

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 26

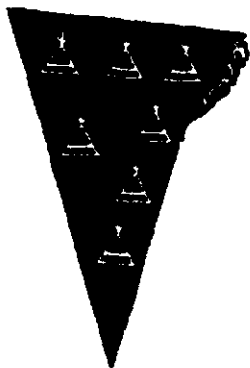
PENAL CODE

REPEALED

Resolution:

SWO-05-093

Dated: October 6th, 2005



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-05-093

2005 Amendments to Penal Code

WHEREAS, The Sisseton-Wahpeton Oyate of the Lake Traverse Reservation is organized under a Constitution and By-laws by the members of the Tribe on August 1-2, 1966 and approved by the Commissioner of Indian Affairs on August 25, 1966; and,

WHEREAS, The said Constitution and By-laws mandates at ARTICLE II, Section 1, that the Tribal Council shall have the power: (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; (h) to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Tribe; and, (i) to adopt resolutions regulating the procedures of the Council, its officials and committees in the conduct of tribal affairs; and (k) to promulgate and enforce ordinances governing the conduct or persons under the jurisdiction of the Sisseton-Wahpeton Oyate; and, (l) to enact resolutions or ordinances not inconsistent with Article II of this Revised Constitution and By-laws concerning membership in the Sisseton-Wahpeton Oyate; and,

WHEREAS, In 1999, the Tribal Council adopted Chapter 24, Sisseton-Wahpeton Oyate Penal Code which was condensed from three separate chapters. Formerly, the provisions contained in Chapter 24 were located in Chapter 24-Sentences; Chapter 25-Code of Tribal Offenses; and Chapter 26-Penal Code. Those sections were revised and condensed to create a complete a uniform Tribal Penal Code.

WHEREAS, The general purposes for enactment of the Penal Code is:

- A. To proscribe conduct that unjustifiably and inexcusably threatens or inflicts substantial harm to individual and public interests;
- B. To give all persons entering into the territorial jurisdiction of the Sisseton-Wahpeton Oyate Court a fair warning of proscribed conduct and of the sentences authorized upon convictions;

received
10/11/05 81

- C. To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each;**
- D. To protect the public interest of the Sisseton-Wahpeton Oyate by defining the act or omission which constitutes each offense, and to apply the provisions of Chapter 24 equally and unfavorably to all persons under the jurisdiction of the Court of the Sisseton-Wahpeton Oyate.**

WHEREAS, The Tribal Council has determined it is necessary to amend and revise the Sisseton-Wahpeton Oyate Penal Code that will better serve the interest of justice and the People of the Sisseton-Wahpeton Oyate; and,

WHEREAS, The Judicial Committee, established by the Tribe, through adoption of the Judicial Code, made recommendations pertaining to amendments and other revisions to the Tribal council in consultation with the Sisseton-Wahpeton Oyate Legal Counsel, the SWO Prosecutor, the SWO Public Defender, the SWO Department of Law Enforcement, and the SWO Tribal Court; and,

WHEREAS, The Judicial Committee, presented the revised draft of the penal Code to the seven Districts in order to solicit comments and recommendations on the Code; and,

WHEREAS, The Judicial Committee recommends the attached Chapter 24, with the proposed amendments be adopted by the Tribal Council and that it shall supercede and replace the current Chapter 24 and formerly repeal Chapter 25—Code of Tribal Offenses and Chapter 26—Penal Code.

NOW, THEREFORE, BE IT RESOLVED, That the Sisseton-Wahpeton Oyate Tribal Council of the Lake Traverse Reservation hereby authorizes, adopts and enacts the attached Sisseton-Wahpeton Penal Code as Chapter 24 of the Sisseton-Wahpeton Law and Order Code; and,

FURTHER, BE IT RESOLVED, the Tribal Council of the Sisseton-Wahpeton Oyate, by adoption of Chapter 24—Penal Code, hereby repeals Chapter 25—Code of Tribal Offenses and Chapter 26—Penal Code; and,

FINALLY BE IT RESOLVED, This Ordinance shall be in full force and effect on the date of formal approval and adoption by the Tribal Council, on October 6, 2005. This Code shall apply prospectively and shall not affect those actions already filed with the Sisseton-Wahpeton Oyate Tribal Court by October 6, 2005.



