

TITLE 6A  
DOMESTIC VIOLENCE  
PROTECTION AND PREVENTION CODE

CHAPTER 1  
GENERAL PROVISIONS

SECTION 6A-1-1: CONSTITUTIONAL AUTHORITY: The Executive Committee of the Flandreau Santee Sioux Tribe enacts this ordinance under Article VIII, Section 1 (F) of the Constitution and By-laws of the Flandreau Santee Sioux Tribe which provides that the Executive Committee has the power to promulgate and enforce ordinances governing and regulating the conduct of all persons on the Reservation.

SECTION 6A-1-2. POLICY/PURPOSE: In enacting this ordinance, the Executive Committee hereby establishes the policy that domestic violence is a serious social problem on the Reservation and that violence committed against individuals in domestic relationships will not be tolerated. The Executive Committee recognizes that domestic violence did not exist in traditional tribal cultures and adopts this ordinance with the goal of eliminating domestic violence on the Reservation for all future generations. The purpose of this ordinance is to provide protection and safety to individuals who are or may become victims of domestic violence and to ensure that domestic violence offenders are held accountable for their crimes.

SECTION 6A-1-3. NAME OF CODE: This Title shall be known as the Domestic Violence Protection and Prevention Code.

SECTION 6A-1-4. DEFINITIONS: Terms used in this Title inclusive unless a different meaning is clearly indicated by the context, mean:

- (1) "Domestic abuse," physical harm, bodily injury or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury on a family or household member;
- (2) "Family or household member," spouse, former spouses, persons related by consanguinity or adoption of law, persons living in the same

household, persons who have lived together, or persons who have had a child together;

- (3) "Harasses" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or scares the person;
  
- (4) "Protection Order," an order restraining any family or household member from committing any act of domestic abuse or an order excluding any family or household member from the dwelling or residence of another family or household member, whether or not the dwelling or residence is shared. A protection order has a duration of three years or less;
  
- (5) "Temporary protection order," an order restraining any family or household member from committing any act of domestic abuse or an order excluding any family or household member from the dwelling or residence of another family or household member, whether or not a dwelling or residence is shared. A temporary protection order has duration of thirty days.

**SECTION 6A-1-5. SEVERABILITY:** If any section or part of this Title shall be declared invalid by the Tribal Court, such shall not render invalid the remainder thereof but shall be confined in its operation to the offending section.

**SECTION 6A-1-6. PRIOR INCONSISTENT ORDINANCES REPEALED:** Any and all other ordinances, Titles or enactments of the Executive Committee which conflict in anyway with the provisions of this Title are hereby repealed to the extent they are inconsistent with or conflict with, or are contrary to the spirit and purpose of this Title. All prior ordinances and resolutions of the Executive Committee dealing with the same subject matter as this Title are repealed as of the effective date of this Title.

**SECTION 6A-1-7. EFFECTIVE DATE:** This code shall become effective upon enactment by Resolution of the Executive Committee.

CHAPTER 2  
PROTECTION FROM DOMESTIC VIOLENCE  
CRIMINAL PROVISIONS

SECTION 6A-2-1. APPLICATION. The crimes set forth in this Chapter shall apply to individuals who are family or household members as that term is defined in Chapter 1.

SECTION 6A-2-2. AGGRAVATED DOMESTIC ASSAULT. Any person who:

- (1) Attempts to cause serious bodily injury to a family or household member, or causes such injury, under circumstances manifesting an extreme indifference to the Value of human life;
- (2) Attempts to cause, or knowingly causes, bodily injury to a family or household member with a dangerous weapon;
- (3) Assaults a family or household member with intent to commit bodily injury which results in serious bodily injury; or
- (4) Attempts by physical menace with a deadly weapon to put a Household or family member in fear of imminent serious bodily harm,

shall be guilty of aggravated domestic assault. Aggravated domestic assault is a felony.

