

LOWER BRULE SIOUX TRIBE
LAW AND ORDER CODE

CODE GOVERNING DOMESTIC VIOLENCE
AND RELATED OFFENSES
SPECIAL TRIBAL CRIMINAL JURISDICTION



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LOWER BRULE SIOUX TRIBE

CODE GOVERNING DOMESTIC VIOLENCE AND RELATED OFFENSES- SPECIAL TRIBAL CRIMINAL JURISDICTION

SECTION 1-5-01. PURPOSE AND PROHIBITED CONDUCT

The purpose of this Code is to recognize that domestic violence, sexual violence, domestic abuse, sex trafficking, stalking, and related offenses are serious crimes against individuals, society, the Lower Brule Sioux Tribe, and the family. The intent of this Code is to provide the persons against whom such crimes are perpetrated the maximum protection from further violence that the law can provide. The safety of victims of these crimes must be ensured by the immediate intervention of law enforcement, as well as prosecution, education, treatment, and other appropriate services. Responses to the crimes prohibited by this Code shall stress the enforcement of laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribe's policy that violent behavior will not be tolerated or excused. Consequences for perpetrators are meant as responses to allow them to make positive changes in their behavior.

It shall be unlawful for any person to commit domestic violence, sexual violence, domestic abuse, sex trafficking, stalking, assault on a law enforcement officer, obstruction of justice, or violation of a protection order, as defined in this code, within the exterior boundaries of the reservation of the Lower Brule Sioux Tribe.

SECTION 1-5-02. SCOPE AND JURISDICTION

The Lower Brule Sioux Tribe has the inherent authority to protect its political integrity and to provide for the welfare of its members and others who choose to live within its territory. By treaty, the Tribe has the right to exclude non-members. Offenses prohibited by this Code that are committed within the boundaries of the Lower Brule Sioux Tribe seriously impact the ability of the tribe to provide for the health and well-being of tribal members and threaten its political integrity.

Offenses as described in this Code are perpetrated by or against tribal members and persons who are not members of the Lower Brule Sioux Tribe. The activities of tribal members, non-members, and non-Indians who have entered into consensual relations with tribal members will be regulated under the provisions of this Code. The Lower Brule Sioux Tribe will exercise criminal jurisdiction over both Indian and non-Indian offenders for offenses prohibited by this

Code, pursuant to its inherent authority to protect tribal members from conduct that threatens or has a direct effect on their health or welfare, and pursuant to the Violence Against Women Act which recognizes and affirms tribes' inherent authority to exercise criminal jurisdiction over Indian and non-Indian offenders. The Lower Brule Sioux Tribe intends to exercise Special Tribal Criminal Jurisdiction.

The provisions of this Code shall be applicable to all persons charged with an offense prohibited by this Code and the tribe shall exercise jurisdiction over those persons, as follows:

1. For criminal penalties:
 - a. Over all Indians who reside within the exterior boundaries of the Lower Brule Sioux Reservation.
 - b. Over all non-Indians with sufficient ties to the tribe within the exterior boundaries of the reservation, where the victim is a tribal member or non-member Indian who resides within the exterior boundaries of the Lower Brule Sioux Reservation. Sufficient ties include the following:
 - i. residence on the Lower Brule Sioux Reservation;
 - ii. employment by the Lower Brule Sioux Tribe; or
 - iii. being a spouse, intimate partner, or dating partner of a tribal member or Indian who resides within the Lower Brule Sioux Reservation.
2. For civil penalties and protection orders: all individuals within the exterior boundaries of the reservation.

No provision in this Code is intended to diminish the presumption of innocence of an individual charged with an offense prohibited by this Code.

SECTION 1-5-03. DOMESTIC VIOLENCE, DOMESTIC ABUSE, AND CHILD VIOLENCE. DEFINITIONS AND PROHIBITIONS.

1. "Domestic Violence" means any of the following acts upon any person defined as a "covered person" by § 1.B below:

A. Prohibited Conduct:

- (1) causing bodily injury to a covered person by the use of physical force; or
- (2) attempting to cause bodily injury to a covered person by the use of physical force; or

- (3) threatening bodily injury to a covered person with a deadly weapon; or
- (4) causing a covered person to engage involuntarily in sexual activity by physical force, attempted use of physical force, or threat of physical force.

These actions constitute “domestic violence” under this code if the action is perpetrated upon any “covered person” defined in § 1.B below.

B. Persons considered “COVERED PERSONS” under this code:

For the purposes of this code, the term “covered persons” includes those who are or have been the spouse or intimate partner of the defendant, or in a dating relationship with the defendant, or are a child of the defendant and include the following:

- (1) The relationship between the person and the defendant is one of marriage or former marriage or of a person residing or having cohabited in the same household with the defendant as intimate or dating partners;
- (2) The person and the defendant have a child in common;
- (3) The person or the defendant is pregnant by the other;
- (4) The person and the defendant are intimate partners or dating partners due to their having been in a social relationship with each other of a romantic or intimate nature as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- (5) The person is a child of the defendant.