C E R T I F I C A T I O N


We, the undersigned, duly elected Chairman and 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 9 constituting a quorum, were present at a Tribal Council meeting, duly noticed, called, convened and held at TiWakan Tio Tipi, Agency Village, South Dakota on October 6, 2005, by a vote of 15 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 11th day of October, 2005.



James "JC" Crawford, Tribal Chairman
Sisseton-Wahpeton Oyate

ATTEST:



Michael Peters, Tribal Secretary
Sisseton-Wahpeton Oyate

Original Copy to Tribal Court

cc: Legal Counsel /
Judicial Committee



SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 26

PENAL CODE

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved

Council Adopted
08-02-83

- 26-01-01 **ABDUCTION.** Any person who shall wilfully take away or detain another person against their will or without the consent of the parent or other person having lawful care of him/her, shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-02-01 **ASSAULT.** Any person who shall wilfully and unlawfully attempt or offer, with force or violence to do a corporal hurt to another and creates a well-founded fear of imminent peril, shall be deemed guilty of a Class G Misdemeanor.
- 26-03-01 **ASSAULT AND BATTERY.** Any person who shall wilfully and unlawfully use force or violence upon the person of another or who by offering violence causes another to harm himself/herself shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-04-01 **ASSAULT WITH INTENT TO COMMIT RAPE.** Any person who shall assault a person with the intent to commit rape shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-05-01 **ASSAULT ON A PUBLIC OFFICIAL.** Any person who shall wilfully and unlawfully attempt or offer, with force or violence, to do a corporal hurt to any Public Official, while in the performance of their duties, shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-06-01 **ABUSE OF DOMESTIC ANIMALS.** Any person who shall wilfully or negligently mistreat, poison, or abuse any domestic animal by unreasonable exposure to heat or cold shall be deemed guilty of a Class F Misdemeanor.
- 26-07-01 **ATTEMPT.** Any person who attempts to commit any crime, and in such attempt does any act toward the commission of such crime, but fails or is prevented or intercepted in the perpetration thereof, is punishable where no provision is made by law for the punishment of such attempt, as follows:

If the offense so attempted is punishable by a sentence to labor, a 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 (1/2) of the largest fine which may be imposed upon conviction for the offense so attempted. A violation of this section is deemed a Special Class Misdemeanor.

*Superseded by Amendment on 8/13/99
See Ch. 24 - Amended Penal Code*

- 26-08-01 ATTEMPT RESULTING IN COMMISSION OF OTHER CRIMIS.** Section 26-07-01 does not protect any person who, in attempting unsuccessfully to commit a crime accomplishes the commission of another and different crime, whether greater or less in guilt, from suffering the punishment prescribed by law for the crime committed. A violation of this section shall be deemed a Special Class Misdemeanor.
- 26-09-01 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 a Special Class Misdemeanor.
- 26-10-01 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 a Class C Misdemeanor and make restitution for damages to the injured party.
- 26-11-01 BRIBERY.** Any person who shall give or offer to give any money, property, or services or anything else of value to another person with corrupt intent to influence another in the discharge of public duties, and any person who shall accept, solicit or attempt to solicit any bribe, as defined above, shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-12-01 CARNAL KNOWLEDGE OF PERSON UNDER SIXTEEN.** Any person who shall have sexual intercourse with a person under the age of sixteen (16) years, or any person who aids or permits any such violation shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-13-01 CARRYING CONCEALED WEAPONS.** Any person, who except police officers in the performance of their duties, who shall go about in public places armed with a dangerous weapon concealed upon his/her person unless he/she shall have, in his/her possession, a permit signed by the Chief Judge or designated alternate shall be deemed guilty of a Class D Misdemeanor.
- 26-13-02 DANGEROUS WEAPON DEFINED.** One dangerous to life; one by the use of which a fatal wound may probably or possibly be given.
- 26-13-03 CONFISCATED WEAPONS.** Such dangerous weapons shall be confiscated by the police officer, be placed for public auction at a time and place determined by the Court; and the former owners of such weapons shall be barred from repurchasing the weapons.

