

# SISSETON-WAHPETON OYATE

## CODES OF LAW

### CHAPTER 36—Alcohol and Drug Treatment Act

#### **36-01-01 TITLE**

This Chapter may be cited as the “Alcohol and Drug Abuse Treatment Act.”

#### **36-02-01 PURPOSE**

The Sisseton-Wahpeton Oyate Tribal Council in order to prevent Alcohol and Drug Abuse declares:

1. Alcoholism and drug abuse are major health and social problems afflicting an alarmingly high percentage of the members of the Tribe; whereas treating it as a health problem permits early detection and prevention of alcoholism and drug abuse and effective treatment and rehabilitation relieves policy and other law enforcement agencies of an inappropriate burden that impedes their important work and better serves the interest of the public;
2. Alcohol and drug related offenses cost the Tribe and its members great human suffering in deaths injuries, suicide, sickness, crime, domestic violence, child abuse, neglect, incest, abandonment, and delinquency;
3. Alcohol and drug related offenses cost the Tribe and its member great economic loss.
4. Alcohol and drug related offenses seriously threatens the social and economic stability and security of the Tribe and many families;
5. Alcoholism and drug abuse are illnesses which require treatment and rehabilitation through the coordinated efforts of community health and social services, law enforcement agencies, employers, and concerned individuals; and
6. Alcohol and drug abuse presents a need for prevention and intervention programs designed to reach the members of the Tribe who are alcohol and drug abusers.

#### **36-03-01 DEFINITION OF TERMS**

Terms used in this chapter, shall mean the following:

*Amendment Passed: November 5, 2014*

*Motion No. 45*

*Resolution No. SWO-14-112*

- 36-03-02**     Alcoholic – is a person who suffers the chronic progressive and potentially fatal disease of alcoholism, as characterized by tolerance, physical dependence, pathological, organic changes or both; all of which are the direct or indirect consequences of alcoholism.
- 36-03-03**     Director – shall mean the Director of the Alcohol Program.
- 36-03-04**     Alcohol Program – is the Tribal Alcohol Program.
- 36-03-05**     Incapacitated by Alcohol or Drugs – means that a person, as a result of the use of alcohol or one or more other drugs is unconscious or has his judgement impaired so that he is incapable of making a rational decision in respect to a need for treatment.
- 36-03-06**     Intoxicated Person – is a person whose mental or physical state is substantially impaired by the use of alcohol or drugs.
- 36-03-07**     Treatment – shall mean the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, or vocational rehabilitation and career counseling which may be extended to alcohol or drug abusers.
- 36-04-01**     **DEVELOPMENT OF PROGRAMS**  
The Alcohol Program shall develop plans and programs for the prevention and treatment of alcoholism and drug abuse in cooperation with Tribal, State and national agencies.
- 36-05-01**     **STATISTICAL DATA**  
The Alcohol Program shall keep statistical information, on number of persons treated, frequency of admission and readmission, and duration of treatment.
- 36-06-01**     **CONTRACTS FOR USE OF PUBLIC TREATMENT FACILITIES**  
The Alcohol Program may contract, subject to the approval of the Tribal Council, any contracts necessary or incidental to the performance of its duties and the execution of its powers, with public, private, and Tribal agencies, for treatment services rendered.
- 36-07-01**     **RULES AND POLICIES FOR TREATMENT**  
The Alcohol Program shall adopt rules for the treatment of persons in the program.
- 36-08-01**     **APPLICATION FOR VOLUNTARY TREATMENT**  
Any person may apply for voluntary treatment directly to the Alcohol Program or other treatment facility.



**36-08-02** A person who voluntarily admits him/her self for treatment must comply with all established procedures.

**36-09-01** **PROTECTIVE CUSTODY**

Any person intoxicated or who appears to be in need of help in a public or private place shall be taken into protective custody by the police and taken to the Tribal detention center of a private facility. If the person is intoxicated, they should be held not less than twelve (12) hours and not more than seventy-two (72) hours after which time they shall be released upon recommendation by an alcohol counselor, or

**36-09-02** Any person picked up the fifth time within one year under protective custody shall be brought before the court under Section 36-13-01, and transferred to an appropriate health care facility for proper treatment, at the time specified by the court.

