TITLE 2
CRIMINAL PROCEDURE

CHAPTER 1
GENERAL PROVISIONS

Section 2-1-1. Purpose. The purpose of this Title is to provide for the just determination of every criminal proceeding. It shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Section 2-1-2. Scope. This Title shall be used in all criminal proceedings and in all proceedings for violations of tribal ordinances.

Section 2-1-3. Definitions:

(1) **Arrest:** Arrest is the taking of a person into custody so that he may be held to answer criminal charges in tribal court;

(2) **Complaint:** A complaint is a written statement, signed under oath, of the essential facts constituting the offense charged.

(3) **Law Enforcement Officer:** A law enforcement officer means only those individuals authorized by the Tribe to provide law enforcement services on the reservation.

(4) **Summons:** A written order notifying an individual that he has been charged with an offense and directing the person to appear in court to answer the charge.

(5) **Warrant:** A written order, issued in the name of the Tribe, and signed by a tribal judge, directed to an authorized law enforcement officer, commanding the officer to search before the Court.

Section 2-1-4. Law Enforcement's Duty to Report Crimes. It shall be the duty of all tribal law enforcement officers to report the occurrence of all criminal activity within the Reservation to the Tribe. Such reports shall be in writing and shall be made to the tribal prosecutor.

CHAPTER 2
COMPLAINT, SUMMONS, WARRANT

Section 2-2-1. Complaint. All criminal proceedings shall be commenced by the filing of a complaint by the tribal prosecutor. The complaint shall contain the name of the

defendant, the offense charged, and the facts which constitute the offense charged. The complaint shall be signed under oath before a person authorized to administer oaths.

Section 2-2-2. Warrant or Summons. A warrant for arrest shall be issued if it appears from a complaint, or from an affidavit filed with a complaint, that there is probable cause to believe that an offense has been committed and that the person named in the complaint committed it. Upon request of the tribal prosecutor, a summons may be issued in lieu of a warrant. A warrant shall be issued if a defendant fails to appear in response to a summons. Probable cause may be based on hearsay evidence.

Section 2-2-3. Contents of a Warrant. Every arrest warrant shall contain the name of the defendant and date of issuance. The warrant shall be signed by a tribal judge or by the tribal clerk of courts upon authorization of a tribal judge and command that the defendant be brought before the Court. The judge who signs the warrant shall endorse the amount of bail, if any, on the warrant.

Section 2-2-4. Contents of Summons. A summons shall be in the same form as a warrant except that it shall summon the defendant to appear before the Court at a stated time and place. The summons shall state that if the defendant fails to appear before the Court, a warrant for arrest will be issued.

Section 2-2-5. Execution of Warrant and Summons. A warrant or summons shall be executed by any law enforcement officer authorized by the Tribe to execute the same. A warrant shall be deemed executed by the arrest of the defendant. A law enforcement officer authorized to execute a tribal warrant need not have the warrant in his possession to execute but if he does not have the warrant in his possession he shall inform the defendant of the offense charged and of the fact that a warrant has been issued. A summons shall be served upon a defendant at least five days before the day of appearance fixed therein by delivering a copy of the summons to him personally or by leaving it at his dwelling place or usual place of abode with some person over the age of fourteen years then residing therein.

Section 2-2-6. Return of Warrant or Summons to Committing Judge. The law enforcement officer executing a warrant shall make return thereof to the committing judge before whom the defendant is brought. Any unexecuted warrant may be brought to the committing judge and cancelled by him at the request of the tribal prosecutor.

CHAPTER 3
ARREST

Section 2-3-1. Arrest Under Warrant. Any arrest made under tribal warrant shall be made in accordance with the provisions set out in Chapter 2 of this Title.

Section 2-3-2. Arrest Without Warrant. A law enforcement officer, authorized by the Tribe to make arrests, may, without a warrant, arrest and take a person into custody, pending release on bond or order of the Court,

(1) For a tribal offense, other than a petty offense, committed or attempted in the officer's presence; or

(2) Upon probable cause that a felony or Class I Misdemeanor has been committed and that the person arrested committed it, although not in the officer's presence.

Section 2-3-3. Arrest Without 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 Title 6A (Domestic Violence Protection and Prevention Code) or by another court of competent jurisdiction protecting the victim and the terms of the order prohibiting acts or threats of abuse or excluding the person from a residence have been violated; or

(2) The person within the preceding four hours has assaulted that person's spouse, former spouse, or a person with whom the person resides or has formerly resided and the officer believes:

(a) An assault has occurred and the arrested person has 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 a 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 2-3-4. Citizen's Arrest. Any tribal member or other non-member Indian may arrest another person:

(1) For commission of a tribal offense, other than a petty offense, committed or attempted in his presence; or

(2) For a felony which in fact has been committed although not in that person's presence, if probable cause exists to believe the person arrested committed it.

Section 2-3-5. Manner of Making Arrest. An arrest shall be made by an actual or attempted restraint of the person arrested or by his submission to the custody of the person making the arrest. No person authorized to make an arrest by this Chapter shall subject an arrested person to more physical restraint than is reasonably necessary to effectuate the arrest. A person authorized to make an arrest by this section may take from the arrested person all dangerous weapons and evidence in the arrested persons possession.

A law enforcement officer, authorized to make arrests, may break open an outer or inner door or window of a dwelling house or other structure for the purpose of making an arrest if, after giving reasonable notice of his intention, he is refused admittance, and if:

(1) The authorized law enforcement officer has obtained a warrant; or

(2) Exigent circumstances justify a warrantless arrest.

Section 2-3-6. Aid to Law Enforcement Officer. Every person must aid an officer in the execution of an arrest if the officer requests assistance.

CHAPTER 4
CITATIONS

Section 2-4-1. Citation in Lieu of Detention. Whenever a person is arrested for a violation of this code, the arresting officer, or any other authorized law enforcement officer, may service upon the arrested person a citation and notice to appear in court, in lieu of keeping the person in custody or requiring bail or bond. In determining whether to issue a citation and notice to appear, the officer may consider the following factors:

(1) Whether the person has identified himself satisfactorily;

(2) Whether detention appears reasonably necessary to prevent imminent bodily harm to himself or to another, injury to property, or breach of peace;

(3) Whether the person has ties to the Tribe or is a local resident, so as to provide reasonable assurance of appearance before the Court, or whether there is substantial likelihood that he will refuse to respond to the citation; and

(4) Whether the person has previously failed to appear in response to a citation issued pursuant to this Section or to other lawful process of the Court.

Section 2-4-2. Citation Contents. A citation under this Section shall include the name of the person, his or her address, date of birth and sex, the time, place and description of

the offense charged, the date of issuance of the citation and the name of the officer giving the citation. The citation shall also state the time and place at which the person is to appear in court to hear the charges against him and post bail, which shall not be less than 72 hours after the date of the citation nor more than 15 days after the date of the citation. The individual cited shall sign and give a written promise to appear as required by the citation.

Section 2-4-3. Citation; Effect, Procedure. The citation when completed shall serve as the complaint for purposes of prosecution in court. If the defendant fails to appear, a tribal judge may issue a warrant for arrest and may order bail.

