

OGLALA SIOUX TRIBE CRIMINAL OFFENSES CODE  
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ORDINANCE 02-25

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## GENERAL PROVISIONS

### 1. Short Title

This Title may be cited as the “Oglala Sioux Tribal Criminal Offense Code.”

### 2. Application

- (a) This Title shall apply to all Indian Persons violating its provisions within the territorial jurisdiction of the Tribe, provided, that the provisions of Chapter Four of this Title shall apply to all members of the Tribe and all Indian residents of the jurisdiction of the Tribe wherever such violation may occur, if such violation has any actual or intended effect upon the political integrity or political or economic security of the Tribe.
- (b) This Title shall apply to non-Indians to the extent not inconsistent with Federal Law and to the extent that any non-Indian found to have violated any provision of this Title may be removed from the reservation in a Civil proceeding brought by the Tribal Attorney General or other attorney designated by the Oglala Sioux Tribal Council. The non-Indian, in such cases, shall have all the procedural right of a criminal defendant, as provided in the 1968 Indian Civil Rights Act (25 USC 1301 et seq.), and such cases shall be tried by the rules of criminal procedure.

## CHAPTER ONE: CRIMES AGAINST PROPERTY

### 101. Arson in the First Degree

- (a) It shall be unlawful to knowingly and willfully start a fire or cause an explosion with the purpose of:
  - (1) Destroying or damaging any building, dwelling, occupied structure or other property of another exceeding One Thousand Dollars (\$1,000.00) in value; or
  - (2) Destroying or damaging any property, by whoever owned, to collect insurance for such loss.
- (b) Arson in the First degree shall be punishable by a fine not less than Five-hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal jail for a term of not less than six (6) months nor more than twelve (12) months; or both.

102. Arson in the Second Degree

- (a) It shall be unlawful to knowingly or recklessly, carelessly, or negligently, without regard to the consequences start a fire or cause an explosion which:
- (1) Endangers human or safety of life, or
  - (2) Damages or destroys the property of another.
- (b) Arson in the second Degree shall be punishable by a fine of not less than Two Hundred-fifty Dollars (\$250.00) nor more than Five hundred dollars (\$500.00), or by imprisonment in the Tribal jail for a term not exceeding six (6) months, or both.

103. Arson in the Third Degree

- (a) It shall be unlawful after having started any fire, even though started safely for a lawful purpose, to fail to either:
- (1) Take reasonable measures to put out or control the fire, or
  - (2) To give prompt alarm, if the fire is spreading in such manner that it may endanger the life or property of another.

104. Criminal Mischief

- (a) It shall be unlawful to willfully and knowingly:
- (1) Damage or destroy any property with the intent to defraud and insurer: or
  - (2) Tamper with the property of another so as to recklessly endanger the safety of another, or recklessly cause any damage to any property or utility service; or
  - (3) Damage, destroy, maim, or deface any domestic animal property of another; or
  - (4) Purposely or recklessly shoot or propel a missile or other object, upon or against a motor vehicle, airplane, boat, locomotive, or train.
- (b) Criminal Mischief shall be punishable by a fine of not more than Three Hundred Dollars (\$300.00), or by imprisonment not more than three (3) months, or both.

105-109 RESERVED

110. Burglary

- (a) It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, office, room apartment, tenement, shop, warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle, trailer or semi trailer, mobile home, or any similar enclosed structure of another without consent with the intent to steal or commit any offense punishable by imprisonment.
- (b) Burglary shall be punishable by a fine of not less than Two Hundred-fifty Dollars (\$250.00), or by imprisonment in the Tribal jail for not less than three (3) months nor more than six (6) months, or both,

111. Breaking and entering

- (a) It shall be unlawful to break into by any force whatsoever and enter in any manner any dwelling, office, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, garage, tent, vessel, railroad car, airplane, motor vehicle, trailer or semi trailer, mobile home, trunk, drawer, box coin operated machine, or similar structure, object, device of another without consent with the intent to:
  - (1) Cause annoyance or injury to any person therein; or
  - (2) Cause damage to any property therein; or
  - (3) Commit any offense therein; or
  - (4) Steal; or
  - (5) Cause, or does actually cause whether intentionally or recklessly, fear for the safety of another.
  - (6)
- (c) Breaking and Entering shall be punishable by a fine of not less than Two Hundred-fifty Dollars (\$250.00) nor more than Five Hundred Dollars (500.00), or by imprisonment in the Tribal Jail for a period not exceeding three (3) months, or both.

112. Criminal Trespass

- (a) it shall be unlawful to enter onto, or remain upon the property of another if notice against entry or notice to leave the property has been given by:
  - (1) Personal communication by the owner or someone having authority to act for the owner; or
  - (2) Fencing other than barbed wire or similar field fences except hereafter provided, or other enclosure obviously designed to exclude intruders; or



- (3) Posting of signs prohibiting entry reasonably designed to come to the attention of intruders.
- (b) Criminal Trespass shall be punishable by a fine not exceeding Five Hundred Dollars (500.00), or by imprisonment in the tribal Jail for a term no exceeding three (3) months, or both.
- I It is a complete affirmative defense to the offense of criminal trespass that:
  - The Property was open to the public upon entry and upon being ordered to leave the person did son without undue delay; or
  - (1) Even though not open to the public, the person did not substantially interfere with the use of the property or damage any of the property, and upon being ordered to leave the person did so without undue delay.
  - (d) On rural lands fenced with barbed wire or other types of fencing normally meant to enclose or exclude domestic animals, signs prohibiting entry or use at least six inches by eight inches placed upon or in plain sight next to such fence not more than one hundred fifty feet apart shall create a rebuttal presumption that reasonable notice against entry or entry for certain purposes had been given.

113-119. RESERVED

120. Larceny

- (a) It shall be unlawful to take or carry away any tangible or intangible personal property by fraud or stealth with the intent to deprive the owners thereof.
- (b) Larceny shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a term not exceeding six (6) months, or both.

121. Extortion

- (a) It shall be unlawful to take, receive, or control the use or disposition of property of another with the intent to deprive him of the possession or use thereof by threatening to:
  - (1) Cause bodily harm to any person; or
  - (2) Commit any offense; or
  - (3) Unlawfully injure or destroy any property; or
  - (4) Expose any personal information or secret not public knowledge intending to expose any person to hatred, contempt, or ridicule, or to impair his business or reputation, except by institution of legal proceedings to recover the debt demanded or proper reports to bona fide credit agencies; or

(5) Unlawfully take or withhold official action.

(b) Extortion shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a term not exceeding six (6) months, or both.

#### 121.1 Extortion (former Section 77)

Any Indian who shall willfully, by making false charges against another person or by any other means whatsoever, extort or attempt to extort any money, goods, property or anything else of any value, shall be deemed guilty of extortion and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (30) days, or to a fine not to exceed sixty dollars (\$60.00), to both such imprisonment and fine, with costs.

HIST: 1937 Code, Ch. 6. Sec. 18.

#### 122. False Pretenses

- (a) It shall be unlawful to obtain, take, or receive any property of another by means of a trick or deception, or false or fraudulent representation, statement, or pretense with the intent to deprive the owner thereof.
- (b) False pretenses shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a term not exceeding six (6) months, or both.

#### 123. Embezzlement

- (a) It shall be unlawful to wrongfully or fraudulently appropriate for a person's own use or the use of another any property of another with which the person has been entrusted.
- (b) Embezzlement shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal Jail for a term not exceeding six (6) months, or both.

#### 123.1 Embezzlement (Former Section 75)

Any Indian who shall, having lawful custody of property not his own, appropriate the same to his use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof, shall be to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such imprisonment and fine, with costs.

124 Receiving Stolen Property

(a) Receiving Stolen Property

- (a) It shall be unlawful to possess, receive, buy, or conceal any person property that has been stolen or otherwise obtained from its true owner in violation of this Title with intent to deprive the true owner thereof.
- (b) Receiving stolen property shall be punishable by a fine not exceeding Five Hundred Dollars(\$500.00), or by imprisonment in the Tribal jail for a term not exceeding six (6) months, or both.

125. Theft of Property Lost, Mislaid, or Delivered by Mistake

- (a) It shall be unlawful to fail to take reasonable measures to restore property to a person entitled thereof, with the intent to deprive the owner thereof, when it is known or reasonably suspected that the property has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property of the identity of the recipient.
- (b) Theft of Property Lost, Mislaid, or delivered by Mistake shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a term not exceeding six (6) months, or both.

**126 Theft of Services**

**Needs to be reinserted.**

127. ILLEGAL SALE AND PURCHASE OF ID STOCK AND OTHER TRUST PROPERTY.(Former Section 85)

Any Indian who sells or buys or in any way disposes of or acquires any livestock branded with the ID Reservation brand or the increase thereof, without proper permit, or any trust or reimbursable property in violation of Government regulations shall be deemed guilty of an offense and upon conviction, shall be sentenced to labor for a period not to exceed three (3) months or to a fine not to exceed one hundred and eighty dollars (\$180.00), or to both such fine and imprisonment, with costs. The Court may order such property or stock sold for the benefit of the Tribe.

HIST: 1937 Code, Ch. 6. Sec 25.

128 Misbranding (Former Section 91)

Misbranding. Any Indian who shall knowingly and willfully misbrand or alter any brand or mark on any livestock of another person shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$360.00), to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6, Sec. 32.

128.1 . FAILURE TO BRAND ID STOCK.(Former Section 109)

Any Indian who shall willfully refuse to brand, or mark his/her livestock where such branding or marking is required in the interest of ownership identification and for designating trust property shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed sixty (60) days, or to a fine not to exceed one hundred and twenty dollars (\$120.00), or to both such imprisonment and fine, with costs.

Hist: Ord. #5.

129 Theft (Former Section 100)

Any Indian who shall take the property of another person with intent to steal, shall be deemed guilty of a theft and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months or to a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such imprisonment and fine, with costs.

Hist. 1937 Code, Ch. 6, Sec. 40.

136. Forgery

- (a) It shall be unlawful to alter any writing of another without his authority, or make complete, execute, authenticate, issue, or transfer any writing so that it purports to be the act of another who did not authorize that act, with the intent to defraud or injure anyone.
- (b) "Writing" includes printing or any other method of recording information, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, and other symbols of value, right, privilege, or identification.
- (c) Forgery shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a term no exceeding six (6) months, or both.

### 136.1 FORGERY. (Former Section 82)

Any Indian who shall, with intent to defraud, falsely sign, execute or alter any written instrument, shall be deemed guilty of forgery and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred sixty dollars (\$360.00), or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6, Sec. 22.

### 137. Criminal Simulation

- (a) It shall be unlawful to make, alter or utter or attempt to circulate or sell as a genuine any object so that it appears to have value because of antiquity, rarity, source, or authorship which it does not possess, with intent to defraud anyone.
- (b) Criminal Simulation shall be punishable by a fine not exceeding five Hundred Dollars (\$500.00), or by imprisonment in the Tribal Jail for a term not exceeding six (6) months, or both.

### 138. Fraudulent Handling of Recordable Instruments

- (a) It shall be unlawful to destroy, remove or conceal any will, deed, mortgage, security instrument, Tribal resolution, any Tribal record, for which the law provides public recording, or to knowingly record a false or forged instrument, with the intent to deceive or injure anyone, or to conceal wrong doing.
- (b) Fraudulent Handling of Recordable Instruments shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal Jail for a term not exceeding six (6) months, or both.
- (c)

### 139. Tampering With Records

- (a) It shall be unlawful to falsify, destroy, remove, or conceal any writing or record, with the intent to deceive or injure anyone or to conceal any wrong doing.
- (b) Tampering with Records shall be punishable with a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal Jail for a term not exceeding six (6) months, or both.

### 140. Bad Checks

- (a) It shall be unlawful to issue or pass a check or similar sight order for the payment or money for the purpose of obtaining any money, property, or

other thing of value or paying for any services, rent, wages, or salary, knowing or believing that it will not be honored by the drawee.

- (b) Bad Checks shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal Jail for a term not exceeding six (6) months, or both. Restitution shall be required.

#### 141. Fraudulent Use of a Credit Card

- (a) It shall be unlawful to use a credit card for the purpose of obtaining property or services with knowledge that:
  - (1) The card was stolen; or
  - (2) The card has been revoked or canceled; or
  - (3) For any other reason his/her use of the credit card is unauthorized by either issuer or the person to whom the card had been issued.
- (b) Fraudulent use of a credit card shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal jail for a term not exceeding six (6) months, or both. Restitution shall be required.

#### 142 Fraud (Former Section 81)

Any Indian who shall be willful misrepresentation or deceit, or by false interpreting, or by the use of false weights or measures obtain any money or other property shall be deemed guilty of fraud and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such fine and imprisonment, with costs.

#### 147. Deceptive Business Practices

- (a) It shall be unlawful to, in the course of business, to intentionally:
  - (1) Use or possess for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or
  - (2) Sell, offer, or expose for sale, or deliver less than the represented quality or quantity of any commodity or service; or
  - (3) Take or attempt to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or
  - (4) Sell, offer, or expose for sale adulterated or mislabeled commodities:

- (i) “Adulterated” means varying from the standard of composition or quality prescribed by law or commercial usage;
  - (ii) “Misabeled” means varying from the standard of truth or disclosure in labeling prescribed by law or commercial usage; or
  - (5) Make a substantial false or misleading statement in any advertisement addressed to the public or a substantial segment thereof for the purpose of promoting the purchase or sale of property or services; or
  - (6) Make a false or misleading written statement for the purpose of promoting the sales of securities, or omit information required by law to be disclosed in written documents relating to securities.
- (b) Deceptive Business Practice shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal Jail for a term not exceeding three (3) month, or both
  - (c) It is an affirmative defense to Deceptive Business Practice that the defendant’s conduct was not knowingly or recklessly deceptive.

148. Defrauding Creditors

- (a) It shall be unlawful to:
  - (1) Destroy, remove, conceal, incumber, transfer, or otherwise deal with property subject to a security interest with the intent to hinder enforcement of that interest; or,
  - (2) Deal with property with the intent to defeat or obstruct the operation of any law relating to administration of property for the benefit of creditors; or knowingly falsify any writing or record relating to the property; or knowingly misrepresent or refuse to disclose to a person entitled to administer property for the benefit of creditors, the existence, amount or location of the property, or any other information which the actor could be legally required to furnish in relation to such administration.
- (b) Defrauding Creditors shall be punishable by a fine of not e3xceeding Two Hiundred-fifty Dollars (\$200.00), or by imprisonment in the Tribal Jail for a period not exceeding three (3) months, or both.

149. Securing Execution of Documents by Deception

- (a) It shall be unlawful to intentionally, and by deception, cause another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

- (b) Securing Execution of Documents by deception shall be punishable by a fine of not exceeding Two Hundred Dollars (\$200.00), or by imprisonment in the Tribal Jail for a period not exceeding three (3) months, or both.

(c)

#### 150. Criminal Usury

- (a) it shall be unlawful to intentionally provide financing or make loans at a rate of interest more than the following:
  - (1) If the amount to which the interest applies is less than One Hundred Dollars (\$100.00), or the period of the loan or financing is less than one (1) year, or both, the rate of interest shall not exceed a twenty-four percent (24%) per annum simple interest rate.
  - (2) If the amount to which the interest applies is greater than One Hundred Dollars (\$100.00), or the period of the loan or financing is greater than one (1) year, or both, the rate of interest shall not exceed an eighteen percent (18%) per annum simple interest rate.
- (b) Criminal Usury shall be punishable by a fine not exceeding Two Hundred-fifty Dollars (\$250.00), or by imprisonment in the tribal Jail for a period not exceeding three (3) months, or both. The victim is entitled to restitution for double the actual amount of interest that was actually paid and cancellation of all interest owing for the term of the financing.

#### 151. Unlawful Dealing with Property by a Fiduciary

- (a) It shall be unlawful to knowingly deal with property that has been entrusted to one in a fiduciary capacity, or property of the Tribal government or of a financial institution, in a manner which is substantial risk or loss to the owner or to a person for whose benefit the property entrusted.
- (b) As used in this section, "Fiduciary" includes a trustee, guardian, executor, administrator, receiver or any person carrying on fiduciary functions on behalf of a corporation or other organization that is fiduciary.
- (c) Unlawful Dealing with Property by a Fiduciary shall be punishable by a fine not exceeding Five Hundred Dollars (\$500.00), or by imprisonment in the Tribal Jail for a term not exceeding six (6) months, or both.

#### 152. Making a False Credit Report

- (a) It shall be unlawful to knowingly make a materially false or misleading statement to obtain property or credit for oneself or another or to keep some other person from obtaining credit.



- (b) Making a False Credit Report shall be punishable by a fine not exceeding Two Hundred –fifty dollars (\$250.00), or by imprisonment in the Tribal Jail for a period not exceeding three (3) months, or both.

153 Receiving Stolen Property (Former Section 96)

Any Indian who shall receive or conceal or aid conceal or receiving any property knowing the same to be stolen, embezzled or obtained by fraud or false pretenses, robbery or burglary, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed three (3) months, or to a fine not to exceed one hundred dollars (\$100.00), or both such fine and imprisonment, with costs.

HIST; 1937 Code, Ch. 6, Sect. 36.

154 Trespass (Former Section 101).

Any Indian who shall go upon or pass over any cultivated or other lands of another person and shall refuse to go immediately there from on the request of the owner or occupant, or who shall willfully and knowingly allow livestock to occupy or graze on the cultivated or other lands, shall be deemed guilty of an offense and upon conviction thereof, shall be punished by a fine not to exceed five (\$5.00), with costs; in addition to any award of damages for the benefit of the injured party.

Hist: 1937 Code, Ch. 6, Sec. 41.

155 TAKING TRANSPORTATION CONVEYANCE FOR WRONGFUL USE OR UNLAWFUL TAMPERING. (Former Section 109.1)

Whoever wrongfully takes any automobile, truck, bicycle, or other type of transportation conveyance, or whoever shall temper with such transportation conveyance, where it may have been lawfully placed by the owner, without the consent of the owner, or who shall use any such transportation conveyance in bailment beyond that which was originally intended or agree upon , with intent to wrongfully use the conveyance so taken, shall be guilty of an offense and shall be fined in any sum of not less than seventy-five (\$75.00), nor more than one hundred and fifty dollars (\$150.00), and shall be imprisoned in jail not less than thirty (30) days nor more than three (3) months, and shall be liable to the party injured in double the amount of damages sustained.

## CHAPTER TWO: CRIMES AGAINST PERSONS

### 201. Assault in the First Degree

- (a) It shall be unlawful to wrongfully, purposely, knowingly, or recklessly under circumstances manifesting indifference to the value of human life, to:
  - (1) Attempt to cause or cause serious bodily injury to another; or
  - (2) To use a deadly weapon with the intent to cause serious bodily injury, or the intent to put a person in fear of imminent serious bodily injury with the apparent ability to do so.
- (c) Assault in the First Degree shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal Jail not to exceed twelve (12), months or both.

### 202. Assault in the Second Degree

- (a) It shall be unlawful to wrongfully, purposely, knowingly, or recklessly:
  - (1) Attempt to cause or cause bodily injury to another; or
  - (2) Negligently cause bodily injury to another with a weapon; or
  - (3) Attempt by a show of force or violence to put another in fear of imminent bodily injury with the apparent ability to do so; or
  - (4) Recklessly endanger another by an act or omission to act which threatens to cause serious bodily injury to another, whether or not such harm actually occurs.
- (b) Assault in the Second Degree shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

### 203. Mayhem

- (a) It shall be unlawful to wrongfully, purposely, or knowingly deprive a human being of a member of his body or render it useless, or to cut out or disable the tongue, put an eye or eyes, or slit the nose, ear or lip of another.
- (b) Mayhem shall be punishable by a fine not to exceed Five hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six (6) months, or both.

### 204. Verbal or Written Assault

- (a) It shall be unlawful to threaten verbally or in writing to commit any offense involving violence with apparent ability to do so:

- (1) With intent to terrorize another or place such other in fear of imminent serious bodily injury; or
  - (2) To cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience.
- (b) Verbal or Written Assault shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

205 Adultery (Former Section 61)

Any Indian who shall have sexual intercourse with another person, either of such persons being married to third person, shall be deemed guilty of adultery and upon conviction thereof, shall be sentenced to labor for a period not to exceed six months or to a fine not to exceed three hundred and sixty dollars (360.00), or to both such fine and imprisonment, with costs.

HIST: 1937 Code, CH. 6. Sec. 3.

211. Homicide in the First Degree

- (a) It shall be unlawful to:
  - (1) Purposely, knowingly, and wrongfully with the malice aforethought cause the death of another human being; or,
  - (2) Cause the death of another human being due to the commission or attempted commission of a felony.
- (c) Homicide in the First Degree shall be punishable by a fine of one Thousand Dollars (\$1,000.00), or by imprisonment in the Tribal Jail not to exceed twelve (12) months, or both.

212. Homicide in the Second Degree

- (a) It shall be unlawful to:
  - (1) Recklessly or negligently with disregard of the possible consequence of one's conduct to cause the death of another human being; or
  - (2) Cause the death of another human being by operating a motor vehicle in a reckless, negligent, or careless manner, or while under the influence of an alcoholic beverage, intoxicating liquor, a controlled substance, or any drug, to a degree which renders the person incapable of safely driving a vehicle.
    - (i) A blood alcohol content in excess of 0.1% shall create a rebuttable presumption that the person was under the influence of an alcoholic beverage.

- (ii) For purposes of this section, a motor vehicle is any self-propelled vehicle and includes, but is not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft, or snowmobile.
- (b) Homicide in the Second Degree shall be punishable by a fine of Five Hundred Dollars (\$500.00), or by term of imprisonment in the Tribal jail not to exceed six (6) months, or both.

213. Causing a Suicide

- (a) It shall be unlawful to intentionally cause a suicide by force, duress, or deception.
- (b) Causing a Suicide shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

214. Aiding or soliciting a Suicide

- (a) It shall be unlawful to intentionally aid or solicit another to attempt or commit suicide.
- (b) Punishment:
  - (1) Aiding or soliciting a Suicide shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both, if the defendant's conduct has actually caused or contributed substantially to a suicide, or attempted suicide.
  - (2) Otherwise, Aiding or Soliciting a Suicide is punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail in to to exceed three (3) months, or both.

215 ABDUCTION (Former Section 60)

Any Indian who shall willfully take away or detain another person against his will or without the consent of the parent or other person having lawful care or charge of him/her shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6, Sec. 1.

216 Assault (All of the 216 were Former Section 62)

Any Indian who shall attempt or threaten bodily harm to another person through unlawful force or violence shall be deemed guilty of assault and upon conviction

thereof, shall be sentenced to labor for a period not to exceed five (5) days, or to a fine not to exceed ten dollars (\$10.00), or to both such fine and imprisonment.

HIST: 1937 Code, CH. 6. Sec. 3.

#### SECTION 216.1 ASSAULT –CLASS A.

Any person who shall threaten bodily harm to another person through unlawful force or violence shall be deemed guilty of an offence and upon conviction thereof, shall be sentenced to labor for a period not to exceed ten (10) days, or to a fine of not less than ten dollars (\$10.00) nor more than seventy-five dollars (\$75.00), or to both such imprisonment and fine, with costs.

#### SECTION 216.2 ASSAULT –CLASS B.

Any person who shall attempt to commit harm to another person through unlawful force or violence shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period of not less that five (5) days and not more than twenty-five (25) days, or to a fine of not less than twenty-five dollars (\$25.00), nor more than two hundred dollars (\$200.00), or to both such imprisonment and fine, with costs.

HIST. Ord. #79-03.

#### SECTION 216.3 ASSAULT – CLASS C.

Any person who shall attempt or threaten to commit bodily harm through the unlawful use of a weapon shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period of not less than thirty (30) days and not to exceed one hundred (100) days, or to a fine of not less than one hundred and twenty dollars (120.00) nor more than three hundred dollars (\$300.00), or to both to such imprisonment and fine, and costs.

HIST: Ord. # 79-03.

#### SECTION 216.4 ASSAULT – CLASS D.

Any person who shall attempt or threaten to commit bodily harm to another through the unlawful use of a firearm shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period of not less than sixty (60) days, nor more than one hundred and fifty (150) days, or to a fine of not less than one hundred and eighty dollars (\$180.00) nor more than four hundred dollars (\$400.00), or to both such fine and imprisonment, with costs.

HIST: Ord. #79-03.

## SECTION 216.5 ASSAULT – CLASS E.

Any person who shall attempt or threaten to commit bodily harm to another through the unlawful use of a restricted firearm shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period of not less than ninety (90) days nor more than one hundred and eighty (180) days, or to a fine of not less than two hundred dollars(\$200.00) nor more than five hundred dollars (\$500), or both such imprisonment and fine, with costs.

HIST: Ord. #79-03.

## 217 ASSAULT AND BATTERY. (former Section 63)

Any Indian who shall willfully strike another person or otherwise inflict bodily injury, or who shall be offering violence cause another to harm himself shall be deemed guilty of assault and battery, and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such imprisonment and fine, with costs.

HIST: 1937 Code, Ch., 6, Sec. 4.

### 217.1 Assault and Battery (former Section 63.01 et seq)

#### Section 217.01 Assault and Battery Class A

Any person who shall willfully strike another person or who shall be offering violence cause another to harm himself shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed ten (10) days, or to a fine not to exceed ten dollars (\$10.00), or both such fine and imprisonment, with costs.

HIST: Ord. #79-03.

#### SECTION 217.02 ASSAULT AND BATTERY – CLASS B.

any person who shall willfully inflict bodily injury to another person through the unlawful use of a weapon shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period of not less than sixty (60) days nor more than one hundred and twenty (120) days, or to a fine of not more than seventy-five dollars (\$75.00) nor more than one hundred and fifty dollars (\$150.00), or to both such imprisonment and fine, with costs.

HIST: Ord. #79-03.

SECTION 217.03 ASSAULT AND BATTERY – CLASS C.

Any person who shall willfully inflict bodily injury to another person through the unlawful use of a weapon shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period of not less than sixty (60) days nor more than one hundred and twenty (120) days, or to a fine of not more than seventy-five dollars (\$75.00) nor more than one hundred and fifty dollars (\$150.00), or to both such imprisonment and fine, with costs.

HIST: Ord. #79.03.

SECTION 217.04 ASSAULT AND BATTERY – CLASS D.

Any person who shall willfully inflict bodily injury to another person through the unlawful use of a firearm shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period of not less than ninety (90) days nor more than one hundred and fifty (150) days, or to a fine of not less than one hundred and fifty dollars (\$150.00) nor more than four hundred dollars (\$400.00), or to both such imprisonment and fine, with costs.

HIST: Ord. #79-03

220 Kidnapping

- (a) It shall be unlawful to intentionally and wrongfully remove another from his place of residence, business, or from the vicinity where he is found, or to unlawfully confine or conceal another for a substantial period, for any of the following purposes:
  - (1) To hold for ransom or reward, or as a shield for hostage; or
  - (2) To facilitate commission of any offense or flight thereafter; or
  - (3) To inflict bodily injury on or terrorize the victim or another; or
  - (4) To interfere with the performance of any Tribal governmental or political function.
- (b) A removal, restraint, or confinement is wrongful within the meaning of this code if it is accomplished by force, threat, or deception, or, in the case of a person under the age of fourteen (14) or incompetent, if it is accomplished without the consent of a parent, guardian, or other person responsible for general supervision of his welfare.
- (c) Kidnapping shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in Tribal Jail not to exceed six (6) months, or both.

## 221 False Imprisonment

- (d) It shall be unlawful to knowingly and wrongfully restrain or imprison another so as to interfere with his liberty.
- (e) False Imprisonment shall be punishable by a fine not to exceed Two Hundred-fifty (\$250.00), or by a term of imprisonment in the Tribal Jail no to exceed three (3) months, or both, unless the detention occurs under circumstances which expose the victim to a risk of serious bodily injury, in which case the offense shall be punishable by a fine not to exceed Five hundred dollars (\$500.00.), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

## 222 Custodial interference

(a) It shall be unlawful to wrongfully:

- (1) Take, entice, conceal, or detain a child under the age of sixteen (16) from his parent, guardian, or other lawful custodian, knowing he has no legal right to do so, and
  - (i) With the intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a Court of Competent jurisdiction; or
  - (ii) With the intent to deprive another person of their lawful visitation or custody rights; or,
- (2) Intentionally take, entice or detain an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, without good cause and with knowledge that there no legal right to do so.

(b) Custodial Interference shall be punishable by a fine not to exceed Three Hundred Dollars (\$300.00), or by a term of imprisonment in the Tribal Jail not to exceed (3) Three months, or both.

## 223 Criminal Coercion

(a) It shall be unlawful to intentionally and wrongfully restrict another's freedom of action to his detriment, by threatening to:

- (1) Commit any criminal offense; or
- (2) Accuse anyone wrongfully of a criminal offense: or
- (3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation; or



(4) Unlawfully take or withhold action as an official, or cause an official to take or withhold action.

- (b) it is an affirmative defense to prosecution based n this section except for subsection (1) above, that the actor believe that accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other in a lawful manner to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure, or proposed official action; for example, as by refraining from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the disqualified.
- (c) Criminal Coercion shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

224 Brutality by police officer, jailer, or other person employed by the Police Department. (former section 99.5)

Any person employed as a police officer, jailer, or acting under authority of the Police Department who, not acting in self defense, forcefully beats or enforces any person or who molests any person taken into custody, shall be guilty of an offense, and upon conviction thereof shall be subject to not more than six (6) months in jail, or a fine or not more than five hundred dollars, or to both, with cost. The fine and jail sentence shall be in addition to any disciplinary action required under P.L 93-638 and any regulation promulgated there-under and any other act of Congress which may be applicable. After conviction he/she will not be employed as a police, jailer, or act under the authority of the Public Safety Commission again.

HIST: Ord. #81-01

225 Bastardy (Former Section 64)

Any male Indian who has sexual intercourse with an unmarried woman as a result thereof, she becomes pregnant or delivers a child, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced by the Court to pay a sum of money not to exceed three hundred and sixty dollars (\$360.00) per year for ten (10) years for the support, maintenance, and education of said child.

231. Rape in the First Degree

- (a) It shall be unlawful to intentionally and wrongfully:

- (1) Compel another to submit to sexual intercourse by force of by threat of imminent death, serious bodily injury, extreme pain, or kidnapping to be inflicted on that person or anyone else; or
  - (2) Engage in sexual intercourse with a person under the age of fourteen (14), regardless of consent.
  - (b) Rape in the First degree shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00) , or by a term in the Tribal Jail not to exceed twelve (12) months, or both
  - (c) .
232. Rape in the second Degree

(a) It shall be unlawful to intentionally and wrongfully:

- (1) Compel another to submit to sexual intercourse by any threat that would prevent resistance by a person of ordinary resolution: or
- (2) Engage in sexual intercourse with another whose power to appraise or control their conduct has been substantially impaired by the administration or employment of drugs or other intoxicants, without their knowledge, and for the purpose of preventing resistance; or,
- (3) Engage in sexual intercourse with a person with the knowledge that the persons suffers from a mental disease or defect which renders that person incapable of appraising the nature of their conduct; or,
- (4) Engage in sexual intercourse with a person who is unconscious or with a person who is unaware , or with a person who submits because they falsely suppose that the person is their spouse; or,
- (5) Engage in sexual intercourse with a person under the age of sixteen (16), but over the age of fourteen (14), regardless of consent, the perpetrator being at least four (4) years older than the victim.

(b) Rape in the Second Degree shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

233. Deviate Sexual Intercourse

- (a) It shall be unlawful to engage in deviate sexual intercourse, defined as sexual intercourse per os or per anum between human being who are not husband and wife, or any form of sexual intercourse with an animal, and it shall be unlawful to cause another to engage in deviate sexual intercourse if:
- (1) That person is compelled to participate by any threat that would prevent resistance by a person of ordinary resolution; or
  - (2) That person is compelled to participate by force or threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or
  - (3) The other person's power to appraise or control his conduct had been substantially impaired by the administrator employment of drugs or other intoxicants, without his knowledge, and for the purpose of preventing resistance; or.
  - (4) The offender has knowledge that the other person suffers from a  
  
Mental disease or defect which renders him incapable of appraising the nature of his conduct or the offender has knowledge that the other person is unconscious or submits because he is unaware that sexual act is being committed upon him; or.
- (b) Deviate Sexual Intercourse shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 234. Sexual Assault

- (a) It shall be unlawful to intentionally, wrongfully, and without consent subject another, not his /her spouse, to any sexual contact:
- (1) With knowledge that the conduct is offensive to the other person;  
or
  - (2) With knowledge that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or
  - (3) With knowledge that the other person is unaware that a sexual act is being committed; or
  - (4) After having substantially impaired the person's power to appraise or control his conduct by administering or employing

without the other's knowledge drugs, intoxicants, or other means for the purpose of preventing resistance; or

- (5) If that person is less than fourteen (14) years old regardless of consent; or
- (6) If that person is less than sixteen (16) years old and the actor is at least four (4) years older than the person regardless of consent; or
- (7) If that person is less than twenty-one (21) years old and the actor is his parent, guardian, or otherwise responsible for general supervision of his welfare regardless of consent; or
- (8) If that person is in lawful custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him regardless of consent.

- (b) Sexual contact is any touching of the sexual or other intimate parts of the person of another or otherwise taking liberties with another for the purpose of arousing or gratifying sexual desire of either party.
- (c) Sexual Assault shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Trial Jail not to exceed six (6) months, or both.

#### 235 ASSAULT WITH INTENT TO COMMIT RAPE. (Former Section 103)

Any Indian who shall assault a female person with the intent to commit rape shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty (\$360.00), or to both such imprisonment and fine, with costs.

#### 236 CARNAL KNOWLEDGE OF FEMALE UNDER SIXTEEN. (Former Section 104)

Any Indian who shall have sexual intercourse with any female under the age of sixteen (16) years, or any Indian who aids or permits any such violation shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such fine and imprisonment, with costs.

Hist. 1937. Code, Ch. 6, Sec. 44.

#### 237 Rape and Sodomy (Former Section 104.1 and 104.2)

- (a) Definitions:
  - (1) Rape is an act of sexual violence against a person regardless of the degree of penetration.

- (2) The general reputation and past conduct of a rape victim shall be immaterial and such evidence shall be inadmissible in a court of law.
- (3) Rape committed upon the person of an individual under the age of sixteen (16) or upon the person of an individual who is deemed incompetent shall be rape in the first degree.
- (4) Rape committed upon the person of an individual by means of force shall be rape in the first degree.
- (b) Rape – First Degree. Any person who shall willfully and knowingly commit an act of rape upon the person of an individual under the age of sixteen (16), upon the person of an individual who is deemed incompetent, or the use of force shall be deemed guilty of an offense of Rape in the First Degree and upon conviction thereof, shall be sentenced to labor for a period not to exceed one hundred and eighty (180), days, or to a fine not to exceed five hundred dollars (\$500.00), or to both such imprisonment and fine, with costs.
- (c) Rape – Second Degree. Any person who shall willfully and knowingly commit an act of rape upon the person of an individual shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed one hundred and eighty (180) days, or to a fine not to exceed five hundred dollars (\$500.00), or to both such imprisonment and fine, with costs.

Hist: Ord. #81-04.

Section 238  
SODOMY

- (a) Sodomy. Any person who shall commit sodomy against the person of an individual or against nature shall be deemed guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed one hundred and eighty (180) days or to a fine not to exceed five hundred dollars (\$500.00), or to both such imprisonment and fine, with costs.
- (b) Sodomy of a Child. Any person who shall commit sodomy against the person of an individual under the age of sixteen (16) shall be subject to review by a psychiatrist or psychologist before such person shall be eligible for bond or bail; where such person is judged to be a continuing danger to the health and welfare of children under the age of sixteen (16), such person shall not be eligible for bail or bond until a pre-trial hearing.
- (c) Failure to Report Sodomy of a Child. Any person who shall willfully fail to report an act of sodomy against a child shall be deemed guilty of an offense of sodomy and upon conviction thereof, shall be sentenced to labor for a period not to exceed one hundred and eighty (180) days, or to a fine not to exceed five hundred dollars (\$500.00), or to both such imprisonment and fine, with costs.

Hist. Ord. #81-03.

Section 239 MANDATORY REGISTRATION OF CONVICTED SEX OFFENDERS.  
(Felony and misdemeanor)

- (a) Any person residing within the defined boundaries of the Pine Ridge Reservation who has been convicted for the sex crime against children shall be required within ten days of coming onto the Reservation be required with the Chief of Police. Any subsequent violation will be labeled as disobedience to the Court and will be penalized accordingly.
- (b) Any person whose sentence is discharged shall forward a certified copy of such formal discharge by certified mail to the Division of Criminal Investigation and to the local law enforcement where the person is then registered under this section. Upon receipt of such notice, the person shall be removed from the sex offender registry open to the public inspection and shall be relieved of further registration requirement under this section.
- (c) Annual Verification form mailed to register offender. The Division of Criminal Investigation shall mail a non-forwardable verification for at least once annually to the last reported address of each person registered under Section 104.3 The person shall return the verification form to the Division of Criminal Investigation within ten days after receipt of any such for. The verification form shall be signed by the person required to register and shall state that the person still resides at the address last reported to the Division of Criminal Investigation. If the person fails to return the verification form to the Division of Criminal Investigation within ten days after receipt of the for, the person is in violation of the registration provision of state, federal and tribal laws and will be subject to penalties within these confines. Non- receipt of registration verification does not constitute a defense.
- (d) The registration information shall include the following:
  - (1) Name and all aliases used;
  - (2) Complete description, photographs, and fingerprints;
  - (3) Residence, length of time at the residence, and length of time expected to remain at that residence.
  - (4) The type of sex crime convicted of;
  - (5) The date of commission and the date of conviction of any sex crime committed.
- (e) Information from sex offender registry – Specifics included.



## Robbery

- (a) It shall be unlawful to take anything of value from the person of another or from the immediate control of another by use of force or violence, with the intent to permanently deprive the owner thereof.
- (b) Robbery shall be punishable by a fine not to exceed five hundred Doars (\$500.00), by a term of imprisonment in the Tribal Jail not to exceed six (6), months, or, both.



## CHAPTER THREE: INCHOATE CRIMES

### 300 Attempt

- (a) It shall be unlawful to engage in conduct within the Tribal Jurisdiction constituting a substantial step toward commission of any offense under Tribal, Federal, or State laws applicable to the jurisdiction in which any part of the offense was to be completed with the kind of culpability otherwise required for the commission of the offense.
- (b) Anywhere constituting a substantial step toward the commission of any tribal or Federal offenses within the Tribal jurisdiction while acting with the kind of culpability otherwise required for the commission of the offense.
- (c) Attempts shall be punishable by the same penalties as the completed crime.

### 301 Criminal Forgery

- (a) it shall be unlawful to agree within the Tribal Jurisdiction with one or more persons to engage in or cause the performance of conduct with the intent to commit any offense punishable by Tribal or Federal laws applicable to the jurisdiction in which the conduct is agreed to be performed, and any one person commits an overt act in pursuance of the conspiracy.
- (b) Anywhere with one or more persons to engage or cause the performance of conduct with the intent to commit any Tribal or Federal offense within the Tribal jurisdiction and anyone person commits an overt act in pursuance of the conspiracy.
- (c) Conspiracy to commit an offense carries the same possible punishment as the completed offense.

### 302 Solicitation

- (a) It shall be unlawful within the Tribal jurisdiction to entice, advise, incite, order, or otherwise encourage another to commit any offense, with the intent that such other person commits an offense punishable under the laws of the jurisdiction where the conduct was to be performed.
- (b) In any place, entice, advise, order, or otherwise encourage another to commit any offense, with the intent that such other person commit an offense punishable by Tribal or Federal laws within Tribal jurisdiction.
- (c) Solicitation shall be punishable by a fine not to exceed Two Hundred-fifty Dollars (\$250.00) , or by a term imprisonment in the Tribal jail not to exceed two (2) months, or both.

