

LOWER SIOUX INDIAN COMMUNITY

DOMESTIC RELATIONS CODE

Chapter One: Child Welfare

Subchapter A: General Provisions

Section 1.01 Purpose.

Subd. 1. This Code shall be interpreted to effectuate the following purposes:

- (a) To secure for each child the best care, preferably in her or his own home, that will serve her or his welfare consistent with the best interests of the Lower Sioux Indian Community in Minnesota;
- (b) To preserve and strengthen family ties;
- (c) To preserve and strengthen each Indian child's Community identity;
- (d) To secure for any child removed from her or his home the care, guidance, and control to better serve the child's interests in a manner similar to that which the child should have been given by her or his parents, and to improve any conditions or home environment which may be contributing to a child's problems;
- (e) To assert jurisdiction over cases involving children of the Community aggressively in all forums including courts of the State of Minnesota and other states, thereby providing children involved in these cases with the necessary resources associated with assistance from the Community;

Subd. 2. To the extent required by any section of this Code, the Community hereby establishes the following placement preferences for any Indian child that is to be placed outside the child's home:

- (a) A member of the child's extended family;
- (b) Another member of the child's Community;
- (c) Another Indian family;
- (d) An institution for children approved by the Community which has a program suitable to meet the child's needs;
- (e) A non-Indian foster home located on the reservation and licensed or approved by the Community;

- (f) A non-Indian foster home located off the reservation and licensed or approved by the Community;
- (g) Within each placement preference category, preference shall be given to a placement on the Reservation.

Subd. 3. The provisions of this Section constitute the establishment of a Tribal order of preference as acknowledged by the ICWA.

Section 1.02 Definitions.

Subd. 1. "Abandonment" means the complete lack of parental contact with a child for an amount of time that is not reasonable. It may also include marginal contact for twenty-two of the past forty-eight months, or the failure to provide financial support for more than one continuous year. Placement of a child with a member of the parent's extended family does not constitute abandonment.

Subd. 2. "Adult" means any person 18 years of age or older.

Subd. 3. "Child" means any person under the age of eighteen (18) years.

Subd. 4. "Child Abuse" means inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of a child other than by accidental means, including abandonment, sexual abuse, excessive or unreasonable corporal punishment, malnutrition or substantial risk thereof, or any other acts and omissions by the parent(s) or other person responsible for the child's welfare.

Subd. 5. "Child custody proceeding" means and includes the following with regard to an Indian child:

- (a) Foster care placement: any action before a court of competent jurisdiction removing a child from his/her parent or custodian for temporary placement in a foster home or institution where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;
- (b) Termination of parental rights: any action before a court of competent jurisdiction that results in the legal termination of the parent-child relationship;
- (c) Pre-adoptive placement: the temporary placement of a child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and
- (d) Adoptive placement: the permanent placement of a child for adoption, including any action before a court of competent jurisdiction resulting in a final decree of adoption.

- (e) Suspension of Parental Rights and/or Customary Adoption: any action before the Tribal Court that results in the permanent suspension of parental rights and/or a final decree of Customary Adoption.
- (f) Child custody proceedings under this Chapter shall not include a placement with either parent based upon a divorce proceeding or intra-family disputes.

Subd. 6. “Child Welfare Proceedings” include any Indian child custody proceeding, plus any proceeding related to a child in need of assistance.

Subd. 7. “Child in need of assistance” means any Indian child that is considered dependent, abused, or neglected.

Subd. 8. “Neglected Child” means any Indian child under the age of eighteen (18):

- (a) Who is abandoned by her or his parent(s) or person(s) responsible for her or his care;
- (b) Who lacks proper care due to the fault or habits of her or his parent(s), or person(s) responsible for her or his care;
- (c) Whose parent(s), or person(s) responsible for his or her care, fail or refuse to provide necessary and proper care, related to the dietary subsistence, social and education needs or other care necessary for the health and well-being of such child;
- (d) Whose parent(s), or person(s) responsible for his or her care, neglect or refuse to provide special care made necessary by the mental or physical conditions of the child;
- (e) Whose parent engages in activities that create or are likely to place the child in situations dangerous to life or limb or injurious to the health or welfare of such child.

Subd. 9. “Community” means the Lower Sioux Indian Community as defined in the Constitution of the Lower Sioux Indian Community in Minnesota;

Subd. 10. “Custodian/Guardian” means any person who has legal custody of a child or with whom temporary care, custody and control has been placed by a court with competent jurisdiction, under law or Community custom, and who is responsible for the health, safety, and welfare of a child.

Subd. 11. “Dependent child” means any Indian child under the age of eighteen (18) years, who is homeless or destitute or without proper support through no fault of her or his parent(s), or the person(s) responsible for his or her care.

Subd. 12. “Domicile” means a person’s permanent home. The domicile of an Indian child is generally that of the child’s parent(s), or the person(s) responsible for his or her care. A child shall be considered domiciled at the Lower Sioux Indian Reservation when the child’s parent(s), or the person(s) responsible for his or her care, considers the Reservation to be her or his permanent home.

Subd. 13. “Expert witness” means a person who is either:

- (a) A member of the Community who is acknowledged by the Community to be an expert on the culture, custom, and traditions of the Community; or
- (b) A professional person having a recognized education or experience in medicine, sociology, psychology, or other fields relevant to a child welfare proceeding.

Subd. 14. “Extended family member” means any person who has reached the age of eighteen (18) and is related to an Indian child by blood or marriage within the third degree, or any person recognized as a family member by the law or custom of the Community.

Subd. 15. “Foster home” means any Community approved home or facility that provides temporary shelter and related assistance to children under the supervision of the Community.

Subd. 16. “Guardian Ad Litem” means any person appointed by the Community Court to speak on behalf of the best interests of an Indian child in court proceedings.

Subd. 17. “Indian” means a member of a federally recognized Indian tribe.

Subd. 18. “Indian child” means a child who is a member of the Community, and includes biological and adopted children.

Subd. 19. “Indian Child Welfare Act” means the Indian Child Welfare Act (“ICWA”) as enacted and amended by Congress 25 U.S.C. §1901 et seq.

Subd. 20. “Indian family” means the family of a Community member including, but not limited to, children and adults that live at the residence of the Community member.

Subd. 21. “Law Enforcement Services” (“LES”) means Community law enforcement officers and peace officers employed by state and federal agencies.

Subd. 22. “Lower Sioux Social Services” (“LSSS”) means the designated staff within the Community who have a primary responsibility to ensure that necessary social services and related assistance are provided to children and families.

Subd. 23. “Parent” means a biological or adoptive mother or father, including an unwed father whose paternity has been acknowledged or established in accordance with Community law or custom.

Subd. 24. “Protective Supervision” means the status after a Protective Care Petition has been filed granting the LSSS authority to monitor the welfare of the Indian child(ren) in the home of the parent.

Subd. 25. “Reservation” means land owned by the United States in trust for the Community and any area within the Community’s ten mile radius service area identified in Community Council Resolution No. 72-27 attached as Appendix A.

Subd. 26. “Tribal Court” or “Court” means the Court of the Lower Sioux Indian Community as defined in the Constitution of the Lower Sioux Indian Community.

Section 1.03 Jurisdiction.

Subd. 1. The Tribal Court has jurisdiction over the following:

- (a) Any child welfare proceeding concerning an Indian Child who resides on or is domiciled on the Reservation;
- (b) Any child welfare proceeding concerning a member of the Community, whether that member resides or is domiciled on or off the Reservation;
- (c) Any child welfare proceeding concerning a ward of the Tribal Court, regardless of residency;
- (d) Any child custody proceeding transferred to the Tribal Court from any other court of competent jurisdiction under the terms of the Indian Child Welfare Act.

Subd. 2. Where the Tribal Court has jurisdiction over an Indian child under this section, the Court shall also have jurisdiction over any adult residing in the child’s home and any person(s) the child is placed in the care of to the extent necessary to issue any orders protecting the best interest of the child.

Section 1.04 Transfers and Intervention Under the Indian Child Welfare Act.

Subd. 1. Unless the Tribal Court concludes that good cause exists to decline jurisdiction, the Tribal Court shall always accept jurisdiction over child welfare proceedings transferred from other courts of competent jurisdiction pursuant to the Indian Child Welfare Act.

Subd. 2. For child custody proceedings, pending in courts other than the Tribal Court, the LSSS shall receive notice on behalf of the Community of any such proceeding. The LSSS shall intervene on behalf of the Community in any such child custody proceeding for which the Community receives notice, unless the LSSS concludes such intervention would not be in the best interest of the child.

Section 1.05 Lower Sioux Social Services Department.

Subd. 1. The Lower Sioux Social Services Department (“LSSS”) shall have the following powers, duties, and responsibilities:

- (a) Processing all notices sent to the Community under the Indian Child Welfare Act (“ICWA”), assisting the Community in intervening in ICWA proceedings, assisting the Tribal Court in petitioning for transfer of ICWA proceedings to the Tribal Court where appropriate, and carrying out all other duties and responsibilities regarding ICWA matters.
- (b) Receiving and investigating reports of suspected child abuse, neglect, and abandonment, involving Indian children domiciled on the Reservation, and determining whether to initiate child welfare proceedings.
- (c) Participating in investigations and placement determinations made by other social services agencies.
- (d) Determining whether an Indian child should be held pursuant to the emergency provisions of this Chapter, and providing crisis counseling as necessary.
- (e) Initiating Protective Care Petitions, pursuant to Section 2.04 of this Chapter, when an Indian child is believed to be in need of assistance.
- (f) Making referrals and sharing information with other agencies as needed to carry out the powers, duties and responsibilities under this Section.
- (g) Making a dispositional report and recommendation to the Tribal Court in child welfare proceedings, including a plan of rehabilitation, treatment and care.
- (h) Supervising and assisting Indian children pursuant to child welfare dispositions, and making an affirmative effort to obtain necessary or desired services for the Indian child and the Indian child’s family.
- (i) Accepting legal custody of Indian children when ordered by the Tribal Court.
- (j) Initiating petitions for the termination of parental rights in extraordinary circumstances or investigating and reporting to the Tribal Court on petitions to terminate parental rights brought by others.
- (k) Negotiating agreements for services, record sharing, referral, and funding for child welfare services pursuant to dispositional orders.
- (l) Providing measures and procedures for preserving the confidential nature of child welfare services records within the LSSS.