CHAPTER 5
SEARCH AND SEIZURE

Section 2-5-1. Issuance of a Search Warrant. A search warrant authorized by this Chapter may be issued by a tribal judge on the request of an authorized law enforcement officer or the tribal prosecutor. A warrant shall be issued only upon the evidence set forth in an affidavit or affidavits presented to a tribal judge, which establishes the grounds for issuing the warrant. A tribal judge shall issue a warrant only upon showing that the grounds for the application exist or that there is probable cause to believe that they exist. The finding of probable cause may be based on hearsay evidence in whole or in part. The warrant shall identify the property to be seized and name or describe the person or place to be searched. The judge issuing the warrant may require the affiant to appear personally and may examine the affiant under oath and any witness before a warrant is issued.

Section 2-5-2. Execution of Warrant. The warrant shall be directed to an authorized law enforcement officer, commanding the officer to search, within the time specified by this Chapter, the person or place named for the property specified. The warrant shall be executed in the daytime, unless the committing judge, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at night.

Section 2-5-3. Time Limitation on Warrants. A search warrant shall be executed and returned within ten days of its issuance to the tribal judge who issued it. After expiration of such time, the warrant, unless time is extended by order of the Court, shall be void.

Section 2-5-4. Property for Which a Warrant May Be Issued. A warrant may be issued under this Chapter to search for and seize any:

(1) Property that constitutes evidence of the commission of a tribal criminal offense;

(2) Contraband, the fruits of a crime, or things otherwise criminally possessed; or

(3) Property designed or intended for use in, or which is or has been used as the means of committing a tribal criminal offense.

Section 2-5-5. Oral Testimony as Basis for Warrant. A search warrant may be issued upon sworn oral testimony of a person who is not in the physical presence of a committing tribal judge when circumstances make it reasonable to do so, in the absence of a written affidavit, if the committing judge is satisfied that probable cause exists for the issuance of the warrant. The sworn oral testimony may be communicated to the judge by telephone or other appropriate means and shall be recorded and transcribed. The statement shall be deemed to be an affidavit for purpose of Section 2-5-1. The grounds for issuance of a warrant pursuant to this Section shall be the same as are required by Section 2-5-1. Prior to approval of a warrant issued pursuant to this Section, the committing judge shall require the law enforcement officer or the tribal prosecutor who is requesting the warrant to read to him verbatim the contents of the warrant. Upon approval, the judge shall direct the law enforcement officer or tribal prosecutor who is requesting the warrant to sign the judge's name on the warrant. The warrant shall be called a duplicate original warrant and is a warrant for purposes of this Chapter. In such case the judge shall cause an original warrant to be made.

Section 2-5-6. Forcible Entry for Purposes of Executing a Warrant. Any law enforcement officer authorized to execute a warrant may break open any building, structure, or container or anything therein to execute a warrant if, after giving notice of the officer's authority and purposes, he is refused admittance.

Section 2-5-7. No Knock Warrant Authorized. A tribal judge may include in a warrant a direction that the officer executing the warrant is not required to give notice required by this Chapter under the following circumstances:

(1) The judge is satisfied that there is probable cause to believe that if notice were given prior to its execution:

(a) The evidence sought in the case may be easily destroyed or disposed of; or

(b) That danger to the life of limb of the officer may result.

Under a warrant issued pursuant to this Section, an authorized law enforcement officer may, without notice of his authority or purpose, enter any structure, portion of a structure or vehicle, or anything therein, by whatever means, including breaking therein.

Section 2-5-8. Receipt and Copy of Warrant to Person from Whom Property is Taken and Inventory. An officer authorized to take property under a search warrant shall give the person from whom the property was taken a copy of the warrant and a receipt for the property taken. The warrant shall immediately be returned to the judge

with an inventory of all property seized pursuant to the warrant. The inventory shall be taken in the presence of the person who requested the warrant and in the presence of the person from whose possession or premises the property was taken if they are present, or in the presence of at least one credible person other than the applicant for the warrant. Upon request, the person from whom the property was seized or from whose premises the property was seized shall be given a copy of the inventory.

Section 2-5-9. Unlawful Searches and Seizures. Any search and seizure committed within the territory of the reservation shall be made in compliance with the terms of this Chapter. Any search or seizure effectuated that is not in compliance with the terms of this Chapter shall be deemed an unlawful search and seizure and any evidence obtained as a result of such unlawful search and seizure shall be inadmissible in the tribal court.

Section 2-5-10. Return of Evidence Unlawfully Seized. Any evidence of property obtained pursuant to an unlawful search and seizure shall be returned to the person who owns the property or has lawful right to its possession upon written request to the Court by that individual.

CHAPTER 6
PRELIMINARY PROCEEDINGS

Section 2-6-1. Initial Appearance: As soon as reasonably possible after arrest, but not more than 72 hours thereafter, or within the period designated on the citation, the defendant shall appear or be brought before a tribal judge or a magistrate and the defendant shall be informed of his or her constitutional rights, including the right to counsel at his or her own expense. The defendant shall be advised of the charges against him and be given a copy of the complaint, if available. If the defendant is arrested without a warrant, the tribal prosecutor shall file a complaint and a copy shall be provided to the defendant before the date set for arraignment. Bail shall be set in accordance with Chapter 7.

Any person charged with a Class I Misdemeanor or a Felony shall be entitled to a preliminary hearing. The defendant, at the initial appearance, shall be advised of the right to a preliminary hearing and if requests a preliminary hearing the judge or clerk shall schedule a preliminary hearing. If the defendant is not entitled to a preliminary hearing, or if the defendant waives the right to a preliminary hearing, the defendant shall be scheduled for trial.

Section 2-6-2. Preliminary Hearing. Discharge and Dismissal in Absence of Probable Cause. If from the evidence produced at the preliminary hearing it appears that there is not probable cause to believe an offense has been committed or that the defendant committed it, the judge shall dismiss the complaint and discharge the defendant. The discharge of a defendant does not preclude the tribal prosecution from instituting a subsequent prosecution for the same offense.

CHAPTER 7
BOND

Section 2-7-1. Release on Bond Authorized. Any individual subject to the jurisdiction of the Flandreau Santee Sioux Tribe shall be entitled to release on bond as authorized by this Chapter.

Section 2-7-2. Release on Personal Recognizance Authorized. The Court may release any individual on his/her own personal recognizance pending trial, subject to any restrictions that may be placed on the individual by the Court, unless the Court determines that such a release will not reasonably assure the appearance of the defendant as required. Release on personal recognizance shall be determined by the tribal judge in the exercise of discretion. The following factors may be taken into consideration in making this determination:

(1) The residency of the accused;

(2) The likelihood of appearance for further hearing;

(3) The seriousness of the offense charged;

(4) The defendant's past record, if any, of willful failure to appear before the tribal court or any other court of law;

(5) Evidence that the defendant poses a threat to any individual, the Tribe, or the general public;

(6) The employment of the accused and financial resource; and

(7) Length of residency in the community and family ties.

