

SISSETON-WAHPETON SIOUX TRIBE

Codes of Law

Chapter 23 – Amended Criminal Procedure Code

23-01-01 COMMENCEMENT OF CRIMINAL PROCEEDINGS

23-01-02 COMPLAINT. A Complaint is the written statement of the essential facts constituting the offense charged. Criminal proceedings shall be commenced by filing a written Complaint with the Court. No Complaint shall be accepted by the Clerk of the Court for filing unless it satisfies the requirements of Section 23-01-03 hereof.

23-01-03 CONTENTS OF THE COMPLAINT. The Complaint shall state the essential facts constituting the offense charged. It shall be sworn to and signed by the complainant or complaining witness before a Clerk of Courts and shall be signed by a Clerk of the Court.

23-01-04 LIMITATION OF TIME ON FILING COMPLAINTS. No Complaint, charging the commission of an offense one (1) year or more prior to the date the Complaint is filed, shall be valid; provided, that the absence of the person charged, from the Reservation to avoid service of summons or arrest, shall toll the time and shall not count in computing the one year.

23-01-05 LIMITATION ON TIME TO PROSECUTE. Under no circumstances shall a defendant's right to speedy trial be impinged by bringing a prosecution to trial more than 365 days after the time the complaint was filed, except when the Tribe can show good cause for such delay and the Court finds, at its discretion and in consideration of good cause shown by the Tribe, that the defendant has not been unfairly prejudiced.

23-02-01 SUMMONS TO APPEAR

23-02-02 ISSUANCE OF SUMMONS. The Court may issue a Summons instead of a Warrant where the Court, in its discretion, deems that arrest is not essential. Such a Summons shall direct the defendant to appear before the Court at a stated time and place, to plead in response to the complaint. The Summons shall notify the defendant that a Warrant for his arrest will be issued in the event he fails to appear.

23-02-03 SERVICE OF SUMMONS. The Summons, together with a copy of the Complaint, shall be served by an authorized law officer, be delivering a copy to the defendant personally, or by leaving it at his dwelling place with a person of suitable age, residing there at the time of service. The Officer shall prepare a Return of Service which shall be filed with the records of the case.

23-03-01 ARREST WARRANTS.

23-03-02 ISSUANCE. Where the Court, in its discretion, that arrest is essential, or that a person has failed to appear before the Court after being lawfully ordered to do so, the Court shall issue a Warrant for Arrest upon the written complaint. The warrant shall name the defendant, or contain a description by which the defendant can be identified with reasonable certainty, and shall state the offense charged in the complaint, or if ordered by the Court, the reason for the issuance of such a warrant.

23-03-03 EXECUTION OF WARRANT. The Warrant shall be executed by the arrest of the defendant. The officer should have the warrant in his possession at the time of the arrest, but upon reasonable grounds, can produce the warrant at a later time and show it to the defendant.

23-03-04 LIMITS OF JURISDICTION. A warrant for arrest shall be void outside the limits of the Reservation, unless it conforms to the Extradition provisions of the Sisseton Wahpeton Sioux Tribe Law and Order Code.

23-03-05 ARREST WITHOUT A WARRANT.

- (1) Authority to Arrest Without a Warrant - A Tribal Police Officer may arrest a person without a warrant if the Officer has reasonable cause to believe that such person has committed:
 - (a) a felony;
 - (b) a misdemeanor, and the Officer has reasonable cause to believe that such person:
 - (i) will not be apprehended unless immediately arrested; or
 - (ii) may cause injury to himself or others or damage to property unless immediately arrested; or
 - (c) a misdemeanor or petty offense in the Officer's presence.

- (2) Reasonable Cause - Reasonable cause exists under this Section where there is substantial objective basis for believing that the person to be arrested has committed a crime. An arrest shall not be deemed to have been made on insufficient cause hereunder solely on the ground that the

officer is unable to determine the particular crime which may have been committed.

- (3) Determining Reasonable Cause - In determining whether reasonable cause exists to justify an arrest under this Section, a Tribal Police Officer may take into account all information that a prudent Officer would deem relevant to the likelihood that a crime has been committed and that the person to be arrested has committed it, including information derived from an informant whom it is reasonable, under the circumstances to believe, whether or not at the time of making the arrest, the Officer knows the informant's identity.

23-04-01 SEARCH AND SEIZURE.

23-04-02 AUTHORITY TO ISSUE WARRANT. Warrants may be issued by any Judge of the Court for the search and seizure of any premises, property, or persons subject to the jurisdiction of the Court

23-04-03 ISSUANCE AND CONTENTS. A search warrant shall issue only on an affidavit, sworn to before the Court, by a duly authorized Tribal or Federal Law Officer, establishing the grounds for the warrant. If the Court is satisfied that grounds for issuance of the warrant exist, or that there is probable cause to believe that they exist, the Court shall issue a warrant identifying the property and naming or describing the person or place, or both, to be searched. All search warrants shall be signed by the Judge issuing the warrant, and shall designate the place the return shall be made, which writ shall include a list of the property seized.

