

**WRITTEN MOTION TO SUPPRESS EVIDENCE/STATEMENT(S)  
FOR UNLAWFUL ARREST FOR A VIOLATION CLASS B, C OR D OFFENSE NOT  
COMMITTED IN THE PRESENCE OF LAW ENFORCEMENT**

Only use the attached form motion if there are grounds to suppress the evidence. Please do not file this motion if you have no basis in fact to do so. This means you must have some evidence that there are grounds to suppress the evidence or statements. The Court does not take kindly to entertaining motions that are considered frivolous. Frivolous means there is no evidence or facts to back up your claims that the evidence or statements should be suppressed. If you file a frivolous motion, the Court may not take any other motions you file serious even if they may have merit.

Use the attached form motion if law enforcement arrested you for a B, C or D offense that was not committed in the presence of the officer and then searched and seized items or you made incriminating statements to law enforcement to be used as evidence in violation of your constitutional statutory rights.

An officer should not arrest a person for a Class B, C or D offense not committed in the officer's presence. You should be served with a summons and complaint for any offense committed outside the presence of law enforcement. For example, a neighbor of John Doe calls law enforcement that John Doe is standing in the street yelling and being disorderly. Law enforcement locates John Doe at his home and arrests him for Disorderly Conduct, a Class D offense, not committed in the presence of law enforcement. The officer searches John Doe incident to the arrest and finds a bag of drugs in Doe's front pocket and he is charged with possession of drugs a more serious offense. If Doe had not been arrested for Disorderly Conduct the bag of drugs would have never been found by law enforcement. If an officer arrested you for a Class B, C or D crime that was not committed in the officer's presence and after the officer arrested then searched and seized evidence from you or you make an incriminating statement after your arrest, you should file this motion to suppress evidence.

Under the Tribal code a summons is commonly issued after an investigation that a Class B, C or D offense has been committed unless the Court has reasonable grounds to believe that the defendant will not appear on a summons it will issue an arrest warrant for a Class B, C or D offense. If a Class B, C or D offense is committed outside the presence of law enforcement a summons must be issued and the officer may not arrest the defendant.

The unlawful arrest for a violation of a Class B, C or D offense constitutes an unreasonable seizure of your person and an unreasonable seizure of any evidence or statements obtained as a result of the unlawful arrest under the Tribal Constitution and the Indian Civil Rights Act.

The Tribe's Constitution prohibits the government of the Tribe from violating the right of the people to be secure in the privacy of their own persons, houses, papers, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation sworn by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search, and the

thing to be seized, and any search and seizure taken in violation of this provision shall be excluded.

The Indian Civil Rights Act provides that no Indian tribe in exercising the powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

If the Court finds your motion has merit it will schedule a hearing. The Tribe should have the burden of proving that the evidence is admissible. You will have the chance to show the Court the evidence was seized in violation of your constitutional rights with evidence and arguments to the Court.

**INSTRUCTIONS FOR FILLING OUT THE FORM.** To fill out the attached form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the motion:

- (1) on this line insert your name. If you are charged with a crime(s) you are the defendant.
- (2) on this line insert the date you were arrested.
- (3) on this line itemize the charges against as reflected in each count of the Complaint.
- (4) on this line insert the date you sign the motion
- (5) on this line sign the motion

Note: Your motion must be signed and dated before the Clerk can accept it for filing and service  
(6) on this line date the day you mailed a copy of the motion to the RST Prosecutor's office. You are required to serve a copy of the motion on the RST Prosecutor's office.

(7) on this line sign your name to certify you mailed a copy of the motion on date you inserted on line (6).

**NOTE:** You must file your motion with the RST Clerk of the Criminal Court and mail a copy to Tribe's Prosecutor's office.

ROSEBUD SIOUX TRIBAL COURT)  
ROSEBUD SIOUX RESERVATION ) SS  
ROSEBUD, SOUTH DAKOTA )

IN CRIMINAL COURT

Rosebud Sioux Tribe, Plaintiff,  v.  (1) _____, Defendant.	DOCKET #CR _____  MOTION TO SUPPRESS EVIDENCE/STATEMENT(S) FOR CLASS B, C OR D OFFENSE COMMITTED OUTSIDE THE PRESENCE OF LAW ENFORCEMENT
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Comes now, the above-named Defendant who moves this Honorable Court for an Order suppressing any and all evidence seized from the defendant prior to and after the defendant's arrest done in violation of the Rosebud Sioux Tribe Constitution and the Indian Civil Rights Act; for the following reasons and upon the following grounds:

1. That on (2) \_\_\_\_\_ I was arrested and charged with (3) \_\_\_\_\_  
\_\_\_\_\_ none of which are Class A offenses  
and none which were committed in the presence of law enforcement.
2. That after my arrest, law enforcement searched and seized evidence the Tribe intends to use against me at the trial herein.
3. After my arrest, I made statements to law enforcement the Tribe intends to use against me at the trial herein.
4. Title Seven Section IV, Subsection B.6. of the Rules of Criminal Procedure of the Tribal Law and Order Code gives any officer the authority to make arrests on the Reservation without a warrant to arrest a person for any offense committed in the presence of the officer or may upon probable cause that a Class A crime has been committed and that the person arrested committed it, arrest that person although the offense was committed in the presence of the officer. So a law enforcement officer has no authority to make an arrest even with probable cause for the commission of a Class B, C or D offense not committed in the presence of the law enforcement officer.
5. Article X Section 1(c) of the RST Constitution prohibits the government of the Tribe from violating the right of the people to be secure in the privacy of their own persons, houses, papers, vehicles, and effects against unreasonable searches and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation signed by a judge, and particularly describing the place, person, house, papers, vehicle, or effects to be searched, the object and scope of such search, and the thing to be seized, and any search and seizure taken in violation of this provision shall be excluded.
6. 25 USC Section 1302 (a)(2) of the Indian Civil Rights Act provides that no Indian tribe in

exercising the powers of self-government shall violate the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

7. A summons should have been issued after an investigation finds that a Class B, C or D offense has been committed unless the Court has reasonable grounds to believe that the defendant will not appear on a summons it will issue an arrest warrant for a Class B, C or D offense. If a Class B, C or D offense is committed outside the presence of law enforcement a summons must be issued and the officer may not arrest the defendant.

8. This code violation constitutes an unreasonable seizure of my person and an unreasonable seizure of any evidence or statements obtained as a result of the unlawful arrest. The unlawful arrest for a violation of a Class B or C offense constitutes an unreasonable seizure of your person and an unreasonable seizure of any evidence or statements obtained as a result of the unlawful arrest under the Tribal Constitution and the Indian Civil Rights Act.

9. Tribal law enforcement violated my due process right against unreasonable search and seizure.

10. Article X Section 1(f) of the RST Constitution and 25 USC Section 1302 (a)(8) of the Indian Civil Rights Act both prohibit the Tribe from denying any person of liberty without due process of law.

WHEREFORE, the defendant requests that the Court issue its Order suppressing and excluding as evidence any and all evidence and statements made by me.

(4) \_\_\_\_\_

(5) \_\_\_\_\_  
Defendant

#### CERTIFICATE OF SERVICE

The defendant hereby certifies that on (6) \_\_\_\_\_ I did serve a true and correct copy of the Document in the above matter by mail on the Rosebud Sioux Tribal Prosecutor's Office at P.O. Box 500, Rosebud, SD 57570.

(7) \_\_\_\_\_  
Defendant