Section 2-7-3. Release on Bond. If the Court determines that a defendant's release on personal recognizance will not reasonably assure the appearance of the defendant for trial as required, the committing judge shall order the defendant to be held on an appearance bond or a cash bond. The amount of bond required shall not exceed the amount of the maximum fine allowed for the offense charged.

Section 2-7-4. Conditions of Release. The Court may place conditions on the release of any defendant pending trial. Violations of the conditions may subject the defendant to revocation of bond and result in the detention of the individual pending trial.

CHAPTER 8
ARRAIGNMENT AND PLEAS

Section 2-8-1. Arraignment Procedure. Arraignments shall be conducted in open court and shall consist of reading the complaint to the defendant or stating to the defendant the substance of the charge and calling the defendant to plead thereto. The defendant shall be given a copy of the complaint before called upon to plead and shall be advised of his constitutional and statutory rights in accordance of Section 2-8-4.

Section 2-8-2. Pleas Permitted to Defendant-Requirements for Plea of Guilty or Nolo Contendere. A defendant may plead:

(1) Not guilty;

(2) Not guilty and not guilty by reason of insanity;

(3) Guilty; or

(4) Nolo Contendere.

Except as otherwise provided, a plea of guilty, or nolo contendere can only be entered by a defendant himself in open court. If a defendant refuses to plead, or if the Court refuses to accept a plea of guilty or nolo contendere, the Court shall enter a plea of not guilty. The Court may not enter a judgment unless it is satisfied that there is a factual basis for any plea except a plea of nolo contendere. A guilty plea or a nolo contendere plea may be entered on behalf of a defendant who is not present in open court by the defendant's attorney if the defendant has signed a properly notarized power of attorney authorizing the defendants' attorney to enter the plea. The power of attorney shall verify that the defendant has been advised of his constitutional rights, of the charges against him and of the maximum punishment allowed by law and that the defendant understands the same.

Section 2-8-3. Consent Required for Nolo Contendere Plea. A defendant may plead nolo contendere only with the consent of the Court. Such a plea shall be accepted by the Court only after due consideration of the views of the parties and the interests of the public in the effective administration of justice.

Section 2-8-4. Advice as to Rights to Defendant Pleading Guilty or Nolo Contendere. Before accepting a plea of guilty or nolo contendere the Court must address the defendant personally, in open court, subject to the exception stated in Section 2-8-5, and inform him of, and determine that he understands the following:

(1) The nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;

(2) If the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceedings against him at his own cost;

(3) That he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself;

(4) That if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he waives the right to a trial, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and

(5) That if he pleads guilty or nolo contendere, the Court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury.

Section 2-8-5. Ascertainment of Voluntary Nature of Guilty or Nolo Contendere Plea, Pleading by Attorney to Misdemeanor-Imposition of Sentence. The Court, except as provided in this Section, shall not accept a plea of guilty or nolo contendere without first, by addressing the defendant personally in open court, determining that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement.

If the defendant is charged with a misdemeanor, his attorney may enter a plea of guilty, nolo contendere or not guilty for him. The Court shall inquire into whether the attorney has advised the defendant of the contents of Section 2-8-4. If the Court is satisfied that the defendant has been advised, the plea may be accepted. If the plea is guilty or nolo contendere, sentence may be imposed at that time and is binding upon the defendant.

Section 2-8-6. Plea Bargaining Permitted/Concessions by the Prosecutor Permitted-Notice to Victims. The tribal prosecutor and an attorney for a defendant or a defendant when acting pro se may engage in discussions, with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the tribal prosecutor will do any one or more of the following:

(1) Move for dismissal of other charges or not file additional charges arising out of a different occurrence;

(2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the Court;

(3) Agree that a specific sentence is the appropriate disposition of the case; or

(4) Perform other specified acts to be made a part of the agreement.

The Court shall not participate in such discussions. The tribal prosecutor shall make a reasonable effort to provide each victim of a crime of violence of the defendant's crime with an opportunity to comment on the terms of the plea agreement to the tribal prosecutor. If the victim is a minor, the victim's parent or guardian may comment on the terms of the plea agreement to the tribal prosecutor.

Section 2-8-7. Disclosure of Plea Agreement and Victim's Comments to Court-Acceptance or Rejection. If a plea agreement has been reached by the parties, the Court shall, on the record, require the disclosure of the agreement in open court, or on a showing of good cause, in chambers, at the time the plea is offered. The tribal prosecutor shall disclose on the record any comments on the plea agreement made by the victim. Thereupon the Court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.

Section 2-8-8. Advice to Defendant as to Acceptance of Plea Agreement. If a court accepts the plea agreement, it shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

Section 2-8-9. Advice to Parties as to Rejection of Plea Agreement-Withdrawal of Plea by Defendant. If a court rejects the plea agreement, it shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in chambers, that the Court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, if a plea has been entered, and advise him that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to him than that contemplated by the plea agreement.

Section 2-8-10. Time of Notification to Court of Plea Agreement. Notification to the Court of the existence of a plea agreement shall be given at the arraignment or at such other time, prior to trial, as may be fixed by the Court.

Section 2-8-11. Evidence of Guilty or Nolo Contendere Plea Inadmissible After Withdrawal-Exception in Perjury Prosecutions. Except as provided in this Section, evidence of a plea of guilty or nolo contendere which was later withdrawn, of an offer to plead guilty or nolo contendere to the crime charged or any other crime, or of statements made in connection with, and relevant to, any of the foregoing pleas or offers, is not admissible in any civil or criminal proceeding against the person who made the plea or

offer. However, evidence of a statement made in connection with, and relevant to a plea of guilty or nolo contendere, later withdrawn, or an offer to plead guilty or nolo contendere, to the crime charged or any other crime, is admissible in a criminal proceeding for perjury if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

CHAPTER 9
PRETRIAL PROCEDURE

Section 2-9-1. Defenses and Objections Raised By Motion. Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge.

Section 2-9-2. Grounds for Dismissal of Complaint on Motion. Upon motion of a defendant pursuant to Section 2-10-1 the Court must dismiss the complaint in any of the following cases:

(1) When it is not found, endorsed, and presented or filed as prescribed by this title;

(2) When the names of the witnesses are not inserted at the foot of the complaint or endorsed thereon;

(3) When it does not substantially conform to the requirements of this title;

(4) When more than one offense is charged in a single count;

(5) When it does not describe a tribal offense;

(6) When it contains matter which, if true, would constitute a legal justification or excuse of the offense charged, or other bar to prosecution; or

(7) When it is determined that the Court has no jurisdiction over the person or offense.

Section 2-9-3. Order Setting Aside Complaint Not Bar to Subsequent Prosecution. An order to set aside the complaint, as provided for in this Chapter, is no bar to future prosecution for the same offense, except in the case where the Court has no jurisdiction over the person or the offense.

Section 2-9-4. Pre-Trial Motions Heard at Time Made, Except Good Cause Postponement. All pre-trial motions shall be ruled upon at the time they are made unless for good cause the Court determines that the motion should be delayed and scheduled for a hearing at another time.

