

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 56

PROVISIONS FOR ELDERS

S.W.S.T. CODE

Amendment

New Adoption

Judicial Approved

05-28-86

Council Adopted

06-04-86

56-01-01 PURPOSE AND CONSTRUCTION

Elders are very important and highly respected within our tribal structure. They are the caretakers of our rich culture and traditions. The Indian Child Welfare Act, in recognition, gives priority to grandparents when placing children who are in need. We also, as a people, wish to emphasize elder's rights and protection by making them a part of our laws. The Indian Child Welfare Act, defines "extended family" as the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, step-parent or any other person defined by law or custom of the tribe.

56-02-01 VISITATION RIGHTS OF GRANDPARENTS

The Court, in its discretion, may grant visitation rights with or without petition by the grandparents, if it is in the best interest of the grandchild.

56-03-01 PETITION FOR VISITATION RIGHTS BY GRANDPARENTS

The grandparents of a child may petition the Court for grandchild (ren) visitation rights in the following circumstances:

1. The parents of the child(ren) are divorced or legally separated; or
2. An action for divorce or separate maintenance has been commenced by one of the parents of the child (ren); or
3. The parent of the child (ren), who is the child of the grandparent, has died.

56-03-02 The preceding provisions cited in 56-01-01, 56-02-01, and 56-03-01, inclusive, do not apply if the child (ren) has been placed for adoption with a person other than the child (ren)'s step-parent or grandparent. Any grandparent visitation rights granted pursuant to 56-01-01, 56-02-01, and 56-03-01, inclusive prior to placement for adoption of the child (ren) for adoption, except in those cases of "open adoption" as defined in Section 38-03-37.

56-04-01 ELDERS ABUSE - PENALTY

Any person or caretaker who is convicted for a violation of the following defined provisions in Section 56-06-02 through 56-06-07 shall be sentenced to imprisonment for a maximum of six (6) months in jail and to a fine of not more than three hundred and sixty dollars (\$360.00), plus court costs. (Class A Offense)

56-05-01 PENALTY FOR FAILURE TO REPORT ELDER ABUSE

Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elder shall report the abuse or suspected abuse to the Tribal Prosecutor, or in his/her stead, a police officer, or social worker, immediately. Any person or caretaker who, without good cause, fails to report abuse or suspected abuse of the elder shall be guilty of an offense and upon conviction thereof shall be sentenced to imprisonment for a minimum of ten (10) days and/or fine of not less than thirty-five dollars (\$35.00), plus court costs. (Class E Offense)

56-06-01 DEFINITIONS

56-06-02 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 personal care which are necessary to prevent 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 that they are being furnished traditional remedial treatment by spiritual means through prayer alone in accordance with their religious beliefs.

56-06-03 ELDER - means any person who has attained the age of fifty-five (55) years.

56-06-04 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 competent jurisdiction.

56-06-05 EXPLOITATION - means the act or process of using an elder or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement.

56-06-06 PHYSICAL INJURY - means bodily pain, harm, impairment caused by malnutrition.

56-06-07 MENTAL ANGUISH - means to subject an elder to fear, agitation, confusion, sever depression, or other forms of serious emotional distress through threats, harassment, or other forms of intimidating behavior.

56-07-01 **REPORT AND INVESTIGATION**

Reports may be made to the Tribal Court Prosecutor, a police officer, or social worker. Anyone participating in good faith in the making of a report pursuant to the Elder Abuse provisions 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 proceeding resulting from such report. The Tribal Court Prosecutor, police officer, or social worker shall reduce to writing the following information from an informant:

1. Name, age, and address of elder alleged to be abused;
2. Name and address of person or caretaker in charge of elder who is subject of the report;
3. Name and address of alleged perpetrator;
4. Nature and extent of the abuse;
5. Persons who might have been aware of the abuse;
6. Date(s) and location(s) of when and where the alleged abuse occurred;
7. Any other pertinent information known to the person making the report.

56-08-01 **NON-DISCLOSURE**

The name of any person who reports suspected abuse of elders 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.

56-09-01 **SPECIAL BOARD**

The Chief Judge shall - with the advice and consent of the existing elderly groups and if circumstances warrant - appoint a special board who shall evaluate circumstances and make remedial recommendations. The Board shall have at least one (1) elder and shall consist of not less than (3) nor more than five (5) members, in an ad hoc capacity. The Board's primary responsibilities shall consist of evaluating what services need to be mobilized on the elder's behalf and shall include, but not be limited to, arrangement for appropriate living quarters, obtaining financial benefits to which the person is entitled, securing medical services and supplies, and in cases where exploitation, prevention of

injury, protection of the person and their property is at issue, seeking alternative living quarters. The Board shall request and have at its disposal all those services from agencies serving the people of the Sisseton-Wahpeton Sioux Tribe to carry out its objectives.

