

**AMENDED**

**APPLICATION OF THE**

**SISSETON-WAHPETON OYATE**

**VAWA PILOT PROJECT**

**QUESTIONNAIRE ON TRIBAL**

**CRIMINAL JURISDICTION**

# Final Draft Submitted March 2, 2015

Via email to: [OTJ@usdoj.gov](mailto:OTJ@usdoj.gov)

## THE RIGHT TO TRIAL BY AN IMPARTIAL JURY

1. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the Defendant the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

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### References:

See SWO Codes of Law, Chapter 23, Sections 23-10-01 through 23-10-10, copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking “Legal Department” icon.

### **23-10-01 JURIES**

#### **23-10-02 ELIGIBILITY FOR JURY DUTY; GENERALLY**

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.

#### **23-10-03 ELIGIBILITY FOR JURY DUTY; SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION**

Any potential juror for a special domestic violence criminal jurisdiction case must be an adult 18 years or older who meets the eligibility requirements of 23-10-02 except for that of 23-10-02(1). In such a case, the juror must be drawn from sources that reflect a fair cross section of the community.

**23-10-04 JURY LIST; GENERALLY**

A list of at least twenty-one (21) residents of the Tribe and other persons as designated herein 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. Potential jurors may be selected from a variety of sources including but not limited to enrolled members of the Sisseton-Wahpeton Oyate, residents within the jurisdiction of Lake Traverse Reservation pursuant to 20-02-02 and 20-01-07, full-time employees of the Tribe or its entities (educational institutions, businesses, agencies, subdivisions, or instrumentalities) who have completed the required probationary period, and persons leasing lands from the Tribe. Each potential juror selected from the above sources will also comply with the eligibility requirements (23-10-02 and 23-10-03) and will be eliminated if the requirements are not met.

**23-10-05 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.

**23-10-06 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.

**23-10-07 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.

**23-10-08 EXAMINATION OF JURORS**

Each party may question members of the panel of prospective jurors for the purpose of selecting a trial jury.

**23-10-09 CHALLENGES**

In criminal cases, in addition to disqualifying the prospective jurors for cause, the prosecution and the defense shall each be entitled to three preemptory challenge without assigning any cause.

**23-10-10 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.

**FURTHER DISCUSSION**

1. The Jury list is compiled utilizing records from the SWO Enrollment Department, the HR Departments from the Tribe and all its entities.
2. The Tribal Court will assess costs in all criminal cases where there is a Judgment of conviction. *See SWO Codes of Law, Section 23-12-02, posted below and found at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking “Legal Department” icon.*

**23-12-02 COSTS IN CRIMINAL CASES**

The judgment of conviction in criminal cases shall include court costs in an amount not to exceed fifty (\$50.00) dollars for jury trials and twenty-five dollars (\$25.00) for bench trial, plus applicable law enforcement costs and witness service fees of twenty-five dollars (\$25.00).

3. A Defendant found guilty at trial has the right of appeal. *See SWO Codes of Law, Section 23-13-02, posted below and found at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking “Legal Department” icon.*

**23-13-02 APPEALS**

Upon conviction, a party hereto may file a timely appeal in accordance with Chapter 21 and any applicable rules and procedures of the SWO Supreme Court.

**THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL**

2. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the Defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution?

Please answer “Yes” or “No”. Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

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*References:*

*See SWO Codes of Law, Chapter 23, Sections 23-08-01 through 23-08-04, copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking “Legal Department” icon.*

**23-08-01 RIGHTS OF DEFENDANT IN CRIMINAL CASES**

**23-08-02 GENERALLY.**

The Sisseton-Wahpeton Oyate Tribal Court shall provide the Defendant the following rights:

- (1) No defendant shall be twice placed in jeopardy in Tribal Court for the same offense;
- (2) No defendant shall be compelled in any criminal case to be a witness against himself;
- (3) Every defendant shall have the right to a speedy and public trial, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor;
- (4) Every defendant has the right to effective assistance of counsel, who shall be licensed by any jurisdiction in the United States, including tribes. Defendants shall be provided with assistance of counsel if requested and if available for any offense that may include time in jail;
- (5) Any person, if accused of an offense or combination of offenses punishable by imprisonment, shall have the right to trial by an impartial jury of not less than six persons;
- (6) The Sisseton-Wahpeton Oyate Tribal Court shall maintain a record of the criminal proceeding, including audio or other recording of the trial proceeding;
- (7) No person shall be denied due process of law;