- (m) Mailing and filing such reports as may be required by this Code and by agreements with other governmental agencies in furtherance of child and family services.
- (n) Working with the Community's legal counsel and other professionals to accomplish the duties and responsibilities imposed by this Code.
- (o) Performing any other functions ordered by the Tribal Court in matters related to this Code.

Subd. 2. Use of other Tribal resources.

- (a) In carrying out its powers, duties, and responsibilities under this Code, the LSSS may use, and is encouraged to make liberal use of, the psychiatric, psychological, therapeutic, counseling, and other social services available to the Community, both from within and without the Community. The LSSS shall be required to identify and use qualified tribal or other resources, if available and appropriate.
- (b) The Tribal Court may order the provision of psychiatric, psychological, or therapeutic counseling, or other social services by an appropriate department or employee of the Community or other qualified agency in any proceeding under this Code.

Subd. 3. Case plans.

- (a) For all matters under this Code in which a dispositional order other than a dismissal is entered, the LSSS shall develop a written plan of service in consultation with the Indian child, if over 12 years of age, the parent(s), guardian, or custodian, and such other child and family service providers as may be appropriate. Each case plan shall be designed to achieve placement in a setting which most closely approximates a family, and in which any special needs may be met, and shall include the following features:
 - (1) A description of the type of home or childcare institution in which the Indian child is to be placed;
 - (2) A discussion of the appropriateness of the placement for the particular Indian child; and
 - (3) A plan for assuring that:
 - (aa) the Indian child receives proper care while in placement;

- (bb) services are provided to the parent(s), Indian child, and foster parents to facilitate the return of the Indian child to her/his home or permanent placement, and
 - (cc) the need for services of the Indian child in foster placement are met and that the services are appropriate.
- (b) At no less than six month intervals, the LSSS shall review each case and develop written findings which address:
 - (1) Continuing need for service and/or placement.
 - (2) Appropriateness of services and/or placement to date.
 - (3) Compliance with the service plan.
 - (4) Progress made toward alleviating or mitigating the circumstances giving rise to the dispositional order.
 - (5) Projection of a likely date by which the Indian child may be returned home, placed in legal guardianship, or placed for adoption.
 - (c) Case reviews shall be conducted with the assistance of at least one person who is not responsible for management or delivery of services in the case. Notice of the case review meetings shall be sent to the Indian child and their parent(s), guardian, or custodian or their representative.
 - (d) The case plan and any case review findings shall be filed with the Tribal Court and shall be referenced in any petition for the extension or modification of a court order issued under this Chapter.

Subchapter B: Children in Need of Services Assistance

Section 2.01 Notification of Child Abuse Reports.

Pursuant to the Indian Child Protection and Family Violence Prevention Act, 25 U.S.C. §3201-3211 and 18 U.S.C. §1169, the following procedures shall be followed for reporting child abuse or neglect.

Subd. 1. Whenever the LSSS or the Community Police receive an initial report from any person relating to the neglect or abuse of an Indian child subject to this Code, or actions that would reasonably be expected to lead to the conclusion that there has been abuse of an Indian child, that agency shall:

- (a) Immediately notify the appropriate officials of the other agency; and

- (b) Submit a copy of the written preliminary report required under Subdivision 3 of this Section to the other agency.

Subd. 2. Where an initial report or referral of abuse involves an Indian child or where the alleged abuser is an Indian and the preliminary report indicates that a criminal violation has occurred, the Community Police shall immediately report such occurrence to the appropriate local law enforcement officials in accordance with any cooperative law enforcement agreement or applicable state and federal law and where appropriate the Federal Bureau of Investigation.

Subd. 3. Within 36 hours after receiving an initial report of Indian child neglect or abuse, the agency receiving the report shall prepare its own written preliminary report which shall include, if available, the name, address, age, and sex of the child who is the subject of the report; the grade and school in which the child is currently enrolled; the name and address of the child's parents or other person responsible for the child's care; the name and address of the alleged offender; the name and address of the person who made the report to the agency; a brief narrative as to the nature and extent of the child's condition or injuries, including any previously known or suspected neglect or abuse; and any other information the agency or the person who reported the abuse believes to be important to the investigation and disposition of the alleged neglect or abuse. In all cases, the agency involved shall keep the names of the children involved confidential as well as any individuals responsible for reporting the incident to protect the individual's identity and encourage the reporting of child abuse and neglect.

Subd. 4. Upon receipt of a report alleging neglect or abuse, the LSSS, in conjunction with the Community Police, shall:

- (a) Take immediate and appropriate steps to secure the safety and well-being of the child or children involved, consistent with this Code.
- (b) Provide appropriate services to the family; and
- (c) Complete the investigation and prepare a written final report on such allegation within fifteen (15) days.

Subd. 5. If the investigation produces evidence that an Indian child has been neglected or abused by a person other than the parent, or person(s) responsible for the child's care, the LSSS or the Community Police shall immediately notify the child's parent or other person responsible for the child's care, and any other appropriate law enforcement authority having jurisdiction over the suspected neglect or abuse. If the investigation produces evidence that a child has been abused by an employee of the Community, the Community Police or LSSS shall notify the director of the appropriate tribal department of such evidence, and the director may suspend such employee, with or without pay, or terminate employment of the employee, subject to any employment rights provided under the Community's personnel policies and procedures. If the investigation produces evidence that a child has been abused by a departmental director, the Community Police shall notify the Community Council of such evidence. The Community Council shall impose the disciplinary action it deems appropriate.

Section 2.02 Interviews and Examinations.

Subd. 1. In any case where the Community Police or LSSS reasonably believe that the child has been subjected to neglect or abuse, officials of those agencies shall be allowed to take photographs, obtain x-rays, medical and psychological examinations of the child and interview the child without first obtaining the consent of the parent, or person(s) responsible for the care of the child.

Subd. 2. All examinations and interviews of an Indian child who may have been subjected to neglect or abuse shall be conducted in a manner that minimizes additional trauma to the child.

Subd. 3. The expense of such examinations and diagnostic tests shall be paid initially by the Community. The Community Council may seek reimbursement of such expenses from the parent(s) or other persons responsible for the care of the child. If the expenses are not reimbursed within a reasonable time, and notwithstanding any Community ordinance to the contrary, the Community Council by resolution may authorize the reimbursement to be deducted in amounts the Council deems appropriate from any monies or per capita distributions that otherwise would be paid by the Community to the responsible person.

Section 2.03 Emergency Removal.

Subd. 1. If an Indian child is in imminent danger from his/her surroundings and removal from such surroundings is necessary to insure the child's safety, the Community Police or LSSS may remove the child from such surroundings without a court order and place him or her in protective care or a foster home. A child shall be considered to be in imminent danger when:

- (a) The failure to remove the child may result in an immediate and substantial risk of death, permanent or serious injury, or serious emotional harm to the child; or
- (b) The parent(s), or person(s) responsible for the child's care, is absent and it appears from the circumstances that the child's basic necessities of life are not being met, and proper arrangements have not been made by the parent(s) or person(s) responsible for the child for such necessities.

Subd. 2. When a child is removed, the Community Police or LSSS shall make reasonable efforts to place the Indian child with a member of the child's extended family if deemed suitable by LSSS as temporary caregivers for the Indian child. Notice of such emergency removal shall be sent by LSSS to the parent(s) or other persons responsible for the child via personal delivery within 24 hours of the removal of the child.

Subd. 3. When a physician indicates that in her professional opinion, the life of the child would be greatly endangered or that there is a strong likelihood that the child would suffer permanent and/or serious harm without specified treatment, the protective or foster care parent or the Tribal Court on an ex parte basis may authorize emergency medical treatment. Every effort

should be made to contact the child's parent(s) before authorization is given. The child's parent(s) or an extended member of the child's family shall be notified of the emergency treatment immediately thereafter.

Subd. 4. Such removal shall not exceed forty-eight (48) hours, within which time (or on the next business day following the 48 hour period) an Emergency Protective Care Petition shall be filed with the Tribal Court. If no Emergency Protective Care Petition is filed, the child shall be returned to the parent or the person responsible for the child's care.

Subd. 5. If any Emergency Protective Care Petition is filed, the procedures for filing Protective Care Petitions shall be followed, provided that the Tribal Court shall schedule a hearing on the Petition within five (5) business days from the date the Petition was filed.

Subd. 6. Upon the filing of an Emergency Protective Care Petition, the Tribal Court shall cause a Summons to be issued requiring the parent(s) and any other persons necessary or appropriate to the proceedings to appear in Tribal Court. The Clerk of the Tribal Court shall cause the Summons and Petition to be personally served upon the party before the scheduled hearing if possible. If the party to be served is not within the Reservation boundaries or personal service cannot be effected, the Summons and Petition may be served by certified or registered mail, with a return receipt requested. The Summons shall contain the following information:

- (a) It shall identify the parties and the nature of the proceedings;
- (b) It shall state that the party served shall personally appear before the Tribal Court and respond to the Petition at a specified date and time; and
- (c) It shall state that the party has the right to be represented by an attorney/advocate at her or his expense in all proceedings under this Code, to introduce evidence, to be heard on her or his behalf, to examine witnesses, and to be informed of possible consequences of the proceedings.