56-10-01 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 judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

S.W. CODE
 Amendment
 New Adoption
Judicial Approved
12-24-88
Council Adopted
13-01-88

Sisseton-Wahpeton Sioux Tribe

Lake Traverse Reservation

P. O. Box 509

Agency Village, South Dakota 57262

Phone (605) 698-3911

TRIBAL COUNCIL RESOLUTION NO. 87-36

- WHEREAS, The Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation is organized under a Constitution and By-Laws adopted by the members of the Tribe on August 1-2, 1966, and approved by the Commissioner of Indian Affairs on August 25, 1966; and,
- WHEREAS, Article VII., Section 1., of the Constitution authorizes the Tribal Council to: (a) represent the Tribe in all negotiations with Federal, State, and local governments; (g) to take any action by ordinance, resolution, or otherwise which is reasonably necessary, through committees, boards, agents, or otherwise, to carry into effect the foregoing purposes; and (h) to promote public health, education, charity, and other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Sioux Tribe; and,
- WHEREAS, The Sisseton-Wahpeton Sioux Tribal Council has established the Human Services Board as advisory and policy-recommending in matters pertaining to the health and welfare of Tribal members; and,
- WHEREAS, For the past two decades, the Human Services Board has continuously advocated the need for residential care resources for the elderly and disabled population and has set up a number of facilities to address this problem (all of which have failed due to lack of resources); and,
- WHEREAS, The CORE HEALTH PLAN, approved by the Tribal Council in July, 1986, identifies INADEQUATE HEALTH CARE FACILITIES, including lack of skilled, intermediate, and supervised care resources for elderly and disabled patients, as the first-major health problem on the Lake Traverse Reservation; it also cites HIGH INCIDENCE OF CHRONIC DISEASES, such as diabetes, renal failure, hypertension, heart disease, arthritis, lupus, and multiple sclerosis, as the fourth-major health status problem; and,
- WHEREAS, The BIA Labor Force Report, 1986, identifies two hundred fifty-two (252) elderly persons, age sixty-five (65) and older, residing on or near the Reservation, a number which constitutes 7.16% of the total population; and,
- WHEREAS, The Sisseton-Wahpeton Sioux Tribal Community Health Representative Program records indicate that there are twelve (12) Tribal members in local nursing homes, due to the following disabling conditions:

Neurological Disability Due To Stroke	- 6
Disability Due To Accidental Injury	- 3
Terminal Due To Disease Processes (i.e., Cancer)	- 1
Developmental Disability	- 1
Disabled Due To Chronic Disease	- 1 ; and,

WHEREAS, According to information contained in the family profiles of the Tribal Community Health Representative Program, as of January, 1987, there are two hundred eighty-one (281) unduplicated patients identified with disabling conditions, sixty (60) of which are candidates for a residential care situation for reasons summarized as follows:

<u>Type of Condition:</u>	<u>Total Number:</u>	<u>Conditions Among Potential Candidates for Residential Care:</u>
Diabetes	93	16
Heart Disease	43	8
Hypertension	34	3
Developmental Disability	34	3
Arthritis and Lupus	20	4
Visual Impairment	29	6
Hearing Impairment	21	2
Stroke	13	8
Amputee	11	5
Wheelchair	22	8
Cancer	13	3
Chronic Alcoholism	35	20
Spinal Cord Injury	6	0
Chronic Lung Disease	9	4
Renal Disease	7	4
Muscular Dystrophy	8	1
Other Handicap or Condition	84	17

NOTE THAT MOST PATIENTS HAVE MORE THAN ONE HEALTH CONDITION; and,

WHEREAS, The Inhome Care Advisory Board, established by the Tribal Council by Resolution Number 82-34 on February 4, 1982, to meet monthly for inter-agency case-collaboration aimed at assisting patients to stay in their own homes and communities for as long as possible, has approximately twenty (20) unduplicated clients in need of some type of supervised living care for which no appropriate resources exist; and,

WHEREAS, Most of this population is capable of relatively independent living with medical supervision, personal care, meals, housekeeping services, financial management, and protective assistance; and,

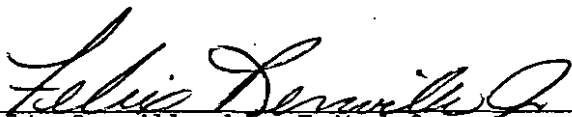
WHEREAS, Generally, Indian elderly and disabled persons prefer to live their lives, grow older, and die in their own community, where language, customs, beliefs, traditions, foods, and activities are familiar, and where they can continue to contribute to and share a way of life.


NOW, THEREFORE, BE IT RESOLVED: That the Tribal Council of the Sisseton-Wahpeton Sioux Tribe supports the recommendation of the Human Services Board and hereby directs that construction of a supervised living/intermediate care facility for elderly and disabled Tribal members be established as the priority for a Housing and Urban Development Community Development Block Grant funding allocation, thereby addressing the need for more adequate health care facilities on the Lake Traverse Reservation.

C E R T I F I C A T I O N

We, the undersigned, duly elected Chairman and Secretary of the Sisseton-Wahpeton Sioux Tribal Council do hereby certify that the above resolution was duly adopted by the Sisseton-Wahpeton Sioux Tribal Council, which is composed of 18 members, of whom 17 members, constituting a quorum, were present at a Tribal Council meeting duly noticed, called, convened, and held at Tiwakan Center, Agency Village, South Dakota, on January 14, 1987, by a vote of 12 for, 0 opposed, 2 not voting, and 3 absent from vote, and that said resolution has not been rescinded or amended in any way.

Dated this 14th day of January, 1987.


Felix Renville Jr., Tribal Secretary
SISSETON-WAHPETON SIOUX TRIBAL COUNCIL

ATTEST: 
Russell Hawkins, Tribal Chairman
SISSETON-WAHPETON SIOUX TRIBAL COUNCIL