

TITLE 5 CRIMES

CHAPTER 1 – PARTIES TO CRIMES

5-1-4 Criminal Jurisdiction

The Rosebud Sioux Tribe's criminal jurisdiction shall extend to the territory within the original confines of the Rosebud Reservation boundaries as established by the act of March 2, 1889, and to such other lands as may hereafter be added thereto under any law of the United States, except as otherwise provided by law. (Constitution and By-laws of the Rosebud Sioux Tribe, Art. I). The criminal jurisdiction of the Tribe shall extend to all Indians, and all other persons over whom the exercise of criminal jurisdiction by the Tribe is authorized or permitted by federal law.

1. The Rosebud Sioux Tribe's criminal jurisdiction shall extend to Non-Indians who by federal law are subject to the Tribe 's special jurisdiction who commit violent crimes specifically domestic violence and dating violence against Indians within the Tribe's jurisdiction. The Rosebud Sioux Tribe's special criminal jurisdiction shall extend to criminal protection order violations under 5-44-7. The conditions for a Non-Indian who violate the Tribes' domestic violence and dating violence Reside within the territorial jurisdiction of the Rosebud Sioux Tribe; or
2. Is employed within the territorial jurisdiction of the Rosebud Sioux Tribe; or
3. Is a spouse, intimate partner, or dating partner of:
 - a. member of the Rosebud Sioux Tribe; or
 - b. an Indian who resides within the territorial jurisdiction of the Rosebud Sioux Tribe.

This Title shall apply to non-Indians to the extent not inconsistent with Federal law and to the extent that any person found to have violated any provision of this Title may be banished from the jurisdiction of the Tribe for a period of not more than ten (10) years, or for such longer terms as may be imposed by the Section violated, in a civil proceeding brought by the Tribe. The non-Indian, in such cases, shall have all the procedural rights of a criminal defendant, and such cases shall be tried by the rules of criminal procedure.

CHAPTER 17 – CRIMES AGAINST PUBLIC, HEALTH, SAFETY, AND WELFARE

5-17-1. DEFINITIONS

“Public Place” for this Chapter 17 means a place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, the common areas of

schools, health facilities, houses, apartments, and office buildings, transport facilities, businesses open to the public, and places of entertainment or amusement.

5-17-2 DISORDERLY CONDUCT.

Any person who intentionally causes serious public inconvenience, annoyance, or alarm to any other person, or creates a risk thereof by:

1. Engaging in fighting or in violent or threatening behavior; or
2. Making unreasonable noise; or
3. Disturbing any lawful assembly or meeting of persons without lawful authority; or
4. Obstructing vehicular or pedestrian traffic; or
5. Using abusive, indecent, profane, or vulgar language in a public place, or makes an offensive gesture or display in a public place, which language or gesture tends to incite an immediate breach of the peace; or
6. Creates by chemical means any noxious order in a public place; or
7. Displays a firearm or other deadly weapon in a public place; or
8. Beggars in any public place for money or any other thing of value; or
9. Appearing in public places in an intoxicated condition and doing any of the following:
 - (i) passing out or falling or sleeping in a public place or on the property of another without permission; or
 - (ii) bothering, disrupting or otherwise intruding upon another person or group of persons; or
 - (iii) wandering about without being able to give a reasonable account of a destination to a law enforcement officer; or
 - (iv) appearing or being found in an area set aside for religious or ceremonial activities which have traditionally, or by order of the Tribal or conducting authorities, been set aside for use, free from alcoholic beverage consumption, and free from the presence of intoxicated persons, during the period of such a religious or ceremonial or public activity;

is guilty of disorderly conduct.

Disorderly conduct is a Class C crime.

5-17-3 PUBLIC NUISANCE

It shall be unlawful to do any act, or fail to perform any duty, without lawful authority to do so, which act or omission either:

1. Unreasonably and substantially annoys and injures or endangers the comfort, repose, health, or safety of three or more persons; or
2. Offends public decency; or
3. Unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for use or passage any public place; or
4. In any way unreasonably renders three or more persons insecure in life or the use of the property.

Public nuisance is a Class D crime.

5-17-4 INTOXICATION

Any person who appears drunk or intoxicated in any public or private road, or in any passenger coach, streetcar, or any public place or building, or at any public gathering, from drinking or consuming such intoxicating liquor, intoxicating substance or intoxicating compound or from inhalation of glue, paint or other intoxicating substance, or if any person shall be drunk or intoxicated from any cause and shall disturb the peace of any person, he shall be guilty of a public intoxication.

