

SISSETON-WAHPETON OYATE

CODES OF LAW

CHAPTER 24—Penal Code

Sisseton-Wahpeton Oyate  
Judicial Committee

New Code  Amended Code  Repealed Code   
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## **TITLE I - GENERAL PROVISIONS AND DEFINITIONS**

### **24-01-01 Title**

This Code shall be known and cited as the Penal Code of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

### **24-01-02 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.

### **24-01-03 Gender**

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

### **24-01-04 Definition, Classifications and Application**

No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this Chapter, with the exceptions of those identified within: Chapter 75 (Sex Offender Notification and Registration Code), Chapter 56 (Elderly Protection Code), Chapter 16 (Fish and Wildlife Code), Chapter 27 (Traffic Code), Chapter 52 (Domestic Violence Ordinance), Chapter 48 (Adult Protection Code), Chapter 38 (Juvenile Code), and the Chapter 29 (Restraining Order Procedures Act).

### **24-01-05 General Classification of Offenses**

Under this Chapter, crimes are classified as either felonies or misdemeanors. Under this Chapter a felony may be punishable by imprisonment of a period of one year or more, and a misdemeanor may be punishable by imprisonment for a period of one year or less.

### **24-01-06 Intent**

Wherever used in this Chapter, unless the context otherwise plainly requires, the terms defined in Sections 24-01-07 to 24-01-11 below shall be defined as follows when applied to the intent with which an act is done or committed.

### **24-01-07 Recklessly**

A conscious disregard as to a substantial and unjustifiable risk, that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe

in the actor's situation.

**24-01-08      Knowingly**

A knowledge that the fact(s) exist which brings the act or omission within the provisions of any Section

**24-01-09      With Malice, Maliciously**

A wish to vex, annoy or injure another person, established either by proof or presumption of law.

**24-01-10      Neglect, Negligence, Negligent and Negligently**

A want of such attention to the nature or probable consequences of the act or omission which a prudent man ordinarily bestows in acting in his own concerns.

**24-01-11      Willfully**

A purpose or willingness to commit the act or the omission referred to. It does not require any intent to violate the law, or to injure another, or to acquire any advantage.

**24-01-12      Bribe**

Signifies any money, goods, right in action, property, things or advantage, present or prospective, asked, promised, given or accepted with the unlawful intent to influence the recipient or prospective recipient in his action, vote, or opinion in any public or official capacity.

**24-01-13      Signature**

Includes any name, mark, or sign written with intent to authenticate any instrument or writing.

**24-01-14      Bodily Injury**

Physical pain, illness or any impairment of the physical condition of the body.

**24-01-15      Serious Bodily Injury**

Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**24-01-16      Deadly Weapon**

Any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

**24-01-17 Offenses**

An omission to perform a duty imposed by act forbidden by this Chapter and to which is annexed, upon conviction, one or more of the following punishments:

- A. Imprisonment;
- B. Fine;
- C. Removal from Office;
- D. Disqualification to hold or enjoy any office of honor, trust or profit under the Sisseton-Wahpeton Oyate; or
- E. All other sentences deemed appropriate by the Court.

**24-01-18 Persons**

Any person who falls under the criminal jurisdiction of the Sisseton-Wahpeton Oyate, pursuant to Chapter 20 of the Sisseton-Wahpeton Oyate Codes of Law. Where appropriate, "person" shall also mean corporation, government, or governmental instrumentality.

**24-01-19 Principals**

All persons concerned in the commission of an offense, whether they directly commit the act constituting the offense, or aid and abet in its commission, even though not present.

**24-01-20 Persons capable of committing an offense**

All persons are capable of committing the offenses listed in this Chapter except those belonging to the following classes:

- A. Children under the age of twelve (12) years;
- B. Children at or over the age of twelve (12) years but under the age of sixteen (16) years, in the absence of proof that at the time of the committing of the act or neglect charged against them they knew of its wrongfulness.
- C. Incompetent Persons.

**24-01-21 Burden of Proof**

- A. The burden of proof lies on the Tribe, and as such, the Tribal Prosecutor has to prove each element of an offense beyond a reasonable doubt. The innocence of the Defendant is presumed.
- B. Whenever the defendant introduces sufficient evidence to establish a defense to any element of the offense, the Tribe has the burden of disproving that defense.

**24-01-22 Defenses**

The action of the defendant in opposition to complaints made against him.

**24-01-23 Intoxication**

An act committed in a state of voluntary intoxication shall not be deemed less of an offense by reason of his having been in such condition. Intoxication of the actor is not a defense unless it negates an element of the offense.

**24-01-24 Ignorance or Mistake**

Ignorance or mistake as to a matter of fact or law is a defense in the following situations:

- A. The ignorance or mistake negates the necessary mental state required for the commission of an offense; or
- B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

When a juvenile is below a particular age, it is no defense that the Defendant did not know the child's age or even reasonably thought the child to be of an age that would have made his conduct legal or illegal.

**24-01-25 Incapacity**

A person is not responsible for conduct that would otherwise be punishable under this Chapter if at the time of such conduct and as a result of mental disease or defect, he lacked substantial capacity to either appreciate the wrongfulness of that conduct or conform his conduct to the requirements of this Chapter.

**24-01-26 Self-Defense**

The use of reasonable force is a defense, and justifiable when a person reasonably believes that the use of such force was immediately necessary to protect himself or others. However, self defense will NOT be a defense under the following circumstances:

- A. A person is not justified in using force for the purpose of resisting arrest, service of process, or other performance of duty by a public servant; and
- B. A person is not justified in using force if the conduct of the person against whom force was used was intentionally provoked by the defendant in an attempt to justify the defendant's use of force as self defense.

The use of deadly force is a defense only when the defendant reasonably believed that such force was necessary to protect himself or another against death, serious bodily harm, abduction, or rape.

#### **24-01-27 Defense of Property**

The use of force, other than deadly force, is a defense only when the defendant reasonably believed that such force was necessary to prevent or terminate conduct which the defendant reasonably believed to be the commission or attempted commission of a crime involving trespass, arson, theft, or damage to property.

#### **24-01-28 Other Defenses**

All common law legal defenses shall be acceptable in proceedings in the Tribal Court, including the defense of restitution.

#### **24-01-29 Punishment Generally**

The punishments prescribed by this Chapter can be inflicted only upon a legal conviction in the Sisseton-Wahpeton Oyate Court. Upon such a conviction, a duty devolves upon the Court to pass sentence, to determine and impose the punishment prescribed. Subject to the provisions relating to indeterminate sentences, whenever punishment is left undetermined between certain limits, the Court shall determine the punishment within such limits.

#### **24-01-30 Parties, Persons to be Punished**

The following persons are liable for punishment under this Chapter:

- A. Sisseton-Wahpeton Oyate tribal members, or persons eligible to be members, who commit an offense within the jurisdiction of the Tribe;
- B. Any tribal member of another tribe, or persons eligible to be members, who commit an offense within the jurisdiction of the Tribe;
- C. Any non-Indian who submits to the criminal jurisdiction of the Tribe or who is subject to the Tribe's special domestic violence criminal jurisdiction.

Whenever any person is convicted of an offense punishable by confinement to jail, the Court may, in its discretion, sentence the person so convicted to confinement in the appropriate jail.

#### **24-01-31 General Penalty Prescribed**

Except in cases where a different penalty is prescribed by this Chapter and pursuant to the Tribe's inherent authority and the Indian Civil Rights Act of 1968, 25 U.S.C.A. § 1301 et seq., every act declared to be an offense is punishable by imprisonment not to exceed three (3) years incarceration, or to a fine not to exceed \$15,000.00, or both; or when the Court deems appropriate, a suitable punishment of restitution.

Offenses subject to greater than a (1) year imprisonment, \$5,000 fine, or both, may only be imposed upon a defendant who: (1) has been previously convicted of the same or comparable

offense by any jurisdiction in the United States, or (2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

The Court shall not impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of nine (9) years.