## CHAPTER FOUR: CRIMES AGAINST PUBLIC JUSTICE

### 401. Bribery

- (a) It shall be unlawful to ask for, give, or accept any money, goods, right in action, property, thing of value or advantage, present or prospective, or any promise or undertaking, given with a wrongful or corrupt intent to influence unlawfully the person to whom it is given.
- (b) Bribery shall be punishable by a fine not to exceed Five Hundred dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 401.1 BRIBERY. (Former Section 65)

Any Indian who shall give or offer to give money, property or services, or anything else of value to another person with corrupt intent to influence another in the discharge of his public duties or conduct; or any Indian who shall accept, solicit or attempt to solicit any bribe, as above defined, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such imprisonment and fine, with costs; and any Tribal office held by such person shall be forfeited.

HIST: 1937 Code, Ch. 6, Sec. 6.

### 402. Improper Influence in Official Matters

- (a) It shall be unlawful to:
  - (1) Threaten unlawful harm to any person with intent to influence another's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official, or voter; or,
  - (2) Threaten harm to any public servant or relative of a public servant with the intent to influence his decision, opinion, recommendation, vote or other exercise of discretion in a judicial, legislative, or administrative proceeding; or
  - (3) Threaten harm to any public servant or official or relative of either with the intent to influence him to violate his duty; or
  - (4) Privately address any public servant who has or will have an official discretion in a judicial or administrative proceeding and making thereby any representation, entreaty, argument, or communication designed to influence the outcome on the basis of considerations other than those authorized by law.

- (b) It is not defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.
- (c) Improper influence in official matters shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 403. Retaliation for Past Official Action

- (a) It shall be unlawful to harm any person by an unlawful action retaliation for anything lawfully done by another person in his capacity as a public servant.
- (b) Retaliation for past official action shall be punishable by a fine not to exceed five Hundred Dollars (\$500.00), or by a term of imprisonment in the tribal jail not to exceed six (6) months, or both.

#### 404. Improper gifts to Public Servants

- (a) It shall be unlawful to knowingly confer or offer or agree to confer or offer or agree to confer benefit to a public servant with the intent to induce an exercise of their discretion in an unlawful manner, or to determined official impartiality.
- (b) This section shall not apply to:
  - (1) Fees prescribed by law to be received by public servant, or any benefit for which the recipient gives lawful consideration or to which he is otherwise entitled; or
  - (2) Gifts or other benefits conferred on a account of kinship, traditional ceremonies, or other personal, professional or business relationship independent of the official status of the receiver; or
  - (3) Trivial benefits incidental to person, professional or business contacts and involving no substantial risk of undermining official impartiality.
- (c) Improper gifts to public servants shall be punishable by a fine not to exceed Five Hundred dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 405. Unofficial Misconduct

- (a) It shall be unlawful to exercise or attempt to exercise any of he functions of a public office when one has not been elected or appointed office.

- (b) Unofficial misconduct shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the tribal Jail not to exceed six (6) months, or both.

#### 406. Oppression in Office

- (a) It shall be unlawful when acting or purporting to act in an official capacity or taking advantage of such actual or purported capacity, with knowledge that such conduct is illegal, to:
  - (1) Subject another to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or infringement or personal or property rights; or,
  - (2) Deny or impede another in the exercise or enjoyment of any right , power, or immunity.
- (b) Oppression in office shall be punishable by a fine not to exceed five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 407. Misusing Public Money

- (a) It shall be Unlawful for a person charged with the receipt, safekeeping, transfer or disbursement of public monies to:
  - (1) Without lawful authority appropriate the money or nay portion of it to his own use o use of another; or
  - (2) Loan the money or any portion thereof without lawful authority; or
  - (3) Fail to keep the money in his possession until lawfully disbursed or paid out according to law; or
  - (4) Deposit the money in an unauthorized bank or with a person not lawfully authorized to receive such; or
  - (5) Knowingly keep any false account, or make a false entry or erasure in any account of or relating to the money; or
  - (6) Fraudulently alter, falsify, conceal, destroy, or obliterate any such account; or
  - (7) Knowingly refuse or omit to pay over on lawful demand by competent authority any public monies in his hands; or
  - (8) Knowingly omit to transfer money when transfer is required by proper authority; or
  - (9) Make a profit for himself or another when not lawfully entitled to such, or in an unlawful manner, out of public monies; or
  - (10) Fail to pay over to the proper account or authority any fines, forfeitures, or fees received by him; or
  - (11) Otherwise handle public money in a manner not authorized by Law for his own benefit; or the

(12) Handle public money in a reckless manner as a result of which a risk of loss of such money is significant.

- (b) "Public Money" includes all money, bonds, and evidences of indebtedness or their equivalent, belonging to, or received or held by the Tribe or any other government, or any account or money held by the Tribe or government for any individual or group.
- (c) Misusing public money shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 407.1 Injury to Public Property

Any Indian who shall without proper authority, use or injure any public, government or Tribal property shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (30) days, or to a fine not to exceed sixty dollars (\$60.00), or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6, Sec. 27.

#### 408. Perjury in the First Degree

- (a) It shall be unlawful in any official proceeding, to make a false statement under oath or equivalent affirmation, or swear or affirm the truth of statement previously made, when the statement is material and he does not believe it to be true.
- (b) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification is material in a given factual situation is a question of law to be decided by the Court.
- (c) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being verified shall be deemed to have been duly sworn or affirmed.
- (d) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.
- (e) No person shall be convicted of an offense under this section where proof or falsity rests solely upon contradiction by testimony of a single person other than the defendant.

- (f) Perjury in the first degree shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by term of imprisonment in the Tribal Jail not to exceed twelve (12) months, or both.

#### 409. Perjury in the Second Degree

- (a) It shall be unlawful to :
  - (1) Make any written false statement which he does not believe to be true; or
  - (2) Purposely create a false impression in written application for any benefit by omitting information necessary to prevent statements therein from being misleading; or
  - (3) Submit or invite reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
  - (4) Submit or invite reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false; with the purpose to mislead a public servant in performing his official function.
- (b) A person is guilty of perjury in the second degree if he makes a false statement, which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable.
- (c) It is no defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.
- (d) No person shall be convicted of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.
- (e) No person shall be convicted of an offense under this section where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant.
- (f) Perjury in the second degree shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 410. Tampering with Witnesses

- (a) It shall be unlawful:

- (1) While believing that an official proceeding or investigation is pending or about to be instituted, to attempt to induce or otherwise cause a person to:
  - (i) Testify or inform falsely; or
  - (ii) Withhold any testimony, information, document or thing, or evidence; or
  - (iii) Elude legal process summoning him to testify or supply evidence; or
  - (iv) Absent himself from any proceeding or investigation to which he had been legally summoned; or
- (2) To harm another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or
- (3) To solicit, accept or agree to accept any benefit in consideration for doing any of the things specified in this section.
- (b) Tampering with witnesses shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six (6) months, or both.

#### 411. Tampering with Evidence

- (a) It shall be unlawful, while believing that an official proceeding or investigation is pending or about to be instituted, to:
  - (1) Alter, destroy, conceal or remove any record, document, or thing with the intent to impair its verity or availability in such proceeding or investigation; or
  - (2) Make, present, or use any record, document, or thing knowing it to be false with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
- (b) Tampering with evidence shall be punishable by a fine not to exceed five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 411.1 DESTROYING EVIDENCE (Former Section 71)

Any Indian who shall willfully and knowingly destroy any evidence that could be used in the trial of a case with the intent to prevent same from being used is guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (30) days, or to a fine not to exceed sixty dollars (\$60.00), or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6, Sec. 11.

#### 412. Tampering with Public Records

- (a) It shall be unlawful to:
  - (1) Knowingly make a false entry in or false alteration of, any record, document or thing belonging to or received or kept by the Tribe or government for information or record, or required by law to be kept by others for information of the Tribe or government; or
  - (2) Make, present or use any record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records referred to in subsection (1) above: or
  - (3) Purposely and unlawfully destroy, conceal, remove or otherwise impair the truth or availability of any such record, document or thing.
- (b) Tampering with Public records shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) month, or both.

#### 413. Impersonating a Public Servant

- (a) It shall be unlawful to falsely pretend to hold a position in the public service with the purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to this prejudice.
- (b) Impersonating a public servant shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 414. Obstructing Governmental Function

- (b) It shall be unlawful to:
  - (1) Use force, violence, intimidating, or engage in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or
  - (2) Purposely obstruct, impair, or prevent the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not



apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

(b) Obstructing government function shall be punishable by a fine not to exceed Five Hundred dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

415 Assisting Offenders (Former Section 63.1)

Any Indian who, with the intent of defeating justice, knowingly and willfully assists any violator of any provision of this Code in evading arrest shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed three (3) months, or to a fine not to exceed one hundred and eighty dollars (\$180.00), or to both such imprisonment and fine, with costs.

426. False Arrest

- (a) It shall be unlawful for any public officer or person pretending to be a public officer to, under the pretence or color of any process or other legal authority, arrest or detain any person against his will, except where such person reasonably believes he is authorized by law to do so.
- (b) False arrest shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

426.1 False Arrest (Former Section 80)

Any Indian who shall willfully and knowingly make, or cause to be made, the unlawful arrest, detention, or imprisonment of another person, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed (6) month or to a fine not to exceed three hundred dollars (\$300.00) or to both such imprisonment and fine, with costs.

427. Refusing to Aid an Officer

- (a) It shall be unlawful to knowingly or recklessly refuse to aid a Law Enforcement officer or fire fighter in the performance of his official duties when called upon by the officer to do so.
- (b) Refusing to aid an officer shall be punishable by a fine not to exceed Two Hundred-fifty Dollars (\$250.00), or by a term imprisonment in the Tribal jail not to exceed three (3) months, or both.

#### 427.1 Refusing to Aid an Officer (Former Section 98)

Any Indian who shall neglect or refuse, when called upon by an Indian police Officer of the U.S. Indian Service, to assist in the arrest of a person charged with or convicted of an offense or in securing an offender when apprehended or in conveying offender to nearest place of confinement shall be deemed guilty of an offense and upon conviction, sentenced to labor for a period not to exceed 10 days or to a fine not to exceed \$20.00 or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6. Sec. 37.

#### 428. Obstructing Justice

- (a) It shall be unlawful, with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for the commission of an offense, to:
- (1) Harbor or conceal the other; or
  - (2) Provide or aid in providing a weapon, transportation, disguise or other means of avoiding apprehension or effecting escape; or
  - (3) Conceal or destroy evidence of the offense, or tamper with a witness, informant, document or other source of information, regardless of its admissibility in evidence; or
  - (4) Warn the other of impeding discovery or apprehension, except if such warning is given in an attempt to get the other person to comply with the law; or
  - (5) Volunteer false information to a law enforcement officer for the purpose of preventing the apprehension of another; or
  - (6) Obstruct by force, threat, bribery or deception anyone from performing an act, which might aid in the discovery, apprehension, prosecution or conviction of another person.
- (c) Obstructing justice shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six (6) months, or both.

#### 429. Providing Contraband

- (a) It shall be unlawful to provide any person in official detention with alcoholic beverages, drugs, weapons, implements of escape, or any other thing or substance, which the actor knows, is improper or unlawful for the detainee to possess.
- (b) Providing contraband shall be punishable by a fine not to exceed Two Hundred-fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three (3) months, or both.

#### 430. Resisting Lawful Arrest

- (a) It shall be unlawful to create a substantial risk of bodily harm to anyone or employ means of resistance justifying or requiring force to overcome the resistance for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself or of any other person.
- (b) Resisting arrest shall be punishable by a fine not to exceed Two Hundred-fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal jail not to exceed three (3) months, or both.

##### 430.1 Resisting Lawful Arrest (Former Section 99)

Any Indian who shall willfully and knowingly, by force or violence, resist or assist another person to resist a lawful arrest shall be deemed guilty of a offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (3) days, or to a fine not to exceed sixty dollars (\$60.00), or to both such fine and imprisonment, with costs.

#### 431. Escape

- (a) It shall be unlawful:
  - (1) Remove oneself from official detention or fail to return to official detention following temporary leave granted for a specific purpose or period; or
  - (2) Knowingly procure, make, or possess anything which may facilitate escape while being held in official detention; or
  - (3) Aid another person to escape official detention with anything which may facilitate such person's escape.
- (b) "Official Detention" means arrest, detention in any facility for custody of persons under charge of convicted of a crime, or any other detention for law enforcement purposes, but official detention does not include supervision of probation or parole, or constraint incident to release on bail.
- (c) Escape shall be punishable by a fine not exceeding Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

##### 431.1 Escape

Any Indian who being in lawful custody, for an offense shall escape shall escape or attempt to escape, or assist another person to escape from lawful custody shall be deemed guilty of an offense and upon conviction thereof, sentenced to labor for a period not to exceed six (6) months, or to a fine not

to exceed three hundred and sixty dollars (\$360.00), or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6. Sec. 16.

432. Bail Jumping

- (a) It shall be unlawful to fail without just cause to appear in person, after having been released on bail or on his own recognizance by court order or other lawful authority upon condition that he subsequently appear on a charge of an offense.
- (b) Bail jumping shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed (6) months, or both.

433. Failure to Obey a Lawful Order of the Court

- (a) It shall be unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command duly made, issued, or given by a Court of the Tribe or any Officer thereof or other wise issued according to Law, without just cause.
- (b) This Section shall apply to a failure to appear as a party in a Civil Action where default or similar remedy is available to the other party.
- (c) Failure to obey a lawful order of the Court shall be punishable by a fine not to exceed Five Hundred Dollars (500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

434. Disobedience to Lawful Order of Court and Contempt of Court (Former Section 72)

Any Indian who shall:

- (a) Willfully disobey any lawful order, subpoena, warrant or command duly issued by the Oglala Sioux Tribal Court or any Officer thereof; or
- (b) Display disorderly, contemptuous or insolent behavior toward the Judge while holding Court, tending to interrupt the judicial proceedings or impair the respect due the Judge's authority; or
- (c) Breach the peace through boisterous conduct or violent disturbance in the presence of the Judge or in the immediate vicinity of the Court, tending to interrupt the judicial proceedings; or
- (d) Use abusive language in the Court while the Court is in session;

Shall be deemed guilty of offence and upon conviction thereof, shall be sentenced to labor for a period not to exceed three (3) months, or to a fine not to exceed one hundred and eighty dollars (\$180.00), or to both such imprisonment and fine, with costs.

HIST: 1937 Code, Ch. 6 Sec. 12, as amended by Res. #60-26.

435. Aiding Return of Removed Persons

- (a) It shall be unlawful for any person to aid, abet, or assist a person who has been removed from the Reservation as an undesirable person to:  
Physically return to the territorial jurisdiction of the Tribe except while actually traveling upon a public highway, or as allowed by law;
- (b) Aiding return of removed persons shall be punishable by a fine of Five Hundred Dollars (\$500.00), and by imprisonment in the Tribal Jail for a term not to exceed six (6) months or both.
- (c) In addition, any personal property of every kind and description which the removed person brought with him or used to return to the Tribal Jurisdiction shall be contraband and forfeited to the Tribe, by civil forfeiture, provided, that if any of said property belongs to another, that person, if known, shall be served with civil process, as in forfeiture proceeding and may defend by showing that the removed person did not have permission to use or possess the property or to enter the Tribal Jurisdiction with that property.

436 Violence to police officers, ihs and bia security guards and ost parks and recreation authority rangers and judges.(former section 99.1)

Any person who shall willfully or knowingly, by force or violence, render physical abuse to a Tribal Officer, IHS and BIA Security Guards and Parks and Recreation Authority Rangers and Judges of the Oglala Sioux Tribal Court, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of 180 days mandatory (non-suspendable) and a fine of \$500.00.

HIST: Ord. # 81, 1951. Amended by Ordinance 95-12.

440. False Alarms

- (a) It shall be unlawful to knowingly:
  - (1) Cause a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or
  - (2) Give false information to any law enforcement officer with purpose to implicate another in an offense; or

- (3) Report to law enforcement authorities an offense or other incident within their concern knowing or believing that it did not occur; or
- (4) Pretend to furnish law enforcement authorities with information relating to an offense or incident when one knows he has no information relating to such an offense or incident; or
- (5) Give a false name or address to a law enforcement officer in the lawful discharge his duties.

(b) False alarms shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

441. Doing Business Without a License

- (a) It shall be unlawful to commence or carry on any business, trade, profession, or calling, the transaction or carrying on of which is required by law to be licensed, without having an appropriate license.
- (b) Doing business without a license shall be punishable by a fine not to exceed Two Hundred Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

442. Tampering with Public Property

- (a) It shall be unlawful to:
  - (1) Steal, deface, mutilate, alter, falsify, or remove all or part of any record, map, book, document or thing, or any court documents or records, placed or filed in any public office, or with any public officer, or to permit another to do so; or
  - (2) Knowingly injure, deface or remove any signal, monument or other marker placed or erected as part of an official survey of the Tribe or Federal government without authority to do so; or
  - (3) Intentionally deface, obliterate, tear down, or destroy any copy or transcript or extract from any law or any proclamation, advertisement, or notice setup or displayed by any public officer or court, without authority to do so and before the expiration of the time for which the same was to remain set up.
- (b) Tampering with public property shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

443. Injuring Public Property

- (a) It shall be unlawful to:

- (1) Intentionally break down, pull down or otherwise injure or destroy any jail or other place of confinement; or
- (2) Intentionally and without authority dig up, remove, displace or otherwise injure or destroy any public roadway, highway or bridge or private road or other public building or structure; or
- (3) Remove or injure any milepost, guidepost or road or highway sign or marker of any inscription on them while such is erected along a road or highway; or
- (4) Knowingly and without authority to do so, remove injure, deface, or destroy any public building or structure, or any personal property belonging to the Tribe, or any other government or government agency.

(b) Injuring public property shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

444-450. RESERVED

#### 451 Compensation for Past Official Behavior

- (c) It shall be unlawful to solicit, accept or agree to accept any financial benefit as compensation for having, as a public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty; or offer, confer or agree to confer compensation, acceptance of which is prohibited by this section.
- (d) Compensation for past official behavior shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

#### 452. Official Unlawful Action

- (a) It shall be unlawful, being a public servant, and with the intent to materially benefit himself or another or to harm another, to
  - (1) Knowingly commit an unauthorized act which purport to be an act of his office, or knowingly refrains from performing a non-discretionary duty imposed on him by law; or
  - (2) Knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office from another public servant, which information has not been made public, he:

- (i) Acquires or divests himself or a valuable interest in any property, transaction or enterprise which may be affected by such action or information; or
  - (ii) Speculates or wagers on the basis of such action or information, and knowingly aid another to do any of the foregoing.
- (c) Official unlawful action shall be punishable by a fine not exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

453. Special Influence

- (a) It shall be unlawful to solicit, receive, or agree to receive any financial benefit as consideration for exerting special unlawful influence upon a public servant, in order to influence that public servant to violate the law or to exercise his discretion in a particular fashion or procuring another to do so, or to offer, confer, or agree to confer any financial benefit receipt of which is prohibited by this section.
- (b) Special influence shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.



CHAPTER FIVE; CRIMES AGAINST PUBLIC, HEALTH, SAFETY, AND WELFARE

503 Disorderly Conduct

- (a) It shall be unlawful to purposely cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, by:
  - (1) Engaging in fighting, or threatening to engage in violent or tumultuous behavior; or
  - (2) Making unreasonable noise or offensively coarse utterances, gestures, or displays, or addressing abusive language to any person present; or
  - (3) Creating a hazardous or physically offensive condition by any act which serves not legitimate purpose of the actor; or
  - (4) Appearing in public places in an intoxicated condition and doing any of the following:
    - (i) Passing out or falling or sleeping in a public place or on the property of another without permission; or
    - (ii) Bothering, disrupting or otherwise intruding upon another person or group of persons; or
    - (iii) Wandering about without being able to give a reasonable account of a destination to a law enforcement officer; or
    - (iv) Appearing or being found in an area set aside for religious or ceremonial activities which have traditionally, or by order of the Tribal or conducting authorities, been set aside for us, free from alcoholic beverage consumption or the presence of intoxicated person, during the period of such a religious or ceremonial or public activity.
- (b) "Public" means affecting or likely to affect persons in a place to which the public or a substantial group of the public had access and includes, but is not limited to, streets, highways, the common transport facilities, businesses open to the public, and places of entertainment or amusement.
- (c) Disorderly conduct shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.
- (d) Upon a second or subsequent conviction under this section, a punishment of a fine not to exceed Five Hundred Dollars (\$500.00), or a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both may be imposed.

502 Failure to Disperse

Needs Insertion

503.1 Disorderly Conduct (Former Section 74)]

Any Indian who engages in any of the following acts shall be deemed guilty of disorderly conduct and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (30) days, or to a fine not to exceed sixty dollars (\$60.00), or to both such imprisonment and fine, with costs. That, any person who is arrested for a violation of this Ordinance three (3) time or more shall be ordered by the Court to report to Alcoholism Programs for counseling.

- (a) Fighting in a public place;
- (b) Disturbing or annoying any public or religious assembly;
- (c) Using profane or obscene language in a public place;
- (d) Appearing in a public or private place in an intoxicated condition;
- (e) Entering the dwelling place of another and using abusive or vulgar language directed to the occupants of said dwelling;
- (f) Entering the land or premises of another and using abusive or vulgar language directed to the occupants of said dwelling;
- (g) Committing any other act of public indecency or immorality.

HIST: 1937 Code Ch. 6. Sec. 14, as amended by Res. #60-26 Ord. 86-12.  
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504. Harassment

- (a) It shall be unlawful, with the purpose to annoy or alarm another, to insult, taunt, or challenge another in a manner likely to provoke a violent or disorderly response; or to make repeated communications anonymously or at extremely inconvenient hours, or in offensively coarse language.
- (b) Harassment shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed Three (3) months, or both

505. Public Nuisance

- (a) It shall be unlawful to do any act, or fail to perform any duty, without lawful authority to do so, which act or omission either:
  - (1) Un reasonably and substantially annoys and injures or endangers the comfort, repose, health, or safety of three or more persons: or
  - (2) Offends public decency; or
  - (3) Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for use of passage any lake, stream, or

campground, POW-WOW ground, public park, square, street, highway, or road: or

- (4) In any way unreasonable renders three or more persons insecure in life or the use of the property

- (b) Public nuisance shall be punishable by a fine not to exceed Two Hundred-fifty Dollars or by a term of imprisonment in the Tribal Jail no to exceed three (3) months, or both

506. Disrupting a Public or Religious Assembly

- (a) it shall be unlawful to intentionally prevent or disrupt a lawful meeting or religious assembly, by doing any act tending to obstruct or interfere with it physically; or by making any utterance, gesture or display designed to outrage the sensibilities of the group or prevent the assembly from conducting its business.
- (b) Disrupting a public or religious assembly shall be punishable by a fine not to exceed Three Hundred fifty Dollars (\$350.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

507. Weapons Offense

- (a) It shall be unlawful to:
  - (1) Have a dangerous weapon in one's actual possession while being addicted to any narcotic drug; or after having been declared mentally incompetent; or while being intoxicated or otherwise under the influence of alcoholic beverages or other intoxicating substance, drug, or medicine; or while possessing the intent to unlawfully assault another; or while under the age of sixteen years old, and without the consent of his parent or guardian. Carry a loaded firearm in a vehicle on a public road without lawful authority to do so; or to discharge a firearm from, upon or across any public highway without lawful authority, to do so.

(b) Definitions:

- (1) "Dangerous Weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. In determining whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the instrument, object or thing the character of the wound produced, if any, and the manner in which the instrument, item or thing was used shall be determinative.

(2) "Firearms" means pistols, revolvers, rifles, shotguns, and any device that is capable of being used as a weapon because it expels a projectile by some means of force.

(c) Weapons offense shall be punishable by a fine not to exceed Two Hundred-fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

508. Aggravated Weapons Offense

- (a) It shall be unlawful to carry a dangerous weapon concealed on the person or to threaten to use or exhibit a dangerous weapon in a dangerous and threatening manner, or use a dangerous weapon in a fight or quarrel; or to possess a shotgun or rifle having a barrel or barrels of less than sixteen inches in a length or an altered or modified shotgun or rifle less than twenty-four inches overall length.
- (b) Aggravated weapons offense shall be punishable by a fine not to exceed Five Hundred Dollars, or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

509. Dangerous Devices

- (a) It shall be unlawful to:
- (1) Deliver or cause to be delivered to any express railway company or common carrier, or place in the mail or deliver to any person, or throw or place on or about the premises or property of another or in any place where another may be injured thereby, a dangerous device, knowing it to be such, unless the threatened person is informed of the nature thereof and its placement is for some lawful purpose; or
- (2) Knowingly construct or contrive any dangerous device, or with the intent to injure another in his person or property, have a dangerous device in one's possession.
- (b) For purposes of this section, a "dangerous device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, or knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or to strike with any of its parts, unexpectedly when moved, handled, or opened or after the lapse of time or under conditions or in a manner calculated to endanger health, life, limb, or property.

- (c) Dangerous devices shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

510 . CARRYING CONCEALED WEAPONS (Former Section 66 and 66.1)

Any Indian who shall go about in public places armed with a dangerous weapon concealed upon his person, unless he shall have a permit signed by a Judge of the Oglala Sioux Tribal Court and countersigned by the Superintendent of the Reservation, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (3) days or a fine not to exceed sixty dollars (460.00), or to both such fine and imprisonment, with costs; and the weapon so carried may be confiscated.

HIST: 1937 Code, Ch. 6, Sec. 7.

SECTION 510.1 FIREARMS CONTROL.

A. Prohibited Firearm – The term “prohibited firearm” means:

1. A shotgun having a barrel or barrels of less than 18 inches in length;
2. A weapon made from a shotgun if such weapon, as modified, has an overall length of less than 26 inches or barrel or barrels of less than 18 inches in length;
3. A rifle having a barrel or barrels of less than 16 inches in length;
4. A weapon made from a rifle if such weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length;
5. Any other weapon as defined in subsection (c);
6. A machine gun;
7. A muffler or a silencer for any firearm whether or not such firearm is included within this definition; and
8. A destructive device.

B. **Machine Gun-** - The term “machine gun” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapons, any combination of parts designed for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

C. **Rifle** - - The term “rifle” means a weapon designed or redesigned, made or remade, and intended to be fixed from the shoulder and designed or

redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifle bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

- D. **Shotgun**—The “shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder designed redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.
- E. **Any other Weapon**—The term “any other weapon” means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol, a revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either which may be easily restored to fire. Such term shall not include a pistol or revolver having a rifled bore, or rifled bores or weapons designed, made, or intended to be fire from the shoulder and not capable of firing fixed ammunition.
- F. **Destructive Device** – The term “destructive device” means:
  - 1. Any explosive, incendiary, or poison gas;
    - a. bomb
    - b. grenade,
    - c. rocket having a propellant charge of more than four ounces,
    - d. missile having an explosive or incendiary charge of more than one-quarter ounce.
    - e. mine, or
    - f. other similar device.
  - 2. Any type of weapon by whatever name which will, or which may be readily converted to expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which is generally recognized as particularly suitable for sporting purposes; and
  - 3. Any combination of the parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled.

SECTION 510.2 POSSESSION OF CERTAIN FIREARMS  
PROHIBITED.

No person shall, within the Pine Ridge Reservation of the Oglala Sioux Tribe, own, possess, or transport any prohibited firearms, or destructive devices, or any other weapon, other than any duly appointed law enforcement officer when such officers are on duty and enforcing law and order on the Pine Ridge Reservation.

#### SECTION 510.3 PENALTIES.

Any person subject to the jurisdiction of the Oglala Sioux Tribe who violates Section 66.2 thereof shall be guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed ninety (90) days, or to pay a fine not to exceed three hundred dollars (\$300.00), or to both such fine and imprisonment, with costs; and such prohibited firearm shall be subject to forfeiture by the Oglala Sioux Tribal Court.

1. Exclusion. Any person who is not subject to the jurisdiction of the Oglala Sioux Tribe who violates Section 66.2 hereof shall be subject to removal from the Pine Ridge Reservation upon issuance of a written order of exclusion by the Court, after a hearing upon reasonable notice pursuant to Art. IV, Sec. 1 of the Constitution and Ordinance No. 73.08, as amended.
2. Interpretation. The term used in this ordinance are intended to prohibit the possession, ownership or transportation within the Pine Ridge Reservation or any firearm which is subject to registration with the National Firearms Registration and Transfer Board pursuant to provisions of the Act of October 22, 1968, 82 Stat. 1229, 26 U.S.C., Section 5841, or any successor provision of Federal law. In applying definitions set forth herein, reference the Treasury pursuant to that Act.
3. Antique Weapons Exception. This Section shall not apply to antique firearms, falling within the definition of subsection (1) above, unsuitable for use as firearms and possessed as curiosities or ornaments or collector's items.
4. Crime Committed or Attempted with Prohibited Firearm--Punishment. If any person shall commit or attempt to commit any crime when armed with a prohibited firearm or any other weapon or destructive device, he shall in addition to the punishment provided for the crime, upon conviction of the commission of a crime when armed with a prohibited firearm, be punished for the first offense by a fine of not more than three hundred dollars (\$300.00), or to imprisonment and labor for not more than ninety (90) days, or both such fine and imprisonment, with costs; and in the second such offense by a fine not to exceed five hundred dollars (\$500.00), or to imprisonment and labor for not more than

one hundred and eighty (180) days, or both such fine and imprisonment, with costs; and such conviction shall be consecutive to any other sentence imposed upon him.

5. Person Convicted of a Crime of Violence—Owning or Possessing Prohibited Firearm—Punishment. Any person who has been convicted of a crime of violence on this Reservation, State of South Dakota or elsewhere who owns, controls or has or has in his possession, a prohibited firearm, or any other weapon or destructive device shall, in addition to the punishment provided for the crime of possession, pursuant to subsection 2 of this ordinance, be punished for the first offense by a fine of not more than three hundred dollars (\$300.00), or to imprisonment and labor for not more than ninety (90) days, or both such imprisonment and fine, with costs/ and for the second such offense, by a fine not to exceed five hundred dollars (\$500.00), or to imprisonment and labor for not more than one hundred and eighty (180) days, or both such imprisonment and fine, with costs; and such punishment shall be consecutive to any other sentence imposed upon him.

HIST: Ord. # 77-14

#### 511 . MINOR CARRYING FIREARM OR GUN

Any Indian under the age of eighteen (1\*) years, who shall go about anywhere within the Pine ridge Reservation, armed with a shotgun, rifle pistol, air-gun or other firearms, unless his parent or guardian shall have obtained a permit there-for, signed by a Judge of the Oglala Sioux Tribal Court and countersigned by the Superintendent of the Reservation, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced in the discretion of the Court.

Every parent or guardian, on applying for a permit, shall agree to pay all damages to persons or property resulting from the use of the firearms in the hands of the person for whom the permit has been issued. Any gun seized for the violation of the foregoing section may be confiscated.

HIST: Ord. # 41.

#### 512 Illicit Cohabitation (Former Section 86)

Any Indian who shall live or cohabit with another as husband and wife not then and there being married shall be deemed guilty of illicit cohabitation and upon conviction thereof, shall be sentenced to labor for a period not to exceed six (6) months, or to a fine not to exceed three hundred and sixty dollars (\$60.00), or to both such fine and imprisonment, with costs.



HIST: 1937. Code, Ch. 6, Sec. 26.

513 . MAINTAINING A PUBLIC NUISANCE.(Former Section 90)

Any Indian who shall act in such a manner, or permit 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 an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed five (5) days, or to a fine not to exceed ten dollars (\$10.00), or to both such imprisonment and fine, with costs; and may be required to remove such nuisance when so ordered by the Court.

514 Operating a public dance hall. (former section 92.

Any Indian or group of Indian who operate or maintain a public dance hall within the Pine Ridge Reservation without first having paid a fee not to exceed five dollars per year, for a license, which license shall require the operator to comply with the laws of the State of South Dakota with reference to the opening and closing and having an officer in attendance, shall be deemed guilty of an offense and upon conviction, shall be sentenced to labor for a period not to exceed thirty days, or a fine not to exceed \$60.00 , or both such fine and imprisonment, with costs.

HIST: 1037 Code, Ch. 6. Sec. 31.

516. Desecration

- (a) It shall be unlawful to purposely desecrate any public monument or structure; or to purposely desecrate a place of worship or burial, or other sacred place.
- (b) Desecrate means to deface, damage, pollute, destroy, take or otherwise physically mistreat in a way that the actor knows, or believes, will outrage the sensibilities of persons likely to observe or discover his action.
- (c) Desecration shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

517. Littering

- (a) It shall be unlawful to throw, dump, place or deposit upon the lands of another or any Tribal or Public Property, or highway, street, road, or other area not his own, without the consent of the owner or other lawful permission, any garbage, debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever which could mar the appearance or

detract from the cleanliness of the area; or to store, keep, or allow to accumulate an unreasonable number of any wrecked, junked, or unserviceable vehicles, appliances, or implements unless one has a permit from the Tribe to maintain a junk yard.

- (b) Littering shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (3) months, or both

518 Disposing of Property of an Estate (Former Section 73)

Any Indian, who without proper authority sells, trades or otherwise disposes of any property, of an estate before the determination of the heirs shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed three (3) months, or to a fine not to exceed one hundred and eighty dollars (\$180.00), or to both such imprisonment and fine, with costs.

HIST: 1937 Code Ch. 6, Sec. 13.

526. Abusing a Corpse

- (a) It shall be unlawful to purposely and unlawfully remove, conceal, dissect, or destroy a corpse or any part of a corpse; or to disinter a corpse that has been buried or otherwise interred.
- (b) Abusing a corpse shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not exceed six (6) months, or both.

527. Prostitution

- (a) It shall be unlawful to:
  - (1) Be an inmate or resident of a house of prostitution or otherwise engage in sexual activity as a business or for hire; or
  - (2) Loiter in or within a view of a public place for the purpose of being hired to engage in sexual activity; or
  - (3) Engage in or offer or agree to engage in any sexual activity with another person for a fee; or
  - (4) Pay or offer or agree to pay another person a fee for the purpose of engaging in an act of sexual activity; or
  - (5) Enter or remain in a house of prostitution for purpose of engaging in sexual activity; or

- (6) Own, control, manage, supervise, or otherwise keep, alone or in association with another, a house of prostitution or a prostitution business; or
- (7) Solicit a person to patronize a prostitute; or
- (8) Procure or attempt to procure a prostitute for another; or
- (9) Lease or otherwise permit a place controlled by the actor, alone or in association with others, to be used for prostitution or the promotion of prostitution; or
- (10) Procure an inmate for a house of prostitution; or
- (11) Encourage, induce, or otherwise purposely cause another to become or remain a prostitute; or
- (12) Transport a person with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose; or
- (13) Share in the proceeds of a prostitute pursuant to an understanding that one is to share therein, unless one is the child or legal dependent of a prostitute; or
- (14) Own, operate, manage, or control a house of prostitution; or
- (15) Solicit, receive, or agree to receive any benefit for doing any of the acts prohibited by this subsection.

(b) Definitions:

- (16) "Sexual Activity": means intercourse or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.
- (17) "House of Prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.
- (18) "Inmate", means a person who engages in prostitution in or through the agency of a house of prostitution.
- (19) "Public Place" means any place to which the public or substantial group there of has access.

- (c) On the issue of whether a place is a house of prostitution, the following shall be admissible in evidence: its general reputation; the reputation of the persons who reside in or frequent the place; the frequency, timing and duration of visits by non-residents. Testimony of a person against his spouse shall be admissible to prove offense under this section.
- (d) Prostitution shall be punishable by a fine not to exceed Five Hundred Dollars, or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

527.1 Prostitution. (former section 95)

Any Indian who shall practice prostitution or who shall knowingly keep, maintain, rent or lease house, room or tent other place for purpose of prostitution shall be deemed guilty of an offense and upon conviction, shall be sentenced to labor for a period not to exceed 6 months, or a fine not to exceed \$360.00.00 or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6, Sec. 35.

528. Spreading Venereal Disease

- (a) It shall be unlawful to infect another person with venereal disease, if one knows or has reason to believe he/she is infected with venereal disease.
- (b) The Court shall, upon conviction, have the power to order the medical examination and treatment of the convicted offender and may also order an investigation to determine to what extent others have or may have been infected by the convicted offender.
- (c) Spreading venereal disease shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

528.1 Giving Venereal Disease to Another (Former Section 84)

Any Indian who shall infect another person with a venereal disease shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed three (3) months, or to a fine not to exceed one hundred and eighty dollars (\$180.00), or both such imprisonment and fine, with costs. The Oglala Sioux Tribal Court shall have authority to order and compel the medical examination and treatment of any person found to be afflicted with any communicable disease.

HIST: 1937 Code, Ch. 6, Sec. 24.

529. Obscenity

- (c) It shall be unlawful to :
  - (1) Sell, deliver or provide, or offer or agree to sell, deliver or provide, any obscene writing, picture, record or other representation or embodiment that is obscene; or
  - (2) Present or direct an obscene play, dance, or performance, or participate in that portion thereof which makes it obscene: or

- (3) Publish, exhibit or otherwise make available any obscene material or
- (4) Possess any obscene material for purposes of sale or other commercial dissemination; or
- (5) Sell, advertise, or otherwise commercially disseminate material, whether or not obscene, by representing or suggesting that it is obscene.

(d) Material is obscene if considered as a whole:

- (1) It lacks serious literary, artistic, political, or scientific value; and
- (2) It depicts or describes nudity, sex or excretion in a patently offensive manner that goes substantially beyond customary limits of candor in describing or representing such matters; and
- (3) If the average person, applying contemporary community standards, would find that the material, taken as a whole appeals predominately to a morbid or unnatural interest in nudity, sex, or excretion.

- (e) A person disseminates or possesses obscene material in the course of his business is presumed to do so knowingly or recklessly.
- (f) Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or some other especially susceptible audience.
- (g) Undeveloped photographs, molds printing plates, and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.
- (h) It shall be a defense to a prosecution under this section that the dissemination of the obscene material was restricted to institutions or persons having scientific, educational, and governmental or other justification for possessing obscene material.
- (i) Obscenity shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), and all obscene material shall be confiscated and destroyed.

530 Failure to Send Children to School (Former Section 79)

Every Indian having under his control, a child of the age of six (6) to eighteen (18) shall cause such child to attend regularly, until completion of the eighth (8) grade, at some public or private school for the entire term during which school is in session, unless such child is excused from such attendance.

Any Indian who fails to comply with the requirements of this Section shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed ten (10) days, or to a fine not to exceed (\$20.00), or to both such imprisonment and fine, with costs, for the first offense. For any subsequent offense, such Indian shall be sentenced to labor for a period not to exceed twenty (20) days, or to a fine not to exceed forty dollars (\$40.00), or to both such imprisonment and fine, with costs.

### 536 Intoxication

- a) No person may be prosecuted solely for being intoxicated in public or private place, except as provided in this ordinance. If a person is intoxicated within the confines of the Pine Ridge Reservation, a police Officer shall issue a citation with the fee of twenty-five dollars (\$25.00) and shall render assistance in the following manner:
- (1) The Police Officer may direct or transport the intoxicated person to a detention facility where the intoxicated person may be detained only until they are sober for a minimum of eight (8) hours, or a maximum of twenty-four (24) hours.
  - (2) If the intoxicated person is unable to pay the citation fee of twenty-five dollars (\$25.00) within an allotted time, the person will complete one day of community service in the alternative as directed by the detention officer.
  - (3) If the citation fee is not paid within the allotted time, and if the individual refuses to perform community service, the intoxicated person may be brought to Court and Court Costs may be added to the citation fee to cover the Administration expenses.
- (b) If a person is arrested three times in thirty (30) days, the Office of Attorney General will file a Petition for Involuntary Commitment for the arrested to attend alcohol education classes and /or outpatient treatment for chemical dependency and/or inpatient treatment for chemical dependency .
- (c) The Police Officer may use reasonable force to restrain the intoxicated person if necessary to protect himself, the Intoxicant or Others. No Police Officer shall be held civilly or criminally liable on account of reasonable measures taken under authority of this Section.

