Tribe's jurisdiction and place conditions on non-member entry onto such lands. As a condition of entry and continued presence on the Tribe's jurisdiction, non-members, which includes non-Indians, have a general duty to abide by the laws of the Sisseton-Wahpeton Oyate. The Sisseton-Wahpeton Oyate has the authority to define civil offenses and sanction violators as part of its regulatory jurisdiction over the conduct of persons and activities on tribal land.

**24A-05-02 PURPOSE.**

The intent of this chapter is to create a regulatory framework for the enforcement of a code of conduct for non-Indians who enter into the Tribe's jurisdiction and to authorize the Tribe to pursue civil remedies against individuals that violate the code of conduct. This chapter does not classify crimes and criminalize conduct but rather places conditions on non-members and non-Indians that enter or have continued presence in the Tribe's jurisdiction and outlines civil remedies for violations of such conditions.

**24A-05-03 RULES OF PROCEDURE.**

Unless a specific provision of this chapter provides otherwise, the suit brought to enforce the below-described civil offenses shall be governed by the Rules of Civil Procedure for the Sisseton-Wahpeton Oyate Tribal Court.

**24A-05-04 NOTICE OF CIVIL VIOLATION.**

Upon becoming aware that a civil offense has occurred, a Tribal law enforcement officers or another officer of the Sisseton-Wahpeton Oyate Tribal Court shall serve the respondent, or have the respondent served, with written notice that shall include at least the following:

1. the name of the Respondent;
2. the name of the officer or agent issuing the notice, including the signature of the agent or officer;
3. the date the notice was prepared;
4. a citation and quotation of the provision of this Act which the Tribe alleges the Respondent has violated;

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5. A statement which provides that the Respondent may obtain an attorney at their own expense, and that the Respondent may have the opportunity to call witnesses and cross-examine the Tribe's witnesses; and

6. a statement that the Tribal Court will schedule a hearing date for the citation.

**24A-05-05 SERVICE AND NOTICE TO THE TRIBAL COURT.**

Service shall be completed pursuant to the Rules of Civil Procedure for the Sisseton-Wahpeton Oyate Tribal Court. The law enforcement officers or another officer of the Sisseton-Wahpeton Oyate Tribal Court shall immediately file the notice with the Tribal Court.

**24A-05-06 BURDEN OF PROOF.**

The Sisseton-Wahpeton Oyate shall have the Burden of Proof for proving all elements of the below-described offenses by a preponderance of the evidence.

**24A-05-07 PROPER PARTIES AND DESIGNATION.**

All civil offenses shall be enforced and pursued in civil actions initiated in the Sisseton-Wahpeton Oyate Tribal Court. The enforcement of this chapter shall be by sworn and commissioned officers of the Tribe. Offenses shall be prosecuted in the Sisseton-Wahpeton Oyate Tribal Court by the Sisseton-Wahpeton Oyate Tribal Prosecutor or another attorney authorized to prosecute such offenses. No other person or entity shall enforce, nor pursue in court, a civil offense contained in this Act without the express authorization of the Sisseton-Wahpeton Oyate Tribal Council.

**24A-05-08 CODE OF CONDUCT.**

This Code of Conduct addresses activities that represent a civil offense that threatens the political integrity, economic security, and health or welfare of the Tribe. It shall be a violation of the Sisseton-Wahpeton Oyate Code of Conduct to engage in any of the following activities:

1. Distribution – A person commits the offense of distribution if they sell, give away, deliver, exchange, distribute, or dispose of to another methamphetamine or Schedule 1 drug within the Tribe's jurisdiction.
2. Manufacture – A person commits the offense of manufacturing if they produce, cultivate, pack, repack, tablet, encapsulate, label, relabel, fill, or otherwise process methamphetamine or Schedule 1 drug within the Tribe's jurisdiction.
3. Possession – A person commits the offense of possession if they are found with methamphetamine or Schedule 1 drug within the Tribe's jurisdiction.

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4. Ingestion – A person commits the offense of ingestion if they willfully and knowingly ingest, inhale, or otherwise take upon the body methamphetamine or Schedule 1 drug within the Tribe’s jurisdiction.
5. Aiding and Abetting – A person commits the offense of aiding and abetting if they promote or facilitate the commission of a crime that aids, abets, or advises another person in planning or committing the crime of manufacturing or distribution of methamphetamine or Schedule 1 drug within the Tribe’s jurisdiction.

**24A-05-09 CIVIL REMEDIES.**

The Sisseton-Wahpeton Oyate Tribal Court may grant the following civil remedies if an individual is successfully prosecuted pursuant to this Code of Conduct:

1. Civil Fine – the Tribal Court may impose civil fines of up to \$2,500 for violations of this Code of Conduct made payable to the Sisseton-Wahpeton Oyate for drug diversion programs.
2. Civil Restitution – the Tribal Court may order an individual to pay restitution to the Sisseton-Wahpeton Oyate for any damage to property that occurred as a result of the individual’s actions.
3. Civil Temporary Exclusion – the Tribal Court may recommend temporary exclusion, which shall be conducted pursuant to the procedures of Chapter 4 of this Ordinance, for any violation of this Code of Conduct.

**24A-05-10 EMERGENCY REMOVAL OF NON-MEMBER.**

1. Law enforcement officers are authorized to remove non-members and non-Indians from the Tribe’s jurisdiction if an officer determines that the non-member’s presence constitutes an immediate danger to the safety or health of a Tribal member or the Tribe and delay would result in irreparable harm.
2. Such removals may be effective for up to seventy-two (72) hours from the time of the removal.
3. In the event such an emergency removal occurs, law enforcement shall promptly notify the Tribal Council of the action and the reason for the action. The Tribal Council shall consider whether the situation requires further action to exclude the non-member in accordance with this Act.