Section 2.04 Procedures for Filing Protective Care Petitions.

Subd. 1. If the investigation produces evidence that an Indian child has been neglected or abused and is in need of care, either the Community Police or the LSSS shall file a Protective Care Petition.

Subd. 2. The Petition shall set forth the following:

- (a) The name, birth date, sex, residence and tribal affiliation of the child;
- (b) The basis for the Tribal Court's jurisdiction;

- (c) A plain and concise statement of the facts upon which the allegations of neglect or abuse are based, including the date, time and location at which the alleged neglect or abuse occurred;
- (d) The names, addresses, social security numbers and tribal affiliation of the child's parent(s) or person(s) responsible for the child, if available.
- (e) The names and addresses of the child's extended family and all former care givers, to the extent available; and
- (f) If the child has been placed outside of the home, the facts necessitating the placement, the date and time of the placement, and where and with whom the child was placed.

Subd. 3. The Tribal Court shall schedule a hearing on the Petition within twenty-one (21) days from the date the Petition was filed. The Tribal Court may order that the LSSS conduct a social study and assessment of the child's home and family or an evaluation of matters relevant to the disposition of the case.

Subd. 4. Upon the filing of a Petition, the Tribal Court shall cause a Summons to be issued requiring the parents and any other persons necessary or appropriate to the proceedings to appear in Tribal Court. The Clerk of the Tribal Court shall cause the Summons and Petition to be personally served upon the party at least ten (10) days before the scheduled hearing. If the party to be served is not within the Reservation boundaries or personal service cannot be effected, the Summons and Petition may be served by certified or registered mail, with a return receipt requested. The Summons shall contain the following information:

- (a) It shall identify the parties and the nature of the proceedings;
- (b) It shall state that the party served shall personally appear before the Tribal Court and respond to the Petition at a specified date and time;
- (c) It shall state that the party has the right to be represented by an attorney/advocate at her or his expense in all proceedings under this Code, to introduce evidence, to be heard on her or his behalf, to examine witnesses, and to be informed of possible consequences of the proceedings.

Section 2.05 Hearing.

The purpose of the hearing shall be to determine whether or not the child is endangered or in need of services, and whether Tribal Court intervention and protective supervision are necessary to protect the best interests of the child.

Subd. 1. The hearing proceedings shall be on the record, but shall be closed to the general public.

- (a) Any privilege against the disclosure of communications between spouses shall not apply and either party may testify as to any relevant matter.
- (b) Evidence that the child has been neglected or abused or has sustained a non-accidental injury shall constitute prima facie evidence that shall be sufficient to support an adjudication that such child is in need of assistance.

Subd. 2. Whenever any party intends to call the child as a witness, it shall notify the Tribal Court no later than five (5) days, (or three (3) days in the case of a hearing following an emergency removal), before the hearing. Upon receipt of the notice, the Tribal Court may direct the child to be evaluated by an expert witness to determine if testifying in person would cause trauma to the child.

- (a) The child may be allowed to testify if such testimony will not cause serious emotional or psychological harm to the child.
- (b) If the Tribal Court determines that such testimony may cause serious emotional or psychological harm to the child, the child may testify by means of a videotape deposition or other appropriate method. If the Tribal Court allows these methods to be utilized, the Tribal Court shall specifically set out the reasons for this determination on the record.

Subd. 3. The Tribal Court shall make specific findings as to whether or not the allegations of the Petition are supported by a reasonableness standard and whether or not the best interests of the child will be served by Tribal Court intervention, protective supervision, or by removal from his/her home.

- (a) Whenever removal and foster care placement of a child is recommended, the Tribal Court shall be satisfied that active efforts have been made to provide remedial and rehabilitation services designed to prevent the breakup of the family and that these efforts have proved unsuccessful, or that such efforts would be futile.
- (b) If the evidence in the Petition or at the hearing indicates it would be appropriate, the Tribal Court may vest LSSS or a qualified person with the child's temporary care and custody.

Section 2.06 Court Findings.

Subd. 1. The Tribal Court shall enter a written order with specific findings of fact and conclusions of law. The Court shall make a determination as to whether the child qualifies as being in need of assistance, and include in the Court's findings the basis for its determination that continuing Court jurisdiction is warranted by the child's circumstances.

Subd. 2. If the Tribal Court concludes that removal or continued out of the home placement is not warranted, the child shall be returned immediately to the custody of his or her parents, custodian/guardian; provided, however, that the Tribal Court may define the terms and conditions for returning the child to his/her home, and may provide for continued Tribal Court jurisdiction and protective supervision. The basis for continued jurisdiction must be included in specific findings made by the Court.

Subd. 3. If the Tribal Court finds that removal or continued removal is in the best interests of the child, the Tribal Court shall determine:

- (a) The proper placement of the child;
- (b) The services or treatment to be provided to the child and the child's family to help address the circumstances underlying the removal; and
- (c) The terms and conditions for placement of the child, returning the child to his/her home, and family visitation.

Subd. 4. Where the evidence demonstrates that the activities of a particular person in the household are the basis for the Tribal Court's finding that removal of the child is required, the Tribal Court may, pursuant to its civil regulatory authority, issue a restraining order preventing that person from residing in the residence in lieu of removing the child.

Subd. 5. The expense for any temporary care and custody shall be paid initially by the Community. The Community Council may seek reimbursement of such expenses from the parents or other persons responsible for the care of the child. If the expenses are not reimbursed within a reasonable time, and notwithstanding any Community ordinance to the contrary, the Community Council may by resolution authorize the reimbursement to be deducted in amounts the Council deems appropriate from any monies or per capita distributions that otherwise would be paid by the Community to the responsible person.

Section 2.07 Review of Placement and Supervision.

Subd. 1. In the event that the Tribal Court has found an Indian child to be need of assistance the Tribal Court may exercise continuing jurisdiction over the supervision of such child custody proceeding for so long as it deems necessary to protect the child's best interests. The status of all children who have come within the supervision of the Tribal Court shall be reviewed by the Tribal Court at least every six (6) months to determine whether or not placement conditions have been met and whether or not the legal basis for the Tribal Court supervision continues to exist.

Subd. 2. The first review following a formal hearing on the Petition shall be held within forty-five (45) days of the Tribal Court's decision.

Subd. 3. If continued Tribal Court supervision and intervention is necessary, the Tribal Court shall set forth the following in a written order:

- (a) Whether, and to what extent, the parents or guardian/custodian have complied with the case plan pursuant to Section 1.05 subdivision 3 of the Code;
- (b) What services have been provided or offered to the parents or guardian/custodialn to help address the circumstances underlying the removal;
- (c) The extent of the parent or guardian/custodian involvement with the child or any reason why visitation and/or contact has been infrequent or has not occurred;
- (d) Whether or not the parents or guardian/custodian have been cooperative with the Tribal Court;
- (e) Whether the case plan should be amended or supplemented;
- (f) Whether or not the parents or guardian/custodian should be required to participate in any additional treatment programs to help correct the underlying circumstances;
- (g) What time frame is appropriate, in which the family can reasonably expect to be reunited, provided the case plan is complied with and the circumstances underlying the removal have been satisfactorily addressed; and
- (h) Any additional steps the Tribal Court deems necessary and appropriate.

In applying this section of the Code, a key consideration of the Tribal Court in making determinations on whether and when a child should be reunited with his or her parent(s) or guardian(s)/custodian(s), in cases where there has been abuse or neglect, is whether the parent(s) or guardian(s)/custodian(s) have complied with the case plan developed pursuant to Section 1.05 Subdivision 3. The parent(s) or guardian(s)/custodian(s) compliance with the case plan shall be considered by the Tribal Court at each status hearing. The Tribal Court shall incorporate a specific finding on the extent of their compliance, and on the need for any revisions of the case plan, in the order that it enters after each status hearing. The case plan shall serve as a roadmap for the parents in their efforts to reunite the family. The plan also provides an objective basis for the Tribal Court's decision making.

Section 2.08 Confidentiality.

Subd. 1. Records from the Tribal Court, Community Police, and LSSS related to child welfare proceedings shall be confidential and shall not be open to inspection, except by the agency personnel directly involved in handling the case, or any other person by order of the Tribal Court.

Subd. 2. The identity of any person making a report of suspected child neglect or abuse shall not be disclosed, without the consent of the individual, to any person other than a court of competent jurisdiction or any employee of the Community, or of the state or federal government, who needs to know the information in the performance of such employee's duties.

Subd. 3. Pursuant to 25 U.S.C. §3205, 5 U.S.C. §552a, and 20 U.S.C. §1232g, or any other provision of law, agencies of the Community that investigate and treat incidents of child abuse may provide information and records to those agencies of any other Tribe, state, or the federal government that need to know the information in the performance of their duties.

Section 2.09 Central Registry.

The Community Police and LSSS shall maintain a registry of all reports of suspected child neglect or abuse, and the information contained in the reports and any other information relative to the report, wherever located, shall be confidential, subject to their use and access as required for any interview, examination, investigation, or prosecution, or to prevent or discover further abuse of children.

Section 2.10 Modification, Revocation or Extension of Court Orders.

Upon a motion of any party to the proceeding or any other person or entity who would have had the right to be a party to the proceeding, the Tribal Court may conduct a hearing to modify, revoke or extend a court order made under this Chapter.