Any person who appears drunk or intoxicated in a private place where one unreasonably disturbs another person legally present, from drinking or consuming such intoxicating liquor, intoxicating substance or intoxicating compound or from inhalation of glue, paint or other intoxicating substance shall be guilty of a public intoxication.

Public intoxication is a Class B offense and shall be punishable by a fine not to exceed five hundred dollars (\$500.00) and courts costs or a jail term not to exceed six (6 months) or both fine, court costs, and jail term. However, a judge or the arresting law enforcement officer may order the release from custody and the dropping of a charge under this section if he believes further imprisonment is unnecessary for the protection of the individual or another and the individual is in a sober condition at the time of release. The Judge may also alternatively commit the person convicted to a facility for treatment if it appears that the person is dependent upon the intoxicating beverage, drug, controlled substance, or vapor producing substance, for a period not to exceed six months.

5-17-5 PROTECTIVE CUSTODY.

Any person who appears to be intoxicated in a public place and to be in need of help or a danger to the health and safety of oneself or others, may be assisted to his home or may be taken into protective custody by law enforcement officers and taken forthwith to the hospital or to a jail for the purposes of detoxification. No person placed in protective custody under this section shall be held for a period exceeding twenty-four (24) years.

In taking a person into protective custody under this section, the detaining officer may take reasonable steps to protect himself. Any law enforcement officer, taking a person into protective custody pursuant to this section shall make reasonable efforts to protect the person's health and safety.

A taking into protective custody under this section is not an arrest. No warrants, complaints or summons shall issue pursuant to this section. Law enforcement officers are, however, specifically authorized to maintain records of the identity of persons placed in protective custody and dates thereof under this section for use in alcohol or drug commitment proceedings and any other judicial proceeding where the person's use or abuse of alcohol or illegal drugs may be in question.

Law enforcement authorities not criminally or civilly liable for protective custody actions taken in compliance with this section if acting in the course of their official duty.

5-17-5. PUBLIC CONSUMPTION.

Any person who voluntarily consumes, ingests, or inhales any alcoholic beverages, intoxicating substance, intoxicating compound, glue, paint or other intoxicating substance, or has in his possession an open package containing any alcoholic beverage or illegal drugs in a public place, except in public premises covered by a liquor license, or as authorized by applicable law, is guilty of public consumption.

Public consumption of alcohol is a Class B offense and shall be punishable by a fine not to exceed five hundred dollars (\$500.00) and courts costs or a jail term not to exceed six (6 months) or both fine, court costs, and jail term. However, a judge or the arresting law enforcement officer may order the release from custody and the dropping of a charge under this section if he believes further imprisonment is unnecessary for the protection of the individual or another and the individual is in a sober condition at the time of release.

5-17-6 PUBLIC POSSESSION.

A person shall not possess an alcoholic beverage, liquor, wine, beer, or controlled substance listed in Schedules I through V (unless the substances was obtained directly from, or pursuant to a valid prescription or order, of a practitioner while acting in the course of his professional

practice) in a public place or upon the public streets or highways, with the seal of the original package broken, except in any public place covered by a liquor license.

Possession while in public is a Class B offense and shall be punishable by a fine not to exceed five hundred dollars (\$500.00) and courts costs or a jail term not to exceed six (6 months) or both fine, court costs, and jail term. However, a judge or the arresting law enforcement officer may order the release from custody and the dropping of a charge under this section if he believes further imprisonment is unnecessary for the protection of the individual or another and the individual is in a sober condition at the time of release. The Judge may also alternatively commit the person convicted to a facility for treatment if it appears that the person is dependent upon the intoxicating beverage, drug, or controlled substance, for a period not to exceed six months.

5-17-7 UNLAWFUL RETURN OF BANISHED PERSON

It shall be unlawful for any person under sentence of banishment during the term of such banishment, to:

1. Physically return to the territorial jurisdiction of the Tribe except while actually traveling upon a public highway, or as allowed by law; or
2. Apply for or attempt to claim any right, privilege or immunity by virtue of membership in the Tribe except as provided by law.

Unlawful return of banished persons shall be a Class B Crim and shall be further punishable by banishment for a term equal to the original term of banishment which was violated.