And

WHEAREAS, the collection of the citation fee will be administered by the OST Court and identified for supplemental funding for the Office of the Attorney General and the OST Court, now

THEREFORE BE IT ORDAINED, that such Section shall be hereby become effective on February 1, 2003.

537 Manufacture and Transportation of Alcoholic Beverages.

- (a) It shall be unlawful for any individual to manufacture or transport any beer, wine, whiskey or any other beverage whatsoever which produces alcohol intoxication.
- (b) Manufacturing or transporting any beer, wine, whiskey, or other beverage which produces alcoholic intoxication shall be punishable by a fine not to exceed One Thousand Dollars (\$1000.00), or by a term of imprisonment in the Tribal Jail not to exceed one (1) year, or both.
- (c) Ordinance No. \_\_\_\_\_ decriminalizing offenses involving intoxicating beverages shall remain in full force in effect.

538 Sale and Possession of an Alcoholic Beverage

- (a) It shall be unlawful to buy, sell, serve, give away, consume, furnish, or possess any beer, ale, wine, liquor, spirits, or any other beverage or product containing alcohol for ingestion by human beings; or to appear or be found in a place where alcoholic beverages are sold and/or consumed, except as provided by federal law or Tribal law.
- (b) Possession of an alcoholic beverage in violation of federal law or Tribal Law shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three months, or both.
- (c) Any such alcoholic beverage handled in violation of this section is hereby declared to be contraband and civil proceedings may be had against such alcoholic beverages for forfeiture as provided by law.

538.1 LIQUOR VIOLATION (Former Section 88.01 and 88.02)

Any individual who shall possess, transport or manufacture beer, wine, whisky, or any article whatsoever which produces alcoholic intoxication will be deemed guilty of an offense and upon conviction shall be sentenced to labor for not to exceed sixty days or a fine not to exceed (\$100.00) or both, with costs.

Part 2 LIQUOR SALE OR TRADE.

Any individual who sells or trades any beer, ale, wine, whiskey or any article which produces alcoholic intoxication in a manner not rendered lawful (#68-03 and #69-22), or who sells or trades same without a validly issued license to do so by the Oglala Sioux Tribal Council shall be deemed

guilty of an offense and upon conviction thereof, shall be sentenced and fined according to the following schedule:

- (a) First offense – Upon conviction; to be sentenced to a minimum of sixty (60) days imprisonment, not to exceed one hundred and eighty (180) days imprisonment, and to be fined a minimum of one hundred and fifty dollars (\$150.00), not to exceed five hundred dollars (\$500.00), plus court costs.
- (b) Second Offense – Upon conviction ; to be sentenced to a minimum of ninety (90) days imprisonment, not to exceed one hundred and eighty (180) days of imprisonment, and be fined a minimum of three hundred dollars (\$300.00), not to exceed five hundred dollars (\$500.00), plus court costs.
- (c) Third Offense - - Upon conviction; to be sentenced to a minimum of one hundred and sixty (160) days imprisonment, not to exceed one hundred and eighty (180) days imprisonment, and to be fined a minimum of four hundred and seventy five dollars (\$475.00), not to exceed five hundred dollars (\$500.00), plus court costs.
- (d) Fourth Offense - Upon conviction; to be remanded to the authority of the Federal Court for prosecution under the Federal Liquor laws.

Any person charged with violation of Section 88.02 may exercise his Constitutional right to bail or bond in which case the bond shall be set a

minimum rate of 150 percent of the minimum fine for each offense, not to exceed 150 percent of the maximum fine:

- (1) First Offense - \$225.00 bond or bail - \$750.00
- (2) Second Offense - \$450.00 bond or bail - \$750.00
- (3) Third Offense - \$712.50 bond or bail - \$750.00

Bail or bond to be refunded in the event the defendant is acquitted and to be applied to the Court fine, in the event of conviction by the Court or by a Jury; and to apply the fine when the defendant enters plea of “guilty” or “nolo contendere.”

Any person charged by Tribal Court with violation of Sec. 88. 02 may exercise his Constitutional right to a trial by jury after posting, in addition to bail or bond set forth above, a jury bond of \$50.00; to be refunded in the event the defendant is acquitted and applied to the Court costs in the event of conviction by jury.

Any conviction under Section 88.01 and 88.02 shall be consecutive to any other sentence imposed upon him by the Court.



539 Tobacco Offense

(d) It shall be unlawful to:

- (1) Purchase, obtain, possess, smoke, chew, inhale or ingest any product made from or with tobacco if under the age of eighteen years (18); or
- (2) Sell to or otherwise obtain for or arrange for the obtaining of tobacco or a tobacco product for a person under the age of eighteen (18), or to knowingly permit such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation

(e) Tobacco offenses shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00). or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

540 Abuse of Psychotoxic Chemical Solvents

(f) It shall be unlawful to purposely smell or inhale the fumes of any psychotoxic chemical solvent, or to possess, purchase, or attempt to possess or purchase any psychotoxic chemical solvent, with the intention of causing a condition of intoxication

(g) This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

(a) As used in this section, "Psychotoxic chemical solvent" includes any glue, cement, or other substance containing one or more of the following Chemical compounds" acetone and acetate, benzene, butyl-alcohol, methyl ethyl, peptone, pentachlorophenol, petroleum ether or any other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement of listing of the contents of a substance packaged in a container by manufacturer or producer thereof shall be proof of the contents of such substances without further expert testimony if it reasonably appears that the substance in such container is the same substance placed there in by the manufacturer or producer.

(b) Abuse of psychotoxic chemical solvents shall be punishable by a fine not to exceed Two Hundred fifty Dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not exceed three (3) months, or both, and the Court may order any person using psychotoxic chemical solvents for inhalation to be committed to some facility for treatment for term not exceeding six (6) months.

- (c) Such psychotoxic chemical solvents kept or in violation of this section are hereby declared to be contraband and civil proceedings may be had against such psychotoxic chemical solvents as provided by law.

#### 541 Dangerous Drug Offenses

- (h) It shall be unlawful, except as authorized and controlled by Federal Law, to manufacture, distribute, possess with intent to distribute, dispense, create, possess, or cultivate a controlled or a counterfeit substance; or to obtain or acquire possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or to knowingly or intentionally use any communication facility in committing any of the above prohibited acts.
- (i) Controlled or counterfeit substances shall consist of the substances listed in 21 U.S. C. Section 812 (1972), and any other chemical substance, natural or artificial, defined as controlled or dangerous substance the possession, sale, distribution, or use of which is prohibited by federal law, except peyote.
- (j) A dangerous drug offense shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00). or by a term of imprisonment in the tribal Jail not o exceed six (6) months, or both.
- (k) Any substance handled in violation of this section is hereby declared to be contraband and civil forfeiture proceedings may be had against such substance as provided by law.
- (l) Any personal property used to transport, conceal, manufacture, cultivate, or distribute the controlled dangerous substance in violation of this section shall be subject to forfeiture as contraband by civil proceeding as provided by law.

#### 541.1 CONTROLLED DRUGS AND SUBSTANCES (Former Section 106.00)

##### Definitions:

“Controlled substance” --- a drug or substance listed in Section 106.01 of this Section.

“Deliver” or “delivery”---the actual, constructive, or attempted transfer of a controlled drug or substance whether or not there exists an agency relationship.

“Distribute”—to deliver a controlled drug or substance. “Distributor” --- A person who delivers a controlled drug or substance. Distribute shall include delivery by gift, barter, or exchange with or without consideration.

“Imprisonment” --- Incarceration in the Tribal Correctional Facility.

“Marijuana” --- All parts of a plant of genus cannabis, whether growing or not; the seeds thereof, resin extracted from any part of such plant; and every compound, manufacture, sale, derivative, mixture, or preparation of such plant, its seeds or resin; but shall not include fiber produced from mature stalks of such plant, or oil or cakes made from seeds of such plants.

“Manufacture” --- The production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by

extraction from substances of a natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis.  
“Manufacturer”—includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer.

“Opiate”--- any controlled drug or substance having an addiction sustaining liability similar to morphine or being capable of conversion into a drug having such addiction sustaining liability.

“Person”---any corporation, association, partnership, or one or more individuals.

“Produce” or “Production” the manufacture, planting, cultivation, growing or harvesting of a controlled drug or substance.

“Tribe”---The Oglala Sioux Tribe.

## SECTION 541.2 CONTROLLED DRUGS AND SUBSTANCES.

The Following controlled drugs and substances are hereby declared to be controlled:

Morphine

Heroin

Marijuana and marijuana derivatives.

Hashish and hash oil

Lysergic acid diethylamide, commonly known as LSD.

Phencyclidine

Mescaline

Peyote, except that when used as a sacrament in services of the Native American Church in a natural state which is unaltered except for drying or curing and cutting or slicing, it is hereby accepted.

Psilocybin

Tetrahydrocannabinol, whether as that which occurs in marijuana in its natural and unaltered state or as a chemical synthetic.

Opium, coca leaves, cocaine, and opiate.

amphetamine

Methamphetamine

Methaqualone

Phentermine

\Any substance which contains any quantity of the derivative of the barbituric acid.

Codeine.

Chlordiazepoxide (Librium)

Diazepam (Valium)

Dextropropoxyphene (Darvon).

The controlled substances listed in this section shall include any salt, compound derivative or preparation which is chemically equivalent or identical with any of the substances referred to in subdivisions (a) through (t), whether produced directly or indirectly from substance of vegetable origin or independently by means of chemical synthesis.

#### SECTION 541.3 UNLAWFUL POSSESSION OF CONTROLLED DRUG OR SUBSTANCE.

It shall be unlawful for any person to knowingly possess a controlled drug or substance as defined in this Chapter,, unless such substance was obtained directly or pursuant to a valid prescription or order from a medical practitioner, while acting in the course of his professional medical or veterinary practice. Any person convicted for a period not to exceed six (6) months, or a fine not to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment, with costs.

#### SECTION 541.4 POSSESSION OF MARIJUANA PROHIBITED.

It shall be unlawful for any person to knowingly possess marijuana. Possession of one (1) ounce or less of marijuana is possession in the second degree. Possession of more than one (1) ounce of marijuana is possession of marijuana in the first degree. Any person convicted of possession of marijuana in the second degree shall be punishable by imprisonment for a period of time not to exceed thirty (30), months or by a fine of up to one hundred dollars (\$100.00), or both such fine and imprisonment. A person convicted of possession of marijuana in the first degree shall be punishable by imprisonment for a period not to exceed six (6) months, or to a fine not to exceed five hundred dollars (\$500.00), or both such imprisonment and fine, with costs.

#### SECTION 541.5 UNAUTHORIZED, UNLAWFUL MANUFACTURE, DISTRIBUTION OR DISPENSING OF A CONTROLLED SUBSTANCE.

It shall be unlawful for any person to manufacture, produce, distribute, or dispense a controlled substance unless such manufacture, distribution, or dispensing is done directly under or pursuant to a valid license for manufacturing or distribution or dispensing, or pursuant to a valid prescription or order from a medical or veterinary practitioner while acting in the course of his professional practice. Any person convicted of a violation of this section shall be subject to imprisonment not to exceed six (6) months, or to a fine not to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment, with costs.

#### SECTION 541.6 KEEPING A PLACE FOR USE OR SALE OF CONTROLLED SUBSTANCE.

It shall be unlawful for any person to keep or maintain a place which is resorted to by persons using controlled drugs and substances or which is used for the purpose of using such substance, or which is used for the keeping or selling of such substances. Any person convicted of a violation of this section shall be punishable by imprisonment for a period not to exceed six (6) months, or to a fine not to exceed five hundred dollars (\$500.00), or by both such fine and imprisonment, with costs.

**SECTION 541.7 INHABITING ROOM WHERE CONTROLLED SUBSTANCES ILLEGALLY STORED OR USED.**

It shall be unlawful for any person to inhabit a room knowing that any controlled drug or substance is being illegally stored or used therein. Any person convicted of a violation of this section shall be subject to imprisonment not to exceed thirty (0) days, or a fine not to exceed one hundred dollars (\$100.00), or by both such fine and imprisonment, with costs.

**SECTION 541.8 SEARCH WARRANTS. GROUNDS FOR ISSUANCE**

As search warrant relating to offenses involving controlled drugs and substances may be served at any time of the day or night if the Judge issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at such time.

**SECTION 541.9 EXECUTION OF SEARCH WARRANT WITHOUT NOTICE – SPECIAL DIRECTION IN WARRANT.**

Any officer authorized to execute a search warrant may, without notice of his authority or purpose, enter any structure, portion of a structure, or any vehicle, or anything by whatever means, including breaking therein, if the Judge issuing such warrant is satisfied that there is probable cause to believe that if such notice were given the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another, may result, and has included in the warrant a direction that the Officer executing it shall not be required to give notice.

**SECTION 541.10. CONTROLLED DRUGS AND SUBSTANCES DEEMED TO BE CONTRABAND.**

All substances listed in Section 106.01 that are possessed, transferred, sold, or offered for sale in violation of the provisions of this Chapter shall be deemed contraband and seized and summarily forfeited to the Tribe. Similarly, all controlled substances which are seized or come into the possession of the Tribe, the owners of which are unknown, shall be deemed contraband and summarily forfeited by the State. All species of plants from which controlled

substances may be derived, which have been planted or cultivated in violation of this Chapter, or of which the owner or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the Tribe.

**SECTION 541.11 OTHER PROPERTY DECLARED CONTRABAND –  
DISPOSITION.**

Any funds or other things of value used for purposes of unlawful purchasing, attempting to purchase, distributing, or attempting to distribute any controlled drug or substance and seized by law enforcement officers during the purchase, attempted purchase, distribution, or attempted distribution, is hereby declared contraband and shall be paid into law enforcement training funds or other funds to be used for further law enforcement purposes.

Hist. Ord. # 80-10.

**542 Failure to Support Dependent Persons (Section 78)**

Every Indian who shall, because of habitual intemperance or gambling, or for any other reason, refuse or neglect to furnish good shelter, or care to those dependent upon him, including any dependent children born out of wedlock, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed three (3) months, for the benefit of such dependents, or to a fine not to exceed one hundred and eighty dollars (\$180.00), or to both such fine and imprisonment, with costs.

HIST: 1937 Code, Ch. 6. Sec. 18.

**551. Cruelty to Animals**

(a) It shall be unlawful to purposely or knowingly:

- (1) Torture or seriously overwork an animal; or
- (2) Fail to provide necessary food, care, or shelter for an animal in one's custody; or
- (3) Abandon an animal in one's custody, or
- (4) Transport or confine an animal in a cruel manner; or
- (5) Kill, injure, or administer poison to an animal without legal privilege to do so; or
- (6) Cause one mammal to fight with another.

(b) Cruelty to animals shall be punishable by a fine not to exceed Two Hundred Fifty Dollars (\$250.00), or by a term of imprisonment in the

Tribal Jail not to exceed three (3) months, or both. It is a defense to prosecution under this section that the conduct of the actor toward the animal was an accepted veterinary provided that if the animal is to be destroyed, the manner employed will not unnecessarily cruel unless directly necessary to the veterinary purpose involved.

#### 551.1 Cruelty to Animals (Former Section 68)

Any Indian who shall torture or cruelly mistreat any animal, shall be deemed guilty of an offense and shall be sentenced to labor for a period not to exceed thirty (30) days or to a fine not to exceed sixty dollars (\$60.00), or to both such fine and imprisonment, with costs.

HIST. 1937 Code, Ch. 6, Sec. 8

#### 552. Livestock Offense

(a) It shall be unlawful to:

- (1) Knowingly or recklessly refuse or fail to mark or brand his livestock when such is required in the interest of livestock identification or directed by Tribal or government officials; or
- (2) Alter, obliterate, or remove a brand or mark, or misbrand or miss-mark livestock with a purpose to deceive another for any reason; or
- (3) Knowingly permit livestock to graze or trespass on the property of another or the Tribe without permission to do so in excess of permitted time or amount; or
- (4) Knowingly fail to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock; or
- (5) Knowingly fail to treat or dispose of a sick animal where there is a substantial danger of infecting other animals; or
- (6) Fail to dip, inoculate or otherwise treat livestock in the manner which the designated representative of the Tribe shall direct; or
- (7) Make a false report of livestock owned.

#### 553 Cutting Fence (Former Section 105)

Any Indian who willfully cuts the wire of a fence belonging to another person shall be deemed guilty of an offense and upon conviction thereof,

shall be sentenced to labor not to exceed sixty (60) days, or to a fine not to exceed one hundred and twenty dollars (\$120.00), or to both with costs.

Hist : 1937 Code, Ch. 6, Sec. 46.

561. False Reports

- (a) It shall be unlawful to initiate or circulate a report or warning of fire, bombing, or other crime or catastrophe, knowing that the report of warning is false or baseless and that it is likely to cause evacuation of any building, place or assembly, or facility of public transport, or cause public inconvenience or alarm or action or any sort by an official or volunteer agency organized to deal with emergencies.
- (b) False reports shall be punishable by a fine not to exceed two hundred dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

562. Emergency Telephone Abuse

- (a) It shall be unlawful to knowingly refuse to yield or surrender the use of a party line or public pay telephone to another person upon being informed that said telephone is needed to report a fire, or summon police, medical or other aid in case of an emergency, unless the actor is already using said telephone to report an emergency; or to ask for or request the use of a party line or public pay phone on the pretext that an emergency exists, knowing that no emergency exists.
- (b) "Emergency" means a situation in which property or human life or safety is in jeopardy and the prompt summoning of aid is or reasonable appears to be essential to preservation of human life, safety, or property.
- (c) Emergency telephone abuse shall be punishable by a fine not to exceed Two hundred fifty dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

563. Violation of Privacy

- (a) Unless authorized by the National Gaming Regulation act (25 U.S.C.), and Tribal Ordinance adopted thereunder, it shall be unlawful to:
  - (1) Trespass on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or



- (2) Install in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in such place, or use any such unauthorized installation;
- (3) Install or use outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside without the consent of the person or persons entitled to privacy there; or
- (4) Divulge without consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted, or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(b) Definitions:

- (1) "Eavesdrop" means to overhear, record, amplify, or transmit any part of an oral or written communication of others without the consent of at least one party thereto by means of any mechanical or other device.
- (2) "Private place" means a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.

- (c) Violation of privacy shall be punishable by a fine not to exceed two hundred fifty dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

564. Criminal Defamation

- (a) It shall be unlawful to knowingly and with malicious intent communicate to any person orally or in writing any information which one know or should know to be false and tends to impeach the honesty, integrity, virtue or reputation of any person, or which portrays or casts any person in a false light, or to publish the natural defects of one who is alive, or who has not been declared missing or dead for a period exceeding twenty years, and thereby expose him or her to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown by way of defense.
- (b) Criminal defamation shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed twelve (12) months, or both. However, it shall be a defense to criminal defamation that the person making the publication was at the time engaged in the formal broadcast or publication of news by

some public news media, and in good faith believed he was reporting a newsworthy event concerning a public figure with a basis in truth.

565. Gambling

- (a) Except to the extent authorized by federal law (Class I NIGRA) and tribal ordinances adopted pursuant to federal law, it shall be unlawful for any person to:
  - (1) Participate in gambling; or
  - (2) Knowingly permit any gambling to be played, conducted, or dealt upon in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part; or
  - (3) Win or acquire to himself or another any gambling proceeds when one know he has a lesser risk of losing or participants, and the risk is not known to all participants; or
  - (4) Derive or intend to derive an economic benefit, other than personal winnings, from gambling and either:
    - (i) induce or aid another to engage in gambling: or
    - (ii) knowingly possess a gambling device with intent to use it in gambling.
- (b) Gambling shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal Jail not to exceed twelve (12) months, or both.

566. Waters Offense

- (a) It shall be unlawful to
  - (1) Interfere with or alter the flow of water in any stream, river, or ditch, without lawful authority to do so, or permit from the Tribe, and in violation of the right of any other person; or
  - (2) Knowingly break, injure, alter or destroy any bridge, dam, levee, embankment, reservoir, water tank, water line, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or
  - (3) Pollute or befoul any water in any of the following ways:
    - (i) Construct or maintain a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste of drainage therefrom shall flow directly into

waters of any stream, well, spring, or source of water used for domestic, purpose; or

- (ii) Deposit, pile, unload or leave any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage there from will flow directly into the waters of any stream, well, spring or source of water used for domestic purposes; or
- (iii) Construct, establish, or maintain any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filthy therefrom, find their way into said source of water;
- (iv) Knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.

- (b) Water offense shall be punishable by a fine not to exceed two hundred fifty dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

567. Contributing to the Delinquency of a Minor

- (a) It shall be unlawful for a person eighteen years of age or older to:
  - (1) Knowingly or recklessly sell or give to or otherwise make beer, liquor, wine or other alcoholic beverages available to a person under the age of eighteen years; or
  - (2) Knowingly or recklessly, by or omission, encourage, cause or contribute to the delinquency or unlawful conduct of a minor under eighteen years of age.

- (b) Contributing to the delinquency of a minor shall be punishable by a fine of not more than two hundred fifty dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months, or both.

567.1 Contributing to the Delinquency of a Minor (former Section 68)

Any Indian who shall willfully contribute to the delinquency of any minor shall be deemed guilty of an offense and upon conviction thereof shall be sentenced to labor for a period not to exceed six (6) months, or to

a fine not to exceed three hundred and sixty dollars (\$360.00), or to both such imprisonment and fine, with costs.

HIST: 1937 Code Ch. 6. Sec. 9.

568. Trafficking Children

(a) It shall be unlawful to:

- (1) Accept any compensation, in money, property or other thing of value, at any time, from the person or persons adopting a child, for services of any kind performed or rendered, or purported to be performed or rendered, in connection with such adoption; or
- (2) Accept any compensation, in money, property or other thing of value from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home; or
- (3) Offer to place, or advertise to place, a child for adoption or for care in a foster home, as in inducement to any woman to enter an institution for home or other place for maternity care of, for the deliver of a child.

(b) "Child" means an unmarried or unemancipated person under the age of eighteen years.

(c) This section does not apply to attorneys or advocates licensed by the Tribal Courts receiving reasonable fees for legal services actually rendered in the course of lawful adoption proceedings, not shall subparagraphs (a) (1) or (a) (2) apply to any bona-fide social worker or government employee receiving their normal salary and making such placements as a part of their official duties.

(d) Trafficking in children shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal Jail not to exceed six (6) months, or both.

569. Curfew Violations

(a) It shall be unlawful for a parent, guardian or other person having physical charge of a minor to allow said minor under the age of eighteen to be away from his place of residence in a public place, or a private place other

than the place where he intends to spend the night with the permission of the owner of such place, or in a vehicle driving about, after the hour of eleven o'clock p.m. local time, unless accompanied by a parent, guardian, or other person having physical charge of said minor or in attendance at or returning directly home from an organized school, church or Tribal or public function.

- (b) A curfew violation shall be punishable by a fine not to exceed two hundred fifty dollars, (\$250.00), or by a term of imprisonment in the tribal Jail not to exceed three (3) months, or both.

570. Fireworks Offense

- (a) It shall be unlawful to possess, or buy sell, distribute, transport, activate, ignite, or detonate or to allow any minor under one's physical or actual care, custody, or control to possess, buy, sell, distribute, transport, activate, ignite, or detonate any firecracker or fire work type device which is capable of or intended to explode, ignite, become self-propelled, give off any projectile, spark, or other ignited or fused object or manifestation, or in any way give off sound or light by virtue of its burning or exploding.

- (b) It shall not be an offense under this section:

- (1) To use or ignite hand held sparkler type devices in such a manner that they burn openly and singly or to use toy caps and cap guns singly and in the intended fashion; or
- (2) To use or ignite fireworks at a patriotic, religious, or tribal ceremony, gathering, or celebration in a safe manner provided that a permit to do so has been obtained from the Tribe or a lawfully authorized Tribal Agency prior to the importation and use of such fireworks.
- (3) To buy, possess, use or ignite fireworks between June 24 and July 10 inclusive of each year, provided that such devices are handled safely with regard to the safety of others and their property, and provided further, that minors under the age of twelve buying, possessing, using or igniting fireworks must be under the actual direct physical supervision of some responsible adult over twenty one years of age for this exception to apply.
- (4) To possess or sell fireworks between June 25 and July 10 inclusive of each year provided that a permit to do so had been obtained from the Tribe or a lawfully authorized Tribal Agency prior to such possession and sale, provided further, that upon proof of a secure and safe facility, such permit may state a particular location for year round storage of fireworks,

- (c) A fireworks offense shall be punishable by a fine not to exceed two hundred fifty dollars (\$250.00), or by a term of imprisonment in the Tribal Jail not to exceed three (3) months or both.

571 CUTTING GREEN TIMBER WITHOUT A PERMIT.

Any Indian who, without first securing a proper permit, cuts any standing green timber off any Indian Trust Allotment, except for the personal use of the allottee, or Tribal or land, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (30) days or to a fine not to exceed sixty dollars (\$60.00), or both such imprisonment and fine, with costs.

HIST: 1937 Code, Ch. 6, Sec. 10.

572 UNAUTHORIZED LEASING (former Section 102)

Any Indian who leases his land in violation of the leasing regulations shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (30) days, or to a fine not to exceed sixty dollars (\$60.00), or both such imprisonment and fine, with costs.

Hist: 1937 Code, Ch. 6, Sec. 43.

573 Vagrancy (Former Section 107)

Any Indian who wanders about in idleness, living off of others who are able to work, and has no property or money sufficient for his/her support or loafs or loiters in any city, town, or village on the Pine Ridge Reservation without any attempt to obtain regular employment shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed thirty (30) days, or to a fine to exceed sixty dollars (\$60.00), or to both such imprisonment and fine, with costs.

Hist: 1937 Code, Ch. 6. Sect. 47.

CHAPTER SIX : TRAFFIC OFFENSES

601 Definitions

- (a) The term “motor vehicle” shall mean every device in, or by which any person or property is or may be drawn or transported upon a public road and which device is self-propelled, be not including any vehicle which is an

implement of husbandry and is designed principally for agricultural purposes, nor any mechanical device designed or used principally for construction or maintenance purposes excepting trucks.

(b)A “public road” shall be defined as the entire width between the boundary lines of every right of way within the exterior boundaries of the Tribal jurisdiction which is maintained by any government agency, and when open to the use of the public, is for the purpose of travel by motor vehicles.

(c) A “Traffic infraction” shall be defined to mean an offense designated by the Law and Order Code to be punishable only by a civil penalty.

602. Driving While License is Suspended or Revoked

(a) It shall be unlawful to drive any motor vehicle upon any public road at a time when one’s driver’s license or permit or other driving privilege has been denied, suspended, cancelled or revoked by any State or Indian Tribe, or when one’s driving privilege has been suspended by the Tribal Court.

(b) Driving while license is suspended or revoked is a traffic infraction punishable by a civil penalty of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (250.00) upon the first conviction. The second conviction is a traffic infraction punishable by a civil penalty of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00).

(c) In addition to any civil penalty, the Court is authorized to order suspension or revocation of the driver’s license of any offender.

603. Careless Driving

(a) It shall be unlawful to operate any motor vehicle upon any public road in a careless or imprudent manner, without due regard for the width, grade, curves, corners, traffic, or existing weather conditions, and the use being made of such road or other attendant circumstances.

(b) Attendant circumstances shall include, but not be limited to allowing person riding in the box of a pickup truck or trailer, to sit on the edge of the box while the vehicle or trailer is moving.

(c) Careless driving shall be a traffic infraction punishable by a civil penalty of not less than one hundred dollars (\$100.00), nor more than two hundred fifty dollars (\$250.00) upon the first conviction. Second and subsequent convictions are traffic infractions punishable by a civil penalty of not less than one hundred seventy-five dollars (\$175.00) nor more than three hundred fifty dollars (\$350.00)

604. Reckless Driving

- (a) It shall be unlawful to drive any motor vehicle upon any public road within the Tribal jurisdiction in such a manner as to indicate either a wanton or willful disregard for the safety of persons or property.
- (b) Reckless driving shall be a traffic infraction punishable by a civil penalty of not less than two hundred fifty dollars (\$250.00) nor more than three hundred fifty dollars (\$350.00).

605. Driving While Intoxicated

- (a) It shall be unlawful to drive or be in actual physical control of any motor vehicle upon any private or public road within the Tribal Jurisdiction while under the influence of intoxicating liquor, or controlled dangerous substances, or any other drugs which impair the ability to control or operate a vehicle.
- (b) A person is presumed to be under the influence of intoxicating liquor if there is 0.1% or more of alcohol in the blood by weight, and a person is presumed not to be under the influence if there is less than 0.05% of alcohol in their blood, by weight. Between such percentages, results of tests showing such fact may be received in evidence, with other tests or observations, for consideration by the court or jury. A breath or blood test must be administered with the consent of the subject, by a qualified operator using a properly maintained apparatus in order to be admissible, provided that if any person refuses to take such test when requested to do so by an Officer having a reasonable suspicion that such person may be intoxicated, the person's driving privileges within the Tribal jurisdiction shall be suspended by the Court for a period of six months whether or not such person is convicted of any offense. Such suspension is mandatory
- (c) Driving while intoxicated shall be a traffic infraction punishable by a civil penalty of not less than two hundred fifty dollars (\$250.00), nor more than five hundred dollars (\$500.00). In addition, if the offender is a Tribal member or a non-member Indian, the offender may also be sentenced to imprisonment in the Tribal Jail not to exceed six (6) months, or by suspension of driving privileges for a period not to exceed two years or any combination of punishments.

606. Duties of Drivers Involved In Accidents Involving Deaths or Personal Injuries

- (a) It shall be unlawful for the driver of any motor vehicle directly involved in an accident resulting in injury to death of any person or damage to any other moving or attended vehicle to fail to immediately stop his vehicle at the scene of the accident or as close thereto as possible; or fail to return to and remain at the scene of the accident and render such aid and assistance as may be necessary in the circumstances; or fail to give his name, address



and the registration number of his motor vehicle and his operator's or chauffeur's license number and security verification information to all other drivers involved in the accident; or fail to render to any injured person such assistance as may be necessary in the circumstance; or fail to notify, or have another notify, the Tribal Police of the accident and its location as soon as possible.

- (b) Failure to perform the duties of drivers involved in accidents involving deaths or personal injuries shall be a traffic infraction punishable by a civil penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). In addition, if the offender is a Tribal member or a non-member Indian, the offender may also be sentenced to imprisonment in the Tribal Jail not to exceed six (6) months, or by suspension of driving privileges for a period of not to exceed two (2) years, or any combination of punishments.]

607. Duty upon Striking Unattended Vehicle

- (a) It shall be unlawful for the driver of any motor vehicle which collides with any unattended vehicle to fail to immediately stop and attempt to locate and notify the operator or owner of such vehicle of both the address and name of the driver and owner of the vehicle striking the unattended vehicle; or to fail to leave securely attended in place where it may be easily seen in the vehicle struck, a written notice giving the name and address of the driver and the circumstances thereof; or to fail to inform the Tribal Police of the accident and its location as soon as possible.
- (b) Failure to perform the duty of a driver upon striking an unattended vehicle shall be a traffic infraction punishable by a civil penalty of not less than one hundred dollars (\$100.00) no more than two hundred fifty dollars (\$250.00).

608. Duty Upon Striking Highway Fixtures

- (a) It shall be unlawful for the driver of any motor vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway to fail to take reasonable steps to locate and notify the owner or person in charge of such property of such fact and his name and address and of the registered number of the vehicle he is driving; or to fail to report such accident to the Tribal police as soon as possible.
- (b) Failure to perform the duty of a driver upon striking an unattended vehicle shall be a traffic infraction punishable by a civil penalty of not less than one hundred dollars (\$100.00) nor more than two hundred fifty dollars (\$250.00).

609. When Driver is Unable To Report

- (a) It shall be unlawful for another occupant in the vehicle at the time of an accident who is capable of making the report to fail to do so when the driver of the motor vehicle is physically unable to make a required accident report to the Tribal Police.
- (b) Failure to make such report shall be a traffic infraction punishable by a civil penalty not to exceed one hundred (\$100.00)

610. Driver's License in Possession

- (a) It shall be unlawful to operate a motor vehicle upon any private or public road within the Tribal Jurisdiction without possession of a valid Federal, Tribal, or State operators, license, chauffeur's license, or permit, which must be exhibited upon demand by an authorized person.
- (b) Failure to have a driver's license in possession shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

611. Permitting Unauthorized Person to Drive

- (a) It shall be unlawful to knowingly cause or permit any unauthorized person, except in emergency situations involving life and death, to operate a motor vehicle upon any public road.
- (b) Permitting an unauthorized person to drive shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars, (\$100.00)

612. Traffic Control and Signal Devices

- (a) It shall be unlawful to turn a vehicle from a direct course on a public road until such movement can be made with safety, and then only after giving an appropriate signal, either by hand or arm or by a directional signal device.
- (b) Failure to properly signal shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars, (\$100.00).
- (c) It shall be unlawful to disobey the lawful command or instruction of any law enforcement officer. Failure to obey a lawful command shall be punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

613. Following Too Closely

- (a) It shall be unlawful to follow another vehicle more closely than it is reasonable and prudent, having due regard for the speed of such vehicle and the traffic thereon and the condition of the highway.

- (b) Following too closely shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

614. Stopping for School Bus

- (a) It shall be unlawful, when meeting or overtaking from either direction any school bus which has stopped for the purpose of receiving or discharging passengers, to fail to stop immediately and not proceed again until all passengers are received or discharged and the bus is again in motion.
- (b) Failure to stop for a school bus shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

615. Entering Public Road from Private Road

- (a) It shall be unlawful for the driver of a motor vehicle about to enter or pass a public road from a private road or driveway to fail to yield the right of way to all vehicles approaching on said public road.
- (b) Failure to yield the right of way when entering a public road from a private road shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars, (\$100.00).

616. Right of Way at Intersection

- (a) It shall be unlawful for the driver of a motor vehicle approaching an intersection to fail to yield the right of way to any vehicle approaching from the right, unless otherwise directed by sign, traffic light, or a proper official directing traffic.
- (b) Failure to yield the right of way at an intersection shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

617. Failure to Stop at Stop Sign and yielding Right of Way

- (a) It shall be unlawful for the driver of a motor vehicle to fail to come to a complete stop at all intersections marked by a stop sign before entering an intersection otherwise directed by an Officer directing traffic.
- (b) It shall be unlawful for the driver of a motor vehicle approaching an intersection marked by a sign requiring him to yield the right of way to decrease the speed of such vehicle and yield the right of way to decrease the speed of such vehicle and yield the right of way to any traffic proceeding on the road given the right of way by such sign.

- (c) Failure to stop at a stop sign or yield the right of way shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

618. Driving On Right Side

- (a) It shall be unlawful to fail to drive on the right half of the roadway, except when overtaking and passing another vehicle proceeding in the same direction.
- (b) Failure to drive on the right side shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

619. Passing Oncoming Vehicle

- (a) It shall be unlawful for drivers proceeding in opposite directions to fail to pass each other to the right and to give the other at least half of the main traveled portion of the roadway.
- (b) Improper passing of oncoming vehicles shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

620. Passing and Turning on Curve or Crest

- (a) It shall be unlawful to pass a vehicle going in the same direction unless the driver can see the road for sufficient distance ahead to pass safely and such passing can be accomplished safely without colliding with oncoming traffic.
- (b) It shall be unlawful for a vehicle to be driven so as to pass or turn in any direction on a curve or crest or on any approach to a crest or on a bridge on any approach to a bridge unless such vehicle can pass or be turned safely and seen by traffic approaching in either direction .
- (c) Improper passing on a curve or crest shall be a traffic infraction punishable by a civil penalty not to exceed one hundred dollars (\$100.00).

621. Unsafe Vehicles

- (a) It shall be unlawful for any person to drive or cause to knowingly permit to be driven on any public road any motor vehicle which is in such unsafe condition so as to endanger any person or is not at all times equipped with the following:
  - (1) HEADLIGHTS: One on each side of the front of the motor vehicle, said lights to be multi-beam so that the driver can adjust lights from light to dim, and such lights must be in proper working order at all times so as to be seen by oncoming traffic

for a reasonable distance during hours of darkness or other times when light conditions require the use of headlights.

- (2) **REAR LAMPS:** One lighted red lamp on each side of the back of the motor vehicle that will plainly visible for a reasonable distance to the rear and such lamps must be in proper working order at all times.
- (3) **STOP LIGHTS:** All motor vehicles shall be equipped with a stop light in good working order at all times, such stop lights to be automatically controlled by brake adjustment.
- (4) **BRAKES:** Every motor vehicle shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle.
- (5) **HANDBRAKE:** Every motor vehicle shall be equipped with a handbrake.
- (6) **HORN:** Every motor vehicle shall be equipped with a horn in good working order.
- (7) **WINDOWS UNOBSTRUCTED- WIPERS:** No person shall drive any motor vehicle with any sign or other nontransparent material upon the windshield, side wings, side or rear windows of such vehicle that would obstruct the driver's view, other than a paper or certificate required to be so displayed by law. The windshield on every motor vehicle shall be equipped with a device for cleaning rain, snow, or other obstructions from the windshield and must be in proper working order at all times.

SECTION XXX. TITLE TO UNCLAIMED VEHICLE VESTED IN THE OGLALA SIOUX TRIBAL COURT - DISPOSAL - APPLICATION OF PROCEEDS - NOTICE TO DEPARTMENT AND OWNER.

If after six (6) months from the date of mailing notice pursuant to Section XXVIII, the vehicle remains unclaimed, the title to such vehicle shall be vested in the Oglala Sioux Tribal Court, which has removed the same and such vehicle shall be disposed of in any manner as may be provided by the responsible governing body. The proceeds of any such disposal shall first be applied to the costs incurred in removing the vehicle with the balance to be deposited to the credit of the General Fund of the Oglala Sioux Tribe.

The governing body of the Oglala Sioux Tribal Court, which has become vested with the title to any vehicle as provided herein shall, within thirty (30) days of so acquiring title, notify the Department of Public Safety thereof and shall provide the Department, on such forms as may be prescribed, all facts and information relevant thereto as it may require. Upon receipt thereof, the Department shall appropriately mark the title and registration records and notify the owner of record at his last known address of the actions taken.

SECTION XXXI. DISPOSITION OF FUNDS RECEIVED ON SALE OF VEHICLES.

After the costs of removing, storing, advertising and selling a vehicle, pursuant to Section XXVIII are deducted, the balance of the sale price shall be held for the owner of such vehicle for a period of ninety (90) days. If such proceeds are not claimed at the expiration of ninety (90) days after the sale, such proceeds shall be paid to the Treasurer of the Oglala Sioux Tribe.

SECTION XXXII. LIEN ON VEHICLE FOR COSTS OF REMOVAL AND STORAGE.

The Oglala Sioux Tribal Court, taking custody of an abandoned or wrecked vehicle under the provisions of Sections XXV to XXXI, inclusive, shall have a possessory lien thereon for the costs in taking custody and storing of said vehicle.

SECTION XXXIII. POLICE TO MOVE VEHICLE TO PLACE OF SAFETY - WHEN REQUIRED.

Any police officer is hereby authorized to remove or cause to be removed to the nearest garage or other place of safety, any vehicle found upon a highway when report has been made that such vehicle has been stolen or taken without the consent of the owner, or the person or persons in charge of such vehicle are unable to provide for its custody or removal or when the person driving or in control of such vehicle is arrested for an alleged offense for which officer is required by law to take the person arrested before the Oglala Sioux Tribal Court without unnecessary delay.

SECTION XXXIV - PART 1. SCHOOL BUS.

School bus shall mean every vehicle with a capacity of ten (10) or more pupils owned or operated by or for a school or school district, used for the purpose of transporting school children to and from school or used in connection with school activities.

**SECTION XXXIV - PART 2. FLASHING RED AND AMBER LIGHTS REQUIRED**

Any school bus with a capacity for ten (10) or more students, used to transport children to and from a public or non-public school shall be equipped on the front and rear thereof, with alternately flashing red signal lights.