The term “domestic violence” includes “dating violence” and “child violence” as defined in §§ 1C. and 1E. below.

C. “Dating partners” means persons who are or have been in a social relationship of a romantic or intimate nature as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. The crime of “dating violence” occurs when an individual uses violence as defined in § 1.A. above, against a “dating partner.” The crime of “domestic abuse” occurs when an individual’s actions are prohibited by § 3.A below.

D. “Intimate partners” means spouses, former spouses, persons who are or have been in a marital-like relationship, including same-sex relationships, persons who have a child in

common, regardless of whether they have been married or have lived together at any time in a romantic relationship.

E. "Child violence" includes any of the actions above in § 1.A perpetrated against the minor child of defendant, or child of defendant's intimate partner or dating partner.

2. Sexual Violence

A. Prohibited Conduct

Conduct prohibited by this section includes causing a "covered person" to engage involuntarily in sexual activity by physical force, attempted use of physical force, or threat of physical force with a deadly weapon.

B. Covered Persons

The persons described above as "covered persons" in § 1.B, and dating partners and intimate partners described in §§ 1.C and 1.D, and children described in § 1.E are covered persons for this section prohibiting sexual violence.

3. "Domestic abuse" means any of the following acts committed against a "covered person" as defined above in §§ 1.B and 2.B:

A. Prohibited Actions

- (1) causing or attempting to cause mental harm to a person;
- (2) placing the person in fear of bodily injury;
- (3) causing the person to engage in unwanted sexual activity by duress or the threat of harm to the person or to another person or when the person lacks the capacity to consent

B. Covered Persons

The persons described above in §§ 1.B and 2.B are covered persons for purposes of this section prohibiting domestic abuse.

SECTION 1-5-04. STALKING

A. Prohibited Conduct

Stalking means engaging in a course of conduct directed at a specific covered person proscribed by the criminal law of the Lower Brule Sioux Tribe, where such conduct would cause a reasonable person

1. To fear for the person's safety or the safety of others; or
2. To suffer substantial emotional distress.

B. The persons described above in §§ 1.B and 2.B are "covered persons" for this section prohibiting stalking.

SECTION 1-5-05. SEX TRAFFICKING

Sex Trafficking, defined as follows, is prohibited on the Lower Brule Reservation:

A. Whoever knowingly--

1. recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or
2. benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph A.1, knowing, or, except where the act constituting the violation of paragraph A.1 is advertising, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection B., below, or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be guilty of a Class A offense.
3. In a prosecution under subsection A.1 in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years.

B. In this section:

1. The term "abuse or threatened abuse of law or legal process" means the use or

threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

2. The term “coercion” means—

a. threats of serious harm to or physical restraint against any person;

b. any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

c. the abuse or threatened abuse of law or the legal process.

3. The term “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

4. The term “participation in a venture” means knowingly assisting, supporting, or facilitating a violation of subsection A.2.

5. The term “serious harm” means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

6. The term “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

SECTION 1-5-06. OBSTRUCTION OF JUSTICE

A. Obstruction of Justice means any violation of the criminal law of the Lower Brule Sioux Tribe that involves interfering with the administration of the laws of the Tribe or investigation of a crime described in this Code which authorizes the exercise of Special Tribal Criminal Jurisdiction.

B. Obstruction of Justice under this Code is a Class B offense.

SECTION 1-5-07. ASSAULT ON A LAW ENFORCEMENT OFFICER

- A. Assault on law enforcement officer means the use, attempted use, or threatened use of physical force against an individual authorized to act on behalf of the Lower Brule Sioux Tribe during or because of the performance of the duties of that individual in
1. preventing, detecting, investigating, making arrests related to, apprehension for, or prosecuting a crime prohibited by this Code;
 2. adjudicating, participating in the adjudication of, or supporting the adjudication of a crime prohibited by this Code;
 3. detaining, providing supervision for, or providing services for persons charged with a crime prohibited by this Code; or
 4. incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a crime prohibited by this Code.
- B. Assault on a Law Enforcement Officer under this code is a Class A offense.

SECTION 1-5-08. PROBABLE CAUSE

Probable cause is defined as follows: If, based on the law enforcement officer's observations or on statements made by either or both parties involved and witnesses (if any), the officer, using reasonable judgment, believes that an offense prohibited by this Code has occurred and that the person to be arrested committed the crime, the officer has probable cause to arrest.

SECTION 1-5-09. MANDATORY ARREST

- A. This mandatory arrest provision indicates that the victim need not sign a complaint for an arrest to occur. Further, under the provisions of Section 1-5-04 above, an officer shall arrest based upon probable cause even though it may be against the expressed wishes of the victim.
- B. A 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. That an offense prohibited by this Code has occurred whether the injury is observable to the officer or not; or

2. That physical activity has occurred which was intended to cause an intimate partner, dating partner, or child to fear imminent serious bodily injury or death.