CHAPTER 10
DISCOVERY

Section 2-10-1. Prosecution Evidence Discoverable by Defendant. Upon written request of a defendant, the tribal prosecutor shall permit the defendant to inspect and copy or photograph;

(1) Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the prosecutor, the existence of which is known or by the exercise of due diligence may become known, to the tribal prosecutor; and

(2) The substance of any oral statement, which the tribal prosecutor intends to offer in evidence at the trial, made by the defendant whether before or after arrest in response to interrogation by any person then known to the defendant to be an employee of a law enforcement agency.

Section 2-10-2. Copy of Prior Criminal Record Furnished to Defendant on Request. Upon written request of the defendant, the tribal prosecutor shall furnish to the defendant such copy of his prior criminal record, if any, as is within the possession, custody or control of the tribal prosecutor, and the existence of which is known, or by the exercise of due diligence may become known, to the tribal prosecutor.

Section 2-10-3. Defendant's Right to Inspect and Copy Documentary and Tangible Evidence Taken from Defendant. Upon written request of the defendant, the tribal prosecutor shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody, or control of the tribal prosecutor and which are material to the preparation of his defense or intended for use by the tribal prosecutor as evidence in chief at the trial, or were obtained from or belong to the defendant.

Section 2-10-4. Defendant's Right to Inspect and Copy Results of Examinations or Scientific Tests. Upon written request of a defendant, the tribal prosecutor shall permit a defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession custody or control of the tribal prosecutor, the existence of which is known, or with the exercise of due diligence may become known, to the tribal prosecutor, and which are material to his defense or are intended for use by the tribal prosecutor as evidence in chief at the trial.

Section 2-10-5. Work Product Protected from Discovery by Defendant. Except as provided in Sections 2-10-1 to 2-10-4 of this Chapter, this Chapter does not authorize the

discovery or inspection of reports, memoranda, or other internal prosecution documents made by the tribal prosecutor in connection with investigation or prosecution of the case, or of statements made by the prosecution witnesses or prospective prosecution witnesses except as provided in Section 2-10-7 to 2-10-10 of this Chapter.

Section 2-10-6. Statements by Witnesses Not Discoverable Until Testimony in Preliminary Hearing or Trial. In any criminal prosecution, no statement in the possession of the tribal prosecutor, which was made by a prosecution witness or prospective prosecution witness (other than the defendant), shall be the subject of subpoena, discovery, or inspection until such witness has testified on direct examination in the preliminary hearing or in the trial of the case.

Section 2-10-7. Prior Statements of Prosecution Witnesses Subject to Discovery after Direct Examination. After a witness called by the tribal prosecutor has testified on direct examination, the Court shall, on motion of the defendant, order the tribal prosecutor to produce any statement of the witness in the possession of the tribal prosecutor which relates to the subject matter of the testimony of the witness, the Court shall order it to be delivered directly to the defendant for his examination and use.

Section 2-10-8. Excision from Statement of Prosecution Witness of Matter Not Testified To-Delivery to Defendant-Preservation of Entire Statement for Appeal-Recess to Permit Examination of Defendant. If the tribal prosecutor claims that any statement ordered to be produced under Section 2-10-6 to 2-10-10, inclusive, contains matter which does not relate to the subject matter of the testimony of the witness, the Court shall order the tribal prosecutor to deliver such statement for the inspection of the Court in camera. Upon such delivery the Court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the Court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the tribal prosecutor and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the tribal judge. Whenever any statement is delivered to a defendant pursuant to this Section, the Court in its discretion, upon application of the defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of the statement by the defendant and his preparation for its use in the trial.

Section 2-10-9. Testimony Stricken When Prosecution Elects Not to Produce Prior Statement-Mistrial. If the tribal prosecutor elects not to comply with an order of the Court under Section 2-10-7 to 2-10-8 to deliver to the defendant any such statement, or such portion thereof as the Court may direct, the Court shall strike from the record the testimony of the witness, and the trial shall proceed unless the Court in its discretion shall determine that the interests of justice require that a mistrial be declared.

Section 2-10-10. Defendant's Documentary and Tangible Evidence Discoverable by Prosecution. If the defendant requests disclosure under Section 2-10-3 or 2-10-4, upon compliance with such request by the tribal prosecutor, the defendant, on written request of the tribal prosecutor, shall permit the tribal prosecutor to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody, or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial.

Section 2-10-11. Results of Examination and Scientific Tests Discoverable by Prosecution. If the defendant requests disclosure under Section 2-10-3 or 2-10-4, upon compliance with such request by the tribal prosecutor, the defendant, on written request of the tribal prosecutor, shall permit the tribal prosecutor to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports related to his testimony.

Section 2-10-12. Defense Work Product Protected From Discovery. Except as to scientific or medical reports, Section 2-10-10 or 2-10-11 does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution or defense witnesses, to the defendant, his agents or attorneys.

Section 2-10-13. Notice to Adverse Party of Newly Discovered Evidence Subject to Discovery. If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under Section 2-10-1 to 2-10-12, inclusive, he shall promptly notify the other party, his attorney or the Court of the existence of the additional evidence or material.

Section 2-10-14. Restriction of Rights of Discovery or Inspection-Preservation of Entire Statement for Appellate Record. Upon sufficient showing the Court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion by a party, the Court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the Court enters an order granting relief following such ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the Court to be made available to the appellate court in the event of an appeal.

Section 2-10-15. Remedies on Failure of Party to Comply With Discovery Requirement-Manner of Discover and Inspection. If, at any time during the course of

a proceeding, it is brought to the attention of the Court that a party has failed to comply with an applicable discovery provision, the Court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order at it deems just under the circumstances. The Court may specify the time, place and manner of making the discovery and inspection and may prescribe such terms and conditions as are just.

CHAPTER 11
SUBPOENA

Section 2-11-1. Attorney's Subpoena for Witnesses within Reservation. The tribal prosecutor may issue subpoenas, subscribed by him, for the appearance of witnesses within the reservation, in support of a prosecution. An attorney for a defendant may issue subpoenas subscribed by him for witnesses the defendant may require.

Section 2-11-2. Committing Judge's Subpoenas for Witnesses within Reservation-Blank Subpoenas Issued by Clerk of Court. A tribal judge before whom a complaint is laid, shall, when requested, may issue subpoenas, subscribed by him, for the appearance of witnesses with the reservation, whether on behalf of the tribe or the defendant.

Section 2-11-3. Documentary or Tangible Evidence Required by Subpoena-Modification-Inspection Rights. A subpoena may also command the person to whom it is directed to produce books, papers, documents or other objects designated therein. On motion made promptly the Court may quash or modify a subpoena if compliance would be unreasonable or oppressive. The Court may direct that books, papers, documents, or objects designated in a subpoena be produced before the Court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers or documents, or objects or portions thereof to be inspected by the parties and their attorneys.

Section 2-11-4. Service of Subpoena. A subpoena shall be served by a tribal law enforcement officer. Service of a subpoena shall be made by delivering a copy thereof to the person named.

Section 2-11-5. Place of Service of Subpoena. A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the reservation boundaries.

