

Itazipco

Oohe Numpa



Mnicoujou

Siha Sapa

# Children's Code





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**Children's Code**  
**Chapter I**  
**PURPOSE AND CONSTRUCTION**





## **CHAPTER I - PURPOSE AND CONSTRUCTION**

### **1.01 Purpose and Construction**

It is the purpose of this Children's Code to secure for each child coming before the Tribal Children's Court such care, guidance, and control, preferably in his or her own home or with an extended family member, as will serve his or her welfare and the best interest of the Cheyenne River Sioux Tribe; to preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity whenever possible; to provide for the adoption of those persons under the jurisdiction of the Children's Court in a manner which protects their rights, and the cultural integrity of the Tribe; to implement the provisions of the Indian Child Welfare Act, 25 USC 1901 et. seq. with respect to children who are members or eligible to become members of the Tribe; to secure for any child removed from his or her home that care, guidance, and control as nearly equivalent as that which he or she should have been given by his or her parents to help him or her develop into a responsible, well-adjusted adult; to improve any conditions or home environment which may be contributing to his or her delinquency; and at the same time, to protect the peace and security of the community and its individual residents from juvenile violence or law-breaking. To this end, this Code shall be liberally construed.

### **1.02 Interference with Court Orders as Contempt of Court**

Any person who interferes or fails to comply with any order of the court affecting the direction or disposition of any child made pursuant to the provisions of the Children's Code may be held in contempt of court and is subject to punishment as for contempt of court.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*



**Children's Code**  
**Chapter II**

**CHILDREN'S BILL OF RIGHTS**







## **CHAPTER II - CHILDREN'S BILL OF RIGHTS**

The Cheyenne River Sioux Tribe has adopted the following Bill of Rights for Children:

1. All Children residing on the Cheyenne River Reservation have the right to express through speech, custom or dress their Indian or Tribal heritage.
2. All children residing on the Cheyenne River Reservation have the right to receive continual loving care and respect as an unique individual ... a child growing in trust in himself and secure in their person by receiving protection and proper care.
3. All children residing on the Cheyenne River Reservation have the right to live in a community in which adults practice and believe that the welfare of children is of primary importance.
4. All children residing on the Cheyenne River Reservation have the right to dream and the right for support and guidance to pursue their dreams to their fullest potential.
5. All children residing on the Cheyenne River Reservation have the right to grow up in freedom to express their feelings and opinions, in dignity as well as to be safe and secure in a place they can consider home.
6. All children residing on the Cheyenne River Reservation have the right to healthy adult role models who respect themselves and the children.

***As amended by Resolution 155-92-CR, effective June 2, 1992.***



**Children's Code**  
**Chapter III**  
**DEFINITIONS**





## CHAPTER III - DEFINITIONS

### 3.01 "Abandoned"

The failure of the parent to provide reasonable support and to maintain regular contact with a child, including the provision of adequate supervision. Failure to maintain a normal parental relationship with a child without just cause for a period of one year shall constitute prima facie evidence of abandonment. Custody with extended family members by voluntary consent to placement does not constitute abandonment.

### 3.02 "Abuse"

- (1) The term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;
- (2) The term "physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;
- (3) The term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;
- (4) The term "sexual abuse" includes employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children, consistent with the provisions of Law & Order Code Title III, Section 4F.

*As amended by Resolution 294-97-CR, effective October 9, 1997, and Resolution 288-97-CR, effective October 29, 1997.*

### 3.03 "Adult"

A person who is eighteen years of age or older or who is sixteen years of age or older and has been married or who is sixteen years of age or older and is the custodial parent of a child or who has been otherwise emancipated by the Children's Court.

### 3.04 "Child"

A person under eighteen years of age who does not fall within the meaning of "Adult" as set out in subsection 3.03 above.

### 3.05 "Child-in-need-of-care"

A child who:

- (1) Has no parent, guardian or custodian available and willing to care for him, or has been abandoned; or

- (2) Has been subjected to injury, sexual abuse, or negligent treatment or maltreatment by a person who is legally responsible for the child's welfare under circumstances which indicate that the child's health, welfare and safety are harmed thereby. "Negligent treatment or maltreatment" shall mean an act or omission which indicates a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare and safety; or
- (3) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being; or
- (4) Has been committing delinquent acts as a result of parental pressure, guidance, or approval; or
- (5) Has been committing status offenses. A status offense is a child's violation of the Children's Code by doing some act that would not be considered illegal if an adult did it, but that indicates that the child is beyond parental control.

3.06 "Children's Court"

The Cheyenne River Sioux Tribal Court established pursuant to this code. "Court", unless otherwise indicated, means the Children's Court.

3.07 "Children's Court Judge"

Any duly appointed Judge of the Children's Court.

3.08 "Custodian"

One who has physical custody of a child and who is providing food, shelter, and supervision to him.

3.09 "Delinquent Act"

An act, which, if committed by an adult, is designated a crime under the Cheyenne River Sioux Tribal Law and Order Code.

3.10 "Detention"

The placement of a child in a physically restrictive facility.

3.11 "Dispositional Hearing"

A proceeding in the Children's Court to determine how to resolve a case after it has been determined at an adjudicatory hearing that the child is a juvenile offender or is a child in need of care.

3.12 "Extended Family"

Any person related by blood or marriage to the family of the child or any individual who is viewed by the family as a relative in accordance with the customs of the Cheyenne River Sioux Tribe. In situations where the relationship is not formally

established by blood or marriage, the relationship must be attested, by testimony in Court or sworn affidavit, by two (2) reliable witnesses.

3.13 "Guardian"

A person other than the child's parent, appointed by the Court, who is by law responsible for that child.

3.14 "Guardian Ad Litem"

An advocate appointed by the Court to represent a child's best interests.

3.15 "Home Detention"

Home detention shall be a dispositional alternative available to the Children's Court Judge whereby a juvenile offender may be released to the parent or legal guardian provided that the juvenile offender may not go beyond fifty (50) yards of the residence in which the Court has ordered them to be detained in without prior approval of the presiding Judge.

***As amended by Resolution 291-97-CR, effective October JO, 1997.***

3.16 "Juvenile Offender"

A Child who commits a delinquent act.

3.17 "Least Restrictive Alternative"

This term in the code directs the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of feasibly achieving that objective.

3.18 "Placement"

The temporary placement of a child in the physical, but not legal custody, of an individual or agency pending disposition.

3.19 "Protective Supervision"

A legal status created by Court order following an adjudication whereby a child is allowed to remain in his home or is placed with a relative or other suitable individual and supervision and assistance is provided by the Children's Court, a health and social services agency or some other agency designated by the Children's Court.

3.20 "Time"

*In computing any period of time prescribed under this Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.*

3.21 Other terms

Any term not defined in this Code shall be understood to have the meaning ascribed to it in the Definitions section of the Indian Child Welfare Act, P.L. 95-608, 25 U.S.C. sec.1901, et seq.



**Children's Code**  
**Chapter IV**  
**TRADITIONAL LAWS TO**  
**GOVERN DECISIONS**  
**EFFECTING CHILDREN**





## CHAPTER IV - TRADITIONAL LAWS TO GOVERN DECISIONS EFFECTING CHILDREN

### 4.01 **Ovate Ta Wooke-Traditional Laws to Govern Decisions Effecting Children**

- (A) This Code reincorporates familial practices retained, sometimes even unknowingly, by our people. We have retained many traditional practices in spite of a history of attempts to outlaw or prevent the practice of our culture. These practices are rooted in our history and our language, and they arose over a long period of time or as gifts from *Wakan Tanka* to aid in harmonious living with each other and our natural world.
- (B) The following traditional laws shall be considered and reinforced where the future of a child is decided or influenced, including in processes governed by this Code. Approximate English translations are provided, but the Lakota term shall govern.
- (1) **Wocekiye ("faithfulness")** - to believe in and pray to *Tunkasila*, or *Wakan Tanka* - the Great Spirit - as the supreme being and power, and as the creator of all that is. *Wakan Tanka* gave the people seven sacred ceremonies as means of cleansing themselves and seeking guidance and direction from the Great Spirit. The ceremonies, in the order they were given to the people, are: (i) *Inipi* (purification); (ii) *Hanbleceyapi* (seeking a vision); (iii) *Wiwangwacipi* (Sun dance); (iv) *Hunkayapi* (making of relatives); (v) *Nagi Gluhapi* (keeping of the spirit); (vi) *Isnati Awicalowanpi* (womanhood ceremony); (vii) *Tapa Wankayeyapi* (throwing of the ball).
  - (2) **Wa'ohola ("respect")** - for self, high power, family, community, beliefs and decisions of others and all life.
  - (3) **Waonsila ("compassion")** - to look after the well being of others, and to share one's knowledge and materials so that others may prosper.
  - (4) **Wowicake ("honesty and truth")** -with yourself, higher power and others with sincerity.
  - (5) **Wawokiye ("generosity")-helping** without expecting anything in return; giving and living from the heart.
  - (6) **Wah'wala ("humility")** - we have a spirit, we are equals with others, no better or less than others.
  - (7) **Woksape ("wisdom")** - to be sound in mind and to acquire the knowledge necessary to make proper and effective decisions for the well being of the people, especially the youth.

#### 4.02 **Wotakuve: Lakota Kinship**

##### (A) **Background, Tiospaye, and Tiwahe**

The root of Lakota social structure is *tiospaye* - *extended family*. *Tiospaye* are comprised of *tiwahe* - *immediate families*, as well as individuals adopted through formal ceremony. Equality is a prevailing principle of *tiospaye* life.

Responsibilities are dispersed throughout the *tiospaye* and no one is above the laws. Social classes do not exist and leaders maintain prominence only insofar as they carry out the wishes of the people. Historically, *tiospaye* were self sufficient and life revolved around them. However, Federal policies and initiatives that accompanied reservation life promoted the assimilation of the Lakota into mainstream Anglo-American culture and have led to a loss of some of the strengths of the *tiospaye* lifestyle.

Among the strengths of traditional *tiospaye* life and the strong emphasis on kinship was that children never really became orphans. Upon birth, they had many mothers, fathers, brothers, and sisters. Thus, even though children might lose their natural parents, relatives stepped forward and assumed parental responsibilities. Furthermore, kinship customs minimized violence, conflicts, and disputes within the *tiospaye*. Few individuals would consider causing trouble among the people, knowing of the consequences they would face from disrespecting relatives. Kinship customs in the historical *tiospaye*, with few exceptions, promoted a peaceful and harmonious life.

##### (B) **Awareness of Tradition Necessary for Service Provision**

Acculturation and assimilation occurred in the contact between the Western Europeans and the *Oyate* of the *Oceti Sakowin*. As a result, contemporary reservation life represents a blend of Anglo-American ethos and traditional Lakota values. Everyone has adopted Anglo ways to a certain extent, but some have done so more than others. Moreover, institutions that serve the people operate primarily on Western European methods and concepts. Programs that impose these ways on the people, especially traditional people, encounter numerous obstacles. The people resent being subjected to practices that contradict their way of life. Hence programs are not as effective as they should be in delivering services to the people.

Since about the late 1960s, the people have been reviving their traditions. They are positioning themselves to take back control over their lives. In order to survive and to be effective, programs that serve the people need to revise and adapt their methods to the traditional ways of the people. To do so, however, organizational stakeholders must first seek knowledge about the traditional way of life.

In traditional *tiospaye* life, kinship determines how people talk to one another, how they interact, and how they behave around one another. Central to the work of the programs that serve the people is to understand how traditional Lakota communicate. How effective service providers are in helping the children,

*tiwahe*, and *tiospaye* depends on how effectively they communicate with them. Thus, programs must understand traditional Lakota kinship and its rules for communication and interaction. Then programs must incorporate kinship customs into the services they provide and the means of providing those services. Programs that reinforce traditional customs will be far more effective than those that impose contradictory standards and practices.

Kinship also holds strict rules for how traditional Lakota addresses one another, and how they interact. Traditional Lakota refer to their relatives by their relationship, rather than by their given names. Among certain relatives, respect is heightened to the point where special customs are observed. One such custom applies to the relationship between a son-in-law and his mother-in-law, and between a daughter-in-law and her father-in-law. A son-in-law does not communicate directly with his mother-in-law. Furthermore, they avoid direct eye contact, refrain from being in close proximity to one another, and shun being alone together. The same relationship applies between a daughter-in-law and her father-in-law.

(C) Elders

The first consideration in traditional kinship is age. We often hear "respect your elders." Elders hold a special place and status in traditional Lakota society. They are revered for their knowledge and wisdom, which they have acquired through lifelong experiences and learning. They are looked upon as the foundation of *tiospaye* life because they provide the guidance and direction needed by the people to endure from generation to generation.

Children are taught at an early age to respect their elders. They are also taught to know and to help their relatives. These teachings have a practical application of precluding intermarriages, but are mainly in keeping with the natural laws of respect and generosity. Elders are teachers and counselors in traditional Lakota life. Children are often sent to them for *Wowahokunkiye* - *lecturing or teaching*. This is done particularly when children misbehave or need help. Elders are also called upon to mediate disputes and to help keep peace and harmony within the *tiospaye*.

In interactions among *tiospaye* members, preference is always given to elders. For example, in asking for assistance from a *tiwahe* or *tiospaye*, we ordinarily work through the eldest members. We may ask the younger people, but, in most cases, they would need to confer with the elders anyway before our request is either granted or denied. Furthermore, in gatherings, such as meetings, preference is always given to the eldest individuals present.

Elders are called upon for the *wocekiye* - *prayer* and *woksape* - *words of wisdom* which always come first in a meeting. Elders always speak first, eat before others, and are made to feel comfortable until the gathering is concluded. If younger people are going to precede elders in any way, such as in speaking, it

must be done with the permission or acknowledgement of the elders. In traditional Lakota society, we always give preference to individuals who are older than we are regardless of our relationship to them.

(D) Addressing Relatives

Males and females use different terms in some cases to refer to the same relative. For example, a male and female have a cousin named Jake. The male would refer to him as *Tahansi* or *Tahansi Jake*. The female would refer to him as *Sicesi* or *Sicesi Jake*. We must distinguish between male and female kinship terms in referring to our relatives. Otherwise, we might embarrass ourselves and our relatives by using a term reserved for the opposite gender. This is one of the reasons we are taught at an early age to know our relatives. We need to know them in order to refer to them and to address them in the proper way. By using the proper kinship terms in addressing our relatives, we command a great deal of respect from them. Children and young people who address their relatives by the appropriate kinship terms are admired because they reflect a proper upbringing.

(E) Making Relatives

*Tiospaye* kinship also goes beyond bloodlines. Individuals are adopted into *tiospaye* through formal ceremony. *Waliyacin* means the prelude to the making of relatives; it means that individuals and their families make a commitment to being related which begins the necessary preparations for formal ceremony. The ceremony for making relatives is *Hunkayapi*; individuals may also choose, however, to make relatives through a pipe ceremony and/or gift giving. Women who make relatives, such as taking on a sister, call the ceremony *Sa Wicayapi*. Ceremonies for making relatives are purposeful and elaborate. Spirituality is at the root of making relatives; individuals commit themselves before their *tiwahe* and *tiospaye*, and before *Wakan Tanka*, to be related from that time on.

In the case of children, the making of relatives is a way for adults to provide a home for orphans, or children who have been abandoned. A father takes on a new son, or a mother a new daughter, through formal ceremony. Once parents adopt children in this way, they treat them as they do their own children. Moreover, they acquire all the rights of kinship afforded other children in the *tiospaye*.

4.03 Lena Tuwepi he/hwo {Traditional Lakota Definitions}

- (1) *Ovate ("people")*: The Lakota People.
- (2) *Tiospaye ("extended family")*: The root of the Lakota social structure. *Tiospaye* are comprised of the immediate families of brothers and sisters, their descendants, and relatives adopted through formal ceremony.
- (3) *Tiwahe ("family")*: A family unit resulting from a union or partnering (*Hasanipi*) of a man and woman to raise children and to live according to the laws, ceremonies, and customs of the people.

- (4) **Wakanyeia ("child")**: A sacred gift from *Tunkasila*, or *Wakan Tanka-the Great Spirit* - conceived by the union of a man and a woman. Spirits conduct ceremonies in *Nagiyata* (the "spirit world") to prepare for the child's entry into earth. Children are given a vision or role for their life on earth. Children are pure and have special powers until around the age of puberty.

4.04 **Wakanyeia Ta Wowasake**

- (A) All children have the rights set out in subsection (B), and all decisions concerning children shall be made in consideration and furtherance of these rights. By definition, these rights are in the best interests of the children.
- (B) All children have a right to:
- (1) A mother (*Ina*); and
  - (2) A father (*Ate*); and
  - (3) Identity with the traditional way of life (*Lakol wicoh 'an*);
  - (4) Learn and speak his or her language (*Lakol lyapi*); and
  - (5) A family (*Tiwahe na tiospaye*); and
  - (6) Know their relatives (*Wotakuye*); and
  - (7) Know the traditional laws, customs, and ceremonies of the people; and
  - (8) Live according to and to practice the traditional laws, customs, and ceremonies that govern the people.

4.05 **Tiwahe na Tiospaye Ta Wowasake (Traditional Family Rights)**

- (A) Largely because of their primary role in taking care of the children, *tiwahe* and *tiospaye* groups also have certain rights as set out in subsection (B). By definition, these rights are in the best interests of the *tiwahe* and *tiospaye*, and in turn they are therefore in the best interests of the children for whom the groups care.
- (B) ***Tiwahe*** and ***tiospaye*** have a right, and corresponding responsibilities, to:
- (1) ***Wiconzani*** - to make choices and decisions to live a healthy and prosperous life according to the traditional laws, customs, and ceremonies;
  - (2) ***Igluhapi*** - to make choices and decisions to establish economic, political, educational and cultural self-sufficiency, and to maintain privacy according to the traditional laws, customs, and ceremonies;

- (3) ***Woope Gluhapi-*** to live and function according to the traditional laws, customs, and ceremonies; and to protect and nurture such laws, customs and ceremonies;
- (4) ***Woitancan*** - to select and designate leaders to serve the people and to promote the common good according to the traditional laws, customs, and ceremonies; and
- (5) ***Woilake*** - to select and designate such official officers and workers as the *tiospaye* deem necessary to serve the people and to promote the common good according to the traditional laws, customs, and ceremonies.



**Children's Code**  
**Chapter V**  
**THE CHILDREN'S COURT**  
**AND JUDGES OF THE**  
**CHILDREN'S COURT**





## **CHAPTER V - THE CHILDREN'S COURT AND JUDGES OF THE CHILDREN'S COURT**

### **5.01 Establishment**

- (A) There is hereby established a Court known as the Children' Court of the Cheyenne River Sioux Tribe.
- (B) Court sessions shall be held within the Reservation at such places and times as the Judge of the Court shall direct.
- (C) The Court shall have the same powers and duties as provided for other Tribal Courts to the extent they are consistent with this Code, and such other powers as set forth in this Code.

### **5.02 Absence of Criminal Effect**

No adjudication upon the status of any child in the jurisdiction of the Children's Court shall be deemed criminal or be deemed a conviction of a crime, (except for the purpose of determining double jeopardy, and as otherwise provided in this Code) unless the Children's Court refers the matter to the adult Tribal Court. Therefore, the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court. In appropriate circumstances, the Court may order that statements made in proceedings under this Code may not be used as evidence against any person in criminal proceedings. However, such order must be made prior to the statement and only upon agreement of the Prosecutor.

### **5.03 Telephone/Facsimile Orders**

The Court may issue orders by telephone and/or facsimile machine and such orders shall have the same force and effect as original written orders. Telephone orders shall be followed by a written order as soon as possible.

### **5.04 Telephone Appearance**

Upon written motion by any party pursuant to the Cheyenne River Sioux Tribe. Rules of Civil Procedure, the Court may allow a party or witness to appear by telephone. Any party may object to the telephone appearance of a party or witness.

### **5.05 Appointment and Qualifications of Judges of the Children's Court**

- (A) The Tribal Council shall appoint the Judge of the Children's Court and additional judges if necessity requires. If there is more than one judge appointed, one shall be named Chief Judge of the Children's Court.
- (B) Such judges shall be chosen without regard to political affiliation and on the basis of ability, judicial temperament and special aptitude for Children's Court work.

- (C) The Judge of the Children's Court may be a member or a non-member of the Tribe.
- (D) If there is currently serving a Juvenile Court Judge, that person shall continue to serve as Judge of the Children's Court subject to the provisions herein.

5.06 Term and Compensation of Judges

A judge shall be appointed for a term of two years and until a successor is appointed and shall receive such compensation, expenses, payments and other benefits as the Tribal Council shall prescribe. Provided, a judge may be removed by the Tribal Council if the judge is convicted of a crime or guilty of gross misconduct in the performance of duties; and also provided that enactment of this Code shall not affect the terms of the current judge.

5.07 Conflict of Interest in Judges

No Children's Court Judge shall hear a case in which he has previously participated as an advocate or in which he has a personal interest and shall be subject to an affidavit of prejudice in the same manner as other Tribal Judges and to such other provisions relating to conflicts of interest as set forth in section 1-2-5 of the Law & Order Code.

5.08 Annual Reports

The Court Administrator shall prepare and submit to the Tribal Council an annual report on the operations of the Children's Court which shall include financial and statistical data and information on all funds received and expended. This section shall be implemented consistent with Public Law 91-638 and any contracts entered into there under.

5.09 Authority to Expend Funds and Contract

The Court Administrator may, subject to the approval of the Tribal Council, receive and expend any funds which may become available from federal or state government or any sub-divisions thereof or any non-profit institution to carry out any of the purposes of this Code including personnel training and, to secure these funds, the Court Administrator may meet any requirements of those agencies not in conflict with this Code which may be conditions precedent to receiving such funds and, with the prior written consent of the Council, may contract with such agencies. This section shall be implemented consistent with Public Law 91-638 and any contracts entered into there under.

5.10 Children's Court Prosecutor

The Prosecutor shall represent the Cheyenne River Sioux Tribe in all proceedings under this Code where the Tribe is a party to the proceeding. The Prosecutor may perform other duties and shall be a member of the Tribal Prosecutor's office.

5.11 Juvenile Probation Officers

- (A) Such Juvenile Probation Officers as may be required to carry out the work of the Children's Court shall be appointed by the Tribal Hiring Board. Juvenile

Probation Officers shall be chosen for their ability and special aptitude for working with children. They shall receive such salary, compensation and expenses as the Tribal Council may prescribe, if any. In addition, any members of the Tribal Police Department assigned duties similar to those of Juvenile Probation Officers shall be deemed "Juvenile Probation Officers" for all purposes under this Code.

- (B) Juvenile Probation Officers shall have the power and duty to carry out the objectives and provisions of this Code with regard to juvenile offender cases and shall:
  - (1) Conduct investigations and make appropriate referrals of cases presented to them to other agencies if other assistance appears to be needed or desirable;
  - (2) Make predisposition studies and submit reports and recommendations to the Children's Court;
  - (3) Supervise and assist a child placed on probation or under his supervision by Children's Court order; and
  - (4) Perform such other duties in connection with the care, custody or transportation of children as the Children's Court may require.
- (C) Juvenile Probation Officers shall not be required to perform the duties of a Prosecutor. A Juvenile Probation Officer may take into custody and place in detention a child who is under his supervision when the Officer has reasonable cause to believe such child has violated the conditions of his probation or may leave the jurisdiction of the Children's Court. The Probation Officer shall be subject to and proceed in accordance with the provisions of this code relating to custody and detention procedures and criteria as set out in this Code.
- (D) Juvenile Probation Officers may be agents or employees of other offices operating on the Reservation, including employees of other Tribal, state or federal agencies.

***Amended by Executive Resolution E-17-98-CR, effective January 20, 1998.***

**5.12 Child Services Workers**

- (A) Child Services Workers shall have the power and duty to carry out the objectives and provisions of this Code with regard to children in-need-of-care as defined in Section 9.05 (1)- (3) inclusive of this Code:
  - (1) Conduct investigations and make appropriate referrals of cases presented to them to other agencies if other assistance appears to be needed or desirable;
  - (2) Make predisposition studies and submit reports and recommendations to the Children's Court;

- (3) Supervise and assist a child placed outside the parents' home; and
  - (4) Perform such other duties in connection with the care, custody or transportation of children in-need-of-care as the Children's Court may require.
- (B) Child Services Workers shall not be required to perform the duties of a Prosecutor or Law Enforcement Officer.
- (C) Child Services Workers may be agents or employees of other offices operating on the Reservation, including employees of other Tribal, State, Federal, or charitable agencies; consistent with the tribal personnel procedures to the greatest extent such procedures can be applied consistent with this Code.
- (D) All court appointed placements of children shall be made and approved by the Court. Provided, however, the Tribal Council may designate by agency (tribal, federal, state, or charitable) that personnel of such agency shall be Child Services Workers for purposes of this Code, in which case no further Court appointment or approval shall be necessary.

5.13 Prosecutor

The person who files the petition as described above and who represents the interests of the Cheyenne River Sioux Tribe in proceedings in Children's Court.