**24-01-32 Classification of Offenses**

**Felonies.** The maximum sentence for a felony shall be:

Three (3) years incarceration, not to exceed nine (9) years for multiple counts, a \$15,000.00 fine or both;

**Class One (1) Misdemeanors.** The maximum sentence for a Class One (1) Misdemeanor shall be:

One (1) year incarceration, \$5,000.00 fine, or both

**Class A Misdemeanors.** The maximum sentence for a Class A Misdemeanor shall be:

Eight (8) months incarceration, \$1,000.00 fine or both

**Class B Misdemeanors.** The maximum sentence for a Class B Misdemeanor shall be:

Four (4) months incarceration, \$400.00 fine, or both.

**Class C Misdemeanors.** The maximum sentence for a Class C Misdemeanor shall be:

Three (3) months incarceration, \$250.00 fine, or both.

**Class D Misdemeanors.** The maximum sentence for a Class D Misdemeanor shall be:

Forty-five (45) days incarceration, \$100.00 fine, or both.

**Class E Misdemeanors.** The maximum sentence for a Class E Misdemeanor shall be:

Fifteen (15) days incarceration, \$50.00 fine, or both,

**Class F Misdemeanors.** The maximum sentence for a Class F Misdemeanor shall be:

\$75.00 fine.

**Class G Misdemeanors.** The maximum sentence for a Class G Misdemeanor shall be:

\$50.00 fine.

**Special Class Misdemeanors.** The maximum sentence for a Special Class Misdemeanor shall be:

A sentence to imprisonment, fine, or work, at the Court's discretion and as directed within the code section for the particular offense for which the Defendant is being sentenced.

#### **24-01-33 Special Sentencing**

No Section of this Chapter shall prohibit the Court from imposing any sentence, deemed more appropriate than imprisonment or a fine, under the circumstances of a particular case. Sentences may include, but are not limited to

- A. Commitment to a rehabilitation program;
- B. Work for the benefit of the Tribe;
- C. Restitution.

#### **24-01-34 Sentences**

Sentences may include, but are not limited to, the following:

- A. Sentence to Imprisonment, Fine or Work. Any person who has been convicted of an offense shall be alternately sentenced to imprisonment or a fine or both. No Section of this Chapter shall prohibit the Court from imposing any sentence, deemed more appropriate than imprisonment or fine, under the circumstances of a particular case. Sentences may include, for example: commitment to a rehabilitation program, work for the benefit of the Tribe, restitution, etc.
- B. Payment of Fines. Fines shall be paid in cash as directed by the Court. Upon request of the convicted person, a duly authorized Federal officer shall pay the fine out of funds of the convicted person on deposit at the Agency, or, if the judgment so requires, shall approve the transfer of property to the Tribe in payment of the fine.

**24-01-35 Factors in Determining Sentence**

In determining the character and duration of the sentence to be imposed the Court shall consider, among other factors that, in its own discretion it finds relevant, the following:

- A. The sentences fixed in this Chapter are the maximum sentences;
- B. The previous record and conduct of the convicted person;
- C. Whether the convicted person has made restitution or paid damages; and
- D. The financial resources and needs of the convicted person and his dependents and such other factors as the Court may deem appropriate.

**24-01-36 Suspension of Sentences**

The Court may, on such terms and conditions as it may feel appropriate, suspend the sentence and release a convicted person on probation upon the person's pledge of good conduct for the duration of the sentence.

**24-01-37 Probation**

The Court may release on probation a convicted person on such terms and conditions as are just and appropriate, taking into consideration the prior criminal record of the defendant, his background, character.

**24-01-38 Violations of Conditions of Probation**

Any person who violates the terms and conditions of his probation may be required to serve the original sentence, remaining at the time that the probation was granted.

**24-01-39 Parole**

Any prisoner confined to the jail who shall have served without misconduct one half (1/2) of the sentence imposed shall be eligible for parole, if the sentence is greater than thirty (30) days in length. This Section does not apply to offenses with mandatory sentences.

**24-01-40 Granting of Parole**

Parole may be granted by the court upon such terms and conditions, including the requirement of personal reports from the parolee, as the Court may prescribe.

**24-01-41 Violations of Parole**

Any paroled person who shall violate any provisions of his parole may be apprehended and confined to serve the original sentence.

**24-01-42 Commutation of Sentence**

If the Court is satisfied that justice will best be served by reducing a sentence, the Court may at any time commute to a lesser period any sentence imposed upon a person, upon proof that during the period of sentence the person served without misconduct and did satisfactory work.

**24-01-43 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.

**24-01-44 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.

**24-01-45 Amendment**

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

**24-01-46 Interpreting Definitions**

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

**24-01-47 Definitions**

- A. "Concealed" means any firearm that is totally hidden from view.
- B. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.
- C. "Credible threat" means a threat made with the intent and the apparent ability to carry out a threat. A credible threat need not be expressed verbally.
- D. "Drug-Related Paraphernalia" means and includes any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling or otherwise introducing into the body a controlled substance, possession of which is unlawful under this section.
- E. "Firearm" means any gun, revolver, pistol, rifle, shotgun, or other weapon, or any device

- by which discharges a projectile by explosive force.
- F. “Fugitive” means anyone who is knowingly or negligently aware that they are suspected of, being sought after, prosecuted for, convicted of, or liable to punishment for any offense in the Code.
- G. “Public Official” means but is not limited to, Tribal Chairman, Tribal Vice- Chairman, Tribal Secretary, District Councilman, Tribal Judges, and Tribal Law Enforcement.
- H. “Receiving” means acquiring possession, control or title, or lending on the security of the property.
- I. “Replica-firearm” means, a device or object that is not defined as a dangerous weapon, shall include, a facsimile, a toy version and reasonably appears like a pistol, revolver, shotgun, sawed-off shotgun rifle, machine gun, rocket launcher. Replica also includes devices that fire blanks.
- J. “Sexual contact” means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitals or anus of any person, excluding any contact for medical or healing purposes.
- K. “Sexual intercourse” means contact between human beings consisting of penetration of any of the mouth, penis, vulva or anus, or penetration by the defendant’s hands or any foreign instrument held or controlled by the offender and the penis, vulva or anus of the victim.

## OFFENSES

### Title II - Attempting and Aiding

#### **24-02-01      Attempt**

Any person who attempts to commit a crime by an act or omission, but fails, or is prevented, or is intercepted in the perpetration thereof, is punishable where no explicit provision is made by law for the punishment of such attempt, as follows:

If the offense so attempted is punishable by a sentence to imprisonment, fine, or both, the offender convicted of Attempt may be punished by a sentence to labor, a fine, or both, not exceeding one half (1/2) of the longest sentence to labor, and one half (½) of the largest fine which may be imposed upon conviction for the offense so attempted. A violation of this Section is a Special Class Misdemeanor.

#### **24-02-02      Aiding and Abetting**

Any person who, with the intent to promote or facilitate the commission of an offense, aids, abets, or advises another person in planning or committing the offense shall be deemed guilty of Aiding and Abetting. A violation of this Section is a Special Class Misdemeanor.

### **Title III- Crimes Against the Person/Homicide**

#### **24-03-01 Murder**

Any person who willfully or knowingly causes the death of another human being shall be deemed guilty of Murder. A violation of this Section is a Felony.

#### **24-03-02 Manslaughter**

Any person who recklessly causes the death of another human being shall be deemed guilty of Manslaughter. A violation of this Section is a Felony.

#### **24-03-03 Negligent Homicide**

Any person who negligently causes the death of another human being shall be deemed guilty of Negligent Homicide. A violation of this Section is a Felony.

#### **24-03-04 Attempted Suicide**

Any person who attempts to commit suicide shall be held in Protective Custody until transferred to an appropriate facility upon order of the Court. A violation of this Section shall be deemed guilty of Attempted Suicide. A violation of this Section is a Special Class Misdemeanor.