SECTION 6A-2-3. DOMESTIC ABUSE. Any person who:

- (1) Attempts to cause bodily injury to a family or household member and has the actual ability to cause such injury;
- (2) Recklessly causes bodily injury to a family or household member;
- (3) Attempts by physical menace to put a family or household member in fear of imminent harm, with or without the actual ability to harm the other person;

- (4) Intentionally causes bodily injury to a household or family member which does not result in serious bodily injury; or
- (5) Threatens or harasses a family or household member in a willful or malicious manner,

shall be guilty of domestic abuse. Domestic abuse is a Class I misdemeanor.

**SECTION 6A-2-4. VIOLATION OF PROTECTION ORDER.** If a temporary protection order or a protection order is granted pursuant to this Title, and the respondent or person to be restrained knows of the order, violation of the order is a Class I misdemeanor. Any proceeding under this section is in addition to other civil and criminal remedies..

**SECTION 6A-2-5. CONDITIONAL BOND- VIOLATION AS MISDEMEANOR.** If a bond for the defendant in any domestic abuse action is authorized, a condition of no contact with the victim shall be stated and incorporated into the terms of the bond. Willful violation of any such no contact provision is a Class I misdemeanor.

**SECTION 6A-2-6. POSSESSION OF FIREARM WHILE PROTECTION ORDER IN PLACE.** It shall be unlawful for any person to have a firearm in his possession while there is a temporary protection order or a protection order in place which prohibits the individual from possessing a firearm. Violation of this section is a Class I misdemeanor.

**SECTION 6A-2-7. MANDATORY ARREST WITHOUT A WARRANT IN DOMESTIC SITUATIONS.** An authorized law enforcement officer shall arrest and take into custody, pending release on bail, or other court order, a person without a warrant if the officer has probable cause to believe that:

- (1) An order for protection has been issued by the Court under this Title or by another court of competent jurisdiction protecting the victim and the terms of the order prohibiting contact, acts or threats of abuse or excluding the person from a residence have been violated; or
- (2) The person within the preceding twenty-four hours has assaulted a family or household member and the officer believes:

- (a) An assault has occurred and the arrested person committed it; or
- (b) An attempt by physical menace has been made to put another in fear of imminent serious bodily harm.

Any law enforcement officer who is responding to domestic abuse call shall arrest any person who is suspected of committing a crime if the officer has probable cause to believe that a tribal offense has been committed.

**SECTION 6A-2-8. MANDATORY HOLD UPON ARREST.** Any person arrested for the commission of an offense under this Chapter shall not be released on bond until at least twenty-four hours have elapsed since the time of arrest.

**SECTION 6A-2-9. NO RELEASE ON PERSONAL RECOGNIZANCE IN DOMESTIC CASES.** A person who has been arrested for a violation of this Chapter shall be required to post a minimum of One Hundred Dollar cash bond and shall not be entitled to release on personal recognizance. The Judge may require that a higher bond be set in accordance with Title 1.

**SECTION 6A-2-10. MANDATORY SENTENCING/JAIL TIME.** Any person who has been found guilty of or entered a plea of guilty or no contest under Sections 6A-2-2 or 6A-2-3 of this Chapter, shall be sentenced to serve a minimum of five days in jail, not suspendable in any portion.

**SECTION 6A-2-11. MANDATORY SENTENCING/TREATMENT.** Any person who has been found guilty of or entered a plea of guilty or no contest to an offense under Section 6A-2-2 and 6A-2-3 of this Chapter shall, as part of sentencing, be required to have an assessment completed by an appropriate agency and follow any recommendations of such assessment, including completion of a batterers program.

**CHAPTER 3  
PROTECTION FROM DOMESTIC VIOLENCE  
CIVIL PROTECTION ORDERS**

**SECTION 6A-3-1. APPLICATION FOR RELIEF:** An application for relief under this Chapter shall be filed in tribal court.

**SECTION 6A-3-2: PETITION FOR PROTECTION ORDER-PARTIES-ALLEGATIONS-AFFIDAVIT-PENDING ACTION-COSTS-STANDARD PETITION FORM.** There exists an action known as a petition for a protection order in cases of domestic abuse. Procedures for the action are as follows:

A petition under this section may be made by any family or household member against any other family or household member.