The arrest shall be made even if the conduct prohibited by this code did not take place in the presence of the officer. Once this mandatory arrest provision has been triggered under this law, the duty to arrest shall continue until the arrest takes place.

- C. Under this code, a law enforcement officer shall refrain from dual arrests when the officer believes the parties have assaulted one another. The officer shall arrest the person who is believed to be the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider:
1. The intent of this code is to protect intimate partners, dating partners, and children from domestic violence, sexual violence, sex trafficking, stalking, and domestic abuse;
 2. The comparative extent of injuries inflicted or the extent of threats creating fear of physical injury;
 3. The history of domestic violence or other relevant conduct between the parties involved;
 4. The relative severity of the injuries inflicted on each person and assessing who in this relationship poses the most danger to the other;
 5. The likelihood of future injury to each person, i.e., who is at the most risk of future harm;
 6. Whether one of the persons acted in self-defense and/or in defense of another;
 7. The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or a third party.
- D. In making the determination whether to arrest, the law enforcement officer shall not:
1. threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by any party;

2. consider the use or abuse of alcohol by either party in making a determination as to whether or not an offense prohibited by this Code has been committed;
3. consider the employment, economic, educational, social, physical and/or mental health and political status of the alleged offender and/or victim.

SECTION 1-5-10. FILING OF COMPLAINT AND DUTIES OF LAW ENFORCEMENT OFFICERS

- A. The law enforcement officer making an arrest under this code shall sign a complaint against the alleged offender on behalf of the Lower Brule Sioux Tribe. The officer shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses. The officer shall also include with the report any medical reports bearing on the incident and all photographs of the victim.
- B. The victim may be subpoenaed as the primary witness for the prosecution.
- C. If the perpetrator and the victim are married to one another, the spousal communication privilege or testimonial privilege of the tribal code (if any), or other spousal communication privilege or testimonial privilege, shall not apply.
- D. A law enforcement officer who responds to an allegation of domestic violence or domestic abuse shall use all reasonable means to protect the victim and others present from further violence, including but not limited to:
 1. Taking any action necessary to provide for the safety of the victim and family/household/significant-other members.
 2. Confiscating any weapon involved or potentially to be involved in the alleged domestic abuse.
 3. Assisting the victim in removing essential personal effects and goods from the residence.
 4. Assisting the victim and any children in obtaining transportation to a medical facility if required.
 5. Informing the victim of services available for assistance in filing protection orders.

SECTION 1-5-11. MANDATORY 72-HOUR HOLD AND NO CONTACT RULE

Any person arrested under this code shall be held without bail in custody for a period not less than seventy-two hours as a mandatory cooling off period. The tribal court shall review the basis for the arrest to assure that probable cause existed. If the tribal court determines probable cause did not exist, the defendant shall be released. When bond is posted the tribal court may also impose other conditions of bond, to include temporary orders of child support, alimony, visitation of children, living arrangements, and that the person arrested shall not have any contact with the victim until final disposition of the case. The court may also order the victim not to have any contact with the defendant.

SECTION 1-5-12. IMMUNITY

Law enforcement officers acting in good faith under this code shall have immunity from liability, both civil and criminal.

Law enforcement officers shall also have immunity from liability with respect to court proceedings arising under this code.

SECTION 1-5-13. PROTECTION ORDERS

1. Definitions

- a. "Protection order": Any injunction, restraining order, or any other order restraining any person from committing any act of domestic violence, domestic abuse, sexual violence, sex trafficking, or stalking; or an order excluding any person from a dwelling or residence whether or not the dwelling/residence is shared; or an order enjoining any act of stalking against a dating partner, intimate partner, or child of either; or an order prohibiting any contact or communication with or physical proximity to another person. A protection order has the duration of one (1) year or less. **Note:** Domestic orders shall be enforced to the letter. An arrest shall be made regardless of whether the defendant was invited into the home or not. The tribal court must amend its order before an excluded party may return to the residence.

A form for a Petition for a Protection Order is at the Appendix of this Code.

- b. "Temporary protection order": An order as defined in paragraph 1.a. above, which has a duration of twenty-one (21) days.

2. There exists an action known as a petition for protection order in cases of domestic violence, domestic abuse, sexual violence, sex trafficking, and stalking.

- a. Violation of a protection order. It shall be unlawful for a defendant within the territorial boundaries of the Lower Brule Sioux Reservation to violate a protection order that:
 - (1) 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, or prohibits entry of a residence or dwelling;
 - (2) was issued against the defendant;
 - (3) is enforceable by the Lower Brule Sioux Tribe.
- b. The Lower Brule Sioux Tribe gives full faith and credit to protection orders from other jurisdictions, consistent with 18 U.S.C. § 2265(b).

SECTION 1-5-13(a). PETITION FOR PROTECTION ORDER

Procedures for obtaining a protection order are as follows:

1. A petition under this section may be made by any intimate partner, dating partner, child, or victim of sex trafficking or stalking.
2. A petition shall allege the existence of domestic violence, domestic abuse, sexual violence, sex trafficking, or stalking and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic violence, domestic abuse, sexual violence, sex trafficking, or stalking.
3. A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition or other action between the parties.