**SECTION XXXIV - PART 3. USE OF RED AND AMBER LIGHTS BY SCHOOL BUS OPERATOR.**

When stopping to receive or discharge pupils, the operator of a school bus shall cause the amber caution lights to be lighted at a distance of not less than three hundred (300) feet, nor more than five hundred (500) feet from the point where said pupils are to be received or discharged from the bus. If the point of receiving or discharging pupils is:

(1) On the roadway or in a business or residential district where the speed limit is thirty-five miles per hour or more, the operation shall bring the bus to a stop, turn off the amber caution lights and turn on the red flashing signal lights; or

(2) Off the roadway or in a business or residential district where the speed limit is less than thirty-five miles per hour, the operator shall bring the bus to a stop and continue the amber caution lights.

Upon conviction of violation of this Section, punishment may be imposed in amount not to exceed five hundred dollars (\$500.00) fine, or thirty (30) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

**SECTION XXXIV - PART 4. DUTY OF MOTORISTS TO SLOW OR STOP IN OBEDIENCE TO AMBER OR RE-SIGNAL - EXCEPTION FOR SPECIFIED HIGHWAYS.**

The operator of a motor vehicle upon meeting or overtaking a school bus on which the red flashing signal lights are flashing shall bring his vehicle to a complete stop not closer than fifteen (15) feet from the school bus and shall remain stopped until flashing signal lights are extinguished.

Upon conviction of violation of this section, punishment may be imposed in an amount not to exceed five hundred dollars (\$500.00) fine or thirty (30) days in jail; or, at the discretion of the court, to both such fine and labor or imprisonment.

**SECTION XXXV. FAILURE TO STOP ON SIGNAL OR ELUDING POLICE VEHICLE AS PUBLIC OFFENSE - OFFICER IN UNIFORM - MARKING OF VEHICLE.**

Any driver of any motor vehicle who intentionally fails to refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police vehicle when given visual or audible signal to bring the vehicle to a stop, shall be guilty of a violation.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed five hundred dollars (\$500.00) fine, or six (6) months in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

**SECTION XXXVI - PART 1. DUTY OF VEHICLE OPERATOR TO STOP IN CASE OF ACCIDENT - INFORMATION GIVEN - AID TO INJURED PERSONS.**

The driver of any vehicle involved in any accident resulting in injury or death to any person or damage to property shall immediately stop and give his name and address and the name and address of the owners and license number of the vehicle he is driving to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such accident, reasonable assistance.

**SECTION XXXVI - PART 2. DUTY TO STOP AFTER ACCIDENT WITH UNATTENDED VEHICLE OR PROPERTY - LEAVING INFORMATION - REPORT TO POLICE.**

The driver of any vehicle which collides with or is involved in an accident with any vehicle or other property which is unattended resulting in any damage to such other vehicle or property shall immediately stop and shall then and there either locate and notify the operator or owner of such vehicle or other owner of his name, address and the name and address of the owner and license number of the vehicle he is driving or shall attach securely, in a conspicuous place in or on such vehicle or other property, a written notice giving his name, address and the name and address of the owner and the license number of the vehicle he is driving and shall, without unnecessary delay, notify the nearest office of a duly authorized police authority. Every such stop shall be made without obstructing traffic any more than is necessary.

**SECTION XXXVI - PART 3. HIT AND RUN ACCIDENT RESULTING IN DEATH OR INJURY.**

Any driver of any vehicle involved in an accident resulting in injury or death or any person who shall fail immediately to stop such vehicle at the scene of such accident and comply with this Section shall be guilty of an offense and the Tribal Court may revoke or limit the privilege of the driver to operate a motor vehicle on the Pine Ridge Indian Reservation, in addition to any other lawful penalties.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed five hundred dollars (\$500.00) fine or six (6) months in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

**SECTION XXXVI - PART 4. HIT AND RUN ACCIDENT RESULTING IN PROPERTY DAMAGE.**



Any driver of any vehicle involved in an accident resulting in damage to property who fails immediately to stop such vehicle at the scene of the accident and give his name and address and the name and address of the owner of the vehicle commits a crime.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed two hundred and fifty dollars (\$250.00), or thirty (30) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XXXVI - PART 5. DUTY TO GIVE IMMEDIATE NOTICE OF ACCIDENT TO PEACE OFFICERS.

The driver of any vehicle involved in an accident resulting in injuries or death to any person or property damages to an apparent extent of two hundred and fifty dollars (\$250.00) or more shall immediately by the quickest means of communication, give notice of such accident to the nearest available peace officer who has jurisdiction.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed two hundred and fifty dollars (\$250.00), or thirty (30) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XXXVI - PART 6. ACCIDENT REPORTS NOT PRIVILEGED - FEES FOR FURNISHING COPIES.

Reports pursuant to this Section and the information contained therein shall not be privileged or held confidential. The Superintendent of the Police Department shall collect two dollars (\$2.00) for each copy of a report furnished to any person by his office. All sums collected for copies of such reports shall be deposited in the police program for administrative expenses.

#### SECTION XXXVI - PART 7. DRIVER'S LICENSE REQUIRED.

Every operator of a motor vehicle shall have in his possession while operating a motor vehicle, a valid driver's license. Five (5) days or \$25.00 fine or both and cost.

Hist: Amendment Section II - Part 3 and Section XXXVI - Part 7 in Ordinance 84-03.

#### SECTION XXXVII - TRAFFIC CONTROL.

Section 1 - Traffic Controlled by "GO", "CAUTION", lights, signal at place other than intersection. Whenever traffic is controlled by traffic control signals exhibiting the words "go", "caution", or "stop", or exhibiting difference colored lights successively one at a time, or with arrows, only the colors mentioned in subsection 2 to 5, inclusive, shall be used and said terms and lights shall indicate and apply to drivers of vehicles and pedestrians as provided by subsection 2 to 5, inclusive.

In the event an official traffic control signal is erected and maintained at a place other than in intersection, the provisions of subsection 1 to 5, inclusive, shall be applicable except as to those provisions which by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking the stop shall be made at the signal.

Section 2 - Meaning of green or "go" signal - Vehicular traffic - Pedestrians. A green light alone or "go" shall indicate that:

(1) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.

(2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

Section 3 - Meaning of steady yellow light - Vehicular Traffic - Pedestrians. A steady yellow light alone shall indicate that:

(1) Vehicular traffic facing the signal are hereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

Section 4 - Meaning of Steady Red Light or "stop" signal - Vehicular Traffic - Right Turn on Red. A steady red light alone or "stop" shall indicate that:

(1) Vehicular traffic facing the signal shall stop before entering the crosswalk in the near side of the intersection or, if none, then before entering the intersection shall remain standing until green or "go" is shown alone, except as hereinafter provided.

(2) The driver of any vehicle which is stopped as close as practicable at the entrance to the far right side of the roadway, then at the entrance to the intersection in obedience to a red or "stop", signal may make a right turn but shall yield to the right-of-way to any pedestrian and other traffic proceeding as directed by the signal at the intersection. This provision permitting a right turn after a stop when facing a steady red light alone or "stop" signal shall not be effective if any local ordinance prohibits such turn and if a sign is erected at such intersection giving notice thereof.

Section 5 - Meaning of Steady Red Light with Green Arrow - Vehicular Traffic - Pedestrians. A steady red light with green arrow shall indicate that:

(1) Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall yield the right-of-way to pedestrians lawfully within a crosswalk and to other traffic lawfully using the intersection.

(2) No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic.

Section 6 - Flashing Red or Yellow Signal. Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal it shall require obedience by vehicular traffic as provided by subsection 7 and 8.

Section 7 - Meaning of Flashing Red Signal. When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

Section 8 - Meaning of Flashing Yellow Signal. When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

Section 8.1 - Lane Direction Control Signals. When lane direction control signals are placed over the individual lanes of a street or highway, vehicular traffic may travel in any lane over which a green signal is shown, but shall not enter or travel in any lane over which a red signal is shown.

Section 9 - Pedestrian Control Signals. Whenever special pedestrian control signals exhibiting the words "walk" or "don't walk" or any other signals directing stop or walk are in place such signals shall indicate as follows:

(1) Walk - Pedestrians facing such signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(2) Don't Walk - No pedestrians shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the "don't walk" signal is showing.

Section 10 - Other Traffic Control Devices - Directions by Police Officers. The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, and subject to the exceptions granted the driver of an authorized emergency vehicle.

Section 11 - Requirement that Official Signal be in Proper Position and Legible. No provisions of this chapter for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by the ordinarily observant person.

Section 12 - Traffic Light Control by Law Enforcement Officers. Nothing in this chapter shall be deemed to limit, or encroach upon, the existing authority of Oglala Sioux Public

Safety Commission law enforcement officers in the performance of their duties involving traffic light control.

Section 13 - Penalty. Any person convicted of a violation of this Ordinance shall be punishable by a Maximum penalty of ten (10) days in imprisonment in the Oglala Sioux Tribal jail or fifty dollars (\$50.00) fine or both.

Hist: Ordinance 89-17; Amended by Ordinance 89-18.

## **MOTOR VEHICLE LOAD AND WEIGHT LIMITS**

### Weight and size Limitation

Section 1057. Maximum weight of vehicle or combination of vehicles - Axles-Misdemeanor.

No motor vehicle or combination of vehicles operating on a public highway may have a weight:

(1) In excess of twenty thousand pounds on any axle, including all enforcement tolerances; or

(2) In excess of thirty-four thousand pounds on any tandem axle, including all enforcement tolerances; or

(3) In excess of the maximum weight on two or more consecutive axles as determined by the formula below. However, in no instances may the gross weight of any vehicle or combination of vehicles exceed eight thousand pounds on the tribal highway.

Two consecutive set of tandem axles may carry a gross load of thirty-four thousand pounds each provided that overall distance between the first and last axles of such consecutive set of tandem axles in thirty-six feet or more. A violation of this section is a Class 2 misdemeanor.

and

The remaining provisions of the proposed Load and Weight Limitations Code be remanded to the Oglala Sioux Tribal Council Judiciary Committee for further review.

History: Ordinance No. 95-02.

## **SAFETY BELT AND CHILD SAFETY BELT SYSTEM IN PASSENGER VEHICLES.**

SECTION 1. For the purpose of this Ordinance, a passenger vehicle is any motor vehicle with motive power designed for carrying ten or fewer passengers excluding motorcycles and trailers.

SECTION 2. Every operator and passenger of a passenger vehicle operated on a public highway on the Pine Ridge Indian Reservation shall wear a properly adjusted and fastened safety belt at all times when the vehicle is in forward motion. The driver of the passenger vehicle shall secure and cause to be secured a properly adjusted and fastened safety belt system on any passenger who is at least five years of age or forty pounds and larger, but younger than the age of majority.

Passenger vehicles manufactured with safety belts shall be in compliance with Federal Motor Vehicle Safety Standard Number 208 (49 C.F.R. 571.208) in effect January 1, 1987.

SECTION 3. The provision of Section 2 of this Ordinance do not apply to:

- (1) Any occupant of a passenger vehicle manufactured before 1966;
- (2) Any occupants of a passenger vehicle who possesses a written statement from a physician that the individual is unable for medical reasons to wear a safety belt; and
- (3) Any occupants of a vehicle not equipped with a safety belt system because Federal law does not require that vehicle to be so equipped.

SECTION 4. That any person transporting a child under five years of age or under forty pounds in weight on a public highway on the Pine Ridge Indian Reservation in a passenger vehicle shall provide for the protection of the child by properly securing the child in a child passenger safety seat system according to manufacturer's instructions. The child passenger safety seat system must meet Department of Transportation Motor Vehicle Safety Standard 213 in effect January 1, 1984. The requirements of this Section may be met when the child is at least two and under five years of age by securing the child in a safety belt.

SECTION 5. The provisions of Section 4 of this Ordinance do not apply:

- (1) If the child's personal needs are being attended to by someone other than the driver;
- (2) If all seating positions equipped with child passenger safety seat restraint systems or safety seat belts are occupied; and
- (3) In passenger cars manufactured before 1966 that have not been equipped with safety seat belts.

SECTION 6. Failure to comply with the provisions of this Ordinance does not constitute contributory negligence, comparative negligence or assumption of the risk. Failure to comply with the provisions of this Ordinance may not be introduced as evidence in any criminal litigation other than a prosecution under this Ordinance or in any civil litigation on the issue of injuries or on the issue of mitigation of damages.

SECTION 7. The Oglala Sioux Tribe office of Public Safety shall have the responsibility to enforce this Ordinance and shall accomplish enforcement as a primary action.

SECTION 8. Any person violating the provisions of this Ordinance is guilty of a petty offense punishable by a fine not to exceed \$35.00. Any violation of Section 2 or 4 of this Ordinance is not a moving traffic offense. The effective date of this Section will be exactly one year from the date on which the Ordinance was passed. During this one year (grace period), the Oglala Sioux Tribe office of Public Safety will issue warnings for violations of this Ordinance.

SECTION 9. No judgment may be issued against a person charged with violating Section 2 and Section 4 of this Ordinance, if the person produces in court within thirty (30) days of citation, proof that they have acquired a child passenger safety seat system and/or repaired or replaced the safety seat belt system.

HISTORY: Ordinance 97-04.

## MOTOR VEHICLE CODE

### SECTION I - PART 1. DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS.

No person shall drive or be in actual physical control of any motor vehicle if there is either:

1. An amount equal to .10 percent by weight of alcohol in his blood, as measured by a blood, breath test, urine test, or other reliable scientific test; or
2. Under the influence of an alcoholic beverage to such a degree that he is incapable of safe driving; or
3. Under the influence of marijuana or any controlled drug as listed in the Uniform Control Substance Act to such a degree that he is incapable of safe driving; or
4. Under the influence of a combination of any three of the above to such a degree that he is incapable of safe driving.

Any person convicted of a violation of these provisions may be sentenced to a term of labor or imprisonment not to exceed ninety (90) days, to a fine not to exceed two hundred and fifty dollars (\$250.00); or at the discretion of the court, to both such fine and labor or imprisonment. The court may also prohibit or restrict the privilege of the convicted individual to operate a motor vehicle on the Pine Ridge Reservation for a period not to exceed six (6) months.

(Compiler's note: SEE also Section I - Part 8, 9 and 10 regarding the imposition of sentences.)

### SECTION I - PART 2. CHEMICAL TEST REQUIRED.

Every person operating a motor vehicle which is involved in an accident or which is operated in violation of any provisions of this Chapter shall, at the request of a law enforcement officer, submit to a blood, breath, urine test, or any other scientific tests used to determine blood alcohol level.

Any person who refuses to take such test shall be guilty of an offense and sentenced to a term of labor or imprisonment not to exceed ninety (90) days; or to a fine not to exceed two hundred and fifty dollars (\$250.00); or at the discretion of the Court, to both such fine and labor or imprisonment. The Court may also prohibit or restrict the privilege of such individual to operate a motor vehicle on the Pine Ridge Indian Reservation for a period not to exceed six (6) months.

### SECTION I - PART 3. DRIVING WHILE UNDER SUSPENSION.

Any person who operates a vehicle in violation of a lawfully imposed prohibition or restriction, upon conviction, may be sentenced to a term of labor or imprisonment not to exceed thirty (30) days, or to a fine not to exceed one hundred dollars (\$100.00); or at the discretion of the Court, to both such fine and imprisonment or

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#### SECTION I - PART 4. CONSENT TO TEST.

Any person who operates any vehicle on this Reservation shall be deemed to have given his consent to a chemical analysis of his blood, breath or urine for the purposes of determining the amount of alcohol or other drugs in his body.

#### SECTION I - PART 5. COSTS OF TESTING.

Any person convicted of a violation of any Section in this Chapter shall be liable for the costs of any scientific or chemical tests used to determine the amount of alcohol or other drugs in his body.

In case of a conviction under this Chapter of any Section herein, the costs of the tests shall be taxed as costs against the convicted individual.

#### SECTION I - PART 6. RECKLESS DRIVING.

Any person who drives any vehicle recklessly and in disregard of the rights or safety of others or without due caution and at a speed or in a manner so as to endanger any person or property shall be guilty of reckless driving.

Any person convicted of a violation of this provision may be sentenced, at the discretion of the Court, to a term of labor or imprisonment not to exceed ninety (90) days, or to a fine not to exceed two hundred and fifty dollars (\$250.00), or to both such fine and labor or imprisonment.

#### SECTION 1 - Part 7. ARREST WITHOUT WARRANT ON PROBABLE CAUSE AFTER ACCIDENT.

A law enforcement officer of the Oglala Sioux Tribe's Public Safety Department may, without a warrant, arrest a person for a violation of Chapter 15, SECTION 1 - Part 1 when he has probable cause to believe that the person to be arrested has been involved in a traffic accident and has violated Chapter 15, SECTION 1 - Part 1 and that such violation occurred prior to or immediately following such traffic accident.

#### SECTION 1 - Part 8. PUNISHMENT FOR PROHIBITED DRIVING - FIRST OFFENSE.

If convicted for a violation of Chapter 15, SECTION 1 - Part 1 is for a first offense, such person is guilty of an offense and the defendant shall be prohibited from operating a motor vehicle upon the public highways of the Pine Ridge Indian Reservation for thirty (30) days;



provided, however, the court may in its discretion issue an order permitting such person to operate a motor vehicle for purposes of such person's employment during the hours of the day and the days of the week as set forth in such order. The court shall also fine the defendant upon conviction not less than one hundred dollars (\$100.00), plus court costs, and shall sentence the defendant to not less than thirty (30) days in jail. The court may further revoke or restrict defendant's driving privilege for a period of time which cannot exceed one (1) year.

**SECTION 1 - Part 9. PUNISHMENT FOR SECOND OFFENSE - REVOCATION OF DRIVING PRIVILEGE - JAIL SENTENCE FOR DRIVING WHILE LICENSE REVOKED.**

If conviction for a violation of Chapter 15, SECTION 1 - Part 1 is for a second offense, such person is guilty of an offense, and the court shall fine the defendant \$200.00, plus court costs, and shall sentence the defendant to not less than sixty (60) days in jail. The court shall also revoke the defendant's privilege to drive upon the public highways of the Pine Ridge Indian Reservation for six (6) months. (If such person is convicted of driving without a license during that period, he shall be sentenced to imprisonment for not less than six (6) days, which sentence may not be suspended.)

**SECTION 1 - Part 10. PUNISHMENT FOR THIRD OR SUBSEQUENT OFFENSE - PROHIBITION OF DRIVING PRIVILEGE - JAIL SENTENCE FOR DRIVING WHILE PRIVILEGE PROHIBITED.**

If conviction for a violation of Chapter 15, SECTION 1 - Part 1 is for a third offense, or subsequent offense thereafter, such person is guilty of an offense, and the defendant shall be fined five hundred dollars (\$500.00) plus court costs, and shall be imprisoned for not less than six (6) months. The defendant shall be prohibited from driving any motor vehicle for such period of time as may be determined by the court, but in no event less than one (1) year from the date of his final discharge.

**SECTION 1 - Part 11. PERIOD DURING WHICH PREVIOUS CONVICTION CONSIDERED.**

No previous conviction for, or plea of guilty to a violation of Chapter 15, SECTION 1 - Part 1 occurring more than five (5) years prior to the date of the violation being charged may be used to determine that the violation being charged is a second, third or subsequent offense.  
HISTORY: Ordinance 85-05; 86-06 and 87-18.

**SECTION II - PART 1. SPEED LIMITS.**

1. Except as provided for in subsection 2, below, the maximum speed on any highway in a business or residential district or on a school reserve shall be twenty (20) miles per hour.

2. The Oglala Sioux Tribal Council does hereby reduce the speed limit on main street in Pine Ridge Village to twenty (20) miles an hour and the speed limit in all the housing projects, reservation-wide, to ten (10) miles an hour.

3. The maximum speed under circumstances other than those defined in subsections 1 and 2 herein shall be sixty-five (65) miles per hour on those portions of Highway #18, which transect the Pine Ridge Reservation, and on all other highways upon the Pine Ridge Reservation, not covered in subsections 1, 2 or 3 herein, the speed limit shall be fifty-five (55) miles per hour.

4. Any person who drives in excess of the maximum speed, as provided in this Section, or through not driving in excess of such maximum speed drives at a speed greater than is reasonable under the conditions then existing, shall be deemed guilty of a traffic offense, and upon conviction thereof, shall be sentenced to a fine of five dollars (\$5.00) for every mile per hour over the posted limit through sixty miles per hour, ten dollars (\$10.00) for every mile per hour over seventy (70) miles per hour through seventy-nine (79) miles per hour, fifteen dollars (\$15.00) for every mile per hour over eighty (80) miles per hour, and/or to a term of labor or imprisonment not to exceed five (5) days. Speed limits will be enforced through the use of radar and/or other scientific and mechanical devices.

HISTORY: Amended by Ordinance 96-09.

5. Any person who drives in excess of the maximum speed, as provided in this section, or though not driving in excess of such maximum speed, drives at a speed greater than is reasonable under the conditions then existing, shall be deemed guilty of a traffic offense, and upon conviction thereof, shall be sentenced to a fine of one dollar (\$1.00) for every mile per hour over fifty-five (55) through seventy (70) miles per hour; two dollars (\$2.00) for every mile per hour over seventy (70) miles per hour through eighty (80) miles per hour; three dollars (\$3.00) for every mile per hour over eighty (80) miles per hour; and/or to a term of labor or imprisonment not to exceed five (5) days. Speed limits will be enforced through the use of radar and/or other scientific and mechanical devices.

Hist: Amended by Ordinance 87-12.

## SECTION II - PART 2. WHEN SPEED LIMIT NOT APPLICABLE.

The speed limitation set forth in Section II, Part 1, shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law, or of persons charged with or suspected of any violation, not to fire departments when traveling in response to a fire alarm, or to public or private ambulances when traveling in emergencies. This exemption shall not, however, protect the driver of any such vehicle from the consequences of a reckless disregard for the safety of others.

## SECTION II - PART 3. STOP AT STOP SIGN REQUIRED.

It shall be the duty of every operator of a motor vehicle to come to a full and complete stop at any intersection marked by a stop sign before proceeding through the intersection. Fine not to exceed \$40.00 and costs. It will be at the discretion of the Judge to determine the number of days in relation to the offense.

### SECTION III. LAW AND ORDER COMMITTEE AUTHORITY

The Law and Order Committee of the Oglala Sioux Tribal Council shall have authority to prescribe such forms for the issuance of citations for the violations of this Chapter as they may deemed necessary and appropriate.

### SECTION IV. RACING ON HIGHWAY FORBIDDEN

No person shall drive any vehicle in any race on a highway. Any person convicted of a violation of this provision may be sentenced by the Court to a term of labor or imprisonment not to exceed ninety (90) days, or to a fine not to exceed two hundred and fifty dollars (\$250.00);or, at the discretion of the Court, to both such fine and labor or imprisonment.

### SECTION V. RULE OF THE ROAD - USE OF RIGHT HALF OF THE HIGHWAY.

Upon all highways of sufficient width, the driver of a vehicle shall drive upon the right half of the highway, except when overtaking or passing another vehicle.

Upon conviction of violation of this Section, punishment may be imposed not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

### SECTION VI. PASSING ONCOMING VEHICLES.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving the other at least one-half of the travel portion of the roadway as nearly as possible.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, of five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

### SECTION VII. RIGHT-OF-WAY AT INTERSECTION.

When two vehicles approach or enter an intersection at approximately the same time, the driver of the vehicle at the left shall yield the right- of-way to the vehicle on the right. The driver of any vehicle traveling at an unlawful or unsafe speed shall forfeit any right-of-way that he might otherwise have.

Upon conviction of a violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and imprisonment.

#### SECTION VIII. ENTRY OF HIGHWAY FROM ALLEY OR PRIVATE ROAD.

The driver of a vehicle about to enter or cross a public highway from an alley, building, private road, or driveway shall yield the right-of-way to all vehicles approaching on such public highway.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00), or to five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment

#### SECTION IX. YIELDING RIGHT-OF-WAY TO EMERGENCY VEHICLES.

The driver of a vehicle on a highway shall yield the right-of-way to police, fire department vehicles and ambulances when the latter are operated upon official business and the drivers thereof use appropriate signal by siren, whistle, horn and/or warning lights.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed two hundred and fifty dollars (\$250.00) fine, or thirty (30) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION X. RIGHT TURNING VEHICLES.

The driver of vehicles attempting to turn to the right of an intersection shall approach the intersection in the lane of traffic nearest to the right hand side of the highway and in turning, shall keep as closely as possible to the right hand curb or edge of the highway.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XI. LEFT TURNING VEHICLES.

The driver of a vehicle intending to turn left at any intersection shall approach the intersection in the extreme left hand lane which is available to traffic moving in the direction of travel to the vehicle, and after entering the intersection, the left turn shall be made so as to leave the intersection of a lane lawfully available for traffic moving in such direction upon the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or fine (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XII. TURNING FROM WRONG LANE PROHIBITED AND TURN SIGNAL REQUIRED.

No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as defined in Sections X and XI. Signal of an intention to turn right or left when required shall be given continuously during not less than the last two hundred (200) feet traveled by the vehicle before the turn.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or to five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XIII. LEFT TURNING VEHICLES RIGHT-OF-WAY FOR OPPOSING TRAFFIC.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicles approaching from the opposite direction which is in the intersection or so close as to constitute an immediate hazard.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XIV. DOUBLE PARKING - DRIVING UPON SIDEWALK PROHIBITED.

No person shall double park on any street located in any town or village on the Pine Ridge Indian Reservation. Double parking shall mean parking behind parked vehicles or next to vehicles where parallel parking is allowed.

No person shall drive any vehicle upon a sidewalk area except upon crossing the sidewalk for entry upon a driveway.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine or five (5) days in jail; or, at the discretion of the

Hist: Ordinance 87-04.

#### SECTION XV. DUTY TO SIGNAL.

The driver of any vehicle upon a highway before starting, stopping or turning from a direct line shall first see that such movement can be made in safety and whenever the operation of any other vehicle may be affected by such movement shall give a signal plainly visible to the driver of such other vehicle on the intention to make such movement.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XVI. U-TURN PROHIBITED.

No vehicle within a no-passing zone which is marked as required by this Motor Vehicle Code shall be turned to proceed in the opposite direction, nor may any such turning movement be made unless it can be made safely and without interfering with other traffic.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XVII. PASSING OF VEHICLES.

The driver of any vehicles overtaking another vehicle proceeding in the same direction shall pass with a safe distance to the left. The driver of an overtaking vehicle shall pass in a safe distance to the side of an overtaken vehicle and shall not cut in front of the latter until safely clear of the overtaken vehicle.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XVIII. PASSING ON RIGHT.

The driver of a vehicle may overtake and pass another vehicle upon the right only in conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main traveled portion of the highway.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XIX. DRIVING TO LEFT OF CENTER.

The driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made safely.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XX. PASSING ON CURVES.

No vehicle shall be driven on the left side of the roadway when approaching or upon the crest of a grade or a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the other direction.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XXI. NO PASSING ZONE.

The driver of any vehicle shall not overtake and pass any other vehicle proceeding in the same direction when traveling in a no-passing zone on highways or bridges, whether the passing maneuver is safely completed or not.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

The Tribal Law and Order Committee is hereby authorized to determine those portions of any highway where passing of a vehicle would be hazardous and to mark such areas as a no-passing zone by the use of appropriate signs or road markings. Any currently marked as no-passing zones will remain no-passing zones without further Committee action necessary.

#### SECTION XXII. FOLLOWING TOO CLOSELY.

The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent having due regard for the speed of such vehicle and the traffic upon and condition of the highway.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XXIII. PEDESTRIANS.

The driver of any vehicle upon a highway shall yield the right-of-way to pedestrians crossing the highway.

Upon conviction of violation of this Section, punishment may be imposed in an amount not to exceed one hundred dollars (\$100.00) fine, or five (5) days in jail; or, at the discretion of the Court, to both such fine and labor or imprisonment.

#### SECTION XXIV. ABANDONED VEHICLES - VEHICLES UNATTENDED FOR MORE THAN EIGHT HOURS.

Whenever any vehicle is left unattended on any public road, highway or highway right-of-way for a longer period than eight (8) hours without notifying the Oglala Sioux Police Department, it shall be deemed to be an abandoned vehicle and subject to the provisions of Sections XXV to XXXII, inclusive.

**SECTION XXV. MODIFICATION BY TRIBAL ORDINANCE OF ABANDONED VEHICLE PROVISIONS.**

The Oglala Sioux Tribal Council may, by ordinance, modify or change any provisions of any of Sections XXIV through XXXI, inclusive, to meet its needs or to clarify the duties of its peace officers.

**SECTION XXVI. REMOVAL OF ABANDONED VEHICLES.**

Whenever any agent of the Oglala Sioux Tribal Police Department finds an abandoned vehicle, such police officer is hereby authorized to provide for the removal of such vehicle to the nearest garage or place of safety.

**SECTION XXVII. VEHICLES BLOCKING TRAFFIC - WRECKED VEHICLES.**

A vehicle found unattended upon a bridge or causeway or in any tunnel or where such vehicle constitutes an obstruction and hazard to traffic or a wrecked vehicle may be removed at any time and without regard to the eight (8) hour period provided for in Section XXIV.

**SECTION XXVIII. NOTIFICATION TO OWNER OF REMOVAL OF ABANDONED OR WRECKED VEHICLES - RECOVERY BY OWNER.**

It shall be the duty of every agent of the Oglala Sioux Tribal Police Department who has provided for the removal of an abandoned or wrecked vehicle to notify the registered owner and if encumbered, the lien holder, by certified mail of the removal and in whose custody such vehicle is entrusted and that the registered owner may recover said vehicle upon the payment of all costs incident to the removal and storage of the same.

**SECTION XXIX. SALE OF UNCLAIMED VEHICLE - PUBLICATION OF NOTICE.**

If after three (3) months from the date of mailing notice, pursuant to Section XXVIII, the vehicle remains unclaimed, such vehicle may be sold by the Oglala Sioux Tribal Court, as may be designated by its governing body at a public auction, upon notice to be published in the newspaper of general circulation in the county not less than once a week for two (2) consecutive weeks. Such notice shall contain a description of the vehicle, including year, model, serial number, color and license number, if any; a statement that the vehicle was found abandoned and the date thereof, and the place, date, and time at which such vehicle will be sold, which date shall not be sooner than one (1) week following the date of the last publication of notice.



## RULES OF COURT

### RULE 1. PROTECTION OF DEFENDANT'S RIGHTS.

Before any defendant is asked to plead to any criminal charge, the Judge before whom he appears shall do the following:

1. He shall read the charge and the language of the ordinance establishing the offense and fixing the penalty.
2. He shall explain the charge in language the defendant can understand.
3. He shall advise the defendant that he has the right to employ counsel for his defense before he pleads guilty or not guilty.
4. He shall advise the defendant that if he wishes to plead not guilty he demand a jury trial.
5. He shall advise the defendant that if he may demand removal of the case to any Federal or State Court having jurisdiction over the offense.

### RULE 2. ATTORNEYS.

Any party to any case before the Oglala Sioux Tribal Court may employ an attorney to present his case. Such attorney may or may not be a person admitted to any State or Federal Bar. An attorney shall have the right to appear before the Tribal Court upon subscribing to the following oath:

"I, the undersigned, do solemnly swear that I will support and defend the Constitutions and Law of the United States and the ordinances of the Oglala Sioux Tribe against all enemies, foreign or domestic, that I have studied and am familiar with the Code of Ordinances of the Oglala Sioux Tribe, and that I will conduct myself with honor towards those whom I represent and with respect towards the Oglala Sioux Tribal Court."

A list of persons signing the foregoing oath shall be kept by the Clerk of Court. A fee of five dollars (\$5.00) shall be paid by each person upon subscribing the foregoing oath.

An attorney may be permitted to appear in a particular case without taking the prescribed oath in the discretion of the Tribal Court.

Any attorney may be stricken from the rolls of the Tribal Court and thereafter denied the privilege of appearing before the Tribal Court permanently, or for a stated period of time, on any of the following grounds:

1. Violation of his oath.

2. False swearing.
3. The commission of a serious criminal offense.

**RULE 3. ACTION IN CASES OF CONCURRENT JURISDICTION.**

Wherever it appears that a defendant is charged with an offense under Tribal ordinances which is also an offense under State or Federal law, it shall be the duty of the Tribal Court to determine whether the appropriate State or Federal authorities will consent to exercise the jurisdiction lawfully vested in them over the said offense. In making such determination the Tribal Court may use the following form, or may rely on information obtain in any other manner:

To the United States Attorney at \_\_\_\_\_.

To the State District Attorney at \_\_\_\_\_.

(Strike out those inapplicable)

There has been duly arrested and brought before the Tribal Court of the Oglala Sioux Tribe of the Pine Ridge Indian Reservation, a defendant charged with the offense of \_\_\_\_\_ as noted in the attached criminal complaint.

Since it appears that the acts of the defendant constitute an offense under Federal or State law, as well as under the ordinances of the Oglala Sioux Tribe, I am authorized to turn the prisoner over to your custody if you are willing to accept responsibility for handling this case. Your prompt attention to this matter is respectfully requested. This action is taken pursuant to Section 1.1 of the Revised Code of the Oglala Sioux Tribe, as approved by the appropriate Federal authorities in August 4, 1947.

Hist: Res. No. 255-50.

**RULE 4. PROSECUTING ATTORNEYS AND DEFENSE ATTORNEYS.**

The Oglala Sioux Tribal Council shall appoint a Prosecuting Attorney and in the event of a suspension or a vacancy occurring therein between sessions of the Council, the Executive Committee shall appoint temporarily a Prosecuting Attorney until the next special or regular session, and the Trial Judge may appoint a Prosecuting Attorney in the absence of the duly appointed Prosecuting Attorney. The Trial Judge shall appoint a Defense Attorney if the defendant is unable to secure a Defense Attorney. The Prosecuting Attorney and the Defense Attorney shall be allowed a fee for his services in the discretion of the Trial Judge, which fee shall not be less than one dollar (\$1.00) nor more than three dollars (\$3.00) for each case. Such fee shall be assessed as a Court cost when the defendant is found guilty.

The term of office of the Prosecuting Attorney shall be two (2) years beginning at each new Administration.

Hist: Res. No. 54.51, as amended by Res. No. 55-2.

## CORONER OF THE OGLALA SIOUX TRIBE

### SECTION 1. CREATION OF POSITION OF CORONER OF OGLALA SIOUX TRIBE.

There is hereby a position of Coroner of the Oglala Sioux Tribe who shall have authority to investigate all deaths occurring on the Pine Ridge Indian Reservation as provided in this ordinance. Such person shall serve a term of five (5) years and shall be appointed by majority vote of the tribal council. All vacancies occurring shall be filled by the tribal council in the same manner. No person shall be appointed coroner unless such person:

- (a) is an enrolled member of the Oglala Sioux Tribe;
- (b) has at least a high school diploma or equivalent;
- (c) is thirty (30) years of age or older;
- (d) has never been convicted of a felony or a misdemeanor within one year previous to assuming office;
- (e) is of good moral character; and
- (f) demonstrates a knowledge of the Oglala Sioux Law and Order Code and Court procedures and has an understanding of federal law and court procedures.
- (i) Whenever possible, training will be provided on how to appropriately perform duties as Coroner.

## CORONER'S INQUEST

SECTION 2. DEATHS TO BE INVESTIGATED BY CORONER. The Coroner shall investigate any human death if a determination of the cause and manner of death is in the public interest, without limitation:

- (1) All deaths by unnatural means of, if there is a suspicion of unnatural means, including all deaths of accidental, homicidal, suicidal and undetermined manner, regardless of suspected criminal involvement in the death;
- (2) All deaths where the identity of the victim is unknown or the body is unclaimed;
- (3) All deaths of inmates of any state, county or municipality operated correctional facility, mental institution, special school, or otherwise in custody;
- (4) All deaths believed to represent a public health hazard;

(5) All discretion of the coroner, all deaths of children under two years of age resulting from an unknown cause or if the circumstances surrounding the death indicate that sudden infant death syndrome may be the cause of death; and

(6) Any case in which the death was sudden and the person was in a state of health where the death was unexpected.

**SECTION 3. JOINT CUSTODY OF DEAD BODIES AND EFFECTS - MOVEMENT PROHIBITED.** As to the death, the cause and manner of which is in the public interest, the Coroner and law enforcement agency exercising investigating control over such death shall jointly take charge of and exercise complete control over all dead bodies and all effects affixed thereto to determine the physiological cause of death. The investigating law enforcement officers shall have control over all other elements of evidence demonstrating a potential criminal circumstance of death. No dead body subject to control by the Coroner having investigative control may be moved from the scene of death without the Coroner's permission unless the body directly obstructs a public transportation right-of-way or poses an immediate health hazard. No dead body subject to Coroner control under this section may be embalmed without the express authority of the investigating Coroner.

**SECTION 4. CERTIFICATE PREPARED BY CORONER.** The Coroner shall prepare a medical certificate for all deaths over which he assumes jurisdiction.

**SECTION 5. AUTOPSY ORDERED BY CORONER.** If in the public interest, the coroner may order an autopsy on those deaths falling within his jurisdiction mentioned in subdivisions (1) to (5), inclusive, Section 2.

BE IT FURTHER ORDAINED that Dave Brewer, enrolled, qualified member of the Oglala Sioux Tribe, is hereby appointed as Coroner of the Oglala Sioux Tribe with a majority vote of the Oglala Sioux Tribe.

**HISTORY:** Ordinance 93-05.

## OGLALA SIOUX TRIBAL GRAND JURY ORDINANCE

### SECTION 1. POLICY.

It is the policy of the Oglala Sioux Tribe that all litigants in Oglala Sioux Tribal Court who may be sentenced to more than thirty days imprisonment shall have the right to grand juries selected at random from a fair cross section of those members of the Oglala Sioux Tribe who are enrolled and eligible to vote in Oglala Sioux Tribal elections. It is further the policy of the Oglala Sioux Tribe that all said described members of the Oglala Sioux Tribe shall have the opportunity to be considered for service on grand juries in the Oglala Sioux Tribal Courts of the Pine Ridge Reservation, and shall have an obligation to serve as jurors summoned for that purpose.

### SECTION 2. COMPOSITION OF JURORS.

The Oglala Sioux Grand Jury shall be comprised of one member, as described in Section 1, of each district that comprises the Pine Ridge Reservation: White Clay; Wakpamni; Lacreek; Wounded Knee; Porcupine; Medicine Root; Eagle Nest; Pass Creek; and Pine Ridge Village. Must be 25 years of age.

### SECTION 3. OGLALA SIOUX TRIBAL COURT ORDER FOR GRAND JURIES - SUMMONS OF JURORS.

The Oglala Sioux Tribal Court shall issue an order summoning a grand jury only when it appears to the judge's satisfaction that a grand jury is necessary or desirable for the investigation of public offenses. The Court shall direct that a sufficient number of legally qualified members as set forth in Section 1 be summoned to meet this requirement.

### SECTION 4. MANNER OF SELECTION OF JURORS WHO SHALL SIT AS GRAND JURY.

Within fourteen days from the receipt of the order provided for in Section 3 of this chapter, the Oglala Sioux Tribal Court's Clerk of Courts and a delegate from the Oglala Sioux Tribe's enrollment office or their substitute as designated by the court in case one of them is unable to serve shall meet at the clerk's office to select the grand jury master list. The master list shall consist of the first thirty six names drawn from the pool of members of the Oglala Sioux Tribe as described in Section 1 of this chapter. A person who serves on a grand jury shall be excused from future service for two years from the date his service ends. The clerk shall keep a record of all persons who actually serve and their term of service. The names that comprise the master list shall be drawn in rotation between the Clerk of Courts and the delegate from the Oglala Sioux Tribe's enrollment office.

### SECTION 5. NOTICE TO OFFICERS OF MEETING TO DRAW NAMES OF JURORS.

The meeting of such officers as set forth in Section 4 of this chapter shall be after notice in writing has been served upon them or their deputies, or by leaving a copy of the notice in

their respective offices if any such officer or deputy is absent from the Pine Ridge Reservation. The notice must be served by the clerk of courts and

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must state that the object of the meeting is the drawing of the names of grand jurors, and that their attendance at the office of the clerk is required at a specified time.