- (1) A petition shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse.
- (2) A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition or other action between the parties.
- (3) If a petitioner files an affidavit with his petition stating that he does not have the funds available to pay the cost of filing and service, the petition shall be filed and served without payment of costs. If a petition is filed and served without payment of costs, the Court shall determine at the hearing described in Section 6A-3-3 if the petitioner is indigent. In determining if the petitioner is indigent, the income of the alleged perpetrator of the domestic abuse may not be considered. If the Court finds that the petitioner is not indigent, the Court may order the petitioner to pay the costs of filing and service.

The Clerk of the Tribal Court shall make available standard petition forms with instructions for completion to be used by a petitioner.

**SECTION 6A-3-3: HEARING-TIME-SERVICE ON RESPONDENT.** Upon receipt of the petition, the Court shall order a hearing which shall be held not later than thirty (30) days from the date of the order. Personal service of the petitions, affidavit and notice for hearing shall be made on the respondent not less than five (5) days prior to the hearing.

**SECTION 6A-3-4: RELIEF AUTHORIZED ON FINDING ABUSE-TIME LIMITATION.** Upon notice and a hearing, if the Court finds by

a preponderance of the evidence that domestic abuse has taken place, the Court may provide relief as follows:

- (1) Restrain any party from committing acts of domestic abuse;
- (2) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (3) Award temporary custody or establish temporary visitation with regards to minor children of the parties;
- (4) Establish temporary support for minor children of the parties or a spouse;
- (5) Order that either or both of the parties obtain counseling;
- (6) Order other relief, as the Court deems necessary for the protection of a family or household member, including orders or directives to tribal law enforcement.
- (7) To surrender any dangerous weapons in the possession of the respondent to tribal law enforcement.

Any relief granted by the order for protection shall be for a fixed period and may not exceed three years.

**SECTION 6A-3-5: EX PARTE TEMPORARY PROTECTION.** When an affidavit filed with a petition under this Chapter alleges that immediate and irreparable injury, loss or damage will result before an adverse party or his attorney can be heard in opposition, the Court may grant an ex parte temporary protection order pending a full hearing and granting relief as the Court deems proper, including an order:

- (1) Restraining any family or household member from committing acts of domestic abuse;
- (2) Excluding any family or household member from the dwelling or the residence of the petitioner.

- (3) Award temporary custody or establish temporary visitation with regards to minor children of the parties;
- (4) Order that the abusing party have no contact with the victim:

**SECTION 6A-3-6: LIMITED DURATION OF TEMPORARY ORDER-SERVICE ON RESPONDENT.** An ex parte temporary protection order is effective for a period of thirty (30) days. The respondent shall be personally served forthwith with a copy of the ex parte order along with a copy of the petition, affidavit and notice of the date set for the hearing.

**SECTION 6A-3-7: SECURITY NOT REQUIRED OF PETITIONER-EXCEPTION.** The Court may not require an undertaking or other security of any party to a petition for an order of protection other than in exceptional circumstances.

**SECTION 6A-3-8: DEPARTURE OF PETITIONER FROM HOUSEHOLD NOT WAIVING RIGHT TO RELIEF.** A person's right to apply for relief under the section may not be affected by the departure of that person from the residence or household to avoid abuse.

**SECTION 6A-3-9: MODIFICATION OF ORDER.** Upon application, notice to all parties and hearing, the Court may modify the terms of an existing Order for Protection.

**SECTION 6A-3-10: REAL ESTATE TITLES NOT AFFECTED.** No order issued pursuant to this section may affect title to real estate.

**SECTION 6A-3-11: DELIVERY OF ORDER TO LAW ENFORCEMENT AGENCIES.** The petitioner may deliver an order for protection granted pursuant to this section within twenty-four (24) hours to the tribal law enforcement agency having jurisdiction over the residence of the petitioner. Each appropriate law enforcement agency shall make available to other law enforcement officers information as to the existence and status of any order for protection issued pursuant to this section.