- 26-14-01 CHILD ABUSE. Any person who wilfully causes or permits any child to suffer, or who inflicts thereon unjustifiable physical pain or mental suffering, and whoever, having the care or custody of any child, causes or permits the life or limb of such child to be endangered, or the health of such child to be injured, shall be deemed guilty of a Class A Misdemeanor.
- 26-14-02 Any person who wilfully inflicts upon any child any cruel or inhumane corporal punishment or injury resulting in a traumatic condition but not constituting a felonious assault or attempted murder is guilty of a Class One (1) Misdemeanor.
- 26-14-03 Any abused child is a child found to be suffering abuse of a physical, emotional, nutritional, sexual, or exploitive nature.
- 26-15-01 STATUTE OF LIMITATIONS - SEXUAL ABUSE
- 26-15-02 Limitation of Time on Filing Complaints No complaint, charging the commission of an offense seven (7) years or more, prior to the date the complaint is filed, shall be valid; provided, that the absence of the person charged, from the Reservation to avoid service of summons or arrest, shall toll the time and shall not count in computing the seventh year.
- 26-16-01 CHILD NEGLECT. Any person who wilfully causes or permits any child to be placed in one or more of the following:
- 26-16-02 A child whose parents, guardian, or custodian fails or refuses to provide necessary subsistence, education, medical care, or any other care necessary for the child's health and well-being while the parents, guardian, or custodian is capable of doing so.
- 26-16-03 A child who lacks adequate parental control by reason of the fault or habit of his/her parents or guardian, or custodian.
- 26-16-04 A child under fourteen (14) years of age who is left without competent supervision overnight for other than emergency reasons.
- 26-16-05 A child exposed to physically dangerous situations as a result of parental negligence.
- 26-16-06 A child left with an irresponsible babysitter.
- 26-16-07 A child who is not dressed adequately for weather conditions.

- 26-16-08 A child under fourteen (14) years of age who is left alone or unsupervised in a car.
- 26-16-09 A child under eighteen (18) years of age who accompanies its parents, guardian, or custodian into a bar where the child is unsupervised or uncared for.
- 26-16-10 A child under eighteen (18) years of age who is allowed access to alcoholic beverages or drugs.
- 26-16-11 A child who is fourteen (14) years of age or under and has more than ten (10) unexcused absences from school in a semester or other standard school term.
- 26-16-12 A child who is allowed to be out and unsupervised after curfew.
- 26-16-13 A violation of Sections 26-16-01 through 26-16-12 shall be deemed a Special Class Misdemeanor and sentenced as follows:
- 1st Offense: 30 Days, \$100.00 Fine, or Both.
 2nd Offense: 60 Days, \$200.00 Fine, or Both.
 3rd Offense: 90 Days, \$360.00 Fine, or Both.
- 26-16-14 Where appropriate, the Court may order guidance and counseling, or other rehabilitative services.
- 26-16-15 **REVIEW OF RECORD.** In determining if a person shall be sentenced for his/her first, second, or third Child Neglect offense, the Court shall review that person's Tribal Court record for the past four (4) years.
- 26-17-01 **DETOXIFICATION.** A peace officer shall have authority to take any person appearing in public in an apparently intoxicated condition to his/her home, to a local hospital, or whenever the person constitutes a danger to himself/herself or others, to jail for purposes of detoxification. If taken to jail, the person shall not be held for more than seventy-two (72) hours and the peace officer shall make every effort to contact the person's family or relatives to inform them of the intoxicated person's whereabouts.
- 26-18-01 **CONTEMPT OF COURT.** Any person guilty of any Contempt of Court of any of the following is guilty of an offense.
- 26-18-02 Disorderly, contemptuous, or insolent behavior, committed during the sitting of the Tribal Court, in immediate view and presence of the Court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