5.14 Clerk

There shall be a Clerk of the Children's Court hired whose salary and other benefits shall be prescribed by the Court. The duties of the Clerk shall include recording Children's Court proceedings, issuing all processes and notice required under this Code, secretarial duties and such other duties as may be assigned by the Court Administrator.

***Amended by Resolution 272-02-CR, effective October 2, 2002.***

5.15 Guardian ad Litem

In all juvenile offender or child in need of care proceedings, and in those instances specified under other provisions of this Code, the Court shall make a preliminary finding on the issue of whether the child's interests are represented by the parties to the proceeding. If the Court determines then or at any other stage of a proceeding that the child's interests are inadequately represented, the Court shall appoint a Guardian ad Litem to represent the interests of the child. A party to the proceedings or an employee or representative of a party shall not be appointed as Guardian ad Litem. A Guardian ad Litem shall serve the child without compensation unless compensation is authorized by the Court or the Tribal Council.

**Children's Code**  
**Chapter VI**  
**BASIC RIGHTS IN**  
**CHILDREN'S COURT**







## CHAPTER VI - BASIC RIGHTS IN CHILDREN'S COURT

### 6.01 Open and Closed Proceedings

All juvenile offender hearings shall be closed to the general public except where the Court in its discretion after a finding of exceptional circumstances deems it appropriate to conduct an open delinquency hearing. All child in-need-of-care hearings shall be closed to the general public.

### 6.02 Confidentiality of Closed Proceedings: Penalties

(A) Persons the Court finds to have a proper interest in the case or in the work of the Court, including counsel, may be admitted by the Court to closed hearing on the condition they respect the confidentiality of the proceeding.

(B) Those persons or parties who knowingly and intentionally divulge information in violation of this Section shall be deemed to have committed a civil offense. Persons found guilty of violating the provisions of this Section may be subject to a civil fine not to exceed five thousand dollars (\$5,000.00). Each violation shall subject the person to a separate fine.

### 6.03 Exclusion of Child from Proceedings

If the Court finds it is in the best interest of the child, the child may be temporarily excluded from an in-need-of-care hearing and during the taking of evidence on the issues of need for treatment and rehabilitation in juvenile offender hearings. A child may be temporarily excluded by the Court during a hearing on dispositional issues under the same method.

### 6.04 Rights and Responsibilities of the Parents

The rights and responsibilities of the parent(s), whose parental rights have not been terminated, are:

(1) The right to visitation subject to the Court's modifications in a court order.

(2) The right to consent to, be informed of, and be involved in determining the medical needs of the child.

(3) The right to choose the child's religion.

(4) The right to be involved in planning for the child.

(5) [Reserved].

(6) The right to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

- (7) The right and responsibility to assistance and support in obtaining appropriate resources available to improve the family's functioning in aiding the return of the child to the family.
- (8) The right to notice of all proceeding affecting their child, as provided in this Code.
- (9) All other Due Process rights applicable to proceedings covered by this Code, including the right to reasonable notice and opportunity to be heard before any actions affecting themselves or their child are taken. However, in an emergency situation, actions may be taken in the best interest of the child(ren) without prior notice to the parents, so long as notice and opportunity to be heard are provided as soon as possible.
- (10) In all cases, there shall be a presumption that the mother is entitled to legal custody of her children under the age of five years. This legal custody may be overcome by an appropriate showing that the mother's custody has been modified or terminated or that custody has been vested in another person.

If no guardian has been appointed, residual parental rights and responsibilities also include the right to consent to marriage and to consent to enlistment in the Armed forces.

Children's Code  
Chapter VII  
**JURISDICTION**





## CHAPTER VII - JURISDICTION

### 7.01 Personal

- (A) Except as otherwise specifically provided, the Children's Court shall have jurisdiction over any child who is a member or eligible to become a member of the Cheyenne River Sioux Tribe no matter where domiciled, residing or found and over any other child domiciled or found within the territorial boundaries of the Tribe, as set forth in Article I of the Cheyenne River Sioux Tribe Constitution. The Children's Court may decline jurisdiction where a forum with concurrent jurisdiction is exercising its authority or in cases where neither the child nor either parent is a Reservation resident in cases where justice may require declination.
- (B) To the extent necessary to make a proper disposition of the case, the Children's Court shall have authority to exercise jurisdiction over all persons having the care, custody or control of a child over whom the Court exercises jurisdiction. This authority shall include the power to punish for contempt whether or not such contempt is committed in its presence.

### 7.02 Subject Matter

- (A) The Children's Court shall have exclusive original jurisdiction over proceedings involving alleged delinquent acts committed by a child under the age of eighteen. Pursuant to the transfer provisions in subsection 7.05 of the Children's code, the Court may waive jurisdiction to the Tribal Criminal Court concerning a child of fourteen years of age or older if the alleged act is a Class A offense under the Tribal Criminal Code or in the case of a lesser offense, if the Children's Court issues written findings that the child is not amenable to rehabilitation; provided further that the Children's Court shall not waive jurisdiction over offense that only a child may commit.
- (B) Except as otherwise provided, the Children's Court shall have exclusive original jurisdiction over proceedings involving a juvenile offender or child in-need-of-care and over the following proceedings:
  - (1) For termination of parental rights;
  - (2) For the adoption of a child or adult;
  - (3) To determine custody of, or to appoint a custodian or guardian for a child;
  - (4) To determine the paternity of a child and to provide for support for the child;
  - (5) For the commitment of a mentally retarded or mentally ill child;

- (6) To authorize employment, enlistment in the Armed Forces or emergency medical treatment of a child who does not have a parent or guardian or, if necessary, over the objection of such parent or guardian;
- (7) To emancipate a child;
- (8) Any other proceedings authorized by this Code.

***Amended by Resolution 291-97-CR, effective October 10, 1997 and Resolution 235-04-CR, effective July 9, 2004.***

**7.03 Continuance of Jurisdiction**

Jurisdiction obtained by the Children's Court of a child through adjudication under this Code shall continue until he becomes 21 years of age unless terminated prior thereto by the Court.

**7.04 Traffic, Game and Fish, Boating Violations**

- (A) The Children's Court shall have original exclusive jurisdiction over a child between the ages of fourteen (14) and eighteen (18) charged with a violation of the Cheyenne River Sioux Tribal Traffic, Boating or Game and Fish laws.
- (B) The Children's Court may transfer the case to the Tribal Criminal Court pursuant to the transfer provisions in subsection 7.05 of the Children's Code.

***Amended by Resolution 235-04-CR, effective July 9, 2004.***

**7.05 Transfer to Adult Court**

**(A) Petition**

The Prosecutor or the child may file a petition requesting the Children's Court to transfer the child to adult Tribal Court if the child is fourteen (14) years of age or older and is alleged to have committed an act that would have been considered an offense under this Code if committed by an adult.

**(B) Hearing**

The Children's Court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to adult Tribal Court. Written notice of the transfer hearing shall be given to the child and the child's parent, guardian or custodian at least seventy-two (72) hours prior to the hearing.

***As amended by Resolution 291-97-CR, effective October 10, 1997.***

**(C) Factors to Consider**

The following factors shall be considered when determining whether to transfer jurisdiction of the child to adult Tribal Court:

- (1) The nature and seriousness of the offense with which the child is charged.

- (2) The nature and condition of the child, as evidenced by his age, mental and physical condition; past record of offenses; and response to past Children's Court efforts at rehabilitation.

(D) Circumstances for Transfer

The Children's Court may transfer jurisdiction of the child to adult Tribal Court if the Children's Court finds clear and convincing evidence that both of the following circumstances exist:

- (1) There are no reasonable prospects for rehabilitating the child through resources available to the Children's Court; and
- (2) The offense allegedly committed by the child evidences a substantial danger to the public.

(E) Order

When a child is transferred to adult Tribal Court, the Children's Court shall issue a written transfer order containing reasons for its order. The transfer code constitutes a final order for purposes of appeal.

Every transfer order of the Court shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

7.06 Transfer from State Court

The Children's Court shall have jurisdiction over any matter transferred to it by any state court pursuant to the Indian Child Welfare Act, 20 U.S.C. secs. 1901, et seq.

It shall not be necessary for a new petition or complaint to be filed if the pleadings filed in the state court action are sufficient to give notice of the matter therein involved.





Children's Code  
Chapter VIII  
**JUVENILE OFFENDER  
PROCEDURE**





## CHAPTER VIII- JUVENILE OFFENDER PROCEDURE

### 8.01 Basic Rights in Juvenile Offender Proceedings

#### (A) Self-incrimination

- (1) A child alleged to be a juvenile offender, from the time being taken into custody, shall be provided with the following basic rights:
  - (a) Notice of the charges;
  - (b) Right to a transcript of the proceedings upon filing of an appeal;
  - (c) Right to appellate review; and
  - (d) All other rights accorded parties in subsections (C) and (D).

Any information received during questioning of an alleged juvenile offender shall not be used in evidence unless (i) the child's attorney or parent(s) is present during the questioning, or (ii) the privilege against self-incrimination has been knowingly and voluntarily waived by the attorney or parent(s).

- (2) In a proceeding on a petition alleging delinquency:
  - (a) An extra-judicial statement that would be inadmissible in a criminal matter shall not be received in evidence over objection.
  - (b) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a child over objection.

#### (B) Fingerprinting and Photographing

A child in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of the Criminal or Children's Court. If an order of the Court is given, the fingerprints or photographs shall be used only as specified by the Court.

#### (C) Introduction of Evidence and Confrontation of Witnesses

In a proceeding on a petition alleging that a child is a juvenile offender or in-need-of-care by reason of delinquent acts or a status offense, the child and the child's parent(s), guardian or custodian are entitled to the opportunity to introduce evidence, to be heard on their own behalf, to examine witnesses and to confront and cross-examine witnesses testifying against him, and to admit or deny the allegations of a petition; provided that, in cases transferred to the Children's Court pursuant to the Indian Child Welfare Act where a petition would be subject to dismissal due to the unavailability of witnesses or the unwillingness of state or federal personnel to testify in Court, the Court may accept as evidence reports and

other public records generated beyond the reservation where the best interests of the child require.

(D) Rights of Parties

The parties shall have all rights secured to them by federal or tribal law including, but not limited to:

- (1) Right to be represented by counsel at their own expense;
- (2) Privilege against self-incrimination.

8.02 Complaint

A complaint or affidavit shall be filed by a Juvenile Probation Officer, law enforcement officer, or any other person. The complaint or affidavit shall be given under oath and shall contain:

- (1) A citation to the Tribal Code provision which the child is alleged to have violated; and
- (2) Name, age and address of the child who is the subject of the complaint, if known; and
- (3) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

All complaints or affidavits shall be reviewed by the Prosecutor for determination as to whether a petition shall be filed with the Court.

8.03 Pick up and Hold Order. Custody and Detention

(A) Pick up and Hold Order

After reviewing the petition, the Children's Court may issue a Pick up and Hold Order directing that a child be taken into custody if the Children's Court finds there is probable cause to believe the Child committed the delinquent act alleged in the petition. Probable cause may be based, in whole or in part, on hearsay evidence.

(B) Custody

A child may be taken into custody by a Tribal officer if:

- (1) The officer has probable cause to believe a delinquent act has been committed and that the child has committed the delinquent act; or
- (2) A Pick up and Hold Order has been issued for the child.

(C) Tribal Officer's Duties

A Tribal officer who takes a child into custody pursuant to this Chapter shall proceed as follows:

- (1) An arresting officer shall inform the child of his rights prior to any questioning in custody;
- (2) An arresting officer shall make all reasonable efforts to notify the parent(s), guardian, or custodian that the child has been charged, and to inform the parent(s), guardian, or custodian of the charges against the child and shall release the child to the child's parent(s), guardian or custodian if the offense committed would be a Class C misdemeanor under the Tribal Criminal Code if committed by an adult unless otherwise specified in the Ordinance charged;
- (3) If the offense charged would be a Class B or Class A offense if committed by an adult under the Tribal Criminal Code, or if the Tribal Criminal Ordinance charged indicates that detention is warranted, the Officer shall deliver the child to the Juvenile Detention Center where a Juvenile Detention Officer shall take custody of the child, and shall make all reasonable efforts to notify the parent(s), guardian, or custodian that the child has been detained, and to inform the parent(s), guardian, or custodian of the charges against the child;
- (4) The Juvenile Detention Officer shall follow the policies and procedures enacted by the Law Enforcement Department and Children's Court to determine when detention is warranted, and when release of the child to a parent, guardian, or custodian is warranted. If the child is in detention, the Juvenile Detention Officer shall notify the Children's Court within forty-eight (48) hours and the Children's Court Judge shall determine whether a terms of release or bond shall be issued or to detain the juvenile for a hearing within seventy-two (72) hours of the time the child was placed in the Juvenile Detention Center, pursuant to subsection 8.04 of this Chapter to determine whether detention until an Advisory Hearing is held is warranted.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

(D) Contempt of Court

If any parent, guardian, or custodian of a child makes a verbal or written promise to bring the child who is the alleged juvenile offender before the Court, pursuant to a summons or pursuant to terms of release from custody or bond and, without reasonable cause, fails to do so, that person or party may be proceeded against for civil contempt.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

(E) Approved Facilities

A child alleged to be a juvenile offender may be detained, pending Court hearings, in the following places;

- (1) A foster care or residential facility on or off the Reservation or shelter facility on the Reservation approved by the Tribe, the Federal Agency or the State. If the Tribe establishes a Tribal approval procedure, the facility must be approved by the Tribe.
- (2) A juvenile detention facility on the Reservation approved by the appropriate agency, as set forth in subsection (1).
- (3) A private family home on the Reservation approved by the appropriate agency, as set forth in subsection (1).

(F) Approved Facilities- Sixteen (16) Years or Older

A child who is sixteen (16) years of age or older may be detained in a jail or facility used for the detention of adults only if:

- (1) A facility under the previous section is not available or would not assure adequate supervision of the child; and
- (2) Detention is in a cell separate and removed from sight and sound of adults; and
- (3) Adequate supervision is provided 24 hours a day.

8.04 Custody Hearing

- (A) If a child is placed in detention or placement pursuant to the above sections, the Children's Court shall conduct a custody hearing within seventy-two (72) hours for the purpose of determining whether continued detention or placement is necessary pending further proceedings. If the child's parent(s), guardian or custodian has still not been contacted, or is not present at the custody hearing, the Children's Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the Children's Court shall recess for not more than 24 hours and direct the Juvenile Officer to make continued efforts to obtain the presence of a parent, guardian or custodian. Notice of the custody hearing shall be given to the child and his parent(s), guardian or custodian as soon as the time for the hearing has been established.

*As amended by Resolution 291-97-CR, effective as of October 10, 1997.*

(B) Procedure at Custody Hearing

- (1) The Children's Court shall inform the child, his parent(s), guardian or custodian of their right to retain counsel at their own expense, and the judge shall continue the proceedings if it appears that additional time is necessary to obtain counsel.
- (2) The Children's Court shall inform the child that he need not be a witness against himself or otherwise incriminate himself.
- (3) The child, his counsel, and his parent(s), guardian or custodian shall have the opportunity to be heard on his and their own behalf.

8.05 Continued Custody

The child shall be released to his parent, guardian or custodian and ordered to appear at the hearing on a date to be set by the Court, unless:

- (1) The act is serious enough to warrant continued detention or placement; or
- (2) There is a reasonable cause to believe the child will run away so that he will be unavailable for further proceedings; or
- (3) There is a reasonable cause to believe that the child will commit a serious act causing damage to person or property; or
- (4) The best interests of the child require continued detention or placement.

The Children's Court may release a child under this Chapter to a relative or other responsible adult tribal member if the parent(s) or guardian of the child consent to the release. The wishes of the child shall be considered by the Court in determining whether to release a child under this paragraph but such wishes shall not be determinative: the best interests of the child shall be determinative.

When considering whether to order further detention or placement for the child, the Children's Court may consider the recommendation of the Juvenile Officer regarding alternative pre-adjudication custody arrangements.

Every order of the Court regarding custody, detention or placement of a child shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

8.06 Investigation by Juvenile Officer

The Juvenile Officer or the Prosecutor shall make an investigation within seven (7) days of the custody hearing if the child is in detention or placement, or within fourteen (14) days if the child has been released to a parent, guardian or custodian to determine if the

best interests of the child and the public require that further action be taken. Upon the basis of his or her investigation, the Juvenile Officer or Prosecutor shall:

- (1) Recommend that no further action be taken; or
- (2) Suggest to the child, his parent(s), guardian or custodian that they appear for an informal hearing pursuant to section 8.07 of this Chapter; or
- (3) File a petition to begin transfer to adult Tribal Court proceedings pursuant to subsection 7.05; or
- (4) A law enforcement officer may file a report recommending that the Prosecutor file a petition pursuant to this Chapter to initiate further proceedings, within seven (7) days if the child is in detention or placement or within fourteen (14) days if the child has been released.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

8.07 Informal Hearing

(A) Hearing

The Prosecutor may hold an informal conference with the child and the child's parent, guardian or custodian, to discuss alternatives to the filing of a petition if:

- (1) The admitted facts bring the case within the jurisdiction of the Children's Court; and
- (2) An informal adjustment of the matter would be in the best interest of the child and the Tribe; and
- (3) The child and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.
- (4) An informal hearing is not available if the offense charged would be a Class A offense under the Tribal Criminal Code if committed by an adult.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

Notice of the informal hearing shall be given to the child and his parent(s), guardian or custodian and their counsel as soon as the time for the hearing has been established. This does not authorize the Juvenile Officer to compel any person to appear at any conference, produce any papers or visit any place.

(B) Evidence

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any proceeding against the child under this Code.



(C) Disposition

At the informal hearing the Prosecutor may:

- (1) Refer the child and the parent(s), guardian or custodian to a community agency for needed assistance; or
- (2) Order, by agreement of the child and his parent(s), terms of supervision calculated to assist and benefit the child with regulating the child's activities and which are within the ability of the child to perform; such an order must be approved by the Court; or
- (3) Accept an offer of restitution if voluntarily made by the child; or
- (4) Make a decision to file a petition with the Children's Court.

Any informal adjustment period shall not exceed six (6) months.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

(D) Post-Disposition

The Prosecutor shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation. The Prosecutor shall review the child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the officer concludes that positive results are not being achieved, the officer shall recommend that a petition be filed pursuant to this Chapter.

8.08 Petition

(A) Formal proceedings under the Children's Code shall be instituted by a petition filed by the Prosecutor on behalf of the Tribe and in the interest of the child. The petition shall state:

- (1) The facts necessary to invoke the jurisdiction of the Children's Court;
- (2) A citation to the appropriate Section of the Tribal Code the child is alleged to have violated;
- (3) A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts or behaviors occurred;
- (4) The name and address of the child;
- (5) The names and residence address of the parent(s), guardians or custodian of the child. If a parent, guardian or custodian does not reside or cannot be found within the Reservation, the name of any known adult relative

residing within the reservation, or if there be none, the known adult relative living nearest to the Reservation;

- (6) The name of the Prosecutor and the date and time presented;
- (7) Whether the child is in custody, and if so, the place of detention and the time taken into custody;
- (8) If any matters required to be set forth by subsections (5) through (7) are not known, a statement that after reasonable investigation they remain unknown should be made. This shall be sufficient to invoke the jurisdiction of the Children's Court.

(B) Summons: Service

- (1) After a petition is filed, the Court shall set a time for an advisory hearing and direct the issuance of summons by the Court Clerk.
- (2) A summons shall be issued to the child and to the child's parent(s), guardian or custodian and such other persons as the Court considers proper or necessary parties.
- (3) The form of the service shall conform to the requirements of the Rules of Civil Procedure of the Cheyenne River Sioux Tribe.
- (4) If after diligent inquiry, the address or whereabouts of a parent, guardian or custodian cannot be ascertained, summons may be made by publication in a newspaper having general circulation in Eagle Butte, South Dakota once a week for two (2) weeks. The petitioner shall pay for service by publication. The summons shall only state that a proceeding concerning the child is pending in the Court and that adjudication will be made. Service shall be complete on the day of last publication.
- (5) If the summons cannot be served, or if it is made to appear by sworn statement to the Court that the person served will not obey the summons, or that serving the summons will be ineffectual, or that the welfare of the child requires that he be brought immediately into custody of the Court, a civil warrant may be issued to bring the parent, guardian or custodian before the Court or an order to detain issued for the child.

8.09 Advisory Hearing

After receipt of the petition, the Court shall schedule an Advisory Hearing and inform the parties of the date of the hearing in the summons. If a child is in placement or detention, an advisory hearing must be scheduled and held within thirty days after receipt of the petition or the petition dismissed unless:

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

- (1) The hearing is continued upon motion of the child; or
- (2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Children's Court finds the Prosecutor has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available; or
- (3) The hearing is continued upon motion of the Prosecutor by reason of difficulty in serving the summons and upon a showing of due diligence in attempting to discover the address of whereabouts of the person(s) to be served; or
- (4) The hearing is continued upon the Court's determination that a continuance is in the best interests of the child.

(A) Proceedings at Advisory Hearing:

At the advisory hearing, the Court shall:

- (1) Read the petition to the Child and explain the allegations in the petition;
- (2) Explain the consequences of the petition to the child;
- (3) Give a brief explanation to the child of his (her) rights in proceedings in the petition;
- (4) Offer the child the opportunity to admit or deny the allegations in the petition.

(B) Admission to Allegations

If the child admits the allegations of the petition, the Children's Court shall proceed to the disposition stage only if the Court finds:

- (1) The child fully understands his rights under federal and tribal law and fully understands the potential consequences of his admission; and
- (2) The child voluntarily and knowingly admits to all facts necessary to constitute a basis for Children's Court action; and
- (3) The child has not, in his purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(C) Scheduling of further proceedings

If the child makes a valid admission to the allegations, the Court may schedule the dispositional hearing and inform the parties of the date. If the child denies or

does not admit the allegations, the Court shall schedule the adjudicatory hearing and inform the parties of the date. The Court shall also review the custody arrangements made for the child, in light of the child's admission or denial of the allegations.

8.10 Adjudicatory Hearing

(A) Setting of Hearing

The Children's Court shall set a date for the adjudicatory hearing. If the child is in detention or placement, the adjudicatory hearing shall be set at a date not more than thirty (30) days after the advisory hearing. If the adjudicatory hearing is not held within thirty (30) days after the advisory hearing when the child is in detention or placement, the petition shall be dismissed and cannot be filed again, unless:

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

- (1) The hearing is continued upon motion of the child; or
- (2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Children's Court finds the Prosecutor has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available; or
- (3) The hearing is continued upon the Court's determination that a continuance is in the best interests of the child.

(B) Hearing

The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining if the child is a juvenile offender. The hearing shall be private and closed.

(C) Rights of Parties

The parties shall have all rights secured to them by federal or tribal law.

(D) Proof

The Children's Court shall hear testimony concerning the circumstances which gave rise to the complaint. If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Children's Court shall find the child to be a juvenile offender and proceed to the dispositional hearing. The Court shall also order placement or detention for any child adjudged a juvenile offender pending further proceedings. A finding that a child is a juvenile offender constitutes a final order for purposes of appeal. If the allegations of the petition are not sustained, the Court shall enter an order of dismissal of the petition with prejudice.

Every order of the Court adjudging a child a juvenile offender shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

*Amended by Resolution 401-95-CR, effective September 1, 1994.*

8.11 Predispositional Report

(A) Report

(1) In Class A or Class B Offenses the Juvenile Officer shall prepare a report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the care of and assistance to the child calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan. Preference shall be given to the dispositional alternatives which are listed in this Chapter and select that which is the least restrictive of the child's freedom and is consistent with the interests of the Tribe. If applicable, the report shall contain specific reasons for not recommending placement of the child with his parent(s), guardian or custodian. The Juvenile Officer shall present the predisposition report to the Children's Court, the child or his representative, and the Prosecutor at least two (2) days before the dispositional hearing.

(2) The juvenile or a parent, guardian or custodian may also present alternative dispositions.

(B) Continuance

By motion of a party or by its own authority, the Court shall continue the dispositional hearing pending the receipt of a predisposition study and report. During such continuance, the Court shall make an appropriate order for detention, placement or legal custody.

(C) Psychiatric and Physical Exams

The Court may order a psychiatric examination of a child, on an in-patient basis for no more than thirty (30) days or on an out-patient basis, to determine whether mental illness, retardation, or behavioral disorders (including fetal alcohol syndrome or fetal alcohol effects) exist and require a written report indicating the disposition which appears most suitable.

The Court may order a physical or psychiatric examination of a parent, guardian or custodian whose ability to care for or supervise the child is at issue. The parent, guardian or custodian may refuse to be examined but such refusal can be considered by the Court in making its determination on disposition.

(D) The pre-dispositional report may be waived by consent of both parties.

8.12 Dispositional Hearing

A date for a dispositional hearing shall be set by the Court at the conclusion of the Adjudicatory Hearing or the Advisory Hearing as appropriate. The date of the Dispositional Hearing shall not be more than thirty (30) days following the Hearing if the child is in placement or custody unless a continuance is ordered pursuant to subsection 8.09. At the dispositional hearing, the Court shall hear evidence on the question of proper disposition.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

Notice of the dispositional hearing shall be given to the child and his parent(s), guardian or custodian and their legal counsel at least forty-eight (48) hours before the hearing.

