

Title Five, Chapter 44, Domestic and Dating Violence

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5-44-1 PURPOSE.

The purpose of this code is to recognize that domestic and dating violence are serious crimes against our Lakota values and family system. This code recognizes the trauma that domestic violence and dating violence creates in the lives of our Wakanyeja (children). It is the Oyate's intention to ensure that the victims of domestic and dating violence receive the maximum protection from abuse which the Rosebud Sioux Tribe's laws, and those who enforce the laws can provide.

It is the intent of the Rosebud Sioux Tribal Council that the official response to cases of domestic, dating violence and criminal violations of protection orders shall be that violent

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behavior is not to be excused or tolerated, whether or not the abuser is intoxicated. Furthermore, it is the intent of the Tribal Council that criminal laws be enforced without regard to whether the persons involved are family members, were or are married, cohabiting, or involved in a dating relationship. It is the intent of the Tribal Council that the Elders, two-spirit and Wakanyeja (children) of this Tribe be cherished and protected according to the traditions of the tribe.

It is also the intent of the Rosebud Sioux Tribal Council to provide services to both the victims and perpetrators of domestic and dating violence that will assist in healing and stopping the violence within the Tiwahe. The use of alternative sentencing, while providing for the protection of victims of this crime, shall be a priority for the Tribe.

5-44-2 DEFINITIONS.

Terms used in Title 5, Crimes, unless a different meaning is clearly indicated by context, are defined as follows:

"Bodily injury" shall mean physical pain, illness, or any impairment of physical condition.

"Causes apprehension of bodily injury" shall mean any physical act which is intended to cause another person reasonably to fear imminent bodily injury.

"Dangerous weapon" shall mean any weapon, firearm, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily used for, or designed for or through its use, is capable of threatening or producing death or bodily injury, including but not limited to knives, clubs, metal knuckles, nunchaku, throwing stars, explosives, Taser® guns.

"Dating violence" shall mean violence committed by a person who is or who has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

"Domestic violence" means violence committed by;

- (1) a current or former spouse or intimate partner of the victim;
- (2) a person with whom the victim shares a child in common;
- (3) the victim or the defendant is pregnant by the other;
- (4) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
- (5) a person similarly situated to a spouse under the Rosebud Sioux Tribe Law and Order Code, Title 4, Chapter 2.

"Family Member" means related by blood, legal proceeding, or traditional kinship as set out in Title 2, Chapter 2 and Chapter 4, as a parent, child, grandchild, grandparent, brother, sister or by marriage as parent-in-law, stepparent, stepchild, step-grandchild, brother-in-law, sister-in-law, persons who have had a child together, are residing in the same household, have resided in the same household as the defendant.

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"Family Violence" means the same or similar acts committed in domestic violence, when such acts are directed towards family or household member,

"Intimate partner" means;

(1) a current or former spouse, a person with whom the defendant shares a child in common, the victim or the defendant is pregnant by the other, a person who is cohabitating with or who has cohabitated with the defendant as a spouse or intimate partner, including same-sex relationships or by a person similarly situated to a spouse under Rosebud Sioux Tribe Law and Order Code, Title 4, Chapter 2.; or

(2) a person who is or who has been in a social relationship of a romantic or intimate nature with the defendant, including same-sex relationships, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

"Knowingly" means that the defendant was conscious and aware of defendant's actions/ omissions, realized what the defendant was doing or what was happening around the defendant, and did not act through ignorance, mistake, or accident.

"Protection order" means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendente lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of person seeking protection.

"Purposeful or purposely" means a person acts with intent with respect to the nature of the defendant's conduct or a result thereof if it is the defendant's conscious object to engage in conduct of that nature or to cause such a result.

"Recklessly" means a conscious disregard as to a substantial and unjustifiable risk that could result from the defendant's conduct. The risk must be of such a nature and degree that considering the nature and purpose of the defendants' conduct and the circumstances known to the defendant, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the defendant's situation.

"Strangulation" means impeding the normal breathing or circulation of blood of another person by applying pressure on the throat or neck.

"Suffocation" means to block or impair a person's intake of air at the nose and mouth, whether by smothering or other means, with the intent to obstruct the person's ability to breathe.

"Traumatic brain injury" (TBI) means a disruption in the normal function of the brain that can be caused by a bump, blow, or jolt to the head, or penetrating head injury.

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"Unborn child" means a child in utero, and the term "child in utero" or "child, who is in utero" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

"Wakanyeya" Lakota word for child, means a person under the age of 18 years of age.

5-44-3 SPECIAL JURISDICTION.

Criminal Jurisdiction Over Non-Indians in Domestic Violence, Dating Violence and Criminal Protection Order Violations

(1) The Rosebud Sioux Tribe will exercise special domestic violence criminal jurisdiction over any non-Indian defendant who violates the Tribe's domestic violence (5-44-4, 5-44-5) dating violence (5-44-5, 5-44-6) and protection order violations (5-44-7) within the Tribe's territorial jurisdiction provided that the protected person is an Indian and the non-Indian has any of the following ties to the Rosebud Sioux Tribe:

- a. Resides within the territorial jurisdiction of the Rosebud Sioux Tribe; or
- b. Is employed within the territorial jurisdiction of the Rosebud Sioux Tribe; or
- c. Is a spouse, intimate partner, or dating partner of:
 - i. A member of the Rosebud Sioux Tribe; or
 - ii. An Indian who resides within the territorial jurisdiction of the Rosebud Sioux Tribe.