23-04-04 SERVICE AND RETURN. Warrants shall be served only by duly authorized Law Officers, and returned to the Court.

23-04-05 WARRANTLESS SEARCHES. No Law Officer shall search and seize any premises, property or person without a warrant, unless such search and seizure is supported by probable cause and:

- (1) incident to arrest;
- (2) necessary due to exigent circumstances, including the possibility of destruction of evidence or danger of life or property;
- (3) of an object in plain view and the officer is lawfully in the position necessary to make the view; or

- (4) in accordance with the subject's consent.

A person may be stopped and frisked by a Law Officer when that officer has reasonable cause to believe:

- (1) that criminal conduct is afoot;
- (2) that the person being frisked may be armed and dangerous; and
- (3) when such search is limited to the outer clothing of such person in an attempt to discover such weapons.

An unlawful search and seizure shall be deemed a trespass punishable as provided in Section 24-12-28 of the Penal Code.

23-05-01 RELEASE PRIOR TO ARRAIGNMENT. Prior to arraignment, and only when the Court is not in session, Tribal Police shall be authorized to release a defendant in the following manner:

- (1) Traffic Violations - In all traffic violations where there is no potential for jail time, the defendant can waive his appearance in Court by signing a waiver which will allow the Court to enter a plea of guilty on his behalf and Court costs may be paid in the following manner:
 - (a) **Non-residents:** At the time of arrest, non-residents can pay their fine and court costs at the Tribal Jail by depositing the fine and courts costs in an envelope. Tribal Police shall give the defendant a receipt for their payment.
 - (b) **Residents:** Any resident of the Lake Traverse Reservation may pay their fine and court costs any time prior to the set court date on the traffic ticket, thereby waiving there appearance in Court.
- (2) Penal Code Violations - All defendants may be released on a cash bail bond only in accordance with the prescribed bail bond schedule.
- (3) Cash Bail Agreement - A cash bail agreement is an agreement whereby a defendant agrees to pay the Court a specified amount if he fails to appear at the required time for arraignment.

Upon a defendant's release, Tribal Police shall serve a summons upon the defendant stating the date and time that said defendant is to appear in Court.

23-05-02 Failure to pay the fine and court costs as required or failure to appear in Court at the prescribed time shall be grounds for the Court to issue a bench warrant or arrest for the defendant.

23-06-01 ARRAIGNMENT.

23-06-02 ARRAIGNMENT AS BEING MANDATORY. Any person arrested for an offense by the Tribal Police shall be arraigned at the next regular court session.

23-06-03 INTERPRETER. At any time in the trial process, the Judge may appoint an interpreter of his own selection and may fix the reasonable compensation of such interpreter as may be necessary, at the expense of the Court. An interpreter through whom testimony is communicated shall be put under oath to faithfully and accurately translate and communicate as required by the Judge.

Under this section, such an interpreter will be required when the Court finds that a defendant's English skills are so negligible so as to require a Dakota interpreter in the interests of justice and the defendant's right to a fair trial.

23-06-04 PROCEDURE AT ARRAIGNMENT. Arraignment shall be conducted in open Court, and shall consist of:

- (1) Reading the Complaint to the accused;
- (2) Stating to him in Dakota or English, as may be required, the substance of the charges and the language of the law establishing the offense and fixing the penalty;
- (3) Advising him of his rights as set forth in Section 23-08-01 hereof; and
- (4) Calling him to plead to the charges.

23-07-01 PLEAS. A defendant may plead "guilty," "not guilty," or "no contest." Before any defendant is called upon to plead, the Judge before whom he appears shall advise the defendant:

- (1) That the same defendant has the right to counsel at his own expense, as well as the right to consult with counsel before making any statement and before entering any plea;

- (2) That if the defendant waives his right to counsel at any stage of the proceedings, and subsequently reasserts his right to counsel before trial, all proceedings shall stop until the defendant has an opportunity to locate and consult with counsel;
- (3) That if the defendant wished to plead "not guilty", he may request a jury trial if the offense he is charged with is punishable by imprisonment;
- (4) That if the defendant pleads "not guilty", he will be tried on a date set to allow sufficient time for him to prepare his defense;
- (5) That the defendant does not have to testify at his own trial, and his refusal to testify cannot be used to show his guilt;
- (6) That if the defendant does testify at his own trial, he must answer all questions asked by the prosecutor;
- (7) That the defendant has a right to a speedy trial;
- (8) That the defendant and any counsel that may represent him have the right to confront in Court all witnesses who testify against the defendant, and to question such witnesses under oath;
- (9) That the defendant has the right to present witnesses and evidence for his side at trial, and that the Court will require that they come or be brought to the Court if the defendant so requests; and
- (10) That the defendant cannot be tried for the same crime twice.