**23-08-03 ENHANCED SENTENCING.**

The Sisseton-Wahpeton Oyate Tribal Court may, upon conviction of any offense, impose a penalty or punishment up to a term of 3 years, but not to exceed 9 years for multiple counts, a fine up to \$15,000.00, or both. In addition, Defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) The accused shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and professional responsibility of its licensed attorneys;
- (3) The Tribe shall require that the judge presiding over the criminal proceeding: a) has sufficient legal training to preside over criminal proceedings; and b) is licensed to practice law by any jurisdiction in the United States;
- (4) Prior to charging the defendant, the Tribe shall make publicly available the criminal laws, rules of evidence, and rules of criminal procedure.

**23-08-04 SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.**

When the Sisseton-Wahpeton Oyate Tribal Court exercises inherent special domestic violence criminal jurisdiction, defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) All rights listed above, as a part of 23-08-03;

(3) Defendant shall have all rights under the Indian Civil Rights Act and all other rights whose protection is necessary under the Constitution of the United States;

(4) The defendant, regardless of whether a term of imprisonment may be imposed, has the right to a trial by an impartial jury of no less than six persons, that is drawn from sources that: 1) reflect a fair cross section of the community, and 2) do not systematically exclude any distinctive group in the community; and

(5) The defendant shall be notified of his right to file a writ of habeas corpus.

### **THE RIGHT TO INDIGENT DEFENSE COUNSEL**

3. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to each indigent Defendant, at no cost to the Defendant, the right to the assistance of a defense attorney licensed to practice by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively assures the competence and professional responsibility of its licensed attorneys?

Please answer “Yes” or “No”. Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

4. For each licensed defense attorney that the Tribe anticipates will be appointed to represent an indigent Defendant in a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e. prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide a list of all jurisdictions for each attorney.

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#### *References:*

*See SWO Codes of Law, Chapter 23, Sections 23-08-01 through 23-08-04, copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking “Legal Department” icon.*

#### **23-08-01 RIGHTS OF DEFENDANT IN CRIMINAL CASES**

##### **23-08-02 GENERALLY.**

The Sisseton-Wahpeton Oyate Tribal Court shall provide the Defendant the following rights:

- (1) No defendant shall be twice placed in jeopardy in Tribal Court for the same offense;
- (2) No defendant shall be compelled in any criminal case to be a witness against himself;

- (3) Every defendant shall have the right to a speedy and public trial, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor;
- (4) Every defendant has the right to effective assistance of counsel, who shall be licensed by any jurisdiction in the United States, including tribes. Defendants shall be provided with assistance of counsel if requested and if available for any offense that may include time in jail;
- (5) Any person, if accused of an offense or combination of offenses punishable by imprisonment, shall have the right to trial by an impartial jury of not less than six persons;
- (6) The Sisseton-Wahpeton Oyate Tribal Court shall maintain a record of the criminal proceeding, including audio or other recording of the trial proceeding;
- (7) No person shall be denied due process of law;

**23-08-03 ENHANCED SENTENCING.**

The Sisseton-Wahpeton Oyate Tribal Court may, upon conviction of any offense, impose a penalty or punishment up to a term of 3 years, but not to exceed 9 years for multiple counts, a fine up to \$15,000.00, or both. In addition, Defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) The accused shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and professional responsibility of its licensed attorneys;
- (3) The Tribe shall require that the judge presiding over the criminal proceeding: a) has sufficient legal training to preside over criminal proceedings; and b) is licensed to practice law by any jurisdiction in the United States;
- (4) Prior to charging the defendant, the Tribe shall make publicly available the criminal laws, rules of evidence, and rules of criminal procedure.

