

**TITLE
XXV**

DOMESTIC ABUSE

ORDINANCE 133

Of the Standing Rock Sioux Tribal Code of Justice



**Resolution 30-90
Adopted and Incorporated
February 9, 1990**

BY

Standing Rock Sioux Tribal Council

ORDINANCE NO. 133

BE IT ENACTED, that pursuant to the power vested in the Tribal Council under Article IV, Section 1n, of the Constitution of the Standing Rock Sioux Tribe, the foregoing Ordinance No. 133 amending the Code of Justice by adding a new Title XXV, DOMESTIC ABUSE, Sections 25-101 through 25-117, is hereby adopted and incorporated into the Code of Justice.

RESOLUTION NO. 30-90

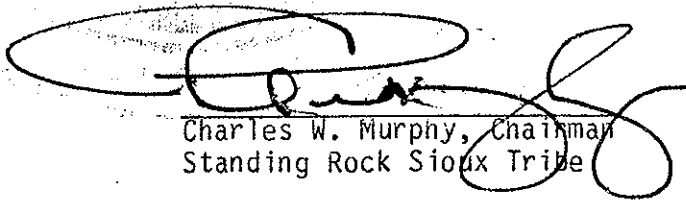
BE IT RESOLVED, that pursuant to the power vested in the Tribal Council under Article IV, Section 1n, of the Constitution of the Standing Rock Sioux Tribe, the foregoing Ordinance No. 133 amending the Code of Justice by adding a new Title XXV, DOMESTIC ABUSE, Sections 25-101 through 25-117, is hereby adopted and incorporated into the Code of Justice.

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council be authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

We, the undersigned, Chairman and Secretary of the Standing Rock Sioux Tribal Council, hereby certify that the Tribal Council is composed of 17 members of whom 15 constituting a quorum were present at a meeting thereof, convened, and held on the 9th day of FEBRUARY 1990, that the foregoing resolution was duly adopted by an affirmative vote of 12 members, with 0 opposing, and with 3 not voting. The Chairman's vote is not required except in case of a tie.

Dated this 9th day of FEBRUARY 1990.


Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

ATTEST:



Elaine Brave Bull, Secretary
Standing Rock Sioux Tribal Council
(OFFICIAL SEAL)

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TITLE XXV. DOMESTIC ABUSE**25-101. Purpose.**

The purpose of this chapter is to recognize domestic abuse as a serious crime against society and to assure the victim of such abuse the maximum protection from further abuse which the law, and those who enforce the law, can provide.

It is the intent of the Standing Rock Sioux Tribal Council that the official response to cases of domestic abuse shall be that violent behavior is not to be excused or tolerated, whether or not the abuser is intoxicated. Furthermore, it is the intent of the Standing Rock Sioux Tribal Council that criminal laws be enforced without regard to whether the persons involved are family members, are or were married, cohabiting, or involved in a relationship.

25-102. Definitions.

Terms used in this section, unless a different meaning is clearly indicated by context, are defined as follows:

- (a) Domestic violence shall include physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, on the complaining family or household members.
- (b) Domestic abuse program shall mean a program that provides emergency housing for victims of domestic violence and their dependents, plus some of the following additional services:
 - (1) Counseling.
 - (2) Advocacy.
 - (3) Community education on domestic violence.
 - (4) Referral to other sources for services not provided by the domestic abuse program.
- (c) Family member or household member shall mean a spouse, family members, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, or the purposes of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under Section 24-108.
- (d) Bodily injury shall mean physical pain, illness, or an impairment of physical condition.
- (e) Causing apprehension of bodily injury shall mean any physical act which is intended to cause another person reasonably to fear imminent serious bodily injury or death.

25-103. Crime of Domestic Abuse.

A person commits the crime of domestic abuse if he or she:

- (a) Purposely or knowingly cause bodily injury to a family member or household member; or
- (b) Purposely or knowingly cause apprehension of bodily injury to a family member or household member.

25-104. Mandatory Arrest.

(a) 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 that:

- (1) An assault has occurred, which may or may not have resulted in bodily injury that is observable to the officer; or
- (2) Any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death; and
- (3) The victim is the person's family or household member, or former household member.

(b) The arrest shall be made even though the assault did not take place in the presence of the officer.

(c) The officer, under this Title, is not required to arrest both parties when he or she believes the parties have assaulted one another. The officer shall arrest the person whom he or she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider:

- (1) The Tribe's intent to protect victims of domestic abuse under this Title; or
- (2) The comparative extent of injuries inflicted or serious threats creating fear of physical injury; and
- (3) The history of domestic abuse between the persons involved.

25-105. Mandatory Hold.

Any person arrested under this Title shall be held without bail, in the custody of the police department, for a period not to exceed seventy-two (72) hours as a mandatory "cooling off" period.

25-106. Filing of Complaint.

(a) The law enforcement officer making an arrest under this Title shall sign a complaint against the alleged abuser on behalf of the Standing Rock Sioux Tribe. He or she shall submit a detailed report of the circumstances of the arrest, along with statements from the victim and other witnesses.

(b) The victim shall be subpoenaed as the primary witness for the Tribe.

25-107. Notice of Rights to Victims.

The officer shall advise the victim of domestic abuse whether a shelter or other services are available in the community and give the victim immediate notice of his or her right to petition the court for a protection order.

25-108. Protection Order.