Section 2-11-6. John Doe Subpoena for Examination Before Magistrate-Compelling Obedience. Whenever a complaint, verified positively or upon information and belief by the tribal prosecutor, is laid before a tribal judge alleging that a criminal offense has been committed on the reservation and asking for an investigation of the same, such judge shall issue his subpoena requiring any person he may deem proper to attend before him

at the time and place mentioned in such subpoena and submit to an examination and give testimony concerning any violation of law about which he may have knowledge.

Section 2-11-7. Advice as to Rights Given to John Doe Witness-Immunity Provision Applicable. Any witness examined under Section 2-11-6 shall be informed of the right to be advised by counsel and the right to not be required to make any incriminating statement which will incriminate him. The provisions of Section 2-11-10 relating to immunity shall apply to proceedings held pursuant to Section 2-11-6.

Section 2-11-8. Record of John Doe Testimony-Warrant for Arrest of Offender. The testimony of a witness attending pursuant to Section 2-11-6 shall be reduced to writing by the tribal judge or some person under his direction. If the offense complained of appears to have been committed, a warrant for the arrest of the offender shall be issued and further proceedings shall then be had as provided by law.

Section 2-11-9. Disobedience of Subpoena as Contempt of Court. Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of court.

Section 2-11-10. Self-Incriminating Testimony Required Under Promise of Immunity-Restriction on Use of Information. No witness may be excused on the basis of his privilege against self-incrimination from testifying or providing other information in a proceeding before the Court for a civil, criminal or administrative action whenever the tribal prosecutor has granted the witness immunity pursuant to this Section or whenever the tribal judge presiding over the proceeding has ordered such testimony. No testimony or other information compelled under an order or a grant of immunity, or any information directly or indirectly derived from such testimony, may be used against the witness in any criminal proceeding, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

CHAPTER 12
TRIAL BY JURY OR COURT

Section 2-12-1. Trial by Jury Unless Waived by Parties. Cases required to be tried by a jury shall be so tried unless the defendant waives a jury trial in writing or orally on the record with the approval of the Court and the consent of the tribal prosecutor.

Section 2-12-2. Number of Jurors-Stipulation for Smaller Jury. Juries shall consist of six members but at any time before verdict the parties may stipulate in writing or orally on the record with the approval of the Court that the jury shall consist of any number less than six.

Section 2-12-3. Findings of Fact in Trial Without Jury. In a case tried without a jury, the Court shall make a general finding and shall in addition, on request made before

submission of the case to the Court for decision, find facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

CHAPTER 13
EVIDENCE

Section 2-13-1. Civil Rules Applicable Except as Provided. The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this title.

Section 2-13-2. Innocence Presumed-Reasonable Doubt Requires Acquittal. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown, he is entitled to be acquitted.

Section 2-13-3. Defendant's Right to Testify-No Presumption from Failure to Testify. In a trial of all indictments, informations, and complaints and other proceedings before the Court, against persons charged with the commission of any crime, the person charged shall, at his own request, but not otherwise, be a competent witness. His failure to make such request does not create any presumption against him.

CHAPTER 14
MOTION FOR JUDGMENT OF ACQUITTAL

Section 2-14-1. Judgment of Acquittal Entered With or Without Motion on Close of Evidence for Either Side-Defendant's Right to Offer Evidence After Denial of Motion. The Court on motion of a defendant or on its own motion shall order the entry of judgment of acquittal of one or more offenses charged in a complaint after the evidence on either side is closed, if the evidence is insufficient to sustain a conviction of the offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the tribal prosecutor is not granted, the defendant may offer evidence without having reserved the right.

Section 2-14-2. Reservation of Decision on Motion Made at Close of Trial-Time of Ruling. If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

Section 2-14-3. Motion Made After Discharge of Jury-Setting Aside Guilty Verdict-Prior Motion Not Granted. If a jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within ten days after the jury is discharged or within such further time as the Court may

fix during the ten day period. If a verdict of guilty is returned the Court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned a Court may enter judgment of acquittal. In order to make such a motion it is not necessary to have made a similar motion prior to the submission of the case to the jury.

CHAPTER 15
THE TRIAL JURY

Section 2-15-1. Qualifications of Jurors. All Flandreau Santee Sioux Tribe Members pursuant to Article 2 of the FSST Constitution, who are on the eligible voter's list, eighteen years of age or older, of sound mind and who are able to read, write, and understand the English language, are eligible to serve as jurors.

Section 2-15-2. Jurors Summoned for Civil Actions Used for Criminal Trials. Jurors drawn and summoned for the trial of civil actions are also the jurors for the trial of criminal actions.

Section 2-15-3. Call of Jurors Equal to Number Required Including Challenges. When prospective jurors are called for examination, the Court shall call to the jury box a number of prospective jurors equal to the number of jurors to be impaneled, the number of peremptory challenges allowed the parties, and number of alternates, if any.

Section 2-15-4. Examination of Prospective Jurors by Parties and Court. The defense attorney or the defendant, if appearing pro se, and the tribal prosecutor shall conduct examination of prospective jurors. Prior to the examination the Court may conduct a general examination of the prospective jurors. The Court may in its discretion allow examination of one or more jurors apart from the other jurors.

Section 2-15-5. Oaths of Panel Members to Answer Truthfully. All members of the panel shall swear or affirm that they will answer truthfully all questions concerning their qualifications.

Section 2-15-6. Excuse and Replacement of Juror Disqualification for Cause-Challenges for Cause on Record. At any time that cause for disqualifying a juror appears, the Court shall excuse him and call another member of the panel to take his place in the jury box and on the clerk's list of jurors. Challenges for cause may be made out of hearing of jurors, but shall be made on the record.

Section 2-15-7. Kinds of Challenges for Cause-Taken by Either Party. A challenge for cause is an objection to a particular juror and is either general or specific. It may be taken either by the Tribe or a defendant.

Section 2-15-8. Order of Making Challenges for Cause-Grounds. All challenges for cause to an individual juror must be taken, first by the defendant and then by the Tribe,

and each party must exhaust all his challenges for cause before the other begins. Challenges for cause shall consist of the following:

(1) To an individual juror for a general disqualification;

(2) To an individual juror for implied bias;

(3) To an individual juror for actual bias.

If new jurors are called to the panel to replace jurors dismissed for cause, the procedures in this section shall be followed in exercising challenges for cause to the substituted jurors.

Section 2-15-9. Challenge on General Qualifications of Juror. A general challenge for cause is that the juror is disqualified pursuant to Section 2-15-1 from service in any case on trial.

Section 2-15-10. Specific Challenge of Juror for Bias-Actual and Implied Bias. A specific challenge for cause is that a juror is disqualified from serving in the case on trial because of:

(1) Implied bias; or

(2) Actual bias.

Actual bias is the existence of a state of mind on the part of a juror, in reference to the case or to either party, which satisfied the Court, in the exercise of sound discretion, that he cannot try the issue impartially, without prejudice to the substantial rights of the party challenging.

In challenge for actual bias, cause must be alleged. In a challenge for implied bias, one or more of the causes stated in Section 2-15-11 must be alleged.