**23-08-04 SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.**

When the Sisseton-Wahpeton Oyate Tribal Court exercises inherent special domestic violence criminal jurisdiction, defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;

- (2) All rights listed above, as a part of 23-08-03;
- (3) Defendant shall have all rights under the Indian Civil Rights Act and all other rights whose protection is necessary under the Constitution of the United States;
- (4) The defendant, regardless of whether a term of imprisonment may be imposed, has the right to a trial by an impartial jury of no less than six persons, that is drawn from sources that:  
1) reflect a fair cross section of the community, and 2) do not systematically exclude any distinctive group in the community; and
- (5) The defendant shall be notified of his right to file a writ of habeas corpus.

*Question #4*

Vincent Pelfrey – SWO Public Defender, Licensed in South Dakota and the Sisseton Wahpeton Oyate Tribal Court

***FURTHER DISCUSSION***

As cited in the applicable sections above, the SWO does not distinguish between indigent and non-indigent Defendants, nor will it distinguish between Indian and non-Indian Defendants. All Defendants who come before the Court, in which a term of imprisonment of any length may be imposed, are entitled to representation by the SWO Public Defender.

**THE RIGHT TO A LAW-TRAINED LICENSED JUDGE**

5. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the Defendant the right to a criminal proceeding presided over by a Judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any Jurisdiction in the United States?

Please answer “Yes” or “No”. Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

6. For each Judge that the Tribe anticipates will be appointed to represent an indigent Defendant in a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot



Project (i.e. prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide a brief description of the judge's legal training to preside over criminal proceedings, and (b) a list of all jurisdictions that Judge is licensed to practice law.

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*References:*

See *SWO Codes of Law, Chapter 23, Section 23-08-03*, copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking "Legal Department" icon.

**23-08-03 ENHANCED SENTENCING.**

The Sisseton-Wahpeton Oyate Tribal Court may, upon conviction of any offense, impose a penalty or punishment up to a term of 3 years, but not to exceed 9 years for multiple counts, a fine up to \$15,000.00, or both. In addition, Defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) The accused shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and professional responsibility of its licensed attorneys;
- (3) The Tribe shall require that the judge presiding over the criminal proceeding: a) has sufficient legal training to preside over criminal proceedings; and b) is licensed to practice law by any jurisdiction in the United States;
- (4) Prior to charging the defendant, the Tribe shall make publicly available the criminal laws, rules of evidence, and rules of criminal procedure.

*Question #6*

B.J. Jones – Chief Judge — Licensed in South Dakota, North Dakota, Virginia, U.S. District Courts of South Dakota and North Dakota, 8<sup>th</sup> Circuit Court of Appeals

Michael T. Swallow – First Associate Judge – Licensed in South Dakota, U.S. District Courts of South Dakota and North Dakota, 8<sup>th</sup> circuit Court of Appeals

## THE RIGHT TO PUBLICLY AVAILABLE LAWS AND RULES

7. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe, prior to charging the Defendant, make publicly available the criminal laws, (including regulations and interpretive documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government?

Please answer "Yes" or "No". Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

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### *References:*

*See SWO Codes of Law, Chapter 23, Section 23-08-03(4) and 23-09-02, copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking "Legal Department" icon.*

### **23-08-03 ENHANCED SENTENCING.**

The Sisseton-Wahpeton Oyate Tribal Court may, upon conviction of any offense, impose a penalty or punishment up to a term of 3 years, but not to exceed 9 years for multiple counts, a fine up to \$15,000.00, or both. In addition, Defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) The accused shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and professional responsibility of its licensed attorneys;
- (3) The Tribe shall require that the judge presiding over the criminal proceeding: a) has sufficient legal training to preside over criminal proceedings; and b) is licensed to practice law by any jurisdiction in the United States;
- (4) Prior to charging the defendant, the Tribe shall make publicly available the criminal laws, rules of evidence, and rules of criminal procedure.

**23-09-01 JUDGES**

**23-09-02 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.

**THE RIGHT TO RECORDS OF THE CRIMINAL PROCEEDING**

8. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding?

