

Flandreau Santee Sioux Tribe

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RESOLUTION NO. 2020-24

WHEREAS, the Flandreau Santee Sioux Tribe is a recognized Indian tribe organized pursuant to a Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, and further amended November 16, 1967, and further amended November 14, 1984, and further amended May 17, 1997; and

WHEREAS, Article III of the Tribe's Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and

WHEREAS, Article VIII Section 1(a) of said Constitution provides that the Executive Committee has the authority to negotiate with Federal, State, and local governments; and

WHEREAS, Article VIII Section 1(f) of said Constitution provides that the Executive Committee has the authority to promulgate and enforce ordinances governing and regulating the conduct of all persons on the reservation. (As amended on November 14, 1984, by Amendment I to Article VIII, Section 1 (f) and further amended on May 13, 1997, by Amendment XII to Article VIII, Section 1 (F); and

WHEREAS, Article VIII Section 1(h) of said Constitution provides that the Executive Committee has the authority to adopt resolutions consistent with this Constitution and By-Laws, regulating the procedure of the Executive Committee itself and of other tribal agencies, tribal officials or tribal organizations of the Flandreau Santee Sioux Tribe; and

WHEREAS, Article IX, Section 1 of said Constitution provides that the judicial power of the Flandreau Santee Sioux Tribe shall be vested in the tribal court system. The tribal court system shall be composed of a court of general jurisdiction which shall be known as the "Flandreau Santee Sioux Tribal Court"; and

WHEREAS, Article IX, Section 2 of said Constitution provides that the judicial authority and jurisdiction of the tribal courts shall extend to all cases arising under this Constitution, the laws, ordinances, regulations, customs, and traditions of the Flandreau Santee Sioux Tribe and shall be exercised to the fullest extent consistent with the Flandreau Santee Sioux Tribe's inherent powers as a sovereign nation. Such jurisdiction shall extend to all lands within the territorial

boundaries of the reservation, including all territory now held or hereafter acquired by or for the Tribe whether held in trust by the United States or owned in fee by the Tribe. The tribal court shall have jurisdiction over all members of the Flandreau Santee Sioux Tribe and over any non-member in accordance with tribal law; and

WHEREAS, the Executive Committee finds that although Tribe has jurisdiction to prosecute member and non-member Indians for any criminal offense addressed in the tribe's code, the tribe's authority to punish an offender convicted in its tribal court is limited by the Indian Civil Rights Act, or ICRA, codified at 25 U.S.C. § 1301 - 1304; and

WHEREAS, the Executive Committee further finds that at the time the Tribe enacted its criminal laws and procedures in 1996, ICRA limited the maximum sentence to one year of imprisonment and/or a \$5,000 fine; and

WHEREAS, the Executive Committee also finds that the Tribal Law & Order Act of 2010 (TLOA) later amended ICRA. TLOA provided federally-recognized Indian tribes the option to enhance sentences in criminal cases beyond one year imprisonment or fines up to \$5,000, or both. Tribes implementing enhanced sentencing under TLOA may impose sentences up to 3 years imprisonment, fines up to \$15,000, or both. Tribes may also stack sentences for multiple offenses in one proceeding to up to 9 years. Enhanced sentencing is not limited to imprisonment and can include community supervision such as parole or probation. The decision to enact the enhanced sentencing is entirely at the tribe's discretion; and

WHEREAS, tribes may implement enhanced sentencing where the defendant:

- has previously been convicted of the same or comparable offense by any jurisdiction in the U.S.; or
- is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year imprisonment if prosecuted by the U.S. or any of the States.

See ICRA, 25 U.S.C. 1302(b); and

WHEREAS, defendants are afforded five due-process protections prior receiving an enhanced sentence:

- the tribal court must be a 'court of record'.
- the judge must have sufficient legal training for a criminal proceeding.
- the judge must be licensed to practice law by any jurisdiction in the U.S.
- the defendant must be provided the right to 'effective assistance of counsel' at least equal to the U.S. Constitution.
- an indigent defendant must be provided legal counsel at the expense of the tribe.

- defense counsel must be licensed to practice law by any jurisdiction in the U.S. that applies appropriate standards and ensures competency and professional responsibility.
- the defendant cannot be subject to excessive bail, excessive fines, or cruel and unusual punishment.
- Tribal laws are publicly available – including all criminal laws, rules of evidence, and rules of procedure.
- Detention facility must meet certain criteria.

See ICRA, 25 U.S.C. § 1302(c);

WHEREAS, the defendant can serve the sentence in one of the following facilities:

- A tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after TLOA’s enactment;
- The nearest available and appropriate federal facility, at the expense of the United States, pursuant to the Bureau of Prisons’ (BOP) tribal-prisoner pilot program;
- A state or local government-approved detention or correctional center, pursuant to an agreement between the Indian tribe and the state or local government;
- An alternative rehabilitation center of an Indian tribe; or
- An alternative form of punishment, as determined by the tribal court under tribal law.