Section 2-15-11. Causes for Challenge for Implied Bias. A challenge for implied bias may be taken for all or any of the following causes, and for no other:

(1) The juror is a relative of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, of the defendant;

(2) The juror is a guardian, ward, client, employer, employee, landlord, tenant, or a member of the household of the defendant, the person alleged to be injured by the offense charged, the person on whose complaint the prosecution was instituted, or the prosecuting attorney or the defense attorney;

(3) The juror is a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal action;

(4) The juror served on a trial jury which tried another person for the offense charged in the information;

(5) The juror was a member of a jury formerly sworn to try the information or complaint, and whose verdict was set aside or which was discharged without a verdict;

(6) The juror served as a juror in a civil action brought against the defendant for the act charged as an offense.

Section 2-15-12. Entry in Minutes of Challenge to Individual Juror. A challenge to an individual juror may be oral, but must be entered upon the minutes of the Court.

Section 2-15-13. Objections to Challenge of Jurors-Denial of Facts. An adverse party or counsel may object to a challenge to a juror. An adverse party may also orally deny facts alleged as a ground for challenge.

Section 2-15-14. Trial by Court of Challenges. All challenges, whether to a panel or to an individual juror, shall be tried by the Court.

Section 2-15-15. Examination as Witness of Challenged Juror-Evidence Received. When a challenge to an individual juror is tried, the juror challenged may be examined as a witness to prove or disprove the challenge, and witnesses may also be examined on either side, and the rules of evidence applicable to the trial of other issues govern the admission or exclusion of evidence on the trial of the challenge.

Section 2-15-16. Allowance or Disallowance of Challenge to Individual Juror. When a challenge to a individual juror for which no reason need be given. It can be taken by either party and may be oral. A Court must exclude a juror on a peremptory challenge.

Section 2-15-17 Number of Peremptory Challenges Allowed. In all criminal cases the defense and prosecution shall have three peremptory challenges.

CHAPTER 16
CONDUCT OF TRIAL

Section 2-16-1. Order of Proceedings at Trial. After a jury has been impaneled and sworn, a trial must proceed in the following order:

(1) If the complaint is for a felony, the clerk or tribal prosecutor must read it and state the plea of the defendant to the jury. In all other cases this formality may be dispensed with;

(2) The tribal prosecutor or other counsel for the Tribe may make an opening statement and offer the evidence in support of the complaint;

(3) The defendant or his counsel may then open his defense and offer his evidence in support thereof. However, the defendant or his counsel may make his opening statement immediately after the tribal prosecutor's opening statement.

(4) The parties may then, respectively, offer rebutting evidence only, unless the Court, for good reason, in furtherance of justice or to correct and evident oversight, permits them to offer evidence upon their original case;

(5) The judge must then charge the jury; he may state the issues and must declare the law, but must not instruct the jury in respect to matters of fact; and except as otherwise specially provided in this title, all instructions and requests for instructions shall be governed by the law relating thereto in civil actions, except that all requests for instructions to the giving or refusing of any instructions must be taken and called to the attention of the Court before the jury retires, unless the Court shall otherwise direct; and

(6) When the evidence is concluded, unless the case is submitted to the jury on either side, or on both sides, without argument, the tribal prosecutor shall open and the defendant or his counsel shall follow; then the prosecuting attorney shall conclude the argument to the jury.

Section 2-16-2. Departure from Order of Proceedings for Good Cause. When the state of the pleadings requires it or in any case for good reasons and in the sound discretion of the Court, the order of the trial and argument prescribed in Section 2-16-1 may be departed from.

Section 2-16-3. Admonition to Jurors on Each Adjournment of Court. Jurors must also, at each adjournment of Court, be admonished by the Court that it is their duty not to converse, among themselves or with anyone else, on any subject connected with the trial, or to form or express any opinion thereon, until the case is finally submitted to them.

Section 2-16-4. Minor's Testimony as to Sexual Offense Involving Child-Open Only to Certain Persons-Exceptions for Grand Jury Proceedings. Any portion of criminal proceedings at which a minor is required to testify concerning rape of a child, sexual contact with a child, child abuse involving sexual abuse or any other sexual offense involving a child may be closed to all persons except the parties' attorneys, the victim or witness assistant, the victim's parents or guardian and officers of the Court.

CHAPTER 17
JURY INSTRUCTIONS AND DELIBERATIONS

Section 2-17-1. Duty to Receive Law Laid Down by Court. Although jurors have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law that which is laid down as such by the Court.

Section 2-17-2. Statements of Law in Charge-Exclusive Judges of Fact. In charging jurors, a Court must state to them all matters of law which it deems necessary for their information in giving their verdict. It must also inform the jurors that they are the exclusive judges of all questions of fact.

Section 2-17-3. Instruction on Presumption of Innocence Required. In each criminal case, the judge shall instruct the jury that the defendant is presumed innocent.

Section 2-17-4. Preparation and Settlement of Instruction-Reading to Jury-Comment During Argument-Filing and Endorsement of Requested Instructions. All requested instructions shall be prepared and presented by the parties and handled and settled by the Court. Instructions shall be settled out of the presence of the jury at the close of the evidence but prior to final argument. Before final argument the Court shall read its instructions to the jury and shall furnish a copy to each of the parties. The instructions may be read to the jury and commented upon by counsel during the argument. They shall be taken by the jury when it retires. All instructions requested by the parties, or given by the Court, shall be filed with the clerk and, with the endorsement thereon indicating the action of the Court, shall be a part of the record for the case.

Section 2-17-5. Retirement for Deliberation-Room Provided-Food and Lodging During Deliberations. After hearing the charge, the jury shall retire for deliberation. A suitable room, equipped for such purpose, must be provided for the use of a jury upon its retirement for deliberation. While a jury is kept together, either during the progress of a trial or after its retirement for deliberation, the jurors must be provided with suitable and sufficient food by the Tribe upon an order of court, at the expense of the Tribe.

Section 2-17-6. Evidence and Instructions Kept by Jury During Deliberations. Upon retiring for deliberations, a jury may take all exhibits and all papers which have been received as evidence in the case. Copies may be substituted for original documents when, in the opinion of the Court, such documents should not be taken from the person possessing them. A jury must also take the instructions of the Court.

Section 2-17-7. Request by Jury for Further Instructions-Notice to and Presence of Parties. After jurors have retired for deliberation, if there is a disagreement among them as to any part of the testimony or if they desire to be informed upon a point of law arising in the case, they shall ask the officer having them in charge to convey their written request

to the Court. Any information allowed by the Court must be given in the presence of the tribal prosecutor and the defendant or his counsel, and must be taken down by the court reporter.

Section 2-17-8. Jury Not Discharged until Verdict Rendered-Exceptions. A jury cannot be discharged after a case is submitted to it until its members have agreed upon their verdict and rendered it in open court, except by the consent of both parties entered on the record, or unless at the expiration of such time as the Court deems proper, it satisfactorily appears that there is no reasonable probability that the jurors can agree.

Section 2-17-9. New Trial When Jury Discharged Before Verdict. In all cases where a jury is discharged or prevented from giving a verdict, by reason of an accident or other cause except where the defendant is discharged during the progress of the trial or after the case is submitted to them, the case may be again tried at the same or another term, as the Court may direct.