Please answer “Yes” or “No”. Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

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The SWO Tribal Court maintains a digital recording of each court proceeding. The Oyate utilizes a state of the art recording system that includes the capability of audio/video proceedings for arraignments. Digital microphones are located at counsel tables, the bench, the witness box and various other spots in the courtroom. All hearings are recorded and can be transcribed and made available upon request of the Defendant. Because recordings are kept electronically until a transcript is requested, they are kept indefinitely, the Court having no plans to destroy such records. Upon request, the Tribe will provide indigent Defendants with transcripts of proceedings for the purpose of appeal and habeas proceedings.

**THE RIGHT TO TIMELY NOTICE OF FEDERAL HABEAS CORPUS OF RIGHTS AND PRIVILEGES**

9. Will the Tribe provide to each person detained by order of the Tribe timely notice of the person's rights and privileges in the court of the United States a petition for a writ of habeas corpus under **25 U.S.C. §1303** and a petition to stay further detention under **25 U.S.C. §1304(e)**?

Yes

No

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*References:*

See *SWO Codes of Law, Chapter 23, Section 23-06-04 and 23-08-04(5)*, copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking "Legal Department" icon.

**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 23-06-05 and 23-08-02, 23-08-03, and/or 23-08-04; and
- (4) Calling him to plead to the charges.

**23-08-04 SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.**

When the Sisseton-Wahpeton Oyate Tribal Court exercises inherent special domestic violence criminal jurisdiction, defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) All rights listed above, as a part of 23-08-03;
- (3) Defendant shall have all rights under the Indian Civil Rights Act and all other rights whose protection is necessary under the Constitution of the United States;
- (4) The defendant, regardless of whether a term of imprisonment may be imposed, has the right to a trial by an impartial jury of no less than six persons, that is drawn from sources that: 1) reflect a fair cross section of the community, and 2) do not systematically exclude any distinctive group in the community; and

(5) The defendant shall be notified of his right to file a writ of habeas corpus.

### **OTHER RIGHTS PROTECTED BY THE INDIAN CIVIL RIGHTS ACT**

10. In a criminal proceeding in which the Tribe will exercise SDVCJ will the Tribe provide to the Defendant all applicable rights under the Indian Civil rights Act of 1968, as amended, including but not limited to (a) the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, and not to be subjected to a warrant unless it was issued upon probable cause, was supported by oath or affirmation, and particularly described the place to be searched and the person or thing to be seized; (b) the right not to be twice put in jeopardy for the same offense; (c) the right not to be compelled to be a witness against himself; (d) the right to a speedy and public trial; (e) the right to be informed of the nature and cause of the accusation; (f) the right to be confronted with the witnesses against him; (g) the right to have compulsory process for obtaining witnesses in his favor; (h) the right to be free from excessive bail; (i) the right to be free from excessive fines; (j) the right against cruel and unusual punishments; (k) the right to the equal protection of the Tribe's laws; (l) the right not to be deprived of liberty or property without due process of law; (m) the right not to be subjected to an ex post facto law; and (n) the right to a trial by jury of not less than six persons.

Please answer "Yes" or "No". Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

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#### *References:*

*See SWO Codes of Law, Chapter 23, Sections 23-08-02 through 23-08-04, copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking "Legal Department" icon.*

#### **23-08-02 GENERALLY.**

The Sisseton-Wahpeton Oyate Tribal Court shall provide the Defendant the following rights:

- (1) No defendant shall be twice placed in jeopardy in Tribal Court for the same offense;
- (2) No defendant shall be compelled in any criminal case to be a witness against himself;
- (3) Every defendant shall have the right to a speedy and public trial, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor;
- (4) Every defendant has the right to effective assistance of counsel, who shall be licensed by any jurisdiction in the United States, including tribes. Defendants shall be provided with assistance of counsel if requested and if available for any offense that may include time in jail;
- (5) Any person, if accused of an offense or combination of offenses punishable by imprisonment, shall have the right to trial by an impartial jury of not less than six persons;
- (6) The Sisseton-Wahpeton Oyate Tribal Court shall maintain a record of the criminal proceeding, including audio or other recording of the trial proceeding;
- (7) No person shall be denied due process of law;

**23-08-03 ENHANCED SENTENCING.**

The Sisseton-Wahpeton Oyate Tribal Court may, upon conviction of any offense, impose a penalty or punishment up to a term of 3 years, but not to exceed 9 years for multiple counts, a fine up to \$15,000.00, or both. In addition, Defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) The accused shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; defense attorneys shall be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and professional responsibility of its licensed attorneys;
- (3) The Tribe shall require that the judge presiding over the criminal proceeding: a) has sufficient legal training to preside over criminal proceedings; and b) is licensed to practice law by any jurisdiction in the United States;
- (4) Prior to charging the defendant, the Tribe shall make publicly available the criminal laws, rules of evidence, and rules of criminal procedure.