The rights of the parties shall be the same as in an adjudicatory hearing.

At the dispositional hearing, the Children's Court shall consider the Predispositional report submitted by the Juvenile Officer and afford the parents an opportunity to controvert the factual contents and conclusions of the reports. The Court shall also consider the alternative Predispositional report prepared by the child and his attorney, if any. The dispositional order constitutes a final order for purposes of appearance.

Every dispositional order of the Court shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

8.13 Dispositional Alternatives

If a child had been adjudged a juvenile offender, or the child has admitted the allegations in an Advisory Hearing, the Court may make the following dispositions:

- (1) Place the child on probation subject to conditions set by the Court and subject to the probation requirements set by the Probation Officer pursuant to subsection 8.16; and
- (2) Place the child in an institution or agency designated by the Court for the purpose of treatment, rehabilitation, or detention; and
- (3) The Court may order Home Detention where such disposition is in the best interests of the child and the best interests of the public; and
- (4) The Court may order community service where appropriate supervision is available by any organization duly authorized by the Court to supervise such community service; and
- (5) The child may be committed to a detention facility and may be required to perform community service while in detention as ordered by the Children's Court. All community service performed while an offender is in detention shall be supervised by a Detention Officer.

- (6) The Children's Court may order the child and the parent(s), guardian, or custodian to attend any counseling or treatment that the Court finds is in the best interest of the child and the public; and
- (7) The Children's Court may order the child and the parent(s), guardian, or custodian to pay any restitution for damages to person or property that have resulted from the actions of the child. Restitution shall include payment of money damages, surrender of property, and/or performance of any other act for the benefit of any person or party injured personally or in his property by the juvenile offender provided that such injury is fairly attributable to the act or failure or failure to act constituting the offense for which the offender was found to be responsible; and
- (8) The Children's Court may order the child and the parent(s), guardian, or custodian to pay any court costs not to exceed \$50.00; and
- (9) The Children's Court may order that the following fines be imposed:
  - (a) If the offense is an offense that only applied to persons under the age of eighteen, the Court may order that the offender and/or the parent(s), guardian, or custodian pay a fine not to exceed \$100.00;
  - (b) If the offense would be a Class C Offense under the Tribal Criminal Code if it were committed by an adult, the Court may order that the offender and/or their parent(s), guardian, or custodian pay a fine not to exceed \$100.00;
  - (c) If the offense would be a Class B offense under the Tribal Criminal Code if the offense were committed by an adult, the Court may order that the offender and/or their parent(s), guardian, or custodian pay a fine not to exceed \$200.00;
  - (d) If the offense would be a Class A offense under the Tribal Criminal Code if the offense were committed by an adult, the Court may order that the offender and/or their parent(s), guardian, or custodian pay a fine not to exceed \$5,000.00.
- (10) The dispositional orders are to be in effect for the time limit set by the Court, but no order shall continue after the child reaches the age of eighteen (18) years of age, unless the Court continues jurisdiction pursuant to Section 7.03.
- (11) The dispositional orders may be reviewed at the Court's discretion, but at least once every six (6) months.

- (12) Except as provided in Section 8.03(F) of this Code, no child adjudged a juvenile offender or in need of supervision shall be committed or transferred to a facility used for execution of sentences or persons convicted of crimes.
- (13) Whenever the Court vests legal custody in an agency, institution, or department, it shall transmit with the dispositional order copies of all clinical reports, predisposition studies and reports, and other information in its possession pertinent to care and treatment of the child.
- (14) The Court may order hospitalization or treatment in an hospital or treatment facility approved by the Children's Court Judge if the Court finds, upon due notice to the parent(s), guardian, or custodian and after an informal or dispositional hearing conducted in accordance with applicable laws and regulations, that the child is (1) mentally ill or a chronic alcoholic or substance abuser, and (2) because of his or her illness is likely to injure him or herself or others if allowed to remain at liberty or is in need of treatment.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

8.14 Modification of Disposition

A dispositional order of the Children's Court may be modified upon a showing of change of circumstances that significantly affect the best interests of the child and the best interests of the public. The Court may modify a dispositional order at any time upon the motion of the following:

- (1) The child; or
- (2) The child's parent(s), guardian or custodian; or
- (3) The Juvenile Probation Officer; or
- (4) The Prosecutor.

If the modification involved a change of custody, the Court shall conduct a hearing to review its dispositional order.

*As amended by Resolution 291-97-CR, effective October 10, 1997.*

8.15 Continuance; Consent Decree

- (A) At any time after the filing of a juvenile offender petition, and before the entry of a final order, the Court may, on motion of the Prosecutor or counsel for the child, suspend the proceeding and continue the child under supervision in his own home under terms and conditions agreed to by all the parties affected. If a suspension is given, time limits for hearings shall not apply. The Court Order continuing the



child under supervision pursuant to this Section shall be known as a "consent decree".

- (B) If the child objects to a consent decree, the Court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the Prosecutor, the Court shall consider the objections and the reasons therefore and may in its discretion enter the consent decree.
- (C) A consent decree shall remain in force for a period not to exceed six (6) months. Prior to the expiration of the six month period, and upon the application of the Juvenile Probation Officer or any other approved agency supervising the child under a consent decree, the Court may extend the decree for an additional six months in the absence of objection to extension by the child. A copy of the application shall be served on the child or his counsel and he shall have thirty days from the date of service to object to the application. If the child objects to the extension, the Court shall hold a hearing on the issue of extension.
- (D) If the child allegedly fails to fulfill the terms of the consent decree, the Prosecutor may file a petition to revoke the consent decree. If the child is found to have violated the terms of the consent decree by a preponderance of the evidence, the Court may:
  - (1) Extend the period of the consent decree; or
  - (2) Proceed to an adjudicatory hearing.
- (E) A child who completes the terms of a consent decree without violation or completes the terms of an extended decree shall not be in jeopardy again in any court for the same offenses alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the child and his parents for damages arising from his conduct.

#### 8.16 Probation Revocation

- (A) A child on probation incident to an adjudication as a juvenile offender who violates the terms of the probation may be proceeded against in a probation revocation proceeding.
- (B) Revocation of probation shall be part of the initial proceeding and is begun by filing in the original proceeding a petition styled as "Petition to Revoke Probation".
- (C) Petitions to revoke probation shall be subject to the same procedures as petitions alleging delinquency may be prepared by the Probation Officer and shall be represented by the Prosecutor. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.

- (D) The standard of proof in probation revocation proceedings shall be the same as in the adjudicatory hearing.
- (E) In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency or need of supervision petition.
- (F) If a finding of probation violation is made, the Court may extend the period of probation or make any other judgment or disposition that would have been available in the original disposition of the case.

8.17 Judgment - Non-Criminal and non-admissible

A judgment in proceeding on a petition under this Chapter shall not be deemed a conviction of a crime except for double jeopardy purposes, nor shall it impose any civil disabilities ordinarily resulting from conviction of a crime, nor shall it operate to disqualify the child from participating in any Tribal program, obtaining Tribal employment, or holding Tribal office. The disposition of a child and any evidence given in a hearing in Court shall not be admissible as evidence against the child in any case or proceeding, before or after reaching majority, except in dispositional proceedings after a finding that the child is a juvenile offender for the purpose of a pre-sentence investigation and report in the case that a child under the age of eighteen years of age, or except to transfer to adult court based on the factors enumerated in section 7.05 (C) and (D). In no case shall the records of a juvenile delinquency proceeding be admissible in any action against said person after the person reaches the age of eighteen years of age.

*Amended by Resolution 87-03-CR, effective February 7, 2003.*

8.18 Damages to or Destruction of Property

- (A) Any person harmed may recover damages, not to exceed five thousand dollars (\$5,000), in a civil action from the parent(s), guardian or custodian of a child upon proof by clear and convincing evidence that the child has injured any person(s) or damaged or destroyed property, real or personal, belonging to any person bringing the action and that the parent(s), guardian or custodian failed to provide adequate supervision of the child. Actions to recover under this section shall be brought in the Civil Court.
- (B) Recovery of damages under this section is limited to actual damages proved in the action, taxable court costs, and in the discretion of the Judge, reasonable attorney's fees to be fixed by the Court.
- (C) Nothing contained in this Section limits the discretion of the Children's Court Judge to issue an order requiring damages or restitution to be paid by a child who has been found to be within the provisions of the Children's Code.

Children's Code  
Chapter IX  
**CHILD IN NEED OF CARE**





## CHAPTER IX- CHILD IN NEED OF CARE

### 9.01 Report; Initiation of Proceedings

Any official or any Juvenile Officer or Child Services Worker who receives information that a child may be in-need-of-care should transmit such report or information to the Prosecutor.

### 9.02 Preliminary Investigation

- (A) Upon receipt of a report or information under Section 9.01 that a child may be in need of care, the Prosecutor shall cause a preliminary investigation to begin immediately by a Child Services Worker, Law Enforcement Officers, and/or the Child Abuse Investigation Team [see section 11.08].
- (B) If any investigator has reasonable grounds to believe the allegations are founded in fact, and the conditions alleged present an immediate danger to the child or the child is a danger to himself or others, the Prosecutor or law enforcement officer may direct that the child be taken into temporary custody and deliver the child to a place of care approved by the Tribe, Federal agency or State (or by the Tribal licensing agency, if one is established) where the child shall remain pending an adjudicatory hearing as set out in this chapter.
- (C) If it appears to the Court upon affidavit sworn to in the presence of a Judge by a police officer or any other person, and upon the examination of other witnesses if required by the Court, that there is probable cause to believe that a child is being unlawfully detained or abused in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a police officer or Juvenile Officer to search for the child. Upon serving such warrant upon the person in possession of the premises specified in the warrant, the Officer making search may enter the house or premises in order to remove the child. The officer must thereupon take the child to the Court or to the place of shelter designated by the Court.
- (D) After completion of the preliminary investigation, the Prosecutor shall either authorize the filing of a petition or refuse to authorize the filing of a petition. If the Prosecutor refuses, he must file and record a written statement of reasons for the refusal.

### 9.03 Warrant; Custody

#### (A) Warrant

The Court may enter an order called a warrant upon the request of the Prosecutor, directing that a child be taken into custody if the Court finds there is probable cause to believe the child is in need of care.

#### (B) Custody

A child may be taken into custody by a Tribal Child Services Worker or Juvenile Probation Officer or law enforcement officer if:

- (1) The officer has probable cause to believe that the child is in need of care and that the child is in immediate danger from his surroundings and that his removal is necessary; or
- (2) A warrant pursuant to this Chapter has been issued for the child; or
- (3) Upon order of the Prosecutor pursuant to section 9.02(B).

(C) Tribal Officer's Duties

A Tribal officer who takes a child into custody pursuant to this Code shall proceed as follows:

- (1) Release the child to the child's parent(s), guardian or custodian and issue a verbal counsel or warning as may be appropriate,
- (2) If the child is not released, an officer shall make immediate and recurring efforts to notify the child's parent(s), guardian or custodian to inform them that the child has been taken into custody and inform them of their right to be present with the child until the need for placement is determined;
- (3) If the child is not released, the child shall be taken immediately to the Children's Court Judge or Child Services Worker by the Tribal officer;
- (4) Inform the Prosecutor that the child has been taken into custody.

(D) Determination of Need for Detention or Placement

A child taken into custody shall be taken to the Court within one business day for a determination of the need for placement pending the custody hearing provided for in section 9.04. If a child's parent(s), guardian or custodian has not been contacted, the officer shall make immediate and recurring efforts to inform them that the child has been taken into custody and the child shall be released to the parent(s), guardian or custodian unless placement is immediately necessary. If the Court determination that the child's best interests require that he be placed other than with his parent(s), guardian, or custodian pending the section 9.04 hearing, the Court shall arrange or direct placement for the child pending the custody hearing. A Child Services Worker shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

(E) Approved Facilities

A child alleged to be in need of care may be placed pending the custody hearing, in the following places:

- (1) With a relative of the child who is willing to guarantee to the Court that the child will not be returned or exposed to the alleged abusive or

neglectful parent(s), guardian, custodian, or person without prior approval of the Court; or

- (2) A foster care facility on the Reservation approved by the Tribe, Federal agency or State, provided that if the Tribal Council establishes a Tribal licensing agency, the facility must be approved by the Tribal agency.
- (3) A shelter care facility on the Reservation approved by the appropriate agency, as set forth above.
- (4) A private Indian family home on the Reservation approved by the appropriate agency, as set forth above.
- (5) A private non-Indian family on the Reservation approved by the appropriate agency, as set forth above, but only if no Indian family can be located (if the child is an Indian).
- (6) A tribally, federally or State licensed facility on the Reservation. If the Tribal Council establishes a Tribal licensing agency, the facility must meet the approval of the tribal agency.
- (7) With the child's parent(s) if it is in the best interests of the child and the Court believes that the child would not be in danger if placed with his parents.
- (8) If the child is a danger to himself or others, he may be detained in the Juvenile Detention Center until suitable placement is found.

9.04 Custody Hearing or Detention Hearing: Continued Custody and/or Detention

(A) Hearing

If a child is placed pursuant to the above sections, the Court shall conduct a custody or detention hearing within ninety-six (96) hours, not including weekends or holidays, for the purpose of determining whether continued detention or shelter care is necessary pending further proceedings. If the Child's parent, guardian or custodian has still not been contacted, or is not present at the custody hearing, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent(s), guardian or custodian. If it appears that further efforts are likely to produce parent(s), guardian or custodian, the Court shall recess for not more than twenty-four (24) hours and direct the Child Services Worker to make continued efforts to obtain the presence of a parent(s), guardian or custodian. Notice of the custody or detention hearing shall be given to the child and his parent(s), guardian or custodian as soon as the time for the hearing has been established. If the Court is unable to locate the parent(s), guardian or custodian after reasonable efforts, the Court may proceed with the custody or detention hearing.

(B) Procedure

- (1) The Children's Court shall inform the child, his parent(s), guardian or custodian of their right to retain counsel at their own expense, and the judge shall continue the proceedings if it appears that additional time is necessary to obtain counsel.
- (2) The Children's Court shall inform the child that he need not be a witness against himself for otherwise incriminate himself.
- (3) The child, his counsel, and parent(s), guardian or custodian shall have the opportunity to be heard on his and their own behalf.

(C) Continued Custody and/or Detention

The child shall be released to his parent(s), guardian or custodian and ordered to appear at an informal or adjudicatory hearing on a date to be set by the Court, unless the Court finds by a preponderance of the evidence that:

- (1) There is a reasonable cause to believe that the child is in immediate danger from his parent(s), guardian or custodian and that his removal from them is necessary; or
- (2) There is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings; or
- (3) There is reasonable cause to believe that the child will commit a serious act causing damage to person or property; or
- (4) There is reasonable cause to believe that the child is a danger to himself or others.

For children who are under terms of release or are released on notification, the Children's Court may release a child under this Chapter to a relative or other responsible adult Tribal member if the parent(s), guardian or custodian of the child consents to the release. If the child is ten (10) years of age or older, the child and his parent(s), guardian or custodian must both consent to the release.

If any of the four conditions set forth above apply, the Children's Court shall determine the further detention or placement for the child upon consideration of the recommendations of the Child Services Worker regarding alternative pre-adjudication custody arrangements.

Every order of the Court regarding detention or placement of a child shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.



9.05 Investigation by Child Services Worker

The Child Services Worker shall make an investigation within five (5) days of the custody hearing or the release of the child to his parent(s), guardian or custodian to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the Child Services Worker shall:

- (1) Recommend that no further action be taken; or
- (2) Suggest to the child, his parent(s), guardian or custodian that they appear for an informal hearing pursuant to this Chapter; or
- (3) Recommend that the Prosecutor file a petition pursuant to this Chapter in the Children's Court to initiate further proceedings. The petition shall be filed within five (5) days if the child is in detention or placement. If the child has been previously released to his parent(s), guardian or custodian, relative or responsible adult, the petition shall be filed within thirty (30) days.

9.06 Informal Hearing: Disposition

(A) The Child Services Worker may hold an informal conference with the child and the child's parent(s), guardian or custodian to discuss alternatives to the filing of a petition if:

- (1) The admitted facts bring the case within the jurisdiction of the Children's Court; and
- (2) An informal adjustment of the matter would be in the best interest of the child and the Tribe; and
- (3) The child and his parent(s), guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

Notice of the informal hearing shall be given to the child and his parent(s), guardian or custodian and their counsel as soon as the time for hearing has been established. This does not authorize the Children's Court to compel any person to appear at any conference, produce any papers or visit any place.

(B) Evidence

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding under this Code.

(C) Disposition

At the informal hearing, the Child Services Worker may:

- (1) Refer the child and the parent(s), guardian or custodian to a community agency for needed assistance; or

- (2) Provide for agreed upon terms of supervision calculated to assist and benefit the child which regulate the child's activities and which are within the ability of the child to perform; or
  - (3) Recommend that the Prosecutor file a petition pursuant to this Chapter. Any informal adjustment period shall not exceed six (6) months.
- (D) Post-Disposition
- The Child Services Worker shall set forth in writing the conclusions reached at the informal hearing and any disposition agreed to by the parties for remedying the situation. If no petition is filed, the Child Services Worker shall review the child's progress every thirty (30) days. If at any time after the initial thirty day period, the officer concludes that positive results are not being achieved, the Child Services Worker shall recommend that a petition be filed pursuant to this Chapter.

9.07 Petition

An adjudicatory hearing under this chapter shall be instituted by a petition filed by the Prosecutor on behalf of the Tribe and in the best interest of the child. The petition shall state:

- (1) That the child is in-need-of-care;
- (2) The facts upon which the allegations that a child is in-need of-care are founded including the date, time and location at which any alleged acts occurred;
- (3) The address of the child and the names and addresses or place of residence of the parent(s), guardian, or custodian, if any, of the child; if a parent, guardian or custodian cannot be found upon the Reservation, the name of any known adult relative residing upon the Reservation or living nearest to the Reservation.
- (4) The name of the Prosecutor and the date and time presented;
- (5) Whether the child is in custody; and, if so, the place of shelter and the time he was taken into custody;
- (6) If any matters required to be set forth by this Section are not known, a statement that after reasonable investigation they remain unknown shall be made. This shall be sufficient to invoke the jurisdiction of the Children's Court.

(A) Summons; Service

- (1) After a petition is filed, the Court shall set a time for an advisory hearing and direct the issuance of summons by the Court Clerk.
- (2) A summons shall be issued to the child and to the child's parent(s), guardian or custodian and such other persons as the Court considers proper or necessary parties.
- (3) The form of the service shall conform to the requirements of the Rules of Civil Procedure of the Cheyenne River Sioux Tribe.
- (4) If after diligent inquiry, the address or whereabouts of a parent, guardian or custodian cannot be ascertained, summons may be by publication in a newspaper having general circulation in Eagle Butte, South Dakota once a week for two (2) weeks. The summons shall only state that a proceeding concerning the child is pending in the Court and that adjudication will be made. Service shall be complete on the day of last publication.
- (5) If the summons cannot be served, or if it is made to appear by sworn statement to the Court that the person served will not obey the summons, or that serving the summons will be ineffectual, or that the welfare of the child requires that he be brought immediately into custody of the Court, a civil warrant may be issued to bring the parent, guardian or custodian before the Court or an order to detain issued for the child.

9.08 Advisory Hearing

After receipt of the petition, the Court shall schedule an Advisory Hearing and inform the parties of the date of the hearing in the summons. The advisory hearing must be scheduled and held within thirty days after receipt of the petition or the petition dismissed unless:

- (1) The hearing is continued upon motion of the child; or
- (2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Children's Court finds the Prosecutor has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available; or
- (3) The hearing is continued upon motion of the Prosecutor by reason of difficulty in serving the summons and upon a showing of due diligence in attempting to discover the address of whereabouts of the person(s) to be served; or
- (4) The hearing is continued upon the Court's determination that a continuation is in the best interests of the child.

(A) Proceedings at Advisory Hearing:

At the advisory hearing, the Court shall:

- (1) Read the petition to the child and explain the allegations in the petition.
- (2) Explain the consequences of the petition to the child.
- (3) Give a brief explanation to the child of his (her) rights in proceedings in the petition.
- (4) Set a date for the adjudicatory hearing and inform the parties of that date.
- (5) Offer any party to the proceeding the opportunity to stipulate to the truth of any allegation in the petition.

9.09 Adjudicatory Hearing

(A) Setting of Hearing

The Children's Court shall set a date for the adjudicatory hearing which shall not be more than twenty (20) days after the petition is filed and notify the parties accordingly. If the adjudicatory hearing is not held within twenty days after the petition is filed, the petition shall be dismissed and cannot be filed again, unless:

- (1) The hearing is continued upon motion of the child; or
- (2) The hearing is continued upon motion of the Prosecutor by reason of the unavailability of material evidence or witnesses and the Children's Court finds the Prosecutor has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.
- (3) The hearing is continued upon motion of the Prosecutor by reason of difficulty in serving the summons and upon a showing of due diligence in attempting to discover the address of whereabouts of the person(s) to be served.
- (4) The hearing is continued upon the Court's determination that a continuance is in the best interests of the child.

(B) Adjudicatory Hearing

The Children's Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child is in need of care. The hearing shall be private and closed.

(C) Rights of Parties

The parties shall have all rights secured to them by tribal and federal law.

(D) Proof

The Children's Court shall hear testimony concerning the circumstances which gave rise to the complaint. If the allegations of the petition are sustained by proof that is clear, cogent, and convincing, the Children's Court shall find the child to be in need of care and proceed to the dispositional hearing. A finding that a child is in need of care constitutes a final order for the purposes of appeal.

If the Court finds:

- (1) That the child is in-need-of-care, the Court shall then review the custody and/or detention situation, determine whether the best interests of the child require modification of the custody situation pending the dispositional hearing, and order such changes in the custody or detention of the child as it deems necessary; or
- (2) That the child is not in-need-of-care, the Court shall dismiss the petition and release the child to his parent(s), guardian or custodian.

Every order of the Court adjudging a child to be in-need-of-care shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

*Amended by Resolution 401-95-CR, effective September 1, 1994.*

9.10 Predispositional Report

The Child Services Worker or other appropriate agency shall prepare a written report describing all reasonable and appropriate alternative dispositions. The predispositional report shall contain the following information:

- (1) A statement of the specific harm or harms to the child that intervention is designed to alleviate;
- (2) If removal from or continued residence outside the home is recommended, a statement of the likely harm the child will suffer as a result of removal, including emotional harm resulting from separation from his parents;
- (3) An individualized treatment plan and/or case service plans consisting of:
  - (a) A description of the specific progress necessary by both parents(s) and the child in order to prevent further harm to the child, a specific plan setting out the steps to be taken by the parent(s) and caseworker and a timetable for the completion, the reasons why such a program is likely to be useful, the availability of any proposed services and the plan for ensuring that the services will be delivered;

- (b) If removable from the home or continued residence outside the home is recommended, a description of any previous efforts to work with the parent(s) and the child in the home and the in-home treatment programs which have been considered and rejected;
  - (c) A description of the steps that will be taken to minimize any harm to the child that may result if separation from his parent(s) occurs or continues; and
  - (d) A description of the behavior that will be expected before a determination is made that supervision of the family of placement is no longer necessary.
- (4) A copy of the predisposition report shall be provided to counsel for all parties at least five (5) days before the dispositional hearing unless waived by the parties.

9.11 Dispositional Hearing

(A) Hearing

A dispositional hearing shall take place not more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Children's Court shall hear evidence on the question of proper disposition.

(B) Notice

Notice of the disposition hearing shall be given to the Child and his parent, guardian or custodian and their counsel at least forty-eight (48) hours before the hearing.

(C) Rights of Parties

The rights of the parties shall be the same as in an adjudicatory hearing.

(D) Dispositional Finding

At the dispositional hearing, the Children's Court shall consider the predispositional report submitted by the appropriate agency and afford the parent(s) an opportunity to controvert the factual contents and conclusions of the reports. The Court shall also consider any alternative predisposition report prepared by the child and his attorney. After considering all the evidence submitted, the Court shall order such disposition as appears to the Court to be in the best interests of the child, taking into account the requirements of the next section. The dispositional order constitutes a final order for purposes of appeal.

Every disposition order of the Court in an in-need-of-care proceeding shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

9.12 Dispositional Alternatives

(A) Priority to Family; Survey

In the disposition phase of every case under this Code, the Court shall give priority to placement of the child with its parent(s) or with the closest relative who is found qualified to receive and care for the child by the Court, after investigation by a tribal, federal or state agency. (If the Tribal Council establishes a tribal licensing agency, the investigation shall be conducted by the licensing agency.) In order to enable the Court to place children in a manner consistent with this section, the appropriate agency shall make or cause to be made a continuing survey of the availability and suitability of Reservation homes of Tribal members willing to accept and care for children.