### **Title IV- Abduction and Related Offenses**

#### **24-04-01 Abduction**

Any person who willfully detains for a significant period or takes away another person against their will or without the consent of the parent or other person having lawful care of him shall be deemed guilty of Abduction. A violation of this section is a Felony.

#### **24-04-02 False Imprisonment**

Any person who, without lawful authority, intentionally removes, detains, restrains, or confines another person without his or her consent shall be deemed guilty of false imprisonment. A violation of this Section is a Class One (1) Misdemeanor.

### **Title V-Sexual Offenses**

#### **24-05-01 Indecent Exposure**

Any person with the intent to be seen exposing his genitalia or anus or she exposes the areola or nipple of her breast (s) where there is present another person (s), and the defendant is reckless about whether such other person (s), as a reasonable person (s), would be offended or annoyed

by the act, shall be deemed guilty of Indecent Exposure. A violation of this Section is a Class One (1) Misdemeanor.

**24-05-02 Incest**

Any person who knowingly engages in sexual conduct or sexual intercourse when related, either through blood, marriage, or adoption as either,

- A. Parent and child;
- B. Grandparent and grandchild;
- C. Siblings (whole or half);
- D. Uncle and niece/nephew;
- E. Aunt and nephew/niece;
- F. First cousins, or;
- G. Second cousins,

Shall be deemed guilty of Incest. A violation of this Section is a Class One (1) Misdemeanor.

**24-05-03 Statutory Rape**

Any person who has sexual intercourse with a person who is under the age of sixteen (16) years and who is at least three (3) years younger than the defendant, or any person who knowingly aids or permits any such violations shall be deemed guilty of Statutory Rape. A violation of this Section is a Felony.

**24-05-04 Rape**

Any person who engages in a sexual act with another, or one who causes another to engage in sexual intercourse, under any of the following circumstances shall be deemed guilty of Rape:

- A. The defendant compels the other person to submit by force or by any threat of serious bodily injury, death, or kidnapping against the victim or other persons of a close relationship. A close relationship is defined as: parent, sibling, children whether biological or custodial, grandparent, and life partner;
- B. The victim is incapable, because of physical or mental incapacity, of giving consent to such intercourse;
- C. The victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent;
- D. The victim is unconscious;
- E. The victim submits because the person falsely supposes the defendant to be someone else;
- F. The victim is in official custody or otherwise detained in a hospital, prison, or other similar institution and the defendant has supervisory or disciplinary authority over the detained person.

A violation of this Section is a Felony.

**24-05-05 Prostitution**

- A. Any person, who engages in, agrees to, or offers to engage in sexual intercourse or sexual contact for consideration or who shall knowingly keep, maintain, rent, or lease, any house, room, or other place for the purpose of prostitution shall be deemed guilty of Prostitution. A violation of this section is a Class One (1) Misdemeanor.
- B. Any person who shall patronize any person or establishment defined in this Section shall be deemed guilty of a Class One (1) Misdemeanor.

**24-05-06 Transmitting a Communicable Disease**

Any person who knows or has reason to know that he is infected with a communicable disease and who recklessly exposes another to the disease shall be deemed guilty of Transmitting a Communicable Disease. A violation of this Section is a Class One (1) Misdemeanor.

Any person found guilty of this Section shall accept necessary diagnosis or treatment, or both, in accordance with Indian Health Service and State Health Department regulations.

**24-05-07 Human Trafficking**

Any person who knowingly

- A. Recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains, or so attempts, another person knowing or causing that person to be subjected to involuntary servitude, or commercial sex acts, or
- B. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in any act described in paragraph (A) commits a felony.
- C. Evidence of the following facts or conditions shall not constitute a defense in a prosecution for violations of 24-05-07, nor shall such evidence preclude a finding of a violation:
  - 1. a victim of human trafficking's sexual history or history of commercial sexual activity;
  - 2. a victim of human trafficking's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking;
  - 3. consent of or permission by a victim of human trafficking or anyone else on the victim's behalf to any commercial sex act or sexually explicit performance;
  - 4. age of consent to sex, legal age of marriage, or other discretionary age.
- D. A victim of human trafficking is not criminally liable for any commercial sex act or

illegal sexually explicit performance committed as a direct result of, or incident or related to, being subject to 24-05-07 (A).

## **Title VI - Assault and Related Offenses**

### **24-06-01 Simple Assault**

Any person who;

- A. Attempts to cause or willfully, knowingly or recklessly causes bodily injury to another; or
- B. Negligently causes bodily injury to another with a deadly weapon; or
- C. Attempts by physical menace to put another in fear of imminent serious bodily injury,

Shall be deemed guilty of Simple Assault. A violation of this Section is a Class G Misdemeanor.

### **24-06-02 Assault and Battery**

Any person who willfully uses force or violence upon the person of another or who by offering violence causes another to harm himself/herself shall be deemed guilty of Assault and Battery.

A violation of this section is a Class A misdemeanor.

### **24-06-03 Aggravated Assault**

Any person who;

- A. Attempts to cause serious bodily injury to another, or causes such injury willfully, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or
- B. Attempts to cause or willfully or knowingly causes bodily injury to another with a deadly weapon,

Shall be deemed guilty of Aggravated Assault. A violation of this Section under paragraph (A) is a Class 1 Misdemeanor. A violation of this Section under paragraph (B) is a Class A Misdemeanor.

### **24-06-04 Assault on a Public Official**

Any person who shall willfully and unlawfully attempt or offer, with force or violence, to do a corporal hurt, or who actually does a corporal hurt, to any public official, which includes but is not limited to: Tribal Chairman, Tribal Vice-Chairman, Tribal Council Secretary, District Councilman, District Chairmen and Tribal Judges and Tribal Law Enforcement Officers, while they are in the performance of their duties, shall be deemed guilty of Assault on a Public Official. A violation of this Section is a Class One (1) Misdemeanor.

**24-06-05 Assault with Intent to Commit Rape**

Any person who shall assault another person with the intent to commit rape, whether or not rape is actually committed, shall be deemed guilty of Assault With Intent to Commit Rape. A violation of this Section is a Class One (1) Misdemeanor.

**24-06-06 Sexual Assault of a Child**

Any person who intentionally has sexual contact with a person under thirteen (13) years of age, or who causes another person to do so shall be deemed guilty of sexual assault of a child. A violation of this Section is a Felony.

No statute of limitations that would otherwise preclude prosecution for an offense involving sexual or physical abuse of a child under the age of eighteen (18) years shall preclude such prosecution before the child reaches the age of twenty-five (25) years.

**24-06-07 Sexual Assault**

Any person who intentionally has sexual contact with another person without the consent of such person shall be deemed guilty of Sexual Assault. A violation of this section is a Felony.

**24-06-08 Sexual Exploitation of a Child**

Any person who forces a child to any of the following, or allows another to force a child to do any of the following shall be deemed guilty of Sexual Exploitation of a Child:

- A. Solicit or engage in prostitution;
- B. Submit to sexual contact of any kind;
- C. Engage in filming, photographing, videotaping, posing, modeling, or performing before a live audience, where such acts involve exhibition of the child's genitals, or the placing of a child into a situation involving sexual contact;
- D. Any person who engages in the distribution or attempts to engage in the distribution of any such films, photographs or videotapes as may related to Section C of 24-06-07.

A violation of this Section is a Felony.

No statute of limitations that would otherwise preclude prosecution for an offense involving sexual or physical abuse of a child under the age of eighteen (18) years shall preclude such prosecution before the child reaches the age of twenty-five (25) years.

**24-06-09 Child Abuse**

Any person, having permanent or temporary care, custody, or responsibility for the supervision

of a child, or any household or family member, is guilty of Child Abuse under any of the following circumstances:

- A. Cruel mistreatment, including but not limited to, unjustifiable physical pain by striking, beating, or torturing or causing mental suffering;
- B. Subjects the child to harm or substantial risk of being harmed;
- C. Deserts the child with intent to abandon him.

Any abused child is a child found to be suffering abuse of a physical, emotional, nutritional, sexual or exploitative nature.