**23-08-04 SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.**

When the Sisseton-Wahpeton Oyate Tribal Court exercises inherent special domestic violence criminal jurisdiction, defendants are granted the following rights:

- (1) All rights listed above, as a part of 23-08-02;
- (2) All rights listed above, as a part of 23-08-03;
- (3) Defendant shall have all rights under the Indian Civil Rights Act and all other rights whose protection is necessary under the Constitution of the United States;
- (4) The defendant, regardless of whether a term of imprisonment may be imposed, has the right to a trial by an impartial jury of no less than six persons, that is drawn from sources that: 1) reflect a fair cross section of the community, and 2) do not systematically exclude any distinctive group in the community; and
- (5) The defendant shall be notified of his right to file a writ of habeas corpus.

**TRIBAL CRIMINAL JURISDICTION**

11. Will the Tribe exercise SDVCJ over a Defendant only for criminal conduct constituting, within the meaning of **25 U.S.C. §1304**, either (a) an act of domestic violence or dating violence that occurs in the Indian country of the Tribe, or (b) an act that occurs in the Indian country of the Tribe and violates the portion of a protection order that (1) prohibit or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (2) was issued against the Defendant; (3) is enforceable by the Tribe; and (4) is consistent with **18 U.S.C. §2265(b)**?

Please answer “Yes” or “No”. Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

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*References:*

*See SWO Codes of Law, Chapter 20, Sections 20-03-01 through 20-03-03 and Chapter 52, Sections 52-01-04(5)(6) and 52-02-05 copied below and publicly available at:*

<http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking “Legal Department” icon.

## **20-03-01 SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION**

### **20-03-02 CRIMINAL CONDUCT COVERED**

The Sisseton-Wahpeton Oyate hereby exercises its inherent power, which is recognized and affirmed by the Violence Against Women Reauthorization Act of 2013, to exercise special domestic violence criminal jurisdiction (SDVCJ) over non-Indians. The Sisseton-Wahpeton Oyate may exercise special domestic violence criminal jurisdiction for criminal conduct that falls into one or more of the following categories:

1. Domestic Violence and/or Dating Violence - an act of domestic violence and/or dating violence, pursuant to Chapter 52, that occurs in the jurisdiction of the Sisseton-Wahpeton Oyate.
2. Violations of Protection Orders - an act that:
  - a. Occurs in the jurisdiction of the Sisseton-Wahpeton Oyate; and
  - b. Violates the portion of protection order that:
    - i. Prohibits or provides protection against violence or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;
    - ii. was issued against the defendant;
    - iii. is enforceable by the Sisseton-Wahpeton Oyate:
      1. was issued by a court with jurisdiction over the parties and matter; and
      2. gave reasonable notice and opportunity to be heard, sufficient to protect the defendant's right to due process.

### **20-03-03 DEFENDANTS**

The Sisseton-Wahpeton Oyate may exercise special domestic violence criminal jurisdiction over a non-Indian defendant that meets any of the below criteria:

1. Resides within the jurisdiction of the Sisseton-Wahpeton Oyate; and/or
2. Is employed within the jurisdiction of the Sisseton-Wahpeton Oyate; and/or
3. Is a spouse, intimate partner, or dating partner of:
  - a. A member of the Sisseton-Wahpeton Oyate, or
  - b. Any Indian person of another tribe who resides in the jurisdiction of the Sisseton-Wahpeton Oyate.



**52-01-04 Definitions.**

5. **“Dating Violence”** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, and the frequency of interaction between the persons involved in the relationship.
  