T. CODE
 Amendment
 / Adoption
 Approved
7-85
 Adopted
7-85

- 26-18-03 Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of the Court.
- 26-18-04 Wilful disobedience to any process or order lawfully issued by the Court.
- 26-18-05 Resistance wilfully offered by any person to the lawful order or process of any Court.
- 26-18-06 The contumacious and unlawful refusal of any person to be sworn or affirmed as a witness, or when so sworn or affirmed, such as refusal to answer any material question, unless said question is self-incriminating and the witness is not the defendant.
- 26-18-07 The publication of a false or grossly inaccurate report of the proceedings of any Court.
- 26-18-08 But no person can be punished for contempt, in publishing a true, full, and fair report of any trial, argument, decision, or proceeding held in Court.
- 26-18-09 Any person violating any part of Sections 26-18-01 through 26-18-07 shall be deemed guilty of a Special Class Misdemeanor and shall be sentenced according to the discretion of the Judge.
- 26-19-01 **USE OF NOXIOUS SUBSTANCE.** For purposes of this section, noxious substances shall include the inhalation, consumption or any other means of introducing noxious substances into the human system to produce a mind-altering state. Noxious substances shall include but not be limited to Lysol products, sterno, rubbing alcohol, shaving lotion, gasoline, glue, paint, etc. Any person who shall use, furnish, sell, permit or give away such substance for the preceding purposes shall be deemed guilty of a special Class Misdemeanor and shall be sentenced to thirty (30) days in jail or one hundred dollars (\$100.00) fine, or both, and if circumstances warrant, referral or ordered to a treatment facility or program that will provide rehabilitation.
- W.S.T. CODE
Amendment
New Adoption
cial Approved
-06-84
- 26-20-01 **CONTRIBUTING TO THE DELINQUENCY OF A MINOR.** Any person who shall, by any act of omission, cause, encourage, or contribute to the delinquency of any child, shall be deemed guilty of a Class One (1) Misdemeanor.
- ncil Adopted
-06-84
- 26-21-01 **CURFEW.** Any parent, guardian, or custodian whose children shall fail to obey the curfew regulations shall be deemed guilty of a Special Class Misdemeanor.

- 26-22-01 DESTROYING EVIDENCE.** Any person who shall wilfully and knowingly destroy any evidence that could be used in the trial of a case with the intent to prevent same from being used is guilty of a Class D Misdemeanor.
- 26-23-01 DESTROYING FENCE.** Any person who shall wilfully destroy by any means the fencing or fences belonging to another person shall be deemed guilty of a Special Class Misdemeanor and shall be ordered to make restitution.
- 26-24-01 DISCHARGING FIREARMS, AIR GUNS.** Any person, except police officers in the performance of their duties, or a licensed hunter, who wilfully discharges any firearms, air guns, or other weapons within the limits of the Lake Traverse Reservation in a manner endangering persons or property (not his/her own), shall be deemed guilty of a Class D Misdemeanor.
- 26-25-01 DISOBEDIENCE OF LAWFUL ORDERS OF THE COURT.** Any person who shall wilfully disobey any order, subpoena, warrant, or summons duly issued, and made or given by the Sisseton-Wahpeton Sioux Tribal Court, or any officer thereof shall be deemed guilty of a Class B Misdemeanor.
- 26-26-01 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 a Special Class Misdemeanor and ordered to pay restitution.
- 26-27-01 DISORDERLY CONDUCT.** A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance, or alarm or recklessly creating a risk thereof in a public or private place, that person is found to be in one or more of the following situations.
- 26-27-02** Engages in fighting, violent or disruptive behavior.
- 26-27-03** . Makes unreasonable noise or noises.
- 26-27-04** Without lawful authority, disturbs any lawful assembly or meeting.
- 26-27-05** Obstructs vehicular or pedestrian traffic.
- 26-27-06** Creates a hazardous condition by any act which serves no legitimate purpose.
- 26-27-07** A violation of Sections 26-27-01 through 26-27-06 shall be deemed a Special Class Misdemeanor and sentenced as follows:

1st Offense: Class F Misdemeanor.
2nd Offense: Class E Misdemeanor.
3rd Offense: Class D Misdemeanor.
4th Offense (or more): Class One (1) Misdemeanor.

W.S.T. CODE
Amendment

New Adoption 26-27-08

Judicial Approved

07-85

Council Adopted

07-85

REVIEW OF RECORD. In determining if a person shall be sentenced for his/her first, second, third, or fourth disorderly Conduct offense, the Court shall review that person's Tribal Court record for the past four (4) years.

26-28-01 HARASSMENT. A person shall be deemed guilty of harassment when, with intent to harass, annoy, or alarm another person, that person is found to be in one or more of the following situation.