CHAPTER 18
THE VERDICT

Section 2-18-1. Unanimous Verdict Required-Return in Open Court. A jury verdict shall be unanimous. It shall be returned by the jury to the judge in open court. When the jurors appear, they must be asked by the Court or the clerk whether they have agreed upon their verdict. If the foreman answers in the affirmative, they must, on being required, declare the same.

Section 2-18-2. General Verdict Required-Special Verdict Permitted. Except as provided in this section, jurors shall render a general verdict. Special verdicts are abolished, except the verdicts of “guilty but mentally ill” and “not guilty by reason of insanity.”

Section 2-18-3. Form of General Verdict on Not Guilty Plea. A general verdict on a plea of not guilty is either “guilty” or “not guilty” which imports a conviction or acquittal of the offense charged.

Section 2-18-4. Form of Verdict Acquitting for Insanity. If a defendant is acquitted because he was insane when he committed the offense charged, the verdict shall be “not guilty by reason of insanity.”

Section 2-18-5. Direction to Reconsider Improper Verdict. If a jury renders a verdict which is not a general verdict in accordance with this Chapter, the Court may, with proper instructions as to the law, direct the jury to reconsider it.

Section 2-18-6. Verdict as to Degree of Crime-Lowest Degree Found on Reasonable Doubt. Whenever a crime is distinguished by degrees, a jury, if it convicts an accused,

shall find the degree of the crime of which he is guilty and include that finding in its verdict. When there is a reasonable ground of doubt as to which of two or more degrees an accused is guilty, he can be convicted of only the lowest degree.

Section 2-18-7. Conviction of Included Offense or Attempt. A defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if such attempt is an offense.

Section 2-18-8. Polling of Jury After Verdict Returned-Further Deliberation or Discharge if not Unanimous. After verdict is returned but before it is recorded, the jury shall be polled at the request of any party or upon the Court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

Section 2-18-9. Recording of Verdict-Inquiry of Jury. When a verdict is given which the Court may receive, the clerk must properly record it in full in the minutes, and must read it to the jurors and inquire of them whether it is their verdict. If any juror disagrees, the fact must be entered in the minutes and the jury must again be sent out. If no disagreement is expressed, the verdict is complete and the jury must be discharged from the case.

CHAPTER 19
SENTENCING AND JUDGMENT

Section 2-19-1. Time of Imposition of Sentence-Hearing in Mitigation or Aggravation of Punishment-Evidence Received-Restitution. Sentences shall be imposed without unreasonable delay, but not within forty-eight hours after determination of guilt. A defendant may waive the forty-eight hour delay. Before imposing a sentence, the Court may order a hearing in mitigation or aggravation of punishment. At such hearing, the Court shall allow the defense counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. The tribal prosecutor shall have an equivalent opportunity to speak to the Court.

Section 2-19-2. Address of Court by Victim Before Sentence Imposed-Response of Defendant-"Victim" Defined. Upon request to the Court by a victim and before imposing sentence on a defendant, in the discretion of the Court, the victim may address the Court concerning the emotional, physical, and monetary impact of the defendant's crime upon the victim. The defendant shall be permitted to respond to such statements orally or by presentation of evidence, and shall be granted a reasonable continuance to refute any inaccurate or false charges or statements.

For the purpose of this section, the word “victim” shall be construed to mean the actual victim or the parent, spouse, or next of kin of any actual victim who is deceased, incompetent by reason of age or physical condition or whom the Court shall find otherwise unable to comment.

Section 2-19-3. No Forfeiture of Property Unless Expressly Imposed. No conviction of any person for a tribal offense works any forfeiture of any property except in cases in which a forfeiture is expressly imposed by law.

Section 2-19-4. Advice as to Appeal Rights After Sentence on Not Guilty Plea. After imposing a sentence in a case which has gone to trial on a plea of not guilty, the Court shall advise the defendant of his right to appeal. There is no duty on the Court to advise a defendant of any right of appeal after sentence is imposed flowing a plea of guilty or nolo contendere.

Section 2-19-5. Relief from Judgment-Grounds-Time of Motion. Within reasonable time but not more than one year after final judgment, a Court on motion of a defendant or upon its own motion may relieve a defendant from final judgment if required in the interest of justice. If the original trial was by a court without a jury, the Court on motion of a defendant or upon its own motion, may vacate the judgment if entered, order a new trial or take additional testimony and direct the entry of a new judgment.

A motion under this Section does not affect the finality of a judgment or suspend its operation.

If an appeal is pending, the Court may grant a motion under this Section only upon remand of the case.

Section 2-19-6. Pre-sentence Investigation and Report-Contents Not Disclosed Unless Defendant Convicted. A pre-sentence investigation may be ordered in the discretion of the Court.

The report shall not be submitted to the Court or its contents disclosed to anyone unless the defendant has pleaded guilty or nolo contendere or has been found guilty, except that a judge may, with the written consent of the defendant, inspect a presentence report at any time.

Section 2-19-7. Contents of Report of Pre-Sentence Investigation. The report of a presentence investigation shall contain any prior criminal record of the defendant and such information about his characteristics, his financial condition and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the Court.

Section 2-19-8. Parties' Access to Pre-Sentence Report Before Sentence Imposed-Material Kept From Defendant-Comments and Other Evidence Received. Before imposing sentence, the Court shall, upon request, permit the defendant, his counsel if he is so represented, or the tribal prosecutor to read the report of the presentence investigation, but the Court may exclude any recommendation as to sentence, and other material that, in the opinion of the Court, contains a diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. The Court shall afford the defendant, his counsel, or the tribal prosecutor an opportunity to comment thereon and, in the discretion of the Court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report.

Section 2-19-9. Disclosure From Pre-Sentence Report Same for Both Parties. Any material disclosed to the defendant or his counsel shall also be disclosed to the tribal prosecutor. Any material disclosed to the tribal prosecutor shall also be disclosed to the defendant or his counsel.

Section 2-19-10. Time for Withdrawal of Plea of Guilty or Nolo Contendere. A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice a court after sentence may set aside a judgment of conviction and permit the defendant to withdraw his plea.

Section 2-19-11. Order Suspending Imposition of Sentence and Placing Defendant on Probation-Revocation of Suspension. Upon receiving a verdict or plea of guilty for a misdemeanor or felony by a person never before convicted of a crime which at the time of conviction thereof would constitute a felony, the Court, when satisfied that the ends of justice and the best interest of the public as well as the defendant will be served thereby may, without entering a judgment of guilty, and with the consent of the defendant, suspend the imposition of sentence and place the defendant on probation for such period and upon such terms and conditions as the Court may deem best. The Court may revoke such suspension at any time during the probationary period and impose and execute sentence without diminishment or credit for any of the probationary period.

Section 2-19-12. Discharge and Dismissal of Probationer on Complaints of Conditions-No Judgment Entered-Limitation to One Time. Upon completion of the observance of all conditions imposed pursuant to Section 2-19-12 the defendant shall be discharged by the Court. A formal entry of such discharge shall be entered by the clerk of courts. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction of a crime. Discharge and dismissal under this section may occur only once with respect to any person.

