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SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 65

HARASSMENT AND STALKING CODE

65-01-01 POLICY AND INTENT

It shall be and is hereby established as the policy and intent of the Sisseton-Wahpeton Sioux Tribe to prohibit Harassment and Stalking, without regard to whether the persons involved are family members, were or are married, cohabiting, or involved in a relationship. To provide protection for those who have suffered threats of harm and to impose legal intervention and penalty to violators of this law.

65-02-01 DEFINITIONS OF TERMS

For the purposes of this Section, the following terms have the meanings given them in this Chapter.

65-02-02 Credible Threat - a threat made with the intent and the apparent ability to carry out the threat, a credible threat need not be expressed verbally.

65-02-03 Course of Conduct - a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

65-02-04 Court - means the Sisseton-Wahpeton Sioux Tribal Court.

65-02-05 Dwelling - means the building or part of a building used by an individual as a place of residence on either a full-time or a part-time basis. A dwelling may be part of a multi-dwelling or a multipurpose building, or a manufactured home.

65-02-06 Family or Household Member - means spouses, persons living with spouses, persons related by blood or marriage, and other persons residing jointly in the same dwelling unit who are eighteen (18) years of age or older, or who are emancipated.

65-02-07 Harasses or Harassment

1. a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses or who makes a credible threat to another person and which serves no legitimate purpose.

2. would cause a reasonable person under the circumstances to feel oppressed, persecuted, or intimidated; and,
3. causes this reaction on the part of the victim;
4. repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;
5. target residential picketing; and
6. a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

65-02-09 Officer - means the Sisseton-Wahpeton Sioux Tribal Police.

65-02-10 Petitioner/Victim - means persons alleging harassment and/or stalking in a Protection Order petition/or throughout the proceedings described in this Code.

65-02-11 Premises - means real property and any appurtenant building or structure.

65-02-12 Respondent/Abuser - means any individual alleged to have engaged in harassment and/or stalking or organization alleged to have sponsored or promoted harassment and/or stalking in a Protection Order petition and/or throughout subsequent Court proceedings.

65-02-13 Stalking - any person who willfully, maliciously, and repeatedly follows or harasses another person or who makes a credible threat to another person with the intent to place that person in reasonable fear of death or great bodily injury is guilty of the crime of stalking.

65-02-14 Targeted Residential Picketing - includes the following acts when committed on more than one occasion. Marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

65-03-01 EX PARTE TEMPORARY ORDER

Is granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested. An application under this Section alleges an immediate and present danger of harassment and/or stalking, as defined in Section 65-02-03, 65-02-13, and 65-11-01. The court may grant an Ex Parte Temporary Order for Protection, pending a full hearing, and granting relief as the court deems proper, including an order:

1. restraining the abusing party from committing acts of harassment and/or stalking, as defined in section 65-02-08, 65-02-13, and 65-11-01.
2. excluding the abusing party from the place of employment of the petitioner or otherwise limiting access to the petitioner by the abusing party at the petitioner's place of employment.

65-03-02 A finding by the court that there is a basis for issuing an Ex Parte Temporary Order for Protection constitutes a finding that sufficient reasons exist not to require notice under applicable court rules governing applications for ex parte temporary relief.

65-03-03 Only a judge of the Tribal Court may issue a ex parte temporary order.

65-03-04 An Ex Parte Temporary Order for Protection shall be effective for a fixed period not to exceed fourteen (14) days, except for good cause as provided by this Section, a hearing shall be set for not later than ten (10) days from the issuance of the temporary order. The respondent shall be served forthwith a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

65-03-05 When service is made by published notice under Section 65-06-04, the petitioner may apply for an extension of the period of the ex parte order at the same time the petitioner files the affidavit required under Section 00-08-03. The Tribal Court may extend the ex parte temporary order for an additional period not to exceed fourteen (14) days. The respondent shall be served forthwith a copy of the modified ex parte order along with a copy of the notice of the new date set for the hearing.