Subchapter C: Termination of Parental Rights

Section 3.01 Purpose.

The purpose of this Subchapter is to provide for the voluntary or involuntary termination of the parent-child relationship by court order, resulting in the complete severance of the legal relationship between a child and his/her parents, so that the child is free for permanent placement or adoption; provided the termination of parental rights shall not affect the right of inheritance of the child or the child's membership rights in the Community. This Subchapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the Community and to individual family members when that unit remains united and together, and that termination of the parent-child relationship bears such permanent effects that it should be used only as a last resort when all efforts have failed to preserve a viable family unit and when it is in the best interests of the child.

Section 3.02 Appointment of a Guardian Ad Litem for Minor or Incompetent Parent.

Subd. 1. Whenever, with respect to any petition filed under this Subchapter, it appears that either parent of an Indian child is a minor or incompetent, the Court may appoint a Guardian Ad Litem for such parent. The Guardian Ad Litem shall be an attorney admitted to practice in a

state in the United States or any person certified by the State of Minnesota to be a Guardian Ad Litem.

Subd. 2. The Guardian Ad Litem shall be allowed reasonable compensation which shall be paid by the Community..

Section 3.03 Petition to Terminate Parental Rights.

Subd. 1. A petition to terminate parental rights of an Indian Cchild may be filed by any of the following persons:

- (a) Either or both parents; including a parent who is a minor;
- (b) The guardian of the child;
- (c) Any person possessing a legitimate interest in the matter, including a representative of LSSS.

Subd. 2. The petition for termination of parental rights shall set forth with specificity:

- (a) The name, sex, date and place of birth, present address and tribal affiliation of the child;
- (b) The name and address of the petitioner, and the nature of the relationship between the petitioner and the child;
- (c) The names, dates of birth, addresses, and tribal affiliation of the child's parents;
- (d) If the parent of the child is a minor, the names and addresses of the parents or guardian of the minor;
- (e) The name and address of the person or agency having legal or temporary custody of the child;
- (f) The facts upon which the termination is sought, the effects of a termination decree and the basis for the Tribal Court's jurisdiction;
- (g) The name of the persons or agencies which have agreed to accept custody or guardianship of the child upon disposition of the matter; and
- (h) A list of the assets of the child, together with a statement of the value thereof.

Subd. 3. If the information required under subsections (b) and (f) of subdivision 2 of this Section is not stated, the petition shall be dismissed. If any of the other facts required hereunder are not known or cannot be ascertained by the petitioner, the petitioner shall so state in the

petition. The petitioner shall sign and date the petition, and attest to the veracity of the information contained therein.

Section 3.04 Consent to Termination.

Subd.1. If either parent consents to the termination of his or her parental rights, each consenting parent shall acknowledge in writing, evidencing to the satisfaction of the Tribal Court that the consenting parent has voluntarily and knowingly consented to the termination of his or her parental rights, and that the terms and consequences of such consent are understood by the consenting parent.

Subd. 2. No consent to termination of parental rights by a mother shall be executed prior to or within ten (10) days after the birth of the child. A minor who is a parent shall have the right to consent to termination of parental rights and such consent shall not be voidable by reason of such minority.

Subd. 3. In any voluntary proceeding the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree, and where the child has been placed out of the family, the child shall be returned to the parent unless the Tribal Court finds good cause to the contrary not to return the child.

Section 3.05 Hearing.

Subd. 1. Upon the filing of a petition for the termination of parental rights, the Tribal Court shall set a time for hearing the petition. The time for the hearing shall not be more than 30 days after the filing of the petition.

Subd. 2. The petitioner shall cause a notice of the hearing to be served on the parents or any other person(s) responsible for the care of the child, the LSSS, and to the child if he or she is over the age of 14 years. The notice shall state that the party whose parental rights are being terminated has the right to be represented by counsel.

Subd. 3. Notice of the hearing and a copy of the petition shall be served at least 10 days before the date of the hearing by personal service. If personal service cannot be reasonably effectuated or the address of any person is unknown, notice shall be given by registered or certified mail, return receipt requested, or if no such address is known, by publication in a newspaper of general circulation in the region where the Tribal Court is located.

Subd. 4. Notice and appearance may be waived by a parent in writing before the Tribal Court, provided that such parent has been apprised, on the record, by the Tribal Court of the meaning and consequences of the termination action. A parent who has executed such a waiver shall not be required to appear at the subsequent hearing. Where the parent is a minor, the waiver shall be effective only upon approval by the Tribal Court.

Section 3.06 Conduct of Hearing; Investigation and Report; Grounds for Termination.

Subd. 1. At the hearing held on the petition for the termination of parental rights, any party to whom notice was given shall have the right to appear and be heard with respect to the petition. If the parent who is consenting to the termination of parental rights appears at the hearing, the Tribal Court shall explain to the parent, on the record, the meaning and consequences of termination of parental rights.

Subd. 2. Upon finding at the hearing or at anytime during the pendency of the petition that reasonable cause exists to warrant an examination, the Tribal Court, on its own motion or on motion of any party, may order the child to be examined by a physician, psychiatrist, or licensed clinical psychologist appointed by the Tribal Court. The Tribal Court may also order an examination of a parent or guardian whose competency or ability to care for a child before the court is at issue. The expenses of any examination if ordered by the Tribal Court shall be paid initially by the Community. The Community Council may seek reimbursement of such expenses from the parent or person responsible for the care of the child. If the expenses are not reimbursed within a reasonable time, and notwithstanding any Community ordinance to the contrary, the Community Council by resolution may authorize the reimbursement to be deducted in amounts the Council deems appropriate from any monies or per capita distributions that otherwise would be paid by the Community to the responsible person. The Tribal Court may consider the results of the examination in ruling on the merits of the petition.

Subd. 3. The Tribal Court may, in any contested case, request the LSSS make an investigation and written report to the Court within 45 days from receipt of the petition. The report shall indicate the physical, mental, and emotional health of the child and shall contain such facts as may be relevant to determine whether the proposed termination of parental rights will be in the best interests of the child.

Subd. 4. If such report is requested, the Tribal Court shall schedule a hearing not more than 30 days from the receipt of the report.

Subd. 5. The report shall be admissible in evidence, subject to the right of any interested party to require that the person making it appear as a witness.

Subd. 6. If no investigation and report has been requested, the Tribal Court may approve the petition terminating the parental rights and may appoint a guardian for the child, if it finds by clear and convincing evidence, including the testimony of two expert witnesses, that the termination of parental rights is in the best interests of the child, and, with respect to any consenting adult, that such consent was voluntarily and knowingly given; or, with respect to any non-consenting parent that one or more of the following conditions exist:

- (a) The parent has abandoned the child;
- (b) That the child has experienced egregious harm in the parent's care which is of a nature or duration that indicates a lack of regard for the child's well-being, such that a reasonable person would believe it contrary to the best interest of the child or of any child to be in the parent's care;

- (c) That the parent has substantially, continuously, or repeatedly refused or neglected to comply with the duties imposed upon that parent by the parent and child relationship, including but not limited to providing the child with necessary food, clothing, shelter, education, and other care and control necessary for the child's physical, mental or emotional health and development, if the parent is physically and financially able, and either active efforts by the social services agency have failed to correct the conditions that formed the basis of the petition or active efforts would be futile and therefore unreasonable;
- (d) That the parent is palpably unfit to be a parent because of a consistent pattern of specific conduct or of specific conditions that render the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental, or emotional needs of the child.
- (e) That following the child's placement out of the home, active efforts, under the direction of the Tribal Court, have failed to correct the conditions leading to the child's placement. It is presumed that active efforts under this clause have failed upon a showing that:
 - (1) The child has resided out of the parental home under court order for a cumulative period of 12 months within the preceding 22 months. In the case of a child under age eight (8) at the time the petition was filed alleging the child to be in need of assistance, the presumption arises when the child has resided out of the parental home under court order for six (6) months unless the parent has maintained regular contact with the child and the parent is complying with the out-of-home placement plan; or
 - (2) Conditions leading to the out-of-home placement have not been corrected. It is presumed that conditions leading to the child's out-of-home placement have not been corrected upon a showing that the parent or parents have not substantially complied with a court's order and a reasonable case plan.

Subd. 7. If the Tribal Court denies a petition for termination of parental rights, with or without consent, it may refer the matter to the LSSS to assess the needs of the child, the care the child is receiving, and a remediation plan for the parent.

Section 3.07 Findings and Orders.

Subd. 1. Except in cases based on consent, the Tribal Court shall make written findings in determining whether to terminate the parent-child relationship based on:

- (a) the timeliness, nature and extent of services offered or provided to the child or parent by any Tribal or state agency to facilitate the reunion of the child with the parent;

- (b) the terms of any applicable Court order and the extent to which the parties have fulfilled their obligations thereunder;
- (c) the feelings and emotional ties of the child with respect to his or her parents, any guardian, or any person who has provided physical care or custody to the child during the preceding year and with whom the child has developed significant emotional ties;
- (d) the age of the child; and
- (e) the extent to which the parent may have been prevented from maintaining a meaningful relationship with the child.

Subd. 2. Whenever the Tribal Court finds that the parent-child relationship should be terminated, all rights, powers, privileges, immunities, duties and obligations including any rights to custody, control, visitation or support existing between the child and parent shall be severed and terminated, provided that the rights of one parent may be terminated without affecting the rights of the other parent. In such cases, the remaining parent shall be the sole parent and, unless otherwise provided by law, the guardian of the person of the child. A parent whose rights have been terminated shall have no standing to appear at any future legal proceeding concerning the child.

Subd. 3. Any support obligation existing prior to the effective date of the order terminating parental rights shall not be severed or terminated.