26-28-02 Strikes, shoves, kicks, or otherwise subjects a person to physical contact, or attempts to or threatens to do the same.

26-28-03 Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other persons and which serve no legitimate purpose.

26-28-04 A violation of Sections 26-28-01 through 26-28-03 shall be deemed a Special Class Misdemeanor and sentenced as follows:

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

W.S.T. CODE
Amendment

New Adoption

Judicial Approved

229-94

Council Adopted

02-95

26-28-05 REVIEW OF RECORD. In determining if a person shall be sentenced for his/her first, second, third, or fourth Harassment offense, the Court shall review that person's Tribal Court record for the past four (4) years.

26-29-01 DOGS RUNNING AT LARGE. See Chapter 54.

26-30-01 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/her, including any dependent children born out of wedlock, shall be deemed guilty of a Special Class Misdemeanor and may be sentenced to a fine and jail not to exceed a Class C Misdemeanor and order attendance at a rehabilitative program, family counseling service program, or any other program designed to correct the problems that resulted in conviction.

- 26-31-01 FAILURE TO SEND CHILDREN TO SCHOOL.** Any person, who shall without good cause, as defined below, neglect or refuse to send his/her child or any child in his/her care to school until such child has reached the age of eighteen (18) years, or has completed the eighth (8th) grade shall be deemed guilty of a Class D Misdemeanor. Good cause is defined in the following sections.
- 26-31-02** Illness in his/her immediate family, making his/her presence at home an actual necessity, or his/her presence in school a menace to the health of the other pupils.
- 26-31-03** The child is otherwise instructed by a competent person for a like period of time in the branches commonly taught in the schools. All such instructions can be given in both the Dakota and English languages and reports covering his/her work shall be filed with Tribal Education Department on such forms and as often as the Department may require.
- 26-31-04** The physical or mental condition of the child is such as to render his/her attendance at school unsafe, impracticable, or harmful either to such child or to others. The evidence of such condition is evidenced by the certificate of a reputable physician, dentist, or other persons who may lawfully treat sickness or disease or by a certificate of a psychologist.
- 26-31-05** 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 "individuals", if possible. In the event that a mentally handicapped or physically 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 or appropriate referral.
- 26-32-01 EMBEZZLEMENT.** Any person who shall, having lawful custody in a trust relationship of property not his/her own, appropriate the same for his/her own use with intent to deprive the owner thereof, shall be deemed guilty of a Class One (1) Misdemeanor and ordered to make restitution.
- 26-33-01 ESCAPE.** Any person, who being in lawful custody for any offense, shall escape or attempt to escape or who shall permit or assist or attempt to assist or permit another to escape from lawful custody shall be deemed guilty of a Class One (1) Misdemeanor.

- 26-34-01 **EXTORTION.** Any person who shall wilfully, by making false charges against another by use of force or threats, extort or attempt to extort any money, goods, property, or anything else of value, shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-35-01 **FALSE ARREST.** Any person who shall wilfully and knowingly make, or cause to be made, the unlawful arrest, detention, or imprisonment of another person shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-36-01 **FRAUD.** Any person who shall by wilful misrepresentation or deceit, or by false interpretation, or by the use of false weights, measures or brands, obtain money or other property shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-37-01 **FORGERY.** Any person who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be guilty of forgery, and shall be deemed guilty of A Class One (1) Misdemeanor and shall pay restitution.
- 26-38-01 **INJURY TO PUBLIC PROPERTY.** Any person who shall, without proper authority, use of injury to any public, government, or Tribal property shall be deemed guilty of a Class D Misdemeanor and shall pay restitution.
- 26-39-01 **INTERFERING WITH POLICE OFFICER.** Any person who shall wilfully and unlawfully attempt or offer to interfere with an officer of the law in the performance of his/her duties, shall be deemed guilty of a Class D Misdemeanor.
- 26-39-02 Any person who shall be convicted of a second offense or more, shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-40-01 **LITTERING.** 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 waters of the Lake Traverse Reservation shall be deemed guilty of a Class F Misdemeanor and may be ordered to clean up that portion of the area in which the offense was committed.
- 26-40-02 Any person who acts in such manner, or permits his/her property to fall into such condition as to injure or endanger the safety, health, comfort, or property of his/her neighbors, shall be deemed guilty of a Special C Class Misdemeanor and sentenced to clean up that portion of the area and also may be ordered to pay restitution.