OR

Any adult who intentionally physically harms, emotionally harms, or sexually contacts a minor shall preclude such prosecution before the child reaches the age of twenty-five (25) years.

No statute of limitations that would otherwise preclude prosecution for an offense involving sexual or physical abuse of a child under the age of eighteen (18) years shall preclude such prosecution before the child reaches the age of twenty-five (25) years.

#### **24-06-10 Child Neglect**

Any person having permanent or temporary care or custody of a child who willfully causes or permits that child to be placed in any of the following situations shall be deemed guilty of Child Neglect.

- A. A child who has been abandoned or abused by his parent, guardian, or custodian, or whose parent, guardian or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child;
- B. A child is deprived of necessary subsistence, education, shelter, medical treatment, or any other care necessary for the child's health and well-being while capable of doing so, except in cases where the parent's spiritual beliefs prohibit them from allowing medical treatment;
- C. A child is permitted to live in an environment that causes the child's physical, mental, or emotional health to be significantly impaired or in danger of being significantly impaired;
- D. A child lacks adequate parental care or control evidenced by habitual delinquency;
- E. A child under the age of fourteen (14) years who is left without competent supervision overnight for any reason other than emergency;
- F. A child who is exposed to a physically dangerous situation as a result of parental negligence;

- G. A child under the age of fourteen (14) years who is left with a knowingly irresponsible babysitter;
- H. A child who is not dressed adequately for severe weather conditions;
- I. A child under the age of twelve (12) years, who is left alone or unsupervised in a vehicle;
- J. A child under the age of eighteen (18) years, who is knowingly allowed access to alcoholic beverages, drugs, or tobacco;
- K. A child under the age of eighteen (18) years, who has more than ten (10) unexcused absences from school in one quarter where the parent(s) or custodian(s) have knowledge of the absences.
- L. A child, knowingly allowed to be out and unsupervised after curfew;
- M. A child who is not immunized from reasonably preventable diseases when contacted by medical personnel, except in cases where the parent's spiritual beliefs prohibit them from allowing medical treatment.

OR

Any person who knowingly, recklessly, or negligently causes or allows a child to suffer physical, mental, or emotional injury or knowingly, recklessly, or negligently deprives a child of the basic necessities of life shall be deemed guilty of Child Neglect.

A violation of this Section is a Special Class Misdemeanor and sentences are as follows:

- 1<sup>st</sup> Offense: 30 days, \$100 fine, or both.
- 2<sup>nd</sup> Offense: 60 days, \$200 fine, or both.
- 3<sup>rd</sup> Offense: 90 days, \$360 fine, or both.

In determining if a person shall be sentenced as a first, second, or third Child Neglect offense, the Court shall review that person's Tribal Court record for the past four (4) years. In addition, where appropriate, the Court may order guidance and counseling, or other rehabilitative services.

**24-06-11 Domestic Abuse**

Domestic Abuse is set forth under the Protection from Domestic Violence Ordinance, Chapter 52 of the Sisseton-Wahpeton Oyate Codes of Law.

**24-06-12 Sex Offender Registry**

Sex Offender Registration requirements are set forth under the Sex Offender Ordinance, Chapter

75 of the Sisseton-Wahpeton Oyate Codes of Law.

**24-06-13 Elderly Protection**

The Elderly Protection Code is set forth under Chapter 56 of the Sisseton-Wahpeton Oyate Codes of Law.

**Title VII - Crimes against Property**

**24-07-01 Setting Fires**

Any person who shall willfully, knowingly or, negligently kindle or cause to be kindled, fire within the Lake Traverse Reservation or communities therein, and leaves it un-extinguished or negligently or carelessly without full precaution to prevent fire spreading, permits it to spread beyond his control, so as to endanger the property of another, or is a party of the foregoing, and whether such fire is kindled upon his own land or not; or who finding any uncontrolled fire burning, fails to give, immediate warning and make reasonable attempt to extinguish it, shall be deemed guilty of Setting Fires. A violation of this Section is a Class D Misdemeanor and, in addition, the Court may order the defendant to make restitution for damages to the injured parties.

**24-07-02 Arson**

Any person who shall willfully maintain a fire or cause an explosion within the Lake Traverse Reservation, or communities therein, with the intent to destroy or damage a building or occupied structure, motor vehicle, field, crop or standing timber of another shall be deemed guilty of Arson. Such a violation of this Section is a Felony and, in addition, the Court may order the defendant to make restitution for damages to the injured parties.

**24-07-03 Trespass**

Any person who willfully commits any of the following acts, within the territorial jurisdiction of the Lake Traverse Reservation shall be deemed guilty of Trespass:

- A. Entering and occupying land, which has been posted with notice signs, real property, or structures of any kind without the consent of the owner, or uses his agent, or person in lawful possession thereof;
- B. Refusing or failing to leave land, real property, or structures of any kind belonging to or lawfully occupied by another and not open to the general public, upon being requested to leave by a police officer and the owner, or user, his agent, or the person in lawful possession thereof;
- C. Refusing or failing to leave a public building or a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a police officer, a regularly employed guard, watchman, or custodian of the

public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue.

- D. Entering any lands or buildings whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intent to interfere with, obstruct or injury any lawful business or occupation carried on by the person in lawful possession.

A violation of this Section is a Class One (1) Misdemeanor.

**24-07-04 Breaking and Entering**

Any person who shall knowingly or willingly break into and enter a home, business, or building of another person shall be deemed guilty of Breaking and Entering. A violation of this Section is a Class C Misdemeanor and, in addition, the defendant shall make restitution for damages to the injured parties.

**24-07-05 Burglary**

Any person who shall knowingly or willingly break and enter the dwelling place of another at night with the intent to commit a crime therein shall be deemed guilty of Burglary. A violation of this Section is a Class One (1) Misdemeanor.

**24-07-06 Petty Theft**

Any person who knowingly or willingly takes, or exercises control over, property of another person valued at \$100.00 or less with intent to deprive him of it, including, but not limited to, by deception or threat, shall be deemed guilty of Petty Theft. A violation of this Section is a Class E Misdemeanor and, in addition, the Court may order the defendant to make restitution to the injured parties.

**24-07-07 Theft**

Any person who knowingly or willingly takes, or exercises control over, property of another person valued at more than \$100.00 with intent to deprive him or it, including, but not limited to, by deception or threat, shall be deemed guilty of Theft. A violation of this Section is a Class One (1) Misdemeanor and, in addition, the Court may order the defendant to make restitution to the injured parties.

**24-07-08 Embezzlement**

Any person who shall have lawful custody in a trust relationship or of property not his own and appropriate the same for his own use with intent to deprive the owner thereof shall be deemed guilty of Embezzlement. A violation of this Section is a Class One (1) Misdemeanor and in addition, the Court may order the defendant to make restitution to the injured parties.

**24-07-09      Extortion**

Any person who shall willfully or knowingly, by making false charges against another by use of force or threats, extort or attempt to extort money, goods, property, or anything else of value, shall be deemed guilty of Extortion. A violation of this Section is a Class One (1) Misdemeanor.

**24-07-10      Receiving Stolen Property**

Any person who willfully receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with purpose to restore it to the owner shall be deemed guilty of Receiving Stolen Property. A violation of this Section is a Class B Misdemeanor and, in addition, the Court may Order restitution for damages to the injured parties.

**24-07-11      Malicious Mischief**

Any person who maliciously injures, defaces, or destroys any real or personal property not his own, shall be deemed guilty of Malicious Mischief. A violation of this Section is a Special Class Misdemeanor and the defendant may be Ordered to make restitution for the injury done; and upon failure of the defendant to make restitution within a reasonable time, the Judge may impose a sentence not to exceed the specifications of a Class A Misdemeanor.

**24-07-12      Injury to Public Property**

Any person who shall, without proper authority, use or injure any public, government, or Tribal property shall be deemed guilty of Injury to Public Property. A violation of this Section is a Class D Misdemeanor and, in addition, the Court may Order restitution for damages to the injured parties.