See ICRA, 25 U.S.C. § 1302(c).

NOW THEREFORE BE IT RESOLVED that the Executive Committee, having the authority to regulate the conduct of persons on the Flandreau Santee Sioux Tribe reservation, desires to give its Courts the ability to issue enhanced sentencing for crimes; and

NOW THEREFORE BE IT FURTHER RESOLVED that the Flandreau Santee Sioux Tribe Tribal Law and Order Code shall be amended to meet the criteria of TLOA in order to enact enhanced sentencing provisions; and

NOW THEREFORE BE IT FURTHER RESOLVED that relevant tribal departments are encouraged to seek resources to implement enhanced sentencing provisions; and


NOW THEREFORE BE IT FINALLY RESOLVED that the Tribal President shall enter into agreements with other jurisdictions in order to implement enhanced sentencing.

[Certification follows on next page.]

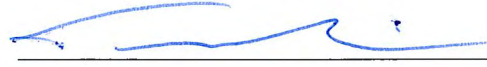
CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 12th day of May, 2020, by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 5 In Favor, 0 Opposed, 0 Abstaining, and 2 Not Voting, as follows:

Vice President, Andrew Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Secretary, Donalda Montoya:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee I, Kristi Bietz:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee II, David Kills-A-Hundred:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee III, Kenneth Weston:	YES	NO	ABSTAIN	<u>NOT PRESENT</u>
Trustee IV, John Jason Armstrong:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider (<i>If Required</i>):	YES	NO	ABSTAIN	NOT PRESENT



Donalda Montoya, Tribal Secretary



Anthony Reider, Tribal President

TLOA Enhanced Sentencing Checklist

✓	Federal Requirement	Tribal Requirement
OFFENSES SUBJECT TO > 1 YR IMPRISONMENT OR A FINE GREATER THAN \$5000		
	<p>25 USC § 1301(b)</p> <p>A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who—</p> <p>(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or</p> <p>(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.</p>	<p>Title 3, Criminal Law; Ch. 2, Classification of Offenses and Authorized Punishment; Section 3-2-2. Felonies.</p> <p>Section 3-2-2: Felonies: There shall be one two classes of felonies. which shall be punishable by a maximum of one (1) year in jail or a five (5) thousand dollar fine, or both.</p> <p>(1) Class 1 felonies shall be punishable by a term of imprisonment greater than one (1) year but not to exceed three (3) years for any one (1) offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both. The Court may stack sentences for multiple offenses in one proceeding to up to nine years.</p> <p>(2) Class 2 felonies shall be punishable by a maximum of one (1) year in jail or a \$5,000, or both.</p> <p>In order to prosecute felonies that occur on the FSST reservation, it is also recommended to extend the current statute of limitations:</p> <p>Section 3-1-2. Limitations of Actions: Except as otherwise specifically provided in this code, the commission of a crime under this code must be prosecuted within 3 the following number of years of the date the criminal act was committed or the last act in a series of Acts which amount to a criminal offense under this</p>

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		<p>Code.</p> <p style="padding-left: 40px;">(1) For all felonies, there is a seven (7) year limitation.</p> <p style="padding-left: 40px;">(2) For all misdemeanors, there is a three (3) year limitation.</p> <p>Additional SOL recommendations for offenses include:</p> <p>Section 3-3A-2: Homicide. A person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being. Criminal homicide for purposes of this Code includes murder, manslaughter or negligent homicide. Homicide is a felony. <i>There is no limitation on the number of years barring the prosecution of Homicide, or any offenses related to the commission of such homicide.</i></p> <p>Section 3-6-6. Sexual Exploitation of a Child -- Acts Prohibited: "Prohibited sexual act" as used in Sections 3-6-7 and 3-6-8 means, sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus, or incest and any other sexual activity including nudity if such sexual activity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction. Encouraging, aiding, abetting or enticing any person to commit any such "prohibited sexual act" as provided in this Section is a "prohibited sexual act". <i>There is no limitation on the number of years barring the prosecution of Sexual Exploitation of a Child, or any offenses related to the commission of such offense.</i></p>
RIGHTS OF DEFENDANTS		
<p>In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—</p>		