**36-09-03** Any pregnant woman using alcohol shall be brought before the Court under Section 36-13-01, and committed to an appropriate treatment facility, at the time specified by the Court.

**36-09-04** Failure to comply with Section 36-09-02 above shall be grounds for the accused to be charged with disobedience to the lawful orders of the court which carries a maximum penalty of a one hundred and twenty dollar (\$120.00) fine and three (3) months in jail.

**36-10-01** **PROTECTIVE CUSTODY NOT AN ARREST**

Protective custody under this section is not an arrest. Except in the case of a pregnant mother, she may be arrested for offenses of abuse or neglect of her unborn child.

**36-10-02** Pregnant Mothers: any pregnant mother who is arrested, charged, or convicted of an offense of abuse or neglect involving her unborn child shall be placed under the protective custody of the Tribal Court for placement in detox, treatment, or other appropriate facility. The protective custody shall be a mandatory six month period or until birth of the child. If the pregnant mother is not convicted there shall be no additional protective custody enforced.

**36-11-01** **PROTECTIVE CUSTODY PROCEDURE**

The police shall notify the Alcohol Program promptly when a person is taken into protective custody. Upon notification, the Alcohol Program shall, within twelve (12) hours, determine when a person in Protective Custody shall be released.

**36-12-01** **POLICE NOT CRIMINALLY OR CIVILLY LIABLE**

*Amendment Passed: November 5, 2014*

*Motion No. 45*

*Resolution No. SWO-14-112*

The police when in compliance with this chapter acting in the course of their official duty shall not be subject to criminal or civil liability.

**36-13-01 TREATMENT PETITION**

Proceedings for the involuntary treatment of a person in need or treatment may be started by any person eighteen (18) years or older by supplying necessary information alleging that the person is incapacitated by alcohol and/or drugs. The petition shall contain the following:

1. Name, address, age of petitioner.
2. Name, address, age, marital status and occupation of the person in need of treatment.
3. Names, addresses, enrollments, and relationships, of the person's nearest relatives, or of a friend.
4. The allegations shall include statements by the petitioner, statements by the Tribal Police or other persons having knowledge of that person's drug and/or alcohol abuse, and a statement of the person's condition, and other information to support the need for treatment.

**36-14-01 REVIEW OF THE PETITION**

The court shall review the petition to determine if it meets the requirements of Section 36-13-01. The court shall determine whether the petition establishes probable cause to believe that the respondent meets the criteria of a person requiring treatment, as defined in Section 36-13-01, subsection 4.

1. If probable cause is established, the court shall order a suitable person(s) to submit written background report upon which the petition is based.
2. If probable cause is not established, the petition shall be dismissed.

**36-15-01 APPOINTMENT OF COUNSEL**

If the person cannot employ his own counsel, suitable counsel shall be appointed by the Tribal Judge. Assignment of counsel shall be made within twelve (12) hours prior to the hearing or immediately in the case of a person requiring emergency treatment.

**36-16-01 IMMEDIATE APPREHENSION OF PERSON REQUIRING TREATMENT**

After reviewing the petition for treatment and if probable cause is shown, the court shall enter an order for immediate apprehension and detention of respondent



for the purposes of examination if a certificate of examination does not accompany petition, and for respondent's presence at the hearing. The person may be detained at an appropriate facility no longer than seventy-two (72) hours, excluding Saturdays, Sundays and holidays if evaluation services are not available on those days.

**36-17-01 CERTIFICATE OF EXAMINATION**

A certificate of examination shall be attached to the petition, or if none is attached, a statement shall be included in the petition why one could not be obtained. The certificate of examination of the individual requiring treatment and shall be conducted by a physician within seventy-two (72) hours after apprehension of respondent in the case of respondent requiring Emergency Treatment. It shall contain the following information:

1. Evaluation of the respondent's physical and mental condition.
2. Conclusion as to whether the respondent meets the criteria of a person requiring treatment with a clear explanation of how that conclusion was derived.
3. Signature of the examining physician.
4. A record of all drugs, medication or other treatment prescribed within the seventy-two (72) hour period.

