

SISSETON-WAHPETON OYATE
OF THE LAKE TRAVERSE RESERVATION
CHAPTER 24
PENAL CODE

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SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

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 PURPOSE AND INTENT.

This Code shall be construed to promote the following:

- A. The Sisseton-Wahpeton Oyate is a sovereign and federally recognized Treaty Tribe, pre-existing and dating the creation of the United States and exercising inherent jurisdiction. Our treaties with the United States guaranteed territorial integrity, and reserved a “permanent home” on the Lake Traverse Reservation.
- B. The jurisdiction of the Sisseton-Wahpeton Oyate “shall extend to the lands lying in the territory within the original confines of the Lake Traverse Reservation as described in Article III of the Treaty of February 19, 1867 and those lands subsequently acquired by the Sisseton-Wahpeton Oyate. Article I – Jurisdiction, Revised Constitution and By-Laws of the Sisseton-Wahpeton Oyate.
- C. Our most important resource is our people and the presence of crime within our communities poses an imminent and serious threat to the health, safety, and welfare of our people and the Sisseton-Wahpeton Oyate as a whole. By treaty, the Sisseton-Wahpeton Oyate has the right to adopt laws, including laws “for the security of life and property” of its members and as such shall take precedent over any general laws of applicability.

24-01-03 SOVEREIGN IMMUNITY NOT WAIVED.

By adoption, and subsequent amendments, of this Code, the Tribe does not waive its sovereign immunity or consent to suit in any court, whether the court is federal, tribal, or state, and the adoption and amendment does not nor shall be construed to be a waiver of the sovereign immunity of the Tribe nor a consent to suit against the Tribe in any court.

24-01-04 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.

24-01-05 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.

24-01-06 Definition, Classifications and Application

No act or omission shall be deemed criminal or punishable except as prescribed or authorized by this Chapter, with the exception 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).

24-01-07 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.

24-01-08 Intent

Wherever used in this Chapter, unless the context otherwise plainly requires, the terms defined in Section 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.

24-01-09 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.

24-01-10 Knowingly

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

24-01-11 With Malice, Maliciously

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

24-01-12 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.

24-01-13 Willfully

A purpose of 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.

24-01-14 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.

24-01-15 Signature

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

24-01-16 Bodily Injury

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

24-01-17 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.

24-01-18 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.

24-01-19 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.

24-01-20 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.

24-01-21 Principles

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.

24-01-22 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.

24-01-23 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.

24-01-24 Defenses

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

24-01-25 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.

24-01-26 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.

24-01-27 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.

24-01-28 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.

24-01-29 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.

24-01-30 Other Defenses

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

24-01-31 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.

24-01-32 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.

24-01-33 General Penalty Prescribed

Except in cases where a different penalty is prescribed in 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 (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.

24-01-34 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.

24-01-35 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.

24-01-36 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 case 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.

24-01-37 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.

24-01-38 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.

24-01-39 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.

24-01-40 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.

24-01-41 Parole

Any prisoner confined to the jail who shall be 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.

24-01-42 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.

24-01-43 Violations of Parole

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

24-01-44 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 and sentence imposed upon a person, upon proof that during the period of sentence the person served without misconduct and did satisfactory work.

24-01-45 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 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 judgment shall have been rendered.

24-01-46 Construction

This Code shall be interpreted and applied in a manner consistence with all other Codes, Laws, Resolutions, and Regulations of the Sisseton-Wahpeton Oyate.

24-01-47 Amendment

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

24-01-48 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 its most reasonable application. The words and phrases in this Part are specifically defined and shall control and prevail over any other definition.

24-01-49 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 closing 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 offense and the penis, vulva or anus of the victim.

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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 of 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 (1/2) 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.

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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.~~

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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.

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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 violation shall be 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 person or 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 Services 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 subject 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).

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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

A person commits aggravated assault under any of the following circumstances: 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;
- C. Attempts to cause or willfully or knowingly causes bodily injury to another by strangulation or suffocation;
- D. If the person has previously been convicted of assaulting the same victim; or
- E. If the assault victim is the protected party and the defendant is the restrained party in a court order issued by the Tribal Court or a valid foreign protection order recognized by the Tribal Court.

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 or attempted 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 ~~Representatives~~, 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 be related to 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:

- 1st Offense: 30 days, \$100 fine, or both.
- 2nd Offense: 60 days, \$200 fine, or both.
- 3rd 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.

SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

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 or 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 building 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.

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 of 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 and 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 party.

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 property 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 no 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 her 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:
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

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.

SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

CRIMES AGAINST THE PUBLIC ORDER

TITLE VIII – WEAPONS OFFENSES

24-08-01 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 Sisseton-Wahpeton Oyate, 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 fifty yards 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 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.

SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

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 of 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 Substances

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 Lawful Possession or Use of Marijuana

The following acts are not unlawful and shall not be criminal offenses under tribal law, if the person is at least twenty-one (21) years of age:

- A. Possessing one (1) ounce or less of marijuana;
- B. Possessing more than one (1) ounce or more of marijuana, provided that such marijuana is prescribed and used pursuant to the Medical Cannabis Code of the Oyate;
- C. Using, inhaling, or ingesting marijuana.