(2) And the following conditions must be met in order for the Rosebud Sioux Tribe to exercise special domestic violence and dating violence criminal jurisdiction over any non-Indian and any other person who violates a protection order:

- a. The violation occurred within the territorial jurisdiction of the Rosebud Sioux Tribe;
- b. The protection order was issued against the defendant;
- c. The protection order is enforceable by the Tribe;
- d. The protection order is consistent with 18 U.S.C. 2265(b);
- e. The defendant violated the portion of the protection order that prohibits or provides protection against: violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- f. The victim must be a person specifically protected by the protection order that the defendant allegedly violated.

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5-44-4 DOMESTIC VIOLENCE. A person commits the crime of domestic violence if the defendant:

- (1) Purposely or knowingly causes bodily injury to an intimate partner or family member; or
- (2) Purposely or knowingly causes apprehension of bodily injury in an intimate partner or family member.

The crime of domestic violence shall be a Class B crime.

5-44-5 AGGRAVATED DOMESTIC OR DATING VIOLENCE. A person commits the crime of aggravated domestic violence or dating violence if the defendant:

- (1) Uses or attempts to use a dangerous weapon during the commission of the crime of domestic violence or dating violence;
- (2) Strangulation or suffocation of domestic violence or dating violence victim occurs;
- (3) The defendant caused an injury to the victim of domestic violence or dating violence which required medical treatment;
- (4) The victim suffered a traumatic brain injury and the injury stems from being a victim of domestic violence or dating violence; or
- (5) The victim is pregnant with an unborn child and is a victim of domestic violence or dating violence.

The crime of aggravated domestic violence shall be a Class F crime.

5-44-6 DATING VIOLENCE. A person commits the crime of dating violence if the defendant:

- (1) Purposely or knowingly causes bodily injury to a romantic or intimate partner; or
- (2) Purposely or knowingly causes apprehension of bodily injury to a romantic or intimate partner

The crime of dating violence shall be a Class B crime.

5-44-7 PROTECTION ORDER VIOLATION. A person commits the crime of violation of a protection order if the defendant:

- (1) purposely or knowingly violates a protection order, within the territorial jurisdiction of the Rosebud Sioux Tribe that prohibits or provides protection against violent or threatening acts or sexual assault, harassment against, contact or communication with, or physical proximity to another person.

The crime of protection order violation shall be a Class B crime.

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5-44-8. MANDATORY ARREST.

A. The law enforcement officer shall arrest a person, anywhere, with or without a warrant, including at the person's residence, if the officer has probable cause to believe:

- (1) an assault has occurred which has resulted in bodily injury to the to an intimate partner or family member, whether the injury is observable to the officer or not; or
- (2) that the defendant has caused apprehension of bodily injury to an intimate partner or family member; or
- (3) that the defendant violated a protection order after the law enforcement officer has verified the existence of the protection order.

B. For a violation of 5-44-4, 5-44-5, 5-44-6 or 5-44-7, the officer, under this chapter is not required to arrest both parties when he or she believes the parties have assaulted one another. The decision to arrest shall not require the consent of the victim.

C. The officer shall arrest the person whom he or she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider:

- (1) the Rosebud Sioux Tribe's the intent to protect the victims of domestic violence, dating violence, and stalking;
- (2) the comparative extent of injuries inflicted or serious threats creating fear of physical injury;
- (3) the history of domestic violence, dating violence and stalking between the persons involved; and
- (4) whether one of the persons acted in self-defense.

D. The officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties in order to discourage requests for intervention by law enforcement by any party. The officer will not consider the use or abuse of alcohol or controlled substances by either party in making a determination as to whether the crime of domestic, dating violence or stalking has been committed.

5-44-9 MANDATORY HOLD UPON ARREST.

Any person arrested under this chapter shall be held in custody without bail and the defendant shall be taken before the Judge not more than 24 hours after the defendant's arrest. This is a mandatory "cooling off" period. In no case shall any person be released prior to the expiration of 24 hours from arrest, unless good cause is shown before the court, the court may consider a continuance of custody or release through a hearing on the matter.

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(1) The law enforcement officer shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses to the Tribal Prosecutor. The law enforcement officer will collect all credible evidence of the alleged crime, taking special note in the detailed report of any Wakanyeja present.

(2) The law enforcement officers report shall describe the relationship of the alleged abuser and the victim, whether the alleged abuser is an Indian or non-Indian, whether the victim is an Indian and the nature of their relationship.

(3) The victim may be subpoenaed as the primary witness for the prosecution but must not be forced to testify under threat of warrant (7-1-6 (5)(d)).

5-44-11 LIABILITY OF LAW ENFORCEMENT OFFICERS.

A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause, enforcement in good faith of a court order, or any other action or omission in good faith under this chapter arising from an alleged incident of domestic violence or dating violence or violation of a protection order brought by any party to the incident.