Subd. 4. A termination order shall not prevent a child from inheriting property or interest in the same manner as any other natural child from the natural parent. A natural parent may not, however, inherit from a natural child after termination.

Section 3.08 Child's Continued Right to Benefits.

An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agencies, state or the United States, nor shall any action under this law be deemed to affect any rights and benefits that the child derives from the child's descent from or membership in the Community.

Section 3.09 Custody After Relinquishment or Termination Order.

Subd. 1. If upon entering a decree terminating the parental rights of a parent or guardian, there remains no suitable parent or no parent having parental rights, the Tribal Court shall commit the child to the care and custody of the LSSS or shall place the child in accordance with the placement preferences established by this Code under such terms and conditions as are in the best interests of the child. In the absence of a suitable home under the placement preferences, the Tribal Court may place the child with a non-Indian family outside the Community, or authorize the LSSS to seek adoption of the child.

Subd. 2. At least every three (3) months thereafter, a report shall be made to the Tribal Court on the efforts taken to secure permanent placement of the child.

Section 3.10 Review of Placement.

The status of all children who have been permanently placed pursuant to this Chapter shall be reviewed by the Tribal Court at least once a year, or as otherwise directed by Tribal Court order.

Subchapter D: Adoption Proceedings

Section 4.01 Purpose and Policy

The purpose of this Subchapter is to insure that the Community can protect the rights and promote the welfare of its children and other Indian children as well as all natural and adoptive parents. It is the further purpose of this Subchapter to insure that a Tribal forum exists to address adoption issues that arise from all states' compliance with the Indian Child Welfare Act ("ICWA"), 25 U.S.C. §1901, *et seq.*

Section 4.02 Petition for Adoption.

The petition for adoption of an Indian child shall be filed with the Tribal Court. It shall be verified under oath by the adoptive parent or parents, and shall contain the following:

- (a) The full name, the residence, date of birth, enrollment status and sex of the child. Documentary proof of the date and the place of the birth of the child to be adopted shall be provided with the petition.
- (b) The full name, the residence, date and place of birth, Tribal enrollment, and occupation of the adoptive parent or parents. Documentary proof of the adoptive parents' marital status shall be provided with the petition. If the adoptive parent or parents are unmarried, they shall so designate on the petition.
- (c) A full description and statement of value of all property owned or possessed by the child.
- (d) An agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child, and that is in the child's best interests.
- (e) A fully witnessed and notarized document from the natural parent consenting to the adoption or an order terminating the parent-child relationship with respect to any living parent who does not consent shall be provided with the petition.

Section 4.03 Who May File a Petition.

Subd. 1. General Requirements. Any adult may file a petition in the Tribal Court to adopt an Indian child, whether or not such child is domiciled on the Reservation. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition. The adoptive applicants must be at least ten (10) years older than the child.

Subd. 2. Special conditions for non-member adoption.

- (a) An order of adoption granted to a petitioner who is not a member of the Tribe shall be expressly conditioned upon the petitioner making a commitment to the Tribal Court to make every effort to keep the child apprised of his or her tribal heritage and a commitment to raise the child insofar as possible to foster the child's tribal heritage.
- (b) The Tribal Court may order the appropriate agency/office to monitor the adoptive placement to insure that the provisions of this section are being complied with.
- (c) The Tribal Court may enter a custody order not to exceed six (6) months in order to determine that the mandate enumerated herein is complied with.
- (d) At the expiration of six (6) months from the entry of the interim order, the Tribal Court may enter its final adoption order and decree.

Section 4.04 When Consent to Adoption is Required.

Subd. 1. No petition for adoption shall be granted unless:

- (a) Each parent of the child, or if there is no living parent, the person(s) responsible for the care of the child, consents in writing to the adoption of the child by petitioners; or
- (b) the parent-child relationship has been terminated as to any non-consenting parent.

Subd. 2. A minor parent may consent to an adoption provided the parents of the minor parent concur, however, the Tribal Court may waive consent by the minor's parents if it finds that the withholding of such consent is unreasonable.

Subd. 3. The adoption of a child twelve (12) years of age or older shall not be granted without the child's consent given in Tribal Court or in writing in such form as the Tribal Court may direct. If a child is unable to give consent due to mental incapacity, this consent provision may be waived by the Tribal Court.

Subd. 4. A parent's consent to adoption may be withdrawn for any reason within ten (10) working days after the consent is executed and acknowledged. Written notification of

withdrawal of consent must be received by the agency, Community department or individual to which the consent was given no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgement, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the natural parents over the adoptive parents.

Section 4.05 Appointment of a Guardian.

Except in the case of stepparent adoptions, a petition for adoption by any person who is not a relative within the second degree of kinship either by blood or affinity shall not be heard unless a guardian for the child has first been appointed by the Tribal Court.

Section 4.06 Investigation Report.

Within five (5) days after the filing of a petition for adoption, the Tribal Court shall request the assistance of the LSSS, any federal, state, or private agency to inquire into, investigate and report, in writing, to the Tribal Court within thirty (30) days as to the suitability of the child for adoption, the financial ability, moral and physical fitness and general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

Section 4.07 Hearing on Adoption.

Subd. 1. Within five (5) days after the written report required by Section 4.06 is filed, the Tribal Court shall schedule a hearing on the petition for adoption to be held within 45 days after the filing of the report. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified, unless notice is waived, and may appear or be represented by a person having power of attorney authorizing such person to represent them for the purpose of the adoption.

Subd. 2. If the Tribal Court is satisfied as to the suitability of the child for adoption, the validity of the consent to adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, it may enter a final decree of adoption in the case of a child who has been in the custody of the petitioners and provided for by them for more than three (3) months or may place the child in legal custody of the petitioners for a period of not less than six (6) months prior to entering a final decree of adoption, or if the Tribal Court is satisfied that the adoption petition will not be in the best interests of the child, the petition shall be denied and the guardian so instructed to arrange suitable care for the child. If the adoption petition is denied and no guardian has been appointed, the Tribal Court shall appoint a guardian for the child. The Tribal

Court may request agencies authorized to provide such services to assist in the placement and the care of the child.

Section 4.08 Report and Final Decree of Adoption.

Subd. 1. Within six (6) months after the child has been in the custody of the petitioner(s), the Tribal Court shall request a supplementary written report under the same procedures followed in Section 4.06 of this Chapter as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Tribal Court is satisfied the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered.

Subd. 2. No final order may be entered by the Tribal Court until the child to be adopted has lived and resided for a period of at least six (6) months in the home of the adoptive parents. In any case where the Tribal Court finds that the best interests of the child will not be served by the adoption, a guardian of the child shall be appointed and suitable arrangements for the care of the child shall be made. The Tribal Court may request an appropriate Tribal, federal, or state agency authorized to provide such services to assist in the placement and the care of the child.

Section 4.09 Privacy Interests of Person(s) Giving Child up for Adoption.

In order to protect the privacy interests of the natural parent or guardian consenting to an adoption, the final order for adoption shall clearly indicate if that person's identity shall be confidential pursuant to the designation on the consent form provided by and filed with the Tribal Court. If the person later changes his or her mind, he or she may move to the Court to amend that portion of the order by filing a motion with the Tribal Court.

Section 4.10 Adoption Records.

All records, reports, proceedings and orders in adoption cases are confidential 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 Tribal Court by the adopted person after reaching legal majority, or upon order of the Tribal Court upon good and sufficient cause shown, unless the person consenting to the adoption has requested otherwise.

Section 4.11 Contents of Adoption Order.

Subd. 1. The final order and decree of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, the adoptive home and parents are adequate and capable for the proper care of the child, and that it is in the child's best interests.

Subd. 2. Within five (5) days after the final order and decree of adoption has been entered by the Tribal Court, the agency or subdivision of state government having responsibility for maintenance of state birth, death, and adoption records shall be notified on a form prepared and submitted by the Clerk of Tribal Court that the adoption has taken place. In providing such

notification, the Clerk shall include the full name, sex, birthday, names of natural parents and full names of adoptive parents so that a new record of birth in the new name and with the name or names of the adopting parents may be recorded. The Clerk shall also provide a certified true and correct copy of the final order and decree of adoption.

Section 4.12 Name and Legal Status of Adopted Child.

Children adopted by order of the Tribal Court shall assume the surname chosen by the persons by whom they are adopted, unless the Tribal Court orders otherwise, and shall be entitled to the same rights of person and property as natural children or heirs of the persons adopting them and shall be subject to the same obligations of natural children of the adoptive parent. The entry of an order and decree of adoption divests any parent or alleged parent who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations with respect to the adopted child, except for past-due child support payments.

Section 4.13 Tribal Status of Child.

Adoption of any minor child who is a member of Community shall not affect the child's status as a Community member.

Subchapter E: Customary Adoption Proceedings

Section 5.01 Declaration of Policy.

- (a) It is the fundamental belief of the Lower Sioux Indian Community that its children are the sacred responsibility of the Community.
- (b) One of the Lower Sioux Indian Community's basic inherent sovereign rights is the right to make decisions regarding the best interests of its children including who should provide for the care, custody and control of its children. This code is intended to assure a safe, stable, nurturing and permanent environment for the Community's children and to provide for the protection of our children, our people and our way of life.
- (c) The principles that shall guide decisions pursuant to this code are: protection of the child's safety, well-being and welfare and their sense of belonging; preservation of the child's identity as a tribal member and member of an extended family and clan; preservation of the culture, religion, language, values, clan system and relationships of the Community.
- (d) As an exercise of its inherent sovereignty the Lower Sioux Indian Community has the authority and jurisdiction to formally delegate the authority to its Tribal Court to adjudicate its own customary practices regarding child rearing and child custody.