**36-18-01 NOTICE OF HEARING**

Upon filing the petition, accompanied by the certificate of examination, the Clerk of Courts shall set the time and date for the hearing no longer than five (5) days after the petition is filed. A copy of the petition, certification of examination, and summons, shall be personally serve upon the respondent, a notice of hearing, along with a copy of the petition, and certificate of examination shall be issued to the petitioner and to the respondents relatives named in the petition. Summons shall, also include the respondent's right to have witnesses appear and testify on his behalf or other documentation he/she have to support his/her case.

**36-19-01 EXAMINATION BY THE COURT**

In the event the respondent upon receiving notice of the hearing refuses to be examined by a qualified mental health professional or a physician, the court may issue a warrant and detain the person at a facility it may designate as long as is necessary to complete the examination, and hold a hearing, but in no event longer than seventy-two (72) hours, excluding Saturdays, Sundays and holidays, if, evaluation services are not available on those days.

- 36-20-01 PRECAUTIONS AGAINST DRUGS HAMPERING DEFENSE**  
 After an examination, the examining mental health professional physician shall transmit a certificate to the court and personally appear at the hearing. The alleged mentally ill person has the right to obtain an additional examination at his own expense, which may be placed in evidence before the Court.
- 36-21-01** If personal service cannot be made on respondent, the summons shall be published for 3 weeks(s).
- 36-22-01** If, after personal service has been made on respondent, or after the expiration of the publication period, respondent fails and refuses to appear for the hearing, the court shall issue a Bench Warrant to show cause, why he/she should not be held in Contempt of Court.
- 36-23-01 PRESENCE OF RESPONDENT AT THE HEARING**  
 The person requiring treatment shall be present at all hearings with counsel.
- 36-24-01 CLEAR AND CONVINCING EVIDENCE REQUIRED**  
 If the court finds by clear and convincing evidence that the respondent is in need of treatment, in order to prevent respondent from endangering himself or others the court may order him/her to undergo appropriate treatment. The person committed shall complete the full cycle of treatment at the designated facility.
- 36-25-01 RECORDS TO BE CONFIDENTIAL**  
 All records and information of persons committed to treatment shall remain confidential and privileged except to the person committed. Any breach of confidentiality shall be grounds for possible termination of employment.
- 36-26-01 NO WAIVER OF IMMUNITY**  
 Nothing in this Code shall be construed as a waiver of sovereign immunity for the Sisseton-Wahpeton Oyate, its departments, agencies, entities, employees, or agents.
- 36-27-01 SEVERABILITY**  
 If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by the Tribal Court or Tribal 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.

- 36-28-01 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.
- 36-29-01 AMENDMENT**  
This Code may be amended only upon affirmative vote of a majority of the Tribal Council of the Sisseton-Wahpeton Oyate.
- 36-30-01 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.
- 36-31-01 INTERPRETING DEFINITIONS**  
Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common usage for the Sisseton-Wahpeton Oyate and to give this Code it's most reasonable application. The words and phrases in this Chapter are specifically defined and shall control and prevail over any other definition.

**Legislative History:**

**WEIGHTED VOTE ON MOTION NO. 44:** 17 For: Dawn Eagle (3); Lynn Halbert (2); Francis Crawford (2); Marc Beaudreau (3); Virginia Max (2); Louis Johnson (1); Jerome Renville, Sr. (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 45:** made by Marc Beaudreau, second by Virginia Max, question by Sara Lincoln, in resolution form, to approve the revisions and amendments to SWO Codes of Law: Chapter 7, Chapter 24, Chapter 36, Chapter 38, Chapter 60, and Chapter 66, to implement the sections detailing the definitions, language, and penalties pertaining to Meth use, possession, production, and distribution.

**WEIGHTED VOTE ON MOTION NO. 45:** 17 For: Dawn Eagle (3); Lynn Halbert (2); Francis Crawford (2); Marc Beaudreau (3); Virginia Max (2); Louis Johnson (1); Jerome Renville, Sr. (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**  
**Resolution No. SWO-14-112**

**Note:** Big Coulee District did not have a District meeting in October 2014.

**Note:** Long Hollow District did not have a District meeting in October 2014.

**MOTION NO. 46:** made by Dawn Eagle, second by Sara Lincoln, question by Jerome Renville, Sr., to approve the District Chairman's Association (DCA) report, as presented by DCA Members; Kenneth Johnson, Tony Barker, Rodney Barse, Beverly Thompson, Floyd Kirk Jr., Gerald German Jr., and Donovan White.