**SECTION 6. NOTICE TO JURORS DRAWN FOR GRAND JURY MASTER LIST - RETURN OF ACCEPTANCE OF SERVICE.**

After the grand jury master list of jurors has been drawn the clerk of courts shall mail to each juror, at least twenty days after drawing the master list, a notice that she/he has been drawn as a grand juror for the period prescribed by the Oglala Sioux Tribal Judge.

The notice shall state the place where, and the period for which, the jurors shall serve, and shall have attached thereto an acceptance of service to be signed by each juror. It shall be the duty of the jurors so served to sign the acceptance of service of the notice.

**SECTION 7. SUMMONS OF ADDITIONAL GRAND JURORS TO SUPPLY DEFICIENCIES.**

If all persons summoned as grand jurors do not appear, or if for any cause the panel of grand jurors is not complete, the court may order the chief of police to summon without delay persons having the qualifications of grand jurors, whose names appear upon the grand jury list, and if the jury list is exhausted then from other members as set forth in Section 1.

**SECTION 8. DISCHARGE OR SUSPENSION FROM EMPLOYMENT FOR JURY SERVICE AS CRIME.**

No person or employer shall discharge any employee or suspend any employee from his/her employment for serving as a grand juror. Any person or employer violating this section is guilty of a crime against the Oglala Sioux Tribe and upon conviction shall be subject to a fine of \$500.00 and 180 days in jail or both fine and sentence.

**SECTION 9. RETENTION OF EMPLOYMENT STATUS DURING GRAND JURY STATUS.**

Any employee serving as a grand juror shall retain and be entitled to the same job status, pay, and seniority as she/he had prior to performing jury duty.

**SECTION 10. FAILURE TO APPEAR FOR JURY DUTY AS CONTEMPT OF COURT.**

If any person summoned to appear as a grand juror fails, refuses, or neglects to appear, or if having appeared, fails to attend, such person shall be considered guilty of contempt of court and may be fined by the court in any sum not less than \$25.00 nor more than \$180.00 and imprisoned by the court no longer than 90 days in jail.

**SECTION 11. NEW GRAND JURY ORDERED AFTER DISCHARGE OF ORIGINAL JURY.**

If a grand jury is discharged by an allowance of a challenge to the panel, or if an offense is committed during the sitting of the court after the discharge of a grand jury, or if after such discharge a new indictment becomes requisite by reason of an arrest of judgment or by the setting aside of an indictment, or if for any other good and sufficient cause another grand jury may become necessary, a court may in its discretion order that another grand jury be summoned, and the court may to that end make an order to summon another grand jury according to the provisions of this chapter.

#### SECTION 12. CHALLENGES TO JURORS.

Either the prosecuting attorney or a defendant may challenge the array of grand jurors on the ground that a grand jury was not selected, drawn or summoned in accordance with law and may challenge an individual grand juror on the ground that the juror is not legally qualified. Challenges shall be made before the administration of the oath to the jurors and shall be tried by the Oglala Sioux Tribal Court.

#### SECTION 13. SUMMONS OF NEW JURORS AFTER CHALLENGE.

Whenever challenges to individual grand jurors are allowed, the court shall make an order to the chief of police of the Oglala Sioux Tribe's Public Safety Commission, to summon without delay, from the members of the Oglala Sioux Tribe as described in Section 1, a sufficient number of persons to complete or to form a grand jury. A grand jury formed and impaneled as to and in a particular case, after a challenge or challenges to individual grand jurors have been allowed, shall be sworn to act only in such particular case, and as to all other cases at the same term of that grand jury, the grand jury shall be formed in the usual manner.

#### SECTION 14. DISMISSAL OF INDICTMENT BECAUSE GRAND JURORS NOT QUALIFIED.

A motion to dismiss an indictment may be based on objections to the array or on the lack of legal qualifications of an individual juror, if not previously determined upon challenge.

#### SECTION 15. GRAND JURORS' PER DIEM AND MILEAGE - APPEARANCE FEE - CERTIFICATION AND PAYMENT.

Each grand juror for each day's attendance shall receive \$12 and \$.205 (20.5 cents) for each mile actually and necessarily traveled, to be paid by the Oglala Sioux Tribe. However, any grand juror called but not impaneled shall receive an appearance fee of \$12 and \$.205 (20.5 cents) for each mile actually and necessarily traveled. Such grand juror's fees shall be paid by the Oglala Sioux Tribe, upon presentation of claims which shall be issued by the clerk of courts upon filing of each grand juror's certificate of attendance, which certificate shall bear the endorsement of the clerk of courts of the Oglala Sioux Tribal Court.

#### SECTION 16. PAYMENT OF GRAND JURORS.



Any grand juror having compensation or mileage or both due and owing him/her may receive payment for it every two weeks. Such payments shall coincide with the Oglala Sioux Tribal employee's pay days.

#### SECTION 17. PERMITTING IMPROPER COMMUNICATION WITH GRAND JURY AS CRIME.

Every officer to whose charge any grand jury is committed by the Oglala Sioux Tribal Court, who negligently or intentionally permits them or any one of them:

- (1) To receive any communication from any person;
- (2) To make any communication to any person;
- (3) To obtain or receive any book or paper; or
- (4) To leave the jury room without the leave of such court first obtained;

is guilty of a crime, and upon conviction shall be fined \$120 and imprisoned for 30 days or both fine and imprisonment.

#### SECTION 18. FOREMAN AND DEPUTY FOREMAN OF GRAND JURY - POWERS AND DUTIES - CLERK OF GRAND JURY - RECORD OF PROCEEDINGS.

The court shall appoint one of the jurors to be foreman and another to be deputy foreman. The foreman shall have power to administer oaths and affirmations and shall sign all indictments. During the absence of the foreman, the deputy shall act as foreman and shall have the same powers and duties as the foreman.

The grand jury must appoint one of its members as clerk, who must preserve minutes of the proceedings and of the evidence given before it and shall keep a record of the number of the jurors concurring in the finding of every indictment, but not the votes of the individual members, and shall file the record with the clerk of court, but the record shall not be made public except on the order of the court.

#### SECTION 19. OATH ADMINISTERED TO GRAND JURORS.

The following oath must be administered to the foreman of the grand jury:

"You, as foreman of this grand jury, shall diligently inquire into, and true indictment make, of all public offenses committed or triable within the Oglala Sioux Tribal Court system, or which you shall have or can obtain evidence. You will keep your own counsel and that of your fellows, and of the Oglala Sioux Tribe, and will not, except when required in the due course of judicial proceedings, disclose the testimony of any witness examined before you, nor anything which you or any other grand juror may have said, nor the manner in which you or any other grand juror may have voted on any matter before you. You shall present no person through malice, hatred, or ill will, nor leave any unrepresented through fear, favor, or affection, or for reward or the promise or hope thereof, but in all your indictments you

shall present the truth, the whole truth and nothing but the truth, according to the best of your skill and understanding; so help you God."

The following oath must be immediately administered to the other grand jurors:

The same oath which your foreman has now taken before you on his (her) own part, you and each of you shall well and truly observe on your part; so help you God.

#### SECTION 20. CHARGE TO GRAND JURY BY COURT - COMMENCEMENT OF INQUIRIES.

After the grand jury is impaneled and sworn, it must be charged by the court. In doing so, the court shall give the members such information as it may deem proper as to the nature of their duties, and as to any charges for public offenses returned to the court or likely to come before the grand jury. The grand jury must then retire to a private room and inquire into the offenses cognizable by it.

#### SECTION 21. GENERAL POWERS OF GRAND JURY.

The grand jury has power, and it is its duty, to inquire into all public offenses committed on the Pine Ridge Reservation, and to present them to the Oglala Sioux Tribal Court by indictment. A grand jury is entitled to the examination without charge, of all public records on the Pine Ridge Reservation. The grand jury is hereby authorized to issue subpoenas to insure the appearance of all individuals subject to the jurisdiction of the Oglala Sioux Tribal Court. The grand jury shall also be authorized to issue subpoenas for the production before the grand jury of any and all records kept by both public and private entities.

#### SECTION 22. ADVICE SOUGHT FROM COURT OR PROSECUTING ATTORNEY.

The grand jury may at all reasonable times ask the advice of the court or the prosecuting attorney.

#### SECTION 23. APPEARANCE BY PROSECUTING ATTORNEYS BEFORE GRAND JURY - PRESENCE OF OTHER PERSONS - COUNSEL ADVISING WITNESSES.

Prosecuting attorneys may at all times appear before the grand jury for the purpose of giving information or advice or interrogating witnesses relative to any matter cognizable by it. Prosecuting attorneys, the witness under examination and his counsel, interpreters when needed, and for the purpose of taking the evidence when authorized by the grand jury, a stenographer or operator of a recording device may be present when the grand jury is in session, but no person other than the jurors may be present while the grand jury is deliberating or voting. The role of counsel appearing with a witness shall be limited to advising the witness. The prosecuting attorney shall not be present during the consideration of any charge against himself, except that the grand jury may summon him as a witness.

SECTION 24. TESTIMONY BEFORE GRAND JURY BY SUBJECT OF INVESTIGATION - WAIVER OF IMMUNITY.

The subject of a grand jury investigation may, at the discretion of the grand jury or prosecuting attorney, be given the opportunity to testify before the grand jury, provided he waives immunity orally on the record or in writing.

SECTION 25. NOTICE OF RIGHTS TO SUBJECT APPEARING BEFORE GRAND JURY.

Before testifying or providing other evidence at any proceeding before a grand jury impaneled before the Oglala Sioux Tribal Court, the subject of the grand jury investigation shall be given adequate and reasonable notice of:

- (1) His right to counsel as provided in Section 23 of this chapter;
- (2) His privilege against self-incrimination; and
- (3) The fact that anything he says can and will be used against him in a court of law.

SECTION 26. REMOVAL AND REPLACEMENT OF ATTORNEY FOR WITNESS APPEARING BEFORE THE GRAND JURY.

The court shall have the power to remove a witness attorney and order the witness to obtain new counsel, when it finds that the attorney has violated Section 23 of this chapter or that such removal and replacement is necessary to ensure that the activities of a grand jury are not unduly delayed or impeded. nothing in this section shall affect the power of the court to punish for the contempt or impose other appropriate sanctions.

SECTION 27. EVIDENCE HEARD BY GRAND JURY - ORDER FOR PRODUCTION OF EVIDENCE.

A grand jury is not bound to hear evidence for a defendant, but it is its duty to weigh all the evidence submitted to it. When it has reason to believe that there is other evidence, it may order such evidence to be produced, and for that purpose the grand jury may issue process for the witnesses.

SECTION 28. RESTRICTION ON DISCLOSURE OF GRAND JURY PROCEEDINGS - IMMUNITY OF JURORS - SEALING OF INDICTMENTS.

Disclosure of matters occurring before a grand jury, other than its deliberations and the vote of any juror, may be made to prosecuting attorneys for use in the performance of their duties. Otherwise a juror, attorney, witness, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when directed by the Oglala Sioux Tribal Court

preliminary to or in connection with a judicial proceedings or when permitted by the Oglala Sioux Tribal Court at the request of a defendant upon a showing that grounds may exist for a motion to dismiss an indictment because of matters occurring before a grand jury. Any juror, attorney, witness, interpreter, stenographer, operator of a recording device or any typist who transcribes recorded testimony who discloses matters occurring before the grand jury without a court order allowing him/her to disclose shall be fined \$120.00 and imprisoned for 30 days or both. A grand juror cannot be questioned for anything he/she may say or any vote he/she may give in the grand jury proceedings relative to a matter legally pending before it, except for perjury of which he/she may have been guilty in making an accusation or giving testimony to his fellow jurors. No obligation of secrecy may be imposed upon any person except in accordance with this section. A court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and in that event the clerk shall seal the indictment and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

**SECTION 29. PENALTY FOR FAILURE OF SUBPOENAED WITNESSES TO APPEAR OR FOR THEIR FAILURE TO COOPERATE WITH GRAND JURY.**

Any witness who fails to appear when subpoenaed by the grand jury or any witness who fails to cooperate with a grand jury is guilty of a crime and upon conviction may be imprisoned until the term of the grand jury who subpoenaed the witness expires.

**SECTION 30. DISCLOSURE BY PROSECUTING ATTORNEY OF EVIDENCE RECEIVED BY GRAND JURY.**

The prosecuting attorney may disclose evidence received before the grand jury or heard before the grand jury in the performance of his/her official duties.

**SECTION 31. QUORUM OF GRAND JURY - VOTES REQUIRED FOR INDICTMENT - WITNESSES NAMED ON INDICTMENT - DISMISSAL OF CHARGE ON FAILURE TO INDICT.**

A quorum of nine grand jurors must be present before any evidence or testimony may be received or any other business conducted. An indictment may be found only when there is probable cause to believe that an offense has been committed and that the defendant committed it. An indictment may be found only upon the concurrence of nine jurors. The name of only those witnesses examined before the grand jury in relation to the particular indictment shall be listed on that indictment before it is presented to the court. An indictment shall be returned by the grand jury to a judge of the Oglala Sioux Tribal Court in open court, endorsed a true bill.

If nine grand jurors do not concur in finding an indictment against a defendant who is in custody but who has not had a preliminary hearing, the complaint or information and the certified record of the proceedings before the committing magistrate transmitted to them must be returned to the court, with the endorsement thereon, signed by the foreman, that the charge is dismissed. The dismissal of the charge does not prevent its being again submitted

to a grand jury as often as a court may direct, but without such direction it cannot again be submitted.

**SECTION 32. TERM OF SERVICE OF GRAND JURY - EXCUSE AND REPLACEMENT OF JURORS.**

A grand jury shall serve until discharged by the court which convened it, but no grand jury may serve more than six months. the tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in in the latter event the court may impanel another person in place of the excused juror in the same manner as the original juror was impaneled.

Hist: Ordinance 84-11.

## ELDERLY ABUSE CODE

### SECTION 1. DEFINITIONS.

As used in this ordinance, unless the context clearly indicates otherwise:

(a) the term "abuse" means the willful infliction of physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, the willful deprivation by a caretaker of the basic necessities of life - such as but not limited to food, shelter, clothing, and medical and personal care - which are necessary to avoid physical harm, mental anguish, or mental illness, or any other type of maltreatment. However, no person shall be deemed to be abused for the sole reason they are being furnished nonmedical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment;

(b) the term "elderly" means any person who has attained the age of fifty-five (55) years:

(c) the term "caretaker" means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, receipt of payment for care as a result of a family relationship, or by an order of a court of competent jurisdiction;

(d) the term "exploitation" means the act or process of using an elderly or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement to do so;

(e) the term "physical injury" means bodily pain, harm, impairment, or disease;

(f) the term "mental anguish" means to subject an elderly to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior;

(g) the term "Oglala Sioux Elderly Protection Team" (O.S.E.P.T) shall mean that group created by this Ordinance whose objective is to protect elders from themselves and from others as the need arises.

### SECTION 2. Mandatory Arrest Provision.

(a) An officer shall arrest and take into custody persons whom the officer has probable cause to believe assaulted an elderly person with whom he/she is residing with or has formerly resided with. No warrant is required to make an arrest under this section.

NOTE: Probable cause is defined as follows: Based on the officer's observations and statements made by the parties involved and witnesses (if any) the officer using reasonable judgment believes an assault did occur and the person to be arrested committed the assault. This mandatory arrest provision means that the victim need not sign a complaint for an arrest to occur. Further, under the provisions of (a) above, an officer shall arrest under probable cause even though it may be against the expressed wishes of the victim.

(b) An officer shall arrest and take into custody a person whom the officer has probable cause to believe has violated an order for protection restraining the person or excluding the person from the residence if the existence of the order can be verified by the officer.

NOTE: Regardless whether or not the person violating the order was invited back into the home, an arrest shall be made. Thus, when the court issues such an order it should inform the excluded party that the court must formally change the order in order for him/her to return to the residence.

(c) An officer shall arrest if there was a threat with a dangerous weapon.

(d) An officer may arrest when responding to a call if the officer has probable cause to believe that the alleged assailant has within the past twenty-four hours placed the alleged victim in immediate fear of bodily harm.

(e) Whenever an officer investigates an allegation of an incident described in (a), (b), (c) or (d) above, whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to the Prosecutor. The Prosecutor shall forward copies of all written reports to the Oglala Sioux Elder Protection Team and/or to the Adult Services Worker in the Department of Social Services within 48 hours of receipt of reports of elderly abuse.

(f) The officer shall request that the jailer contact the Oglala Sioux Elder Protection Team and/or the Adult Services Worker in the Department of Social Services immediately following the booking procedure and inform them that an arrest has been made.

**SECTION 3. Role of the Court in Regard to Mandatory Arrest Provision (Section 2 above).**

(a) Anyone arrested under this ordinance shall be held until arraignment.

(b) Prior to the release of the defendant a community volunteer will talk with him/her and discuss the availability of domestic violence groups.

(c) The defendant is arraigned.

(d) If he/she enters a plea other than guilty, an advocate for the victim will assist him/her in the preparation of an order for protection temporarily excluding the other from the home and restraining the defendant from any contact with the victim. If he/she pleads guilty, a pre-sentence investigation is ordered and the victim, either personally or through the Adult Services Worker, communicates his/her concerns to the court.

(e) Sentences for a violation of this ordinance shall be a minimum of six (6) months in jail and a fine of not less than \$500.00, plus court costs.

(f) If alcohol or drugs play a part in the abuse, a chemical dependency evaluation and complete cooperation with any recommendations for treatment made will be ordered.

(g) The assailant shall be ordered to participate in the appropriate domestic violence program and must:

(1) Attend an intake session for evaluation and placement in a group for domestic violence. This will be accomplished by the Adult Services Worker of the Department of Social Services or by a member of the Oglala Sioux Elderly Protection Team or by a member of another domestic violence program not later than 10 calendar days after sentencing.

(2) Attend a minimum of 12 re-education sessions out of 14 consecutive sessions and attend a minimum of 12 counseling sessions out of 14 consecutive sessions. These sessions will begin immediately following the intake session (see (1) above). The counselor shall submit a record of attendance to the Clerk of Courts. The Clerk of Courts shall maintain a record of attendance.

(h) In cases of failure to comply the assailant may be found in contempt of court, given a jail sentence, and given a choice of completing the program or going to jail again. Failure to attend counseling, violation of an order for protection, or commission of a crime of violence during the order for protection period, will result in immediate review of the case by the court.

(i) Upon any second or subsequent offense offenders shall be sentenced to at least six months in jail not to exceed the maximum penalty the OST can apply. After serving their sentence they must complete the domestic violence counseling as described in (g) 2 above.

#### SECTION 4. **Order for Protection.**

There will exist an order for protection in cases of elderly abuse.

(a) A petition for relief under this section may be made by any family or household member on behalf of himself/herself or on behalf of minor family or household members.



(b) A petition for relief shall allege the existence of elderly abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.

(c) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

(d) The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this section.

(e) The court shall advise a petitioner of the right to file a motion and affidavit and to sue without cost and shall assist with the writing and filing of the motion and affidavit.

**SECTION 5. Hearing on Application, Notice.**

(a) Upon receipt of the petition, the court shall order a hearing, which shall be held not later than 14 days from the date of the order. Personal services shall be made upon the respondent not less than five (5) days prior to the hearing. In the event that personal services cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date.

(b) Notwithstanding the provisions of paragraph (a) above, service may be made by one week published notice provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a law enforcement official was unsuccessful and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner. Service under this paragraph is complete seven (7) days after publication. The court shall set a new hearing date if necessary to allow the respondent the five (5) day minimum notice required under paragraph (a) above.

**SECTION 6. Relief by the Court.**

Upon notice and hearing, the court may provide relief as follows:

(a) Restrain the abusing party from committing acts of elder abuse.

(b) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner.

(c) Order the abusing party to participate in treatment or counseling services.

(d) Award temporary use and possession of property and restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court.

(e) Order, at its discretion, other relief as it deems necessary for the protection of a family or household member, including order or directives to the Public Safety Division, the Oglala Sioux Tribe. Any relief granted by the order for protection shall be for a fixed period not to exceed one year, except when the court determines a longer fixed period is appropriate.

**SECTION 7. Standing Order for Protection.**

(a) Where an application under this section alleges an immediate and present danger of domestic abuse, the court may grant a standing order for protection, pending a full hearing, and granting relief as the court deems proper, including an order:

(1) restraining the abusing party from committing acts of domestic abuse;

(2) excluding any party from the dwelling they share or from the residence of the other, and from any contact with the victim except by further order of the court.

(b) A standing order for protection shall be effective for a fixed period not to exceed 14 days, except for good cause as provided under paragraph (c) below. A full hearing, as provided by this section, shall be set for not later than seven (7) days from the issuance of the temporary order. The respondent shall be served forthwith a copy of the standing order along with a copy of the petition and notice of the date set for the hearing.

(c) When services is made by published notice, as provided under Section 6 (b) above, the petitioner may apply for an extension of the period of the standing order at the same time the petitioner files the affidavit required under that section, the court may extend the standing order for an additional period not to exceed 14 days. The respondent shall be served forthwith a copy of the modified standing order along with a copy of the notice of the new date set for the hearing.

**SECTION 8. Service of Order for Protection.**

Orders are to be served personally upon the respondent by a police officer. If the respondent cannot be located the order for protection will be mailed by certified mail to the respondent's last known address.

**SECTION 9. Assistance of Public Safety in Service or Execution.**

When an order for protection is issued, upon request of the petitioner, the court shall order the police to accompany the petitioner and to assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order for protection.

**SECTION 10. Right to Apply for Relief.**

A person's right to apply for relief shall not be affected by his/her leaving the residence or household to avoid abuse.

**SECTION 11. Modification of Order for Protection.**

Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

Nothing in this ordinance shall affect the title to real estate.

**SECTION 12. Copy to Law Enforcement Agency.**

An order for protection granted pursuant to this ordinance shall be forwarded by the clerk of courts within 24 hours to the tribal police with jurisdiction over the residence of the applicant. The Public Safety Commission shall make available to each officer information as to the existence and status of any order for protection issued under this section.

**SECTION 13. Violation of an Order for Protection.**

(a) Violation of an order by a respondent who has had notice of the order for protection is an offense.

(b) A police officer shall arrest without a warrant and take into custody a person whom the police officer has probable cause to believe has violated an order for protection, if the existence of the order can be verified by the officer.

(c) A violation of an order for protection shall also constitute contempt of court and be subject to attendant penalties.

(d) In the event of violation of a protection order the mandatory arrest provision, Section 3 (b) et al. above, applies.

**SECTION 14. Reporting Abuse of Elderly; Penalty for Failure to Report.**

Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elderly shall report the abuse or suspected abuse to the O.S.E.P.T. or to a prosecutor of the Oglala Sioux Tribe immediately. Any person or caretaker who without good cause fails to report abuse or suspected abuse of elders shall be guilty of an offense and upon conviction for a violation of this section shall be sentenced to imprisonment for a minimum of 30 days in jail and to a fine of not less than \$150.00, plus court costs.

**SECTION 15. Report to Oglala Sioux Elder Protection Team or Oglala Sioux Tribal Prosecutor, and Investigation.**

Any report required to be made under this ordinance shall be made in person and orally to a member of the O.S.E.P.T. or the O.S.T. Prosecutor who shall reduce the report to writing.

Once the report is reduced to a written form, the report shall be forwarded to the O.S.E.P.T. members, who shall, together with the Oglala Sioux Tribe's Public Safety Department officers, investigate the allegations made in the report. If the allegations are found to be true the O.S.E.P.T. shall forward a copy of their report to the Oglala Sioux Tribal Prosecutor who shall take the appropriate court action. If the allegations in the report are without merit the O.S.E.P.T. shall recommend that the case be closed.

**SECTION 16. Oglala Sioux Elder Protection Team (OSEPT).**

The Oglala Sioux Tribal Council hereby creates an Oglala Sioux Elder Protection Team (O.S.E.P.T.) upon the Pine Ridge Indian Reservation which shall serve the entire Pine Ridge Indian Reservation. O.S.E.P.T.'s objective is to protect all elders from themselves if necessary and from others if need be. The services O.S.E.P.T. shall provide shall consist of evaluating the need for services and mobilization on the elder's behalf of the appropriate existing services and shall include, but shall not be limited to, arrangement for appropriate living quarters, obtaining financial benefits to which a person is entitled, securing medical services and supplies and legal services in those situations where exploitation, prevention of injury, protection of the person and their property and providing the basic necessities of life is at issue. The O.S.E.P.T. shall consist of eight (8) members: two (2) of which shall be appointed by the Oglala Sioux Tribal Council; one (1) of which shall be the Adult Services Worker from the State Department of Social Services; one (1) of which shall be a representative of the Pine Ridge Public Health Service Hospital's Human Services Program; one (1) of which shall be a representative of the Pine Ridge Bureau of Indian Affairs' Social Services Department, one (1) of which shall be a member of the Grey Eagle's Society, one (1) of which shall be member of the Foster Grandparent's Program, one (1) of which shall be another community member, who must be a lakota speaker. The representatives from the agencies other than the appointees of the Oglala Sioux Tribal Council shall be appointed by the respective agencies and programs. A quorum of the O.S.E.P.T. to conduct a meeting shall consist of three (3) members who are present and voting. All actions of the Board of Directors shall be considered official if the action is approved by a majority of the members present and voting. The O.S.E.P.T. shall have the authority to solicit and accept grants of funds from the Federal Government and for other public and any private sources for any of the purposes of this ordinance.

**SECTION 17. Immunity.**

Anyone participating in good faith in making of a report pursuant to this ordinance shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any court proceedings resulting from such report.

**SECTION 18. Contents of Report.**

**Any report required to be completed by this Ordinance shall consist of at a minimum.**

**(a) name, age and address of elder alleged to be abused.**

- (b) name and address of person with legal responsibility for the elder that is the subject of the report if it is other than the said elder;
- (c) name and address of the alleged perpetrator;
- (d) nature and extent of the abuse;
- (e) persons who might have been aware of the abuse;
- (f) date(s) and location(s) of when and where the alleged abuse occurred;
- (g) findings and recommendations if report is from O.S.E.P.T. to O.S.T. Prosecutor; and
- (h) any other pertinent information known to the person making the report.

**SECTION 19. Central Registry Confidential.**

The O.S.E.P.T. shall establish a central registry for reports of and convictions of abuse of the elder. The information in the central registry shall be confidential and may be released only to the members of the O.S.E.P.T. A court order is required before information gathered under this section shall be released to anyone except O.S.E.P.T. members. The information shall be released by the Oglala Sioux Tribal Court only after the court determines the information is necessary to prevent elderly abuse or to treat those convicted of elderly abuse. Any unauthorized release of confidential information is an offense and upon conviction the offender shall be imprisoned for no less than 90 days in jail and fined no less than \$500.00, plus court costs.

**SECTION 20. Reimbursement.**

Any person who is convicted of financial exploitation of an elderly shall be ordered by the Oglala Sioux Tribal Court to reimburse the elderly in full as a part of any plea bargain, guilty plea, finding of guilty by a judge or jury or nolo contendere plea. If the person has exploited resources other than money from the elderly, then the court shall order the exploiter to return the resources immediately or to sign the necessary documents returning the resources to the elderly.

**SECTION 21. Non-Disclosure.**

The name of any person who reports suspected abuse as defined in this Ordinance shall not be disclosed to any person unless the person who reported the abuse specifically requests such disclosure or a judicial proceeding results from such report.

**SECTION 22. Responsibilities of Public Safety.**

(a) Written reports shall be filed on every elderly abuse report received (see Section 2 (d) above.).

(b) Copies of all written reports of elder abuse shall be forwarded to the Oglala Sioux Elderly Protection Team and to the Adult Services Worker of the Department of Social Services within 48 hours of initial reports of elderly abuse.

**SECTION 23. Follow-up Assessment.**

(a) Follow-up will be done at the end of the mandated 14 week sessions, six (6) months after initial sentencing, and one year after initial sentencing.

(b) PHS Mental Health shall do the assessment and shall forward a written copy of findings to the Clerk of Courts, to the Adult Services Worker of the Department of Social Services, and to the Oglala Sioux Elder Protection Team. The Clerk of Courts shall place the assessment in the case file.

**SECTION 24. Appellate Review.**

Appellate Court shall not stay the execution of sentences under this ordinance but may review legal issues under its review powers. EXCEPTION: If the Appellate Court determines that legal grounds exist for review then and only then may it stay the execution of sentence, pending its review. The Appellate Court shall limit its review to questions of law, leaving factual questions to the court of original jurisdiction.

Any person or caretaker who abuses or knowingly allows to abuse any elderly is guilty of an offense. Any person or caretaker who is convicted for a violation of this section shall be sentenced to imprisonment for a minimum of six (6) months in jail and to a fine of not less than five hundred (\$500.00) dollars plus court costs.

Hist: Ordinance 85-16; Amended by 89-05.

The Oglala Sioux Trial Court approves of the training schedules be offered by within the next thirty (30) days concerning the ELDER ABUSE CODE by Project Medicine Wheel and the Oglala Sioux Tribal Council requires that Oglala Sioux Tribal Court Judges, Prosecutor, Assistant Prosecutor, IHS Mental Health, OST Chief of Police, OST Police Lieutenants and police officers attend said training schedules during the next thirty day period so that proper implementation of Section 99.2 ELDER ABUSE CODE can be affected. That all elderly, who are victims of physical abuse shall be examined and treated by IHS doctor, as soon as possible, after physical abuse is reported or discovered. That any and all current ordinances that are in conflict with this amended ordinance are hereby rescinded.

Amended by Ordinance No. 95-07.

# Domestic Violence Code

## Chapter I - General Provisions

Section 101 - Purpose

Section 102 - Authority of the Oglala Sioux Tribe to regulate domestic violence in It's jurisdictional territory.

Section 103 - Definitions

Section 104 - Severability Clause

Section 105 - Specific Applicability

## Chapter 2 - Criminal Penalties and Procedures

Section 201 - "Crime involving domestic violence" Defined

Section 202 - Violation of certain orders of protection is a misdemeanor

Section 203 - Penalties; enhancement of penalty for second or subsequent crime Involving domestic violence

Section 204 - Duties of law enforcement officers to victim of domestic violence; Required notice to victim.

Section 205 - Mandatory arrest for crimes involving domestic violence; determination of predominate aggressor; required report.

Section 206 - Mandatory arrest for certain violation of orders for protection.

Section 207 - Change of venue prohibited.

Section 208 - Court action for conflicts among domestic violence response agencies, entitles or personnel forbidden.

Section 209 - Officers who batter, including law enforcement officer; procedure

Section 210 - Officials who batter, including law enforcement officers; prosecution Responsibility.

Section 211 - Authority of law enforcement officer to seize weapons

Section 212 - Immunity

Section 213 - Detention

Section 214 - Condition of pre-release

Section 215 - Self-defense; Judicial safeguards for victims

Section 216 - Mandatory arrest for violation of conditions of release

Section 217 - Written procedures for prosecutions if domestic violence; purpose

Section 218 - Duty of prosecutor to notify victims

Section 219 - Record of dismissal required in court file

Section 220 - Dismissal of criminal case prohibited because civil compromise reached

Section 221 - Rights of victims of domestic violence; duty of prosecutor to inform victim of rights

Section 222 - Security and confidentiality of domestic violence programs/programs restrictions

Section 223 - Spousal privileges inapplicable in criminal proceedings involving domestic violence

Section 224 - Victim-advocate privilege applicable in cases involving domestic violence

- Section 225 - Residential confinement in home of victim prohibited; cultural remedies restricted
- Section 226 - Diversion prohibited; deferred sentencing prohibited; no contest prohibited
- Section 227 - Appearance or testimony of victim not required.
- Section 228 - Conditions of probation for perpetrator convicted of crime involving domestic violence; required reports by probation department
- Section 229 - Release of perpetrator permitted under certain conditions; Notice to victim; Confidentiality of victim's address.
- Section 230 - Required written policies and procedures; OST Department of Public Safety.
- Section 231 - Role of the Court; sentencing; probation condition.
- Section 232 - Probation violations, process for revocation, consequences
- Section 233 - Mandatory training.
- Section 234 - Juveniles
- Section 235 - Ethics; familial relationships of law enforcement, prosecution, and judges to defendant.
- Section 236 - Ethics violations; assisting domestic violence offenders; criminal prosecution penalties.
- Section 237 - Habitual domestic violence offender status
- Section 238 - Possession, use, sale or trade of firearms by person under an order for protection; misdemeanor charge; penalties.
- Section 239 - Mandatory domestic violence docket; limited continuances
- Section 240 - Denying, hindering, or delaying provision of emergency or law enforcement services to a family or household member; mandatory arrest; penalties
- Section 241 - Required Participation; information technology system
- Section 242 - Specific Applicability

Chapter 3. - Civil Orders For Protection

- Section 301 - Eligible petitioners for order
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- Section 303 - Jurisdiction; venue; residency not required to petition.
- Section 304 - Continuing duty to inform court of other proceedings; effect of other proceedings; delay of relief prohibited; omission of petitioner's address.
- Section 305 - Order for protection; modification of orders; relief available ex-parte, relief available such after hearing; duties of the court; duration of order
- Section 306 - Issuance of permanent order of protection; duration of order; expiration date required
- Section 307 - Required hearings; service; duty of court when order for protection denied.
- Section 308 - Petitioner cannot violate order for protection.
- Section 309 - Denial of relief prohibited



- Section 310 - Mutual orders for protection prohibited
- Section 311 - Court-ordered and court-referred mediation of cases involving domestic violence prohibited
- Section 312 - Court costs and fees.
- Section 313 - Court responsibilities; notification of assistance available to victims of domestic violence
- Section 314 - Enforcement of foreign orders for protection
- Section 315 - Tribal registry for orders for protection
- Section 316 - Specific Applicability

Chapter 4 - Family and Children

- Section 410 - Presumptions concerning custody
- Section 402 - Factors in determining custody and visitation
- Section 403 - Presumption concerning residence of child
- Section 404 - Change of circumstances
- Section 405 - Conditions of visitation in cases involving domestic violence
- Section 406 - Specialized visitation center for victims of domestic violence
- Section 407 - Mediation prohibited in cases involving domestic violence.
- Section 408 - Duties of juvenile court
- Section 409 - Specific applicability

Chapter 5 - Prevention and Intervention

- Section 501 - Public health plan for reducing domestic violence.
- Section 502 - Standards for health care facilities, practitioners, and personnel; specialized procedure and curricula concerning domestic violence
- Section 503 - Notice of rights for victims and remedies and services available; required information.
- Section 504 - Health care providers required to provide certain information to pregnant women and parents.
- Section 505 - Regulation of programs for intervention for perpetrators; required provision; duties of providers.
- Section 506 - Continuing education for law enforcement officers concerning domestic violence; content of course.
- Section 507 - Continuing education of judges and court personnel; prosecutors; content of course.
- Section 508 - Continuing education for tribal employees who work with domestic violence cases and are required to report abuse and neglect of children.
- Section 509 - Continuing Education for Attorneys.
- Section 510 - Required curricula for Pine Ridge Indian Reservation education system
- Section 511 - Continuing education school personnel who are required to report abuse and neglect of children
- Section 512 - Initial training; OST Domestic Violence Code provisions
- Section 513 - Specific Applicability

## Chapter 6 - Stalking

Section 601 - the stalking provision of the OST Domestic Violence Code is construed to promote the following:

Section 602 - Definitions

Section 603 - Stalking; Offense defined and penalties.

Section 604 - Location of stalking perpetrator not bar to prosecution.

Section 605 - Specific Applicability

## Chapter 7 - Firearms Disqualification

Section 701 - Purpose

Section 702 - Firearms possession, dealing or access prohibited

Section 703 - Penalties; forfeiture of firearms

## Chapter 8 - Domestic violence Advocates and Shelter

Section 801 - Protection for Advocates

Section 802 - Harassment of a Domestic Violence Advocate; misdemeanor offense

Section 803 - Harassment of a Domestic Violence Advocate; penalties.

Section 804 - Enhanced Penalty for Crime of Violence Against Domestic violence advocate.

## Chapter 9 - Domestic Violence Leave Act

Section 901 - Purpose

Section 902 - Disciplinary action for absence of employment due to domestic violence prohibited

Section 903 - Penalty for violation

Section 904 - Referral for domestic violence victim services; employee assistance referral.

Section 905 - Specific Applicability

## Chapter 1 – GENERAL PROVISIONS

### SECTION 101. Purpose

The OST Domestic violence Code is construed to promote the following:

1. That violence against family members is not in keeping with traditional Lakota values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The purpose of this code is to provide victims of domestic violence with safety and protection.

2. It is also the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Lakota values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Lakota values that hold women and children as sacred. These consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior and understand “wolakota”.
3. the prevention of future violence in all families through prevention and public education programs that promote cultural teachings and traditional Lakota values so as to nurture non-violence within Lakota families and respect for Lakota women.

SECTION 102. Authority of the Oglala Sioux Tribe to regulate domestic violence in its jurisdictional territory.

1. By treaty, the Oglala Sioux Tribe has the right to exclude non-members as well as an inherent authority to protect its political integrity and provide for the welfare of its members and others who choose to live within its territory.
2. The problem of domestic violence within the boundaries of the Oglala Lakota Nation is seriously impacting the ability of the tribe to provide for the health and well being of its tribal members and threatens the political integrity of the tribe.
3. Domestic violence is also being perpetrated by or against persons who are not members of the Oglala Sioux Tribe. These activities of non-members, will be regulated under this ordinance just as the activities of Tribal members.

SECTION 103. Definitions.

1. “Domestic Violence/abuse” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense.
  - (a) Attempting to cause or causing physical harm to another family or household member;
  - (b) Placing a family or household member in fear of physical harm; or
  - (c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.
2. “Family or household members” include:
  - (a) Adults or minors who are current or former spouses;
  - (b) Adults or minors who are dating or who have dated; Adults or minors who are engaged in or who have engaged in a sexual relationship;

- (c) Adults or minors who are engaged in or who have engaged in a sexual relationship;
  - (d) Adults or minors who are related or formerly related by marriage as recognized by western or Lakota tradition;
  - (e) Persons who have a child in common; and
  - (f) Minor children of a person in a relationship that is described in paragraphs (a) through (e) above.
3. “Domestic violence advocate” means an employee of, or volunteer for a program for victims of domestic violence and /or sexual assault who;
- (a) Has a primary function of rendering advocacy, counseling, or assistance to victims of domestic violence and or sexual assault (and their children); supervising the employees or volunteers of the program; or administering the program;
  - (b) Has undergone a minimum of 40 hours of specialized advocate training ; and
  - (c) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.
4. “Program of intervention for perpetrators” and /or “offender’s program” means a specialized program that accepts court orders and voluntary participants that;
- (a) Offers intake, orientation , and placement in a domestic violence class;
  - (b) Offers a minimum of 24 re-education classes;
  - (c) Utilizes historical/cultural information in re-educating perpetrators of domestic violence regarding responsible Lakota behavior in the family/ community/nation.
  - (d) Makes available and integrates the specialized function, knowledge and expertise of elders and medicine people.
5. Program for victims of domestic’ means a specialized program for victims of domestic violence and their children that includes but is not limited to advocacy, shelter, crisis intervention, supportive services, referral, and makes available the specialized knowledge and expertise of elders and medicine people.
6. “Safety plan” means a written or oral outline of actions to be taken by a victim of domestic violence to secure protection and support after making an assessment of the dangerousness of the situation.
7. “Domestic violence probation officer:”, for the purposes of this domestic violence code, means a duly authorized probation officer of the Cangleska, Inc. Domestic violence Probation Department, recognized and authorized to monitor and supervise persons placed on probation, parole, or supervised release for a crime of domestic violence.

8. “Public Servant” means any law enforcement officer, dispatcher, detention guard law enforcement supervisor or administrator, judge, court clerk prosecutor, court administrator, juvenile presenting officer.

#### SECTION 104. Severability Clause

If any clause, section or part of this ordinance is declared invalid by the Tribal Court, such shall not render invalid the remainder thereof, but shall be confined I its operation to the offending section.

#### SECTION 105. Specific Applicability

The provisions of the chapters herein apply specifically to this domestic violence code and takes precedence over any general laws of applicability.