Section 5.02 Purpose.

The customary adoption code shall be liberally interpreted and construed as an exercise of the inherent sovereign authority of the Lower Sioux Indian Community to fulfill the following express purposes:

- (a) To embody and promote the basic traditional values of the Lower Sioux Indian Community regarding the protection and care of the Community's children. The Lower Sioux Indian Community believes that it is the responsibility of the Community, the tribal communities and extended families to protect, care for and nurture our children.
- (b) To promote the belief of the Lower Sioux Indian Community that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.
- (c) To provide for the best interests of the Community, tribal communities and the Community's children.
- (d) To afford judicial processes which allow for formal adjudications that address the issues of the rights, responsibilities, care, custody and control of minor children when the biological parents are unable or unwilling to provide a safe, stable, nurturing and permanent environment for their children by conferring jurisdiction upon the Lower Sioux Indian Community's Tribal Court to hear and adjudicate such matters.

Section 5.03 Definitions.

Subd. 1. "Adoptee" is defined as the individual, child or adult who is adopted or is to be adopted.

Subd. 2. "Adoptive Parent" is defined as the person establishing or seeking to establish a permanent parent-child relationship with a child who is not their biological child.

Subd. 3. "Best Interests of the Child" is defined as a variety of factors including: the ability of the Community and reservation community to provide for the care of the child; the wishes of the Community, parents, party or parties; the preference of the child if the child is of sufficient age to express a preference; the intimacy of the relationship between the parties and the child; the child's adjustment to home, school and tribal community; the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed adoptive home; the mental and physical health of all individuals involved; the capacity and disposition of the parties to give the child love, affection, guidance and to continue educating the child in the child's tribal culture and heritage.

Subd. 4. "Best Interests of the Community" is defined as a variety of factors including but not limited to the ability of the Community and its members to provide for the child; the ability of the Community and its members to provide for the continuation of the Community's culture, language, history, religion, traditions and values through its children if those children are taken away and not taught these things throughout their daily lives. The ability of the Community to continue as a viable

cultural entity will be hindered by the loss of its children. Every child is a gift from the creator and is viewed by the Community as crucial to the future of the Community as a whole.

Subd. 5. “Birth Parent” is defined as the biological parent.

Subd. 6. “Community” means the Lower Sioux Indian Community as defined in the Constitution of the Lower Sioux Indian Community in Minnesota.

Subd. 7. “Customary Adoption” means a traditional tribal practice recognized by the Community which gives a child a permanent parent-child relationship with someone other than the child’s birth parent(s).

Subd. 8. “Clerk of the Tribal Court” means the office of the Clerk of the Tribal Court created pursuant to Division I of the Judicial Code.

Subd. 9. “Court” or “Tribal Court” means the Tribal Court of the Lower Sioux Indian Community.

Subd. 10. “Child” is defined as a person under the age of eighteen (18) years of age.

Subd. 11. “Family member” is defined as a person related by blood or marriage who maintains some form of significant contact with the child. The term includes spouses, parents, children, siblings, aunts, uncles, grandparents, grandchildren, cousins, significant others, and any other persons who might be considered a family member or a relative under tribal law or custom.

Subd. 12. “Final Decree of Customary Adoption” is defined as the final court order which establishes the permanent legal relationship between the child and the adoptive parent(s) and establishes any contact which may be allowed with the biological parent.

Subd. 13. “Final Order Suspending Parental Rights” means a final order of the court which permanently suspends the rights of a biological parent to provide for the care, custody and control of their child. Said order may establish the parameters of contact between the birth parent and the child if said contact is in the child’s best interests.

Subd. 14. “State court” means a court of the State of Minnesota, or of any other state, having civil jurisdiction over the child or children who are the subject of a suspension of parental rights petition or customary adoption petition.

Subd. 15. “Suspension of Parental Rights” is defined as the permanent suspension of the rights of biological parents to provide for the care, custody and control of their child.

Section 5.04 Civil Jurisdiction.

The Tribal Court shall have civil jurisdiction to hear and adjudicate petitions seeking a suspension of parental rights order or a customary adoption for protection of a child or, to issue temporary and

permanent orders for protection of a child, including ex parte orders if an emergency exists; and to issue such other orders as may be just and reasonable and designed to carry out the intent and purposes of this Subchapter, including use of the civil contempt powers of the Tribal Court as set forth in Division I of the Judicial Code.

Section 5.05 Rights of Parties in Suspension of Parental Rights Proceedings.

In addition to any other rights afforded under the Indian Civil Rights Act, 25 U.S.C. Sections 1301-03 (1968), as amended, or enumerated within the Judicial Code, petitioners, and other parties have the following rights:

- (a) A biological parent has the right to refuse services provided by any social services agency, however, their refusal to accept services may have a significant impact on their ability to have contact with their child;
- (b) The petitioner and respondent have the right to have reasonable notice and to attend any hearing arising out of the filing of a petition for suspension of parental rights pursuant to this Subchapter;
- (c) The biological parents and the petitioner have the right to be represented by counsel at their own expense at all proceedings;
- (d) The biological parents and the petitioner have the right to summon and cross-examine witnesses; and
- (e) The biological parents and the petitioner have the right to seek independent medical, psychological or psychiatric evaluations of the child at their own expense.

Section 5.06 Petition to Suspend Parental Rights.

Subd. 1. Any adult or agency possessing custody of a minor child may file a petition with the Clerk of the Tribal Court seeking an order for the permanent suspension of the parental rights of a parent of a child. The petition shall contain the following information:

- (a) The name, address and telephone number of the child's Community;
- (b) The name, address, telephone number and age of the child's parent whose parental rights are to be suspended;
- (c) The name, address, and telephone number of the petitioner and the petitioner's relationship, if any; to the child;
- (d) The name, address, and telephone number of any other relatives who may have an interest in the care, custody and control of the minor child;

- (e) A statement as to why an order for the suspension of parental rights of the parent is in the best interests of the child and the child's Community.
- (f) A statement as to basis for the request for the suspension of parental rights, supported by medical, psychiatric, child protection worker, family member and/or psychological reports or testimony; and
- (g) A statement that no similar action is pending in a state or other tribal court having jurisdiction over the child.

Subd. 2. The petitioner shall sign the petition in the presence of the Clerk of the Tribal Court or a notary public and shall affirm under oath that the contents are true and correct except as to those matters based upon belief and, as to those matters, the petitioner reasonably believes them to be true.

Section 5.07 Notice of Hearing on Petition to Suspend Parental Rights.

Upon the filing of a petition seeking an order for the suspension of parental rights, the Clerk of the Tribal Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's Community; the child's parent(s); family members; caretaker, if any; and appropriate agencies of the Community which may either have an interest in the proceedings or be of assistance to the Tribal Court in adjudicating the matter. Such notice shall be served in the manner provided for in the Lower Sioux Indian Community Judicial Code.

Section 5.08 Hearing.

Subd. 1. Attendance at hearing.

- (a) The parents, family members, agencies and petitioner shall be present at the hearing in person or by telephone unless he or she has waived the right to appear in a writing executed before the Clerk of the Tribal Court or a notary public and filed with the Tribal Court or unless the parent is unable to attend by reason of a medical condition as evidenced by a written statement from a licensed physician or other appropriate professional.
- (b) The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.
- (c) The parent(s) named in the petition shall also be present. The parent(s) failure to appear shall not prevent the issuance of an order for suspension of parental rights.

Subd. 2. Conduct of the hearing.

- (a) The Tribal Court shall inform the parent of their rights under this code and of the nature and consequences of the proceedings.

- (b) The Tribal Court shall further inform all other parties of their rights under the Judicial Code and pursuant to the Indian Civil Rights Act, 25 U.S.C., Section 1301-03 (1968), as amended, including the right to summon and cross-examine witnesses.
- (c) The rules of evidence of the Tribal Court shall apply.
- (d) The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence. There shall be a legal presumption of the parent's ability to parent until proven otherwise.
- (e) The Tribal Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Subchapter.

Subd. 3. Record of proceedings. In all proceedings the court shall take and preserve an accurate stenographic or recording of the proceedings.

Subd. 4. Findings.

- (a) In all cases, the Tribal Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.
- (b) The Tribal Court may make findings that it is in the child's best interests that a final order suspending the parental rights be entered and the Tribal Court shall specify the basis of those findings.

Section 5.09 Final Order for Suspension of Parental Rights.

Subd. 1. If the Tribal Court determines that it is in the best interests of the child and the child's Community, it shall issue a final order for a suspension of parental rights. Such an order for the suspension of parental rights shall contain a statement regarding why it is in the best interests of the child and the child's Community to enter this order and may include the following:

- (a) A permanent suspension of the parental rights of the parent including the suspension of the right to the care, custody and control of the minor child and allowing the child to be adopted;
- (b) A permanent suspension of the right of the parent to have contact with the minor child including contact in person, by mail, by telephone or through third parties or the order may allow for a contact agreement agreed upon by the parties to be ordered by the Tribal Court;

- (c) Restraining a parent from contacting the minor child, the child's foster parent, the child's adoptive parent and/or the social services agency or agencies possessing information regarding the minor child;
- (d) Ordering that the biological parents' obligation to pay child support, except for arrearages, is hereby terminated;
- (e) Ordering that any prior court order for custody, visitation or contact with the minor child is hereby terminated;
- (f) The parent shall have no standing to appear at any future legal proceedings involving the child;
- (g) The suspension of parental rights does not sever or affect in any way a child's relationship to his/her Community or any rights of inheritance from the biological parent(s); and
- (h) Any other relief that may be deemed necessary or appropriate by the Tribal Court.