**24-07-13      Destroying Fence**

Any person who shall willfully destroy by any means the fencing or fences belonging to another person shall be deemed guilty of Destroying Fence. A violation of this Section is a Special Class Misdemeanor and, in addition, the Court shall Order restitution for damages to the injured parties.

**24-07-14      Wanton Injury to Timber**

Any person who shall wantonly or maliciously, or without proper permission, cut, dig up, or injure any timber planted, cultivated, or growing naturally on the Lake Traverse Reservation, or who shall wantonly or maliciously open, let down, throw down, tear down, or prostrate any fence, gate or bars, belonging to any enclosure of any description shall be deemed guilty of Wanton Injury to Timber. A violation of this Section is a Class D Misdemeanor and, in addition, the Court may Order restitution for damages to the injured parties.

**24-07-15 Unauthorized Tampering with a Motor Vehicle**

Any person who shall tamper with a motor vehicle of another with intent to injure the vehicle or cause inconvenience to the owner or who shall take or operate the vehicle of another without the consent of the owner or person lawfully in charge thereof, shall be deemed guilty of Unauthorized Tampering with a Motor Vehicle. A violation of this Section is a Class A Misdemeanor and, in addition, the Court may Order restitution for damages to the injured parties.

**24-07-16 Desecration**

Any person who willfully desecrates any public monument or structure or place having a spiritual significance including, but not limited to, use for worship or burial, or a substantial segment thereof by defacing, damaging, polluting, or otherwise physically mistreating in a way that would outrage the sensibilities of a reasonable person shall be deemed guilty of Desecration. A violation of this Section is a Class A Misdemeanor and, in addition, the Court may Order restitution for damages to the injured parties.

**24-07-17 Theft by Deception**

Any person who purposely obtains property of another person or governmental agency, shall be deemed guilty of Theft by Deception if he willfully:

- A. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or
- B. Prevents another from acquiring information which would affect his judgment of a transaction; or
- C. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
- D. Fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

A violation of this Section is a Special Class Misdemeanor.

**24-07-18      Forgery**

Any person who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be deemed guilty of Forgery. A violation of this Section is a Class One (1) Misdemeanor and, in addition, the Court shall Order restitution for damages to any injured parties.

**24-07-19      Disposing of Property of an Estate**

Any person who sells, trades, or otherwise disposes of any property of an estate before the determination of the heirs and without proper authority shall be deemed guilty of Disposing of Property of an Estate. A violation of this Section is a Special Class Misdemeanor and the Court may Order restitution for damages to injured parties.

**24-07-20      Passing Bad Checks**

A.    **Passing Checks Against Insufficient Funds.** Any person who, for himself or as agent or representative of another, for a present consideration with intent to defraud, passes a check drawn on a financial institution knowing at the time of such passing that there are not sufficient funds in the account on which the check was drawn for the payment of such check, and all other checks upon such funds then outstanding, in full upon its presentation, although no express representation is made reference thereto, shall be deemed guilty of Passing Checks Against Insufficient Funds.

1.    A person who passes a check of one hundred dollars (100) dollars or less against insufficient funds is guilty of passing a check against insufficient funds in the Third Degree, which is a Class D Misdemeanor.
2.    A person who passes a check or a series of checks within any thirty (30) day period the amount of two hundred (200) dollars or less but not more than one hundred (100) dollars, against insufficient funds, is guilty of passing a check against insufficient funds in the Second Degree, which is a Class B Misdemeanor.
3.    A person who passes a check of more than two hundred (200) dollars or a series of checks within any thirty (30) day period totaling more than two hundred (200) dollars is guilty of passing a check against insufficient funds in the First Degree, which is a Class A Misdemeanor.

The passing of a check as described above creates a rebuttal of presumption that the person who passed it had knowledge of insufficient funds in the account on which the check was drawn in the financial institution.

B.    **Passing Checks against a Nonexistent Account.** Any person who, for himself or as an agent or representative of another for present consideration with intent to defraud, passes

a check drawn on a financial institution knowing at the time of such passing that he or his principal does not have an account with such financial institution, shall be deemed guilty of Passing Checks Against A Nonexistent Account. Such a violation of this section is a Class One (1) Misdemeanor.

It is a defense to this section that the actor's or his principal's account was closed without the actor's actual knowledge. Evidence that the financial institution mailed a notice by certified or registered mail to the person in whose name the account was listed at the last address contained in the financial institution's records shall constitute a rebuttal of presumption that the actor had knowledge that his or his principal's account was closed.

The fact that a person who has been accused of a violation of Section 24-07-02, has restored or returned the property allegedly obtained as consideration or has made payment of the check before a complaint has been laid before a Tribal Judge may be considered in mitigation of punishment. However, the restoration or return of the property or payment of the check is not a defense to a violation of the above statutes, nor may it be considered by the finder of fact.

The making of a postdated or hold check, knowingly received as such, or a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not constitute a violation of Section 24-07-20.

The holder of an insufficient funds check shall, before presenting it to the Tribal Prosecutor for prosecution, serve a notice of dishonor upon the writer of the check, by registered or certified mail, return receipt requested. The holder of the dishonored check shall upon return of the receipt, hold it for a period of at least five (5) days and upon the expiration of that period shall present the check with the attached bank return, return receipt and copy of dishonor notice to the Tribal Prosecutor for prosecution. The notice of dishonor required by this section shall be in substantially the following form:

Date:
Name of Issuer:
Bank on which drawn:
Date of check:
Amount of check:
Person or merchant holding check:
<b>YOU ARE HEREBY NOTIFIED</b> that your check described above has been dishonored and is now being held by the above person or merchant for a period of five (5) days from the above date. Payment of the amount of the check or return of the goods purchased is not a defense to a violation of Section 24-07-20 of the Sisseton-Wahpeton Oyate Law and Order Code.

Service of the above notice of dishonor is not an element of passing a check against insufficient funds or against a nonexistent account. If the notice required above is returned undelivered, or if

it appears that there is reasonable cause to believe that the writer of the check intends to remove himself from the jurisdiction of the Court, the Tribal Prosecutor shall not require such notice before commencing prosecution.

A criminal prosecution must be commenced within six (6) months after the holder of the check receives notice of its dishonor. Failure to prosecute a complaint within six (6) months shall be a bar to any criminal action under Section 24-07-20.

A violation of this Section is a Special Class Misdemeanor and, in addition, Order the Court shall Order restitution for damages to the injured parties

## **CRIMES AGAINST THE PUBLIC ORDER**

### **Title VIII- Weapons Offenses**

#### **26-08-01 Carrying a Concealed Firearm**

Any person, except police officers in the performance of their duties, who shall go about in public places with a firearm concealed upon his person unless he shall have, in his possession, a valid permit to carry a concealed firearm recognized by the SWO, shall be deemed guilty of Carrying A Concealed Firearm. A violation of this section is a Class D Misdemeanor.

#### **24-08-02 Brandishing a Firearm**

Any person, except a law enforcement officer in the course of their duties, who shall brandish a firearm in front of at least one other person with the intent to threaten bodily harm; or to put another in fear of imminent bodily harm, shall be deemed guilty of Brandishing a Firearm. A violation of this Section is a Class A Misdemeanor.

#### **24-08-03 Negligent Use of a Deadly Weapon**

Any person who engages in the following conduct shall be deemed guilty of Negligent Use of a Deadly Weapon.

- A. Discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;
- B. Carrying a firearm while intoxicated;
- C. Endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or
- D. Discharging a firearm within one hundred fiftyyards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof.

The provisions of Paragraphs (a), (c) and (d) of this section shall not apply to a law enforcement officers or other public employee who is required or authorized by law to carry or use a firearm

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in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

A violation of this Section is a Class D misdemeanor.

## **Title IX-Drug Offenses**

### **24-09-01 Public Intoxication**

Any person who appears in a public place while under the influence of alcohol or an illicit substance, the use of possession of which is prohibited by this Chapter, and to the degree that he may reasonably endanger himself or other persons or property shall be deemed guilty of Public Intoxication. A violation of this Section is a Class E Misdemeanor.