(B) Preferences

(1) The Children's Court may make any of the following dispositions which are listed by priority:

- (a) Permit the child to remain with his parents, guardian or custodian subject to such limitations and conditions as the Court may prescribe; or
- (b) Place the child with a relative within the external boundaries of the Reservation subject to such limitations and conditions as the Court may prescribe; or
- (c) Appoint a guardian for all or limited purposes to supervise or serve as guardian to the child; or
- (d) Place the child in a foster home within the external boundaries of the reservation which has been approved by the Tribe, or Federal or State agency (If the Tribal Council establishes a tribal licensing agency, the facility must be approved by the tribal agency.) subject to such limitations and conditions as the Court may prescribe; or
- (e) Place the child in placement/care facilities approved by the appropriate agency as set forth above and designed by the Court; or
- (f) Place the child in a foster home or a relative's home outside the external boundaries of the Reservation subject to such limitations and conditions as the Court may prescribe; or
- (g) Recommend that termination proceedings begin.

- (2) Whenever a child is placed in a home or facility located outside the boundaries of the Reservation, the Court shall require the party receiving custody of the child to:
  - (a) Sign an agreement that the child will be returned to the Court upon order of the Court; and
  - (b) Consent, in writing, to the jurisdiction of the Court in matters relating to the child or his/her placement; and
  - (c) Immediately get consent from the court, parent(s) and/or guardian(s) in writing of any medication regimen the home or facility prescribes for the child, including the nature and purpose of any medications the home or facility prescribes for the child and any potential side effects, and of any changes made by the home or facility to such medication regimen; and
  - (d) Provide monthly progress reports to the Court, including descriptions of any and all therapeutic and cultural programs the child is engaged in; and
  - (e) Allow the Court, through its designated agent or representative, to conduct random unannounced site visits of such home or facility in order to monitor the child's condition and progress.

***Amended by Resolution 390-05-CR, effective November 8, 2005.***

- (3) The dispositional orders are to be in effect for the time limit set by the Court, but no order shall continue after the child reaches the age of eighteen (18) years unless the Court continues jurisdiction under Section 7.03.
- (4) The dispositional orders are to be reviewed at the Court's discretion, but at least once every six (6) months.

9.13 **Modification of Disposition**

(A) **Motion**

A disposition order of the Children's Court may be modified in the best interests of the child upon a showing by a preponderance of the evidence of change of circumstances. The Court may modify a dispositional order at any time upon the motion of the following:

- (1) The child; or
- (2) The child's parent(s), guardian or custodian; or



- (3) The investigative agency (see section 9.11); or
- (4) The Tribe.

If the modification involves a change of custody, the Court shall conduct a hearing to review its dispositional order.

(B) Notice: Rights

Notice in writing of the hearing shall be given to the child, the child's parent(s), guardian and/or custodian and their counsel at least forty-eight (48) hours before the hearing. The rights of the parties shall be the same as in a dispositional hearing.

(C) Emergency Review Hearing

The Court may modify or set aside any order or decree made by it under this chapter. Notice and a hearing shall be required in any case in which the effect of modifying or setting aside an order is to deprive a parent of the legal custody of the child, to place the child in an institution or agency, or to transfer the child from one institution or agency to another, except that transfer from one foster home to another may be effected without notice and hearing.



Children's Code  
Chapter X  
**SCHOOL ATTENDANCE  
AND  
CURFEW**





## CHAPTER X- SCHOOL ATTENDANCE AND CURFEW

### 10.01 School Attendance

All children older than five (5) years and younger than eighteen (18) years shall attend school regularly unless they have graduated from high school or received an equivalency degree. Unless subject to a valid suspension, expulsion, or other order prohibiting them from attending school, children shall be in violation of this section if they:

- (1) Miss three or more consecutive days of school without a valid excuse written and signed by their parent(s) or guardian(s); or
  - (2) Otherwise fail to attend school regularly; and
  - (3) That the school and a child's parent(s), guardian or custodian have held a meeting or the child's parent(s), guardian or custodian has refused to attend a meeting to discuss the child's habitual and unjustified absence from school; and
  - (4) That the school has provided an opportunity for counseling to determine whether a curriculum change would resolve the child's problem and if the local school board or governing authority of a private school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative education program; and
  - (5) That the school has conducted a review of the child's educational status which may include medical, psychological and/or educational testing of the child in accordance with the school regulations to determine whether social problems may be a cause of the child's absence from school and, if so, that appropriate action has been taken; and
  - (6) That the school has sought assistance, from appropriate agencies and resources available to the local school board or private school, or has referred the matter to a local social services agency for the purpose of utilizing and coordinating such agencies and resources.
- (A) At the discretion of the Tribal Prosecutor, children who are in violation of this section may be treated as juvenile offenders alleged to have violated a Class B misdemeanor. Alternately, such children may be treated as children in need of care for all purposes of this Code, provided that in such cases the procedures set forth in Chapter 9 of this Code shall be amended and/or clarified as follows:
- (1) The requirement of holding an Advisory Hearing, as set forth in Section 9.08, shall be abolished; and

- (2) After a petition is filed, the Court shall set a date for an adjudicatory hearing, which shall not be more than thirty (30) days after the petition is filed, and direct the Court Clerk to issue the appropriate summons in accordance with Sections 9.07(A)(2)-(5); and
- (3) Section 9.09(A) shall be abolished.
- (B) Indian parent(s) or guardian(s) of Indian children who are in violation of this section shall be guilty of a class B misdemeanor. Non-Indian and Indian parents or guardians of Indian children who are in violation of this section shall be subject to a civil fine not to exceed \$50.00 for each day their child fails to attend school.

***Amended by Resolution 401-95-CR, effective September 1, 1994.***

#### 10.02 Curfew Violations

- (A) Curfew. It shall be unlawful for any juvenile under the age of eighteen (18) years to be, remain or loiter in, about or upon:
  - (1) Any place on the reservation away from the residence or usual place of abode of said juvenile; and
  - (2) In a private place other than a place where (s)he has the permission of the owner of the residence and the permission of their legal guardian, parent, or custodian to be present; and
  - (3) In a vehicle without the supervision of a person over the age of eighteen and without the permission of the parent, legal guardian, or custodian; between the hours of 10 p.m. and 6 a.m.
- (B) Exceptions. The provisions of this section do not apply:
  - (1) To any emancipated minor; or
  - (2) To a juvenile accompanied by his or her parent, guardian, or adult person having the care, custody or supervision of said juvenile; or
  - (3) When said juvenile is on an emergency errand approved by the parent or legal guardian of said juvenile; or
  - (4) When said juvenile is on reasonable, legitimate and specific business or activity directed or permitted by his or her parent, guardian, or other adult person having the care, custody or supervision of said juvenile; or
  - (5) When the juvenile is in attendance or traveling to or from an organized school, church, Tribal, community, or recreational function. For purposes

of this subsection, "organized recreational function" means only formally organized and adult-supervised activities such as formal organized sports competitions, movie theater attendance, etc. and does not include informal recreational activities such as private parties or informal sports activities; or

- (6) At or traveling directly home from a place where the child is employed.
- (7) To any person who meets the definition Section 3.03.

For purposes of this section, a child is not "travelling directly home" from any activity if the child is not actually in transit between that place and home or if the child is at a place no closer to home than the child would be if (s)he were making a direct route at reasonable progress toward home given the amount of time since the child left the activity or the time at which the activity ceased.

(C) Enforcement and Penalties

(1) Enforcement.

In addition to any other authority he or she may have, a Cheyenne River Sioux Tribal Law Enforcement Officer, or any other law enforcement officer authorized by the Tribal Council, who apprehends a juvenile for violation of the provisions of this Section, when no valid defense to such violation applies, shall issue a ticket and summons for the violation, ordering that the offender appear before the Tribal Children's Court to answer such summons.

The Law Enforcement Officer will take such measures as the Law Enforcement Officer deems reasonable under the circumstances to ensure that the child goes immediately to his/her home or place where the child plans to lawfully spend the night with the permission of their parent, custodian or legal guardian and the permission of the owner or lessor of the abode where the child plans to lawfully spend the night.

If the child is apprehended or subject to being taken into custody under the provisions of this Code or another tribal or federal law(s) other than for violating this section, then the Law Enforcement Officer may take such steps as he or she deems necessary and appropriate with regard to the other offenses.

(2) Penalties

Any juvenile who violates this Section shall be adjudicated responsible for a misdemeanor offense, which would be a Class C offense if it were committed by an adult under the Tribal Criminal Code and proceedings shall be taken against such juvenile in accordance with and pursuant to the Cheyenne River Children's Code.

The following fines shall be assessed against a juvenile adjudicated responsible for a violation of the curfew law:

- (a) First Offense: Verbal Warning and the Court shall transmit a copy of this Section of the Children's Code to the parent, guardian or custodian of the child and a copy to the child.
  - (b) Second Offense: \$10.00 fine and/or community service.
  - (c) Third Offense: \$20.00 fine and/or community service.
  - (d) Fourth Offense: \$40.00 fine and/or community service.
  - (e) Fifth Offense: \$60.00 fine and/or community service.
  - (f) **Sixth** Offense: \$80.00 fine and/or community service.
  - (g) Seventh Offense and successive offenses: \$100.00 fine and/or community service.
- (3) The Children's Court retains the authority to add any additional dispositions available pursuant to Section 8.13 as the Court, in its discretion, deems necessary and just. The Children's Court also retains the authority to impose community service in lieu of a fine, and to require parent(s) of juveniles in violation of this Section to pay fines assessed against the juvenile.
- (4) Any Indian parent(s), custodian or guardian of a juvenile who violates this Section, or fails to supervise a juvenile who has had three or more adjudications that the juvenile has violated may be adjudged guilty of a Class C misdemeanor under the Tribal Criminal Code. Upon the conviction of such parent(s) or guardian, such person shall be sentenced to imprisonment not to exceed forty-five (45) days or to a fine not to exceed one hundred dollars (\$100.00) or both, and/or may be required to attend any counseling or treatment ordered by the Court. Non-Indian parent(s) or guardian(s) of children who are in violation of this section shall be subject to a civil fine not to exceed \$100.00 for each violation. The civil court shall retain the authority to order any additional remedies available under the civil code.

***Enacted by Resolution 401-95-CR, effective September 1, 1994, as amended by Resolution 290-97-CR, effective October 10, 1997, and as amended by Resolution 52-98-CR, effective April 23, 1998.***



Children's Code  
Chapter XI  
**CHILD ABUSE - GENERAL**





## CHAPTER XI- CHILD ABUSE - GENERAL

### 11.01 Duty to Report Abuse Against Children

- (A) Basis of Report. Persons who have a reasonable cause to suspect that a child has been, or will be abused, should report the suspected activity to the Tribal Police or the tribal prosecutor or Social Services agency, either orally or in writing. The report shall be made at the first opportunity but in no case longer than forty-eight (48) hours after there is reasonable cause to believe the child has suffered abuse.
- (B) Those Required to Report. The following professionals and officials must report when they know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused child:
- (1) A physician, resident, intern, or any other member of a hospital's staff engaged in the admission, examination, care or treatment of persons; and
  - (2) A nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other medical or mental health professional; and
  - (3) School principals, school teachers, Head Start teachers, nurses, counselors, teacher's aids, and other school officials who work during regular school hours; and
  - (4) Social workers, mental health counselors, or therapists; and
  - (5) An operator or employee of any registered or licensed day care center or substitute care facility on the Reservation; and
  - (6) Foster care, residential, or institutional worker; and
  - (7) A peace officer, Juvenile Officer or other law enforcement official; and
  - (8) A judge, attorney, lay advocate, paralegal, clerk of court, or other tribal judicial system official.
- (C) Other Persons Reporting. Any person may make a report of suspected abuse. Those persons reporting, except those specified above, may remain anonymous.

### 11.02 Immunity from Liability- Persons Reporting

Any person participating in good faith in the making of a report or in a judicial proceeding held pursuant to this Section, in taking of photographs or x-rays, conducting an investigation team, or the placing in temporary protective custody of a child pursuant to the Tribal Code shall be immune from any liability, civil or criminal, or termination of employment that might otherwise result by reason of such reporting. For the purpose of any proceedings, civil or criminal, the good faith of any person reporting child abuse, any person taking photographs or x-rays, and any person who has legal authority to

investigate or place a child in protective custody shall be presumed. This section shall not limit, however, any immunity which an official or entity might otherwise have under law.

11.03 Penalties for Failure to Report

Any person, official, or institution required by this Code to report known or suspected child abuse, who fails to do so or who prevents another person from doing so is civilly liable for the damages not to exceed five thousand dollars (\$5,000) proximately caused by such failure or prevention.

Any Indian required by Tribal law to report known or suspected child abuse who purposely or knowingly fails to report child abuse or purposely or knowingly prevents another from doing so is guilty of a Class C offense and may be fined up to one thousand dollars (\$1,000) or be sentenced up to one month in jail, or both.

11.04 Initiation of Investigation

Upon receipt of a report of known or suspected instances of child abuse, an investigation shall be initiated promptly by the Prosecutor, and in any event within forty-eight (48) hours. Upon a finding of abuse, immediate steps shall be taken to protect the health and welfare of the abused child, as well as that of any other child(ren) under the same care who may be in similar danger.

Upon request of the Prosecutor, a law enforcement officer may take or cause to be taken a child into emergency custody if the officer or the Prosecutor has reasonable grounds to believe that the child is in immediate danger from his surroundings and that removal is necessary.

If the Prosecutor determines that the report is unfounded or that further proceedings are inappropriate, he shall make a written record of this determination and state therein the reasons for the determination. This record shall not be a public document but shall be confidential.

11.05 Petition for Temporary Placement

In cases where it appears that a child has been or will be abused, or whenever the child has been taken into emergency custody, the Prosecutor, in consultation with the Tribal, federal or state social services agency, may file a petition in the Children's Court, utilizing the placement procedures found in Section 9.04.

Such petition shall state the name, age and address of the child and the facts establishing probable cause that he has been or is in danger of being abused.

Such petition shall be supported by an affidavit signed by the Prosecutor, Child Service Worker, Tribal Police Officer, BIA Social Services representative, or other appropriate official who first became aware of the alleged abuse.

11.06 Emergency Protective Order for Sexually Abused Children

The Court may issue an emergency ex parte custody or other protective order (including an order temporarily removing the alleged perpetrator from the child's home) upon receipt of a sworn written statement of facts, showing probable cause exists to believe that a child subject to this Code has been or is in danger of being sexually abused. (Emergency custody for child sexual abuse shall be handled similarly to the tribal system for handling other abused or neglected children.)

Every custody or other protective order of the Court shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

11.07 Warrant

The Court may issue a custody warrant pursuant to section 9.03 authorizing a law enforcement officer to search for a child if there is probable cause to believe that the child is within the Court's jurisdiction and an emergency custody or other protective order has been issued for the alleged abused child.

11.08 Child Abuse Investigation Team

The Tribe may develop, maintain, and coordinate the services of a child abuse investigation team. The team shall be composed of a representative of the Tribal, Federal and/or State Social Services agency, the Tribal Police Department and the Prosecutor.

The Child Abuse Investigation Team shall investigate a report of abuse of a child. A coordinated, systematic approach to conducting an investigation shall be arranged.

Specified team members shall conduct an initial interview of the child alleged to have been abused, an interview of the alleged perpetrator, and an interview of the child's parent(s) not allegedly involved in the abuse. The team may also conduct any other interview or investigation deemed necessary to determine the existence of potential sexual abuse, sexual exploitation, or incest of a child.

11.09 Child Protection Team

The Tribal, Federal or State Social Services agency, in cooperation with IHS and BIA shall develop, maintain, and coordinate the services of a multidisciplinary Child Protection Team on the Reservation. The Team may be composed of representatives of appropriate health, mental health, social services, educational, legal service, and law enforcement agencies.

The Child Protection Team shall be convened to supplement the single intake and protective services activities of the Tribal, Federal or State Social Services agency . . . . Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cause of child abuse or neglect or sexual abuse of a child pursuant to this Code. The role of the Child Protection Team shall be to support the Social Services agency and the Child Abuse Investigation Team and to provide services to abused and exploited children upon referral as deemed to be necessary and appropriate for such children. The specialized diagnostic assessment,

evaluation, coordination, consultation, and other supportive services that the Child Protection Team may be capable of providing include, but are not limited to, the following:

- (1) Medical diagnosis and evaluation services, including provision or interpretation of X-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto; and
- (2) Telephone consultation services in emergencies and in other situations; and
- (3) Medical evaluation related to abuse or neglect, as defined by department policy or rule; and
- (4) Such psychological and psychiatric diagnosis and evaluation services for the child, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child abuse or neglect case, as a child protection team may determine to be needed; and
- (5) Short-term psychological treatment. It is the intent of the Tribe that short-term psychological treatment be limited to no more than six months' duration after treatment is initiated, except that the appropriate social services administrator may authorize such treatment for individual children beyond this limitation if she/he deems it appropriate.
- (6) Case staffing to develop, implement, and monitor treatment plans for a child whose case has been referred to the Child Protection Team. The Team may provide consultation on any other child who has not been referred to it, but who is alleged or is shown to be abused, which consultation shall be provided at the request of the appropriate social services agency or at the request of any other professional involved with a child, his parent(s), guardian(s), custodian(s) or other care givers.  
  
A Social Services representative shall attend and participate in all such child protection team case staffing, consultations, or staff activities involving a child.
- (7) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.
- (8) Such training services for program and other department employees as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse and neglect cases.

- (9) Educational and community awareness campaigns on child abuse and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse and neglect in the community.

#### 11.10 Referrals

Child abuse cases that are appropriate referrals to the Child Protection Team for support services include, but are not limited to, cases involving:

- (1) Sexual abuse of a child, as defined in Chapter 3.
- (2) Venereal disease, or any other sexually transmitted disease, in a pre-pubescent child.
- (3) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected child abuse, where any sibling or other child remains in the home.
- (4) Symptoms of serious emotional problems in a child where emotional or other abuse is suspected.

In all instances where a Child Protection Team is providing certain services to abused children, other offices and units of the Tribe shall avoid duplicating the provision of those services.





Children's Code  
Chapter XII  
**EMANCIPATION**





## **CHAPTER XII - EMANCIPATION**

### **12.01 Purpose**

Any child over whom the Children's Court has jurisdiction and is at least fifteen (15) years of age, who is living separate and apart from his/her parent(s), guardian or custodian, capable of self-support and of managing his own financial affairs and/or a parent who is providing care for his/her own child may petition the Court to have the disabilities of minority removed for limited or general purposes.

### **12.02 Who may petition**

A child may file this petition in his ownname.

### **12.03 Contents**

The petition for emancipation shall state:

- (1) The name, date of birth and address of the child;
- (2) The name and address of each livingparent;
- (3) The name and address of the child's guardian or custodian, if any;
- (4) The reasons why emancipation would be in the best interests of the child;
- (5) The purpose for which emancipation is sought;
- (6) The current living situation and source of self-support.
- (7) Name, address and date of birth of any child(ren) of the minor child seeking emancipation.

### **12.04 Consent**

- (A) The child must obtain the consent of each living parent, guardian or custodian having control of the person or property of the child.
- (B) If the person who is to consent to the petition is unavailable or his/her whereabouts are unknown, or if a parent, guardian or custodian reasonably withholds consent, the Court, acting in the best interests of the child, may waive this requirement as to the parent, guardian or custodian.
- (C) The Court may appoint a guardian adlitem to represent the interests of the child at the hearing.

### **12.05 Notice; Opportunity to be Heard**

Upon receipt of an emancipation petition, the Court shall provide the parent(s), guardian, and/or custodian of the petitioner with notice that an emancipation petition has been filed by their child. The notice shall include the date and place of the hearing and inform the

parent(s), guardian, and/or custodian that they may appear and give testimony at the hearing if they wish to contest the emancipation.

12.06 Standard to be Applied

The Court may remove the disabilities of minority as requested in the petition if, after a hearing, there is clear and convincing evidence that emancipation is in the best interests of the child. Emancipation may be for general purposes or the limited purposes specified in the order.

Every emancipation order of the Court shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.

Upon filing a written agreement of all parties, the hearing, findings and conclusions may be waived.

12.07 Effects of Emancipation

Except for specific constitutional and statutory age requirements for voting and use of alcoholic beverages, a child whose disabilities are removed for general purposes has the power and capacity of an adult; including, but not limited to, the right to control himself, the right to be domiciled where he desires, the right to receive and control all earnings, to sue or be sued, and the capacity to contract. The rights and responsibilities of the parents of the emancipated child shall be terminated except that nothing in here shall affect the emotional or spiritual ties between parent and child and nothing in this section shall affect the rights or abilities of the child to inherit property by legacy, will, or intestate succession.

12.08 Restoration

The relationship of parent(s) and child may be restored with respect to children emancipated under this section upon application of the child and upon the consent of the parent(s) with respect to whom the restored relation is sought.

Children's Code  
Chapter XIII  
**TERMINATION OF  
PARENT \_ CHILD  
RELATIONSHIP**





## **CHAPTER XIII-TERMINATION OF PARENT-CHILD RELATIONSHIP**

### **13.01 Petition: Who May file; Grounds.**

- (A) Any person or agency that has a legitimate interest in the welfare of a child, including but not limited to, a relative, foster parent, or a social services/child welfare agency may file a petition for the termination of the parent-child relationship alleging grounds contained in section 13.05(B). Any person may provide information, supported by a sworn affidavit, showing that the parent-child relationship should be terminated and the Prosecutor may initiate a petition based on such information.
- (B) All petitions shall be approved by the Cheyenne River Sioux Tribal Prosecutor and/or the Cheyenne River Sioux Tribal Attorney General.

***Amended by Resolution 195-94-CR, effective June 14, 1994.***

### **13.02 Contents of Petition.**

- (A) A petition for the termination of the parent-child relationship filed pursuant to this Chapter shall include, to the best information and belief of the Prosecutor:
  - (1) The name and address of the person requesting the petition, and the relationship of that person to the minor child(ren) or the fact that no relationship to the minor child(ren) exists;
  - (2) The name, gender, date and place of birth and residence of the child(ren);
  - (3) The basis for the Court's jurisdiction;
  - (4) The names, addresses and dates of birth of the parent(s), if known;
  - (5) The names and addresses of the persons having legal custody or guardianship of the child(ren), or the organization or authorized agency having legal custody or providing care for the child(ren);
  - (6) The grounds on which termination of the parent-child(ren) relationship(s) is sought;
  - (7) The names and address of person, or authorized agencies or officers thereof, to whom or to which legal custody or guardianship of the person of the child(ren) might be transferred;
  - (8) A certified birth certificate for the minor child(ren).

- (B) A copy of any relinquishment or consent, if any, previously executed by the parent(s) shall be attached to the petition. A consent or relinquishment shall conform to the provisions of the Indian Child Welfare Act, 25 U.S.C. Section 1913.

13.03 Notice; Waiver; Guardian Ad Litem

- (A) After a petition for termination of parental rights has been filed, the Clerk of the Children's Court shall set a time and place for hearing. Notice thereof shall be given to the parents of the child, the person having legal custody of the child, any individual acting as guardian to the child(ren) and the guardian ad litem, if any, as provided in the rules for service of process in civil actions.
- (B) The hearing shall take place no sooner than ten (10) days after the completion of notice and service.
- (C) Proper notice of hearing may be waived by any party at the time of hearing.
- (D) When the parent(s) inability to discharge parental responsibilities is due to mental illness, mental deficiency, or a history of chronic abuse of drugs, controlled substances or alcohol, the Court may appoint a guardian ad litem for the alleged incompetent parent. The Court may otherwise appoint a guardian ad litem as deemed necessary for any party.

13.04 Social Study Prior to Disposition; Contents

- (A) Upon the filing of a petition the Court shall order the appropriate agency or other person selected by the Court to conduct a complete social study. A written report shall be submitted to the Court prior to hearing, except that when an agency is requesting the petition, either in its own right or on behalf of a parent, a report in writing of the social study shall accompany the petition. The Court may order any additional studies it deems necessary. The social study shall include the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child and such other facts as may be pertinent to the parent-child relationship.

The person or agency conducting the study shall consult with the child's parent(s) and all social services, health, education and other personnel known to have had prior professional contacts with the child and his parent(s), guardian or custodian to determine whether termination of the parent-child relationship is consistent with the best interests of the child. The person or agency conducting the study may also review any of the child's previous Children's Court records. The report shall contain the professional opinions of all personnel with whom the person or agency conducting the study has consulted and shall include a specific recommendation on the termination of the parent-child relationship and the reasons therefore.



- (B) The report shall state whether or not all reasonable efforts have been made to preserve the parent-child relationship and describe those efforts.
- (C) The Court may waive the requirements of subsections (A) and (B) when the Court finds that it is in the best interests of the child, or when the parent has signed a consent or relinquishment of rights form and after a finding by the Court that such relinquishment or consent was knowingly, voluntarily and competently made.