26-41-01 LOPHOPHORA WILLIAMSII (PEYOTE, PELLOTE). Any person who sells, furnishes, or gives away or offers to sell, furnish, or give away, or has in his possession Lophophora Williamsii (Peyote, Pellote) or any compound derivative or preparation thereof, shall be deemed guilty of a Class One (1) Misdemeanor.

(NOTE: This section shall not be applied to the Native American Church.)

26-42-01 MALICIOUS MISCHIEF. Any person who maliciously injures, defaces, or destroys any real or personal property not his/her own, is guilty of a Special Class Misdemeanor and sentenced to make restitution for the injury done; and upon failure of the defendant to make restitution, the Judge may impose a sentence not to exceed the specifications of a Class A Misdemeanor.

26-43-01 MARIJUANA AND NARCOTIC DRUGS. Any person who shall plant, grow, cultivate, harvest or gather, or sell, barter, or give away, or have in possession any cannabis Indian or cannabis sativa, commonly known as Indian hemp, hashish, or marijuana shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to:

1. A CLASS B MISDEMEANOR for possession of one ounce (1 oz.) or less of Marijuana.
2. A CLASS A MISDEMEANOR for possession of more than one ounce (1 oz.) but less than one pound (1 lb.) or more of Marijuana.
3. A CLASS ONE (1) MISDEMEANOR for possession of one pound (1 lb.) or more of Marijuana.
4. A CLASS B MISDEMEANOR for distribution of one ounce (1 oz.) or less of Marijuana.
5. A CLASS A MISDEMEANOR for distribution of one ounce (1 oz.) but less than one pound (1 lb.) of Marijuana.
6. A CLASS ONE (1) MISDEMEANOR for distribution of one pound (1 lb.) or more of Marijuana.

26-43-02 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 and every 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 a CLASS ONE (1) Misdemeanor.

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved

Council Adopted
03-04-87

Amendment
New Adoption
Official Approved
Council Adopted
3-04-87

- 26-44-01 **UNAUTHORIZED POSSESSION OF DRUGS.** No person shall knowingly possess a drug or substance unless such substance was obtained directly pursuant to a valid prescription or order from a practitioner, while acting in the course of his/her professional practice. a violation of this section is a CLASS ONE (1) Misdemeanor.
- 26-45-01 **OBTAINING MONEY OR PROPERTY UNDER FALSE PRETENSES.** Any person who shall wilfully and knowingly by misrepresentation of facts, or through devious methods obtain money or other property shall be guilty of a Class B Misdemeanor and make restitution.
- 26-46-01 **PARENTAL RELINQUISHMENT OF CHILD CUSTODY.** No parent shall relinquish or otherwise transfer his/her rights with respect to the custody of his/her child under eighteen (18) years of age. Any such transfer or relinquishment, written or otherwise, shall be void in the absence of a decree by a court having jurisdiction. Any person violating this section shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-47-01 **PERJURY.** Any person who shall wilfully in any judicial proceeding in any Court of the Sisseton-Wahpeton Sioux Tribe, falsely swear or interpret, or shall make a sworn statement or affidavit knowing the same to be untrue, or shall induce or procure another person to do so, shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-48-01 **RECEIVING STOLEN PROPERTY.** Any person who shall receive or conceal or aid in concealing or receiving any property, knowing the same to be stolen, embezzled, or obtained by fraud or false pretense, robbery or burglary, shall be deemed guilty of a Class B Misdemeanor and make restitution.
- 26-49-01 **REFUSING TO AID AN OFFICER.** Any person who shall unreasonably neglect or refuse when called upon by any Tribal Police Officer to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement shall be deemed guilty of a Class E Misdemeanor.
- 26-50-01 **RESISTING LAWFUL ARREST.** Any person who shall wilfully and knowingly by force or violence, resist or assist another person to resist lawful arrest shall be deemed guilty of a Class B Misdemeanor.

