

DOMESTIC ABUSE

PURPOSE; The purpose of this chapter is to recognize domestic abuse as a serious crime against our society and to assure the victim of domestic abuse the maximum protection from abuse which the law and those who enforce the law can provide.

It is the intent of the Rosebud Sioux Tribal Council that the official response to cases of domestic abuse shall be that violent behavior is not to be excused or tolerated, whether or not the abuser is intoxicated. Furthermore, it is the intent of the Tribal Council that criminal laws be enforced without regard to whether the persons involved are family members, were or are married, cohabiting, or involved in a relationship. It is also the intent of the Tribal Council that the Elders of this tribe be cherished and protected according to the traditions of the tribe.

Section 1. DEFINITIONS

Terms used in this ordinance, unless a different meaning is clearly indicated by context, are defined as follows:

A. Family member or household member shall mean a relative, spouse, former spouse, adult or elderly person related by marriage or an adult or elderly person who resides or formerly resided in the residence.

B. Bodily injury shall mean ~~physical pain, illness, or an~~ impairment of physical condition.

C. Causing apprehension of bodily injury shall mean any ~~physical act which is intended to cause another person reasonably to fear imminent serious bodily injury or death.~~

Section 2. CRIME OF DOMESTIC ABUSE.

A person commits the crime of domestic abuse if he or she:

1. purposely or knowingly causes bodily injury to a family member or household member; or
2. purposely or knowingly causes apprehension of bodily injury in a family member or household member.

The crime of domestic abuse shall be a Class A crime.

Section 3. MANDATORY ARREST

A. A law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe: (1) that an assault has occurred; (2) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable to the officer or not; (3) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death, and the victim is the person's family member, household member or former household member. The arrest shall be made even though the assault did not take place in the presence of the officer.

B. The officer, under this ordinance, is not required to arrest both parties when he or she believes the parties have assaulted one another. The officer shall arrest the person whom he or she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider: (1) the intent to protect victims of domestic abuse under this ordinance; (2) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (3) the history of domestic abuse between the persons involved.

Section 4. 12 HOUR HOLD

Any person arrested under this ordinance shall be held without bail, in the custody of the Police Department, for a period not to exceed twelve (12) hours, as a mandatory "cooling off" period.

Section 5. FILING OF COMPLAINT

1. The law enforcement officer making an arrest under this ordinance shall sign a complaint against the alleged abuser on behalf of the Rosebud Sioux Tribe. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

2. The victim shall be subpoenaed as the primary witness for the prosecution.

3. If the perpetrator and victim are married to one another, the Husband and Wife Communication Privilege shall not apply in cases of domestic abuse.

Section 6. LIABILITY OF LAW ENFORCEMENT OFFICERS

A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence brought by any party to the incident.

Section 7. NOTICE OF RIGHTS

The officer shall tell the victim of domestic abuse whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include the victim's right to the following:

1. an order restraining the abuser from further acts of abuse;
2. an order directing the abuser to leave the household;
3. an order preventing the abuser from entering the residence, school, business, or place of business;
4. an order awarding custody or visitation with any minor children;
5. an order directing the abuser to pay support to the victim and minor children where appropriate.

Section 8. WRITTEN REPORT

Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, and he or she does not make an arrest, he or she shall file a written report with his or her supervisor, setting forth the reason or reasons for his or her decision.

Section 9. PENALTIES

The purpose of this ordinance shall be to stop all family violence on the Rosebud Sioux Reservation and to promote the healing of families where possible.

A. A person convicted of a first or second offense of domestic abuse shall be imprisoned for a term of not less than ten (10) days or more than 180 days, and may be fined an amount not to exceed \$500. The Court shall require mandatory counseling as part of the sentence. Such counseling may include, but is not limited to: alcohol/drug abuse counseling, anger control, and family counseling. Persons who practice traditional Indian religion shall be entitled to counseling by a Medicine man

recognized in the community as such.

B. A person convicted of a third or subsequent offense of domestic abuse shall be imprisoned for a term of not less than 30 days nor more than 180 days, and may be fined in an amount not to exceed \$500 or both. The court shall require mandatory counseling as part of the sentencing. Such counseling may include, but is not limited to alcohol/drug abuse counseling, anger control and family counseling. Persons who practice traditional Indian religion shall be entitled to counseling by a Medicine man recognized in the community as such.

Section 10. REPORTING STATISTICS

In all cases of Domestic Abuse, the officer involved shall make a written report and the numbers of such cases shall be tabulated. A quarterly report shall be made by the Police Department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to appropriate agencies and the public.