23-08-01 PRETRIAL RELEASE. At arraignment, the Court, in its discretion, may release a defendant pursuant to any of the following:

- (1) Personal Recognizance - To insure the presence of the defendant in Court at the time of trial, a defendant may be released without any monetary amount and the following factors may be considered in order for a defendant to be released on a Personal Recognizance ("P.R.") Bond: nature and circumstances of offense charged, weight of the evidence against the defendant, employment, ties to the reservation, financial resources, character and mental condition, record of convictions, length of residence on the reservation, record of

appearances in court proceedings, and the potential or previous flight to avoid prosecution, failure to appear at previous court proceedings.

- (2) Cash Bail Bond - To insure the presence of the defendant in all subsequent court proceedings, a cash monetary amount may be required of a defendant prior to his release. Bail shall be fixed in such an amount and in such form as, in the judgment of the Court will insure presence of the defendant but in no case shall bail exceed the maximum cash penalty for each offense which the defendant has been charged.
- (3) Bail Pending Appeal - Pending appeal, bail may be continued or allowed by the Court to run until the final determination of the case.
- (4) Revocation of Bail - The Court, for good cause shown, may revoke bail at any time and order the defendant committed to custody. The defendant may request a hearing on the issue of whether there was good cause for the revocation.

23-09-01 WAIVER OF RIGHTS AGREEMENT. As a condition of the defendant's release under a cash bail bond, personal recognizance bond or cash bail agreement, he or she shall agree to sign a waiver of rights which stipulates that the Tribal Police shall apprehend the defendant within the original boundaries of the Lake Traverse Reservation to be brought to Tribal Court.

23-10-01 PRESENCE OF THE DEFENDANT. The defendant in a criminal case shall be present in Court at every stage of the trial, including the impaneling of the jury and return of the verdict where trial is by jury, and the imposition of sentence.

23-11-01 RIGHTS OF DEFENDANT IN CRIMINAL CASES. No person shall twice be placed in jeopardy for the same offense, nor shall he be compelled in any criminal case to be a witness against himself. The accused shall have the right to a speedy and public trial, the right to confrontation of witnesses, the right to compulsory process for commanding the presence of witnesses, and the right to demand trial by an impartial jury for any offense or combination of offenses in this Code punishable by imprisonment.

23-12-01 RECUSAL OF A JUDGE. Upon the filing of an affidavit of bias and prejudice setting forth satisfactory proof of facts establishing that the defendant cannot have a fair trial because of bias or prejudice of the Judge to whom the case is assigned, the Judge shall disqualify himself. Any person who abuses this privilege, by filing affidavits of bias and prejudice without basis in fact, shall be in Contempt of Court.

23-13-01 TRIAL BY THE COURT WITHOUT A JURY. All trials shall be before the Court without a jury when the defendant waives his right to a jury trial at the time of arraignment. In trials without a jury, the Court shall hear and determine all issues of fact as well as all issues of law.

23-14-01 JURIES.

23-14-02 ELIGIBILITY FOR JURY DUTY. Any potential juror must meet the following requirements:

- (1) They must be an adult resident member of the Tribe.
- (2) They must be able to speak and understand the English language.
- (3) They must not have an interest in the case, or be related as spouse, parent, brother, sister, or child to any of the parties or their attorneys.
- (4) They must not have been convicted of a felony within one (1) year prior to appointment.
- (5) Any felony conviction of the appointee must not bear a similarity to the crime with which the defendant is charged.
- (6) They must not be a member of the Tribal Council; a Judge, officer or employee of the Court or Jail; a tribal law enforcement officer; or admitted to practice before the Court.
- (7) Elders of 65 years of age or older, who would be unduly burdened by serving on a jury may contact the Court to be excused.

23-14-03 JURY LIST. A list of at least twenty-one (21) resident enrollees of the Tribe who are eligible for jury duty shall be prepared and maintained by the Clerk. Each voting district on the Reservation shall be represented on the list.

23-14-04 TRIAL JURIES - HOW CONSTITUTED. Under the supervision of the presiding Judge, a panel of jurors shall be drawn by lot from the jury list. A trial jury shall consist of six (6) qualified jurors selected from a panel of no less than twelve (12) eligible persons taken from the jury list.