### CHAPTER 2.- CRIMINAL PENALTIES AND PROCEDURES

#### SECTION 201. “C rime involving domestic violence’ defined.

Crimes involving domestic violence as defined in Section 103 are oftentimes already defined under the existing Oglala Sioux Tribal Code. The purpose of this ordinance is to clarify that domestic violence is a separate crime punishable separate and apart from the underlying crime, and to acknowledge that when the following crimes are perpetrated against a family or household member, a finding of such shall trigger the application of his ordinance. The crime of Domestic violence occurs when a family or household member; commits one or more of the following offenses against another family or household member:

- (1) Arson;
- (2) Assault Offenses (Battery, Aggravated Assault, Simple Assault, and Intimidation);
- (3) Burglary, Breaking and Entering;
- (4) Destruction of Property, Damage, Vandalism of Property
- (5) Homicide Offenses (Murder and Non-negligent Manslaughter, Negligent Manslaughter, and Justifiable Homicide)
- (6) Kidnapping, Abduction;
- (7) Sex offenses, Forcible Rape, Forcible Sodomy, Sexual Assault with an Object and Forcible Fondling);
- (8) Stolen Property offenses;
- (9) Weapon Law Violations’;
- (10) Disorderly Conduct;
- (11)Family Offenses, Non-violent (deprivation of resources, Isolation, Squandering family resources, failure to support dependent persons);

- (12) Stalking;
- (13) Trespass of Real Property;
- (14) Intoxication
- (15) Habitual or Repeat domestic Violence Offender status;  
Harassment.

SECTION 202. Violation of certain orders for protection is a misdemeanor.

Violation of one of the following orders issued in accordance with the OST Domestic violence Code is a misdemeanor, to be designated and charged as a Violation of Order of Protection:

- (1) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family household member;
- (2) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating verbally or in writing with the petitioner directly or indirectly through family members, relations by marriage, friends and co-workers;
- (3) An order removing and excluding the respondent from the residence of the petitioner;
- (4) An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named family or household member;
- (5) An order granting temporary custody and child support regarding children, denying visitation or outlining specific visitation conditions and restrictions, including supervised visitation;
- (6) An order prohibiting the respondent from using or possessing a firearm or other weapon as specified by the court and in accordance with Title 18 USC 922;
- (7) An order requiring the respondent to attend domestic violence classes; and
- (8) An order requiring the respondent to obey all laws of the Oglala Lakota Nation.

The petitioner who is grant an order for protection cannot violate or be arrested for a violation of her/his own order of protection.

Any person granted a civil or criminal order of protection from the Oglala Sioux Trial court or any other court of competent jurisdiction cannot be punished for a violation of that order for protection under this ordinance. It shall no be defense to a charge of violation by encouraging contact or violation of the order of protection.

A violation of an order for protection shall be a criminal violation punishable under tribal, state, or federal law.

SECTION 203. Penalties; enhancement of penalty for second or subsequent crime involving domestic violence.

When a defendant makes a judicial admission, pleads guilty to or has been found guilty of a crime involving domestic violence as defined by this code, or violation of an order for protection, the following minimum sentencing provisions shall apply uniformly to all offenders:

1. First Offense:
  - (a) Mandatory minimum 30 day in jail, not to exceed 60 days \$100.00 fine plus costs, with suspended imposition of sentence dependent upon mandatory successful completion of the Cangleska Inc. offender's program and two years supervised domestic violence probation, including all court-ordered and probation department administrative and rehabilitative conditions.
  - (b) Completion of any sentenced jail time shall not be construed to satisfy, excuse, or negate the requirement of mandatory successful completion of the Cangleska Inc. offender's program
2. Second Offense:
  - (a). Mandatory minimum of 90 days in jail, not to exceed 120 days, \$250.00 fine plus costs, successful completion of Cangleska Inc. offenders program and minimum three years supervised domestic violence probation, including all court-ordered and probation department rehabilitative conditions.
3. Third or subsequent offense:
  - (a) Mandatory minimum 180 days in jail, \$500.00 fine plus costs, successful completion of the Cangleska Inc. offender's program and minimum five years supervised domestic violence probation, including all court ordered and probation department rehabilitative conditions.
  - (b) Completion of any sentenced jail time shall not be construed to satisfy, excuse, or negate the requirement of mandatory successful completion of the Cangleska Inc. offender's program or domestic violence probation.
  - (c) Conviction of a third offense of domestic violence shall require that the Court designate for the record that the offender has been designated as a habitual domestic violence offender and subject to the additional provisions of Section 237 of this code.
4. Any person who makes a judicial admission, pleads guilty to or has been found guilty of a crime, or subsequent crime, of domestic violence shall be placed on probation with the Cangleska Inc. Probation Department for a term consistent with the sentencing conditions of this section. The Cangleska Inc. Probation Department shall have administrative and rehabilitative latitude to set rehabilitative standards and conditions consistent with assisting the offender to attain a non-violent, productive, and alcohol-free/drug-free life path.

5. Running of sentenced probation under this section shall be consistent with chapter 2, Section 217, of the OST Probation and Parole Act.
6. The Court may enhance the sentencing level for any domestic violence offense but shall not reduce the sentencing level below the minimum prescribed by this section. The Court shall consider all aggravating factors such as, but not limited to use of weapons, level of injury, criminal history, and history of violence, as grounds to enhance any sentence under the section.

This section shall apply to any offense committed after the enactment of this section, but any conviction of a crime of domestic violence committed before enactment of this section may be considered in determining whether the sentence should be enhanced.

SECTION 204. Duties of law enforcement officer to victim of domestic violence: required notice to victim.

1. A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and has a duty to arrest upon finding probable cause to believe that domestic violence has occurred. A law enforcement officer need not obtain a search warrant in order to enter a residence where s/he has probable cause to believe a such reasonable means include but are not limited to:

- (a) Taking any lawful action necessary to provide for the safety of the victim and nay family or household member.
- (b) Confiscating any weapon involved in the alleged domestic violence.
- (c) Transporting or obtaining transportation for the victim and any child(ren) to a shelter or any other place of safety.
- (d) Assisting the victim in removing essential personal effects.
- (e) Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility.
- (f) Giving the victim immediate and adequate notice of the rights of victims and or the remedies and services available to victims of domestic violence.
- (g) Enforcing an order of protection.

2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give, in addition to verbal notification, written notice to the adult victim substantially as follows:

“if you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection



that will provide for your immediate protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a shelter, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report at no cost from the law enforcement department.

Please be advised that the prosecutor may choose to file a criminal complaint against your assailant. You also have the right to file a petition requesting a permanent order for protection from domestic violence which could include any of the following orders:

- (a) An order enjoining your abuser from threatening to commit or committing further acts of domestic violence.
- (b) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly through family members, relation by marriage, friends and co-workers.
- (c) An order removing your abuser from the residence regardless of ownership or lessee of record;
- (d) An order directing your abuser to stay away from your or any other designated household /family member's place of residence, school, place of employment, or any other specified place frequented by you;
- (e) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court';
- (f) An order granting you possession and use of an automobile and other essential personal effects, regardless of ownership;
- (g) An order granting you custody of your child or children.
- (h) An order denying your abuser visitation;
- (i) An order specifying arrangements for visitation, including requiring supervised visitation;
- (j) An Order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payment, medical expenses, expenses for shelter, court costs, and attorney's fees.

The forms you need to obtain an order for protection are available from Cangleska Inc. advocates, any reservation legal services office, and or the clerk of court. The services of Cangleska Inc are available to assist you in obtaining information relating to domestic violence, treatment of injuries, community resources, community services, and places of safety and shelter. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done through Tribal Court.

3. The written notice:

- (a) Must not include the addresses or locations of shelters, and
- (b) Must be provided in the native language of the victim, if practicable, when the native language of victim is not English.

4. Any law enforcement officer who enforces this section in good faith shall be immune from suit by any person alleging a violation of this subsection of any other section of tribal law.

SECTION 205. Mandatory arrest for crimes involving domestic violence; determination of predominate aggressor; required report.

1. A law enforcement officer shall arrest any person, with or without a warrant, whom s/he has probable cause to believe committed any crime involving domestic violence as defined in Section 201, either in the presence of the officer or within 24 hours of a report to law enforcement of the commission either in the presence of the officer or within 24 hours of a report to law enforcement of the commission of such offense. The officer shall promptly file a report and charge the arrestee with Domestic Assault.
2. Regardless of the elements of any other crime committed in conjunction with crimes of domestic violence, the crime of Domestic Violence shall be considered a separate and distinct offense and shall be charged in addition to any other crime.
3. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, officer need not arrest the other person alleged to have committed domestic violence. In determining whether a person is the predominate aggressor, the officer shall consider:
  - (a) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
  - (b) The relative severity of the injuries inflicted on each person, i.e., who in this relationship poses the most danger to the other.
  - (c) The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
  - (d) Whether one of the persons acted in self-defense and /or in defense of other; and
  - (e) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the other person or to a third party.
4. A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party.

5. A law enforcement officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence had been committed.
6. The employment, economic, educational, social, physical and/or mental health and political status of the alleged perpetrator and /or victim shall not be considered in making an arrest.
7. The law enforcement officer is not required to make an arrest based on who hit who first but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to arrest.
8. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence, or who arrests two or more persons for a crime involving domestic violence, must submit a written report setting forth the grounds for not arresting or in instances where both parties are arrested, separate reports for each party must be submitted that describe how the determination was made that both parties acted as predominant aggressor and that neither party acted primarily in self-defense.
9. Copies of all reports shall be forwarded to Cangleska Inc. within 24 hours of reports of domestic violence, regardless of whether or not an arrest was made, arrests were made of two or more persons, or a predominate aggressor was identified and arrested.

SECTION 206. Mandatory arrest for certain violations for orders for protection.

When a law enforcement officer has probable cause to believe that a respondent has violated one of the following orders of the Court and verifies the existence of the order, the Officer shall, without a warrant, arrest the apparent violator, whether the violation was committed in or outside the presence of the Officer, if the orders are issued in accordance with OST Domestic Violence Code, or the laws of any other jurisdiction, provided such laws comply with 18 U.S.C. 2265. An Officer making an arrest under this subsection shall be immune from suit provided s/he acted in good faith. Such orders may include, but not limited to:

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or household members;
2. An order prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly through family, relations by marriage, friends, and co-workers;

3. An order removing and excluding the respondent from the residence of the petitioner;
4. An order requiring the respondent to stay away from the residence, school, place of employment or a specified place frequented regularly by the petitioner and any named family or household member;
5. An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;

The petitioner who is granted an order for protection cannot violate or be arrested for violation of her/his own order of protection.

SECTION 207. Change of venue prohibited

The Court where domestic violence charges were initially filed shall be the Court of Record, except in situations where the alleged perpetrator or alleged victim can demonstrate;

- 1 Bias on the part of the Court of Record.
- 2 Personal bias on the part of the prosecutor of the Court of Record and / or any prosecutor assigned specifically to handle domestic violence cases.
- 3 Bias on the part Inability of the Court of Record to produce an unbiased jury pool to hear the Case.

The petitioner who is granted an order for protection cannot violate or be arrested for violation of her/his own order for protection.

SECTION 208. Court action for conflicts among domestic violence response agencies, entities or personnel forbidden

The Court shall no be forum for retaliatory or malicious use or abuse of civil or criminal complaints to settle administrative or personal differences between domestic violence response system agencies, entities, or personnel. Issuance of Orders for Protection is strictly limited to victims of domestic violence, as defined by Section 201, and family or household members, as defined under Chapter1, Section 103. Attempted abuse of the Court through retaliatory or malicious use of civil or criminal process shall be actionable under this section as Criminal Contempt of Court.

SECTION 209. Officials who batter, including law enforcement officers; procedure.

Upon receiving a report or notification that a law enforcement officer is a possible perpetrator of domestic violence:

1. The dispatcher shall immediately notify the Captain and a duty supervisor or designate. The supervisor will either respond to the call or will notify the officer's supervisor.

2. Line Officers may secure the scene and ensure the safety of all parties, if necessary and await the response of a superior. However, under no circumstances will line officers be responsible for or be assigned to investigate calls regarding other officers of equal rank or superior officers.
3. Someone of higher rank than the alleged perpetrator must always be involved in responding.

Upon receiving notification that a public official is a possible perpetrator;

1. The dispatcher shall notify the on-call supervisor and criminal investigator or designate, who shall respond immediately.
2. The responding officer shall proceed with all reasonable means to secure the scene and insure the safety of all parties, if necessary, and await the response of the supervisor or criminal investigator.

Law enforcement Officers and public officials who are suspected of committing the crime of domestic violence shall be subject to all provisions of the OST Domestic Violence code, including mandatory arrest with probable cause, prohibitions against temporary release, and all laws involving firearms disqualification herein.

The provisions of this section shall no relieve the responding officer from the duty to implement mandatory arrest, should probable cause and/or immediate victim safety indicate such action.

SECTION 210, Officials who batter including law enforcement officer; prosecution responsibility.

The Oglala Sioux Tribe Attorney General shall be responsible for initiating, presenting, and prosecuting any domestic violence criminal case involving any official or law enforcement officer. Domestic Violence cases involving prominent persons or other high-profile individuals and/or circumstances shall also fall under the direct prosecution responsibility of the Attorney General. Other tribal prosecutors may assist or represent the Tribe to meet due process requirement of the Court, if the Attorney General is not available. However, ultimate responsibility for prosecuting the case shall remain with the Attorney General.

SECTION 211. Authority of law enforcement officer to seize weapons.

Incident to an arrest, or in the course of securing a crime scene involving domestic violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involving domestic violence, a law enforcement officer:
2. Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The seizure of weapons is without regard to ownership of the weapons; weapons owned by a

third party are subject to confiscation when officers conclude that the weapon was used in the commission of a crime or must be confiscated to protect law enforcement, victims of domestic violence, or others.

SECTION 212. Immunity.

1. Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any other authority granted under this section when domestic violence or any crimes involving domestic violence have been committed, if the law enforcement officer acts in good faith so as to provide protection for victims of domestic violence.
2. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

SECTION 213. Detention.

Any person detained for the crime of domestic violence and/or any related offenses is under the care and supervision of the OST Department of Public Safety Division of Corrections and subject to procedures and administrative rules which safeguard the safety of all inmates and the general public. There are certain privileges available to inmates at the discretion of corrections personnel. The purpose of this section is to provide procedures, which will establish enhanced detention safety mechanisms to safeguard victims of domestic violence from further harassment, threats, and or violence. Corrections personnel shall;

1. Prior to arraignment:
  - (a) Place all outgoing telephone calls from inmates, record the person and telephone number called in an inmate call log, and log whether or not the party called was contacted.
  - (b) Outgoing calls may be made to an attorney or family member. Telephone call to the victim are prohibited; and
  - (c) Visitation is limited to state-or tribally- licensed Attorneys, Cangleska Inc. advocates and domestic violence probation officers, mental health personnel, tribal/state department of Social Services, and chemical dependency personnel.
2. Upon booking:
  - (a) Corrections personnel shall check all available information for existing orders for protection, probation/parole/supervised release, and outstanding warrants; and
  - (b) Findings of an existing order for protection, current probation/parole/supervised release status or outstanding warrant(s) shall require detention personnel to notify Cangleska Inc. advocates

and domestic violence probation, the tribal prosecutor, and the arresting officers(s).

3. In the event of mutual arrest (both parties are arrested and booked), corrections personnel shall arrange for transport of one of the parties to an alternate detention facility.
4. Inmate statements and threats:
  - (a) During booking, any statement made by an inmate, admitting or expounding upon the incident for which s/he has been incarcerated, shall be documented in an incident report, copies of which to be provided to his/her supervisor, the tribal prosecutor, and the arresting officer;
  - (b) In the event an inmate threatens physical injury, retaliation, or makes verbal statement that indicate an intent to harm the alleged victim, hi/herself, domestic violence advocates, probation personnel, criminal justice personnel, or any reporting parties or witnesses, corrections personnel shall complete an incident report detailing the threats and /or statements. The report shall be forwarded to his/her supervisor and the tribal prosecutor.
5. Detention restrictions following conviction shall include:
  - (a) Any person convicted of, or pleading guilty to a crime of domestic violence and/or other related offenses shall not be allowed trustee status during the term of his/her incarceration;
  - (b) The inmate shall not be allowed to place telephone calls to the victim in instances where an order for protection is in place prohibiting such contact;
  - (c) Other telephone privileges shall be permitted or denied according to the policies of the division of Corrections;
  - (d) In the event an order for protection is in place and the victim seeks visitation with the inmate/respondent, corrections personnel shall advise the inmate that an order for protection prohibits such contact and that such contact is in violation of the order for protection. Should the inmate choose to make contact in violation of the order, corrections personnel are required to complete an incident report about the contact and forward the report to the tribal prosecutor and a Cangleska Inc. advocate or probation officer.
6. Inmates ordered held with no bond and no release until hearing, shall be subject to the same conditions/restrictions as those afforded under Section 213, subsection 1.

SECTION 214. Conditions of pre-trial release.

1. No person arrested for a crime of domestic violence or violation of an order for protection under this ordinance shall be released from detention until after the expiration of 72 hours from arrest, notwithstanding the ability to post a cash or surety bond or the failure of the prosecutor to file a criminal.
2. No person arrested for a crime of domestic violence or violation of an order for protection under this ordinance shall be allowed a temporary release before arraignment except for extreme medical emergency or death of an immediate family member, and provided such release does not represent an imminent danger to the perpetrator's spouse /partner, immediate family, or others.
3. Prior to arraignment, a domestic violence advocate or domestic violence probation officer shall meet I person with the alleged assailant to obtain custodial information and provide information on the availability of domestic violence re-education classes. Any meeting or informative session conducted by any court personnel, tribal probation officer, or any other person not meeting the definition of a domestic violence advocate or domestic violence probation officer, under Section 103 herein shall not be construed as meeting the condition of this subsection.
4. In making a decision concerning pretrial release of a person who is arrested for, or charged with a crime involving domestic violence or a violation of an order for protection, the court may ask for or entertain a pre-release investigative report from the Cangleska Inc. domestic violence probation department. Regardless of whether or not any such investigation report and recommendations are asked for, the court shall review the facts of arrest and detention of the person and determine whether the person:
  - (a) Is a threat to the alleged- victim or other family or household member;
  - (b) Is a threat to public safety;
  - (c) Is reasonably likely to appear in Court; and
  - (d) Past behavior while on previous pre-trial release(s).
5. The use or abuse of alcohol and /or other chemicals by the alleged perpetrator shall be considered, not only in relationship to the alleged assault but as alcohol and/or other chemicals relate to the alleged perpetrator's overall lifestyle, in the likelihood that alcohol and /or other chemicals greatly increases the likeliness or unlikeliness of a person to appear in court, potential for lethality, or enhances the possibility of further threats or injury to the victim or others.
6. The employment, economic, educational, social and political status of the alleged perpetrator shall not be considered in making a determination regarding release or process for release inconsistent with the provisions of this section.



7. Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of an order for protection, the court shall make findings on the record, if possible, concerning the determination made in accordance with subsections 1-4 a above, the Oglala Sioux Tribal Probation and Parole act, and may impose conditions of release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:
  - (a) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household member;
  - (b) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relation by marriage, friends, or co-workers;
  - (c) An order directing the person to vacate or stay away from the home of the alleged victim and/or child(ren) and to stay away from any location where the victim is likely to be;
  - (d) An order prohibiting the person from using or possessing a firearm or other weapon specified by the Court;
  - (e) An order prohibiting the person from possession or consumption of alcohol or controlled substances; and
  - (f) Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in Court.
8. If conditions of release are imposed, the Court shall:
  - (a) Issue a written order for conditional release;
  - (b) Immediately distribute a copy of the Order to the Prosecutors office, Public Safety, and Cangleska Inc. Probation Department.
  - (c) Provide Public Safety with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim; and
  - (d) Inform the person to be released that his/her release shall be monitored by a probation officer of the Cangleska Inc. Probation Department for compliance with the conditions of release and that a violation of those conditions may result in his/her arrest for non-compliance with release conditions.
9. The Clerk of Courts or on-duty detention officer shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of he conditions of release does not invalidate the conditions if the arrested or charged person has been provided other notice of the conditions.
10. If conditions of release are imposed without a Hearing, the arrested or charged person may request a prompt hearing before the Court to review the

conditions. Upon such a request, the court shall hold a prompt hearing to review the conditions.

11. When a person who is arrested for or charged with a crime involving domestic violence, or a violation of an Order of Protection, is released from custody or has escaped from custody, the on-duty detention personnel at the jail shall:
  - (a) Use all reasonable means to immediately notify the alleged victim of the release;
  - (b) Immediately notify a Cangleska Inc. advocate; and
  - (c) Delay any pending release for a period not to exceed two (2) hours to allow for notification of the alleged victim by detention personnel and/or a Cangleska Inc. advocate.
  
12. When a person who is arrested for or charged with a crime involving domestic violence or a violation of an order for protection is released from custody, or has escaped from custody, the Tribal prosecutor shall:
  - (a) Use all reasonable means to immediately notify the victim of the alleged crime of the release; and
  - (b) Furnish the victim of the alleged crime, at no cost, an official copy of any conditions of release.
  
13. The Clerk of Court shall determine the Court trial date and time prior to the defendant's release, informing the Court and defendant of such for the record and denoting the trial date and time on the defendant's release documents. The Defendant shall not be released until s/he has been advised of the trial , date and time.
  
14. The address of the victim is confidential and law enforcement and the Court are prohibited from divulging it.

#### SECTION 215. Self-defense; Judicial safeguards for victims.

In the event of a dual arrest for domestic violence, or where a female perpetrator has been arrested, the presiding judge will take judicial notice of all factors in the case, including determinants for predominate aggressor, before entertaining a guilty plea by an alleged female perpetrator. Indications of self-defense shall be sufficient reason for a judge to order a hearing to show cause before proceeding with a domestic violence charge against the alleged female perpetrator. Such procedure and hearing shall take place to determine possible self-defense, with or without concurrence of the prosecutor.

During such hearing to show cause, the presiding judge will entertain any pertinent information and/or expert testimony of domestic violence advocates pertaining to domestic violence or any other factors relating to the self –defense characteristics displayed in domestic violence cases.

#### SECTION 216. Mandatory arrest for violation of conditions of release.

If a law enforcement officer or domestic violence probation officer has probable cause to believe that a person on domestic violence probation, parole, or other supervised release has violated a condition of release imposed in accordance with Section 214 herein, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer. A domestic violence probation officer may, for reasons of dangerousness and safety, direct a law enforcement officer to take the person into physical custody on the authority of the probations officer's probable cause.

A sworn affidavit by a domestic violence probation officer, Cangleska Inc. employee or upon the report of a person to be protected under a domestic violence order of protection, of such violation will constitute probable cause to arrest without a warrant, under this section.

SECTION 217. Written procedures for prosecution of domestic violence; purpose.

Within 120 days following the enactment of the Domestic Violence Code, the Attorney General shall develop, adopt, and put into effect written procedures for the prosecution of domestic violence crimes to ensure the effective prosecution of domestic violence crimes. Such procedures shall include:

1. A mandatory "cooling off period prior to arraignment;
2. The employment, economic educational, physical and/or mental health and political status of the alleged perpetrator and victim shall not enter into determinations for domestic violence crimes;
3. A "no drop" policy which prohibits victims from withdrawing charges;
4. The prohibition of no contest, diversion, and deferred sentencing;
5. The use or abuse of alcohol by the alleged perpetrator or victim shall not be primary, factor in determining the pursuit of domestic violence cases but shall be considered as it relates to the safety of the victim and potential lethality;
6. A process describing the utilization of advocates during every phase of criminal justice proceedings;
7. Not member of the prosecution office has the authority to order the release of an alleged perpetrator prior to the procedures described in Section 214, subsection 1;
8. Prosecution shall not dismiss a domestic violence case without prior consultation and review with the arresting officer(s) and a domestic violence advocate;
9. Prosecution shall expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off the reservation for safety;
10. The victim may but shall not be required to act as the primary witness. In instances where the victim may be unavailable or it is not safe for the victim to appear, the prosecution is required to enlist any and all evidentiary avenues,

including photographs, other witnesses, excited utterance and other law enforcement testimony, medical records, history of past abuse, etc.

11. The prosecution shall make every reasonable effort and shall include advocacy in an attempt to avoid charging victims with contempt in instances where victims refuse to testify or cooperate in the criminal justice process; such efforts shall include provisions for training prosecutors to prepare cases with the expectation that the victim will not be available at trial;
12. In recognizing domestic violence as a crime and not a relationship issue, the prosecution shall not recommend or promote any actions that require the victim to engage in any type or form of a mediation process with the alleged assailant such as mediation, peace-making, alternative justice, restorative justice, family counseling, couple counseling, circle sentencing, etc.
13. Measures to expedite prosecution of and recommend enhanced penalties for, repeat offenders; and
14. Any other policies and procedures that serve as reasonable efforts to ensure the protection and safety of victims of domestic violence.

#### SECTION 218. Duty of prosecutor to notify victim

1. A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.
2. Release of a defendant from custody must not be delayed because of the requirements of subsection 1, except as provided for under Section 214 (11) © above.

#### SECTION 219 Record of dismissal required in Court file

When the Court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reasons why any witnesses are unavailable and the reasons the case cannot be prosecuted. Any dismissal of a complaint by the Court, for any reason other than insufficient evidence, may be appealed by the Tribe or the victim to the Oglala Sioux Supreme Court.

#### SECTION 220. Dismissal of criminal case prohibited because of civil compromise reached.

A Court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached. Evidence of a Civil compromise or settlement shall not be admissible in the criminal proceeding as evidence of consciousness of guilt or innocence or an admission against interest. It shall also not be used to impeach a victim's testimony.

SECTION 221. Rights of victims of domestic violence; duty of prosecutor to inform victim of rights.

1. A victim of domestic violence is entitled to all rights granted to victims of crime, including but no limited to the right to:
  - (a) Be informed of all hearing dates and continuances;
  - (b) Provide the Court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm;
  - (c) Be present at sentencing and address the court;
  - (d) Advise the Court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
  - (e) Restitution for losses sustained as a direct consequence of any criminal conduct;
  - (f) Apply for any available victims' compensation and to be informed of procedures for applying; and
  - (g) Receive notice from the prosecutor in accordance with Section 218.
2. The prosecutor shall notify any victim of domestic violence of his/her rights set forth in this section, in writing. For notice to be meaningful, it should be actual, timely and written in a language in which the victim is competent.

SECTION 222. Security and confidentiality of domestic violence shelters/programs; Restrictions.

1. The security and confidentiality of any domestic violence shelter/programs within the exterior boundaries of the Oglala Lakota Nation shall be recognized by the Court, Law enforcement, and other service agencies as existing for the safety of victims of domestic violence. Advocates and shelter staff will not substantiate, verify, or deny placement information or the whereabouts of any domestic violence victim, or his/her children, as afforded under the Victim – Advocate Privilege Act.
2. Law enforcement Officers and /or criminal investigators will contact the domestic violence shelter program with any message for individual victims concerning investigations or victim in formation Law enforcement Officers will not attempt coercion, duress, or intimidation of shelter staff or advocates to gain access to the shelter or information on the whereabouts of any victim. Any such attempt will be considered a violation of the Victim-Advocate

Privilege Act, and any information gained from such an attempt will not be admissible in any Tribal Court proceeding.

3. No judge or officer of the OST Court will issue or initiate any search warrant, pick-up Order, Summons, Bench Warrant or any notice of Court proceedings specifying the domestic violence shelter program as the individual's residence and/or location. Nor shall the shelter or domestic violence program be named as a party in any Court action involving individual victims that may or may not be receiving advocacy services from the domestic violence shelter program, in accordance with the Victim-Advocate Privilege Act.
4. While the domestic violence shelter/program may not be named as party to any individual's Court proceeding, an individual may give permission for a domestic violence shelter/program advocate obtain Court paperwork on his/her behalf. Such action shall no be construed by the Court or Law enforcement to mean that the domestic violence shelter/program is a party to any Court proceedings, civil and/or criminal.

SECTION 223. Spousal privileges inapplicable in criminal proceedings involving domestic violence.

The following evidentiary privileges do no apply in any criminal proceeding in which a spouse or other family or household member is the victim of alleged crime involving domestic violence perpetrated by the other spouse;

1. The privilege of confidential communication between spouses.
2. The testimonial privilege of spouses.

SECTION 224. Victim-advocate privilege applicable in cases involving domestic violence.

1. Except as otherwise provided in subsection 2, and in compliance with the Victim –Advocate Privilege Act, a victim of domestic violence may refuse to disclose, and may prevent an advocate, elder or medicine person from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim unless the privilege is waived by:
  - (a) The victim; or
  - (b) The death of the victim.
2. The privilege does not relieve a person from any duty imposed in the mandatory reporting of child abuse or neglect. A person may not claim the privilege when providing evidence in proceedings concerning child abuse or neglect.

3. As used in this subsection, “advocate” means an employee of or volunteer for a program for victims of domestic violence who:
  - (a) Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;
  - (b) Has undergone minimum of 40 hours of specialized domestic violence advocacy training; and
  - (c) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

SECTION 225. Residential confinement in home of victim prohibited; cultural remedies restricted.

SECTION 226. Diversion prohibited; deferred sentencing prohibited; no contest prohibited.

SECTION 227. Appearance or testimony of victim not required.

No judge or prosecutor shall require a victim of domestic violence or related offense addressed by this code to appear or testify as a condition of proceeding with the prosecution of any offense included in this domestic violence code.

SECTION 228. Conditions of Probation for perpetrator convicted of crime involving domestic violence; required reports by probation department.

1. Before placing a perpetrator who is convicted of a crime involving domestic violence on probation, the court shall first consider safety and protection of the victim of domestic violence.
2. The Court may condition the granting of probation to a perpetrator in compliance with one or more orders of the Court, including but not limited to:
  - (a) Mandatory probation/parole conditions as specified under Chapter 2, Section 205, of the Probation and Parole Act;
  - (b) Enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim or other family or household member;
  - (c) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly through family, relations by marriage, friends, or co-workers;
  - (d) Requiring the perpetrator to stay away from the residence, school, place of employment, or a specified place frequented regularly by the victim and any designated family or household member;
  - (e) Prohibiting the perpetrator from possessing or consuming alcohol or controlled substances;

- (f) Prohibiting the perpetrator from possessing a firearm or other specified weapon.
  - (g) Directing the perpetrator to surrender any weapons owned or possessed by the perpetrator;
  - (h) Directing the perpetrator to participate in and complete, to the satisfaction of the Court a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment or any other program or service deemed applicable by the domestic violence program or domestic violence probation officer;
  - (i) Directing the perpetrator to pay restitution to the victim;
  - (j) Directing the perpetrator to refrain from any violations of law for the duration of his/her probation, and
  - (k) Imposing any other condition necessary to protect the victim of domestic violence and any designated family or household member, or rehabilitate the perpetrator.
3. The Court shall utilize the procedures and definitions of Section 211 of the Probation and Parole Act to process and enforce substantiated documentation of non-compliance with probation conditions. The Court shall consider non-compliance with any probation conditions to be a matter of contempt of court and subject to summary penalties. The Court may entertain additional charges from the Tribal prosecutor for Disobedience to the Lawful Order of the Court, which shall be separate and in addition to non-compliance criminal contempt.
  4. The Court shall order, as a condition of sentencing, that the convicted perpetrator be placed under supervised Probation with Changleska Inc. domestic violence probation department for a period consistent with Section 203 of this code.
  5. The Cangleska, Inc. Probation department shall document and report to the OST Court any violations of law, any assault by the perpetrator, any threat of harm made by the perpetrator, and the perpetrator's failure to comply with any condition imposed by the Court or Probation department, regardless of where the violation occurred or under what jurisdiction any subsequent crime was adjudicated, in accordance with the Probation and Parole Act. Such a violation shall be deemed as constituting non-compliance with probation conditions.

SECTION 229. Release of perpetrator permitted under certain conditions; notice to victim; confidentiality of victims' address.

1. The Court may release a perpetrator of a crime involving domestic violence only under conditions that would protect the safety of a victim of domestic violence or other family or household member.



2. The jailer shall notify a Cangleska Inc. advocate, who shall notify the victim of a crime of domestic violence, of the proposed release of the perpetrator before the date and /or time of release of the perpetrator, if the victim has provided Cangleska Inc. staff with an address at which s/he can be notified.
3. The address of a victim of a crime involving domestic violence is confidential. Law enforcement, criminal justice personnel, probation and advocates shall not reveal any address provided pursuant to subsection 2. Law enforcement, criminal justice personnel, probation and advocates shall be subject to any internal policies or procedures that address breach of confidentiality and may also be subject to prosecution under provisions of the Victim-Advocate Privilege Act.

**SECTION 230. Required written policies and procedures; OST Department of Public Safety.**

Within 120 days of the enactment of the Domestic Violence Code, Public Safety shall develop or adopt and put into effect written policies and procedures concerning:

1. The effective response of the Agency to cases involving domestic violence.
2. Enforcement of all applicable OST statutes concerning domestic violence.
3. Protection and safety of the victims of domestic violence and other family and household members.
4. The method of process for sanctions against officers or officials who fail to follow or enforce official protocols.
5. The protocol for responding to domestic violence crimes perpetrated by law enforcement officers and law enforcement officials.
6. The protocol for response to sexual assault arising from domestic violence.
7. Coordination with hospitals and programs for victims of domestic violence.

**SECTION 231. Role of the Court; sentencing; probation conditions.**

In responding to the crime of domestic violence the Court shall:

1. Establish a specialized Court docket to expedite trials of domestic violence criminal cases as prescribed under Section 239. The Specialized docket shall provide that domestic violence Case trials be scheduled and conducted within 60 day calendar days of arraignment and initial appearance. Any sentencing hearing must be held no later than five court day after conviction;
2. Advise the offender that s/he is prohibited from substituting other services or activities, such as individual counseling, alcohol treatment or participation in traditional healing practices, for participation in the offender's program as defined in Section 103, except for as such activities may be offered through the domestic violence offender's program requirements;

3. In the event the offender does not comply with the domestic violence program and/or other conditions of probation, the Court shall find the offender in contempt of Court and shall impose service of the original sentence, plus an additional one-half of incarceration time, during which time the offender must concurrently attend the domestic violence program. Further, the Court will order that any additional charges of Disobedience to Lawful Order of the Court. However, any subsequent charge of sentencing and /or probation/parole supervised release conditions;
4. Upon conviction of any second or subsequent offense, the offender shall be sentenced according to the mandatory provisions of Section 203. As provided under the Probation and Parole Act, probation will commence at the time of the second conviction; prior or current probation time will not be considered as fulfilling any second or subsequent probationary period and/or any sentencing, fine, rehabilitation and community service conditions imposed by the Court;
5. The Court will advise the defendant when and where she will report to the Cangleska Inc. domestic violence probation department for intake and rehabilitative assessment;
6. Not require that the victim be available to the court for any sentencing or court imposed requirements in relation to the offender's sentence for the crime of domestic violence, although the Court may advise the victim of services available in the community through direct contact, the prosecutor or domestic violence probation department and advocates;
7. Acknowledge that any person placed on probation for a domestic violence crime shall be subject to random or specific drug testing, to be implemented and monitored by the Cangleska Inc. Probation Department. While on probation a perpetrator shall be subject to unannounced portable breath or intoxilyzer tests to determine whether the probationer has been consuming alcoholic beverages. Such drug testing shall be implemented and monitored as per procedures of the OST Probation and Parole Act.
8. Provide that any domestic violence offender found to be in non-compliance will serve his/her full original sentence, plus one-half, but shall be subject to all rehabilitation efforts available to any offender on probation. The Cangleska Inc probation officer shall petition the Court, outlining the rehabilitation placement. The offender shall be returned and shall complete any remaining sentence upon completion of the rehabilitation activity.
9. Advise offender's on domestic violence probation that probation time will not run during the duration of any rehabilitative activity or treatment in excess of thirty (30) days, and no reduction of sentenced jail time shall accrue or be exchangeable for conditional release time allowed under subsection 8, above.

SECTION 232. Probation violations, process for revocation, consequences.

1. The Court shall recognize the signed affidavit of the Cangleska Inc., probation department and accompanying documentation outlining any violation of probation conditions as probable cause for warrantless arrest or issuance of a warrant for the perpetrator's arrest, as per authority granted under the OST Probation and Parole Act.
2. Upon a warrantless arrest for a probation violation, the person on probation will be held without a bond or eligibility for temporary release, pending Court appearance for contempt. In addition to an affidavit and documents of non-compliance, the Cangleska Inc. probation department shall submit a probation investigation report and make recommendations to the Court regarding further sentencing for the probation violation before the Court appearance on the non-compliance. Upon review of the affidavit, accompanying documentation and recommendations, the Court shall make a judicial determination that a violation of probation has or has not occurred, and enact a finding of contempt of Court for non-compliance, if indicated. Upon such finding, the Court shall re-impose any suspended sentence, plus on half of any such jail sentence, and the probationer shall be required to concurrently attend domestic violence classes. The Court may impose any additional conditions and consider the appropriacy of additional charges for disobedience to a Lawful Order of the Court. Further charges shall be served consecutively.
3. If the Court has issued a Bench Warrant based upon an affidavit and supporting evidence of non-compliance with probation conditions, issuance of the Bench Warrant shall constitute a judicial determination that a violation of probation has occurred. After the execution and arrest under such a Bench Warrant, the person on probation will be held without bond, or eligibility for temporary release, pending Court appearance for contempt. At the Court appearance, the Court shall re-impose any suspended sentence, plus one-half of any such jail sentence, and the probationer shall be required to concurrently attend domestic violence classes. The Court may impose any additional conditions and consider the appropriacy of additional charges for disobedience to a lawful order of the Court. Further charges shall be served consecutively.
4. The economic, employment, educational, social and political status of any person on probation shall not be considered in this process or in any consideration of further sentencing.
5. The jail shall notify the Cangleska Inc., domestic violence probation department of any person on probation who is arrested for any crime.

6. In the event the person who is charged with a subsequent offense of domestic violence and/or any other charge, the Cangleska Inc., probation department shall file an affidavit, accompanying documents, and recommendations to the Court to address a violation of mandatory conditions and subsequent violation of probation. A violation of probation that occurs concurrently with other charges shall follow the same process as outlined in subsection 2 and shall not preclude the prosecution from filing additional charges.
7. The Department of Public Safety shall expedite service of bench warrants for non-compliance to ensure the safety of the victim and community.
8. The booking charge under this section shall be Probation Violation

**SECTION 233. Mandatory training; Department of Public Safety and BIA or Tribal Criminal Investigators.**

1. All employees and officials of the OST Department of Public Safety and the OST criminal justice system, including any BIA or Tribal criminal investigators who's responsibility is to investigate felony and misdemeanor crimes occurring on the Pine Ridge Indian Reservation, shall participate in a mandatory minimum of one semester hour equivalent (40 hours) of initial training, to include but not be limited to:
  - (a) The specific provisions of the OST Domestic Violence Code
  - (b) The dynamics of domestic violence, the impact of victimization, offender's re-education programs, and coordinated systems response in order to facilitate the implementation of this ordinance; in addition, law enforcement training shall include the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, evidence gathering, and report writing.
  - (c) Cangleska Inc., shall be responsible for coordinating the training curriculum.
  - (d) Failure to participate in the mandatory training shall result in disciplinary action, with a minimum of a written reprimand placed in his/her personnel file and future monitoring to ensure attendance at training.
  - (e) Failure to participate by a subordinate officer or employee shall result in consideration of disciplinary action against his/her immediate supervisor.
2. Sixteen (16) hours of mandatory annual re-fresher training shall be required of all personnel covered by this section, such training to be coordinated with Cangleska Inc.
3. All new employee of the OST Department of Public Safety, the OST criminal justice system, and/or any new or recently detailed BIA or Tribal criminal

investigators shall be required to complete the initial training outlined in subsection 1 within six (6) months of their hire or reassignment date.

SECTION 234. Juveniles.

Any juvenile committing domestic violence as defined in Section 103 shall be subject to prosecution and all other conditions outlined under the OST Domestic Violence Code. Any such proceeding shall be closed and any imposition of days shall be served in the Juvenile Detention Center. Juvenile Domestic violence offenses or case files shall not be made available or considered for the purposes of determining habitual domestic violence offender status under Section 237 of this Code.