**CHAPTER 4**  
**FULL FAITH AND CREDIT**  
**FOR FOREIGN PROTECTION ORDERS**

**SECTION 6A-4-1: FULL FAITH AND CREDIT FOR VALID FOREIGN PROTECTION ORDER.** Any valid protection order related to domestic or family violence, issued by a court of another tribe, state, or U.S. territory shall be accorded full faith and credit by the tribal court and enforced as if it were issued by the Tribal Court.

**SECTION 6A-4-2: VALID FOREIGN PROTECTION ORDER.** A protection order issued by a tribal, state or U.S. territorial court related to domestic or family violence shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe or territory. There shall be a presumption in favor of validity where an order appears authentic on its face.

A defendant must be given reasonable notice and the opportunity to be heard before the order of the foreign tribe, state, or U.S. territory was issued, provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process.

Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order.

**SECTION 6A-4-3: EXCLUSION FROM FULL FAITH AND CREDIT.** A protection order entered against both the plaintiff and defendant shall not be enforceable against the plaintiff in a foreign jurisdiction unless:

- (a) the defendant filed a cross or counter petition, complaint or other written pleading was filed seeking such a protection order and
- (b) the issuing court made specific findings of domestic or family violence against both the plaintiff and defendant and determined that each party was entitled to such an order.

**SECTION 6A-4-4: INTERTRIBAL PROTECTION ORDER REGISTRY.**

- (1) The Flandreau Santee Sioux Tribe or agency designated by the Executive Committee shall establish a intertribal registry of protection orders related to domestic or family violence and shall maintain a complete and systematic record and index of all valid temporary and final civil and criminal court orders of protection.
- (2) The data fields of the intertribal registry shall include, but need not be limited to, the following:
  - (i) The names of the plaintiff and any protected parties.
  - (ii) The name and address of the defendant.
  - (iii) The date the order was entered.
  - (iv) The date the order expires.
  - (v) The relief granted under \_\_\_\_\_ (specify relief awarded and citations related thereto, and designate which of the violations are arrest-able offenses).
  - (vi) The tribal court and contact information for court administration for the court in which the order was entered.
  - (vii) Where furnished, the Social Services number, date of birth of and description of the defendant.
  - (viii) Caution indicator stating whether the defendant is believed to be armed and dangerous.
  - (ix) Brady record indicator stating whether the defendant is prohibited from purchasing or possession a firearm under federal law.
- (3) Upon establishment of the intertribal Protection Order registry, the clerk of the issuing court or the clerk of the court where a foreign order of protection is filed shall send, on a form to be prescribed by the Tribal Court, a copy of the protection order to the intertribal protection order registry so that it is received within 24 hours of the entry and order issued within the tribe or the filing of a foreign order.

- (4) The intertribal protection order registry shall be available at all times to inform courts, dispatchers and law enforcement officers of any valid protection order issued within the Tribe or filed as a foreign order for purposes of enforcement in the Tribe.

**SECTION 6A-4-A5: FILING OF FOREIGN PROTECTION ORDER.**

- (1) A plaintiff who obtains a valid order of protection from another tribe, state, or U.S. territory may file that order by presenting a certified copy of the foreign order to the tribal clerk of court where the plaintiff believes enforcement may be necessary.
- (2) Filing shall be without fee or cost.
- (3) The clerk of court shall forward a copy of the foreign protection order to law enforcement office and the intertribal protection order registry upon application of a plaintiff seeking enforcement.
- (4) The clerk shall provide the plaintiff with a copy bearing proof of filing with the court and entry into the intertribal protection order registry.
- (5) Filing and entry of the foreign order in the intertribal protection order registry shall not be prerequisites for enforcement of the foreign protection order.

A law enforcement officer may rely upon a copy of any foreign protection order which has been provided to the officer by any source and may also rely on upon the statement of any person protected by a foreign order that the order remains in effect. A law enforcement officer acting in good faith shall be immune from civil and criminal liability in any action arising in connection with, a court's finding that the foreign order was not enforceable.

This Title was enacted by the Flandreau Santee Sioux Tribe Executive Committee by Resolution 99-83, dated ~~June~~ Sept 16<sup>th</sup> 1999.