5-44-12 NOTICE OF RIGHTS.

The law enforcement officer shall inform the victim of domestic or dating violence whether a shelter or other services are available in the community and give the victim immediate notice of the legal rights and remedies available. The notice must include all of victim's right to the following:

(1) The victim has a right to seek an order restraining the abuser from further acts of violence;

(2) The victim has a right to seek an order directing the abuser to leave the household;

(3) The victim has a right to seek an order preventing the abuser from entering the victims' residence, school, business or place of business;

(4) The victim has a right to seek an order awarding custody or visitation with any minor Wakanyeja (children); and

(5) The victim has a right to seek an order directing the abuser to pay support to the victim and minor Wakanyeja (children) where appropriate.

(6) The victim has a right to seek restitution for any property destroyed or damaged.

5-44-13. WRITTEN REPORT. Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence or dating violence, and he or she does not make an arrest, he or she shall file a written report with his or her supervisor, setting forth the reason or reasons for his or her decision. These reports will then be compiled and on a quarterly basis be presented to the Rosebud Sioux Tribe's Judiciary Committee and other agencies to be reviewed,

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5-44-14 PENALTIES.

Sentencing. Any person convicted of Domestic Violence, Dating Violence or Violation of a Protection Order shall be sentenced to the following:

There is no time limit between the previous conviction and the current charge to increase the penalty under this section.

- (1). A person convicted for a first offense for domestic violence and dating violence or violation of a protection order is a Class B offense. A person convicted of a first offense under 5-44-4, 5-44-6, 5-44-7 shall be imprisoned for a term of not less than 15 days or more than 90 days and maybe fined in an amount not to exceed, five hundred dollars (\$500.00).
- (2). A person convicted of a second offense for domestic violence and dating violence or violation of a protection order is a Class A. A person convicted of a second offense under 5-44-4, 5-44-6, 5-44-7 shall be imprisoned for a term of not less than 30 days or more than 180 days and maybe fined an amount not to exceed, one thousand dollars (\$1,000.00).
- (3). A person convicted of third or subsequent domestic violence and dating violence or violation of a protection order is a Class F Offense. A person convicted of a third or subsequent offense 5-44-4, 5-44-6, 5-44-7 shall be imprisoned for a term for not less than 120 days or more than 3 years and maybe fined in an amount not to exceed ten thousand dollars (\$10,000) or both.
- (4). A person convicted of a first offense aggravated domestic violence or dating violence, 5-44-5 is a Class F Offense and shall be imprisoned for a term of not less than 180 days or more than 3 years and maybe fined an amount not to exceed ten thousand dollars (\$10,000.00).
- (5). A person convicted of a second or third offense of aggravated domestic violence or dating violence, 5-44-5 is a Class F Offense and shall be imprisoned for a term of not less than one (1) year or more than 3 years and maybe fined an amount not to exceed ten thousand dollars (\$10,000.00).

A. In addition to the penalties proscribed in this section, the court shall order mandatory batterer's intervention as part of the sentence, and other such interventions may include, but is not limited to alcohol/drug abuse assessments, and if recommended treatment, mental health assessments, and treatment, parenting classes for defendants whose children were exposed to the abuse that had taken place. Counseling shall be made available for the Wakanyeja (children) of the defendant and the Wakanyeja (children) of the victim. Persons who practice traditional Indian religion shall be entitled to counseling by a Medicine Man recognized in the community as such. Defendants may at the discretion of the Court be ordered to pay restitution to the victim, pay the costs of the counseling for Wakanyeja, pay the costs of batterer's intervention programs, alcohol/drug assessment and any other treatment, including parenting classes. The Defendant may be ordered to pay for his or her defense. The Court may order any other alternative sentencing, such as community service, assisting the elderly, attending local program and organizational educational programs or cultural relevant activities.

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5-44-15 REPORTING STATISTICS.

In all cases of domestic violence, dating violence, and violation of protection orders under this chapter, the officer-involved shall make a written report and the numbers of such cases shall be tabulated. A quarterly report shall be made by the police department, setting out the numbers of reports of domestic violence, dating violence, and violation of protection orders under this chapter, including investigations and arrests. Reports will also include the number of alleged non-Indian suspects and victims, and the gender of alleged suspects. Such statistics shall be made available to appropriate agencies and the public.

5 -44-16 SEVERABILITY.

If any part of this Code is invalidated by a court of competent jurisdiction, all valid parts that are severable from the invalid part remain in effect. If a part of the Code is invalid in one or more of its applications, that part remains in effect in all valid applications that are severable from the invalid applications.

(History-Adopted Ord. 88-07, "Illegal Misuse and Sale of Commodities", Ord. 89-01 to Amend to "Domestic Abuse" Chapter, Res. 89-8, Corrects 88-07, changes "Illegal Misuse and Sale of Commodities" to Title 41, reaffirms "Domestic Abuse" Chapter 38, Ord. 90-02, Chapter 38 to "Fireworks", Res. 95-221 amends Ord. 90-02 "Fireworks" amended and moved to Title 16, Ord. 2016-171, Amends Sec. 5-38-1).