26-51-01 REMOVAL OF A CHILD FROM THE CUSTODY OF ITS PARENTS OR GUARDIAN. Any person, partnership, voluntary association, or corporation which maliciously, forcibly or fraudulently takes or entices away a child under the age of eighteen (18) years, with intent to detain or conceal the child from its parents, guardian, or other person having lawful charge of the child shall be deemed guilty of a Class One (1) Misdemeanor.

26-52-01 SETTING FIRES. Every person who shall wilfully or negligently kindle or cause to be kindled, fire within the Lake Traverse Reservation or townsites therein and leaves it unextinguished or negligently or carelessly without full precaution to prevent fire spreading, permits it to spread beyond his/her control, so as to endanger the property of another, or is a party to any of the foregoing, and whether such fire is kindled upon his/her own land or not; or who finding any uncontrolled fire burning, fails to give immediate warning and make reasonable attempt to extinguish it. A person in violation of this section shall be deemed guilty of a Class D Misdemeanor and ordered to make restitution.

26-53-01 STALKING. Any person who willfully, maliciously, and repeatedly follows or harasses another person or who makes a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury is guilty of the crime of Stalking.

26-53-02 A violation of Section 26-53-01 shall be deemed a special Class Misdemeanor and shall be sentenced as follows:

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

26-53-03 REVIEW OF RECORD: In determining if a person shall be sentenced for his/her first, second, third, or fourth Stalking Offense, the court shall review that person's Tribal Court record for the past five (5) years.

26-54-01 THEFT. Any person who takes, or exercises control over, property of another with intent to deprive him/her of it, is guilty of theft. A violation of this section shall be deemed a Class One (1) Misdemeanor and restitution may be ordered.

26-54-02 Any person who obtains property of another by deception is guilty of theft.

W.S.T. CODE
Amendment
New Adoption
Council Approved
29-94
Council Adopted
08-95

W.S.T. CODE
Amendment
New Adoption
Council Approved
29-94
Council Adopted
08-95

- 26-54-03 Any person who obtains property of another by threats is guilty of theft.
- 26-55-01 **TIMBER - WANTON INJURY.** 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 of cultivated and growing timber shall be deemed guilty of a Class D Misdemeanor and may be ordered to make restitution.
- 26-56-01 **TRESPASS.** Any person who wilfully commits any of the following within the territorial jurisdiction of the Lake Traverse Reservation shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-56-02 Entering and occupying land, real property, structures of any kind without the consent of the owner, or uses his/her agent, or person in lawful possession thereof.
- 26-56-03 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.
- 26-56-04 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.
- 26-56-05 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 injure any lawful business or occupation carried on by the person in lawful possession.
- 26-57-01 **UNAUTHORIZED LEASING.** Any person who leases land in violation of the Tribal or BIA leasing regulations shall be deemed guilty of a Class One (1) Misdemeanor.

- 26-58-01 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 and operate the vehicle of another without the consent of the owner or person lawfully in charge thereof, shall be deemed guilty of a Class A Misdemeanor and shall be ordered to make restitution.
- 26-59-01 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 a Class F Misdemeanor.
- 26-60-01 PROSTITUTION.** Any person who shall practice prostitution 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 a Class One (1) Misdemeanor.
- 26-60-02** Any person who shall patronize any person or establishment defined above shall be deemed guilty of a Class One (1) Misdemeanor.
- 26-61-01 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 is legally accountable, as a principal to the offense and shall be deemed guilty and be sentenced according to the maximum penalty of the crime which was aided or abetted.
- 26-62-01 INTERFERENCE WITH WITNESSES.** Whoever 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 a Class One (1) Misdemeanor.
- 26-63-01 INDECENT EXPOSURE.** Any person who intentionally and with an immoral purpose exposes his/her genitalia or other private parts in any place where there are present other persons to be offended or annoyed thereby is guilty of a Class One (1) Misdemeanor.

S.W.S.T. CODE
 Amendment
 New Adoption
 Special Approved

Adopted

26-64-01

REFUSAL TO ACCEPT DIAGNOSIS OR TREATMENT FOR COMMUNICABLE DISEASE. Any person within the jurisdiction of the Sisseton-Wahpeton Sioux Tribe, reasonably suspected of being infected with a communicable disease shall accept necessary diagnosis or treatment, or both, or who fails to follow the reasonable and necessary directives of the Indian Health Service personnel, State Health Department issued for the protection or other persons, is guilty of a Class One (1) Misdemeanor.