23-14-05 POWER TO SUBPOENA JURORS. The Judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the jury panel and of trial jurors. Such subpoenas shall be signed by the Judge issuing

them

- 23-14-06 POWER TO EXCUSE ANY PERSON FROM JURY DUTY.** The Judge assigned to the case shall have the power to excuse person from jury duty on account of sickness, disability or for other good cause.
- 23-14-07 EXAMINATION OF JURORS.** Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.
- 23-14-08 CHALLENGES.** In criminal cases, in addition to disqualifying the prospective jurors for cause, the prosecution and the defense shall each be entitled to three peremptory challenge without assigning any cause.
- 23-14-09 COMPENSATION TO JURORS.** Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at minimum rates set by the Court administrator of five dollars (\$5.00) per day and mileage at the rate of twenty-five cents (\$.35) per mile. All such payments shall be paid in order of presentation from available Court funds.
- 23-15-01 WITNESSES AND PRODUCTION OF EVIDENCE.**
- 23-15-02 ISSUANCE OF SUBPOENAS.** On motion of good cause shown by any party to the case, or on the Court's own motion, the Court shall issue subpoenas to compel the attendance of witnesses, or the production of books, records, documents, papers, and things necessary to the determination of the case, over which the Court has jurisdiction. Subpoenas shall be served at least 48 hours before attendance in Tribal Court is required.
- 23-15-03 PAYMENT OF WITNESSES.** Each party shall pay for its own witnesses. The Tribe shall pay all witnesses subpoenaed on its behalf at minimum rates set by the Court administrator at five dollars (\$5.00) per day and mileage at the rate of twenty-five cents (\$.35) per mile. Upon showing of the defendant's indigency, the Court shall make appropriate provisions for the appearance of witnesses on behalf of the indigent party.
- 23-15-04 ORAL TESTIMONY.** In all trials, the testimony of witnesses shall be given orally on oath in open court, subject to the right of cross-examination.
- 23-15-05 DOCUMENTARY AND TANGIBLE EVIDENCE.** Documents and other tangible evidence, material and relevant to the case may be received in evidence in open court if properly identified. Such evidence shall be open and available to the defendant for inspection and copying.

- 23-15-06 INTOXILYZER TEST.** Under no circumstances shall the results of an intoxilyzer test be admissible into evidence in any criminal action unless the officer who administered the test has been certified by a source recognized by the Court. Also, in order for the results to be admissible in such a case, a maintenance record shall be available for the particular test in question.
- 23-15-07 ORDER OF PRESENTATION.** The case of the plaintiff or prosecution shall be presented first, followed by the case of the defendant and by rebuttal and sur-rebuttal as required.
- 23-15-08 CLOSING ARGUMENTS.** At the conclusion of the evidence, the prosecution and defendant shall each in turn summarize the proof and make any final arguments, with the prosecution having the right of final rebuttal.
- 23-15-09 INSTRUCTIONS TO JURY.** At the close of evidence or at such earlier time during the trial as the Judge directs, counsel for any party may file with the Judge written instructions on the law which the party requests the Judge to deliver orally to the jury. At the same time, copies of such requests shall be furnished to opposing counsel. The Judge shall inform counsel of his proposed action upon each request prior to the arguments to the jury, but the Judge shall deliver his instructions to the jury after arguments are completed. No party may assign as error any portion of the Judge's charges or omission therefrom unless he makes his objection before the jury retires to consider its verdict. The objection shall be distinctly stated and the grounds for objection set forth. Opportunity shall be given to make the objection out of the hearing of the jury.
- 23-15-10 JURY VERDICTS IN CRIMINAL CASES.** After deliberation in private, the jury in criminal cases shall return to the Judge in open court a verdict of "Guilty" or "Not Guilty" with respect to each charge the defendant faces.
- 23-16-01 COSTS IN CRIMINAL CASES.** The judgment of conviction in criminal cases shall include costs in an amount not to exceed ten dollars (\$10.00).
- 23-17-01 APPEALS.** Upon conviction, a party thereto may file an appeal with the Intertribal Court of Appeals pursuant to, and in accordance with, Chapter 19 of the Sisseton-Wahpeton Sioux Tribe Law and Order Code.
- 23-18-01 GENDER.** For purposes of clarity only, male pronouns are used throughout this chapter. Any time such a pronoun is used, it would be just as appropriate to use a female pronoun as this chapter is equally applicable to all tribal members, regardless of gender.

23-18-02 **SEVERABILITY.** If any clause, sentence, paragraph, section, or part of this code shall for any reason be adjudicated by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

This Code was revised and amended during the Summer of 1999, and condensed from two separate chapters. Formerly, the provisions contained herein were located in Chapter 22 - Proceedings Before Trial, and Chapter 23 - Trials. These sections have been condensed and revised, with some key additions, in the interest of a creating a more complete, consistent, and uniform Tribal Criminal Procedure Code that will better serve the interests of justice and the people of the Sisseton-Wahpeton Sioux Tribe.