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## TITLE VI CIVIL PROCEEDINGS

### **24A-06-01 PRIVATE RIGHT TO TEST.**

As a matter of Tribal law there exists a private, legal right to test property and a property owner, landlord, tenant, or other person living at a property has a legal right to test the property to determine whether the property was used to manufacture, distribute, store, or use methamphetamine or a Schedule I drug for any reason or no reason at all and without prior notice to any other person. This legal right is unique to Tribal law and ensures that the general health and welfare of property owners, landlords, tenants, and others that live on the property have a right to know if methamphetamine or a Schedule I drug was manufactured, distributed, stored, or used on the property.

Every lease, sublease, rental agreement, contract, or other written document affecting the property is subject to this legal right to test property to determine whether the property contained methamphetamine or a Schedule I drug. Such lease, sublease, rental agreement, contract, or other written document may not contradict this legal right.

### **24A-06-02 TESTING STANDARD.**

The test must test meth surface contamination samples for the concentration of the mass of meth found on a surface area. The mass is measured in micrograms ( $\mu\text{g}$ , one-millionth of a gram). The health-based standard for meth residue is  $1.5 \mu/100\text{cm}^2$ , which also serves as the health-based cleanup number for homes subject to clean up.

### **24A-06-03 REPORTING POSITIVE TEST RESULTS.**

1. Every positive test shall be reported to law enforcement and the Tribal Court. Every person, business, landlord, tribal entity, and Housing Authority that owns or manages property and is aware of a positive test result has a legal duty to report a positive test to the Tribe's law enforcement and to the Tribal Court.
2. Every person, business, landlord, tribal entity, and Housing Authority that owns or manages property must include the legal duty to report a positive test result to the Tribe's law enforcement and to the Tribal Court in every lease or other written agreement concerning the property.
3. Failure to report shall constitute a violation of this Act and shall be subject to a civil fine not less than \$5,000.00. Failure to report may result in the termination of the right to do business within the Tribe's jurisdiction.

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4. A property that tests positive for methamphetamine or Schedule I drugs may be condemned if the property exceeds the testing standard of § 24-06-02 or constitutes a danger to occupants, visitors, or the public.

#### **24A-06-04 CONTAMINATION AND CLEAN UP.**

Law enforcement shall file a notice of violation of testing for methamphetamine or a Schedule I drug with the Tribal Court and serve the notice on the property owner or manager. The Tribal Court shall order that any property or portion of a property that has tested positive or found by law enforcement to be a place of manufacturing methamphetamine or a Schedule I drug comply with the following conditions:

1. The property shall not be occupied or used until it has been assessed and cleaned up as provided in the U.S. Environmental Protection Agency's most recent cleanup guidelines, including disposal in accordance with the Resource Conservation and Recovery Act.
2. The cleanup of the property shall be accomplished by a contractor certified for methamphetamine cleanup with expertise with hazardous waste and who will make the verification required in accordance with the cleanup guidelines.
3. The property may be subject to additional testing. Methamphetamine made in a rental property with multiple units may result in contamination throughout the structure from chemicals or by-products of the manufacturing process or usage of methamphetamine. The units adjoining the meth lab unit (up, down, front, back, left, and right) may also be contaminated and must be tested.
4. The Tribal Court shall determine, if possible, who caused the positive test. After notice and opportunity to be heard, any person that is determined to be responsible for the positive test must pay for all costs of testing, cleanup, and disposal, including of his property and any adjoining property.

#### **24A-06-05 HEALTH RISK BUT NO CONTAMINATION.**

If the measured methamphetamine or Schedule I drug level is below the testing standard and the property was not declared a methamphetamine lab, cleanup may only be necessary if law enforcement determines that the property presents a health risk to any occupant and files a notice of violation of a health risk pertaining to methamphetamine or a Schedule I drug with the Tribal Court and serves the notice on the property owner or manager. The Tribal Court shall order cleanup that, in its discretion, will eliminate the health risk.

#### **24A-06-06 SUMMARY EVICTION PROCEEDINGS.**

A landlord shall be entitled to institute summary eviction proceedings in the Tribal Court of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation if a tenant manufactures, distributes,

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aids and abets, ingests, or possesses methamphetamine or a Schedule I drug or the property is subject to a positive test. The landlord shall service notice on the tenant. After receipt of the filing of a summary eviction notice, the Tribal Court shall issue a notice of hearing and provide the tenant with a meaningful opportunity to be heard prior to eviction.

If the Tribal Court determines that a tenant manufactures, distributes, aids and abets, ingests, or possesses methamphetamine or a Schedule I drug on the property in question or the tenant caused the property to be subject to a positive test, then the Tribal Court shall order:

1. The lease shall be terminated;
2. The landlord shall be entitled to immediate possession;
3. The landlord shall have the property tested in accordance with this Title;
4. Notice of lease termination and the institution of summary eviction proceedings shall be served upon the tenant;
5. The Tribal Court's Order must inform the tenant that they have 3 days to vacate the property due to the violation of Tribal law, the threat to the health and safety of other tenants, to avoid additional damage to the property, and to ensure that the property in question is subject to testing and the appropriate clean up.
6. Failure to timely vacate the property shall result in the tenant paying for the costs of vacating the property.

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