

# Sisseton-Wahpeton Oyate

LAKE TRAVERSE RESERVATION

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## TRIBAL COUNCIL RESOLUTION NO. SWO-15-018

### Implementation of the Violence Against Women's Act and Amendments to Chapter 20 – Jurisdiction: Civil and Criminal, Chapter 23 – Amended Criminal Procedure Code, and Chapter 52 Domestic Violence Ordinance for Tribal Pilot Status

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

**WHEREAS,** The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and

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

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

**WHEREAS,** It is the Tribal Council's duty and responsibility to promote public health, education, charity, and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, including the need to protect the Oyate and their families, against domestic violence on the Lake Traverse Reservation, in doing so we provide greater protection from violence for our visitors, students and guests; and

**WHEREAS,** That previous Tribal Councils have worked towards implementation of the VAWA and TLOA; and

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**WHEREAS,** In 2010, through Tribal Council SWO-10-112, the Tribal Council stated that “[a]ccording to the Department of Justice, one in three Native American women will be raped in their lifetimes and two-fifths will suffer from domestic violence, Native women are more likely to be victimized than any other racial or ethnic group” and further that “In 2007 Amnesty International published a reported [sic] titled *Maze of Injustice: The failure to protect indigenous women from sexual violence in the USA*, that exposed high levels of rape and sexual violence, including that a high percentage of rapes of Native women are victimized by non-Indian men” the Council then called on Congress to address criminal prosecutions of non-Indians in Indian Country; and

**WHEREAS,** That Congress addressed some the concerns of the 2010 Tribal Council by enacting the VAWA which recognized the Tribes' inherent right to exercise SDVCJ over certain defendants, regardless of their Indian or non- Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian Country; and

**WHEREAS,** That this Tribal Council reiterates the Tribe’s remarks of 2010 and call upon Congress to address all crimes committed by any person, including non-Indians in Indian Country, and address the ruling of *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), this Tribal Council finds that any person who commits any criminal act on the Lake Traverse Reservation should be prosecuted and imprisoned by the Tribe to truly protect our Oyate, their families, visitors, students and guests of the Lake Traverse Reservation; and

**WHEREAS,** That in 2014, the Sisseton-Wahpeton Oyate, as a means to provide the greatest protection and safety of the Oyate, their families, visitors, students and guests, the Tribal Council passed the following Resolutions:

- SWO-14-079, Chapter 20 – Jurisdiction: Civil and Criminal [amendments],
- SWO-14-080, Chapter 23 – Criminal Procedure Code [amendments],
- SWO-14-081, Chapter 24 – Penal Code [amendments],
- SWO-14-082, Chapter 52 – Domestic Violence Ordinance [amendments],
- SWO-14-083, Repeal Chapter 57 – Domestic Abuse Mandatory Arrest Ordinance,
- SWO-14-084, Chapter 75 – Sex Offender Notification and Registration Code [amendments],
- SWO-14-085, Authorization to Submit Application Questionnaire for the VAWA Pilot Project on Tribal Criminal Jurisdiction; and

**WHEREAS,** The Sisseton-Wahpeton Oyate has been working closely with the Department of Justice to implement the VAWA on the Lake Traverse Reservation; and

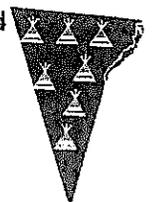
**WHEREAS,** That in order for the Tribe to be a VAWA Pilot Tribe the following code amendments are required:

**20-03-03 DEFENDANTS**

~~(4) Any person who violates a domestic violence protection order as defined under Chapter 20-03-02 within the jurisdiction of the Tribe.~~

**Explanation:**

The Tribe is exercising jurisdiction consistent with federal law.



**23-08-02**      GENERALLY

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

**Explanation:**

The ability to have a trial by an impartial jury is automatic and a defendant does not have to request or demand a trial by jury.

**23-08-04**      SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION

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

**Explanation:**

The defendant shall be notified of his/her right to file a writ of habeas corpus without the requirement of exhaustion of any available tribal court remedies.

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

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

**Explanation:**

The word "member" needed to be removed, in a SDVCJ case, in order to reflect a fair cross section of the community, in some instances non-Indians would sit on a jury. Additional language is to clarify that the potential jurors would need to also meet the other eligibility requirements of 23-10-02.

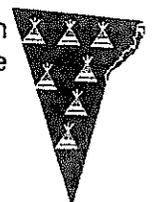
**52-01-04**      DEFINITIONS

~~(6)(d) Any other act/s of domestic violence which is/are purposely used against the victim as a means of inflicting power and control over the victim; this may include but is not limited to:~~

- ~~i. Use of coercion and/or threats;~~
- ~~ii. Use of intimidation;~~
- ~~iii. Use of emotional abuse;~~
- ~~iv. Use of isolation;~~
- ~~v. Use of economic abuse;~~
- ~~vi. Use of harassment and/or stalking;~~
- ~~vii. Use of children.~~

**Explanation:**

The above language is overly broad. While the Tribe plans to include a section for family violence that specifically relates solely to Indians at a later date, the language of this section is stricken due to being overly broad; and



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WHEREAS, All sections of Chapter 20, Chapter 23 & Chapter 52 not identified in this Resolution shall remain in effect.

NOW THEREFORE, BE IT RESOLVED, all amendments are included in this Resolution; and

FINALLY BE IT RESOLVED, That the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation hereby adopts the amendments as described herein.

CERTIFICATION

We, the Undersigned duly elected Tribal Chairman and Tribal Secretary of the Sisseton-Wahpeton Oyate Tribal Council, do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Oyate Tribal Council, which is composed of 10 members (representing a total of 15 Tribal Council weighted votes and two Executive Committee votes for a total of 17 votes) of whom 10 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at the TiWakan Tio Tipi, Agency Village, South Dakota, March 5, 2015, by a vote of 17 for, 0 opposed, 0 abstained, 0 absent from vote, 1 not voting, and that said Resolution has not been rescinded or amended in any way.

Dated this 3<sup>rd</sup> day of April 2015.

*Bruce Renville*

Bruce Renville, Tribal Chairman  
Sisseton-Wahpeton Oyate

ATTEST:

*Crystal Owen*

Crystal Owen, Tribal Secretary  
Sisseton-Wahpeton Oyate