A form for a Petition for Protection Order is at the Appendix of this Code.

SECTION 1-5-13(b). NOTICE OF HEARING

Upon receipt of the petition, the court shall order a hearing which shall be held not later than twenty-one (21) days from the date of the order. Personal service of the petition, affidavit, and notice of hearing shall be made on the respondent not less than seven (7) days prior to the hearing.

SECTION 1-5-13(c). RELIEF AUTHORIZED ON FINDING DOMESTIC VIOLENCE, DOMESTIC ABUSE, SEXUAL VIOLENCE, SEX TRAFFICKING, OR STALKING

Upon notice and a hearing, if the court finds that domestic violence, domestic abuse, sexual violence, sex trafficking or stalking has occurred, the court may provide relief in the form of a protection order which may be in effect for one (1) year, as follows:

1. Restrain any party from committing acts of domestic violence, domestic abuse, sexual violence, sex trafficking, or stalking.
2. Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner.
3. Award temporary custody and establish temporary visitation with regard to minor children of the parties.
4. Establish temporary support for minor children of the parties or the spouse.
5. Order that the respondent attend and successfully complete the Batterers Counseling group (if any) and adhere to the requirements of the program.
6. Order other relief as the court deems necessary for the protection of an intimate partner, dating partner, child, or victim of sex trafficking, sexual violence, or stalking, including orders or directives to law enforcement officers.
7. The court may award temporary use and possession of property of the parties or family members, household members, or significant others, as appropriate, and may restrain one or both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life. The court may also order the parties to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order was served or communicated to the abusing party.
8. Prohibit the parties from contact with each other.

SECTION 1-5-13(d). EX PARTE TEMPORARY PROTECTION ORDER

Any relief granted by the order for protection shall be for a fixed period and may not exceed six months. When an affidavit filed with an application under this code alleges that immediate and irreparable injury, loss, or damage will result before an adverse party or his/her attorney can be heard in opposition, 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 any person, including any intimate partner or dating partner, from committing acts of domestic violence or other conduct prohibited by this Code.
2. Excluding any person, including any family member or household member, from the dwelling or residence of the petitioner.

The form at the Appendix of this Code includes a provision for an ex parte Protection Order.

SECTION 1-5-13(e). LIMITED DURATION OF TEMPORARY ORDER – SERVICE ON RESPONDENT

An ex parte temporary protection order is effective for a period of twenty-one (21) 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 1-5-13(f). DEPARTURE OF PETITIONER FROM HOUSEHOLD NOT WAIVING RIGHT TO RELIEF

A person's right to apply for relief under this code may not be affected by the departure of that person from the residence or household to avoid abuse.

Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

No order issued pursuant to this code may affect title to property.

SECTION 1-5-13(g). DELIVERY OF ORDER TO LAW ENFORCEMENT AGENCIES

The petitioner or court may deliver an order for protection granted pursuant to this code to the law enforcement agency having jurisdiction over the residence of the petitioner. Each appropriate law enforcement agency shall make available to other law enforcement officers any relevant information as to the existence and status of any order of protection issued pursuant to this code.

SECTION 1-5-14. EFFECT OF DIVORCE OR OTHER CIVIL PROCEEDINGS PRIOR TO CRIMINAL PROCEEDINGS

In any action involving domestic violence or domestic abuse, the court may not:

1. Dismiss any charge or delay disposition of a domestic violence or domestic abuse action because of the pending status of a divorce or any other civil proceeding, unless agreed to by all parties, including the victim.
2. Require proof that neither party is seeking dissolution of marriage prior to instigation of a criminal proceeding.

SECTION 1-5-15. RIGHTS OF THE DEFENDANT

It is the policy of the Lower Brule Sioux Tribe in exercising Special Tribal Criminal Jurisdiction under the Violence Against Women Act to provide all defendants the full protection of the laws. Therefore, in all proceedings in which the Lower Brule Sioux Tribe is exercising Special Tribal Criminal Jurisdiction under the Violence Against Women Act, all rights afforded the defendant herein shall apply. These rights include the following:

1. Rights of the Defendant.

In all criminal proceedings under this Code, the defendant shall have the following rights:

- a. The Lower Brule Sioux Tribe shall not 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;
- b. Prior to charging the defendant, the Lower Brule Sioux Tribe shall 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 Lower Brule Sioux tribe;
- c. The Lower Brule Sioux Tribe shall not deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- d. The defendant has the right to be free from excessive bail, and cruel and unusual punishment, and excessive fines;

- e. The defendant has the right to defend in person or by counsel;
- f. The defendant has the right to be informed of the nature of the charges pending against him or her and to have a copy of those charges;
- g. The defendant has the right to confront and cross-examine all prosecution or hostile witnesses;
- h. The defendant has the right to compel by subpoena:
 - i. The attendance of any witnesses necessary to defend against the charges; and
 - ii. The production of any books, records, documents, or other things necessary to defend against the charges;
- i. The defendant has the right to have a speedy and public trial by a Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived in writing by the defendant;
- j. The defendant has the right to appeal any final decision of the Tribal Court to the Tribal Court of Appeals;
- k. The defendant has the right to not be twice put in jeopardy for the same offense;
- l. The defendant has the right not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
- m. To petition for a writ of habeas corpus as set forth in 25 U.S.C. § 1304(e) and 25 U.S.C. § 1303, and incorporated in § 7 below. The Tribe shall ensure notice of the right to petition for federal habeas corpus is timely provided to the defendant.