65-04-01 RESTRAINING ORDER

A restraining order may be issued only against the respondent named in the petition; except that if the respondent is an organization, the restraining order may be issued against and apply to all of the members of the organization. Refer to Chapter 29 - Restraining Order Procedures.

65-05-01 ASSISTANCE OF SERVICE OR EXECUTION

When an Ex Parte temporary order for protection is issued or a restraining order is issued under Section 65-03-01 through 65-04-01 and upon request of the petitioner, the court shall order the Tribal Police Department after the hearing; and it is determined by the Tribal Court, that the Tribal Police Department assist in execution or service of the order of protection. If the application for relief is brought in which the respondent is not present, the officer shall forward the pleading necessary for service upon the respondent to the sheriff in the county of South Dakota in which the respondent is present. This transmittal must be expedited to allow for timely service.

65-05-02 If a Ex Parte order for protection is issued or a restraining order is issued while the arrested person is still in detention, the order must be served upon the arrested person during detention if possible.

65-06-01 CONTENTS OF PETITION; HEARING; NOTICE

A petition for relief must allege facts sufficient to show the following:

1. the name of the alleged harassment and/or stalking victim;
2. the name of the respondent; and
3. that the respondent has engaged in harassment and/or stalking; and
4. that the respondent was not engaged in constitutionally protected activity.

65-06-02 In the event the respondent claims respondent was engaged in constitutionally protected activity, the Tribal Court shall determine the validity of that claim as a matter of law and if found valid, shall exclude that activity from evidence.

65-06-03 The petition shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. The court shall provide simplified forms and clerical assistance to help with the writing and filing of a petition under this Section. Upon receipt of the petition, the court shall order a hearing, which must be held not later than ten (10) days from the date of the order. Personal service must be made upon the respondent not less than five (5) days before the hearing. If personal service cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may set a new hearing date.

65-06-04 Notwithstanding Section 65-06-01, the order for a hearing and a temporary Ex Parte order issued under Section 65-03-01 through 65-03-05, may be served on the respondent by means of a one-week published notice if:

1. the petitioner files an affidavit with the court stating that the attempt at personal service made by a officer was unsuccessful because the respondent is avoiding service by concealment or otherwise; and,
2. a copy of the petition and order for hearing and any temporary restraining order has been mailed to the respondent at the respondent's residence or place of business, if the respondent is an organization, or the respondent's residence or place of business is not known to the petitioner.

65-07-01 NOTICE

An Ex Parte temporary order granted under this Section must contain a conspicuous to the respondent:

1. of the specific conduct that will constitute a violation of the order;
2. that violation of an order is a special class misdemeanor punishable by imprisonment or a fine, or both this is determined by the Tribal Court; and that a subsequent violation is a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$5,000.00, or both; and,
3. that a officer must arrest without warrant and take into custody a person if the officer has probable cause to believe the person has violated an Ex Parte order for protection.

- 65-08-01 VIOLATION OF AN EX PARTE TEMPORARY ORDER FOR PROTECTION**
An officer shall arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated this Ex Parte temporary order for protection granted in Section 65-03-01 through 65-03-05, restraining the person or excluding the person from petitioner's place of employment, even if the violation of this order did not take place in the presence of the officer, if the existence of this order can be verified by the officer. The person shall be held in custody for holidays, unless the person is released earlier by a judge of the Tribal Court. An officer acting in good faith and exercising due care in making an arrest pursuant to this paragraph is immune from civil liability that might result from the officer's actions.
- 65-08-02** A violation of an Ex Parte temporary order for protection shall also constitute contempt of court and be subject to the penalties in Section 26-18-04 of the Penal Code.
- 65-08-03** Upon the filing of an affidavit by the petitioner, an officer, or an interested party designated by the Court, alleging that the respondent has violated an Ex Parte temporary order for protection granted in Sections 65-03-01 through 65-03-05, the Tribal Court may issue an order to the respondent, requiring the respondent to appear and show cause within ten (10) days why the respondent should not be found in contempt of court and punished therefor.
- 65-08-04** The admittance into petitioner's dwelling of an abusing party excluded from the dwelling under a Ex Parte order for protection is not a violation by the petitioner of the Ex Parte order for protection.
- 65-08-05** Whenever an Ex Parte temporary order for protection is granted in Section 65-03-01 through 65-03-05, and the respondent or person to be restrained knows of the order, violation of the order for protection is a special class misdemeanor as stated in under Section 65-07-01, 2. Upon conviction, the defendant must be sentenced to a minimum of three (3) days imprisonment and must be ordered to participate in counseling or other appropriate programs selected by the court as in Section 65-13-01. If the court stays imposition or execution of the jail sentence and the defendant refuses or fails to comply with the court's treatment order, the court must impose and execute the stayed jail sentence.