6. **“Domestic Violence”** means the occurrence of one or more of the following acts by a family or household member, a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or a person similarly situated to a spouse of the victim under the domestic - or family - violence laws of the Sisseton-Wahpeton Oyate:
  - a. Attempting to cause or causing bodily injury to the victim;
  - b. Placing the victim in fear or apprehension of bodily injury;
  - c. Causing the victim to engage involuntarily in sexual activity by force, threat of force, or duress.

This list will exclude any acts of self-defense.

**52-02-05 VIOLATION OF CERTAIN ORDERS FOR PROTECTION IS A MISDEMEANOR**

Violation of one of the following orders, issued as a part of a valid protection order in accordance with the SWO Domestic Violence Ordinance or in accordance with the laws of any other jurisdiction provided such laws comply with 18 U.S.C. 2265 (Full Faith and Credit), is a Class 1 misdemeanor.

1. An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other family or 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 specified by the Court.
7. An order requiring the respondent to attend a program of intervention for offenders;
8. An order requiring the respondent to obey all laws of the Sisseton-Wahpeton Oyate.

The petitioner who is granted an order for protection cannot violate or be arrested for a violation of her/his own order for protection.

Any person granted a civil or criminal order of protection from the Sisseton-Wahpeton Oyate Court or any other Court of competent jurisdiction cannot be punished for a violation of that order for protection under this ordinance. It shall not be a defense to a charge of violation of an order for protection under this section that the victim consented to the violation by encouraging contact or a violation of the order of protection.

A violation of an order for protection shall be a Class I misdemeanor.

12. In a criminal proceeding in which the tribe will exercise SDVCJ, will the Tribe convict a non-Indian Defendant at trial only if the Tribe proves that the alleged victim is an Indian?

Please answer “Yes” or “No”. Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

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*References:*

*See SWO Codes of Law, Chapter 20, Section 20-03-03 and Chapter 52, Section 52-01-03(3) copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking “Legal Department” icon.*

### **20-03-03 DEFENDANTS**

The Sisseton-Wahpeton Oyate may exercise special domestic violence criminal jurisdiction over a non-Indian defendant that meets any of the below criteria:

1. Resides within the jurisdiction of the Sisseton-Wahpeton Oyate; and/or
2. Is employed within the jurisdiction of the Sisseton-Wahpeton Oyate; and/or
3. Is a spouse, intimate partner, or dating partner of:
  - a. a member of the Sisseton-Wahpeton Oyate, or
  - b. any Indian person of another tribe who resides in the jurisdiction of the Sisseton-Wahpeton Oyate.

### **52-01-03 Scope.**

Authority of the Sisseton-Wahpeton Oyate to regulate domestic violence in its jurisdictional territory.

1. By treaty, the Sisseton-Wahpeton Oyate 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 Sisseton-Wahpeton Oyate 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 Oyate.
3. Domestic violence is also perpetrated by or against persons who are not members of the Sisseton-Wahpeton Oyate. These activities of non-members and non-Indians, who have entered into consensual relations with tribal members, will be regulated under this ordinance just as the activities of tribal members.
4. The Sisseton-Wahpeton Oyate shall exercise criminal jurisdiction over non-Indian domestic violence offenders pursuant to: 1) its inherent authority to protect members from conduct that threatens and/or has a direct effect on their health and/or welfare, and 2) the Violence Against Women Reauthorization Act, which recognizes and affirms Tribes' inherent authority to exercise special domestic violence criminal jurisdiction over non-Indian offenders; see Chapter 20 (Jurisdiction).

13. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a Defendant at trial only if the Tribe proves that the Defendant resides in the Indian country of the Tribe; is employed in the Indian country of the Tribe; or is a spouse, intimate partner or dating partner either of a member of the Tribe or an Indian who resides in the Indian country of the Tribe?

Please answer "Yes" or "No". Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

*References:*

See *SWO Codes of Law, Chapter 20, Section 20-03-04* copied below and publicly available at: <http://www.swo-nsn.gov/JusticeDept.aspx> and by clicking "Legal Department" icon.