2. Right to Counsel

- a. All defendants, regardless of the length of the potential sentence for the crime being charged, have the right to effective assistance of counsel meeting the requirements of 25 U.S.C. § 1302 while the Lower Brule Sioux Tribal Court is exercising Special Tribal Criminal Jurisdiction. An indigent defendant shall be provided the assistance of a defense attorney meeting the requirements of 25 U.S.C. § 1302 at the expense of the tribal government.
- b. Any person appearing as a party in Tribal Court shall have the right to counsel at his or her own expense. "Counsel" includes attorneys and spokespersons. Such counsel

shall be of the parties' own choosing and need not be an attorney or admitted to practice before the bar of any state, but must be a member of the Tribal Bar.

3. Right to Jury Trial

a. A defendant charged under Special Tribal Criminal Jurisdiction has a right to a trial by jury of six fair and impartial jurors drawn from the community. A defendant may waive the right to a jury trial in a written, voluntary statement to the Court. All jury verdicts must be unanimous.

b. Jury Pool. A list of eligible jurors shall be prepared by the Court. The eligible juror list shall be updated from time to time, but no less than once in each year. It shall reflect a fair cross-section of the community, and not systematically exclude any distinctive group in the community, including non-Indians. The Court shall provide for the selection of names of persons eligible for service as jurors. Jurors shall be 18 years of age or older and, notwithstanding any other law of the Lower Brule Sioux Tribe or any of its agencies, shall be chosen from the following classes of persons:

i. Tribal members living on or near the Lower Brule Sioux Reservation;

ii. Residents of the Lower Brule Sioux Reservation; and

iii. Employees of the Lower Brule Sioux Tribe or any of its enterprises, agencies, subdivisions, or instrumentalities who have been employed by the Lower Brule Sioux Tribe for at least one continuous year prior to being called as a juror.

4. Presiding Judges.

a. The defendant has a right to have a judge presiding over the criminal proceeding:

i. Who has sufficient legal training to preside over criminal proceedings; and

ii. Who is licensed to practice law in any jurisdiction in the United States.

b. Judge(s) meeting the qualifications in § 4.a. can be designated to preside over cases in which the Lower Brule Sioux Tribe is exercising Special Tribal Criminal jurisdiction. The Chief Judge shall designate and assign Judges to cases in which Special Tribal Criminal Jurisdiction will be exercised every January by standing order, and the standing order and qualifications of the Judge will become part of the trial record.

5. The defendant has the right to appeal any final decision to the Tribal Court of Appeals

6. Writ of Habeas Corpus.

a. Federal habeas corpus. The defendant shall be notified by the tribal court of the right to apply for federal habeas corpus.

b. Tribal habeas corpus. Availability of Writ:

i. Except as provided in subsection (6)(b)(ii) of this section, every person within the jurisdiction of the Lower Brule Sioux Tribe imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

ii. The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has not exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

iii. When a person is imprisoned or detained in custody by the Lower Brule Sioux Tribe on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his/her petition, without alleging that he/she is illegally confined.

c. Issuance of Writ.

i. Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf, and must be filed with the Clerk of the Court. It must specify:

(a) That the petitioner is unlawfully imprisoned or restrained of liberty;

(b) Why the imprisonment or restraint is unlawful; and

(c) Where or by whom the petitioner is confined or restrained.

ii. The parties to a writ, including if applicable, the Prosecutor, Chief Judge of the Tribal Court, and the Chief of Police, must be named. All parties must be named if they are known or otherwise described so that they may be identified.

iii. The petition must be verified by oath or affirmation or declaration under penalty of perjury that the contents of the declaration are true to the best of the declarant's belief or the belief of the party making the application.

d. Granting of the Writ. The judge to whom a petition for writ of habeas corpus is presented shall without delay, unless the petition on its face is barred or is otherwise frivolous, issue an order directing the Respondent to show cause why the writ should not be allowed. The Tribal Prosecutor shall represent the Chief of Police in the proceedings. The writ is returnable to the tribal court.

Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and is returnable to the Court of Appeals.

e. Time of Issuance and Requirements for Service.

i. A writ of habeas corpus or any associated process may be issued and served on any day at any time. The writ should be served on the Tribal Prosecutor and Chief Judge of the Tribal Court.

ii. The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal Prosecutor.

iii. The writ must be served by a Tribal Police Officer, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice or the Court, or by the employee of any correctional facility in which the petitioner is held.

f. Return of the Writ. The Prosecutor or his/ her designee shall make a return and state in that return:

i. Whether the person is in custody or under that person's power of restraint; and

- ii. If the person is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or
- iii. If the person has been transferred to the custody of or otherwise restrained by another to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

The return must be signed and verified by affirmation.

g. Hearing. The person commanded by the writ shall cause the petitioner to be brought before the Court as commanded by the writ unless the petitioner cannot be brought before the Court without danger to the petitioner's health. Sickness or infirmity must be confirmed. If the Court is satisfied with the truth of the writing, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present. Any law enforcement officer may bring the person as directed. Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence. If the Court determines that additional inquiry is required into the legality of the restraint of the petitioner, the Court may direct that additional proceedings be held as necessary.

h. Refusal to Obey Writ Is Contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.

i. Disposition of Petitioner. If the Court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

j. Conclusiveness of Judgment. Any party to a habeas corpus proceeding may appeal any final order of the Court.

8. Right to a Speedy and Public Trial. A defendant not released from jail pending trial shall be brought to trial not later than 90 days after the date of arraignment. A defendant

released from jail, whether or not subjected to conditions of release pending trial, shall be brought to trial not later than 120 days after the date of arraignment.

9. The Lower Brule Sioux Tribe shall maintain a record of the criminal proceeding, including an audio or other recording of the trial.

10. Criminal conduct applicable.

The Lower Brule Sioux Tribe exercises Special Tribal Criminal Jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

a. Domestic Violence, Sexual Violence, Domestic Abuse, Sex Trafficking, and Stalking.

An act of domestic violence, sexual violence, domestic abuse, sex trafficking, or stalking as defined in 25 U.S.C. § 1304 and in the Lower Brule Sioux Tribe Law and Order Code-Domestic Violence and Related offenses Code that occurs within the jurisdiction of the Lower Brule Sioux Tribe.

b. Violation of Protection Order. An act that occurs within the Lower Brule Sioux Reservation, and violates the portion of a protection order that:

a. Prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order;

b. Was issued against the defendant;

c. Is consistent with 18 U.S.C. § 2265(b).

c. Obstruction of Justice as defined in this Code at § 1-5-06.

d. Assault on a law enforcement officer as defined in this Code at § 1-5-07.

SECTION 1-5-16. PUNISHMENT FOR DOMESTIC VIOLENCE, SEXUAL VIOLENCE, DOMESTIC ABUSE, SEX TRAFFICKING, AND STALKING

The purpose of this code is to discourage domestic violence, domestic abuse, sex trafficking, and stalking on the Lower Brule Sioux Indian Reservation and to promote healing to families where possible. With these goals in mind, the following penalties shall apply to persons who commit any of those offenses:

1. A first offense of domestic violence is a Class B offense. A person convicted of or pleading guilty to domestic violence, also may be ordered to attend and successfully complete the Batterers Counseling group (if any) and adhere to the requirements of the program and to obtain a psychological evaluation of his/her potential to be a repeat offender.

2. A conviction of sexual violence, sex trafficking, or a second conviction of domestic violence within two (2) years of a prior conviction of any of those offenses is a Class A offense. An advisory sentence is that a period of confinement of a minimum of 90 days be imposed for domestic violence. An advisory sentence of one year of confinement should be imposed for a conviction of sexual violence or sex trafficking. A person convicted of or pleading guilty to a second offense of domestic violence within two (2) years of a prior conviction may be ordered to attend and successfully complete the Batterers Counseling group (if any) and adhere to the requirements of the program. Upon motion by the defendant, the court may review the case and allow the defendant to be released on probation for a term of six (6) months with the following stipulations:
 - a. No alcohol or drug use for a period of three (3) months.
 - b. Twenty (20) hours of community service which shall include speaking to youth about domestic violence.
 - c. Successful completion of Batterers Counseling group (if any)

3. A third or subsequent conviction of domestic abuse within two (2) years of a prior conviction of domestic abuse shall be a Class A offense. An advisory sentence is that a period of confinement of six months be imposed. A person convicted of or pleading guilty to a third or subsequent offense of domestic abuse may be ordered to attend and successfully complete the Batterers Counseling group (if any) and adhere to the requirements of the program. Upon motion by the defendant after serving six months of the sentence, the court may review the case and allow the defendant to be released on probation for a term of six (6) months with the following stipulations:
 - a. No arrests or complaints for a period of six (6) months.
 - b. No alcohol or drug use for a period of six (6) months.
 - c. Thirty (30) hours of community service.
 - d. Successful completion of Batterers Counseling group (if any).

4. A first conviction of domestic abuse or stalking is a Class C offense. A second or higher conviction is a Class B offense.

SECTION 1-5-17. SURRENDER OF WEAPON(S) BY DEFENDANT

The court may require the defendant to surrender any dangerous weapon(s) in his or her possession to tribal law enforcement upon conviction of domestic violence, sexual violence, domestic abuse, sex trafficking, stalking, or violation of a protection order.