13.05 Hearing: Grounds for Termination

- (A) The Termination hearing shall be private and closed. Only such persons who presence the Judge finds to have a direct interest in the case or in the work of the Court shall be admitted provided that such person shall not disclose any information obtained at the hearing. The Court may require the presence of any parties and witnesses it deems necessary to the disposition of the petition.
- (B) In determining whether to terminate the parent-child relationship the Court shall consider the best interests of the child and may terminate the parent-child relationship if the following grounds are established beyond a reasonable doubt, that:
  - (1) (a) The child has been removed from the custody of the parent for a period of at least six (6) months pursuant to a finding that the child is in need of care, or the Court has recommended that termination proceedings begin pursuant to section 9.12 (B) (g); and
  - (b) The conditions which led to the removal or to the Court order still persist; and
  - (c) There is little likelihood that those conditions will be remedied so that the child can be returned to the parent in the near future; and
  - (d) Continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home; and
  - (e) If the finding that a child is in need of care has been pursuant to 3.05 (1) (2) or (3), necessary services have been provided or offered to the parent to facilitate a reunion and the parent has substantially failed to accept such services; and
  - (f) If the parent is subject to an order of disposition pursuant to a finding that the child is in need of care, the parent has substantially failed to comply with the order; or
  - (2) (a) The parent(s) has knowingly, voluntarily and competently consented or relinquished his/her parental rights; and

- (b) The Court finds that termination of the parent-child relationship in this case is in the best interests of the child(ren); and
- (c) The Court finds that adequate arrangements are in place for the care, custody and supervision of the child(ren).

13.06 Court Order; For: Contents

- (A) Every order of the Court terminating the parent-child relationship shall set forth the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Such order shall be conclusive and binding on all persons from the date of entry.
- (B) If the Court finds grounds for the termination of the parent-child relationship, it shall terminate such relationship and take one of the following courses of action, based on the best interests of the child:
  - (1) Appoint an individual as guardian of the child's person; or
  - (2) Appoint an individual as guardian of the child's person and vest legal custody in another individual or in an authorized agency; or
  - (3) Place the child for adoption or order that an adoptive placement for the child be found; or
  - (4) Declare the child, if over the age of 15, emancipated.
- (C) The Court shall also make an order fixing responsibility for the child's support, pursuant to the provisions of Chapter XVI. The parent-child relationship may be terminated with respect to one parent without affecting the relationship of the other parent.
- (D) Where the Court does not order termination of the parent-child relationship, it shall dismiss the petition, provided that where the Court finds the best interest of the child requires substitution or supplementation of parental care and supervision, the Court shall make such orders as are necessary.

13.07 Effect of Order

An order terminating the parent-child relationship shall divest the parent(s) and the child permanently of all legal rights, privileges, duties and obligations with respect to each other except the right of the child to inherit from its parent(s) or to claim its parent's blood or lineage for purposes of enrollment as member of the Tribe.

13.08 Restoration

In the case of relationship terminated by voluntary relinquishment by the parent(s), this relationship may be restored by application of the parent(s) within forty-five days after the order creating the termination.

13.09 Appealability

Any order terminating parental rights under this Chapter shall be immediately appealable, except orders terminating pursuant to a valid relinquishment. Provided, however, refusal by the Court to honor a restoration pursuant to section 13.08 shall be immediately appealable. All appeals shall be governed by the portions of this Code setting forth procedures for appeal.



Children's Code  
Chapter XIV  
**ADOPTION**





## CHAPTER XIV - ADOPTION

### 14.01 Adoption. Generally

(A) Children. Any child subject to the jurisdiction of the Cheyenne River Sioux Tribe may be adopted by any adult person under this Chapter, provided, however, that a married person not lawfully separated from his or her spouse, cannot adopt a child without the consent of his or her spouse if the spouse is legally capable of giving such consent. In any adoption, preference shall be given, in the absence of good cause to the contrary, to:

- (1) A member of the child's extended family, or the spouse of one of the child's natural parents, if such spouse is not a natural parent of the child; or
- (2) Members of the Indian Tribe of which the child is a member or eligible for membership, or if the child is not an Indian, a non-Indian; or
- (3) Other Indian families; and
- (4) The adoptive parent(s) must be at least ten (10) years older than the child(ren) being adopted.

(B) Adults. An adult may be adopted if written consent to the adoption has been executed by the adult and the adult's spouse.

#### (C) Traditional Adoption

*Ecagwaya* or traditional adoption is to raise or to take in as if the child is a biological child. Traditional adoption is the placement of a child by his natural parent(s) with another family through a public ceremony but without any Court involvement. After a period of two (2) years in the care of the ceremonial adoptive family, the Court upon petition of the adoptive parent(s), will recognize that the adoptive parent(s) in a custom or traditional adoption have certain legal rights over a child even though parental rights of the natural parent(s) have never been terminated. Traditional adoption must be attested to by two reliable witnesses. The Court, in its discretion, on a case by case basis, shall resolve any questions that arise over the respective rights of the natural parent(s) and the adoptive parent(s) in a traditional adoption. The decision of the Court shall be based on the best interests of the child and on recognition of where the child's sense of family is.

### 14.02 Consent to Adoption.

(A) No consent to adoption shall be required from a parent or parents whose parental rights have been terminated by a court of competent jurisdiction.

- (B) A child cannot be adopted without the consent of:
- (1) The mother of the child, if living; and
  - (2) The father of the child, if living, and if the father was never married to the mother at the time the child was conceived or at any time thereafter, or if the minor is his by adoption, or if he has maintained a parent-child relationship with the child or provided substantial financial support;

Provided, however that the Court can allow the adoption of a child without the consent of a parent(s) whose whereabouts are unknown after a reasonable search and who has deserted the child for a period of two (2) years without in that time ever contacting the family, or if the parent(s)' rights have been terminated.

- (C) A child deserted by its parent(s) or surviving parent(s) and having no legal guardian may be adopted without the consent of its parent(s) upon a finding by the Court that the child has in fact been deserted and that the whereabouts and/or identity of the parent(s) is unknown after reasonable investigation.
- (D) The consent of a child over the age of twelve (12) years is necessary to its adoption.
- (E) A child who has a guardian of its person other than a parent cannot be adopted without the consent of such guardian provided, however, that an adoption of such a child may be accomplished without such consent if the Court finds that the adoption will be in the child's best interest.
- (F) Consent of a parent(s) shall be taken by the Court and shall be accomplished by signing a consent form to be provided by the Court which explains the consequences of consenting to the adoption. The Court shall certify that the parent(s) fully understood the explanation in English or that it was interpreted into a language that the parent(s) understood. For parent(s) residing outside the Reservation, the consent form shall be executed before a Notary Public who must certify that the consent of the parent(s) appears to be freely given in order for such consent to be valid.
- (G) A consent to adoption may be withdrawn at any time prior to the entry of an Order of Adoption, and only upon permission of the Court for the reason that the best interests of the child will be served by such withdrawal. However, if within six (6) months from the date of consent it can be shown beyond a reasonable doubt that the consent to adoption was given as a result of fraud, coercion or duress, such consent may be withdrawn during such period.
- (H) Any consent given prior to, or within seven (7) days after the birth of the child shall not be valid.



#### 14.03 Petition to Adopt

A person or person(s) wishing to adopt a child through the Children's Court must file a petition, verified under oath, which must contain the following information:

- (1) The full name(s), address(es), age(s), and tribal affiliation or lack thereof of the adopting parent(s), plus the names and ages of all other children living in their household, if any;
- (2) The full name, residence, gender, birth date, and tribal affiliation or lack thereof of the child(ren) whose adoption is sought, plus documentary proof of the child's date and place of birth, if available;
- (3) Copy of order terminating parental rights or copy of consent of parent(s) or guardian to the adoption;
- (4) A full description and statement of value of all property owned or possessed by the child;
- (5) A statement by the adopting parent(s) that is their desire to adopt the child and to establish the relation of parent and child with the adopted child, and that they will protect and care for the child to the best of their ability if the adoption is granted.

#### 14.04 Investigation Report

After the filing of the petition for adoption, the Court may request the assistance of Tribal, Federal, or State officials or agencies to inquire into and report in writing to the Court on the suitability of the child for adoption, and the fitness and general background of the adoptive parent(s) and their home, together with a recommendation regarding the proposed adoption.

#### 14.05 Adoption Hearing

Within five (5) days after the written investigation report is received or within a reasonable time, the Court shall fix a time for hearing on the petition for adoption. The adoptive parent(s) and the adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified if possible and may appear or be represented by a spokesperson authorized to represent them for the purpose of adoption. The Judge shall examine all persons separately.

#### 14.06 Adoption Order.

- (A) If at the conclusion of the hearing, the Court determines that any and all required consents have been obtained and that the adoption is in the best interest of the individual to be adopted, it may:
  - (1) In the case of an adult, issue a final order of adoption;

- (2) In the case of a child, issue an temporary order of adoption which by its own terms automatically becomes a final order of adoption on a day therein specified which shall not be less than six months nor more than one year from the date of issuance of the order unless sooner vacated by the Court for good cause shown.
- (3) In the case of a child, during the pendency of the temporary order, require written reports from child services personnel on the welfare of the child in the adoptive home and on the adoptive parent(s).
- (B) A temporary order of adoption, while it is in force, has the same legal effect as a final order of adoption. If a temporary order of adoption is vacated, it shall be as though void from its issuance, and the rights, liabilities, and status of all affected persons which have not become vested shall be governed accordingly.
- (C) If the Court determines that the adoption petition will not be in the best interests of the child, the petition shall be denied and the child's guardian or person having custody over the child instructed to arrange suitable care for the child, and the Court may request the Tribal, federal, and other agencies authorized to provide such services to assist in the placement and care of the child.

Every adoption order of the Court shall recite the findings upon which such order is based, including findings pertaining to the Court's jurisdiction. Every adoption order shall be accompanied by a notice of entry of judgment. Such order shall be conclusive and binding on all persons from the date of entry.

#### 14.07 Contents of Adoption Order

The order of adoption shall include such facts as are necessary to establish that the individual is eligible and suitable for adoption, and that in the case of a child, the adoptive home and parent(s) are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings. Within ten (10) days after the final order of adoption has been entered by the Court, the Division of Vital statistics of the South Dakota Board of Health shall be notified by the Clerk of the Court that the adoption has taken place, giving the full name, gender, birth date, names of natural parent(s) and full names of adoptive parent(s) so that a new record of birth in the new name and with the name or names of the adopting parent(s) is recorded, and provided with a certified true and correct copy of the final order of adoption.

#### 14.08 Adoption Records

- (A) All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal majority, or otherwise upon order of the Court upon good and sufficient cause shown. However, if the natural parent(s) of the child state in writing that they never want

such records to be released, the records shall not be released except that the child may be informed of the tribal affiliation and degree of Indian blood of the natural parent(s), and such other information necessary for tribal enrollment purposes.

- (B) Except as authorized in writing by the adoptive parent(s), the adopted child if fifteen (15) or more years of age, or upon order of the Court for good cause shown in exceptional cases, no person is required to disclose the name or identity of either an adoptive parent(s) or an adopted child. However, upon request by the adopted child, information regarding the tribal affiliation and degree of Indian blood of the natural parent(s), and such other information necessary for tribal enrollment purposes, shall be made available to the child.
- (C) Transcripts of adoption proceedings and any other records necessary for the purposes of appeal shall be made available to the parties to the appeal, subject to the limitations set forth in Chapter 21, section 21.05.

14.09 Name and Legal Status of Adopted Child

Children adopted by order of the Court shall assume the surname of the person by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of persons and property as children or heirs of the persons adopting them. Adoption shall not affect tribal membership status or any rights incident thereto.

14.10 Rights and Liabilities of Natural Parents

The natural parent(s) of an adopted child are, from the time of the final order of adoption, relieved of all parental duties toward, and all responsibility for children so adopted, and shall have no further rights over them.

14.11 Finality of Adoption Order

Subject to the disposition of an appeal, upon the expiration of one year after an adoption order is issued the order cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a child, the petitioner has not taken custody of the child, or in the case of the adoption of an adult, the adult had no knowledge of the decree within the one year period.

14.12 Recognition of Foreign Order Affecting Adoption

After the enactment of this Code, a court order terminating the relationship of parent(s) and child or establishing the relationship by adoption issued by a court of any other jurisdiction within or without the United States shall be recognized by the Cheyenne River Sioux Tribe only by order of the Children's Court Judge, after petition by the adoptive parent(s) and then only if done pursuant to the Indian Child Welfare Act and this Code.



Children's Code  
Chapter XV  
**PATERNITY**





## CHAPTER XV - PATERNITY

### 15.01 Presumption of Paternity

(A) A man is presumed to be the natural father of a child if:

- (1) He and the child's natural mother are or have been married to each other and the child is born during marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
- (2) Before the child's birth, he and the child's natural mother have attempted to marry each other by marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
  - (a) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred (300) days after its termination.
  - (b) If the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation;
- (3) After the child's birth, he and child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law and/or custom or tradition, although the attempted marriage is or could be declared invalid, and
  - (a) He has acknowledged his paternity of the child in writing;
  - (b) With his consent, he is named as the child's father on the child's birth certificate; or
  - (c) He is obligated to support the child under a written voluntary promise or by court order;
- (4) While the child is under the age of majority, he received the child into his home and openly holds out the child as his natural child; or
- (5) He acknowledged his paternity of the child in writing.

(B) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

15.02 Determination of Father-Child Relationship; Who May Bring Action; When Action May Be Brought

- (A) A child, his natural mother, or a man presumed to be his father under section 15.01 (A) (1), (2), or (3), may bring an action
  - (1) At any time during the minority of the child for the purpose of declaring the existence of the father-child relationship presumed under section 15.01 (A) (1), (2), or (3); or
  - (2) For the purpose of declaring the non-existence of the father-child relationship presumed under section 15.01 (A) (1), (2) or (3), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts rebutting the presumption, but in no event later than three (3) years. The alleged other father(s) shall be made a party to the action. After the presumption has been rebutted, paternity of the child by another man shall be determined in the same action.
- (B) For the purpose of determining the father-child relationship presumed under section 15.01 (A)(4) or (5):
  - (1) Any interested party may bring an action to determine the existence of the father-child relationship within three (3) years of obtaining knowledge of relevant facts that a relationship exists.
  - (2) Any interested party may bring an action to declare the non-existence of the father-child relationship within three (3) years. The alleged father(s) shall be made a party to the action. After the presumption has been rebutted, paternity of the child by another man shall be determined in the same action.
- (C) An action to determine the existence of the father-child relationship with respect to a child who has no presumed father under Section 15.01 may be brought by the child, the mother or personal representative of the child, the appropriate social services agency, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.
- (D) Regardless of its terms, an agreement between an alleged or presumed father and the mother or child, does not bar an action under this section by another interested party.
- (E) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions.



- (F) The mother's subsequent marriage to a man other than the presumed or alleged father(s) shall not preclude any qualified person from bringing an action under this Chapter.

15.03 Statute of Limitations

An action to determine the existence of the father-child relationship as to a child who has no presumed father under Section 15.01 may not be brought later than three (3) years after the birth of the child. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three (3) years after the child reaches the age of majority.

15.04 Jurisdiction; Joinder

- (A) A person who has sexual intercourse within the Reservation thereby submits to the jurisdiction of the Children's Court as to any action brought under this Code with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by registered mail with proof of actual receipt.
- (B) An action under this Chapter may be joined with an action for divorce, annulment, separate maintenance or support.

15.05 Parties

The child shall be made a party to the action. He shall be represented by a guardian ad litem appointed by the Court. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father under section 15.01, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the Court, shall be given notice of the action in a manner prescribed by the Court and an opportunity to be heard. The Court may align the parties.

15.06 Initial Proceedings

- (A) After an action to declare the existence or nonexistence of the father-child relationship has been brought, a closed hearing shall be held.
- (B) On the basis of the information produced at the initial hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship. On the basis of the testimony and evidence, the Court may order any of the following:
  - (1) That the action be dismissed with or without prejudice;
  - (2) That the alleged father voluntarily acknowledged his paternity of the child;

- (3) That parties will submit to appropriate testing within a reasonable time period to be set by the Court. If the appropriate testing has not been conducted within the court-ordered time period, there will be a show cause hearing set upon petition of any party.
- (C) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

#### 15.07 Clinical Test Evidence

- (A) Court Ordered Testing for Paternity. In any action or proceeding under this Chapter, upon motion of the Court or of any of the interested parties for good cause shown, the Court shall order the mother, her child or children, and the alleged father(s) to submit to an examination for the purpose of testing any genetic systems that are generally accepted within the scientific community for the determination of paternity probability. The results of the tests, together with the opinions and conclusions of the testing laboratory, shall be filed with the Court.
- (B) Persons Authorized to Perform Test; Liability. Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician or medical technologist, acting under court order, or at the request of both the mother and the alleged father(s) of the child, may conduct the examination for the purpose of testing to determine parentage. Such persons, and any hospital or laboratory employing such persons, may not be held liable for damages to the party upon whom the examination is conducted if the examination is conducted with usual and ordinary care.
- (C) Costs of Testing. The party requesting the testing shall bear the sole initial cost of testing; provided, however, if the existence of a father-child relationship is established any party may be ordered by the Court to pay costs for testing as equity may require. The Court may also consider any agreement as to payment for costs of the testing reached by the parties.

#### 15.08 Evidence Relating to Paternity

Evidence relating to paternity may include:

- (1) Evidence of sexual intercourse between the mother and alleged father(s) at any possible time of conception;
- (2) An expert's written opinion concerning the statistical probability of the alleged father's paternity based upon the laboratory test or DNA results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;
- (3) If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

- (4) All other evidence relevant to issue of paternity of the child.

15.09 Civil Action

- (A) An action under this Chapter is a civil action governed by the Rules of Civil Procedure of the Cheyenne River Sioux Tribe, except to the extent such rules are inconsistent with this Chapter. If the mother of the child and the alleged father(s) are competent to testify then they may be compelled to testify. If the Court finds the mother of the child and/or the alleged father(s) to not be competent to testify, the Court shall appoint a guardian ad litem or attorney.
- (B) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than a possible time of conception of the child is inadmissible in evidence, unless offered by the mother.
- (C) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Court concerning his sexual intercourse with the mother at or about a possible time of conception of the child is admissible in evidence only if he has undergone and made available to the Court laboratory tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the Court shall be made a party in the action.
- (D) The trial shall be by the Children's Court without a jury.

15.10 Judgment or Order

- (A) The judgment or order of the Court determining the existence or nonexistence of the parent-child relationship is determinative for all purposes.
- (B) If the judgment or order of the Court determines a father not listed on the child's birth certificate, the Court shall order that a new birth certificate be issued under Section 15.11.
- (C) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. Support orders shall conform to the specifications in this Code.

15.11 Birth Records

- (A) Upon order of a Tribal Court or upon request of a foreign court, the registrar of births shall prepare a new certificate of birth consistent with the findings of the Court and shall substitute the new certificate for the original certificate of birth.

- (B) The fact that the father-child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.
- (C) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the Court and all interested persons, or in exceptional cases only upon an order of the Court for good cause shown.

Children's Code  
Chapter XVI  
**SUPPORT OF CHILDREN**





## CHAPTER XVI - SUPPORT OF CHILDREN

### 16.01 Coverage

Support orders may be issued by the Court in the following circumstances:

- (1) A Support order may be issued in a paternity action, pursuant to Chapter 15, Subsection 15.10 (C).
- (2) A support order may be issued in a divorce action as provided in the Domestic code.
- (3) A support order may be issued in a suit by the custodial parent in an action to enforce a support obligation already established.
- (4) A support order may be issued against the parent(s) when a child is placed with an individual or agency other than his parent(s) as follows:
  - (a) The Court may in the same or any subsequent proceeding inquire into the ability of the parent(s) or any other person who may be obligated, to support the child and to pay any other expenses of the child, including the expense of any medical, psychiatric, or psychological examination or treatment provided under order of the Court. The Court may, after due notice and a hearing on the matter, require such person or persons to pay the whole or part of such support and expenses, according to the facts enumerated in section 16.04(B). The amounts so required to be paid shall be paid at such intervals as the Court may direct, and unless otherwise ordered, payment is to be made to the Clerk of the Children's Court for transmission to the person or agency having legal custody of the child or to whom compensation is due.
  - (b) No court order issued under section 16.01(4) against a parent or other person shall be entered unless summons has been served pursuant to the Cheyenne River Sioux Tribe Rules of Civil Procedure. The summons shall specify that a hearing with respect to the financial support of the child will be held.

### 16.02 Reserved

### 16.03 Reserved

16.04 Support Order: Amount and Form

The following principles shall apply to support orders other than those issued pursuant to 16.01 (4):

- (A) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The Court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the Court deems just unless the action is for modification of an existing support order.
- (B) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligations of support shall look to Lakota custom and shall consider all relevant facts, including:
  - (1) The needs of the child;
  - (2) The actual living expenses and circumstances of each parent;
  - (3) The relative financial means of each parent, including the income and debts of a spouse or others in each parent's household;
  - (4) The earning ability of the parent(s);
  - (5) The need and capacity of the child for education;
  - (6) The age of the child;
  - (7) The financial resources and the earning ability of the child;
  - (8) The responsibility of the parent(s) for the support of others;
  - (9) The value of services contributed by each parent;
  - (10) The minimum monetary support amount ordered shall be \$30.00 per month.

The Court may order that support be provided in money, or by an appropriate combination of money and in-kind support. In-kind support is support other than money such as goods or services. However, in no circumstance will a non-parent be ordered to pay child support.



16.05 Enforcement of Support Orders

- (A) In addition to other remedies, the Court may issue an order to any employer, trustee, financial agency, or other person, firm, or corporation, indebted to the parent(s) owing child support under this Code, to withhold and pay over moneys due or to become due not in excess of the lesser of the following:
  - (1) The amount ordered to be paid by the Court, or
  - (2) One-fourth of the amount due or becoming due the parent at each regular or usual payday or day of disbursement.
- (B) A copy of such order shall, if possible, be served on the parents or either of them adjudged liable and either the parent(s) or the indebted party may request a hearing to determine the propriety of the order or the extent of the indebtedness.
- (C) If existence of the father-child relationship is declared in a paternity action under chapter 15, or paternity or a duty of support has been acknowledged or adjudicated under this Code or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.
- (D) The Court may order support payments to be made to the parent, the Clerk of the Court, or a person, corporation, or agency designated to administer the support payments for the benefit of the child under the supervision of the Court.
- (E) Willful failure to obey the judgment or order of the court is a civil contempt of the Court. All remedies for the enforcement of judgments apply.

16.06 Child Support Abatement

The Court may order an abatement of support during any period when the children are with the non-custodial parent for an extended period. However, no abatement may be taken unless there is a Court order authorizing it.

16.07 Payments Directly to Agency: Report to Court: Visits

*Payment for child support may be made to a non-governmental agency in whom the Court vests legal custody, provided that the agency shall make periodic reports to the Court concerning the care and treatment the child is receiving and his response to such treatment. Such reports shall be made at such intervals as the Court may direct, and shall be made with respect to each child at least every six (6) months. The agency shall also afford an opportunity for a representative of the Court to visit the child as frequently as the Court deems necessary.*

16.08 Modification of Judgment or Order

- (A) The Court has continuing jurisdiction to modify or revoke a judgment or order made pursuant to this Chapter, except that the Court, when entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 16.04 (A), may specify that the judgment or order may not be modified or revoked.
- (B) The custodial parent may request that the Court modify a Support order based on changed circumstances. In such a case the burden shall be on the custodial parent to prove by a preponderance of the evidence that support payments should be increased.
- (C) The non-custodial parent may request that the Court modify a Support order based on changed circumstances. In such a case the burden shall be on the non-custodial parent to prove by a preponderance of the evidence that support payments should be decreased.

16.09 Enforcement of Foreign Judgment in Proceedings to Compel Support

- (A) The judgment of the court of another jurisdiction rendered in proceedings to compel support of a child, and directing payment either of a fixed sum or of sums payable from time to time, may be sued upon in the Children's Court and be made a domestic judgment.
- (B) Such foregoing judgment shall be afforded comity treatment by the Court if:
  - (1) The jurisdiction issuing the order or judgment also grants comity to the orders and judgments of the Cheyenne River Sioux Tribal Court;
  - (2) It is made by the court of another tribe and it appears that the other tribal court had jurisdiction;
  - (3) It is made by a court of a state, provided that, before a tribal court may consider recognizing a state court order or judgment as a matter of comity, the party seeking recognition shall establish by clear and convincing evidence that:
    - (a) The state court had jurisdiction over both the subject matter and the parties;
    - (b) The order or judgment was not fraudulently obtained;
    - (c) The order or judgment was obtained by a process that assured the requisites of an impartial administration of justice including but not limited to due notice and a hearing;

- (d) The order or judgment complies with the laws, ordinances and regulations of the jurisdiction from which it was obtained; and
  - (e) The order or judgment does not contravene the public policy of the Cheyenne River Sioux Tribe.
- (D) The same remedies may be had upon a foreign judgment or order which is recognized by a tribal court as if it had been recovered originally in the Tribal Courts.

***Amended by Resolution 323-05-CR, effective August 4, 2005.***

16.10 Statute of Limitations

(A) Prospective right to support.

In proceedings under this chapter, the prospective right to support and the continuing obligation of the parent(s) or other persons adjudged liable to provide support, can be adjudicated at any time during the minority of the child.

(B) Previously unestablished support.

In proceedings under this chapter, where the child's right to support is not yet established by Court order, the Court may look back up to three (3) years prior to the initiation of the support proceedings where the best interests of the child may require.