A law enforcement officer shall have the authority to take any person appearing in public in an apparently intoxicated condition to the person's home, to a local hospital, or to jail whenever the person constitutes a danger to himself or others, for purposes of detoxification. If taken to jail, the person shall not be held for more than seventy-two (72) hours and the law enforcement officer shall make every effort to contact the person's family or relatives to inform them of the intoxicated person's whereabouts.

### **24-09-02 Possession of Alcohol at Tribal Ceremonial Park**

Any person who shall knowingly possess, barter, sell, exchange, give, deliver, or offer any other person any alcoholic beverage at the Tribal Ceremonial Park shall be deemed guilty of Possession of Alcohol At Tribal Ceremonial Park. A violation of this Section is a Class F Misdemeanor.

### **24-09-03 Unlawful Purchase or Possession of Alcohol by a Minor**

It shall be unlawful for any person under the age of twenty-one (21) years of age to purchase, attempt to purchase, or possess or consume alcoholic beverages, or to misrepresent his age for the purpose of purchasing or attempting to purchase such intoxicating liquor, shall be deemed guilty of Unlawful Purchase or Possession of Alcohol by a Minor. A violation of this Section is a Special Class Misdemeanor, and shall be punishable by a fine of not less than fifty dollars (\$50.00), or more than three hundred and sixty dollars (\$360.00) or by imprisonment in the Tribal Jail for no more than one hundred and twenty (120) days, or by both such fine and imprisonment, with costs.

This Section 24-09-03 applies concurrently with Liquor Control Law Section 35-64-01. As such, an offense may be charged under either section, or both, but shall so constitute a single offense.

**24-09-04 Use of Noxious Substance**

Any person who shall use, possess, furnish, sell, give away or permit the use of any substance for any of the following purposes shall be deemed guilty of Use of Noxious Substance:

For purposes of this section, the use of noxious substances shall include the inhalation, consumption or any other means of introducing noxious substances into the human system to produce intoxication, in a manner not intended to be the primary function of that substance. Noxious substances shall include, but not be limited to aerosol products, sterno, rubbing alcohol, shaving lotion, gasoline, glue paint, etc

A violation of this Section is a Special Class Misdemeanor and the Defendant shall be sentenced to thirty (30) days in jail or one hundred dollars (\$100) fine, or both, and if circumstances warrant, shall be referred or ordered to an appropriate treatment facility or program that will provide rehabilitation.

**24-09-05 Unauthorized Possession of Prescription Drugs**

Any person who shall knowingly possess a medical drug, unless such substance was obtained directly pursuant to a valid prescription or order for a practitioner while acting in the course of his professional practice, shall be deemed guilty of Unauthorized Possession of Prescription Drugs. A violation of this Section is a Class One (1) Misdemeanor.

**24-09-06 Unlawful Possession or Distribution of Marijuana**

Any person who shall knowingly plant, grow, cultivate, harvest or gather, or sell, barter or give away, or knowingly have in possession any cannabis indica or cannabis sativa, commonly known as Indian hemp, hashish, or marijuana shall be deemed guilty of Unlawful Possession or Distribution of Marijuana. A violation of this Section is as follows:

- A. Possession of one ounce (1 oz.) or less of Marijuana is a Class B Misdemeanor
- B. Possession of more than one ounce (1 oz.) but less than one pound (1 lb.) or more of Marijuana is a Class A Misdemeanor.
- C. Possession of one pound (1 lb.) or more of marijuana is a Class One (1) Misdemeanor.
- D. Distribution of one ounce (1 oz.) or less of Marijuana is a Class B Misdemeanor.
- E. Distribution of more than one ounce (1 oz.) but less than one pound (1 lb.) or mace of Marijuana is a Class A Misdemeanor.
- F. Distribution of one pound (1 lb.) or more of marijuana is a Class One (1) Misdemeanor.

**24-09-07 Unlawful Possession of Illicit Drugs**

With the exception of marijuana and peyote, punishable under separate offenses, any person who shall knowingly possess, barter, sell, exchange, give, deliver, or offer any other person any narcotic drug, meaning coca leaves, opium, isonipecaine, amidene, isoamidene, ketobemidene, lysergic acid diethylamide, commonly known as LSD, methamphetamine or any substance neither chemically nor physically distinguishable from them; and other drugs to which the Federal laws relating to narcotic drugs may now apply; shall be deemed guilty of Unlawful Possession of Illicit Drugs. A violation of this Section is a Class One (1) Misdemeanor.

**24-09-08 Unlawful Possession of Peyote**

Any person who sells, furnishes, or gives away or offers to sell, furnish, or give away, or has in his possession *Lophophora Williamsii* (also known as Peyote, or Pellote) or any compound derivative or preparation thereof, and who is not a member of the Native American Church and using such for religious or ceremonial purposes, shall be deemed guilty of Unlawful Possession of Peyote. A violation of this Section is a Class One (1) Misdemeanor.

**24-09-09 Unlawful Possession of Drug Paraphernalia**

A person who knowingly uses, or possess with intent to use, drug paraphernalia shall be deemed guilty of Unlawful Possession of Drug-Related Paraphernalia.

Any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, testing, preparing, packaging, growing, storing, containing, propagating, injecting, ingesting, inhaling or otherwise takes into the body a controlled substance, possession of which is unlawful under this Chapter.

A. Such Drug Paraphernalia includes, but is not limited to:

- (1) Water pipes, carburetion tubes or devices, smoking and carburetion masks;
- (2) Roach clips: meaning objects used to hold burning materials;
- (3) Cocaine spoons, cocaine vials, chamber pipes, electric pipes;
- (4) Carburetor pipes, air-driven pipes, chillums, bongs, ice pipes or chillers;
- (5) Balloons, capsules, envelopes, containers, hypodermic syringes, needles.
- (6) Chemicals used to make methamphetamine.

B. Determining factors in which an object Drug Paraphernalia includes, but is not limited to:

- (1) Statement by the owner of the object in question.
- (2) Prior convictions of related offenses.
- (3) Proximity of the object, in time and space.
- (4) Existence of residue.

- (5) Direct or circumstantial evidence of the intent of the owner.
- (6) Oral or written instructions, diagrams, or any other descriptive material accompanying the object, which explains or depicts the intent.
- (7) Expert testimony concerning its use.

A violation of this Section is a Class E Misdemeanor.

**24-09-10 Unlawful Distribution of Drug-Related Paraphernalia**

A person who distributes, dispenses, or possesses with an intent to distribute or dispense; manufactures with an intent to distribute or dispense drug related paraphernalia shall be deemed guilty of Unlawful Distribution of Drug-Related Paraphernalia. A violation of this Section is a Class D Misdemeanor.

**24-09-11 Ingestion**

Any person who willfully and knowingly ingests, inhales, or otherwise takes into the body any substance/s for the purpose of becoming intoxicated, shall be deemed guilty of Ingestion.

Venue of Jurisdiction:

- A. The place in which the substance was ingested, inhaled, or otherwise taken into the body.
- B. The place in which the ingested, inhaled, or otherwise taken into the body substance/s, was detected in the body of the accused.

A violation of this Section is a Class One (1) Misdemeanor.

**Title X-Offenses Involving Governmental Process**

**24-10-01 Bribery**

Any person who intentionally offers, gives, or agrees to give another, or who solicits, accepts or agrees to accept from another, anything of value as consideration for any of the following shall be deemed guilty of Bribery. A violation of this Section is a Class One (1) Misdemeanor.

- A. Influence on the recipient's official action as a public servant; or
- B. Inducement for the recipient's violation of a known legal duty as a public servant.

**24-10-02 False Reporting for Government Services**

Any person who shall willfully falsely report an emergency for ambulance services, fire fighting services, law enforcement or other government safety and security services shall be deemed guilty of False Reporting for Government Services. A violation of this Section is a Class D Misdemeanor.