SECTION 1-5-18. ADDITIONAL RELIEF ON FINDING OF DOMESTIC VIOLENCE, SEXUAL VIOLENCE, DOMESTIC ABUSE, SEX TRAFFICKING, OR STALKING

The court may order any or all of the following additional forms of relief upon a conviction of or a guilty plea to domestic violence, sexual violence, domestic abuse, sex trafficking, or stalking:

1. The court may restrain the abusing party from committing future acts which violate this code;
2. The court may exclude the abusing party from the dwelling which the parties or any child shared or from the residence of the victim and restrain the abusing party from any contact with the victim.
3. The court may award temporary custody and establish temporary visitation with respect to minor children of the parties as appropriate, on a basis that gives primary consideration to the safety of the victim and the children. If the court finds that the safety of the victim or the children will be jeopardized by unsupervised visitation, the court shall condition or restrict visitation with respect to time, place, duration, or supervision, or shall deny visitation entirely, as needed to safeguard the safety of the victim or the children or both. The court's determinations under this section shall in no way delay the issuance of an order for protection.
4. The court may order such other and further relief as it deems necessary for the protection of the victim including orders or directives to tribal law enforcement officers.
5. The court may order that the abusing party pay into a domestic violence fund for the use of domestic violence victims.

SECTION 1-5-19. REPORTING STATISTICS

In all cases of domestic violence, sexual violence, domestic abuse, sex trafficking or stalking, the law enforcement officers involved shall make and file written reports. Additionally, law enforcement shall compile a quarterly report of domestic violence, domestic abuse, sex trafficking and stalking cases investigated during the period. Such reports shall indicate the status of the case investigated, the number of arrests made, and other pertinent data. Such statistics shall be made available to appropriate agencies.

SECTION 1-5-20. STATUTE OF LIMITATIONS

For purposes of this Code, the statute of limitations shall be consistent with the statute applicable to other crimes committed under the Lower Brule Sioux Tribe's Law and Order Code-Criminal Code or any successor code.

Section 1-5-21. NONWAIVER OF SOVEREIGN IMMUNITY

Nothing in this chapter shall be deemed to constitute a waiver by the Lower Brule Sioux Tribe of its sovereign immunity for any reason whatsoever.

Section 1-5-22. SEVERABILITY

If any part, or parts, or the application of any part of this Code is held invalid, such holding shall not affect the validity of the remaining parts of this Code. The Tribal Council hereby declares that it would have passed the remaining parts of this Code even if it had known that such part or parts or application of any part thereof would be declared invalid.

Section 1-5-23. SAVINGS

This Code takes effect on the date approved by the Tribal Council and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this Code, and such Code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty, forfeiture or liability.

APPENDIX

Form for Petition for Protection Order

In the Lower Brule Sioux Tribal Court

Petitioner

PO NO. _____

Petition and Affidavit for a

Protection Order – Domestic
Violence, Domestic Abuse, Child Violence,
Sex Trafficking, Stalking

-vs-

Respondent

I, the above-named Petitioner, or the Parent/Guardian of the minor child Petitioner (the Filer), being duly sworn upon oath, state and affirm the following:

At least one party to the protection order—Petitioner, Respondent (the person against whom I seek this Protection Order), or a Protected Party (a minor child in my custody also victimized by Respondent; family member; household member)—is a resident of the Lower Brule Sioux Reservation.

--- Please check this box if there is a custody order in another jurisdiction regarding the children of Petitioner and Respondent.

--- Please attach a copy of the custody order to this Petition.

The person I am asking the Court to restrain from committing acts of domestic violence, domestic abuse, sex trafficking, sexual violence, or stalking (the Respondent) is, in relation to the Petitioner and any Protected Parties:

(check all that apply):

- a spouse (married) or a former spouse (divorced);
- in a significant romantic relationship or has recently been in one during the past twelve months;
- has a child or is expecting a child with Petitioner or Protected Parties;
- a parent or child;
- a sibling;
- a member of the household;
- ___other (specify) _____

I AM ASKING THE COURT FOR A PROTECTION ORDER BASED UPON THE FACTS BELOW: On or about (month) (day) , (year) , at approximately o'clock (AM/PM), Respondent committed the following act(s) of domestic violence, domestic abuse, sexual violence, sex trafficking, stalking against Petitioner (if not me, my minor child who is related to Respondent) and any Protected Parties (other minor child in my custody related to Respondent):

(check all that apply):

- Respondent caused physical harm or bodily injury.
- Respondent attempted to cause physical harm or bodily injury.
- Respondent's actions inflicted fear in Petitioner and/or any Protected Parties that Respondent was about to cause physical harm or bodily injury to said Petitioner or Protected Party.
- Respondent violated a protection order.
- Respondent willfully, maliciously, and repeatedly followed Petitioner and/or any Protected Parties.
- Respondent pursued a knowing and willful course of conduct which seriously alarmed, annoyed, or harassed Petitioner and/or any Protected Parties with no legitimate purpose. The pattern of conduct was a series of acts over a period of time, however short, showing a continuing pattern of harassment.
- Respondent made a credible threat with intent to cause Petitioner and/or any Protected Parties reasonable fear of death or great bodily injury. The person willfully, maliciously, and

repeatedly harassed Petitioner and/or any Protected Parties by means of any verbal, electronic, digital media, mechanical, telegraphic, or written communication.