Subd. 2. Copies of any order for suspension of parental rights shall be served upon the parent and the agency or agencies having legal custody of the child and any other parties as directed by the Tribal Court.

Subd. 3. Final orders for the suspension of parental rights may be reviewed by the Tribal Court at the request of the biological parent, the agency or agencies possessing custody of the child only if one of the following occurs: if there is no final permanency order in effect after a period of one (1) year after the entry of the final order suspending parental rights; the adoption of the child fails; or the adoptive parent is deceased. Notice of this review shall be provided to all parties to the hearing at which the final suspension of parental rights order was issued.

Section 5.10 Petition for Customary Adoption.

Any adult may file a petition with the Clerk of the Tribal Court seeking an order for the customary adoption of a minor child. The petition shall contain the following information:

- (a) The name, address and telephone number of the child's Community;
- (b) The name, address, telephone number and age of the child to be adopted;
- (c) The name, address, telephone number and tribal affiliation, if any, of the petitioner(s) and the petitioner's relationship, if any, to the child;
- (d) The name, address, and telephone number of any other family members who may have an interest in the care, custody and control of the minor child;

- (e) The proposed name of the adoptee after the entry of the final order of customary adoption;
- (f) A statement or a copy of the final order suspending the parental rights of the biological parent(s);
- (g) A statement as to why a final order for customary adoption is in the best interests of the child and the best interests of the child's Community.
- (h) A statement as to the basis for the customary adoption supported by a home study, medical, psychiatric, child protection worker, family member and/or psychological reports or testimony;
- (i) A statement that no similar action is pending in a tribal or state court having jurisdiction over the child.

Section 5.11 Notice of Hearing on Petition for Customary Adoption.

Upon the filing of a petition seeking an order for a customary adoption of a minor child, the Clerk of the Tribal Court shall schedule a hearing to be held thereon and shall cause written notice of such hearing to be served upon the petitioner; the child's Community; appropriate family members, if any; caretaker, if any; and appropriate agencies of the Community which may either have an interest in the proceedings or be of assistance to the Tribal Court in adjudicating the matter. Such notice shall be served in the manner provided for in Lower Sioux Indian Community Judicial Code.

Section 5.12 Hearing on Petition for Customary Adoption.

Subd. 1. Attendance at hearing.

- (a) The child who is the subject of a petition for customary adoption, agencies, petitioner and any appropriate family members including siblings may be present at the hearing in person or by telephone.
- (b) The petitioner shall be present at the hearing. The petitioner's failure to appear shall be grounds for dismissal of the petition.

Subd. 2. Conduct of the hearing.

- (a) The Tribal Court shall inform the parties of their rights under this code and of the nature and consequences of the proceedings.
- (b) The Tribal Court shall further inform all other parties of their rights under the Judicial Code and pursuant to the Indian Civil Rights Act, 25 U.S.C., Section 1301-03 (1968), as amended, including the right to summon and cross-examine witnesses.

- (c) The rules of evidence of the Tribal Court shall apply.
- (d) The burden of proving the allegations of the petition shall be upon the petitioner and the standard of proof shall be clear and convincing evidence.
- (e) The Tribal Court may continue the hearing, upon a showing of good cause, at the request of any party to the proceeding and enter such temporary orders, if any, as may be deemed just and reasonable to carry out the purposes of this Subchapter.

Subd. 3. Record of proceedings. In all proceedings the Tribal Court shall take and preserve an accurate stenographic or recording of the proceedings.

Subd. 4. Findings.

- (a) In all cases, the Tribal Court shall make specific written findings of fact, state separately its conclusions of law, and enter an appropriate judgment or order.
- (b) The Tribal Court may make findings that it is in the child's best interests that a final order for a customary adoption be entered and the Tribal Court shall specify the basis of those findings.

Section 5.13 Final Order for Customary Adoption.

If the Tribal Court determines that it is in the best interests of the child and the child's Community, it shall issue a final order for a customary adoption. Such an order shall include, but is not limited, to the following:

- (a) A statement that the child has been adopted by the petitioner(s) and that the parent-child bond is hereby established and that all of the rights and responsibilities of that relationship shall exist upon the entry of such a final order; and
- (b) A notice regarding the new name of the child, if any.

Section 5.14 Certification of a Customary Adoption.

Subd. 1. A customary adoption, conducted in a manner that is a long-established, continued, reasonable process and considered by the people of the Lower Sioux Indian Community to be binding and authentic, based upon the testimony of an expert witness, may be certified by the Tribal Court as having the same effect as an adoption order issued by this court so long as it is in the best interests of the child and the child's Community.

Subd. 2. A decree certifying a customary adoption has the same effect as a decree or final order of customary adoption issued by this Court.

Section 5.14 Enforcement.

Final orders for the suspension of parental rights or customary adoption may be enforced by utilizing the contempt powers of the Tribal Court as set forth in Division I of the Judicial Code.

Section 5.15 Appeals.

Subd. 1. Who Can Appeal. Any party to a petition to suspend the parental rights of a parent pursuant to this Code may appeal a final court order.

Subd. 2. Appeals Procedure. All appeals from proceedings under this Code shall be heard pursuant to the Appellate Rules for the Lower Sioux Indian Community except to the extent that any Rule of Procedure is in direct conflict with the express provisions of this Subchapter E. In such a case the provisions of this Subchapter shall apply.

Section 5.16 Right of Access to Records.

Any party deemed appropriate by the Tribal Court and the child who has been the subject of a suspension of parental rights proceeding or a customary adoption proceeding has the right, upon reaching the age of majority, to review all of the Tribal Court's file on these matters subject to redaction of names or the rights of confidentiality of some documents under federal or tribal law.

Section 5.17 Severability.

If any provision of this Subchapter, or the application thereof, to any person is held invalid, such invalidity shall not affect the provisions or applications of this Subchapter which can be given effect without the invalid provisions, and to this end the provisions of this Subchapter are declared severable.

CHAPTER TWO: MARRIAGE AND DISSOLUTION

Subchapter A: Marriage

Section 1.01 Jurisdiction.

The Lower Sioux Indian Community shall have jurisdiction over all marriages of members of the Lower Sioux Indian Community and other Indian tribes.

Section 1.02 Definition.

Marriage is a personal relation arising out of a civil contract requiring the consent of the parties entering it or their guardians.

Section 1.03 Who May Marry.

Subd. 1. No person under the age of 18 years may marry without the written consent of his or her parents, unless the person under the age of 18 is living with only one parent, in which case the consent of that parent will suffice.

Subd. 2. Persons related by whole or half blood as parents, siblings, aunts, uncles, nieces, nephews, or first cousins may not marry one another.

Subd. 3. Only persons of the opposite gender may marry.

Subd. 4. No person declared incompetent by the Tribal Court or another court with jurisdiction may marry without the consent of the person's parent or legal guardian.

Subd. 5. No person who is already married in this or any other jurisdiction may be licensed to be married except as provided in Subdivision 6 of this Chapter.

Subd. 6. A person who is already married, but whose spouse has been absent for five consecutive years and whom the person wishing to marry reasonably believes to be dead, may marry if she or he obtains a judicial determination that the absent spouse is presumed dead, pursuant to the following subsections:

- (a) A judge of the Tribal Court makes a finding, after a hearing and notice to the absent spouse, that an absent spouse is presumed dead. Publication of the notice of hearing in three consecutive issues of a newspaper having general circulation on the Reservation and publication in three consecutive issues of a newspaper of general circulation in the county of the absent spouse's last known residence, if known, shall be sufficient notice. No hearing on an application for presumption of death of spouse shall be heard before thirty (30) days from the last publication of notice of hearing.

- (b) The fact that an absentee spouse was exposed to specific peril of death may be sufficient grounds for finding that she or he died less than five years from the last date on which she or he was heard from.

Section 1.04 Marriage Requirements – Generally.

Subd. 1. Anyone wishing to marry, under the provisions of this Subchapter, must first obtain a marriage license from the Clerk of the Tribal Court. Nothing herein shall be interpreted as divesting the jurisdiction or authority of any person to issue marriage licenses or to perform marriage ceremonies under the laws of the State of Minnesota.

- (a) Before issuing any marriage license, the Clerk of Tribal Court shall ascertain by questioning the applicants and by requiring them to fill out a form that they are adults, mentally competent, sober, and meet all the requirements of this Subchapter.
- (b) The Clerk of Tribal Court may issue Tribal marriage licenses to qualified applicants regardless of their places of residence.
- (c) The Clerk of Court may charge a fee of not greater than \$35.00 for the issuance of a marriage license.

Subd. 2. Persons may contract marriage by declaring in the presence of two witnesses that they take each other to be married. They shall be declared as married if they, along with the two witnesses, sign the marriage license, subject to the solemnization provisions of Subd. 3.

Subd. 3. The contracting parties may marry according to the rites of any church, in which case they, the officiating member of the clergy, and two witnesses shall sign in the places provided on the face of the marriage license. A marriage may be solemnized by a Judge of the Tribal Court, by an individual of any religious denomination designated as having authority to perform marriages according to the form and usage of his or her religion or by a person recognized by Minnesota state law as having authority to perform marriages.

Section 1.05 Validity of Marriages.

Subd. 1. Valid marriages are those performed or licensed under the terms of this Subchapter. A valid divorce decree is necessary to terminate a valid marriage, absent death or annulment.

Subd. 2. All marriages performed other than as provided for in this Subchapter, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Lower Sioux Indian Community.

Section 1.06 Annulment.