**24-10-03 False Impersonation**

Any person who impersonates another with intent to deceive a law enforcement officer, shall be deemed guilty of False Impersonation. A violation of this Section is a Class C Misdemeanor.

**24-10-04 False Impersonation of a Public Official**

Any person without lawful authority who willfully represents himself as a public official to another person, or place of business, who does not hold such office shall be deemed guilty of False Impersonation of a Public Official. A violation of this Section is a Class C Misdemeanor.

**24-10-05 Interfering with a Law Enforcement Officer**

Any person who shall willfully and unlawfully attempt or offer to interfere with a law enforcement officer in the performance of his duties, shall be deemed guilty of Interfering With A Law Enforcement Officer. A violation of this Section is a Class D Misdemeanor.

Any person who shall be convicted of a second offense or more under this Section shall be deemed guilty of a Class One (1) Misdemeanor.

**24-10-06 Filing a False Report**

Any person who shall purposefully or knowingly misrepresent his name or other information to a law enforcement officer (in the course of his duty) or the Tribal Prosecutor, shall be deemed guilty of Filing a False Report to a Law Enforcement Officer or Tribal Prosecutor. A violation of this Section is a Class E Misdemeanor.

**24-10-07 Resisting Lawful Arrest**

Any person who, for the purpose of preventing a law enforcement officer from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the law enforcement officer or anyone else, or employs means justifying or requiring substantial force to overcome the resistance, including running from the officer, shall be deemed guilty of Resisting Lawful Arrest. A violation of this Section is a Class B Misdemeanor.

**24-10-08 Threatening a Law Enforcement Officer's Family**

Any person who threatens to commit any crime of violence with purpose to terrorize a law enforcement officer, with knowledge that the intended victim(s) is(are) a family member of the law enforcement officer for the purpose of intimidating the law enforcement officer shall be deemed guilty of Threatening a Police Officer's Family. A violation of this Section is a Class C Misdemeanor.

**24-10-09      Escape**

Any person, who being in lawful custody for any offense, shall escape or attempt to escape from lawful custody, or who shall permit, assist, or attempt to permit or assist another to do so shall be deemed guilty of Escape. A violation of this Section is a Class One (1) Misdemeanor.

**24-10-10      Harboring a Fugitive**

Any person who renders assistance to another, which the person knows to be a fugitive, with the intent to hinder apprehension, prosecution, conviction or punishment of the other shall be deemed guilty of Harboring a Fugitive. A violation of this Section is a Class A Misdemeanor.

**24-10-11      Destroying Evidence**

Any person who shall willfully and knowingly destroy any evidence that could be used in the trial of a case with the intent to prevent the same from being used in such a manner shall be deemed guilty of Destroying Evidence. A violation of this Section is a Class D Misdemeanor.

**24-10-12      Interfering with Witnesses**

Any person who in any way or degree obstructs, delays, or affects Tribal Court processes or threatens to, or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be deemed guilty of Interfering With Witnesses. A violation of this Section is a Class One (1) Misdemeanor.

**24-10-13      Perjury**

Any person who shall willfully, in any judicial proceeding in any Court of the Sisseton-Wahpeton Oyate, falsely swear or interpret, or who makes a sworn statement or affidavit knowing the same to be untrue, or who induces or procures another person to do so, shall be deemed guilty of Perjury. A violation of this Section is a Class One (1) Misdemeanor.

**24-10-14      Disobedience of Lawful Orders of the Court**

Any person who shall willfully disobey any order, subpoena, warrant, or summons duly issued, and made or given by the Sisseton-Wahpeton Oyate Tribal Court or any officer thereof shall be deemed guilty of Disobedience of Lawful Orders of the Court. A violation of this Section is a Class B Misdemeanor.

**24-10-15      Contempt of Court**

Any person who willfully engages in any of the following shall be deemed to be in Contempt of Court. A violation of this Section is a Special Class Misdemeanor with the sentence to be set

according to the discretion of the Judge:

- A. Any breach of the peace, noise or other disturbance directly tending to interrupt the proceeding of the Court.
- B. Willful disobedience to any process or order lawfully issued by the Sisseton-Wahpeton Oyate Tribal Court.
- C. Resistance willfully offered by any person to the lawful order or process of any Court.
- D. The knowing publication of a false or grossly inaccurate report of the proceedings of any Court. No person shall be punished for contempt for the publication of a true, full and fair report of any trial, argument, decision, or proceeding held in Court.
- E. Failure to appear for jury duty when properly notified or civil contempt in the case of a non-Indian.

### **Title XI-Disorderly Conduct and Related Offenses**

#### **24-11-01 Disorderly Conduct**

Any person who shall, with intent to cause inconvenience, annoyance, or alarm or recklessly creates a risk thereof in a public or private place by acting in any of the following manners shall be deemed guilty of Disorderly Conduct.

- A. Engages in fighting, violent or disruptive behavior.
- B. Makes excessive noise after receiving a warning by law enforcement.
- C. Without lawful authority, disturbs any lawful assembly or meeting.
- D. Obstructs vehicular or pedestrian traffic.

In determining if a person shall be sentenced for his first, second, third, fourth or more Disorderly Conduct offense, the Court shall review that person's tribal record for the past four (4) years. A violation of this section is a Special Class Misdemeanor and shall be sentenced as follows:

- |                                    |                            |
|------------------------------------|----------------------------|
| 1 <sup>st</sup> Offense:           | Class F Misdemeanor.       |
| 2 <sup>nd</sup> Offense:           | Class E Misdemeanor.       |
| 3 <sup>rd</sup> Offense:           | Class D Misdemeanor.       |
| 4 <sup>th</sup> Offense (or more): | Class One (1) Misdemeanor. |

#### **24-11-02 Harassment**

Any person who, with intent to, annoy, alarm, or cause substantial emotional distress to another

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person, and that person is found to be in one or more of the following situations shall be deemed guilty of Harassment:

- A. Strikes, shoves, kicks or otherwise subjects a person to physical contact, or attempts to or threatens to do the same in person or by telephone.
- B. Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other persons and which serve no legitimate purpose.

In determining if a person shall be sentenced for his first, second, third, or fourth or more Harassment offense, the Court shall review that person's Tribal Court record for the past four (4) years. A violation of this Section is a Special Class Misdemeanor and shall be sentenced as follows:

- 1<sup>st</sup> Offense: Class F Misdemeanor.
- 2<sup>nd</sup> Offense: Class E Misdemeanor.
- 3<sup>rd</sup> Offense: Special Class Misdemeanor (sentenced at the Court's discretion)
- 4<sup>th</sup> Offense (or more): Class One (1) Misdemeanor.

#### **24-11-03 Stalking**

Any person who intentionally and repeatedly follows or harasses another person or who makes a credible threat to another person with the intent to place that person in fear of death or great bodily injury shall be deemed guilty of Stalking. A violation of this Section is a Special Class Misdemeanor and shall be sentenced as follows;

- 1<sup>st</sup> Offense: Class E Misdemeanor
- 2<sup>nd</sup> Offense: Class C Misdemeanor
- 3<sup>rd</sup> Offense: Class B Misdemeanor
- 4<sup>th</sup> Offense (or more): Class One (1) Misdemeanor

The Court shall review that person's Tribal Court record for the past four (4) years when determining the sentencing of the defendant.

#### **24-11-04 Littering**

- A. Any person who shall place any garbage, refuse, ashes, junk glass bottles, tin cans, or any form of litter or debris on or near any public road, or any other public ground, or in and around any public near any private or public road, or any other private or public ground, or in and around any private or public waters of the area constituting the original boundaries of the Lake Traverse Reservation. A violation of this Section 24-11-04(a) is a Class F Misdemeanor and, in addition, the Court may be order clean up of the area in which the offense was committed.
- B. Any person who acts in such manner, or permits his property to fall into such condition as to injure or endanger the safety, health, comfort, or property or his neighbors, shall be

deemed guilty of Littering. A violation of this Section 24-11-04(b) is a Special Class Misdemeanor and the Court shall Order clean up of the area and, in addition, the Court may order restitution for damages to any injured parties.