Children's Code  
Chapter XVII  
**CUSTODY  
AND  
VISITATION**





## **CHAPTER XVII - CUSTODY AND VISITATION**

### **17.01 Child Visitation Guidelines**

(a) In any action concerning the custody of a child(ren) born to the parties out of wedlock, the Court shall have authority to determine the custody of any child(ren) in the custody of either party under the age of (18) years. The Court may grant to (1) parent, or may grant joint custody specifying the periods during which each parent shall have custody. In each case, the Court shall determine the visitation rights, if any, of the non-custodial parent.

(b) The determination of custody shall be based on the best interests of the child(ren), and there shall be no presumption that a parent is better suited to be custodial parent based on that parent's gender. Where appropriate, the Court may also order that the non-custodial parent make periodic payments to cover a portion or all the expenses of care and education of the child(ren). Child custody orders may be modified at any time on, a motion to modify by either party, following a hearing as provided in Section 17.04 of this Chapter XVII. In determining the best interest of the child(ren), the Court shall consider the relative ability of the parents to provide adequate food, shelter, clothing, medical, love and emotional support and day-to-day supervision of the child(ren). The Court shall also take into consideration the desires of the child(ren). The difference of financial means alone shall not be the deciding factor in custody cases.

### **17.02 Plaintiff in Custody Action to Serve Guidelines - Guidelines as Court Order - Custody of Minors**

Upon the filing of a summons and petition for divorce or any other custody action or proceeding, the plaintiff or the court shall serve upon the respondent a copy of the standard guidelines. The standard guidelines attached to the summons shall become an order of the court upon fulfillment of the requirements of service pursuant to Cheyenne River Sioux Tribe Rules of Civil Procedure. Any minor child(ren) shall remain in the custody of the parent who has been the primary caregiver for the minor child for the majority of time in the twelve months preceding the filing of the summons and petition, unless the parties agree otherwise in writing. The standard guidelines shall apply and continue in effect, unless the parties agree, or the court orders otherwise. Imposition of the standard guidelines creates no presumption as to who may be awarded custody at any hearing.

### **17.03 Visitation Agreement Other than the Standard Guidelines**

Any agreement by the parties for visitation other than the standard guidelines shall be in writing, signed by both parties and filed with the court. The agreed plan shall be approved by court order and replace the standard guidelines or any plan previously filed.

### **17.04 Objections to Custody or Visitation Order- Hearing- Temporary Order**

If either party objects to the initial custody arrangement in Section 17.09 or the standard guidelines, the court shall order a hearing which shall be held in thirty days after the date of the objection, or as soon thereafter as it may be heard. The court shall issue its temporary custody and visitation order after considering the best interests of the child(ren).

17.05 Standard Guidelines Subject to Certain Court Orders

The standard guidelines are subject to any provision established by the court in the following: a temporary or permanent domestic protection order, an order arising out of an abuse or neglect proceeding, a bond condition arising out of a criminal court case, and an order in any other proceeding affecting child custody or support.

17.06 Attorney Fees and Costs

The court may order either party to pay attorney fees and costs in any action filed.

17.07 Parents Responsible for Child Support

The parents are responsible for payment of child support.

17.08 Request for Implementation of Standard Guidelines - Objection - Hearing - Order

Any parent/guardian, who is the subject of a custody, visitation or child support order, may request the court to enter an order implementing the standard visitation guidelines. If the request is made in a child support proceeding, appropriate notice and an opportunity to be heard, if not previously provided, is required. The request shall be in writing and shall include a copy of the existing order establishing custody or visitation and provide a current address of the responding party. Upon filing of the written request, the moving party shall serve a copy of the standard guidelines, together with a copy of the request and provide notice that absent an objection, the guideline visitation shall be imposed. The notice shall provide instructions as to the manner in which objections may be made. The service of such notice shall be pursuant to the Cheyenne River Sioux Tribal Code of Civil Procedure. If a party objects to the imposition of the standard guidelines within ten days of service, the court shall conduct an expedited hearing as soon as practical. Based upon the evidence presented at the hearing, the court may order the parties to abide by the standard visitation guidelines or may order any other relief as it deems appropriate.

17.09 Relocation of Custodial Parent- Reasonable Notice to Non-custodial Parent- When Notice is Required- Service of Notice - Conditions Excusing Notice

If an existing custody order or other enforceable agreement does not expressly govern the relocation of the principal residence of a child, a parent who intends to change his or her principal residence shall provide reasonable written notice by certified mail or admission of service to the other legal parent of the child. Reasonable notice is notice that is given at least forty-five days before relocation or a shorter period if reasonable under the specific facts giving rise to the relocation. Proof of the notice shall be filed with the court of record unless notice is waived by the court.

No notice need be provided pursuant to this section if:

- (1) The relocation results in the child moving closer to the non-custodial parent; or
- (2) The relocation is within the boundaries of the child's current school district; or



- (3) There is an existing valid protection order in favor of the child or the custodial parent against the non-custodial parent; or
- (4) Within the preceding twelve months, the non-relocating parent has been convicted of violation of a protection order, criminal assault, child abuse, or other domestic violence and either the child or the custodial parent was the victim of the crime or violation.

17.10 Relocation of Custodial Parent - Notice to Non-custodial Parent - Contents

The notice shall contain the following:

- (1) The address and telephone number, if known, of the new
- (2) The purpose for relocating;
- (3) Why the relocation is in the best interest of the child; and
- (4) The relocating party's proposed visitation plan for the non-relocating parent upon relocation.

17.11 Relocation of Custodial Parent - Request for Hearing - Presumption Upon Lack of Request

At the request of the non-relocating parent, made within thirty days of the notice of relocation, the court shall hold a hearing on the relocation. If no request for hearing is made within thirty days of notice, the relocation is presumed to be consented to by the non-relocating parent.

17.12 Prohibition. Revocation. or Restriction of Visitation Rights of Person Causing Conception by Rape or Incest

If it is in the best interest of the child, the court may prohibit, revoke, or restrict visitation rights to a child for any person who has caused the child to be conceived as a result of rape or incest and was convicted of such crime.

17.13 Parents Equally Entitled to Custody of Child

Subject to the court's right to award custody of the child to either parent and considering the best interest of the child, the father and the mother of any minor child are equally entitled to the child's custody.

17.14 Order for Joint Legal Custody- Factors for Court's Consideration

In any custody dispute between parents, the court may order joint legal custody so that both parents retain full parental rights and responsibilities with respect to their child and so that both parents must confer on major decisions affecting the welfare of the child. In ordering joint legal custody, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those aspects between the parties based on the best interests of the child. If it appears to the court to be in the best interests of the child, the court may order, or the parties may agree, how any such residence, education, medical and dental care, and

any other responsibilities which the court finds unique to a particular family or in the best interest of the child.

17.15 Residential Parent to Make Routine Decisions Concerning Child

During the time a child, over whom the court has ordered joint legal custody to both parents, resides with either parent, that parent shall decide all routine matters concerning the child.

17.16 Denial to Access to Certain Records and Information Pertaining to Minor Child Prohibited

Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, orthodontia, optometric, and similar health care, and school records shall be made equally available to both parents. Counseling, psychiatric, psychotherapy, and other records subject to confidentiality or privilege shall only be released in accordance with state, tribal and federal law; but, if available to one parent, shall be available to both. The parents shall make reasonable efforts to ensure that the name and address of the other parent is listed on all such records.

17.17 Written Applications to Enroll Child in Activity or Program to Provide Name and Address of Other Parent

If either parent enrolls the child in any social, beneficent, religious, or peer group activity, service, benefit, or program for which written application is required, the enrolling parent shall provide the name and address of the other parent on, or supplementary to, the application. The provisions of this section do not apply to any written application for any type of annuity or insurance.

17.18 Access to Records and Application Requirements Not Applicable to Certain Parents

The provisions of Sections 17.16 and 17.17 do not apply in any case in which the court has:

- (1) Terminated the rights of either parent; or
- (2) Restrained either parent, by court order, from contact with the child.

Moreover, the court may determine that the application of sections 17.16 and 17.17, or both, is inappropriate under the facts and circumstances of any particular case.

17.19 Power to Change Residence of Child - Restraining Power of Court

A parent entitled to the custody of a child has the right to change his residence, subject to the power of the court to restrain a change of residence if it is in the best interest of child.

17.20 Persons Other than the Parent Entitled to Seek Custody of Child - Parents Presumptive Right to Custody - Rebuttal

The court may allow any person other than the parent of a child to intervene or petition the court for custody or visitation of any child with whom he or she has served as primary caretaker, has closely bonded as a parental figure, or has otherwise formed a significant and substantial relationship. It is presumed to be in the best interest of a child to be in the

care, custody, and control of the child's parent, and the parent shall be afforded all protections provided by tribal and federal law. A parent's presumptive right to custody of his or her child may be rebutted by proof:

- (1) That the parent has abandoned or persistently neglected the child;
- (2) That the parent has forfeited or surrendered his or her parental rights over the child to any person other than the parent;
- (3) That the parent has chosen to give up his or her personal rights and responsibilities; or
- (4) That other extraordinary circumstances exist which, if custody is awarded to the parent, would result in serious detriment to the child.

17.21 Circumstances Suggesting Serious Detriment to Child

Serious detriment to a child may exist whenever there is proof of one or more of the following extraordinary circumstances:

- (1) The likelihood of serious physical or emotional harm to the child if placed in the parent's custody;
- (2) The extended, unjustifiable absence of parental custody;
- (3) The provision of the child's physical, emotional, and other needs by persons other than the parent over a significant period of time;
- (4) The existence of a bonded relationship between the child and the person other than the parent sufficient to cause significant emotional harm to the child in the event of a change in custody;
- (5) The extent of the parent's delay in seeking to reacquire custody of the child;
- (6) The demonstrated quality of the parent's commitment to raising the child;
- (7) The likely degree of stability and security in the child's future with the parent;
- (8) The extent to which the child's right to an education would be impaired while in the custody of the parent; or
- (9) Any other extraordinary circumstance that would substantially and adversely impact the welfare of the child.

17.22 Parental Rights Need Not Be Terminated if Custody Awarded to Person Other Than Parent

If the court determines that a person other than a parent should be awarded custody or visitation, the court need not terminate either parent's parental rights over the child. A judgment awarding to a person other than a parent custodial rights may award the parent visitation rights with the child.

17.23 Child Support. Parent's Duty to Provide for Child When Custody Awarded to Person Other Than Parent

If the court awards a person, other than a parent, custodial rights to a child, the court may order child support of one or both parents pursuant to the Code.

Children's Code  
Chapter XVIII  
**EXTENDED FAMILY  
VISITATION**





## CHAPTER XVIII- EXTENDED FAMILY VISITATION

### 18.01 Right of Visitation

The Children's Code may grant reasonable rights of visitation with a child to (a) grandparents, (b) siblings of majority age, or (c) uncles or aunts (collectively and separately "family members"), with or without petition by the family members, if the visitation is in the best interests of the child and either (a) the visitation would not significantly interfere with the parent/custodian-child relationship, or (b) the parent or custodian has denied or prevented the child's family members reasonable opportunity to visit the child.

### 18.02 Presumption of Best Interest of the Child

There is a presumption that visitation with family members is in the best interest of the child if a parent of that child, who is also the child, parent, or sibling of the requesting party, has died or is otherwise unavailable in the child's life.

### 18.03 Factors to be Considered by the Court

In any case where the child is a member of the Cheyenne River Sioux Tribe or eligible to become a member of the Tribe, the court shall take into consideration the unique familial relationships and values that exist in the Lakota culture when deciding whether to grant reasonable rights of visitation to a child's family members. It is intended that the court will consider at least the following factors, however, the following are only a few examples and are not intended to encompass the entire range of factors that the court should consider when making its decision:

- (1) The role of grandparents, aunts, uncles and other family members play in the *tiospaye* and the raising of Lakota children;
- (2) The amount of time necessary for a child to fully experience and learn the unique culture of the Lakota; and
- (3) The physical setting in which a child would best experience interaction with the child's family members.

### 18.04 Guardian ad Litem

In any family member visitation proceeding, the court may appoint a guardian ad litem for the child if it deems that such an appointment would be in the best interest of the child. Such appointment shall be made pursuant to Section 5.15 of the Children's Code.

***Adopted by Tribal Council on January 3, 2002.***





Children's Code  
Chapter XIX  
**APPLICATION OF THE  
INDIAN CHILD  
WELFARE ACT**





## **CHAPTER XIX - APPLICATION OF THE INDIAN CHILD WELFARE ACT**

### **19.01 Conflict with this Code.**

The Children's Court may apply the policies of the Indian Child Welfare Act, 25 U.S.C. Sections 1901 et seq. hereinafter, ICWA, where they do not conflict with the provisions of this Chapter. The procedures for state courts in the ICWA shall not apply in the Children's Court unless specifically provided for in this Code. ICWA does not apply to disputes between parents.

### **19.02 Full Faith and Credit; Conflict of Law.**

(A) Foreign court child custody orders involving a child over whom the Children's Court has jurisdiction may be recognized by the Children's Court only after a full independent review of such proceedings has determined that:

- (1) The foreign court had jurisdiction over the child; and
- (2) The provisions of the ICWA Section 1901 et seq. were properly followed; and
- (3) The foreign court proceeding does not violate the public policies of laws of the Cheyenne River Sioux Tribe; and
- (4) The foreign court issuing the order or judgment also grants comity to the orders and judgments of the Cheyenne River Sioux Tribal Court.

(B) Child custody orders by the Tribal Criminal or Civil Court shall be recognized by the Children's Court after the Court has determined that:

- (1) The Tribal Criminal or Civil Court exercised proper subject matter and personal jurisdiction over the parties; and
- (2) Due process was accorded to all interested parties participating in the proceeding.

*Amended by Resolution 323-05-CR, effective August 4, 2005.*

### **19.03 Voluntary Placement.**

Parental consent to temporary placement, adoptive placement or relinquishment of parental rights shall be filed with and approved by the Children's Court. The Court may require that the voluntary placement provisions of the ICWA Section 1913 be followed where the best interests of the child require.

### **19.04 Criteria for Children's Court Declination of Jurisdiction under ICWA; Requirement for Written Findings**

(A) The Children's Court may decline a transfer of jurisdiction under Section 1911(B) of the ICWA only after determining that:

- (1) Essential extended family or Tribal relations of the child will not be affected by the State Court proceeding; or
  - (2) If the essential extended family or Tribal relations of the child will be affected, the best interests of the child, based on other than financial considerations, in a secure, stable and loving environment outweigh the need to protect essential extended family or Tribal relations;
  - (3) That active efforts were made by officials of the State conducting the proceedings to provide remedial or rehabilitative services designed to prevent the breakup of the Indian family and that these efforts were unsuccessful.
- (B) For purposes of this Chapter, "essential extended family and Tribal relations" shall mean:
- (1) Knowledge of and access to the extended family of the natural parent(s) in nearly the same manner and frequency that would occur if the child were not placed outside the extended family or off the Reservation;
  - (2) Knowledge of membership in or rights to membership in the Tribe and knowledge of and access to information concerning Tribal values and customs or access to Reservation life itself where such access would not place an undue burden on those with whom the child is placed.
- (C) When jurisdiction is declined, the Children's Court shall file written findings with respect to subsection (A) (1), (2) and (3) with the Secretary of the Tribal Council maintaining the confidentiality of the case when necessary.
- (D) The declination of the Children's Court to take jurisdiction shall be subject to appeal.

#### 19.05 Children's Court Wardship

- (A) Any child who is a member of the Tribe or who may be eligible to become a member who is domiciled or resides upon the Reservation, and is voluntarily placed outside of the Reservation shall be made a ward of the Children's Court.
- (B) A copy of any consent executed by the parent(s) of the child shall be filed with the Children's Court.
- (C) A report on the location of the child shall be filed annually with the Children's Court by the Indian Child Welfare Advisory Board.
- (D) Wardship attaches to the child when he or she physically leaves the Reservation.

- (E) Any placement of a child over whom the Tribe has jurisdiction in violation of this Section may be invalidated upon petition to the Children's Court and the Court shall make such orders at that time as will protect the Court's wardship over the child and the child's best interests.

19.06 Indian Child Welfare Advisory Board. (Res. No. 44-89-CR)

- (A) There is hereby established an Indian Child Welfare Advisory Board which shall be composed of five (5) members appointed by the Tribal Council for a term of two years.
- (B) The duties of the Board shall be as follows:
  - (1) To advise the Children's Court on the status and disposition of cases off the Reservation involving children who are members of the Tribe or eligible to become members;
  - (2) Such other duties as the Tribal Council may assign them.



Children's Code  
Chapter XX  
**MISCELLANEOUS PROVISIONS**







## CHAPTER XX- MISCELLANEOUS PROVISIONS

### 20.01 Consolidation of Proceedings

When more than one child is involved in a home situation which may be found to constitute dependency, or when more than one child is alleged to be involved in the same delinquent act, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

### 20.02 Grounds for Re-hearing

A parent, guardian, custodian, or next friend of any child who has been adjudged delinquent, in need of supervision or dependent or any adult affected by such a judgment, may within one year petition the Court for a new hearing on the grounds that new evidence which might affect the decree has been discovered. If it appears to the Court that there is such new evidence which might affect its judgment, it shall order a new hearing and enter such judgment and make such disposition of the case as it warranted by all the facts and circumstances and the best interest of the child.

### 20.03 Records. Inspection: Penalties for Disclosure: Sealing

(A) Social, medical, psychiatric and psychological records of the Court concerning a child produced or recorded pursuant to Court Order under this Code, including preliminary inquiries, predisposition studies and probation records shall be open to inspection prior to the juvenile turning eighteen years of age only by the following:

- (1) The Judge, Juvenile Officer and Court Personnel;
- (2) Representatives of an agency having legal custody of the child;
- (3) Any other person, by order of the Court, having a legitimate non-penal interest in the particular case or the work of the Court; or pursuant to Chapter 21, section 21.05 of the Children's Code.

(B) All or any part of records or information secured from records listed in subsection (1), when presented to the Court in a proceeding under this Code, shall be made available to the parties to the proceedings and their counsel. The Court may refuse to disclose the identity of informants only after finding that such disclosure will place the informant in danger or that disclosure would not be in the best interests of the child.

(C) Except as permitted by this Section, whoever discloses, makes use of or knowingly permits the use of information derived from the records listed in subsection (A), or acquired in the course of official duties, shall be subject to a civil penalty and shall pay a fine not to exceed two hundred and fifty dollars (\$250).

(D) Children's Court Recording Tape Retention.

Tapes used to record proceedings in the Children's Court shall be retained by the Children's Court until the child reaches the age of eighteen, except for adoption proceedings. If a recorded proceeding involves more than one child, the tapes shall be retained until the youngest child reached the age of eighteen, except for any portions unrelated to the youngest child which shall be expunged by the Court.

Tapes used to record adoption proceedings under Chapter 14 shall be retained indefinitely. Upon the sealing of an adoption file, the related tapes shall be sealed with the contents of the adoption file and shall be made available only upon an order issued by the Court.

Tapes may be issued to parties of an appeal, subject to the limitations set forth in Chapter 21, Section 21.05.

(E) Expungement of Juvenile Delinquency Records

When a juvenile reaches the age of eighteen, the Children's Court shall expunge and destroy all records and files concerning all juvenile delinquency proceedings including any related social, medical or psychiatric reports in the custody of the Court. All other tribal departments with records pertaining to such delinquency proceedings shall also expunge and destroy all records, files and any references in files to juvenile delinquency proceedings. Such action shall be completed within thirty (30) days of the date the juvenile turns eighteen years of age. Any federal or state agency in possession of records, files or references in records or files to juvenile delinquency proceedings involving an action of the Cheyenne River Sioux Tribal Children's Court that operates within the boundaries of the Cheyenne River Sioux Reservation shall also expunge and destroy all juvenile delinquency records within thirty (30) days of the date the juvenile turns eighteen.

Any agency having custody of records subject to this provision of the Code or the person who is the subject of a delinquency proceeding, may apply to the Children's Court for an Order granting the retention of records subject to this provision prior to the date the person who is the subject of such records turns eighteen, provided that any records so retained are sealed and held by the Cheyenne River Sioux Tribe Children's Court and may not be produced in response to a subpoena or otherwise unless:

- (1) A motion is made by the agency in custody of the records or the person who is the subject of the records to the Children's Court for the release of such records and the Children's Court grants the motion by Order of the Court in any case in which the information is requested for a non-penal interest; or
- (2) The consent of the Cheyenne River Sioux Tribe to the release of such records is obtained in response to a subpoena issued by a Court other than the Cheyenne River Sioux Tribal Court.

*Amended by Resolution 87-03-CR, effective February 7, 2003.*

20.04 Court Costs and Expenses

- (A) Reasonable compensation of a Guardian Ad Litem shall be a charge upon the funds of the court upon certification by the Court, unless the Tribal Court appoints an individual to the permanent position of Guardian Ad Litem pursuant to Chapter 5, Section 5.15.
- (B) If, after due notice to the parent(s) or other persons legally obligated to care for and support the child, and after a hearing, the Court finds that they are financially able to pay all or part of the costs and expenses in Subsection (A), the Court shall order them to pay the costs and expenses and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the Court and remittance to those to whom compensation is due, or if costs and expenses have been paid by the Court, to the Court.

20.05 Administration of Children's Court:

All powers of Court administration vested in the Court by this Code, such as personnel matters and budgeting and expenditures, shall be implemented consistent with the requirements of "Public Law 638" and any amendments to Public Law 638-including any provision relating to Tribal Council approval of actions taken with respect to the implementation of such contracts. Personnel matters shall be implemented and administered consistent with the tribal personnel policies and procedures to the greatest extent possible consistent with this Code, unless the Court finds that manifest necessity requires an exception.



Children's Code  
Chapter XXI  
**APPEALS**





## CHAPTER XXI - APPEALS

### 21.01 Who May Appeal

Any party may appeal from a final judgment of the Children's Court to the Court of Appeals of the Cheyenne River Sioux Tribe. Appeals must be filed within thirty **(30)** days after entry of the order appealed by filing a brief notice of appeal with the clerk of the Court of Appeals with a copy of the order attached. Notice of appeal shall be served upon other parties to the action by certified mail. The appeal shall be heard by the Court of Appeals based on the files, records and transcript of the Children's Court proceeding. The name of the child shall not appear on the record on appeal. The case number from the Children's Court shall be used on all documents filed with and issued by the Court of Appeals.

### 21.02 Stay of Judgment

The appeal to the Court of Appeals shall not automatically stay the judgment appealed from, but the Court of Appeals may order a stay upon an application consistent with the Children's Code, if suitable provision is made for the care and custody of the child.

### 21.03 Early Hearing in Case of Custodial Decision

If the order appealed from grants the legal custody of the child to or withholds it from one or more parties to the appeal, the appeal shall be heard at the earliest practical time.

### 21.04 Nature of Appellate Decision

The Court of Appeals shall affirm the Children's Court's judgment or it shall modify the Court's judgment and remand the child to the jurisdiction of the Children's Court for disposition consistent with the decision of the Court of Appeals.

### 21.05 Transcripts

A person who has filed a notice of appeal shall be furnished with a free transcript of the proceeding in Children's Court upon the filing of an affidavit that the person who is legally responsible for the care and support of the child is not able to pay for the cost thereof.

Any transcripts provided to an individual or entity under this Section shall be used only for the purposes of appeal and shall be returned to the Court promptly at the conclusions of the appeal. Use of transcripts provided under this section for any other purpose, photocopying of any confidential materials, or divulgence of any confidential information in violation of this Code shall be punishable by civil contempt.





Children's Code  
Chapter XXII  
**REPEALER**





## **CHAPTER XXII - REPEALER**

The following sections of the Cheyenne River Sioux Tribe Law and Order code are hereby repealed, as of the effective date of this Code, to the extent that they are inconsistent with or in conflict with, or are contrary to the spirit and/or purpose of this Children's Code:

Title V of the Law and Order Code: The Cheyenne River Sioux Tribal Juvenile Code.

Title VIII, Chapter V of the Law and Order Code: Cheyenne River Sioux Tribal Domestic Relations Code- Adoption.



Children's Code  
Chapter XXIII  
**EFFECTIVE DATE**





### **CHAPTER XXIII-EFFECTIVE DATE**

This Code shall take effect on June 12, 2011 and shall govern all cases pending in Children's Court on that date unless the Court finds that manifest injustice would result from immediate application of this Code to a pending case. No such exceptions shall apply to cases initiated on or after June 12, 2011.





Children's Code  
APPENDIX A  
**FOSTER CARE  
REGULATIONS**





## CERTIFICATION

### APPENDIX A-FOSTER CARE REGULATIONS

#### CHAPTER I - GENERAL PROVISIONS

1.01 Purpose and Policy

The purposes of the Foster Care Regulations is to protect the health, safety and well-being of children placed in foster homes by licensing foster parents and their homes; to ensure that foster home placements continue to enhance the children's culture, religion, family and extended family ties, and to provide quality care and services for the children's growth and development.

It is the policy of the Cheyenne River Sioux Tribe to preserve and restore the unity of the family, to provide permanency in children's lives, and to ensure the continuity of our children's culture, spiritual values, ties to the *tiospaye* or family and extended family, and ties to the rest of the tribal community.