5-17-7 AIDING RETURN OF BANISHED PERSON

It shall be unlawful for any person to aid, abet, or assist a person under sentence of banishment to:

1. Physically return to the territorial jurisdiction of the Tribe except while actually traveling upon a public highway, or as allowed by law; or
2. Apply for or attempt to claim any right, privilege or immunity by virtue of membership in the Tribe except as provided by law.

Aiding return of banished persons shall be a Class C Crime and shall be further punishable by banishment for a period not in excess of one-half of the term for which the returned person was banished.

CHAPTER 18 MINOR IN POSSESSION OF ALCOHOL BEVERAGE OR TOBACCO

5-18-1. MINOR IN POSSESSION OF ALCOHOL BEVERAGE.

Any person under the age of 18 years who:

1. Possesses or consumes any beer, wine, ale, whiskey, or any other alcoholic beverage; or
2. Misrepresents his age for the purpose of buying or otherwise obtaining any alcoholic beverage;

is guilty of minor in possession of an alcoholic beverage.

Minor in possession of an alcoholic beverage is a Class C crime.

5-18-2 MINOR IN POSSESSION OF TOBACCO.

It shall be unlawful to:

3. Purchase, obtain, possess, smoke, chew, inhale or ingest any product made from or with tobacco if under the age of eighteen years; or
4. Sell to, or otherwise obtain for or arrange for the obtaining of tobacco or a tobacco product for a person under the age of eighteen, or to knowingly permit such a person to operate a machine dispensing tobacco products in his place of business or in an area of a place of business over which he is charged with the management or operation.

CHAPTER 28 DRUGS AND CONTROLLED SUBSTANCES

5-28-8 EXCLUSION FROM SCHEDULE

A non-narcotic substance is excluded from Schedule I through V if the Substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act and the Tribal Council shall have no power to include a non-narcotic substance in Schedules I through V if the Substance may lawfully be sold over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act. Naloxone, also known as Narcan, is excluded from Schedule I through V.

5-28-12 PEYOTE AND OPIOID ANTAGONIST EXEMPTIONS AND IMMUNITY

The provisions of this Act relating to the possession and distribution of peyote shall not apply to the use of peyote by members of the Native American Church in bona fide religious ceremonies of the church.

The provisions of this Act relating to possession, prescription, and distribution of opioid antagonists as follows:

1. A physician who issues a standing order under and in compliance with all other applicable laws, a first responder acting under a standing order who administers an opioid antagonist in good faith compliance with the protocols for administering an opioid antagonist, and the first responder's employer, are not civilly liable for injuries, and may not be held to pay damages to any person, or the person's parents, siblings, children, estate, heirs, or devisees, for injuries or death associated with the administration of an opioid antagonist.
2. A health care professional who is authorized to prescribe or dispense an opioid antagonist is not subject to any disciplinary action or civil or criminal liability from the Tribe for the prescribing or dispensing of an opioid antagonist to an employer or a person whom the health care professional reasonably believes may be in a position to assist or administer the opioid antagonist to a person at risk for an opioid-related drug overdose.

A licensed health care professional may, directly or by standing order, prescribe an opioid antagonist to a person at risk of experiencing an opioid-related overdose, or prescribe to a family member, friend, or other close third party person the health care practitioner reasonably believes to be in a position to assist a person at risk of experiencing an opioid-related overdose.

A physician who issues a standing order under the rules established by this title and other applicable laws, a first responder acting under a standing order who administers an opioid antagonist in good faith compliance with the protocols for administering an opioid antagonist, and the first responder's employer, are not civilly liable for injuries, and may not be held to pay damages to any person, or the person's parents, siblings, children, estate, heirs, or devisees, for injuries or death associated with the administration of an opioid antagonist.

No person may be arrested or prosecuted for any misdemeanor or felony offense of possession, inhalation, ingestion, or otherwise taking into the body any controlled drug or substance or [inhabiting a room where a controlled substance is illegally stored or used](#), if that person first contacts any law enforcement or emergency medical services and reports that a person is in need of emergency medical assistance as the result of a drug-related overdose. A person qualifies for the immunities provided in this section, only if:

1. The evidence for the charge or prosecution was obtained as a result of the person seeking medical assistance for another person;
2. The person seeks medical assistance for another person who is in need of medical assistance for an immediate health or safety concern; and
3. The person seeking medical assistance for another person remains on the scene and cooperates with medical assistance and law enforcement personnel.