#### **24-11-05 Abuse of Domestic Animals**

Any person who willfully or negligently abuses or neglects any domestic animal by causing unjustifiable pain, suffering, or death in such animal(s) shall be deemed guilty of Abuse of Domestic Animals.

Such abuse includes but is not limited to any of the following: to harass, mistreat, molest, torment, torture, beat, injure, wound, poison, mutilate, or kill a domestic animal; cause a domestic animal; cause a domestic animal to fight another, or, as owner or custodian of a domestic animal, to abandon or unreasonably expose to extreme weather.

A violation of this Section is a Class F Misdemeanor.

### **Title XII-Exploitation**

#### **24-12-01 Contributing to the Delinquency of a Minor**

Any person who negligently causes, aids, or contributes to the delinquency of any child or aids the child in the violation of a Sisseton-Wahpeton Oyate Law shall be deemed guilty of Contributing to the Delinquency of a Minor. A violation of this Section is a Class One (1) Misdemeanor.

#### **24-12-02 Failure to Support Dependent Persons**

Any person who shall, because of habitual intemperance, or for any other reason, refuse or neglect to furnish food, shelter, or care to those dependent upon him, including any children born out of wedlock, shall be deemed guilty of Failure To Support Dependent Persons. A violation of this Section is a Special Class Misdemeanor, and the Court may Order a fine and jail time not to exceed a Class C Misdemeanor. In addition, the Court may order the Defendant to attend a rehabilitative program, family counseling service program, or any other program designed to correct the problem(s) that resulted in conviction.

#### **24-12-03 Failure to Send a Child to School**

Any person who shall, without good cause as defined below, neglect or refuse to send his child or any child in his care to school until such child has reached the age of eighteen (18) years shall be deemed guilty of Failure To Send A Child To School. A violation of this Section is a Class D Misdemeanor.

For purposes of this Section, good cause shall include, but not be limited to, the following:

- A. Illness in the child's immediate family, making his presence at home an actual necessity, or his presence in school a menace to the health of other pupils
- B. The physical or mental condition of the child is such as to render his attendance at school unsafe, impracticable, or harmful either to such child or to others. The nature of such condition must be evidenced by the certificate of a reputable physician, dentist, psychologist or other persons who may lawfully treat sickness or disease.
- C. The child, as declared by a reputable physician, is mentally or physically handicapped and cannot receive proper instruction in the common schools, in which case suitable provisions will be made for the instruction or training of such child, if possible. In the event that a mentally handicapped child is not given such instruction, it shall be the duty of the Tribal Judge to make a written report of said condition to the Agency Branch of Welfare and the Tribal Education Department of such other referral as may be appropriate.
- D. The child is otherwise instructed by a competent person for a like period of time in the subjects commonly taught in the schools. All such instructions can be given in either the Dakota or English languages and reports covering the child's work shall be filed with the Tribal Education Department on such forms and as often as the Department may require.

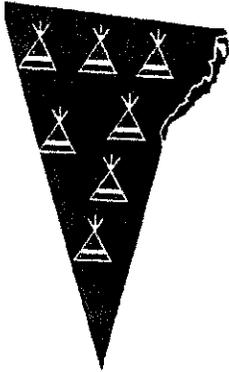
#### **24-12-04 Unlawful Removal of a Child**

Any person, partnership, voluntary association, or corporation that maliciously, forcibly, or fraudulently takes or entices away a child under the age of eighteen (18) years from those having lawful custody, with the intent to detain or conceal the child from his parents, guardian, or other person having care or custody of the child shall be deemed guilty of Unlawful Removal of a Child. A violation of this Section is a Class One (1) Misdemeanor.

#### ***Legislative History***

*This Code was revised and amended during the Summer of 1999 and 2014 (VAWA/TLOA), and condensed from three separate chapters. Formerly, the provisions contained herein were located in Chapter 24- Sentences, Chapter 25- Code of Tribal Offenses, and Chapter 26- Penal Code. These sections have been condensed and revised, with some key additions, in the interest of a creating a more complete, consistent, and uniform Tribal Penal Code that will better serve the interests of justice and the people of the Sisseton-Wahpeton*

*This Code was revised and amended in 2005, and Chapter 25 and Chapter 26 were repealed through Resolution. The amendment process of the Chapter 24, Penal Code will better serve the interests of Justice and the People of the Sisseton-Wahpeton Oyate.*



# Sisseton Wahpeton Oyate

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

## TRIBAL COUNCIL RESOLUTION NO. SWO-14-081

### SISSETON-WAHPETON OYATE CODES OF LAW CHAPTER 24 – PENAL CODE

- WHEREAS,** The Sisseton-Wahpeton Oyate is organized under a Constitution and By-laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966, and last amended effective November 15, 2006; and
- WHEREAS,** The Constitution ARTICLE III, Section 1, states that, the Sisseton-Wahpeton Oyate shall be governed by a Council, and ARTICLE VII, Section 1, states that, the Council shall have the following powers: (a) to represent the Tribe in all negotiations with Federal, State and local governments; (b) to acquire, own, use, manage, lease and otherwise encumber and to dispose of Tribal property, both real and personal, wherever situated; (c) to engage in any business that will further the economic development of the Tribe and its Members, and to use Tribal funds or other resources for such purposes; (d) to make rules governing the relationship of the members of the Tribe, to Tribal property, and to one another as members of the Tribe; (e) to hire employees and agents, including legal counsel, directly or as independent contractors, and to compensate them for their services; (f) to deposit Tribal funds to the credit of the Tribe, without limitations of the amount in any account; (g) to take any action by ordinance, resolution, or otherwise which are reasonably necessary through committees, boards, agents or otherwise, to carry into effect the for-going purposes; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate; (i) adopt resolutions regulating the procedures of the Tribal Council, its officials and committees in the conduct of Tribal Affairs; and
- WHEREAS,** On July 29, 2010, the federal government enacted the Tribal Law and Order Act of 2010 (TLOA), to allow, in part, Tribal Courts to increase jail sentences imposed by Tribal Courts; and
- WHEREAS,** On March 7, 2013, the federal government enacted the Violence Against Women Reauthorization Act of 2013 (VAWA), which recognized the Tribes' inherent right to exercise, "special domestic violence criminal jurisdiction" (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit act of domestic violence or dating violence or violate certain protection orders in Indian Country; and
- WHEREAS,** The Tribal Council responded to each of these Federal Laws by directing the SWO Legal Department and entities of the Sisseton-Wahpeton Oyate to work together in implementing each of these laws (SWO-10-112, SWO-14-039); and

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

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

**WHEREAS,** In order to implement the provisions of federal law, the SWO Judicial Committee has recommended the amendment of Chapter 24, Penal Code to incorporate certain provisions of the federal laws and allow the SWO to exercise jurisdiction to the fullest extent possible; and

**WHEREAS,** The SWO Judicial Committee presented the proposed amendments to the seven (7) districts in order to solicit comments and recommendations of Chapter 24, Penal Code and now recommends passage of the amendments.

**NOW THEREFORE, BE IT RESOLVED** that the Tribal Council of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, hereby approves of the revised and amended Chapter 24, Penal Code and all previous versions of Chapter 24, Penal Code are hereby repealed and superseded by passage of the amended Chapter 24, Penal Code; and

**BE IT FURTHER RESOLVED** that the SWO Legal Department is hereby authorized to post Chapter 24, Penal Code on the Tribe's website for public information purposes; and

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

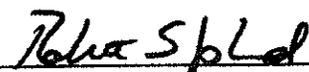
## CERTIFICATION

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

Dated this 28<sup>th</sup> day of August 2014.

ATTEST:

  
Robin Quinn, Tribal Secretary  
Sisseton-Wahpeton Oyate

  
Robert Shepherd, Tribal Chairman  
Sisseton-Wahpeton Oyate