This Section does not: require that the Oyate or any other employer on the reservation to permit or accommodate conduct allowed by this Section; affect the Oyate or an employer's ability to restrict the use of marijuana by certain employees; limit the right of a person who occupies, owns, or controls private property from prohibiting or otherwise regulating conduct permitted under this Section; limit the ability of the Oyate to prohibit or restrict conduct otherwise permitted under this Section within a building owned, leased, or occupied by the Oyate; or limit the ability of the Oyate to civilly regulate the possession or use of marijuana on tribal lands.

24-09-07 Unlawful Possession or Distribution of Marijuana

It shall be unlawful for any person:

- A. under the age of twenty-one (21) years of age to purchase, attempt to purchase, possess, or consume marijuana without a valid Medical Cannabis prescription, or to misrepresent his or her age for the purpose of purchasing or attempting to purchase marijuana. Any person found in violation of this provision shall be deemed guilty of Unlawful Purchase or Possession of Marijuana 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.
- B. to transfer, sell, or give any person under the age of twenty-one (21) years of age marijuana, except for transactions authorized under the Medical Cannabis Code. 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.
- C. to distribute one ounce (1 oz.) or less of Marijuana unless such distribution complies with the Medical Cannabis Code or other civil/regulatory laws of the Oyate. A violation of this Section is a Class B Misdemeanor.
- D. to distribute more than one ounce (1 oz.) but less than one pound (1 lb.) of marijuana unless such distribution complies with the Medical Cannabis Code or other civil/regulatory laws of the Oyate. A violation of this Section is a Class A Misdemeanor.
- E. to distribute more than one pound (1 lb.) of marijuana unless such distribution complies with the Medical Cannabis Code or other civil/regulatory laws of the Oyate. A violation of this Section is a Class One (1) Misdemeanor.
- F. to operate or be in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transportation while under the influence of marijuana. A violation of this Section is a Class B Misdemeanor.

24-09-08 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, amidine, 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.

24-09-09 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.

24-09-10 Unlawful Possession or Drug Paraphernalia

Any person who knowingly uses, or possesses 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 to 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.

24-09-11 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.

24-09-12 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.

SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

TITLE X – OFFENSES INVOLVING GOVERNMENTAL PROCESS

24-10-01 Bribery

Any person who intentionally offers, gives, or agrees to give another, or who solicits, 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 Governmental Services

Any person who shall willfully falsely report an emergency for ambulance services, firefighting 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 to 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.

24-10-16 Official Misconduct

Any Tribal public servant who willfully and intentionally engages in, or aids and abets, any of the following shall be deemed guilty of Official Misconduct.

- A. Purposely or negligently fails to perform any mandatory duty as required by law or by the Tribal Court.
- B. Knowingly performs an act in his official capacity which he knows is forbidden by law.
- C. With the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;
- D. Solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law.

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

24-10-17 Embezzlement and/or Theft from a Tribal or District Organization

Any person or Tribal public servant who willfully and intentionally engages in any of the following shall be deemed guilty of Embezzlement and/or Theft from a Tribal Organization:

- A. They embezzle, steal, knowingly converts to their use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belong to the Tribe, tribal organization, District or subsidiary thereof, or entrusted to the custody or care of any officer, employee, or agent thereof.
- B. Knowing any such money, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another.

A person convicted of this section for \$1,000.00 or more is a Felony and subject to three (3) years incarceration, not to exceed nine (9) years for multiple counts, a \$15,000.00 fine, or both, as well as suitable restitution.

A person convicted of this section for less than \$1,000.00 or more is a Class 1 Misdemeanor and subject to one (1) year incarceration, not to exceed nine (9) years for multiple counts, a \$15,000.00 fine, or both, as well as suitable restitution.

SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

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 st Offense:	Class F Misdemeanor.
2 nd Offense:	Class E Misdemeanor
3 rd Offense:	Class D Misdemeanor
4 th 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 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 to his first, second, third, or fourth or more Harassment offense, the Court shall review the 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 st Offense:	Class F Misdemeanor.
2 nd Offense:	Class E Misdemeanor.
3 rd Offense:	Special Class Misdemeanor (sentenced at the Court's discretion)
4 th 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 st Offense:	Class E Misdemeanor
2 nd Offense:	Class C Misdemeanor
3 rd Offense:	Class B Misdemeanor
4 th 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 of 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 and 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.

SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

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 Person

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.

SISSETON-WAHPETON OYATE

CHAPTER 24 PENAL CODE

TITLE XIII – HATE CRIMES

24-13-01 Hate Crimes Generally

A hate crime is a crime in which an individual selects or targets a specific individual, or in the case of property, the property of that individual, because of the perceived race, color, religion, national origin, ethnicity, gender, sexual orientation, gender identity, or disability of a person.

24-13-02 Hate Crimes Prohibited

It is unlawful for any person, whether or not acting under color of law, to willfully cause bodily injury to any person or cause significant property damage, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, or attempt to cause bodily harm to any person because of the actual or perceived race, color, religion, national origin, ethnicity, gender, sexual orientation, gender identify, or disability of any person. A violation of this Title is a

Felony and is punishable by a jail term of up to one (1) year in jail and up to a one-thousand dollar (\$1,000.00) fine or both in addition to any restitution that is granted.

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