---Respondent committed a crime of violence against Petitioner or any Protected Parties.

__Respondent did or endeavored to cause another person by coercion, threat or force to engage in a commercial sex act

Provide a detailed description of what happened on the above date:

Yes No Don't Know Was law enforcement called?

Yes No Don't Know Was Respondent arrested for this incident?

Yes No Don't Know Is Respondent in jail?

Yes No Don't Know Has Respondent violated previous protection orders? If so, against whom_____. Give the date of the violation _____ and the location of the violation.

Yes No Don't Know Has Respondent been found guilty of violating previous protection orders? If so, against whom_____. Give the date of the conviction _____ and the location of the conviction.

Yes No Don't Know Does Respondent possess guns or weapons?

Yes No Don't Know Was a weapon used in this incident?

Yes No Don't Know Has Respondent threatened anyone with a weapon? Provide a detailed description of other similar incidents or actions that Respondent has committed and reasons you believe it will continue:

REQUEST FOR HEARING AND PROTECTION ORDER

Based upon this Petition and Affidavit in which I truthfully set forth the details of the domestic violence, domestic abuse, sexual violence, sex trafficking, or stalking, I respectfully ask the Court to set a date to hear this matter and after hearing the evidence, to grant Petitioner and any Protected Parties a Protection Order:

1) To Restrain Respondent from acts of domestic violence, domestic abuse, physical harm, making threats of abuse, sexual violence, sex trafficking, or stalking.

2) To Grant the Protection Order for a period of time (no longer than 1 year).

3) To exclude Respondent from Petitioner's residence listed in 4C.

4) To Order that Respondent shall not come within a distance of _____ from the following persons and places:

A. The Petitioner personally

B. The following minor children named as other Protected Parties:

Name	Date of birth	Relationship	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

C. Petitioner's residence

(street/apt) _____
(city) _____, (state) _____. (zip) _____ - _____

D. Petitioner's place of employment

(street) _____
(city) _____, (state) _____ (zip) _____ - _____

E. Other places (street/apt) (city), (state) _____, (zip) - (street/apt) (city), (state) _____ (zip) - (street/apt) (city), (state) _____ (zip) _____.

5) To award me temporary custody of our minor child(ren), whose names are

6) To establish temporary visitation for Respondent with the minor child(ren) named above consisting of: Existing order in File # _____ Supervised at

_____ Other Visitation:

7) To Order that Respondent shall pay temporary (If you are requesting support, you must provide proof of the monthly income of both parties at the hearing.): child support in the amount of \$ _____ a month starting on _____ and continuing until further order of the Court; Child support shall be paid to: _____

- spousal support in the amount of \$ _____ a month starting on _____ and continuing until further order of the Court. Spousal support shall be paid to the Clerk of Courts Office, Lower Brule.

8) To Order Respondent receive parenting classes approved or provided by

_____.

9) To Order Respondent to obtain counseling as follows: _____

10) That Respondent be restrained from contact with the Petitioner and any Protected Parties, by any direct or indirect means except as authorized by a court order.

11) To Order other relief which I believe is necessary for Petitioner's protection and any Protected Parties' protection, as follows:

(If you are requesting an immediate temporary protection order without notice to Respondent and without an opportunity for Respondent to appear, you must state why you believe Petitioner or any Protected Parties will suffer immediate and irreparable injury or damage if you or they have to wait until the hearing.)

---REQUEST FOR IMMEDIATE PROTECTION ORDER WITHOUT NOTICE TO THE OTHER PARTY

---I am requesting an immediate Temporary Protection Order. In addition to what I have requested in sections 1-10 above, I further request that the Court grant Petitioner and any Protected Parties an immediate Temporary Protection Order restraining Respondent from

committing acts of domestic violence, domestic abuse, sexual violence, sex trafficking, or stalking based upon the following sworn statements and beliefs:

The reasons Petitioner and any Protected Parties need this order immediately and cannot wait until the scheduled hearing are:

_____ I believe that Petitioner, and/or any Protected Parties will suffer immediate and irreparable injury, loss or damage if not granted an immediate Temporary Protection Order without notifying Respondent and his/her attorney or giving Respondent an opportunity to be heard.

The immediate and irreparable injury, loss or damage that I believe will be suffered is:

On this _____ day of _____, _____, I swear or affirm under oath that the information I have provided in this Petition and Affidavit are true and correct to the best of my knowledge. I believe Petitioner and any Protected Parties are entitled to the protection I have requested. I am asking for this protection for valid reasons and am not attempting to harass the person I am seeking protection against and am not attempting to abuse or delay the court process or any other legal action.

Your Signature as Filer Only / Petitioner (check one)

Signed and sworn to before me on this day of _____ .