SECTION 235. Ethics; familial relationships of law enforcement, prosecution, and judges to defendant.

All public servants shall be expected to perform their duties and proceed in accordance with this Code no matter what the employment, educational, social and political status of the alleged perpetrator and /or victim. Public servants shall be held to the highest professional standards in responding to the crime of domestic violence, including instances involving a relative by blood or marriage, or involving close personal acquaintance and association. Failure to adhere to professional and legal standards shall subject such public servant to any administrative, civil, and/or criminal sanctions available under the domestic violence Code.

1. In instances where a law enforcement officer responds to a call involving a relative by blood or marriage, or involving close personal acquaintance and association, the officer shall:
  - (a) Note the relationship on the case report; and
  - (b) Prioritize the safety of the alleged victim and adhere to mandatory arrest provisions upon a determination of probable cause.
2. In instances where a law enforcement officer responds to a call involving a relative by blood or marriage, or involving close personal acquaintance and association, the supervisor of the officer reviewing the report shall:
  - (a) Review the report for accuracy and ensure that appropriate action has been taken; and
  - (b) Take appropriate measures to immediately correct inappropriate action and provide for constructive counseling and disciplinary action where necessary.
3. In instances where a law enforcement supervisor has a conflict of interest, because an incident involves a relative by blood or marriage, or involving a person of close personal acquaintance and association, the supervisor shall:

- (a) Adhere to all professional and legal standards when supervising or reviewing the actions of his/her subordinate; and
  - (b) Delegate or relinquish supervisory authority in instances where any semblance of impropriety or alleged differential treatment may become an issue.
- 4. A law enforcement officer or law enforcement supervisor who fails to respond within the appropriate legal and procedural parameters of this section, when a relative by blood marriage, or person of close personal acquaintance and association, is suspected of committing the crime of domestic violence, shall be subject to disciplinary action as prescribed in OST Department of Public Safety Policies and procedures and possible criminal action under Section 236. of this Code.
- 5. In instances where prosecutors or judges are involved in making decisions when the alleged perpetrator of a domestic violence crime is a relative by blood or marriage, or a person of close personal acquaintance and association, the prosecutor and/or judge shall:
  - (a) Recuse him/herself from prosecuting or hearing the case whenever possible;
  - (b) In the event that circumstances do not allow withdrawal from prosecuting or hearing the case, the prosecuting Attorney and/or judge shall be required to maintain the highest professional standards and shall conduct themselves within the legal parameters of the Domestic Violence Code and Judicial Code of Ethics
- 6. In instances where other public servants, including but not limited to court clerks, juvenile presenting officers, and probation officers, are involved processing any case where the alleged perpetrator of a domestic violence crime is a relative by blood or marriage, or a person of close personal acquaintance and association, the prosecutor and /or judge.
  - (a) Make every effort to remove him/herself from any direct involvement in the case, including the handling of case files and reports; and
  - (b) When involvement is necessary and unavoidable, adhere to all professional and legal standards of conduct according to the Domestic Violence and Judicial Code of Ethics.
- 7. Any perceived improprieties, nepotism, favoritism, or differential treatment shall be referred to the Attorney General 's Office for investigation and possible disciplinary, civil or criminal action under Section 236. of this chapter.

SECTION 236. Ethics violations; assisting domestic violence offenders; criminal prosecution; penalties.

The Attorney General shall review any reported violations of ethics, as described under Section 235. to determine if such violation was deliberate and involved the willful and knowing utilization of collusion, favoritism, nepotism, deception, coercion, theft, or the destruction, secreting or altering of records to circumvent any of the provisions of this Domestic Violence Code. If such a determination is made:

1. Any public servant, as defined by Section 103 herein, who willfully and knowingly utilizes collusion, favoritism, nepotism, deception, coercion, or the destruction, secreting, or altering of records to assist an offender in circumventing the provisions of the Domestic Violence Code shall be liable for prosecution for a misdemeanor crime of Assisting Domestic Violence Offenders;
2. Any person making a judicial admission or pleading guilty to, or found guilty of a violation of this section shall be subject to a minimum 30 days in jail and \$500.00 fine, and costs.
3. Prosecution under this section shall not negate any cause of civil remedy available to any victims of domestic violence who's safety was placed in jeopardy by the action of such public servant.
4. The Attorney General shall have exclusive responsibility for the investigation, charging, and prosecution of any violation of this section; and
5. Prosecution under this section does not negate or relieve any individual supervisor or agency from responsibility for taking any administrative action or initiating any sanction under Chapter 1, Section 2.7 Judicial Code of Ethics, of the OST Law and Order Code, or agency or departmental policies and procedures.

SECTION 237. Habitual domestic violence offender status.

Any person convicted or having pled guilty to three or more offenses of Spouse Abuse (Section 99.2), domestic violence, or related offenses under this Domestic Violence Code shall be judicially designated to a Habitual Domestic Violence Offender, such designation to be displayed on the outside of and made a part of any subsequent criminal case file arising from any violation of the OST Criminal Code. The Court shall further provide that:

1. Judicial notice of such status shall be taken regarding sentencing for any further violations of the OST Criminal Code, including subsequent violation of the domestic violence code;
2. A current and updated registry be maintained for information on habitual domestic violations offenders, with inclusion of the registry in any tribal criminal information database and provision to make the information available upon inquiry from any Court, law enforcement, or domestic violence advocacy agency;

3. Consecutive sentencing be implemented for any further violations of the OST Criminal Code, including subsequent violations of the Domestic Violence Code; and
4. Any person judicially designated as a Habitual Domestic violence Offender shall be subject to extended rehabilitative efforts, including but not limited to extended sentencing to the Cangleska Inc. offender's program, extended domestic violence probation, and increased monitoring efforts as outlined and recommended to the Court.
5. Any person judicially designated as a habitual domestic violence offender under this section shall be subject to the permanent or extended prohibition against possessing, using, selling, trading or access to any firearm or ammunition.

Qualifying cases for determining habitual offender status shall be any domestic violence offense charged after December 31, 1998.

SECTION 238. Possession, use, sale, or trade of firearms by person under an order for protection; misdemeanor charge; penalties.

Any person who, while under an order for protection issued under the provisions of this Code, or Court Order made under Section 237 above, is convicted of possessing, using, selling, trading, or having immediate access to any firearm or ammunition, in violation of Section 202 of this Chapter, shall be subject to prosecution for the specific offense of Domestic Violence Firearms Violation, such conviction to carry a minimum penalty of 60 days confinement in jail, \$250.00 fine or both such confinement and fine and costs.

SECTION 239. Mandatory domestic violence docket; limited continuances.

The OST Court shall expedite the hearing of Domestic violence criminal cases on its docket with domestic violence cases being scheduled no later than three (3) weeks following initial arraignment Tuesdays and Thursdays shall be designated by the Court to hear domestic violence criminal cases, with only domestic violence cases scheduled for Court on those days. The Court administrator shall have the authority to designate Wednesdays as needed, to schedule any backlogged domestic violence cases.

Clerks shall not schedule more than one such case per hour (seven per Court day), cases to start at 9:00 a.m. Clerk shall expedite all paperwork to ensure the timely service of subpoenas and appearance of witnesses.

Judges shall limit continuances and grant continuances only after a proper Motion has been filed with sufficient grounds stated for the record. Only one such continuance shall be allowed per defendant, and only under one of the following grounds:



1. Lack of legal counsel
2. Serious illness with a doctor's statement submitted with a Motion is filed
3. Death or serious illness of an immediate family member.
4. Pending Motion for Change of Venue, if file two day prior to the scheduled Court date.
5. Incarceration in another Tribal, State, municipal or federal correctional facility.

Employment issues, lack of transportation, or forgetfulness shall not be considered valid grounds for a continuance. No telephone, verbal, or third person requests for continuance shall be accepted by the Court.

Section 240. Denying, hindering, or delaying provision of emergency or law enforcement services to a family or household member, mandatory arrest; penalties.

It shall be a misdemeanor offense of Hindering Emergency Services for:

1. Any person to use force, fear, or intimidation against a family or household member to prevent that family or household member from contacting law enforcement services, emergency medical services, or the 911 reporting system to secure appropriate law enforcement or emergency services assistance on behalf of him-/herself or another; and
2. Any person to destroy, disable, conceal, or remove from the immediate premises any telephone or other telecommunications devices, or any motor vehicle or other means of transportation, with the intent to deny, hinder, delay, or prevent any family or household member from attempting to secure law enforcement or emergency services in a timely and expedient manner.
3. Any person who is convicted of, or pleads guilty to, subsection 1 or 2 shall be subject to a minimum confinement of 30 days in jail, \$250.00 fine or both such confinement and fine, plus mandatory restitution for repairs to any damaged property or vehicle, plus costs.

SECTION 241. Required participation; information technology system.

To increase the responsiveness of the Oglala Sioux Tribe to the crime of domestic violence and to provide specialized monitoring of domestic violence offenders and enhance services to victims of domestic violence, as well as for all other crime, all tribal criminal justice agencies, including the Oglala Sioux Tribal Court and OST Department of Public Safety, and victim services agencies for domestic violence, shall be required to actively participate in any domestic violence tracking and/or criminal information system or technology which:

1. Has as its primary purpose the coordination and collection of domestic violence offender information, order for protection, criminal justice response records and documents, and law enforcement reports and documentation;

2. Provides for controlled and secure access by responding agencies to domestic violence;
3. Interfaces with any habitual domestic violence offender and/or order for protection registry implemented under the domestic violence code;
4. Provides for the gathering and dissemination of detailed statistical information reports on offenders, victim services, and agency response.
5. Adheres to strict policies and procedures to enhance and provide for victim confidentiality and safety, and offender accountability.

SECTION 242. Specific Applicability.

The provisions of this chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.

CHAPTER 3. – CIVIL ORDERS FOR PROTECTION

SECTION 310. Eligible Petitioners for Order.

1. A person who is or has been a victim of domestic violence may file a petition for an Order for Protection against any person who has threatened or has committed an act of Domestic Violence as defined in Section 201, and is a family or household member as defined in Section 103 of this code.
2. A parent, guardian, or other representative may file a petition for an Order for Protection on behalf of a child or family or household member, or former household member on behalf of a child against a family or household or former household member, who commits an act of domestic violence.
3. Issuance of an Order of Protection must arise from a situation of Domestic Violence as defined by Section 201 of this Code.
4. A person who is an employee of an agency or department engaged in conflict with another agency or department shall not be allowed to file for an order of protection against the individual employee or agency she is in conflict with. Neither shall an agency or department be allowed to file for an Order for Protection against another Agency or department or against an individual employed by the Agency or department because of personal or professional differences.

SECTION 302. Uniform form required for Petitions and Orders; required statement I Petitions and Orders; Duty of Clerk to provide petitions and clerical assistance; no fee for filing.

1. The Oglala Sioux Tribal Court System shall:
  - (a) Develop and adopt uniform forms for Petitions and Orders, including but not limited to such Orders issued pursuant to Divorce, Custody, Protection and other domestic relations hearing;
  - (b) Provide that the title of any form or order developed under this section, whether an emergency, emergency ex-parte, or permanent Order for Protection, shall include the words “Order for Protection”;
  - (c) Provide that all Petitions and forms developed and implemented under this section address and include all requirements for compliance with full faith and credit provisions of the Violence Against Women Act, 18, U.S.C. 2265; and
  - (d) Provide the forms to the Clerks of Court authorized to issue such Orders, Legal Services Agencies, Victim Service agencies and Advocacy agencies.
2. In addition to any other required information, the Petition for an Order for Protection must contain a statement listing all current or pending Civil or Criminal actions involving one or both parties.
3. The following statements must be printed in Bold-faced type and/or in capital letters on the Order for Protection.
  - (a) “Consequences for violation of this Order for Protection include...”,
  - (b) “ If so ordered by the Court, the respondent is forbidden to enter or stay at the Petitioner’s residence, even if invited to do so by the Petitioner or any other person. In no event is the Order for Protection voided by an such invitation or contact initiated by the Plaintiff.”
  - (c) “Any person is subject to an Order for Protection shall not possess, own buy, sell trade, or have immediate access to any firearm or ammunition, in violation of Section 206 of the OST Domestic violence Code and Title 18, united States Code, section 922 (g) (8). Violation of firearms restrictions shall result in prosecution under the Tribal and/or Federal law.”
4. The Clerk of Court or Cangleska Inc. personnel shall provide to a person requesting an order for protection:
  - (a) The form adopted pursuant to subsection 1;
  - (b) All other forms required for an order for protection, including but not limited to, forms for service and forms required by Uniform Child Custody Jurisdiction Act; and
  - (c) Clerical assistance in filling out the forms and filing the petition.

5. Except as otherwise provided in section 305, a Petition for an Order for Protection must be in writing, verified, and subscribed to in the manner provided by Tribal Law.
6. All Orders for protection must be issued on the form adopted in accordance with subsection 1.
7. There shall be no filing fees for any civil action arising from a situation of domestic violence

SECTION 304. Jurisdiction; Venue; Residency not required to petition.

1. The Oglala Sioux Tribal Court has jurisdiction over any petition for Orders for Protection under the Code when the Petitioner or Respondent is domiciled or found within the boundaries of the Oglala Lakota Nation or any act of domestic violence occurred within the boundaries of the Oglala Lakota Nation or when the Court is being asked to recognize and enforce a valid Order of another Court of competent jurisdiction. The Court shall construe this section liberally to exercise maximum jurisdiction.
2. All Court proceedings in reference to the Order for Protection shall be carried out where the original Order for Protection was filed unless the alleged perpetrator can prove such conditions as cited in Section 207. Motions for a change of venue must be filed within five days of notice to the perpetrator. Relationship by blood or marriage are not sole cause for a change of venue. Any motion for change of venue shall be heard by the original Court of Record.
3. There is no minimum requirement of residency to Petition for or be granted an Order of Protection.

SECTION 304. Continuing duty to inform Court of other proceedings; Effect of other proceedings; Delay of relief prohibited; Omission of Petitioner's address.

1. At any hearing in a proceeding to obtain an Order for Protection, each party has an continuing duty to inform the Court of each proceeding for an Order for protection, any Civil litigation, each proceeding in family or juvenile Court, and each criminal case involving the parties, including the case name, the file number, and the Tribe, County, and/or State, including Federal proceedings, if that information is known by the party.
2. An Order for Protection is in addition to an not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking relief because of the existence of a pending action between the parties.

3. A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner must provide the Court a mailing address or in the event the petitioner is utilizing advocacy services, the name of an advocate that has the knowledge to be able to contact the Petitioner. If disclosure of the Petitioner's address is necessary to determine jurisdiction or consider venue, the Court may Order the disclosure to be made:
  - (a) After receiving the Petitioner's consent;
  - (b) Orally and in chambers, out of the presence of the respondent and a sealed record be made; or
  - (c) After a hearing, if the Court takes into consideration the safety of the Petitioner and finds such disclosure is in the interest of justice.

SECTION 305. Order for Protection; Modification of Orders; Relief available ex-parte; relief available after hearing; Duties of the Court; Duration of Order.

1. If it appears from a Petition for an Order for Protection to modify an Order for Protection, that domestic violence had occurred or modification of an Order for Protection is required, the OST Court may:
  - (a) Without notice or Hearing, immediately issue an Order for Protection ex-parte or modify an Order for Protection ex-parte as it deems necessary to protect the Petitioner; or
  - (b) Upon Notice, issue an Order for Protection or modify an Order after a hearing whether or not the Respondent appears;
2. A Court may grant the following relief without Notice and hearing in an Order for Protection or a modification issued ex-parte, and the Court may grant the following relief in a permanent Order for Protection or a modification of a Permanent Order for Protection.
  - (a) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the Petitioner and any designated family or household member;
  - (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or other communicating with the Petitioner directly or indirectly through friends, relative, or co-workers;
  - (c) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence or lessee of record.
  - (d) Order the respondent from the residence of the Petitioner, regardless of ownership of the residence or lessee of record;
  - (e) Seize and prohibit the Respondent from using or possessing a firearm or other weapon specified by the Court;
  - (f) Order possession of the parties' residence and use of or ownership of any vehicle and other essential personal effect, regardless of the ownership

and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is the

3. The Court may grant the following relief in an Order for Protection or a Modification of an Order after Notice and hearing, whether or not the Respondent appears;
  - (a) Enjoin the respondent from threatening to commit or committing acts of domestic violence against the Petitioner and any designated family or household member.
  - (b) Prohibit the respondent from harassing, annoying, telephoning, contacting, or other communicating with the petitioner directly or indirectly through friends, relatives or co-workers;
  - (c) Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence or lessee of record.
  - (d) Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
  - (e) Seize and prohibit the respondent from using or possessing a firearm or other weapon specified by the Court;
  - (f) Order possession of the parties' residence and use of ownership of any vehicle and other essential personal effect, regardless of the ownership, and direct the appropriate law enforcement officer to accompany the Petitioner to the residence of the parties to ensure that the Petitioner is safely restored to possession of the residence, vehicle, and other personal effects, or to supervise the Petitioners or respondent's removal of personal belongings.
  - (g) Prohibit the destruction, liquidation or disposal of any and all joint assets or property and any and all specific assets or property of the petitioner;
  - (h) Grant temporary custody of any minor children to the petitioner, including custody to any petitioner currently residing in a shelter or safe home; and
  - (i) Order such other relief as it deems necessary to provide for the safety and welfare of the petitioner and any designated family or household member.
  
4. The court may grant the following relief in an Order for Protection or Modification of an Order after Notice and Hearing, whether or not the Respondent appears;
  - (a) Grant the relief available in accordance with subsection 2;
  - (b) Specify arrangements for visitation of any minor child by the respondent and require supervision of that visitation by an independent third party or deny visitation if necessary to protect the safety of the Petitioner and/or child;
  - (c) In specifying visitation arrangements, the Court shall consider the Respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use;

- (d) Order the Respondent to pay any special legal fees.
- (e) Order the respondent to:

- (1) Pay rent or make payment on a mortgage on the Petitioner's residence and pay for the support of the Petitioner and minor child if the Respondents is found to have a duty to support the Petitioner or minor child.
- (2) Reimburse the petitioner or other person for any expenses associated with the domestic violence incident including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property; and
- (3) Pay any costs and fees incurred by the Petitioner in bringing the action:

5. The Court shall:

- (a) Cause the Order to be delivered to Public Safety or other appropriate person or Agency for service;
- (b) Make reasonable efforts to ensure that the Order for Protection is understood by the Petitioner, and the Respondent, if present;
- (c) Transmit, by the end of the next business day after the order is issued, a copy of the Order for protection to the local law enforcement agency or agencies designated by the petitioner; and
- (d) Transmit a copy of the Order to the appropriate entity for placement in the Tribal registry.

6. An Order for Protection issued ex-parte or upon Notice and hearing, or a modification of an Order for protection issued ex-parte or upon Notice and Hearing, is effective until further Order of the Court. If an ex-parte Order is entered, a Hearing shall be scheduled within 14 days to allow the Respondent to respond to the petition. It shall be noted in bold or capital letters on the ex-parte Order.

7. The OST Department of Public Safety, through the captain of patrol, shall provide expedited service for Orders for Protection.

**SECTION 306. Issuance of Permanent Orders for Protection; duration of Order; expiration date required.**

Any permanent Order for Protection issued under this chapter upon Notice and opportunity to appear shall be issued for a period of not less than three (3) years. In the discretion of the Court, a permanent Order for protection may be issued for a longer period of time, up to the projected lifespan of the Petitioner. For the purpose of Full Faith & Credit compliance and enforcement, all such extended Orders must include an expiration date, whether figured by actual length of the Order or from projected lifespan of the Petitioner.

SECTION 307. Required hearings; service; duty of Court when Order for Protection is denied.

1. Except as otherwise provided in subsection 2, if a Court issues an Order for Protection ex-parte or a modification of the Order for Protection ex-parte and the Court provides relief pursuant to subsection 2 of section 305, the Court shall set a date for a permanent Order for Protection hearing regarding the ex-parte Order for Protection within 14 days. If personal service cannot be completed, the Court shall notify the respondent by mail, at the last and best known address of the respondent and/ or petitioner, of the date and time of the hearing or permanent Order for Protection.

2. Upon approval of an ex-parte Order, the Civil Clerk shall set a hearing date scheduled for within 14 days and immediately serve the Petitioner regardless of the involvement or lack of involvement of an advocate.

3. If applicable, the respondent shall be served upon arraignment on any related charge(s). The civil Clerk of Courts shall be responsible for forwarding a copy of the ex-parte Order to the jail for service before the respondent's release on any related charge(s).

4. In the event that service is not successful, the Judge shall ask the petitioner, under oath at the Hearing for the Permanent for Protection if s/he believes the respondent is avoiding service by concealment or otherwise, and does not know the respondents' whereabouts or current residence. If the petitioner so states, the judge shall direct the civil clerk of Courts to set another hearing date within 14 days and to initiate service by mail t the last and best known address if the respondent. Any ex-parte Order shall remain in effect per provision of Section 305, subsection 5, above.

5. At a Second hearing for a permanent Order for Protection and in the event the respondent again does not appear, irregardless of service, the judge shall issue a permanent order for Protection, if warranted, and grant relief as the Court deems appropriate.

6. At a second hearing for a permanent Order for protection and having made reasonable efforts to contact the respondent, and in the event the Petitioner requests or the Court provides relief in accordance with paragraph (h), subsection 2, of Section 305, concerning custody of a minor child or the Petitioner requests relief pursuant to paragraph (b), (c), or (d) of subsection 3 of Section 305, such a hearing determining the above cited relief must be



given precedence over all matters including older matters of the same character and involving the same petitioner and respondent.

7. In a hearing held pursuant to subsection 1 or 2 of this section:
  - (a) Relief in accordance with section 305 is available; and
  - (b) If the petitioner seeks further relief concerning an issue not outline by the ex-parte Order for protection, the Court may grant the relief or continue the hearing, or the petitioner may be granted a continuance to allow time to file a Petition for modification of the Order.
  
8. Whether or not the respondent has been arrested or charged with domestic violence, the judge shall Order the respondent to participate in the Cangleska Inc.'s domestic violence offender's program. Further, should the Court determine that an assault has occurred or the threat of assault has occurred, the judge shall notify a tribal prosecutor for follow-up and possible investigation.
  - (a) The Cangleska Inc., domestic violence offender's program shall be responsible for initiating a civil contempt action should the respondent fail to comply with court-ordered participation as outlined in this subsection.
  - (b) Completion, or partial completion, of the Cangleska Inc. offender's program, as ordered under this section, shall not be substituted to meet any subsequent or existing sentencing condition imposed under any other section of this code.
  
9. The Department of Public Safety shall expedite service of permanent orders for protection. If the respondent is not able to be served in person after 30 days, the Department of Public Safety shall notify the Civil Clerk of courts and the permanent order for protection shall be mailed to the last and best known address of the respondent.
  
10. Any person against whom a permanent Order for protection is granted under subsection 5 above may petition the Court for reconsideration of the Order for protection upon a showing, by clear and convincing evidence, that the

respondent did not willingly and knowingly evade service and that there is a meritorious defense to the action. Upon such a showing, the Court may grant another ex-parte Order to protect the petitioner and immediately schedule a hearing within 14 days. The respondent shall be served with a copy of the ex-parte Order at the same time the respondent's petition is granted.

11. If the Court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the Court shall inform the petitioner in person or by mail, of his or her continuing right to request a hearing upon notice to the respondent. The Court must state in the court record why the request was denied.

SECTION 308. Petitioner cannot violate Order of Protection.

If the respondent is excluded from the residence of or ordered to stay away from the petitioner, an invitation by the petitioner to the respondent, and any acceptance of that invitation by the petitioner to the respondent, and any acceptance of that invitation, does not waive or nullify an Order for Protection. Further, the petitioner cannot be considered by such invitation as having violated, or be subject to arrest for a violation of, his/her own ex-parte or permanent order of protection

SECTION 309. Denial of relief prohibited.

The continuing safety of the petitioner shall be the primary factor of consideration for petitions for relief under this chapter. The Court is prohibited from:

1. Denying a petitioner relief requested pursuant to Sections 305 or 306 solely because of a lapse of time between an act of domestic violence and the filing of the petition; or
2. Denying a petitioner relief requested pursuant to Sections 305 or 306 because of ex-parte contentions, gossip, or allegations made by the respondent or his family and disparaging of the character or lifestyle of the plaintiff.

SECTION 310. Mutual Orders for Protection prohibited.

A Court shall not grant a mutual Order for protection, ex-parte or permanent, to opposing parties.

SECTION 311. Court-ordered and Court –referred mediation of cases involving domestic violence prohibited.

A Court shall not order parties into mediation or any type of counseling, alternative justice, restorative justice, peace making, circle sentencing, traditional Lakota ceremonies, or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent, even if the petitioner has the right to refuse to participate, for resolution of the issues in a petition for an Order for protection.

SECTION 312. Court costs and fees.

Fees for filing and service of process shall not be charged for any proceeding seeking only the relief provided in this chapter.

SECTION 313. Court responsibilities; notification of assistance available to victims of domestic violence.

The Court shall inform any petitioner for relief under this chapter about local services and advocacy available through Cangleska Inc. without regard to the victim's employment, economic, educational, mental or physical health, social, or political status.

SECTION 314. Enforcement of foreign Orders for protection.

1. A copy of an order for protection issued by another Tribal, state, county, or other Court jurisdiction, shall be given, full faith and credit by Oglala Sioux Tribal law enforcement authorities as having the same force and effect as one issued by the Oglala Sioux Tribal Court.
  
2. Law enforcement officers shall attempt to verify the existence and/or validity of any foreign Order for protection by any means available. In the event that the victim does not have a copy of the Order, the officer cannot verify the order or the copy is not clear enough to determine its validity, the officer should arrest the subject on an applicable violation of the OST Code and shall assist the victim in obtaining verification of the Order and/ or explaining the procedure for obtaining an OST Order for Protection. The law enforcement officer shall also offer other assistance as provided in Section 204.

3. Valid foreign Orders for Protection shall be upheld as to the conditions of the foreign Order whether or not those remedies or conditions are available through the OST Code.
4. Under this section, the Court shall utilize the penalties and procedures provided in Chapter 2 for the enforcement of Orders for Protection.
5. In accordance with Section 206, any violations of a foreign Order for Protection shall be acted upon in the same manner as if the Order for Protection were issued by the Oglala Sioux Tribal Court and in accordance with the full faith and credit provisions of Title 18 USC 2265.
6. Law enforcement and criminal justice system personnel shall enter valid foreign orders for protection in the Tribal registry.
7. Law enforcement and criminal justice system personnel shall encourage persons possessing foreign orders for protection to file the foreign Order with the Tribal registry and with the OST Court.
8. Facsimile copies which meet the requirements of Title 18, United States Code, Section 2265 shall be recognized as valid verification of foreign orders for protection for the purpose of enforcement under this section.

SECTION 315. Tribal registry for orders of protection.

1. To ensure the proper and timely enforcement of all Oglala Sioux Tribal Orders for Protection, and any foreign Orders falling within its purview and jurisdiction, The Oglala Sioux Tribal Court shall provide for a registry of all orders for protection issued by or registered with the Oglala Sioux Tribal Court. The Clerk of Court shall provide the Public Safety dispatch centers with certified copies of Orders of Protection within the same day of issuance.
2. The Court shall coordinate with, and ensure any OST tribal Orders for Protection are submitted to any other registries, whether federal, state, tribal, or local, for the

purpose of enhancing full faith and credit enforcement of all Orders for protection, including provisions to enter the Order for protection in the National Crime Information Center database.

3. The Clerk of Court shall also immediately provide the dispatch centers and designated registry with certified copies and information concerning any modifications, revocations, withdrawal, and /or expired Orders for Protection.
4. The Court shall provide that information contained in the registry shall be available on a 24 hour basis to any Court, law enforcement agency, or domestic violence program.
5. Facsimile copies which meet the requirements of Title 18, United States Code, Section 2265 shall be recognized as valid and official copies for the purpose of entry into the registry.

SECTION 316. Specific Applicability.

The provisions of this chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.

CHAPTER 4 – FAMILY AND CHILDREN

SECTION 401. Presumptions concerning custody.

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic violence. It is irrelevant, in determining whether the presumption applies, that the domestic violence occurred in the presence or outside the presence of the child.

SECTION 402. Factors in determining custody and visitation.

1. In addition to other factors that a Court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic violence.
  - (a) The court shall consider as primary the safety and well-being of the child and of the parent who is the victim of domestic violence;
  - (b) The Court shall consider the domestic violence perpetrator's history of causing physical harm, bodily injury, assault or causing reasonable fear of physical harm, bodily injury or assault, to another person; and
  - (c) The Court shall also consider the perpetrator's overall lifestyle, including alcohol or other chemical use, in determining custody and/or visitation.
2. If a parent is absent or relocates because of an act of domestic violence by another, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.
3. In any application for emergency ex-parte custody, or permanent custody, of any child or children, the Court shall entertain any information concerning, and make every effort to determine;
  - (a) If the petitioner for custody has been recently arrested and/or convicted of a domestic violence offense'

- (b) If the petitioner for custody had been recently named as the respondent in a domestic violence order for protection; and
  - (c) If the Petitioner for custody has been recently served with a divorce petition, divorce modification, child custody order, child support enforcement Order, modification of an order for protection, or any other Court Order initiated by the respondent to the petition for custody.
4. If any situation outlined in subsection 3 above is found to exist, the court must examine whether the petitioner's motion for custody has been submitted in retaliation against a victim of domestic violence and as part of a continuing pattern of violence, abuse harassment, intimidation, and/or other controlling behavior. If the Court determines that such retaliation and continuing pattern of controlling behavior is likely, the Court shall not grant the Petition for custody, emergency ex-parte or permanent, until such time as a hearing may be held on the petition.
5. Pursuant to subsection 4 above, and barring any overwhelming articulated and immediate need to provide emergency measures for the safety of the child(ren), the court may order that the child(ren) in question remain with the custodial parent, that the child(ren) be placed with a neutral relative, or that the child(ren) be placed in the interim foster care until the hearing such hearing to be held within 72 hours.
6. Pursuant to subsection 5 above, the court shall order an investigation be conducted, and report filed, by child protection services or a court appointed child advocate, concerning the specific grounds for the emergency ex -parte or permanent custody petition. The investigation and report shall be expedited to be available for the ordered hearing.

SECTION 403. Presumptions concerning residence of child.

1. In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic violence has occurred raises a rebuttable presumption that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, in the location of that parent's choice, within or outside the confines of the Pine ridge Indian Reservation.



2. The Court shall exclude, in such proceedings, any consideration that the petitioner may or may not be currently residing in a shelter or safe home. Should shelter or safe home residence of the petitioner be presented by the respondent as grounds to deny custody, the Court shall proceed with the presumption that a shelter or safe home, by definition and operating procedures, is a safe, stable and non-violent environment for the child(ren), equally or more suitable than the place where the perpetrator resides.

SECTION 404. Changes of circumstances.

In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, the finding that domestic violence has occurred since the last custody determination constitutes a finding of a change of circumstances.

SECTION 405. Conditions of visitation in cases involving domestic violence.

1. A Court may award visitation by a parent who committed domestic violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made.
2. In a visitation Order, a Court may:
  - (a) Order an exchange of a child to occur in protected setting.
  - (b) Order visitation supervised by an independent third person or agency.
  - (c) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators as a condition of visitation.
  - (d) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and the 24 hours preceding the visitation.

- (e) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and the 24 hours preceding the visitation.
  - (f) Order the perpetrator of domestic violence to pay a fee to defray the costs of supervised visitation.
  - (g) Prohibit overnight visitation.
  - (h) Require a bond from the perpetrator of domestic violence for the return and safety of the child.
  - (i) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, or other family or household member.
3. Whether or not visitation is allowed, the Court may order the address of the child and the victim to be kept confidential .
4. The Court may refer but shall not order that a victim of domestic violence attend specialized counseling or seek specialized victim support services relating to the victim's status or behavior as a victim, as a condition of receiving or continuing custody of a child, or as a condition of visitation.
5. Supervised visitation shall be conducted by an independent third party as approved jointly by the Court and the victim.

SECTION 406. Specialized visitation center for victims of domestic violence.

1. Cangleska Inc., shall provide for visitation centers for victims of domestic violence and their children to allow court ordered visitation in a manner that protects the safety of all family members. Cangleska Inc., shall coordinate and cooperate with local governmental agencies in providing the visitation centers.
2. A visitation center must provide;
- (a) A secure setting and specialized procedures for supervised visitation and the transfer of children for visitation; and

- (b) Supervision of visitation by a person trained in security and the avoidance of domestic violence.

SECTION 407. Mediation prohibited in cases involving domestic violence.

The court shall not order parties into mediation or any type of counseling, alternative justice peace making, circle sentencing, traditional Lakota ceremonies or any other mediation type of situation that would put the petitioner in the position of dealing directly with the respondent for resolution of the issues in a petition for custody, even if the petitioner has the right to refuse to participate.

SECTION 408. Duties of Juvenile Court.

1. Within 120 days of the enactment of this Domestic Violence Code, the OST Youth and Family Court shall develop written procedures, when abuse or neglect of a child is involved, to assess whether abuse of another family or household member is also occurring. The assessment must include but is not limited to:
  - (a) Inquiry concerning the criminal record of the parents, and the alleged abusive or neglectful person and the alleged perpetrator of domestic violence, if not a parent of the child; and
  - (b) Inquiry concerning the existence of orders for protection issued to either parent.
2. The OST Juvenile Court shall utilize the South Dakota Department of Social Services, Cangleska, Inc., in conducting the assessment.

3. If it is determined in an investigation of abuse or neglect of a child:
  - (a) That the child or another family or household member is in danger of domestic violence, and that removal of one of the parties is necessary to prevent the abuse or neglect of a child, the OST Youth and Family Court shall seek the removal of the alleged perpetrator of domestic violence.
  - (b) That a parent of the child is a victim of domestic violence, services must be offered to the victimized parent and the provision of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

SECTION 409. Specific Applicability.

The provisions of his chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.

CHAPTER 5 – PREVENTION AND INTERVENTION

SECTION 501. Public health plan for reducing domestic violence.

1. The OST Health and Human Services Committee shall;
  - (a) Assess the impact of domestic violence on the public's health.
  - (b) Develop a written public health plan for reducing the incidence of domestic violence within the tribal community;

2. The public health plan:
  - (a) Must include but is not limited to public education, including use of the various communication media set forth the public health perspective on domestic violence;
  - (b) Must be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children; and
  - (c) Must be completed within 120 days of the enactment of this Domestic Violence Code.
  
3. The Health and Human Services Committee shall:
  - (a) Transmit a copy of the public health plan to the Tribal Council; and
  - (b) Annually review and update the plan.

SECTION 502. Standards for health care facilities, practitioners, and personnel; specialized procedure and curricula concerning domestic violence.

1. Within 120 days of the enactment of the Domestic Violence Code, the Indian Health Service, in conjunction with the OST Health and Human Services Committee, shall promulgate standards for health care facilities, practitioners and personnel in the facilities, including specialized procedure and staff training curricula concerning domestic violence.
  
2. The procedures and curricula must be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children.

SECTION 503. Notice of rights of victims and remedies and services available; required information.

1. All Indian health Service clinics and hospitals, and any other health care facility operating within the Pine Ridge Indian Reservation, shall make available to practitioners and health care facilities a written notice of the rights of victims, and remedies and services available to victims of domestic violence in accordance with subsection 3, herein.
2. A practitioner who becomes aware that a patient is a victim of domestic violence shall provide to the patient, and every health care facility shall make available to all patients, the notice provided pursuant to subsection 1.
3. The notice to victims of domestic violence must be substantially as follows:

“If your are a victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that an officer assist in providing for you safety, including asking for an emergency order for protection. You may also request that the Officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a shelter, family member’s or a friend’s residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the police report from the OST Department of Public Safety, who shall provide it at no cost to you.

You may ask the prosecutor to file a criminal complaint. You also have the right to file a petition in the Oglala Sioux Tribal Court requesting an Order for Protection from domestic violence, which could include any of the following orders:

- (a) An Order enjoining your abuser from threatening to commit or committing further acts of domestic violence;
- (b) An Order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
- (c) An Order removing your abuser from your residence, regardless of ownership of the residence or lessee of record;
- (d) An Order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member.
- (e) An Order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court;
- (f) An Order granting your possession and use of the automobile and other essential personal effects, regardless of ownership;
- (g) An Order granting you custody of your child or children;
- (h) An Order denying your abuser visitation;
- (i) An Order specifying arrangements for visitation, including requiring supervised visitation; and
- (j) An Order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments medical expenses, expenses for shelter, court costs, and attorney's fees.

4. The written notice:

- (a) Must not include the addresses of shelters, but should include all pertinent contact numbers; and
- (b) Must be provided in the native language of the victim, if practicable, when the first language of the victim is not English.

SECTION 504. Health care providers required to provide certain information to pregnant women and parents.

Midwives, clinics, and hospitals shall provide information concerning domestic violence to any woman who is pregnant, parents of newborn infants, and to parents of hospitalized minors. The information must include but is not limited to domestic violence victim services, the effect of domestic violence on children, and available services for the prevention and intervention of domestic violence.

SECTION 505. Regulation of programs for intervention for perpetrators; required provisions; duties of providers.

1. Within 120 days of the enactment of the Domestic Violence Code, Cangleska, Inc. shall promulgate rules or regulations for programs of intervention for perpetrators of domestic violence including the Cangleska Inc. Offender's program. The rules or regulations must be promulgated after consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, with advocates for victims, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic violence and their children.
2. The rules or regulations must include:
  - (a) Standards of treatment for programs of intervention;
  - (b) Criteria concerning a perpetrator's appropriateness for the program;
  - (c) Systems of communication and evaluation among the referring Court, the public and private agencies that provide programs for victims of domestic violence, and the programs of intervention for perpetrators; and
  - (d) Required education and qualifications of providers of intervention.



3. The standards for treatment must include but are not limited to the following principles;
  - (a) The focus of the program must be stopping the acts of violence and ensuring the safety of the victim and children or other family or household members;
  - (b) Recognition that substance abuse is a problem separate from domestic violence and which requires specialized treatment.
  
4. Providers of programs of intervention for perpetrators.
  - (a) Shall inform a perpetrator who is Court Ordered into or who has voluntarily registered with the program that:
    - (1) The program will inform the victim and victim's advocates that the perpetrator is in treatment with the provider, and will provide information concerning safety issues to the victim and victim's advocates;
    - (2) The program will require that the perpetrator authorize prior and current treatment or service agencies to provide information about any prior or current treatment history; and
    - (3) The program may provide information about the perpetrator to appropriate criminal justice entities, including courts, probation officers, parole officers, and children's protective services, in compliance with the laws of the Oglala Sioux Tribe and any Court Ordered conditions
  
  - (b) Shall report to the Court and the victim any assault occurring in conjunction with the program failure to comply with the program, failure to attend the program, and threat of harm to self or others made by the perpetrator.

SECTION 506. Continuing education for law enforcement officers concerning domestic violence; content of course.

1. The Department of Public Safety, Training Center must provide forty (40) hours of initial education to all prospective and newly-hired law enforcement officers, detention officers, dispatchers, and supervisors, including those who have not had prior mandatory training concerning domestic violence, in accordance with Section 234 of this Code.
2. The Department of Public Safety, Training Center shall provide eight (8) hours of continuing education and minimum sixteen (16) hours mandatory refresher training on appropriate domestic assault response to law enforcement officers and supervisors each year.
3. Any Bureau of Indian Affairs (BIA) criminal investigators and/or OST Department of Public Safety criminal investigators, whose responsibility is the investigation of misdemeanor and/or felony investigations of crimes occurring on the Pine Ridge Indian Reservation, shall adhere to the training requirements of subsections 1 and 2 above.
4. The course of instruction and the objectives of training required pursuant to subsections 1 and 2 must be developed and presented in consultation with public and private providers of programs of service for victims of domestic violence and programs of intervention for perpetrators, person who have demonstrated expertise in training and education concerning domestic violence as it relates to Lakota culture, and the implementation of a coordinated systems and community response to enhance the safety and respect for Lakota women and families on the Pine Ridge Indian Reservation.
5. The course of instruction must include but is not limited to:
  - (a) The investigation and management of cases involving domestic violence and writing of reports in such cases;
  - (b) The nature, extent, and causes of domestic violence;
  - (c) Practices designed to promote the safety of the victims of domestic violence and other family and household members, including safety plans.
  - (d) The legal rights and remedies available to victims of domestic violence including but not limited to victim rights, compensation for victims of crime, and enforcement of civil and criminal remedies; and
  - (e) The services available to victims of domestic violence and their children;

- (f) Sensitivity to cultural, racial and sexual orientation issues and the effect of cultural, racial and gender bias on the response of law enforcement officers and the enforcement of laws relating to domestic violence; and
- (g) The provisions of the Oglala Sioux Tribal Code and any other laws and statutes applicable to the enforcement of this code;

SECTION 507. Continuing education of judges and court personnel; prosecutors; content of course.