- 65-09-01 VIOLATION OF RESTRAINING ORDER**
When a restraining order is granted under Section 29-02-01 and the respondent knows of the order, violation of the order is a special class misdemeanor. A person is guilty of a misdemeanor under Sections 26-28-04 and 26-53-02, who knowingly and repeatedly violates this order.
- 65-09-02** A officer shall arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated this restraining order issued in Section 29-02-01, if the existence of the order can be verified by the officer.
- 65-10-01 EFFECTIVE DATE**
Section 65-03-01 through 65-04-01 are effective the day following final enactment and apply to crimes committed on or after that date.
- 65-11-01 HARASSMENT AND/OR STALKING CRIMES**
A person who repeatedly harasses and stalks another by committing any of the following acts is guilty of a misdemeanor determined by the court:
1. directly or indirectly manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;
 2. stalks, follows, or purposes another;
 3. returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;
 4. repeatedly makes telephone calls, or includes a victim to make telephone calls to the actor, whether or not conversation ensues;
 5. makes or causes the telephone of another repeatedly or continuously to ring;
 6. repeatedly uses the mail or delivers or causes the delivery of letters, telegrams, packages, or other objects; or
 7. ensues in an other harassing conduct that interferes with another person or intrudes on the person's privacy or liberty.

65-11-02 The conduct described in clauses 4. and 5. may be prosecuted either at the place where the call is made or where it is received. The conduct described in clause 7. may be prosecuted either where the mail is deposited to where it is received.

65-12-01 PATTERN OF HARASSING AND/OR STALKING CONDUCT

A person who engages in a pattern of harassing and/or stalking conduct with respect to a single household in a manner that would cause a reasonable person under the circumstances to feel terrorized or to fear bodily harm and that does cause this reaction on the part of the victim, is guilty of a misdemeanor and may be sentenced to incarceration or payment of a fine.

65-12-02 For purposes of this Section a "pattern of harassing and/or stalking conduct" means two or more acts within a five (5) year period.

65-13-01 MENTAL HEALTH ASSESSMENT AND TREATMENT

When a person is convicted of a harassment and/or stalking offense under Section 65-11-01, the court shall order an mental health assessment of the offender's need for mental health treatment. The court may waive the assessment if an adequate assessment was conducted prior to the conviction.

65-13-02 The assessor has access to the following private or confidential data on the person if access is relevant and necessary for the assessment:

1. medical data;
2. welfare data;
3. health records; and,
4. juvenile court records.

65-13-03 Data disclosed under this Section may be used only for purposes of the assessment and may not be further disclosed to any other person, except as authorized by law.

65-13-04 If the assessment indicates that the offender is in need of an amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment.

65-14-01 VICTIM NOTIFICATION; HARASSMENT; AND/OR STALKING

65-14-02 NOTICE OF DECISION NOT TO PROSECUTE

A prosecutor shall make every reasonable effort to notify a victim of harassment and/or stalking that the prosecutor has decided to decline prosecution of the case or to dismiss the criminal charges filed against the defendant. Efforts to notify the victim should include, in order of priority:

1. contacting the victim or a person designated by the victim by telephone; and,
2. contacting the victim by mail.

65-14-03 If a suspect is still in custody, the notification attempt shall be made before the suspect is released from custody.