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
08-08-94
Council Adopted
08-08-94

26-65-01

INCEST. Any person who shall knowingly and wilfully engage in sexual conduct or sexual intercourse with immediate family members, excluding a husband and wife, and including anyone related through blood, marriage, or adoption, up to and including second cousins, shall be deemed guilty of a Class One (1) Misdemeanor.

W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
6-06-84
Council Adopted
6-06-84

26-66-01

PRACTITIONERS, HOSPITAL AND SCHOOL PERSONNEL, LAW ENFORCEMENT OFFICERS AND CORONERS TO REPORT CHILD ABUSE AND NEGLECT CASES. FAILURE AS MISDEMEANOR--REPORTS BY OTHER PERSONS.

26-66-02

Any physician, surgeon, pathologist, dentist, doctor of osteopathy, chiropractor, optometrist, mental health professional, podiatrist, psychologist, religious healing practitioner, social worker, hospital intern or resident, parole or probation officer, law enforcement officer, teacher, school counselor, school official, nurse, licensed or registered child welfare provider, or coroner, any placement center licensed by the State or Tribe to provide care of placement children, person dealing with the counseling of children having reasonable cause to suspect that a child under the age of eighteen (18) years has been starved, neglected as defined in Sections 26-14-01 through 26-15-13, has had physical injury or injuries inflicted upon him/her by abuse or intentional neglect other than by accidental means, or has been subjected to circumstances or conditions which would reasonably result in abuse or neglect, by any person, including a parent or other person responsible for his/her care, shall report or cause reports to be made in accordance with Section 38-29-01. Any person who intentionally fails to make a report required of him/her is guilty of a Class One (1) Misdemeanor. Any person who knows, suspects, or has reason to believe that a child has received physical or emotional injury or injuries as the result of abuse or intentional neglect shall make a report as provided by law.

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
Council Adopted
05-08-85

(See Sections 38-28-01, 38-30-01, and 38-30-02 of the Juvenile Code)

26-67-01 **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 in the financial institution 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 with reference thereto, is guilty of passing a check against insufficient funds. A person who passes a check of one hundred (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. A person who passes a check or a series of checks within any thirty (30) day period in 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. A person who passes a check of more than two hundred (200) dollars, or a series of checks with 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.

26-67-02 (1) The passing of a check as described above, creates a rebuttable 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.

26-68-01 **PASSING CHECK AGAINST 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 passing that he or his principal does not have an account with such financial institution, is guilty of a Class One (1) Misdemeanor. It is a defense to this section that the actor's or his principal's account was enclosed 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 rebuttable presumption that the actor had knowledge that his or his principal's account was closed.

S.W.S.T. CODE

Amendment

New Adoptior.

Judicial Approved

11-01-89

Council Adopted

11-89-89

26-68-02 If a person, who has been accused of a violation of the above statutes, restores or returns the property allegedly obtained as consideration or makes payment of the check before a complaint or information is laid before a Tribal Judge, such fact may be considered in mitigation of punishment. 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.

26-68-03 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 the above statutes.

26-68-04 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.

1. The notice of dishonor required by the above sections shall be in substantially the following form:

Date: _____
Name of Issuer: _____
Bank of which drawn: _____
Date of check: _____
Amount of check: _____
Person or merchant holding check: _____

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
11-01-89
Council Adopted
11-09-89

YOU ARE HEREBY NOTIFIED 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 purchases is not a defense to a violation of this statute.

26-68-05 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 to the Tribal Prosecutor 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.

26-68-06 A criminal prosecution under the above statutes must be commenced within six (6) months after the holder of a check receives notice of its dishonor. Failure to prosecute a complaint within six (6) months shall be a bar to any criminal action under these sections.

26-69-01 **SEVERABILITY**

S.W.S.F. CODE
 Amendment
 New Adoption
Judicial Approved
02-24-88
Council Adopted
03-01-88

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, aragraph, section or part thereof directly involved in the controversy in which the judgement shall have been rendered.

(Bad Check Statute adopted by Tribal Council on November 9, 1989 with 16 yes votes, 1 absent from vote and 1 not voting.)