1. Cangleska Inc. shall develop and present courses of continuing education concerning domestic violence for judicial officers, prosecutors, and other Court personnel for the purpose of compliance with the provisions of Section 234 of this code.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators and advocates for victims.
3. Each judicial officer or court employee who comes into contact with either party or is involved in any aspect of domestic violence cases must have sixteen (16) hours of initial education in domestic violence and eight (8) hours annual refresher training.
4. The courses must include but are not limited to the following topics;
  - (a) The nature, extent, and causes of domestic violence;
  - (b) Practices designed to promote safety for the victim and other family and household members, including safety plans;
  - (c) Resources available for victims and perpetrators of domestic violence;
  - (d) Sensitivity to gender bias and cultural, racial, and sexual orientation issues;
  - (e) The lethality of domestic violence;
  - (f) Sections 235 of 236 of this Code;
  - (g) Proper use of relevant forms and orders applicable to this code; and

- (h) The provisions of the Oglala Sioux Tribal Code and any other laws and statutes applicable to enforcement of this Code.

SECTION 508. Continuing education for tribal employees who work with domestic violence cases and are required to report abuse and neglect of children.

1. The OST Health and Human Services Committee shall provide courses of continuing education on domestic violence issues for Tribal employees who;
  - (a) Work with cases of domestic violence; and
  - (b) Are required by law to report abuse or neglect of children.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, and advocates for victims.
3. The courses must include but are not limited to the following topics:
  - (a) The nature, extent, and causes of domestic violence;
  - (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
  - (c) Resources available for victims and perpetrators of domestic violence;
  - (d) Sensitivity to gender bias and cultural, racial, and sexual orientation issues; and
  - (e) The lethality of domestic violence.
4. As used in this section, tribal employees working with cases of domestic violence include:
  - (a) Tribal probation officers;
  - (b) Workers in child protective services;
  - (c) Psychologists;
  - (d) Social workers;

- (e) Advocates;
- (f) Community Health representatives;
- (g) Emergency medical services personnel;
- (h) Chemical Dependency personnel;
- (i) Employee Assistance Program personnel;
- (j) Civil Rights Office personnel.

SECTION 509. Continuing education for attorneys.

1. In order to be licensed to practice in any Oglala Sioux Tribal Court, attorneys or legal advocates must complete sixteen (16) hours of initial legal education in domestic violence and participate in eight (8) hours continuing legal education in domestic violence annually. The attorney General shall provide for the courses of initial and continuing legal education in domestic violence for tribally licensed attorneys or attorneys applying for an OST attorney license.
2. The courses must include but are not limited to the following topics:
  - (a) The nature, extent, and causes of domestic violence;
  - (b) Practices signed to promote the safety of the victim and other family and household members, including safety plans;
  - (c) Resources available for victims and perpetrators of domestic violence;
  - (d) Sensitivity to gender bias and cultural, racial, and sexual orientation issues;
  - (e) The lethality of domestic violence; and
  - (f) The OST domestic violence code and any other applicable laws regulations, or statutes

SECTION 510. Required curricula for Pine Ridge Indian Reservation education system.

1. The OST Education Committee shall select or develop, within one year:

- (a) Curricula for pupils concerning domestic violence that are appropriate for various ages; and
  - (b) Curricula for school counselors, school health-care personnel, administrators, and teachers concerning domestic violence.
2. The curricula must be selected or developed in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators of domestic violence, advocates for victims, and persons who have demonstrated expertise and experience in education and domestic violence.
3. The curricula must include but are not limited to:
- (a) The nature, extent, and causes of domestic violence;
  - (b) Issues of domestic violence concerning children;
  - (c) The prevention of the use of violence by children;
  - (d) Sensitivity to gender bias and cultural, racial, and sexual orientation issues;
  - (e) Violence in dating and other social relationships of boys and girls;
  - (f) Practices designed to promote safety for the victim and other family and household members, including safety plans;
  - (g) Relevant provisions of the OST domestic violence code and any other applicable laws, regulations or statutes; and
  - (h) Information on available resources for victims of domestic violence or those residing in a domestic violence home environment.

SECTION 511. Continuing education for school personnel who are required to report abuse and neglect of children.

1. The OST Education Committee shall provide courses of continuing education concerning domestic violence for employees who are required by law to report abuse or neglect of children.
2. The courses must be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence,

persons who have demonstrated expertise in education and domestic violence an advocates for victims.

3. The courses must include but are not limited to the following topics:
  - (a) The nature, extent and causes of domestic violence;
  - (b) Practices designed to promote safety of the victim and other family and household members, including safety plans;
  - (c) Issues of domestic violence concerning children;
  - (d) Sensitivity to gender bias and cultural, racial, and sexual orientation issues;
  - (e) The lethality of domestic violence, and Relevant provision of the OST domestic violence code and any other applicable laws, regulations or statutes.

SECTION 512. Initial training; OST Domestic violence Code provisions.

Upon enactment of the OST Domestic violence Code, and within thirty (30) days of the Code's effective date, Cangleska Inc, shall provide to the OST Judiciary Committee training agendas for the immediate training of all Department of Public Safety, OST Court, OST Office of the Attorney General, and Cangleska Inc. personnel on the provisions of the Domestic Violence Code. The training agendas shall provide for the completion of such training within 120 days from the effective date of this Code. Once approved by the OST Judiciary Committee, all named agencies shall coordinate with

Cangleska Inc. and designated training personnel to effectively get all their employees trained within the required 120 days.

All other training and curricula required under this chapter shall be initiated within one (1) year of the effective date of the code, unless otherwise provided for under this chapter.

SECTION 513. Specific Applicability.

The provisions of this chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.

CHAPTER 6. – STALKING

SECTION 601. Purpose

The stalking provision of the OST Domestic Violence Code is construed to promote the fact that the active stalking of women and family members is a basic and often primary activity used by domestic violence offenders to establish, or re-establish, control over domestic violence victims. Through the pursuit or following of the victim by the



perpetrator, the risk to the victim of being physically assaulted by the stalker is greatly increased. The goal of this section is in keeping with the overall purpose of the OST Code to provide safety and protection to victims, potential victims, and to set standards of behavior within the family that are consistent with traditional Lakota values.

SECTION 602. Definitions.

Unless the context otherwise requires, as used in the OST Code:

1. “Credible threat” means a verbal written threat, or a threat implied by a pattern of conduct, or combination of such verbal/written statements and conduct, either directly or through a third party, made with the intent to place the person who is the target of the threat in reasonable fear of his/her safety. The main standard for establishing a credible threat is the victims’ perception of a threat to his/her safety. The second criteria will be the apparent ability of the defendant to carry out the threat, whether verbal, written, or implied through a willful patter of conduct. The third standard is the ability to identify and relate a pattern of corroborated stalking behavior.
  
2. “Harass” means a knowing and willful pattern of conduct directed at a specific person, either directly or through a third party, which seriously alarms, annoys, torments, or terrorizes the person, and which serves no legitimate purpose. Harassing behavior can include but is not limited to:
  - (a) Vandalism;
  - (b) Annoying or threatening telephone calls;
  - (c) Following or other violations of an order for protection;
  - (d) Actual Assaults;
  - (e) Sending unwanted letters;
  - (f) Sending unwanted messages or threats through third parties;
  - (g) Showing up at a victim’s home or workplace;
  - (h) Attempting to obtain private information about the victim through others;
  - (i) Leaving gifts for the victim;
  - (j) Disabling nor otherwise tampering with the victims vehicle;

- (k) Taking mail for the victim's mailbox;
  - (l) Entering the victim's home or place of residence whether the victim is there or not there;
  - (m) Parking near or driving by the victim's residence or workplace for no legitimate reason; and
  - (n) Using agencies or institutions in a manner that constitutes a pattern of conduct consistent with retaliation or harassment, by initiating investigations, restrictions or sanctions against the victim.
3. "Pattern of conduct" means conduct which has caused the victim to suffer substantial emotional distress or fear. This course of conduct should contain a series of acts carried out by the defendant over a period of time, however short, which demonstrates a continuity of purpose (i.e., to annoy, harass, follow, etc.), and which would cause a reasonable person to suffer like emotional distress or fear.
4. "Family" means any spouse, parent, child, stepparent, stepchild, grandparent, grandchild, or significant other person or relative with whom the victim has a familial relationship, or who resides with the victim or any other relationship as defined in OST Domestic Violence Code, Section 102. (2).
5. "Corroborating stalking conduct" means any evidence of harassing behavior, physical evidence at the scene, records, documents, letters, unsubstantiated alibis, recorded messages, police reports, prior stalking convictions, witness information, or any other information, which would indicate a willful pattern of conduct or threat.

SECTION 603. Stalking Offense; defined and penalties.

1. Any person who, either directly or through a third party, willfully, maliciously and repeatedly follows or harasses another person and who is perceived to constitute a credible threat and by such perception places a person in reasonable fear of his/her safety, or the immediate safety of his/her family, shall be deemed guilty of stalking under this section and chapter. A person who makes a judicial admission of, pleads guilty to or is found guilty of stalking shall be subject to a penalty of not less than thirty (30) days and not more than sixty (60) day in jail, a fine not to exceed \$500.00, or both such fine and imprisonment.

2. Any person making a judicial admission of, pleads guilty to, or is found guilty of stalking, who is sentenced to probation or granted parole, shall be placed under not less than two years probation/parole under supervision of the Cangleska Inc., Domestic Violence Probation Department, under provisions of the Probation and Parole Act.
3. Whoever makes a judicial admission of, pleads guilty, to or is found guilty of a second or subsequent offense, within five (5) years of the first offense, shall be subject to a penalty of not less than ninety (90) days in jail, a fine not to exceed \$500.00 or both fine and imprisonment.
4. A judicial admission, guilty plea, or conviction of a second or subsequent stalking offense, involving a credible threat to the same person within one year, or in violation of a valid order for protection, shall be sentenced to a term of not less than six (6) months in jail, a fine not to exceed \$1,000.00 or both such fine and imprisonment.
5. In addition to the penalties stated in subsections 1- 4 above, any person making a judicial admission, pleads guilty, or being found guilty of a violation of this section, will be required to successfully complete the Cangleska Inc. offender's program.

SECTION 604. Location of stalking perpetrator not bar to prosecution.

1. Any harassing or threatening behavior by the perpetrator, which meets the criteria of a credible threat, accomplished either directly or through a third party, and as corroborated through admission, witness testimony, telephone records, postmarks or order/deliver records as being initiated outside the boundaries of the Pine Ridge, Indian Reservation, will not bar prosecution under this section. The behavior or conduct shall be considered to be credible threat when full transmittal of threat has been completed to the victim, when said victim is within the boundaries of the Pine Ridge Indian reservation.

2. Corroborated initial or intervening acts, used to establish a pattern of conduct for purpose of probable cause under this section, but which occurred outside the boundaries of the Pine Ridge Indian reservation, may be used to establish and corroborate said stalking conduct for prosecution of a violation under this section. However, individual initial or intervening acts occurring outside the boundaries of Pine Ridge Indian reservation are not prosecutable as separate offenses under this section.
  
3. The present incarceration of the person making the threat shall not bar prosecution under this section.

#### SECTION 605. Specific Applicability

The provisions of this chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.

### CHAPTER 7- FIREARMS DISQUALIFICATION

#### SECTION 701. Purpose.

It shall be the purpose of this chapter to prohibit any person who has been convicted of a felony or misdemeanor offense of domestic violence/ abuse, as defined under Section 103 of this Domestic Violence Code, under Tribal, State or federal law, or any person who is subject to an Order of Protection based upon a finding that the person represents a

credible threat of violence to the victim, under tribal, state or federal law, to possess, own sell, trade, or have immediate access to a firearm.

- (a) Was issued after a hearing, of which such person received actual notice and had the opportunity to participate;
  - (b) Included a finding that such person represented or represents a credible threat to the physical safety of a household or family member; and
  - (c) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against another family or household member.
4. Has been convicted in state, federal or tribal court of any crime involving domestic violence/abuse, as defined in Section 103 of this code, which involved the use or attempted use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against a household or family member as defined in Section 103.2

SECTION 702. Firearm possession, dealing, or access prohibited.

It shall be unlawful for any person possess, own, sell, trade, or have immediate access to a firearm, who:

1. Is subject to any court order from a court of competent jurisdiction that restrains such person from assaulting, harassing, stalking or threatening a family or household member as defined in Section 103.2, or engaging in any other conduct that would place a family or household member reasonable fear of bodily injury to the household or family member, except that this paragraph shall apply only to order that:
- (a) Was issued after a hearing, of which such person received actual notice and had the opportunity to participate;
  - (b) Included a finding that such person represented or represents a credible threat to the physical safety of a household or family member; and

- (c) By its terms explicitly prohibits the use, attempted use or threatened use of physical force against another family or household member.
  
- 2. Has been convicted in state, federal or tribal court of any crime involving domestic violence/abuse, as defined in Section 103 of this code, which involved the use of physical force, or the threatened use of physical force, or the threatened use of a deadly weapon against a household or family member as defined in Section 103.2.

SECTION 703. Penalties; forfeiture of firearms.

A violation of Section 702 shall constitute a misdemeanor offense and shall be punishable by 30-60 days in jail, \$500.00 fine, or both such jail time and fine.

CHAPTER 8.- DOMESTIC VIOLENCE ADVOCATES AND SHELTERS.

SECTION 801. Purpose.

The Tribe recognizes that advocating for those who have been the victims of domestic violence can be a dangerous situation for the advocate because of the potential for violence on the part of the perpetrator. This Chapter makes it a crime for any person to harass, annoy or intimidate an advocate for a domestic violence victim with the intent to interfere with the rights of the victim of domestic violence to pursue any civil or criminal remedies she may have in a court of law. It also provides for an enhanced penalty for any

person committing a crime of violence against an advocate because of her advocacy for a victim of domestic violence.

SECTION 802. Harassment of Domestic Violence Advocate; misdemeanor offense.

It shall be unlawful for any person to commit the following acts against a domestic violence advocate:

1. To harass, annoy, intimidate, or make any written or verbal threats to a domestic violence advocate for the purpose of interfering with the right of any victim of domestic violence to obtain a civil protection order or pursue criminal charges against a perpetrator of domestic violence; and/or
2. To harass, annoy, intimidate, or make any written or verbal threat to a domestic violence advocate which places the advocate in apprehension of bodily injury, in retaliation for that advocate's representation of a domestic violence victim.

SECTION 803. Harassment of a Domestic Violence Advocate; penalties.

Any person making a judicial admission to pleading guilty to, or found guilty of a violation of Section 802 of this code shall be guilty of the misdemeanor offense of Harassment of a Domestic Advocate and shall be subject to 30 days in jail, a \$250.00 fine, and two years domestic violence probation. A person found guilty under this section shall serve the full jail sentence without opportunity for trustee status, weekend

service of days or parole. Daily work release may be granted at the discretion of the Court, with due consideration for any danger such release might pose to the advocate or his original victim.

SECTION 804. Enhanced penalty for Crime of Violence Against Domestic Violence Advocate.

Any person convicted of a crime of violence against a domestic violence advocate, under the Oglala Sioux Tribal Code, in which the Tribe demonstrates that said crime was committed because of the victim's advocacy on behalf of domestic violence victims, shall in addition to any other penalty provided by tribal law be sentenced to an additional 60 days in jail and ordered to pay a special assessment to the domestic violence advocacy program in the amount of \$500.00. This enhanced penalty shall not be subject to suspension or modification by the Court.

SECTION 805. Specific Applicability.

The provisions of this chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.



## CHAPTER 9. – DOMESTIC VIOLENCE LEAVE ACT

### SECTION 901. Purpose.

Victims of domestic violence are oftentimes forced to flee from a perpetrator in order to avoid further danger and violence. In so fleeing, victims who are employed frequently miss days of employment, and employers often respond by terminating or disciplining such employees. It is the purpose of this chapter to preclude all reservation employers from terminating any employee who can document that an instance of domestic abuse contributed to his/her absence from employment. Employers have the option of granting such employees leave with pay or leave without pay because of domestic violence related absences.

### SECTION 902. Disciplinary action for absence of employment due to domestic violence prohibited.

It shall be a violation of this ordinance for any employer located within the exterior boundaries of the Indian Reservation to terminate or otherwise discipline any employee who had missed work, or who is tardy, when such employee demonstrates, either through the filing of criminal or civil proceedings in a Court of law, or by such other method satisfactory to the employer, that s/he has been the victim of domestic violence and that such violence contributed to the absence(s) or tardiness from work. In lieu of

disciplinary action, the employer shall grant the employee leave with or without pay, dependent upon the policies of the employer, or such absences.

SECTION 903. Penalty for violation.

Any employer who willfully violates this section shall be subject to a civil penalty of \$500.00 payable to the Oglala Sioux Tribe. An employee wrongfully terminated or disciplined in violation of Section 902 of this Chapter retains all administrative remedies available under the employer's grievance procedures to address wrongful termination. Nothing in this section shall preclude a private party from commencing a wrongful termination civil action against an employer for violation of this section.

SECTION 904. Referral for domestic violence victim services; employee assistance referral.

Upon an employee request for assistance, or the disclosure or discovery that an employee is a victim of domestic violence, whether or not the violence has resulted in any absenteeism, tardiness, or other workplace difficulties, any employer with a place of business located within the exterior boundaries of the Pine Ridge Indian Reservation shall provide for referrals to address domestic violence situations. The employer shall consider it incumbent to seek out and provide information and resources, or establish safety measures in the work place, to address the needs of employee victims of domestic

violence. Such referral options, resources, and safety measures may include the following:

1. The employer may provide for referral to a Cangleska Inc. domestic violence advocate, to assist with employee crisis, providing shelter and legal remedies, and locating appropriate emotional support for his/her employee desires; or
2. Tribal, federal, and some private or chartered employers have an employee assistance program (EAP) available which may be able to assist an employee who is a victim of domestic violence. Any employer subject to the provisions of this chapter, and whose employees have access to an employee assistance program or counselor, shall provide for immediate referral to that resource.

SECTION. Specific Applicability

The provisions of this chapter apply specifically to this domestic violence code and take precedence over any general laws of applicability.

## PARADE ORDINANCE OF THE OGLALA SIOUX TRIBE

SECTION 1. The Terms Parade as used in this ordinance shall include parades, demonstrations, marches, or similar events.

SECTION 2. There shall be no parades, in any District of the Pine Ridge Reservation, Except as permitted under the terms of the Parade Ordinance.

SECTION 3. Any person, organization, or group desiring to parade or march within the boundaries of any District, shall make application to the Executive Committee of the District in which the parade is to take place, by the officials of the requesting organization.

SECTION 4. The Executive Committee shall approve such application, if upon review of the parade plan, there will be no interference with the flow of traffic, either pedestrian or vehicular.

SECTION 5. In the event that there may be an impediment to traffic, either vehicular or pedestrian, the District Executive Committee may require a cash deposit, in an amount not to exceed \$500 prior to the issuance of the parade permit. This deposit is not a limitation upon the liability of the applicant or organization requesting the permit.

SECTION 6. In the event that there is a deviation from the parade permit, the applicants for the parade permit and officers of the requesting organization may be held criminally liable for any criminal act of any participant, as fully as if the applicant had committed said act, and the cash deposit may be forfeited.

SECTION 7. No parade Permit shall issue, nor shall any parade, march, or demonstration, occur within 1,000 feet of any school that is in session, within 1,000 feet of any medical facility when medical personnel are in attendance, or within 1,000 feet of any jail. This section shall not apply to any parades sponsored by a school organization which has been approved by the School Board in advance, nor to any school located upon a Federal or State Highway.

SECTION 8. Any person who violates the terms of the Parade Permit Ordinance shall be held guilty of a misdemeanor and fined in an amount not to exceed \$250 or a jail sentence not to exceed 90 days, or to both such fine and imprisonment. In addition, the applicants for the Parade Permit and officers of the requesting organization may be held liable for any criminal acts of the participants of the Parade.

SECTION 9. Any person, agency, business, or other entity, having a claim resulting from the parade, or the acts of any participants in the parade, shall file a claim with the District Executive Committee within 2 business days of the parade. The District Executive Committee shall notify the applicants of the claim and provide a copy to them. Within 5 days, the District Executive Committee shall schedule a hearing to determine the validity to the claim or claims. If the claims are found valid, they shall be paid, or a proportionate share, to the claimants, from the cash deposit. If no claims are filed,

or there is a balance remaining after payment of the claims from the cash deposit, it shall be refunded to the applicants.

SECTION 10. No Parade Permit shall be issued for a parade unless said parade will occur between the hours of 9:00 a.m. and 6:00 p.m.

APPLICATION FOR PARADE PERMIT

APPLICANT'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

ORGANIZATION REQUESTING PERMIT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PARADE STARTING POINT: \_\_\_\_\_

\_\_\_\_\_

PARADE ENDING POINT: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PARADE ROUTE (Attach Map if necessary): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ANTICIPATED NUMBER OF PARADERS: \_\_\_\_\_

\_\_\_\_\_

TIME OF PARADE COMMENCEMENT: \_\_\_\_\_

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TIME OF PARADE TERMINATION: \_\_\_\_\_

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PERMIT

In Accordance with the application on file, and having deposited the amount of \_\_\_\_\_ dollars, the requested parade is hereby approved under Ordinance 85-14, and subject to the provisions of said Ordinance.

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Chairman

\_\_\_\_\_ District

ATTEST:

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Secretary

\_\_\_\_\_ District

Hist: Ordinance 85-14

## OGLALA SIOUX TRIBAL EXTRADITION LAW

### SECTION 1.

A request to the Oglala Sioux Tribe for the extradition of a person charged with a crime in another state, reservation or International jurisdiction shall be in writing directed to the President of the Oglala Sioux Tribe alleging that the accused is charged with a crime and was legally present in the requesting jurisdiction at the time of the alleged crime, that at the time he was in or thereafter left the requesting jurisdiction to the Pine Ridge Indian Reservation, and accompanied by a copy of the charging document certified as to its correctness and filing by the appropriate Clerk of Courts. The writing shall be under oath and shall be signed by the Governor of the State, President of the Tribe or lawful delegate of any International jurisdiction.

### SECTION 2.

(a) When a written request is made by the Governor of the State of South Dakota or by the Governor of any other State or by the Tribal President of any Indian Reservation or by the lawful delegate of any International jurisdiction, to the Tribal President for the extradition of any person found within the boundaries of the Pine Ridge Indian Reservation, who is charged with an offense which is a felony under the laws of the requesting State or Indian Reservation, or International jurisdiction, the Tribal President shall require the following from the Governor of the requesting State, President of the requesting Tribe or the lawful delegate of the requesting International jurisdiction:

1. An application or extradition by the appropriate District Attorney or the lawful delegate of the requesting Tribe or the lawful delegate of the International jurisdiction.
2. An affidavit of complaining witness.
3. A certified copy of the filed complaint and the issued arrest warrant.

(b) Upon receipt of said written request, the President shall first determine the presence on the Reservation of the requested person and shall call upon the Oglala Sioux Public Safety Department or any other person or body to investigate or assist in investigating the request and to report to him the situation and circumstances of the person so requested and whether he ought to be surrendered.

### SECTION 3.

The President of the Oglala Sioux Tribe can, in his discretion, refer the question of whether or not the request for extradition of the accused should be honored to the Oglala Sioux Tribal Council, person, or body shall have the power to set forth in the preceding paragraph. The decision of the Council, person, or body shall be final.

### SECTION 4.

If decided by the President of the Oglala Sioux Tribe or his lawful delegate that the request should be complied with, he shall sign a warrant of arrest directed to any peace officer or person having authority to execute arrest warrants. The warrant must recite that the accused is charged with a particular crime in a particular crime in a particular requesting jurisdiction and that his extradition is being sought from the Oglala Sioux Tribe.

#### SECTION 5.

No person arrested upon the above described extradition warrant shall be delivered over to the requesting jurisdiction unless he shall first be taken forthwith according to Tribal law, before the Oglala Sioux Tribal Court which shall inform him of the request made for his surrender and of the crime for which he is charged, and that he has the right to procure legal counsel at his own expense.

#### SECTION 6.

The Oglala Sioux Tribal Court may admit to bail the accused requested under such conditions as it deems appropriate.

#### SECTION 7.

If the accused demands, a hearing shall be held as soon as practicable after his initial appearance before the Oglala Sioux Tribal Court at which time the requesting jurisdiction shall be required to establish probable cause that the accused committed the crime for which his extradition is requested and if it appears that there is no probable cause to believe the person guilty of the crime with which he is charged off the Reservation, or if it appears that the person probably will not receive a fair trial in the court of the requesting jurisdiction, the judge shall order the person released from custody. The accused shall be given the opportunity to raise any legal defense that he might have to the request for extradition.

#### SECTION 8.

Any person arrested on the Pine Ridge Reservation for having committed a crime in another requesting jurisdiction may waive all extradition proceedings by executing in the presence of a Tribal Judge, a statement that he consents to return to the requesting jurisdiction. Before such a statement is executed, the accused shall be informed of his rights under this Oglala Sioux Tribal Extradition law.



#### SECTION 9.

Nothing in this Extradition Law shall prevent an accused person from returning voluntarily and without formality to the requesting jurisdiction.

#### SECTION 10.

If the Oglala Sioux Tribal Court shall order that the accused be returned to the requesting jurisdiction, the accused shall be allowed to appeal that decision under ordinary appellate procedures to the Oglala Sioux Tribal Appellate Court. The accused's return shall be delayed until the appeal has been decided, and he, at the discretion of the court, may be admitted to bail pending the appeal.

#### SECTION 11.

Whenever the President of the Oglala Sioux Tribe shall request from the State of South Dakota, other States, other Indian Reservations or any International jurisdiction, a person charged with a crime against the Oglala Sioux Tribe, he shall sign a written request for extradition stating that the accused person was legally present on the Pine Ridge Reservation at the time of the alleged crime and that he remains in or thereafter fled to South Dakota, other States, other Indian Reservations, or other International jurisdiction, to avoid prosecution. The request shall be accompanied by a copy of any arrest warrant, by a copy of any judgment of conviction or sentence imposed, of applicable, and by a sworn statement from a reservation judicial officer that the person claimed has escaped or evaded confinement, or violated the terms of his probation, bail, or parole, and the individual has been charged with committing a specific offense under the laws of the Oglala Sioux Tribe.

#### SECTION 12.

The request for extradition shall be transmitted to the Oglala Sioux Tribal Court, who under signature of a Tribal Court Judge shall file said request with the presiding Judge of the circuit court of South Dakota, other states, other Indian Reservations or International jurisdictions, where the accused is located.

#### SECTION 13.

Nothing in this Extradition Law shall prevent the Oglala Sioux Tribe from following any other procedure to secure the return of a person from any jurisdiction other than South Dakota, charged with committing a crime against the laws of the Oglala Sioux Tribe.

#### SECTION 14.

Legal effect: Supersession. This ordinance expressly supersedes and nullifies any and all ordinances pertaining to extradition heretofore enacted or adopted by the Tribal Council.

**HISTORY:** Ordinance No. 83-21 (November 10, 1983, regular session of the OST Council. 18 for, 0 against and 1 not voting. The Ordinance was introduced by the Law & Order Committee. The Ordinance was drafted by Russell Zephier, Attorney for the OST at the request of the Law & Order Committee.

## REMOVAL OF NON-MEMBERS

### SECTION 112. REMOVAL OF TRESPASSERS.

All persons hunting, fishing, cutting wood, driving livestock peddling, or doing any commercial business on Trust Indian Allotments without the permission of the owner; or Tribal land on this Reservation without the permission of the Oglala Sioux Tribal Council, may be forcibly ejected from the Pine Ridge Reservation by a police officer, officer of the United States Indian Service, or Tribal police, and may be turned over to the custody of the United States Marshal or Sheriff or other officer of the State of South Dakota or Nebraska, for prosecution under Federal or State law.

Hist: 1937 Code, Ch. 7, Sec. 1; Sec. number changed from Sec. 111 to conform with code numbers.

### SECTION 112A REMOVAL OF NON-MEMBERS.

Only the entire Tribal Council, by majority vote, can determine when a state of emergency exists justifying the removal and exclusion of a non-member or person not legally entitled to reside on the Pine Ridge Reservation.

Hist: New Sec. added per Ord. #73-163, dtd. 3/13/73; Rescinded by Res. #77-163 and new words inserted.

### ORDINANCE ON TRIBAL REMOVAL AND EXCLUSION OF NONMEMBERS FROM THE PINE RIDGE RESERVATION

(Ord. #73-08, dtd. 11/28/73, and amended by Res. #77-163, dtd. 12/12/77)

### SECTION 1. PERSONS SUBJECT TO REMOVAL AND EXCLUSION.

A. Except as otherwise expressly provided in Subsection B of this Section, any non-member of the Oglala Sioux Tribe may be removed and excluded from all or any part of the lands within the exterior boundaries of the Pine Ridge Reservation, for the reasons stated in Section 2, and according to procedures listed in Sections 3 through 7.

B. The provisions of this ordinance may not be invoked to exclude non-members:

1. From lands owned by, or held in trust for, the Oglala Sioux Tribe when such non-members are authorized by Federal treaty, statute or administrative regulations to be present on such Tribal lands; or

2. From individually owned lands, whether held in trust, restricted or fee patent, when such non-members are present thereon with the consent of the individual owner or owners thereof. Provided, however, that such consent will not bar the exclusion of any non-member from such lands if it is determined, in a proceeding authorized under Section 4, that in addition to violation of one or more of the grounds specified in Section 2, such non-member

poses a clear and continuing danger to the health or safety of Tribal members or property which outweighs the particular interest of the non-member in continued presence; or

3. From access to State highways within the exterior boundaries of the Pine Ridge Reservation, unless it is determined, in a proceeding authorized under Section 4, that in addition to violation of one or more of the grounds specified in Section 2, such non-member poses a clear and continuing danger to the safety of persons or property on such highways which outweighs the particular interest of the non-member using same.

## SECTION 2. GROUNDS FOR EXCLUSION.

Non-members of the Oglala Sioux Tribe may be excluded on one or more of the following grounds:

A. Commission of a crime, as defined by Federal, State, or Tribal law, including violation of State or Tribal traffic regulations.

B. Unauthorized prospecting.

C. Unauthorized trading.

D. Unauthorized mining, timber cutting, or other activity causing physical loss or damage of any nature to property on the Pine Ridge Reservation.

E. Forcible entry into the home or onto the land of any Tribal member without the consent of the occupant or occupants.

F. Interference with or photographing of Tribal ceremonies without the permission of the Tribal members involved.

G. Commission of fraud, confidence games, or usury against Tribal members, or inducing such members into grossly unfavorable contracts of any nature.

H. Recruiting Tribal members for off-Reservation employment without prior permission of the President of the Tribal Council and the Superintendent.

I. Defrauding any Tribal member of just compensation for his or her labor or services of any nature done at the request of the non-member.

J. Breach of the peace or repeated public drunkenness.

K. Contagious disease.

L. Entry of an area on the Pine Ridge Reservation in violation of an order of the President of the Tribal Council and the Superintendent, designating such area as closed because of fire hazard or any other reason.

M. Removal or attempted removal of any Tribal member under the age of eighteen (18) from the Pine Ridge Reservation without prior approval of the Tribal Council, except for the purpose of attending school under a non-sectarian program approved by the Bureau of Indian Affairs. Provided, however, that this ground for exclusion shall not apply in cases where such minor Tribal member is removed from the Pine Ridge Reservation by its adopted parents, or by persons who have received custody of such child pursuant to an order of the Oglala Sioux Tribal Court.

N. Conducting missionary activities without prior authorization from the Tribal Council.

O. Hunting, fishing, or trapping without permits required under State and Tribal laws.

P. Failure or refusal to pay any taxes, costs or other charges justly due the Oglala Sioux Tribe after reasonable notice and opportunity to pay.

### SECTION 3. NOTICE OF EXCLUSION HEARING.

(First Alternative: Administrative Hearing)

A. The President or Vice-President of the Tribal Council shall cause notice to be served personally or by registered mail upon any non-member whenever either of such officers has grounds to believe that cause may exist for exclusion of such non-member, or whenever the Executive Committee orders either officers to cause such notice to be served.

B. Such notice shall state the ground or grounds, as listed in Section 2 for the proposed exclusion, a brief summary of the facts relied upon to justify the proposed exclusion, and the names and addresses of witnesses whom the Tribe will produce to support the proposed exclusion. The notice shall also name a time and place where the non-member may appear before the Executive Committee to show cause why he should not be excluded from areas of the Reservation designated in such notice.

C. Except as otherwise provided in Section 6 or 7, the notice required under this Section shall be served at least ten (10) days in advance of the hearing provided in Section 4. Return receipt shall be used in any service by mail and such service will be complete upon the date of the return receipt.

(Second Alternative: Judicial Hearing)

A. Whenever the President or Vice-President believes cause may exist for the exclusion of a non-member from any part of the Reservation, or whenever an individual Tribal member believes cause may exist for exclusion of a non-member from land owned or occupied by such member, he shall make application, orally or in writing, to the Oglala Sioux Tribal Court for a show cause order requiring such non-member to appear at a hearing provided for in Section 4.

B. Such show cause order shall be granted by the Tribal Court upon a finding that reasonable grounds exist to believe the proposed exclusion justified under one or more of the bases specified in Section 2. Such order by way of notice shall state the ground or grounds as listed in Section 2, for the proposed exclusion, a brief summary of facts relied upon to justify the proposed exclusion, and the names and addresses of witnesses whom the Tribe will produce to support the proposed exclusion. The order shall also name a time and place, where the non-member may appear before the Tribal Court to show cause why he should not be excluded from areas of the Reservation designated in such order.

C. The order required under this Section may be served personally or be registered mail, in the discretion of the Court, but in either event it shall be served, except as otherwise provided in Sections 6 or 7, at least ten (10) days in advance of the hearing provided for in Section 4. Return receipt shall be used in any service by mail and such service shall be complete upon the date of the return receipt.

#### SECTION 4. HEARING PROCEDURE: ORDER OF EXCLUSION.

(First Alternative: Administrative Hearing) Rescinded per Res. #77-163, dtd. 12/12/77, approved 4/4/78, effective 2/17/78.

(Second Alternative: Judicial Hearing)

A. After notice has been served as provided in Section 3, the Tribal Court shall hold a hearing to determine whether or not the non-member shall be excluded from areas of the Pine Ridge Reservation designated in such order. Such non-member shall be given an opportunity at such hearing:

1. To confront and cross-examine any witness relied upon by the Tribe to justify the proposed exclusions;
2. To prevent oral and written evidence in his defense; and
3. To be represented by counsel of his own choice, including a self-retained professional attorney. The Tribal Court may, in its discretion, grant the request of a non-member for a continuance in the hearing upon a showing of good cause.

B. In all cases where permanent or indefinite exclusion is sought by the Tribe, or where the proposed ground for exclusion is violation of Federal, State, or Tribal criminal laws and the factual basis therefor is disputed by the non-member, the Tribal Court shall find, as a condition to exclusion, that the facts supporting same have been established by clear, unequivocal and convincing evidence. In any other case, the facts supporting exclusion shall be found to exist by a mere preponderance of the evidence. Each decision shall be in writing and shall be based only upon the facts and law presented at the hearing.

C. After the hearing provided for in this Section, or after the time set for such hearing, if after notice, the person proposed for exclusion does not appear, the Tribal Court may order such person excluded from all or any part of the Reservation, or it may permit the person to

remain upon the Reservation, or it may permit the person to remain upon the Reservation under such conditions as it sees fit to impose. All orders following an exclusion hearing shall specify the period of time during which exclusion will be effective as well as any conditions imposed upon continued residence; nothing herein, however, shall prevent exclusion for an indefinite period of time if a final order so provides.

#### SECTION 5. ENFORCEMENT OF EXCLUSION ORDER.

(First Alternative: Tribal Administrative Action) Rescinded per Res. #77-163, dtd. 12/12/77, approved 4/4/78, to be effective 2/17/78.

(Second Alternative: Tribal Judicial Action)

If any person ordered excluded from any part of the Pine Ridge Reservation does not promptly obey the order, the Tribal Court shall direct the Tribal police to use reasonable force in effecting the exclusion order.

#### SECTION 6. FORCIBLE REMOVAL IN EMERGENCIES PRIOR TO EXCLUSION HEARING.

(First Alternative: Tribal Administrative Action) Rescinded per Res. #77-163, dtd. 12/12/77, approved 4/4/78, effective 2/17/78.

(Second Alternative: Tribal Judicial Action)

A. In cases involving immediate danger to the life, health or property of the Oglala Sioux Tribe or any of its members, and where any delay would result in irreparable damage, the Tribal Court, upon application in writing by the President, Bureau of Indian Affairs, Indian or Tribal policemen, or any Tribal member, may order any such policemen to remove a non-member bodily from all or any part of the Reservation prior to the exclusion hearing provided for in Section 4. The policemen executing such emergency order shall only use as much force as is necessary to effect the removal.

B. The Tribal Court shall direct the policeman serving such notice to serve also the notice of charges and hearing thereon provided for in Section 3, either at the time of removal of the non-member or as soon after removal as possible. Such notice shall state that the non-member may demand, orally or in writing, that the hearing provided for in Section 4 be held within twenty-four (24) hours after he receives such notice or at any longer time up to ten (10) days interval specified in Section 3. Absent such a demand, which may be directed to and shall be acknowledged by the removing police officer, the exclusion hearing may be convened as provided in Section 3.

C. The notice required in emergency cases under this Section shall notify the non-member of a place on the Reservation boundary where he may re-enter in the company of a Bureau of Indian Affairs, Indian or Tribal police officer for the purposes of attending the hearing

required under Section 4. The Tribal Court shall order such police officer to accompany such person while he is on the Reservation coming to and leaving the hearing.

**SECTION 7. PROCEDURE UPON ARREST FOR VIOLATION OF FEDERAL, STATE OR TRIBAL LAWS, INCLUDING TRAFFIC OFFENSES.**

A. Any other Section of this ordinance notwithstanding, duly authorized Bureau of Indian Affairs, Indian and Tribal police shall be privileged, for purposes of this ordinance, to stop and detain without prior legal process from the Tribal Council or Tribal Court, any non-member within the exterior boundaries of the Pine Ridge Reservation when they have reasonable cause to believe that such non-member has committed or is about to commit or is committing any offense specified in Section 2(A) (i.e., any crime as defined by Federal, State or Tribal law, including traffic offenses.).

B. The detention thus privileged shall be effected for the sole purpose of issuing a uniform written citation, approved by the Tribal Council and containing the requirements as to notice of grounds for exclusion and a hearing thereon as specified in Section 3.

C. Nothing in this Section shall be construed to authorize such policeman, for purposes of this ordinance, to effect the removal of such detained non-member from any part of the Reservation without first securing the order required under Section 6. Such policemen may detain a non-member, however, under this Section, for a reasonable period of time in order to seek an emergency removal order under Section 6.

\* The Tribal Court shall have the power to determine whether a non-member or person not legally entitled to reside on the Reservation should be removed and excluded pursuant to the hearing procedures laid out in Section 6 (Second Alternative: Tribal Judicial Action), and the provisions of Chapter 7, of the Tribal Code not inconsistent with the preceding resolutions.

Hist: \*added per Res. #77-163, dtd. 12/12/78, approved effective 4/4/78.  
Ord. #73-08, 11/28/73, amended by 77-163.