1.02 Authority

Pursuant to the Constitution of the Cheyenne River Sioux Tribe, Article IV, Sections (a), (t), (k), (o), and (p), the Cheyenne River Sioux Tribal Council has been granted the authority to establish standards for foster home placement of children.

1.03 Effective Date

These regulations are to become effective thirty days from passage by the Tribal Council.

1.04 Severability

If any provision of these regulations or the application of any provision of these regulations to any person or circumstance is held invalid, the remainder of these regulations shall not be affected thereby.

1.05 Encodation

These Regulations shall be encoded as an appendix to the Cheyenne River Sioux Tribe's Children's Code.

1.06 Citation

These Regulations shall be cited as Cheyenne River Sioux Tribe's Foster Care Regulations.

1.07 Superceder

Upon these regulations becoming effective, they supersede any prior conflicting laws and regulations of the Cheyenne River Sioux Tribe.

## CHAPTER II - DEFINITIONS

2.01 Basic Foster Care Home

A licensed foster care home suitable to provide care and maintenance of not more than six (6) children, in addition to current family members under the age of eighteen (18), on a short-term, long-term, emergency, or respite foster care basis. Exceptions in the maximum number of children in foster care allowable may be made in cases in which siblings are involved.

2.02 Case Worker

The social worker responsible for a case.

2.03 Central Registry

The registries of all child abuse and neglect reports that the Cheyenne River Sioux Tribe accesses in its investigation of applicants to become licensed Foster Homes.

2.04 Child in Foster Care

An Indian child placed in a foster care home.

2.05 Children's Court

The Children's Court of the Cheyenne River Sioux Tribe.

2.06 Division

The Department of Human Services, Child Protection Services Division, of the Cheyenne River Sioux Tribe.

2.07 Emergency Foster Care Home

A licensed foster care home suitable to provide care and supervision of a child who has been removed from his or her home as a result of a crisis or for any reason that requires sudden removal. Foster parents that take children under these circumstances are willing to be contacted at any hour, on any day and are able to take the children for temporary placement in their homes.

2.08 Extended Family

Any person related by blood or marriage to the family of the child or any individual who is viewed by the family as a relative in accordance with the customs of the Cheyenne River Sioux Tribe.

2.09 Foster Care

A social service of the Division, for a planned period, which provides substitute care in a private family home for a child when the child's own immediate family cannot care for such child for a temporary or extended period of time.

2.10 Foster Care Home

A private family home maintained by an adult individual that receives and provides for the care and supervision of a child in foster care, and is licensed by the Division.

- 2.11 Foster Care Placement  
The process by which the Division locates a suitable foster care home for a particular child.
- 2.12 Foster Parent  
An adult individual who provides the care and maintenance for a child in foster care placed in his or her home, and who is licensed by the Division.
- 2.13 Foster Care Registry  
The records maintained by the Division of all foster homes licensed or utilized by the Division.
- 2.14 Foster Care Worker  
A social worker of the Division who is responsible for the foster care placement of children and for the coordination of services available to families.
- 2.15 Home Evaluation  
A process by which the Division may assess a family and home by interviews, home visits, references and background checks to determine eligibility as a foster care home.
- 2.16 Indian Child  
A person under the age of eighteen (18) who is a member of or eligible to become a member of a federally recognized Indian tribe and lives on the Cheyenne River Sioux Reservation.
- 2.17 Legal Guardian  
An individual designated by the Tribal Court to accept legal responsibility for a minor child.
- 2.18 License  
The official written document issued by the Division to an adult individual allowing him or her to maintain a basic, Specialized, therapeutic, respite or emergency foster care home.
- 2.19 Licensee  
An adult individual who has been issued a license by the Division.
- 2.20 Licensing Social Worker  
A Social Worker employed with the Cheyenne River Sioux Tribe's Department of Social Services, Division of Child Protection who has been assigned the responsibilities of screening, licensing, and supervising Foster Care Homes. It shall include persons temporarily assigned these duties in the absence of the usual Licensing Social Worker, or if no such person is assigned these duties at a particular time then it shall also include the Director of Social Workers.

2.21 Pre-adoptive Family Home

A licensee's family home suitable to provide care to children whose permanency plan is adoption with the family.

2.22 Respite Foster Care Home

A licensed foster care home suitable to provide care to children on a temporary basis while the regular, Specialized or therapeutic licensed foster parent is taking a break.

2.23 Specialized Foster Care Home

A licensed foster care home suitable to provide care and maintenance of not more than four (4) children, in addition to current family members under the age of eighteen (18), who require specialized care for physical, mental, or emotional reasons, or who have been adjudicated as delinquent. Exceptions in the maximum number of children in foster care allowable may be made in cases in which siblings are involved.

2.24 Therapeutic Foster Care Home

A licensed foster care home suitable to provide care and maintenance of not more than two (2) children, in addition to current family members under the age of eighteen (18), who require therapeutic care for severe emotional and/or behavioral problems, or for severe mental illness. Exceptions in the maximum number of children in foster care allowable may be made in cases in which siblings are involved.

2.25 Treatment

Treatment may include the coordination of services, such as parenting classes, counseling services, and other services or activities.

### **CHAPTER III - LICENSING**

3.01 Types of Licenses

The Division is authorized to issue Basic, Specialized, Therapeutic, Respite, Emergency and Pre-Adoptive licenses as defined above in Chapter II. All licenses are nontransferable, and apply only to the licensee and the location and purpose stated on the license. A licensee shall keep the license available for inspection. A Basic, Specialized, Therapeutic, Respite, Emergency, or Pre-adoptive license shall be issued for a period of one year, and shall be renewable as provided by Section 3.03 below.

The Division is also authorized to issue a Provisional License. A license issued by the Division to an adult individual until he or she complies with all requirements of the license for which he or she is applying. The provisional license is issued for six (6) months and can be issued only once. If the licensee is unable to fulfill the requirements within the six month provisional period, the Division will discontinue utilization of the home as a foster care home. The Children's Safety may not be in jeopardy because of noncompliance.

The Division may place a license previously authorized on Probationary Status if a foster care home already licensed ceases to be in compliance with the requirements of the applicable license. Probationary status may continue for a period not to exceed ninety

(90) days. The probationary status may not be continued beyond the original ninety (90) days. If the licensee is unable to comply within ninety (90) days, then the Division will discontinue utilization of the home as a foster care home. The Children's Safety may not be in jeopardy because of noncompliance.

3.02 Procedures for Obtaining a License

(A) Application

An individual desiring to maintain a foster care home shall complete the Application for Foster Care Home and submit it to the Division.

(B) Consultation

Upon submission of an application, the Division shall make consultation available to applicants. The Division shall provide the knowledge and expertise of its staff and shall share referral services when appropriate with the purpose of assisting an applicant in meeting the licensing requirements. The Division also shall inform the applicant of all requirements to obtain a license.

(C) Licensing Evaluation

Upon receipt of the application, a foster care worker will conduct a licensing evaluation to determine whether the applicant and his or her home meet the licensing requirements as set forth in these regulations. This evaluation will include the following:

- (I) The applicant must complete the form for the Central Registry Screening for possible child abuse or neglect. The foster care worker will submit this form to the Division of Criminal Investigation. Clearance must be received by the Division before it will issue a license.
- (2) The foster care worker will submit the form for Request for Criminal History Record to the Tribal Police Department. All applicants and members of the household, eighteen (18) years of age or older, must be fingerprinted, and the fingerprints submitted to for a check of the records from the time applicants and members of the household reached age eighteen (18):
  - (a) The Tribal Police Department for a tribal, state and/or federal National Crime Information Center records check; and
  - (b) The State Department of Law Enforcement for a statewide records check; and
  - (c) The State of South Dakota Department of Social Services Central Registry; and
  - (d) The Division of Criminal Investigation; and

- (e) The Tribal Police Department of any other reservation where the applicant or household member of the applicant has been a resident.

Applicants are not eligible for licenses if they or a member of their household has a substantial criminal or civil offense record, or if they or a member of their household has ever been convicted of, pled guilty or nolo contendere to any Sex Crimes, an Crime of Domestic Violence, any Crime involving firearms or any Crime involving harm to children, including Neglect or Child Pornography, or if any social service agency has substantiated an allegation of child abuse or neglect.

A substantial criminal record shall be defined as a criminal record which raises serious doubts as to the suitability of the applicant, or household member of the applicant, to care for or be trusted around minor children. Any conviction for a felony, Class A offense under the Cheyenne River Sioux Tribe's law and Order Code, or any offense that would be a Class A offense under the Cheyenne River Sioux Tribe's Law and Order Code if it occurred in Cheyenne River Sioux Tribal Court must automatically disqualify an applicant if it has occurred within the past ten years, or if it involved violence, threat of violence, sexual offense of any kind, or any harm to children.

Convictions for bad checks, DUI, underage consumption, disorderly conduct, or other alcohol related offense, class B or C marijuana offense, minor theft, and similar or related offenses may be considered as part of the overall criminal record, but shall not disqualify an otherwise eligible applicant by themselves if such conviction(s) are over ten years old.

Any Physical Assault or Battery, or any Alcohol or drug related offense of any kind must automatically disqualify an applicant for a period of at least five years from the date of the conviction.

- (3) The foster care worker shall request an order from the Children's Court to get access to any records regarding the criminal history and abuse or neglect history of all children residing in the home of the applicant or licensee. Upon receiving the order, the foster care worker shall submit a Request for Criminal History Record form to the Tribal Police Department and the National Crime Information Center.
- (4) A foster care worker shall conduct a home evaluation of the applicant. The home evaluation shall include:
  - (a) A determination of the maximum number of children in foster care that the applicant is capable of taking into his or her home, but no more than six (6) children, in addition to the applicant's children,



under age eighteen (18), shall reside in the applicant's home. Exceptions in the maximum number of children in foster care allowable may be made in cases in which siblings are involved.

- (b) A determination of whether the applicant's home should be licensed as a basic, specialized, therapeutic, respite or emergency foster care home; a home may be eligible for more than one kind of license;
- (c) At least one personal interview with the applicant and all members of his or her household;
- (d) Three (3) personal reference checks by written correspondence as to the applicant's character and ability to provide quality child care services. The applicant shall list these references on the Application form. At least two (2) of the references shall be non-relatives.

(5) Training

All foster parents must receive training. The training will include, but not be limited to, the following:

- (a) Pre-placement Training  
All applicants shall complete four (4) hours of pre-placement training, provided by the Division, which will provide an overall orientation on the CRST foster care program. This training is required before a license will be issued.
- (b) Continuing Education  
All foster parents shall complete six (6) hours of continuing education each year, provided by the Division, after having obtained a license.
- (c) All applicants for Specialized licenses shall complete an additional sixteen (16) hours of training, in addition to the continuing education hours, related to meeting the needs of developmentally disabled and medically fragile children.
- (d) All applicants for therapeutic licenses shall complete an additional sixteen (16) hours of training, in addition to the continuing education hours, related to meeting the needs of severely emotionally disturbed and/or mentally ill children.
- (e) All foster parents must have twenty-four (24) hours of foster parent training prior to issue of the license. It is desirable that both parents in the home, if applicable, complete the training. All adults

residing in the home must complete pre-placement training under subparts (a) and (e). At least one adult shall complete training required under subparts (c) and (d) if the application is for a Specialized or Therapeutic License.

- (6) The foster care worker shall ensure all documentation required for licensure is current and on file.
- (7) Notice of Decision  
The Division shall complete its licensing evaluation within sixty (60) days of receipt of an Application complete with all necessary attachments. The Division shall then notify the applicant in writing of its decision to grant or deny a license to the applicant within ten (10) days of completion of the evaluation. If the license is denied, the written notice shall state the reasons for denial.

Request for a Fair Hearing may be done either orally or in writing, and must be made within thirty (30) days after receipt of notice of denial. The Division shall be notified when an Applicant requests a Fair Hearing. The Fair Hearing shall be conducted according to the provisions of Section 3.07 as set out below.

### 3.03 Procedures for Re-licensing

- (A) The foster care worker shall notify licensees in writing sixty (60) days prior to the expiration of licenses informing them of actions and documents required for re-licensure.
- (B) License renewal is not automatic. It requires recertification for license renewal and a re-evaluation of services that the family provided during the current licensure period.
- (C) Recertification for license renewal shall be made in the same manner as the original application, and the same procedures shall be followed.
- (D) A licensee must reapply:
  - (1) Thirty days to sixty days prior to the expiration date of the current license; or
  - (2) If the marital status of the licensee has changed; or
  - (3) If there is a change in the location of the licensee's home; or
  - (4) If the household composition has changed.

- (E) If the license expires and the family does not meet the requirements for relicensure, the home cannot be utilized, unless the Division issues a provisional license.

### 3.04 Licensing Requirements

Adult individuals desiring to be licensed to provide foster care must comply with the following requirements:

- (A) Home Environment

The home of the applicant shall conform to a family home setting and environment, free from violence or verbal abuse.

- (B) Age

The applicant must be at least eighteen (18) years of age.

- (C) Income

The applicant must have sufficient income to maintain the family unit without relying on foster care reimbursement. This, however, does not automatically disqualify applicants whose income is low income or very low income under state, tribal, or federal standards.

- (D) Child Care Arrangements

The Division must approve any plan for the supervision and care of children in foster care by persons other than the foster parent. The foster care worker shall ensure necessary information and documents are on file regarding caretakers who are not the foster parents, including an interview of the caretakers. No one other than the foster parent or a child caretaker approved by the Division may look after children in foster care. Currently, the Division does not provide subsidies for child care arrangements.

- (E) Character

- (1) Foster parents must demonstrate an understanding and an ability to handle the physical, mental and emotional needs of children.
- (2) Foster parents must possess a wholesome regard toward and an understanding of health, nutrition, discipline, education, sex education, and other experiences that a child may have or may need assistance and guidance with.
- (3) Foster parents must demonstrate a willingness to show respect for the foster child's individual cultural heritage.
- (4) Foster parents shall participate in training, as set forth in these regulations.

- (5) Foster parents must possess the ability to work effectively with the Division and other specialists involved in the planning and treatment of children in foster care.
- (6) Foster parents licensed for Specialized or Therapeutic foster care, in addition to the requirements herein, shall have the necessary patience, understanding, and acceptance to supervise and motivate children who are physically handicapped, developmentally disabled, emotionally disturbed, mentally ill, or children who are adjudicated as delinquent, and the ability to meet the needs of their children.

(F) Health and Medical Records

- (1) The applicant must submit on an annual basis a physical examination report for all members of his or her household over age eighteen (18) years of age on prescribed forms to the Division. If the home is licensed as a pre-adoptive home, a physical examination is required every three (3) years.
- (2) A licensed medical doctor must certify on the prescribed form that the health of the applicant and members of his or her household over age eighteen (18) are adequate for the expected child care tasks.
- (3) The applicant must furnish the Division with proof of current immunizations for all members of the household who are under eighteen (18) years of age.

(G) Location

The home must be in a location accessible by road that is passable twelve (12) months of the year.

(H) Building

The home must be:

- (1) In good repair, according to building codes for CRST standards; and
- (2) Large enough to prevent crowding; and
- (3) In a safe and sanitary condition; and
- (4) Free of rodents and insects, and radon gas; and
- (5) A barrier-free environment if it is licensed as a Specialized or therapeutic foster care home.

(I) Pets

- (1) Dogs and cats must have the necessary rabies shots, as determined by a licensed veterinarian. The applicant must provide documentation completed by a licensed veterinarian that these pets have had the necessary rabies shots.
- (2) Pets must be kept in good health and not be hazardous or frightening to the child in foster care.

(J) Beds and Bedding

Each child in foster care shall have his or her own bed, equipped with clean mattress, sheets, pillow with case and suitable blankets, and a non-toxic mattress with a waterproof cover.

(K) Storage and Access

Each child in foster care shall have a place to store his or her clothing and personal belongings, and shall have access to their possessions.

(L) Sleeping Arrangements

- (1) A child in foster care over the age of eight (8) years old shall not share a room with a child of the opposite sex. Applicants with homes that do not have enough rooms are not automatically denied a license. Sleeping arrangements used in homes without enough rooms to meet this part shall be appropriate to prevent any potential for sexual abuse and sexual contact between members of the household and a child in foster care.
- (2) A child in foster care shall not share a bedroom with an adult, except in the case of a child whose needs require this arrangement.
- (3) No child in foster care, or other child in the household, or foster parent shall be displaced and made to sleep in a room or in a separate building not commonly used for sleeping purposes.

(M) Sanitary Home

- (1) A home must be kept clean and sanitary, especially toilet and bath facilities and dining and kitchen areas.
- (2) Bathing and other personal hygiene practices shall be applied in the home.
- (3) Adequate and safe provisions shall be made for storage of food, supplies, dishes, cooking utensils, and other kitchen items.
- (4) The home shall have a continuous supply of clean drinking water. If the water is not from Tri-County or city water supply, the foster

parents should have the water tested and approved by local health officials.

(N) Poison

Poisons, cleaning agents, flammable products and toxic substances shall be stored in such place and manner that they are not accessible to small children.

(O) Medicine

Medicines shall be stored in such place and manner that they are not accessible to small children. If prescription medication must be administered to a child in foster care the foster parent shall administer or supervise the administration of the medication. If necessary, the school nurse shall be informed to administer or supervise the medication during school hours. All other medication, such as cough medicine and aspirin, shall be administered or supervised by the foster parent.

(P) Firearms and Ammunition

Firearms and ammunition shall be stored in separate locked places. Firearms shall be stored unloaded.

(Q) Communications

It is desirable that foster care homes have a telephone for emergency purposes. If the home has no telephone, the foster parent must establish and provide to the Division a plan that provides a reliable and reasonable means of communication for emergency purposes.

(R) Fire Safety

- (1) Foster parents must have a fire plan that they go over with the child in foster care, and periodic fire drills to make sure the child understands the procedures.
- (2) The home shall have a portable chemical fire extinguisher installed and maintained.
- (3) The home shall be equipped with a battery-operated, centrally located smoke detector which is in operation at all times.
- (4) If the child in foster care is under the age of eight (8), the home shall have safety caps on all unused electrical outlets throughout the entire home.
- (5) Every precaution must be observed for the safe maintenance of wood burning stoves.

- (6) Every foster home, including a mobile home, must have unrestricted two avenues of exit in case of fire. If all children placed in the home are at least eight (8) years old and able bodied, then one door, and one window that is easily opened and large enough for easy human exit shall be sufficient. If any child placed in the home is under eight years of age, or suffers any disability that would make exit through a window difficult, then the foster home must have two doors.

(S) Vehicles

- (1) Vehicles used for transporting children in foster care shall be kept in a safe and reliable condition.
- (2) Drivers of vehicles used to transport children in foster care shall have valid driver's licenses at all times.
- (3) Approved child and passenger safety restraints shall be used for children in foster care. Any child in foster care four (4) years of age and under must be restrained in a child safety seat. Any child in foster care five (5) years of age and over shall wear safety belts while riding in a vehicle.
- (4) Foster parents shall not allow a foster child to operate a vehicle unless the child is licensed and insured, and has had driver's education training.

(T) Insurance

- (1) It is recommended that foster parents secure and maintain insurance coverage to cover acts of all children in the home and to protect against damage to or loss of buildings and other property.
- (2) Foster parents are required to secure and maintain valid liability insurance on all vehicles used to transport children in foster care. The foster care worker shall have on file a copy of proof of insurance.

(U) Education

- (1) Foster parents shall enroll each child of school age in school.
- (2) Foster parents shall cooperate with the Division and shall take part in the selection and arrangements for educational programs appropriate for the child's age abilities and case plan.
- (3) Foster parents shall plan with school personnel when there are any problems with the child in school, but shall still report to the

Division serious situations which may require Division involvement.

(V) Recreation/Community

- (1) Foster parents shall provide opportunities for recreational activities which are appropriate to the age and abilities of the child.
- (2) Foster parents shall encourage the children to take part in community services and activities both with the family and on their own.

3.05 Waivers

(A) An applicant or licensee may request a waiver on any of the provisions contained in these regulations. The request must be made in writing upon consultation and approval of the foster care worker, and submitted to the Division director. The Division director shall make a decision whether to grant the waiver request within ten (10) business days of receiving the waiver request. This decision is final. A waiver request must include:

- (1) Time frames in meeting the provisions; and
- (2) Alternative ways of meeting the provisions; and
- (3) Social, cultural and traditional considerations in meeting the provisions.

(B) Criteria

- (1) No waiver may be granted if it would allow a child to be placed in immediate danger.
- (2) A waiver may be granted if the applicant or licensee:
  - (a) Appears to be attempting, in good faith, to meet the requirements of the Basic, Specialized, Therapeutic, Respite, Emergency, or Pre-adoptive License; and
  - (b) The time frames submitted with the application, as required in Section 3.07(A) appear reasonably calculated to meet the provisions; and
  - (c) The placement will not place the child in danger; and
  - (d) The placement is otherwise socially and culturally appropriate.

3.06 Denial, Revocation or Modification of a License

- (A) The foster care worker may deny or revoke a license when:
- (1) The applicant or licensee does not comply with the provisions of these regulations, and no waiver has been obtained; or



- (2) There is a material misrepresentation by the applicant or licensee made to the Division relating to such person's qualifications, experiences or performance of responsibilities; or
  - (3) The applicant or licensee does not meet the physical and/or emotional needs of the child in foster care; or
  - (4) The foster care worker may issue a provisional license for a period of ninety (90) days to an applicant who has not yet met all the requirements of a particular license.
- (B) The foster care worker shall modify a Basic, Specialized or Therapeutic license to a Probationary license when a licensee is temporarily unable to comply with the provisions of these regulations.
- (1) The child in foster care may remain in the home during the probationary period on the condition that the noncompliance does not present an immediate threat to the health and well-being of the child in foster care.
  - (2) The foster care worker, in collaboration with the foster parent, must develop a written plan, with specific time frames, to correct the areas of noncompliance within the probationary period.
  - (3) The foster care worker shall recall the existing license and issue a probationary license of a period not to exceed ninety (90) days.
  - (4) The probationary license shall state the conditions of the probation.
  - (5) By the expiration of the ninety (90) day probationary license, the Division must either reinstate the original license to the end of its original term or revoke the license.
- (C) Notice Requirement
- (1) The foster care worker shall provide written notice to the applicant or licensee of its decision to deny, revoke, or modify a license. The written notice shall be sent by certified mail, return receipt requested.
  - (2) The written notice shall state the reasons for the foster care worker's decision with references to specific provisions of these regulations.
  - (3) The written notice shall notify the applicant or licensee of their rights to a fair hearing, as provided in these regulations.

### 3.07 Appeals Procedures

- (A) The applicant or licensee may appeal the foster care worker's decision to deny, revoke, or modify a license within ten (10) business days from receipt of the written notice from the Division.
- (B) The appeal shall be in writing and addressed to the Licensing Worker, CRST Child Protection Services, Department of Human Services, P.O. Box 360, Eagle Butte, SD 57625.
- (C) The decision of the Division shall be final, if a timely appeal is not made.
- (D) The Licensing Worker of the tribal Department of Human Services shall appoint three members from the Foster Care Review Board, referred to in Chapter IV of these regulations, to hear the appeal.
  - (1) Board members appointed to hear the appeal shall be representatives of the following groups:
    - (a) One foster parent;
    - (b) One social worker;
    - (c) One health professional.
  - (2) Board members appointed to hear the appeal shall not be related to any of the parties involved in the case, nor have an interest in its outcome.
- (E) Hearing
  - (1) A hearing shall be set within fifteen (15) business days of the date the request for appeal is received by the Licensing Worker. The Licensing Worker shall send the notice of hearing by certified mail, return receipt requested, which shall state:
    - (a) The date, time and location of the hearing;
    - (b) A statement of the issue(s);
    - (c) The applicant's or licensee's right to be present at the hearing, to present evidence, to cross-examine witnesses, and to be represented by counsel.
  - (2) These Board members shall select a chairperson, who shall preside at the hearing.
  - (3) The hearing shall be recorded on tape and a written transcript prepared, upon request of a party to the proceeding. The requesting party shall pay for the cost of the transcripts.

- (4) The chairperson, at the beginning of the hearing, shall advise each party of his or her right to be present at the hearing, to present evidence, to cross-examine witnesses, and to be represented by counsel.
- (5) The Division shall be given the opportunity first to present relevant evidence to justify its decision, and an opportunity to present its case. After this presentation, the applicant or licensee shall do the same. The Division shall be given the opportunity to rebut the evidence presented by the applicant or licensee; and the applicant or licensee shall be given the opportunity to respond to any rebuttal by the Division.
- (6) Witnesses shall be excluded from the hearing room, except during the presentation of their testimony.
- (7) Upon presentation of all evidence by the parties, the Board members, in closed session, shall make findings of fact based upon the evidence presented during the hearing to support its decision. The decision of the Board members must be supported by substantial evidence. The hearing shall be re-convened, and the Board members shall announce their decision and the reasons for it.