A person who experiences a drug-related overdose and is in need of medical assistance may not be arrested, charged, or prosecuted for any misdemeanor or felony offense of possession, inhalation, ingestion, or otherwise taking into the body any controlled drug or substance or [inhabiting a room where a controlled substance is illegally stored or used](#), if that person first contacts law enforcement or emergency medical services and reports that he or she is in need of medical assistance as the result of a drug-related overdose. A person qualifies for the immunities provided in this section only if the evidence for the charge or prosecution was obtained as a result of the drug-related overdose and the need for medical assistance.

A person who is a family member, friend, or other close third party to a person at risk for an opioid-related drug overdose may be prescribed, possess, distribute, or administer an opioid antagonist that is prescribed, dispensed, or distributed by a licensed health care professional directly or by standing order pursuant to and in compliance with applicable laws and this chapter.

"Drug-related overdose," shall mean an acute condition, including mania, hysteria, extreme physical illness, coma, or death resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a person would reasonably believe to be a drug overdose that requires medical assistance.

"Opioid Antagonist" means naloxone hydrochloride or any other similarly acting and equally safe drug approved by the federal Food and Drug Administration for the treatment of drug overdose.

"First Responder" means and includes:

1. A law enforcement officer;
2. A driver and attendant responding to an emergency call as part of a licensed ambulance service; and
3. A firefighter.

5-28-15 Possession of Drug Paraphernalia

Any person who intentionally and knowingly possesses paraphernalia use for the use, ingestion, manufacturing, distribution of any controlled substance as defined in Chapters 28 and 29 of this Section shall be guilty of a Class B crime.

Paraphernalia defined:

The term "drug paraphernalia" means any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing,

producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under this chapter with the exception of Opioid Antagonists as defined in Section 5-28-12. It includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, PCP, methamphetamine or amphetamines into the human body, such as metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand; or any other item that by its appearance, or by the presence of a controlled substance, or residue of such substance on such item, indicates its use for the purposes described in this Section.

5-28-17. PENALTIES

The purpose of this ordinance is to curtail and eliminate the harmful effect of controlled substances such as methamphetamines, opioids and others on our families and our people.

- A. A person convicted of a first offense of 5-28-10 ("Distribution") shall be imprisoned for a term of not less than one hundred twenty (120) days up to and including the maximum penalty and may be fined an amount not to exceed \$2500.00. The court shall require the completion of an alcohol and drug assessment and the defendant shall follow and complete the recommendations of the assessment, failure to timely complete the recommendations of the assessment shall result in banishment for a period of up to three-hundred and sixty-five (365) and until the recommendations of the assessment are completed.
- B. A person convicted of a second or subsequent offense of 5-28-10 ("Distribution") shall be imprisoned for a term of not less than two hundred and forty (240) days not more than three hundred and sixty-five (365) days, and may be fined in an amount not to exceed \$5,000.00. The court shall require the completion of an alcohol and drug assessment and the defendant shall follow and complete the recommendations of the assessment, failure to timely complete the recommendation of the assessment shall result in banishment for a period of up to ten years and until the recommendations of the assessment are completed.
- C. A person convicted of a first offense of 5-28-11 ("Possession") shall be imprisoned for a term of not less than sixty days (60) days up to and including the maximum penalty and may be fined an amount not to exceed \$1000.00. The court shall require the completion of an alcohol and drug assessment and the defendant shall follow and complete the recommendations of the assessment, failure to timely complete the recommendations

of the assessment shall result in banishment for a period of up to six months days and until the recommendations of the assessment are completed.

- D. A person convicted of a second offense of 5-28-11 ("Possession") shall be imprisoned for a term of not less than one hundred twenty (120) days up to and including the maximum penalty and may be fined an amount not to exceed \$2,500.00. The court shall require the completion of an alcohol and drug assessment and the defendant shall follow and complete the recommendations of the assessment, failure to timely complete the recommendations of the assessment shall result in banishment for a period of up to three-hundred and sixty-five (365) and until the recommendations of the assessment are completed.
- E. A person convicted of a third or subsequent offense of 5-28-11 ("Possession") shall be imprisoned for a term of not less than two hundred forty (240) days up to and including the maximum penalty and may be fined an amount not to exceed \$5,000.00. The court shall require the completion of an alcohol and drug assessment and the defendant shall follow and complete the recommendations of the assessment, failure to timely complete the recommendation of the assessment shall result in banishment for a period of up to ten years and until the recommendations of the assessment are completed.