**20-03-04 DEFENDANTS**

The Sisseton-Wahpeton Oyate may exercise special domestic violence criminal jurisdiction over a non-Indian defendant that meets any of the below criteria:

1. Resides within the jurisdiction of the Sisseton-Wahpeton Oyate; and/or

2. Is employed within the jurisdiction of the Sisseton-Wahpeton Oyate;  
and/or
3. Is a spouse, intimate partner, or dating partner of:
  - a. a member of the Sisseton-Wahpeton Oyate, or
  - b. any Indian person of another tribe who resides in the jurisdiction of the Sisseton-Wahpeton Oyate.

***FURTHER DISCUSSION***

Although Section 20-03-03 refers to the exercise of SDVCJ over a non-Indian who meets the criteria pursuant to VAWA, the conviction of the non-Indian will only occur if the above criteria are met.

**CERTIFICATION OF THE TRIBE'S CHIEF EXECUTIVE OFFICER**

1. I am the Chairman/Chief Executive Officer of the Sisseton Wahpeton Oyate.
2. I certify that I have read the Indian Civil Rights Act, as amended, **25 U.S.C. 1301-1304**, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Amended Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Oyate has safeguards in place to protect the Defendant’s rights, consistent with **25 U.S.C. 1304**.

Signature:

Date: March 2, 2015  
Name: Bruce Renville  
Title: Chairman  
Address: 12554 BIA Hwy 711, SWO Admin Bldg., Agency Village, SD 57262  
Phone: 605-698-3911  
FAX: 605-698-7661  
Email: chairman@swo-nsn.gov

## CERTIFICATION OF THE TRIBE'S CHIEF JUDICIAL OFFICER

1. I am the Chief Judge/Chief Judicial Officer of the Sisseton Wahpeton Oyate.
2. I certify that I have read the Indian Civil Rights Act, as amended, **25 U.S.C. 1301-1304**, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Amended Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Oyate has safeguards in place to protect the Defendant's rights, consistent with **25 U.S.C. 1304**.

Signature

Date:

Name: B.J. Jones

Title: Chief Judge

Address: 12554 BIA Hwy 711, SWO Admin Bldg., Agency Village, SD 57262

Phone: 605-698-3911

FAX: 605-698-4135

Email: BJones@swo-nsn.gov

## CERTIFICATION OF THE TRIBE'S CHIEF LEGAL OFFICER

1. I am the Chief Legal Officer of the Sisseton Wahpeton Oyate.
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Amended Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Oyate has safeguards in place to protect the Defendant's rights, consistent with 25 U.S.C. 1304.

Signature

Date: March 2, 2015  
Name: Shaun Eastman  
Title: Tribal Attorney  
Address: 12554 BIA Hwy 711, SWO Admin Bldg., Agency Village, SD 57262  
Phone: 605-698-391 1  
FAX: 605-698-7844  
Email: ShaunE@swo-nsn.gov



## **CERTIFICATION OF THE TRIBE'S POINT OF CONTACT**

1. I have been authorized by the governing body of the Sisseton Wahpeton Oyate (the "Oyate") to serve as the Oyate's Point of Contact (POC) with the Department of Justice for purposes of the VAWA Pilot Project.
2. I certify that I have read the Indian Civil Rights Act, as amended, **25 U.S.C. 1301-1304**, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Amended Application Questionnaire are complete and accurate.
5. I certify that, to assist the Department of Justice in fulfilling its statutory duty to determine whether the criminal justice system of the Oyate has the adequate safeguards in place to protect defendant's rights consistent with **25 U.S.C. 1304**, I will make best efforts, for the remainder of the Pilot Project's duration (i.e., prior to March 7, 2015), to promptly answer written or oral questions from the Departments Justice and the Interior about the tribe's criminal justice system; to promptly update any answers to this Application Questionnaire if they become incomplete, inaccurate or outdated; to promptly fix any omissions in the Application Questionnaire; and to promptly submit to the Department of Justice any additions, deletions, or corrections to the Application Questionnaire.

**Signature:**

Date: March 4, 2015  
Name: Shaun Eastman  
Title: Tribal Attorney  
Address: 12554 BIA Hwy 71 1, SWO Admin Bldg., Agency Village, SD 57262  
Phone: 605-698-391 1  
FAX: 605-698-7844  
Email: ShaunE@swo-nsn.gov