- (a) An action for a protection order commenced by a verified application alleging the existence of domestic abuse may be brought in Tribal Court by a family member, household member or by any other person if the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of a domestic abuse protection order. An action may be brought under this section, regardless of whether a divorce action has been filed.
- (b) Upon receipt of the application, the court shall order a hearing to be held no later than fourteen (14) days from the date of the hearing order.
- (c) Service shall be made upon the respondent not less than five (5) days prior to the hearing. If service cannot be made, the court may set a new date.
- (d) Upon a showing of actual or imminent domestic abuse, the court may enter a protection order after due notice and a full hearing. The relief provided by the court may include any or all of the following:
 - (1) Restraining any party from threatening, molesting or injuring any other person.
 - (2) Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the domestic abuse is occurring, or from a domestic abuse care facility, where this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - (3) Awarding temporary custody and/or establishing temporary visitation rights with regard to minor children. The court may order that any such visitation be supervised or otherwise restricted.
 - (4) Recommending or requiring that either or both parties undergo counseling with a domestic abuse program or other agency which provides services which the court deems appropriate. The court may request a report from the designated agency within a time period established by the court.
 - (5) Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties.

- (6) Awarding temporary use of personal property, including motor vehicles, to either party.
- (e) The court may amend its order or agreement at any time upon subsequent petition filed by either party.
- (f) No order or agreement under this section shall affect title to any real property in any manner.

25-109. Temporary Protection Order.

- (a) Where an application under Section 24-108 alleges an immediate and present danger of abuse to the applicant based upon an allegation of a recent incident of actual abuse or threat of abuse, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
- (b) An ex parte temporary protection order may include:
 - (1) Restraining any party from committing acts of abuse on another person.
 - (2) Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from a domestic abuse shelter care facility.
 - (3) Awarding temporary custody and/or establishing temporary visitation rights with regard to minor children. The court may order that any such visitation be supervised or otherwise restricted.
- (c) An ex parte temporary protection order shall remain in effect, in the court's discretion, for not more than thirty (30) days, unless otherwise terminated by the court.
- (d) A full hearing as provided by Section 24-108 shall be set not later than fourteen (14) days from the issuance of the temporary order. The respondent shall be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for hearing.
- (e) The clerk of court shall transmit a copy of each temporary protection order, or extension, modification or termination thereof, by the close of the business day on which the order was granted, to the local law enforcement agency with jurisdiction over the residence agency with jurisdiction over the residence at which the actual domestic abuse, which is the subject of the temporary protection order, has occurred, or is likely to occur, if requested by the applicant and approved by the court.
- (f) A maximum filing fee of \$10.00 shall be paid to the Tribal Court prior to the issuance of a temporary protection order unless said fee is waived by the court.

25-110. Persons Required and Permitted to Report.

- (a) Any medical or mental health worker, the personnel of a domestic abuse program, the personnel of a domestic abuse shelter care facility, counselor or social worker having knowledge or reasonable cause to believe that a person coming before him or her in his or her professional or official capacity is a victim of domestic abuse shall report the circumstances to the local law enforcement agency.
- (b) Any person having reasonable cause to believe that a person is a victim of domestic abuse may report such circumstances to the local law enforcement agency.

25-111. Reporting.

- (a) All persons required to report cases of known or suspected cases of domestic abuse shall immediately cause written reports to be made to the local law enforcement agency.
- (b) All persons permitted to report cases of known or suspected cases of domestic abuse may file oral or written reports with the local law enforcement agency.

25-112. Immunity from Liability.

- (a) Any person, other than the alleged violator, who participates in good faith in the making of a report, assists in an investigation, or provides preventive or remedial services with respect to the domestic abuse, is immune from any civil or criminal liability that might otherwise result from those actions.
- (b) A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause or enforcement in good faith of a court order or any other action or omission in good faith under this Title arising from an alleged incident of domestic violence brought by any party to the incident.

25-113. Penalty for False Reports.

- (a) Any person, as defined in Section 24-110, who willfully makes a false report, or causes a false report to be made pursuant to this section is guilty of a CLASS A MISDEMEANOR, but the sentence shall not require time to be spent in jail for the first offense.

25-114. Abrogation of Privileged Communications.

- (a) Any privilege of communication between husband and wife or between any professional person and his client, except between attorney and client, is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding domestic abuse resulting from a report made under this Title.

24-115. Written Report—With No Arrest.

Whenever a law enforcement officer is called to the scene of a reported incident of domestic violence, and he or she does not make an arrest, he or she shall file a written report with his or her supervisor, setting forth the reason or reasons for his or her decision.

25-116. Penalties.

The purpose of this ordinance is to stop all family violence on the Standing Rock Sioux Indian Reservation and to promote the healing of families when possible.

- (a) A person convicted of a first or second offense of domestic abuse shall be imprisoned for a term not less than ten (10) days nor more than ninety (90) days and may be fined an amount not to exceed \$500.00. The court shall require mandatory counseling as part of the sentence. Such counseling shall include, but is not limited to: alcohol/drug abuse counseling, anger control, and family counseling.
- (b) A person convicted of a third or subsequent offense of domestic abuse shall be imprisoned for a term of not less than thirty (30) days nor more than ninety (90) days, and may be fined in an amount not to exceed \$500.00, or both. The court shall require mandatory counseling as part of the sentence. Such counseling shall include, but is not limited to: alcohol/drug abuse counseling, anger control and family counseling. Counseling shall be made available for the children of the perpetrator and the children of the victim.

25-117. Reporting Statistics.

In all cases of domestic abuse, the officer involved shall make a written report, and the number of such cases shall be tabulated. A quarterly report shall be made by the police department, setting out the numbers of reports of domestic violence, investigations and arrests. Such statistics shall be made available to the appropriate agencies.