Section 2-19-13. Suspension of Execution of Sentence-Conditions Imposed. Upon conviction, the Court may suspend the execution of any sentence imposed during good behavior, subject to such conditions or restitutions as the Court may impose.

Section 2-19-14. Imprisonment of Specific Period as Condition of Probation or Suspension of Sentence-Credit for Time. The conditions of probation imposed pursuant to Section 2-19-11 or Section 2-19-12 or the conditions of suspension of execution imposed pursuant to Section 2-19-14, may include the requirement that the defendant be imprisoned for a specific period not exceeding one hundred eight days. The imprisonment may be further restricted to certain days specified by the Court as part of such conditions. Any such imprisonment shall be credited toward any incarceration imposed upon any subsequent revocation of a suspended imposition or execution of sentence.

Section 2-19-15. Enhanced Sentencing. Defendants 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), are entitled to the following due process protections:

(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.

Section 2-19-16. Sentencing Offenses Concurrently or Consecutively. The Court shall have the discretion to issue sentences for multiple offenses in one proceeding concurrently or consecutively. For offenses sentenced consecutively, the Court may impose up to, but no more than, nine (9) years in jail and a fifteen thousand dollar ($15,000) fine.

Section 2-19-17. Prisoner Liable for Costs of Confinement. A prisoner confined to any jail while serving a sentence is liable for $50.00 per day of the prisoner's confinement for room and board charges and any additional medical, dental, optometric, and psychiatric services charges; vocational education training; chemical dependency treatment charges; work release charges; and transportation costs, where transporting the prisoner is required. The judge may allow the prisoner to set up a deferred payment plan for payment for the costs of the inmate's confinement or waive all or part of the payment if the prisoner demonstrates an inability to pay.

Section 2-19-18. Placement on Probation. After conviction of an offense, a defendant may be placed on probation.

Section 2-19-19. Conditions of Probation or Suspension of Sentence. The conditions of probation or of suspension of sentence shall provide in addition to any other conditions, that the defendant not commit another tribal, federal or state crime during the term of probation.

The conditions of probation may provide in addition to any other conditions, that the defendant:

(1) Pay fine or perform community service work as directed by the Court;

(2) Perform community service work;

(3) Receive treatment for chemical dependency;

(4) Make restitution for the costs associated with probation such as drug testing, electronic monitoring, and other reasonable costs; and

(5) Make restitution to victims pursuant to Section 2-19-23.

Section 2-19-20. Hearing Required to Revoke Probation or Suspension of Sentence-Bail Pending Hearing. The Court shall not revoke probation or a suspension of imposition of sentence, except after a hearing at which the defendant shall be present and apprised of the grounds on which such action is proposed. A defendant may be admitted to bail pending such hearing.

Section 2-19-21. Modification of Terms and Conditions of Probation. The Court may, upon notice to the probationer, a hearing and good cause shown, modify the terms and conditions of a probation which may include extending the probationary period.

Section 2-19-22. Cost imposed. What Amount of Court Cost. The Court may require a defendant to pay, in addition to any other sentence imposed, court costs in an amount to be determined by the Court.

Section 2-19-23. Restitution to Victims. The Court, in addition to other penalties imposed, may order that the defendant pay restitution to the victims of the defendants' criminal activity for any loss or damages sustained by the victim to the extent the defendant is reasonably able to do so. An order for restitution may be enforced by the Tribe or a victim named in the order to receive restitution in the same manner as a judgment in a civil action. Compliance with a restitution plan shall be a condition of a defendant's probation or suspension of sentence. A plan for restitution shall be submitted by the tribal prosecutor and approved by the Court.

Section 2-19-24. Forfeiture of Property. Upon a conviction of an offense listed in Chapters 6, 7, or 20 of Title 3, the Court, in its discretion, may order in addition to any other sentence imposed that such person shall forfeit to the Flandreau Santee Sioux Tribe:

(1) Such person's interest in any property, real or personal, that was involved in, used, or intended to be used to commit or to facilitate the commission of such violation, and any property traceable to such property; and

(2) Any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation, or any property traceable to such property.

Section 2-19-25. Transfer of Forfeited Assets. The Attorney General may take possession of assets forfeited pursuant to section 2-19-24. The Attorney General may liquidate such assets and the proceeds derived from the sale thereof shall first be provided to satisfy victim restitution orders arising from this Chapter. Amounts exceeding the restitution ordered under section 2-19-23 shall be deposited into the Flandreau Santee Sioux Tribe's general fund.

Notwithstanding the above, transfers shall not reduce or otherwise mitigate the obligation of a person sentenced under this Chapter to satisfy the full amount through the use of non-forfeited assets, or to reimburse the Attorney General for the cost of the transfer.

Transfers pursuant to this section shall have priority over any other claims to the assets or their proceeds.

Section 2-19-26. Banishment. In addition to any other punishment imposed by this Chapter, the Court may order that a non-member be banished from the reservation if the Court determines that the non-member poses a threat to the safety and general welfare of the Tribe, its members, or any other individual on the reservation. The period of banishment shall be determined by the Court, and may, in appropriate circumstances, be permanent.

Section 2-19-27. Notification of sex offense convictions. The Court shall notify the police department of all sex offense convictions in accordance with the Sex Offender Registry Ordinance, codified in Title 24. There is a Tribal Court Registration Form that is required to provide such notice.

Section 2-19-28. Providing and Publishing Convictions and Orders. The Tribal Courts shall provide any conviction information, regardless of the offender's age or offense committed, for employment, housing, licensing, election, or other background check if presented by a release of information by the requesting party that is signed by the person convicted.

In addition to the above, the Tribal Courts shall publish certain information to the National Crime Information Center (NCIC). This includes:

(1) All Class 1 and Class 2 felony criminal convictions, except for drug convictions;

(2) All convictions for domestic abuse and/or assault and orders of protection under Chapter 4 of Title 3 or Title 6A;

(3) All offenses committed against children under Chapter 8 of this Title;

(4) All convictions related to sex offenses under Chapters 6 and 7 of this Title;

(5) Restraining orders; and

(6) Any conditions of supervised release for these offenses.

No information may be provided to NCIC for minors under the age of eighteen (18) years; except for juveniles were at least fourteen (14) years old at the time of committing a rape offense and who have been adjudicated delinquent for committing (or attempting or conspiring to commit) a rape.

LEGISLATIVE HISTORY

Title 2 of the Flandreau Santee Sioux Tribal Law and Order Code was enacted by the Flandreau Santee Sioux Executive Committee by Resolution Number 96-54, on September 3, 1996; and was approved by the Bureau of Indian Affairs on September 16, 1996. The Executive Committee subsequently amended Title 2 by Resolution Numbers 11-52 on July 12, 2011; 2020-46 on March 20, 2020; and 2020-24 on May 12, 2020. The foregoing amendments were incorporated into this updated document, approved by Resolution Number 2022-19 on September 27, 2022. The Executive Committee later amended Title 2, Chapter 19 by Resolution Number 2023-01 on February 27, 2023.