65-14-04 Whenever a prosecutor dismisses criminal charges against a person accused of harassment and/or stalking, a record shall be made of the specific reasons for the dismissal. If the dismissal is due to the unavailability of the witness, the prosecutor shall indicate the specific reason that the witness is unavailable.

65-14-05 Whenever a prosecutor notifies a victim of harassment, or stalking under this Section, the prosecutor shall also inform the victim of the method and benefits of seeking an Ex Parte temporary order for protection or a restraining order.

65-15-01 ALLOWING DETENTION IN LIEU OF CITATION; RELEASE
An arresting officer may not issue a citation in lieu of arrest and detention to an individual charged with harassment and/or stalking.

65-15-02 An individual who is arrested on a charge of harassing and/or stalking any person must be brought to the Tribal Police Department.

65-15-03 The officer in charge of the Tribal Police Department shall issue a citation in lieu of continued detention is necessary to prevent bodily harm to the arrested person or another, or there is a substantial likelihood the arrested person will fail to respond to a citation.

65-15-04 If the arrested person is not issued a citation by the officer in charge of the police department, the arrested person must be brought before the judge without necessary delay as provided by court rule.

65-15-05 The judge before whom the arrested person is brought shall review the facts surrounding the arrest and detention. The arrested person must be ordered released pending trial or hearing on the person's personal recognizance or on an order to appear or upon the execution of an unsecured bond in a specific amount unless the judge determines that release:

1. will be inimical to public safety;
2. will create a threat of bodily harm to the arrested person, the victim of the alleged harassment or assault, or another, or;
3. will not reasonably assure the appearance of the arrested person at subsequent proceedings.

65-16-01 **CONDITION OF RELEASE**

If the judge determines release is not advisable, the judge may impose any conditions of release that will reasonably assure the appearance of the person for subsequent proceedings, or will protect the victim of the alleged harassment and/or stalking or may fix the amount of money bail without other conditions upon which the arrested person may obtain release. If the conditions of release are imposed, the judge shall issue a written order for conditional release. The Tribal Court Administrator shall immediately distribute a copy of the order for conditional release to the agency having custody of the arrested person and shall provide the agency having custody of the arrested person with any available information on the location of the victim's safety. Either the court or its designee or the agency having custody of the arrested person shall serve upon the defendant a copy of the order. Failure to serve the arrested person with a copy of the order for conditional release does not invalidate the condition of release.

65-16-02 If the judge imposes as a condition of release a requirement that the person have no contact with the victim of the alleged harassment and/or stalking, the judge may also, on its own motion or that of the prosecutor or on request of the victim, issue an Ex Parte temporary order for protection, or a restraining order. These orders for protection are effective until the defendant is convicted or acquitted, or the charge is dismissed, provided that upon request the defendant is entitled to a full hearing on the restraining order, or on the Ex Parte order for protection. The hearing must be held within ten (10) days of the defendant's request.

65-17-01 RELEASE

If the arrested person is not issued a citation by the officer in charge of the Tribal Police Department and is not brought before a judge within the time limits prescribed by court rule, the arrested person shall be released by the arresting authorities, and a citation must be issued in lieu of continued detention.

65-18-01 NOTICE TO VICTIM REGARDING RELEASE OF ARRESTED PERSON

Immediately after the issuance of a citation in lieu of continued detention, or the entry of an order for release, but before the arrested person is release, the agency having custody of the arrested person or its designee must make a reasonable and good faith effort to inform orally the alleged victim of:

1. the conditions of release, if any;
2. the time of release; and,
3. the time, date, and place of the next scheduled court appearance of the arrested person and the victim's right to be presented at the court appearance;
4. if the arrested person is charged with domestic assault, the location and telephone number of the area battered women's shelter as designated by the department of corrections. (also refer to chapter 52 - Domestic Abuse).

65-18-02 As soon as practicable after an order for conditional release is entered, the agency having custody of the arrested person or its designee must personally deliver or mail to the alleged victim a copy of the written order and written notice of the information in clauses. 2 and 3.

65-19-01 ADJUDICATION

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.

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