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<p>25 USC § 1301(c)(1)</p> <p>provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and</p> <p>25 USC § 1301(c)(2)</p> <p>at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and</p>	<p>Title 2, Criminal Procedure; Ch. 19, Sentencing and Judgment; Section 2-19-21. Enhanced Sentencing.</p> <p>For any defendant that is sentenced to more than one year of imprisonment or fined more than five thousand dollars for a criminal offense pursuant to section 3-2-2(1), is entitled to the following due process protections:</p> <ol style="list-style-type: none"> (1) the defendant shall have the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution during all phases of the criminal proceedings; and (2) at the expense of the tribal government, an indigent defendant shall be provided the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys; and (3) the defendant shall be afforded any other due process protections required by the Indian Civil Rights Act, as amended.
<p>25 USC § 1301(c)(3)</p> <p>the judge presiding over the criminal proceeding—</p> <p>(A) has sufficient legal training to preside over criminal proceedings; and</p>	<p>Title 1, General Provisions; Ch. 2, Establishment of Courts; Judges and Other Court Personnel; Section 1-2-2. Judges.</p> <p>There shall be appointed by the Executive Committee one Chief Judge and at least one Associate Judge who shall be called into service as the occasion arises. There shall also be appointed three appellate judges to serve on the tribal appellate court.</p>

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	<p>(B) is licensed to practice law by any jurisdiction in the United States; and</p>	<p>The appointment, qualification, and compensation to be received by such judges shall be determined by the Executive Committee, provided, however, that a judge once appointed shall not have his compensation decreased during his term of office, and provided further that no judge shall be suspended or removed from office prior to the expiration of his term, except as provided hereinafter.</p> <p style="color: blue;">Any judge presiding over criminal proceeding where an offense is subject to imprisonment of greater than one year or fine of greater than \$5000, shall have the sufficient legal training to do so and must be licensed to practice law by any jurisdiction in the United States.</p> <p>Judges shall be appointed to four year terms and may be appointed to successive terms of office.</p>
	<p>25 USC § 1301(c)(4)</p> <p>prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and</p>	<p>Title 1, General Provisions; Ch. 8, General Provisions; Section 1-8-2. Publishing.</p> <p style="color: blue;">It shall be the duty of the Tribal Secretary to make publicly available this Code and the Constitution and By-Laws of the Flandreau Santee Sioux Tribe, including amendments.</p> <p style="color: blue;">The Tribal Secretary shall make publicly available all regulations and interpretative documents related to criminal laws, rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government.</p>
✓	<p>25 USC § 1301(c)(5)</p>	<p>Title 1, General Provisions; Ch. 2, Establishment Of Courts; Judges</p>

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	<p>maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.</p>	<p>And Other Court Personnel; Section 1-2-8. Duties of the Clerks.</p> <p>It shall be the duty of the Clerk of the Tribal Courts to: supervise and keep all records, files, dockets or other records required to be kept by this Code, by rule of the Court, Tribal resolution or as otherwise established; and further to keep a written maintain a record of all proceedings of the Court; to administer oaths; to collect and account for all fines, bail or bond money, fees or other charges which cause money to come to the Court; to deposit and account for all such moneys in the manner prescribed by the Executive Committee; and to disburse such money as authorized by law. The Clerk shall further assist the Court in any way required to facilitate the performance of its duties, to aid the police or private citizens in their dealings with the Court, and may render advice and assistance to individual members of the Tribe or their counsel in the drafting of documents incidental to proceedings to the Court.</p>
<p>SENTENCES</p> <p>In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—</p>		
	<p>25 USC § 1301(d)(1)(A)</p> <p>to serve the sentence in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;</p>	<p>FSST submitted a written request to the BIA for detention services on August 13, 2019. The Tribe’s latest inquiry on an agreement was emailed on February 5, 2020.</p>
	<p>25 USC § 1301(d)(1)(B)</p> <p>in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) of the Tribal Law and</p>	<p>FSST submitted an email request to the BOP for detention services on February 5, 2020.</p> <p>BOP will only accept violent offenders.</p>

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	Order Act of 2010;	
	<p>25 USC § 1301(d)(1)(C)</p> <p>in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or</p>	<p>FSST has not attempted to enter into an agreement at this time. Such an agreement is recommended if a BIA or BOP agreement cannot be entered into. Grant funding should be secured for any state agreement.</p>
✓	<p>25 USC § 1301(d)(1)(D)</p> <p>in an alternative rehabilitation center of an Indian tribe; or</p>	<p>FSST entered into a detention agreement with the Rosebud Sioux Tribe, dated April 6, 2018.</p>
✓	<p>25 USC § 1301(d)(2)</p> <p>to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.</p>	<p>These provisions provide alternative forms of punishment:</p> <p>Title 2, Criminal Procedure; Ch. 19, Sentencing and Judgment.</p> <p>Title 3, Criminal Law; Ch. 2, Classification of Offenses and Authorized Punishment.</p> <p>Title 6A, Domestic Violence Protection and Prevention Code; Ch. 2, Protection From Domestic Violence, Criminal Provisions.</p> <p>Title 8A, Banishment; Ch. 3, Enforcement of Banishments and Punishment.</p> <p>Title 24, Sex Offender Registry Ordinance; Ch. 8, Crimes and Civil Sanctions.</p>