

**SISSETON-WAHPETON SIOUX TRIBE**

**CHAPTER 25**

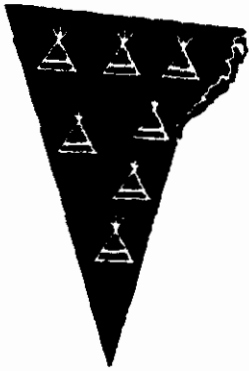
**CODE OF TRIBAL OFFENSES**

**REPEALED**

**Resolution:**

**SWO-05-093**

**Dated: October 6<sup>th</sup>, 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**  
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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,

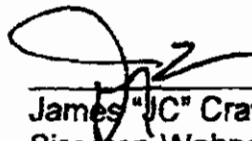
**FINALLY BE IT RESOLVED,** This Ordinance shall be in full force and effect on the date of formal approval and adoption by the Tribal Council, on October 6, 2005. This Code shall apply prospectively and shall not affect those actions already filed with the Sisseton-Wahpeton Oyate Tribal Court by October 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 11<sup>th</sup> 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 25

CODE OF TRIBAL OFFENSES

S. W. S. T. CODE

Amendment

New Adoption

Judicial Approved

64-03-79

Council Adopted

64-03-79

- 25-01-01 **DEFINITION, CLASSIFICATION AND APPLICATION**  
No act or omission shall be deemed criminal or punishable except as prescribed or authorized by the Sisseton-Wahpeton Sioux Tribal Code.
- 25-01-02 Crimes are either felonies or misdemeanors. A felony is a crime which is or may be punishable by imprisonment in a State or Federal penitentiary. Every other crime is a misdemeanor. All offenses prescribed under this Code are misdemeanors.
- 25-02-01 Wherever used in this Code, unless the context otherwise plainly requires, the following terms shall mean;
- 25-02-02 When applied to the intent with which an act is done or committed;
- 25-02-03 Corruptly - imports a wrongful design to acquire some pecuniary advantage to the person guilty of the act or omission referred to.
- 25-02-04 Knowingly - imports only a knowledge that the facts exist which bring the act or omission within the provisions of any ordinance. It does not require knowledge of the unlawfulness of such act or omission.
- 25-02-05 Malice and Maliciously - import a wish to vex, annoy or injure another person, established either by proof or presumption of law.
- 25-02-06 Neglect, Negligence, Negligent and Negligently - import 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.
- 25-02-07 Wilfully - implies simply 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.
- 25-02-08 Bribe - signifies any money, goods, right in action, property, things or advantage, present or prospective, asked, promised, given or accepted with a corrupt intent unlawfully to influence the recipient or prospective recipient in his action, vote, or opinion in any public or official capacity.

*Suspended by Amendment on 8/13/99  
See New Chap 24 - Amended Penal Code*

25-05-02 Whenever it appears that the accused has already been acquitted or convicted upon any criminal prosecution under the laws of the State of South Dakota of the U.S. Government founded upon the act or omission in respect to which he is on trial, this is a sufficient defense.

25-05-03 All standard legal defenses shall be acceptable in proceedings in the Tribal Court, including the defense of restitution.

25-06-01 **PUNISHMENT**

The punishments prescribed by this Code can be inflicted only upon a legal conviction in the Sisseton-Wahpeton Sioux Tribal Court. Upon such 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.

25-06-02 The following persons are liable to punishment under the ordinances of the Sisseton-Wahpeton Sioux Tribal Code:

1. All Indians under the jurisdiction of the Sisseton-Wahpeton Sioux Tribal Court, and non-Indian who consent to such jurisdiction, who commit in whole, or in part, any offense with the Lake Traverse Indian Reservation.
2. Any Indian who commits the offense of ABDUCTION contrary to the ordinances of the Reservation where such act is committed and brings, sends, or conveys such person within the limits of this Reservation, and who is afterwards found herein.
3. Whenever any Indian, who has passed his seventeenth (17th) birthday is convicted of an offense punishable by confinement of jail, the Court may, in its discretion, sentence the person so convicted to confinement in the appropriate jail.

25-06-03 Offense - General Penalty Prescribed. Except in cases where a different penalty is prescribed by this Code, every act declared to be an offense is punishable by imprisonment not to exceed One (1) year incarceration, or to a fine not to exceed \$5,000.00, or both; or when Court deems appropriate, a suitable punishment of restitution.

25-07-01 **CONTEMPT OF COURT**

Any Indian guilty of any contempt of court of any of the following kinds is guilty of an offense:

1. 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.

\*\* As provided for in these Codes, the Court, in its discretion, may also order restitution and/or work for the benefit of the Tribe.

**CLASS F MISDEMEANORS:**

Maximum Sentence: \$75.00 fine.

**CLASS G MISDEMEANORS:**

Maximum Sentence: \$50.00 fine.

**SPECIAL CLASS MISDEMEANORS:** Sentence to imprisonment, fine, or work.

**25-08-02** No Section of this Code 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 for example:

1. Commitment to a rehabilitation program,
2. Work for the benefit of the Tribe,
3. Restitution, etc.

**25-09-01 SEVERABILITY**

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, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

S.W.S.T. CODE

Amendment

New Adoption

Judicial Approved

-24-88

Council Adopted

03-01-88