## **CHAPTER IV - REGULATIONS GOVERNING FOSTER CARE PLACEMENTS**

### **4.01 Responsibilities of the Division**

#### **(A) Foster Care Placement Agreement**

Upon the placement of a child with a foster parent, a Foster Care Placement Agreement will be issued and signed by foster care worker, the Division director and the foster parent(s).

#### **(B) Foster Care Training**

The Division shall provide training, in accordance with these regulations. If necessary, the Division should make appropriate alternative child care arrangements for children to enable foster parents to attend training sessions.

#### **(C) Foster Care Plan for the Child in Foster Care**

The Licensing Worker shall develop a casework plan for the child in foster care within ten (10) days following placement. The plan shall include, at a minimum:

- (1) A permanent plan for the child; and
- (2) A summarization of the case; and
- (3) An assessment of the case; and
- (4) Short-term goals; and

(5) Long-term goals.

(D) Foster Care Plan for the Foster Parent

The Licensing Worker shall verify that the foster parent has obtained a license of the appropriate kind, and, if necessary, shall include any actions necessary to maintain the license in the plan. The plan shall include, but not be limited to, the following:

- (1) The expected length of placement; and
- (2) Post-placement plans; and
- (3) Parental consent, whenever applicable, for any medical care and for transportation.

(E) Treatment Plan

The case worker shall develop a treatment plan for the birth/adoptive parent(s). The treatment plan shall include, but not be limited to, the following:

- (1) An assessment of the precipitating circumstances which necessitated the placement; and
- (2) A treatment plan with specific time intervals to resolve the identified problems of the family and the child; and
- (3) The specific objectives to be achieved, both short term and long term; and
- (4) The services to be provided by the Division.

(F) Monitoring and Supervision

- (1) The Licensing Worker shall identify in writing the case worker who will be responsible for the supervision of the child in foster care, and the child's casework plan.
- (2) The Licensing Worker shall make at least one (1) field visit per month to the child's foster care placement to ensure the foster care home is still in compliance and to assist the foster parent with any concerns or needs.
- (3) The Licensing Worker, the birth/adoptive parent(s), the child, and foster parent shall meet to review the status of the casework plan and discuss progress at least every three (3) months.
- (4) The Licensing Worker shall monitor all foster care homes to determine compliance by the licensee of these regulations. The Division shall

conduct periodic inspections of licensed foster care homes at least every six (6) months.

- (5) The Licensing Worker shall report to the Children's Court on the status of each child in foster care placement at least every six (6) months.

(G) Visits

The Licensing Worker shall arrange visits between the child in foster care, birth/adoptive parent(s) and extended family members, unless there are documented reasons indicating that it is not in the best interest of the child. Foster parents may not arrange visitation directly with birth/adoptive parents or relatives, but rather should refer any requests for visitation to the case worker.

(H) Enrollment

The case worker shall take all steps necessary to ensure that all children in foster care eligible for enrollment with the Cheyenne River Sioux Tribe are enrolled as tribal members, absent objection of the birth/adoptive parent(s), or, if parental rights are terminated, then to take action to enroll eligible children.

(I) Records

- (1) The Division shall maintain a confidential record for each child in foster care.
- (2) The record of each child shall contain copies of birth certificates, tribal enrollment verification, social security number, and information regarding the child's social, education, medical (including annual physical examination), and genealogical history, legal documents and case service plans. Any reports on diagnosis and evaluations for special needs or problems also shall be included.
- (3) The child's case record shall include a written record of expenditures for clothing and personal allowance.
- (4) The child's case record shall show the birth/adoptive parent(s) and family involvement, including services utilized and problems encountered during placement.
- (5) The Division shall maintain the Foster Care Registry, as defined in Section 2.13 above.

(J) Medical Appointments and Transportation

The Licensing Worker, during regular working hours, shall take responsibility for:

- (1) Scheduling and transporting the child in foster care to medical appointments when the foster parent is unable to do so.

- (2) Scheduling and transporting the child in foster care to counseling and evaluation sessions when the foster parent is unable to do so.
- (3) Transporting the child in foster care to and from group home placements, treatment, and like matters.

(K) Financial

- (1) The Licensing Worker shall provide reimbursement request forms to the foster parent at initial placement of the child. The foster parent is to fill out and sign the reimbursement request forms and submit them to the foster care worker at the end of each month. The foster care worker will then classify the request from as either approved, disapproved or adjusted. Then the foster care worker will submit the form to the Division to be processed for payment. Reimbursements are usually processed by the 15<sup>th</sup> of each month.
- (2) The Licensing Worker, in collaboration with the Division director, shall establish and maintain the reimbursement rates.

(L) Funds

- (1) The Division shall provide the funding necessary to establish and implement these regulations, considering and complying with budgetary constraints.
- (2) The Division shall work with federal governmental agencies, whenever applicable, on managing and allocating any funds distributed from the federal government to the Tribe for foster care services.
- (3) The Division shall work with State of South Dakota agencies, if applicable, on managing and allocating any funds distributed from the State to the Tribe for foster care services.

4.02 Responsibilities of Foster Parents

- (A) Guidance and Supervision. The foster parent shall provide care, training, guidance and supervision to the children in foster care to ensure the child's wholesome mental, spiritual, physical and educational developmental needs are met.
- (B) Permanency Planning Participation. The foster parent shall actively participate in the permanency plan for the children in foster care.

- (C) Maintenance of Family Ties. The foster parent shall make every reasonable effort to comply with all visitation ordered by the Division or by the Tribal Court. Any problems encountered in visitation should be immediately reported to the Licensing Worker.
- (C) Trips. The foster parent must obtain written permission from the Tribal Court for activities where a child leaves the jurisdiction of the Cheyenne River Sioux Tribe for a period of three (3) days or more. Information regarding the purpose of the trip, destination, and emergency contact number shall be provided to the Division.
- (D) Health Care. The foster parent, in conjunction with the Division, shall ensure that the child in foster care has a medical examination at least once a year, and dental examinations at least once a year. The foster parent shall submit to the Division verification of these examinations.
- (E) Hair. The foster parent shall not alter the hairstyle of the child without the permission of the Division. The Division shall consult with the Birth/Adoptive Parents.
- (F) Food and Nutrition. The foster parent shall ensure the child in foster care receives at least three (3) nutritionally adequate meals a day at regular intervals that meet Recommended Daily Allowances.
- (G) Clothing and Personal Items.
  - (1) The clothing and personal allowances provided by the Division shall be used only for the child in foster care. The foster parent shall maintain a record and copies of clothing receipts, which shall be submitted with requests for payments.
  - (2) The foster parent shall return all clothing that the child entered foster care with, and also all other clothing purchases with the allowance the child gets each month.
- (H) Religious and Cultural Practices
  - (1) The religion of the child in foster care shall be governed by the choice of the birth/adoptive parent(s) or legal guardian(s); or the choice of the child if such child is deemed to have the capacity to knowingly make such a decision.
  - (2) The foster parent shall make no changes in the religion of a child in foster care without approval of the birth/adoptive parents and the Division.
  - (3) The foster parent shall encourage a child in foster care to attend and participate in the religion and culture of his or her choice.

- (4) The foster parent shall respect the religious and cultural beliefs and practices of the children in foster care.

(J) Discipline

- (1) The foster parent shall train and discipline the child in foster care with kindness and understanding.
- (2) The foster parent shall not allow the child in foster care to be subjected to verbal abuse, derogatory remarks about himself or herself or his or her birth/adoptive parents or relatives, or threats to expel the child from the foster care home.
- (3) The foster parent shall not deprive the child in foster care of meals, mail, possessions, or family visits as a method of discipline or reward.
- (4) The foster parent shall not practice corporal punishment against a child nor any other form of punishment that is humiliating or degrading to a child.
- (5) The foster parent shall not allow a child or group of children to punish another child as a form of discipline.
- (6) Foster parents shall not punish children for bed wetting or actions in regard to toilet training.

(K) Restraint

When a child's actions are physically dangerous to another child, himself or herself, or the foster parent, reasonably protective and defensive restraint may be used if necessary. Such actions must be reported to the Division within twenty-four (24) hours.

(L) Exploitation of Children

- (1) Tasks and household assignments shall be appropriate to the age and abilities of the children in foster care, and shall not interfere with school, health, or necessary recreation.
- (2) Children in foster care shall not be identified by name, by revealing description, and must not be photographed full face for any type of publication or broadcast media, without authorization of the Division.

(M) Reimbursement. The foster parent will fill out and sign the reimbursement request form and submit it to the licensing care worker at the end of each month to receive reimbursement, along with receipts for purchase of clothing.

(N) Records. The foster parents shall maintain records in accordance with the agency procedure for children placed with the family. The records shall include:



- (1) Health Records:
  - (a) Name, address, and telephone number of assigned worker to contract in case of emergency.
  - (b) A record of the child's medical and dental appointments.
  - (c) Any information or counseling received by the child.
- (2) Progress Reports:
  - (a) School Records
  - (b) School Pictures
  - (c) Record of the child's membership, activities, and participation in extra-curricular activities.
- (3) Daily Log. The foster parents shall maintain a daily log of significant occurrences, including any events causing any injury, bruising or scarring of the child.

## **Chapter V - REIMBURSEMENT**

- 5.01 Foster parents are paid a standard daily rate for children in their foster care. It is not intended as family income. Reimbursement is processed at the end of each month.
- 5.02 Rates will be in accordance with tribally established rates, which may change yearly.
- 5.03 The level of care authorized and the age of the child in foster care determine the amount of the monthly reimbursement. The Division shall establish these rates according to the following levels of care: Basic, Regular, Specialized, and Therapeutic foster care.
- 5.04 Payment is made for the child's basic needs, including food, shelter, care and supervision, clothing and incidentals. A breakdown of the reimbursement rates will be given to the foster parent each time a child in foster care enters the home. The breakdown will include the custodial rate, clothing allowance, and incidental allowance.
- 5.06 Based on the foster care home's situation, an initial grocery purchase order may be authorized. For an infant, a purchase order may be issued for diapers and formula.
- 5.07 Children in foster care may use the incidental allowance as a personal allowance. The foster parent, the child in foster care and the foster care worker will discuss how this allowance will be handled.
  - (A) The Division will pay for items as required, such as school fees, activities and other specially required expenses.

- (B) Special allowances for things like class rings, senior photographs or lessons (such as dance, music, sports, and the like) will be evaluated on a case-by-case basis, and may be approved if funding is provided for such purposes.
- 5.08 Based on a case-by-case situation, the foster parent may be reimbursed for part or all of the child care cost, if applicable, for the child in foster care. Reimbursement may be made directly to the vendor. The child care provider must be licensed by the Cheyenne River Sioux Tribe or the State of South Dakota.
- 5.09 Reimbursement for Attending Training
- (A) The Division will reimburse the foster parent for child care expenses if child care is needed in order for the foster parent to attend the training that is required in these regulations. This must be arranged and approved prior to the training sessions.
  - (B) If foster parents are required to travel a great distance for the training, their mileage may be reimbursable. This must be approved prior to the training session.
  - (C) As an incentive to renew their license, foster parents may receive \$30.00 annually for completion of training required to renew their license.

Children's Code  
**APPENDIX B**  
**VISITATION GUIDELINES**





## **APPENDIX B- VISITATION GUIDELINES**

### **INTRODUCTION**

A powerful cause of stress, suffering, and maladjustment in children of divorce is not simply divorce itself, but continuing conflict between parents, before, during, and after divorce. Similar conflicts can occur between parents who were never married. To minimize harm to their children, parents should agree on a parenting arrangement that is most conducive to frequent and meaningful contact for the children with both parents, with as little conflict as possible. When parental maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable time with the non-custodial parent on reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed visitation agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will be used, unless a different schedule is court ordered. For most parents, these guidelines should be considered as only a minimum direction for interaction with the children.

#### **Guideline 1. General Rules**

Parents should always avoid speaking negatively about one another and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other. The basic rules of conduct and discipline established by the custodial parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed messages about appropriate behavior.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. On the Cheyenne River Sioux Tribe, grandparents and extended family members have a legal right to reasonable visitation with the children, if it is in the best interests of the children. Usually, the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother. It is recommended that the parents prepare an annual calendar of agreed dates so that both the parents and the children know where the children will be during the coming year.

In cases where both parents reside in the same community at the time of separation, and then one parent leaves the area, thus changing the visitation pattern, the court will consider apportioning between the parents the children's travel costs necessary to facilitate visitation with the non-custodial parent. In apportioning these costs, the court will consider such factors as the economic circumstances of the parents and the reasons prompting the move.

1.1 Parental Communication

Parents should always keep each other advised of their home and work addresses and telephone numbers. Whenever feasible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone, at their residences, and not at their places of employment.

1.2 Grade Reports and Medical Information

The custodial parent shall provide the non-custodial parent with grade reports and notices from school as they are received and shall authorize the non-custodial parent to communicate concerning the child directly with the daycare, the school, and the children's doctors and other professionals outside the presence of the custodial parent. Unless there are abuse, neglect, criminal, or protection orders to the contrary, the non-custodial parent shall also be listed as the children's parent and as an emergency contact with the daycare, the school, and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall, as soon as reasonably possible, notify the non-custodial parent of all school or other events (for example, church or sports) involving parental participation. If the child is taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions to the non-custodial parent.

1.3 Visitation Clothing

The custodial parent shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children, by the noncustodial parent. The non-custodial parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing belonging to the children may be sent.

1.4 Withholding Support or Visitation

Neither visitation nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and to visitation, neither of which is dependent upon the other. In other words, no support does not mean no visitation, and no visitation does not mean no support. If there is a violation of either a visitation or support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in this Visitation Schedule

This schedule is to be understood as imposing specific requirements and responsibilities; however, when family necessities, illnesses, or commitments reasonably so require, the parents are expected to modify visitation fairly. The parent requesting modification shall act in good faith and give as much notice as circumstances permit.

1.6 Custodial Parent's Vacation

Unless otherwise specified in a court order or agreed by the parents, the custodial parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the non-custodial parent takes with the children. The custodial parent

should plan a vacation during the time when the non-custodial parent is not scheduled to spend time with the children.

1.7 Insurance Forms

The parent who has medical insurance coverage on the children shall supply to the other parent an insurance card and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentists, or other provider not so approved or qualified should pay the additional cost thus incurred. When there is a contemplated change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or taking advantage of economic or medical benefits offered by the new carrier. When there is an obligation to pay medical expenses, the parent responsible therefore shall be promptly furnished with the bill by the other parent. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds shall be promptly turned over to the parent who paid the bill for which the refund was received.

1.8 Child Support Abatement

Unless a court order otherwise provides, support shall not abate during any period when the children are with the non-custodial parent.

1.9 Missed Visitation

When events beyond either parent's control, such as illness, prevent a scheduled visitation, a mutually agreeable substituted visitation date shall be arranged, as quickly as feasible. Each parent shall timely advise the other when a particular visitation cannot be exercised. Missed visitation should not be unreasonably accumulated.

1.10 Visitation - A Shared Experience

Except with infants and adolescents, it usually makes sense for all the children to share the same schedule. Having brothers and sisters along may provide an important support for children. Infants have special needs that may well prevent a parent from being with both infants and other children at the same time. Adolescents have special needs for peer involvement and for some control in their own lives that may place them on different schedules from their younger brothers and sisters. Because it is intended that visitation be a shared experience between siblings and, unless these guidelines, a court order or circumstance, such as age, illness, or a particular event suggest otherwise, all the children should spend time together with the non-custodial parent.

1.11 Telephone Communication

Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call the children at reasonable hours when the children are with the non-custodial parent. The children may,

of course, call either parent, though at reasonable hours and frequencies, and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation should make the child available for telephone calls every three days. At all other times, the parent with whom the child is staying shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available. A parent may wish to provide a child with a telephone calling card to facilitate communication with that parent.

1.12 Mail and E-mail Contact

Parents have an unrestricted right to send cards, letters, packages, and audio and video cassettes or CDs to their children. Children also have the same right to send items to their parents. Neither parent should interfere with this right. A parent may wish to provide a child with self-addressed, stamped envelopes for the child's use in corresponding with that parent. If the child and parent have Internet capability, communication through e-mail should be fostered and encouraged.

1.13 Privacy of Residence

A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other parent. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping off the children should not leave the premises until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is his or her own, and the children's time with that parent is equally private.

1.14 Special Considerations for Adolescents

Generally, these guidelines apply to adolescents as well as younger children. Nonetheless, within reason, the parents should honestly and fairly consider the wishes of their teenagers on visitation. Neither parent should attempt to pressure their teenager to make a visitation decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.15 Day Care Providers

When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

1.16 Special Circumstances

(A) Child Abuse. When child abuse has been established against the non-custodial parent and a continuing danger is shown to exist, all visitation should cease or be allowed only under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases, if either parent abuses a child.



- (B) Spouse Abuse. Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse may be capable of doing so with children. Depending on the nature of the spouse abuse and the time and circumstances of its occurrence, the court may require that an abusive spouse successfully complete appropriate counseling before permitting unsupervised time with the children.
- (C) Substance Abuse. The children should not be with a parent who is abusing substances.
- (D) Long Interruption of Contact. In those situations where the non-custodial parent has not had a continuing relationship with the child for an extended period, visitation should begin with brief visits and a very gradual transition to the visitation in these guidelines.
- (E) Kidnapping Threats. Non-custodial parents who have threatened to kidnap or hide the children should have no visitation or only supervised visits.
- (F) Breast Feeding Child. Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have visits of only a few hours with the father. A mother should not use breast feeding beyond the normal weaning age as a means to deprive the father of visitation.
- (G) A Parent's New Relationship. Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parents' separation or divorce.
- (H) Religious Holidays and Native American Ceremonies. Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and should cooperate with each other on visitation to achieve these goals. These goals should not be used to deprive a non-custodial parent of visitation.
- (I) Other. The court will consider limiting or denying visitation or changing custody of parents who show neglectful, impulsive, immoral, criminal, assaultive, or risk-taking behavior with or in the presence of the children.

## **Guideline 2. Non-custodial Parent Visitation When Children Are Under Age Five**

### **2.1 Children Under Age Five Generally**

Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing, and predictability. Generally, overnight visits for infants

and toddlers are not recommended unless the non-custodial parent is very closely attached to the child and is personally able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account children's developmental milestones as a basis for time with the non-custodial parent. Since children mature at different rates, these may need to be adjusted to fit the child's individual circumstances. These guidelines may not apply when the parents equally share caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations, those in which the custodial parent has been the primary caretaker and the non-custodial parent has maintained a continuous relationship with the child, but has not shared equally in child caretaking, the following guidelines should generally apply.

2.2 Infants - Birth to Six Months

Alternate parenting plans: (1) Three, two-hour visits per week, with one weekend day for six hours; or (2) Three, two-hour visits per week, with one overnight on a weekend for no longer than a twelve-hour period, if the child is not breast feeding and the non-custodial parent is capable of providing primary care.

2.3 Infants - Six to Eighteen Months

Alternate parenting plans: (1) Three, three-hour visits per week with one weekend day for six hours; or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the non-custodial parent is capable of providing primary care; or (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

2.4 Toddlers - Eighteen to Thirty-six Months

Alternate parenting plans: (1) The non-custodial parent has the child up to three times per week for a few hours on each visit, on a predictable schedule; or (2) Same as (1) but with one overnight per week; or (3) Child spends time in alternate homes, but with more time in one than the other with two or three overnights spaced regularly throughout the week. This arrangement requires an adaptable child and cooperative parents.

2.5 Preschoolers - Three to Five Years Old

Alternate parenting plans: **(1)** One overnight visit (i.e., Saturday morning to Sunday evening) on alternate weekends and one midweek visit, at the conclusion of which the child is returned to the custodial parent's home at least one-half hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the non-custodial parent.

2.6 Children in Day Care

In families where a child has been in day care before the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to

separations from both parents. The noncustodial parent who exercises visitation of a child under age five should not during the visits place the child with a baby-sitter or day care provider. If the non-custodial parent cannot be with the child personally, the child should be returned to the custodial parent. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.

## 2.7 Holidays

For toddlers and preschool age children, when the parents live in the same or nearby communities, the parents should alternate each year Christmas Eve and Christmas Day, so that the children spend equal time with each parent during this holiday period. Other major holidays should also be divided between the parents.

### **Guideline 3. Non-custodial Parent Visitation When Children Are Over Age Five and the Parents Reside No More Than 200 Miles Apart**

## 3.1 Weekends

Alternate weekends from Friday at 5:30 p.m. to Sunday at 7:00 p.m.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the non-custodial parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the non-custodial parent.

## 3.2 Mother's Day- Father's Day

The alternate weekends will be shifted, exchanged, or arranged, so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and the regular visitation shall be resolved under Paragraph 1.9.

## 3.3 Summer Visitation

One-half of the school summer vacation. At the option of the non-custodial parent, the time may be consecutive or it may be split into two blocks of time. If a child goes to summer school and it is impossible for the non-custodial parent to schedule this visitation time other than during summer school, the non-custodial parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the non-custodial parent's community.

## 3.4 Winter {Christmas} Vacation

One-half of the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the non-custodial parent shall have the first half in even-number years. Holidays, such as Christmas, are extremely important as times of shared enjoyment, family tradition, and meaning. Families living in the same or nearby communities should plan for the children to spend part of each important holiday at both homes. If the parents are unable to work out a

sharing arrangement for Christmas and they live in the same or nearby communities, in those years when Christmas does not fall in a parent's week, that parent shall have from 2:00 p.m. to 9:00 p.m. on Christmas Day.

3.5 Holidays

Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4<sup>th</sup> of July, Labor Day, and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; the 4<sup>th</sup> of July, when it does not fall on a weekend, shall include the weekend closest to the 4<sup>th</sup>. Holiday weekends begin at 5:30 p.m. and end at 7:00 p.m. on the appropriate days.

3.6 Children's Birthdays

Like holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved under Paragraph 1.9. If the birthday falls on a weekday, it shall be celebrated from 2:00 p.m. to 8:00 p.m. (or so much of that period as the non-custodial parent elects to use).

3.7 Parents' Birthdays

The children should spend the day with the parent who is celebrating his or her birthday, unless it interferes with a non-custodial parent's scheduled time during a holiday or vacation.

3.8 Conflicts Between Regular and Holiday Weekends.

When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the non-custodial parent misses a regular weekend because it is the custodial parent's holiday, the regular alternating visitation schedule will resume following the holiday. If the non-custodial parent receives two consecutive weekends because of a holiday, the regular alternating weekend schedule will resume the following weekend with the custodial parent. The parents are to make up missed weekends resulting from holiday conflicts.

3.9 Visitation Before and During Vacations

The custodial parent will have the weekend before the beginning of the non-custodial parent's summer extended visitation period(s) with the children, regardless of whose weekend it may be. Similarly, the non-custodial parent's alternating weekend schedule shall resume the second weekend after each extended summer visitation period. Weekend visitation "missed" during the summer vacation period will not be "made up". During any extended summer visitation of more than three consecutive weeks, it will be the non-custodial parent's duty to accommodate, at a mutually convenient time, a 48-hour continuous period of visitation for the custodial parent, unless impractical because of distance.

3.10 Notice of Canceled Visitation

Whenever possible, the non-custodial parent shall give a minimum of three days' notice of intent not to exercise all or part of the scheduled visitation. When such notice is not feasible, the maximum notice permitted by the circumstances, and the reason therefor, shall be provided to the other parent. Custodial parents shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled visitation necessary. If the custodial parent cancels or modifies the non-custodial parent's time with a child because the child has a scheduling conflict, the non-custodial parent should be given the opportunity to take the child to the scheduled event or appointment.

3.11 Pick Up and Return of Children

When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually, the non-custodial parent will pick up and the custodial parent will return the children to that parent's residence. The person picking up or returning the children during times of visitation has an obligation to be punctual, arriving at the agreed time, not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

3.12 Additional Visitations

The children's time with the non-custodial parent should be liberal and flexible. For most parents, these guidelines should be considered as only the minimum and are not meant to foreclose the parents from agreeing to such time-sharing with the children as the parents find reasonable and in the best interests of their children at any given time.

**Guideline 4. Non-custodial Parent Visitation When Children Are Over Age Five and the Parents Reside More Than 200 Miles Apart**

4.1 Extended Visitation

All but three weeks of the school summer vacation period and, on an alternating basis, the school winter (Christmas) vacation and spring break.

4.2 Priority of Summer Visitation

Summer visitation with the non-custodial parent takes precedence over summer activities (such as sports), when the visitation cannot be reasonably scheduled around such events. Even so, the conscientious non-custodial parent will often be able to enroll the child in the same or similar activity in the non-custodial parent's community.

4.3 Notice

At least sixty (60) days advance written notice should be given by the noncustodial parent of the date for commencing extended summer visitation, so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to give the precise number of days' notice does not give the custodial parent the right to deny visitation.

#### 4.4 Additional Visitation

Where distance and finances permit, additional visitation, such as for holiday weekends or special events, is encouraged. When the non-custodial parent is in the area where the children reside, or the children are in the area where the non-custodial parent resides, liberal visitation shall be accommodated. Because the non-custodial parent does not get weekly time with the children, the children can miss some school to spend time with the non-custodial parent, so long as it does not substantially impair the children's scholastic progress.