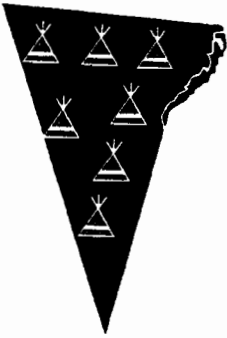
**WEIGHTED VOTE ON MOTION NO. 46:** 17 For: Dawn Eagle (3); Lynn Halbert (2); Francis Crawford (2); Marc Beaudreau (3); Virginia Max (2); Louis Johnson (1); Jerome Renville, Sr. (2); Tribal Vice-Chairman (1); Tribal Secretary (1). 0 Opposed. 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION PASSED.**

**MOTION NO. 47:** made by Francis Crawford, second by Virginia Max, question by Sara Lincoln, to approve the Final Walk-Thru of the SWO Administration Building and Close-Out of the project, acknowledging the pending discrepancies with the Architect for the project.

**WEIGHTED VOTE ON MOTION NO. 47:** 7 For: Francis Crawford (2); Virginia Max (2); Louis Johnson (1); Tribal Vice-Chairman (1); Tribal Secretary (1). 10 Opposed: Dawn Eagle (3); Lynn Halbert (2); Marc Beaudreau (3); Jerome Renville, Sr. (2). 0 Abstained. 0 Absent From Vote. 1 Not Voting: Tribal Chairman.  
**MOTION DEFEATED.**







# 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-14-112

### Amendment of the SWO Codes of Law Pertaining to Methamphetamine Prevention

- 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 November 1, 2013, the Tribal Council held a drug retreat to discuss methamphetamine prevention and proposed amendments to the Sisseton-Wahpeton Oyate Codes of Law that would adequately address methamphetamine prevention within the community; and
- WHEREAS,** The attendance of the retreat included members from the Judicial Committee, Tribal Council, Methamphetamine Prevention Program, Executive Committee, Court Advocates, and interested Community Members; and,
- WHEREAS,** Pursuant to the ongoing issues with methamphetamine use, distribution, and manufacturing that was brought to the attention of Tribal Council through the community and programs Tribal Council chooses to address the issues though the Sisseton-Wahpeton Oyate Codes of Law; and,

**WHEREAS,** The SWO Judicial Committee has been presented with the proposed amendments in order to solicit comments and recommendations of Chapter 7 (Landlord Tenant Law), Chapter 24 (Penal Code), Chapter 36 (Alcohol and Drug Treatment Act), Chapter 38 (Juvenile Code), Chapter 60 (Child Care Ordinance), and Chapter 66 (Education 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 7 (Landlord Tenant Law), Chapter 24 (Penal Code), Chapter 36 (Alcohol and Drug Treatment Act), Chapter 38 (Juvenile Code), Chapter 60 (Child Care Ordinance), and Chapter 66 (Education Code), and all previous versions of these chapters are hereby repealed and superseded by passage of the amended version of each of these codes; and

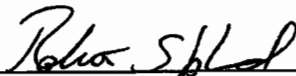
**BE IT FURTHER RESOLVED** that the SWO Legal Department is hereby authorized to post Chapter 7 (Landlord Tenant Law), Chapter 24 (Penal Code), Chapter 36 (Alcohol and Drug Treatment Act), Chapter 38 (Juvenile Code), Chapter 60 (Child Care Ordinance), and Chapter 66 (Education Code), on the Tribe's website 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.

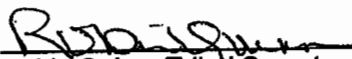
## CERTIFICATION

*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, November 5, 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 5<sup>th</sup> day of November 2014.

  
\_\_\_\_\_  
Robert Shepherd, Tribal Chairman  
Sisseton-Wahpeton Oyate

ATTEST:

  
\_\_\_\_\_  
Robin Quinn, Tribal Secretary  
Sisseton-Wahpeton Oyate