Subd. 1. Annulment of a marriage means that for legal purposes, the marriage never existed. A marriage may be annulled for any of the following causes existing at the time of marriage:

- (a) That the party in whose behalf annulment is sought was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other as husband and wife;
- (b) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife; or
- (c) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

Subd. 2. An action to obtain a decree of annulment of a marriage must be commenced within four (4) years of the marriage date, except for that on the grounds of minority, a parent, guardian or other person having charge of a minor, may obtain such a decree at any time before such married minor has attained the age of legal consent.

Subd. 3. When a marriage is annulled for any reason (except for fraud where the husband is not the biological father) the child(ren) born before judgment may succeed to the estate of both parents. The Tribal Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances of the parents may require.

Subchapter B: Marital Property

Section 2.01 Definition.

Marital property is that which is acquired during the marriage except for gifts and inheritances unless otherwise provided by this Code. The marital property is liable for the debts contracted during the marriage by either spouse.

Section 2.02 Separate Property.

The separate property of each spouse is anything that she or he owned prior to the marriage and separate gifts and inheritances acquired during the marriage. The separate property of either spouse is not liable for the debts of the other spouse.

Section 2.03 Termination of Marital Property.

Marital property shall cease to be acquired upon the filing of a petition for divorce by either party, provided the petition leads to the dissolution of the marriage.

Subchapter C: Divorce

Section 3.01 Residency Requirement.

The Tribal Court shall have jurisdiction over all divorces filed by persons who have resided on the Reservation, as defined in Chapter One, Section 1.02 of this Code, for at least ninety (90) days prior to commencing any action for the dissolution of a marriage, and in which at least one party is a Community member.

Section 3.02 Definition.

A decree of divorce is the termination of the marital relationship and shall restore the parties to the state of unmarried persons.

Section 3.03 Grounds for Divorce.

A divorce shall be granted if the Tribal Court finds that there has been an irretrievable breakdown of the marriage relationship. The Tribal Court may find that there has been an irretrievable breakdown of a marriage if one of the spouses alleges an irretrievable breakdown and that there is no reasonable prospect of reconciliation.

Section 3.04 Division of Property Upon Divorce

Subd. 1. If no valid antenuptial contract to the contrary exists, the marital property of the spouses is to be divided equitably upon divorce. The Tribal Court shall consider the length of the marriage; the contributions, financial and non-financial of both spouses; the standard of living to which each spouse has become accustomed; the financial needs of each spouse; and any other factor the Tribal Court finds appropriate. The Tribal Court shall not consider the misconduct of either spouse when making its determination.

Subd. 2. If no valid antenuptial contract exists, the separate property of each of the spouses remains the property of the respective spouse. Separate property of a spouse, except for the per capita payments of eligible Tribal members, may be given to the other spouse only to prevent unfair hardship.

Subd. 3. If no valid antenuptial contract exists, property which cannot be traced as separate property of one of the spouses is considered marital property for the purpose of division of property between the spouses.

Subd. 4. If no valid antenuptial contract exists, professional degrees earned by one spouse while the other spouse supported him or her are not marital property, but the Tribal Court shall consider such contributions in its equitable distribution of the marital property.

Subd. 5. If no valid antenuptial contract exists, pension plan benefits or rights in the form of future pension plan payments:

- (a) Are payable only under the terms of the pension plan;
- (b) Are not payable in a lump sum amount from available pension plan assets;
- (c) If the former spouse to whom the payments are to be made dies prior to the end of the specified payment period, any remaining payments may be paid to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee.

Subd. 6. All divisions of real and personal property provided by this Section 3.04 shall be final, and may be revoked or modified only where the Tribal Court finds the existence of one of the following:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial;
- (3) Fraud, misrepresentation, or other misconduct of an adverse party;
- (4) The judgment and decree or order is void; or
- (5) The judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

Subd. 7. A motion for modification must be made within a reasonable time not more than two years after the judgment and decree, order, or proceeding was entered or taken. A motion under this subsection does not affect the finality of a judgment and decree or order or suspend its operation. This subsection does not limit the power of the Tribal Court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a party not actually personally notified of the judgment, or to set aside a judgment for fraud upon the Tribal Court.

Section 3.05 Maintenance.

Subd. 1. If no valid antenuptial contract or settlement stipulation exists between the spouses, maintenance may be awarded if the Tribal Court deems appropriate. The Tribal Court shall consider the length of the marriage; contributions, financial and non-financial, of both spouses; the standard of living to which each spouse has become accustomed; the financial needs of both spouses; and any other factor the Tribal Court finds appropriate. The Tribal Court shall not consider misconduct of either spouse when making its determination.

Subd. 2. The Tribal Court may subsequently modify a maintenance award upon a showing of one or more of the following, any one of which makes the terms unreasonable or unfair:

- (a) substantially increased or decreased earnings of a party;
- (b) substantially increased or decreased need of a party;
- (c) receipt of public assistance; or
- (d) a change in the cost of living for either party measured by the federal bureau of statistics.

Subd. 3. If the Tribal Court concludes that a modification is warranted by the factors in Section 3.05, Subd. 2, the Tribal Court shall set the new award by considering the factors listed in Section 3.05, Subd. 1 that existed at the time of the motion.

Subd. 4. A modification of maintenance may be made retroactive only with respect to any period during which the moving party has pending a motion for modification but only from the date of service of notice of the motion on the responding party.

Subd. 5. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

Section 3.06 Child Support.

Subd. 1. Child support shall be paid by the non-custodial parents as follows:

Net income per month of non-custodial parent	Number of Children						
	1	2	3	4	5	6	7 or more
\$401 - 500	14%	17%	20%	22%	24%	26%	28%
\$501 - 550	15%	18%	21%	24%	26%	28%	30%
\$551 - 600	16%	19%	22%	25%	28%	30%	32%
\$601 - 650	17%	21%	24%	27%	29%	32%	34%
\$651 - 700	18%	22%	25%	28%	31%	34%	36%
\$701 - 750	19%	23%	27%	30%	33%	36%	38%
\$751 - 800	20%	24%	28%	31%	35%	38%	40%
\$801 - 850	21%	25%	29%	33%	36%	40%	42%
\$851 - 900	22%	27%	31%	34%	38%	41%	44%
\$901 - 950	23%	28%	32%	36%	40%	43%	46%
\$951 - 1000	24%	29%	34%	38%	41%	45%	48%
\$1001-4000	25%	30%	35%	39%	43%	47%	50%

Guidelines for support to be paid by a non-custodial parent with a monthly income of \$4,001 or more shall be the same dollar amounts as provided for in the guidelines for an obligor with a monthly income of \$4,000.

Subd. 2. Net Income defined as: Total monthly income less

- (a) Federal income tax;
- (b) State income tax;
- (c) Social Security Deductions;
- (d) Reasonable pension deductions;
- (e) Union Dues;
- (f) Cost of dependent insurance coverage;

- (g) Cost of individual or group health/hospitalization coverage or an amount for actual medical expenses; and
- (h) A child support or maintenance order that is currently being paid.

Subd. 3. Net Income does not include:

- (a) The income of the non-custodial parent's spouse;
- (b) Compensation received by a party for employment in excess of a 40-hour work week, provided that:
 - (i) The excess employment began after the filing of the petition for dissolution;
 - (ii) The excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;
 - (iii) the excess employment is voluntary and not a condition of employment;
 - (iv) the excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of an hour; and
 - (v) the party's compensation structure has not been changed for the purpose of affecting a support or maintenance obligation.
- (c) Net income shall only include the first monthly gaming revenue allocation made by the Community.

Subd. 4. The guidelines in Section 3.06, Subd. 1 are binding in each case unless the Tribal Court makes express findings of fact as to the reason for departure below or above the guidelines when setting an initial award.

Subd. 5. In addition to the child support guidelines, the Tribal Court shall take into consideration the following factors in setting or modifying child support:

- (a) All earnings, income, and resources of the parents, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of Subdivision 3;
- (b) The financial needs and resources, physical and emotional condition, and educational needs of the child or children to be supported;

- (c) The standards of living the child would have enjoyed had the marriage not been dissolved, but recognizing that the parents now have separate households;
- (d) The amount of any public assistance granted for the child or children;
- (e) Which parent receives the income taxation dependency exemption and what financial benefit the parent receives from it; and
- (f) The nature and amount of the parent's debts.

Subd. 6. After an order for child support, the Tribal Court may, on motion of either of the parties or on motion of the public authority responsible for support enforcement, modify the order. The terms of a decree respecting child support may be modified upon a showing of one or more of the following:

- (a) Substantially increased or decreased earnings of a party;
- (b) Substantially increased or decreased need of a party;
- (c) Receipt of public assistance;
- (d) A change in the cost of living for either party measured by the federal bureau of statistics;
- (e) Failure of the non-custodial parent to maintain medical support under Section 3.08.

Subd. 7. If the Tribal Court concludes a modification is warranted by the factors in Subdivision 6 of this Section, it shall set the new award as if it were an initial award, under the terms of Subdivisions 1 through Subdivision 5 of this section.

Subd. 8. A modification of child support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party. However, the modification may be applied to an earlier period if the Tribal Court makes express findings that the party seeking modification was precluded from serving a motion by reason of a significant physical or mental disability or a material misrepresentation of another party and that the party seeking modification, when no longer precluded served a motion.

Subd. 9. Unless otherwise agreed in writing, with Tribal Court approval, or expressly provided in the decree, provisions for child support are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

Section 3.07 Enforcement of Child Support.

The Tribal Court may enforce the child support orders as it sees fit, including issuing a garnishment order, or requiring the obligor to execute a wage assignment agreement. The Tribal Court may order the Community Council to withhold a delinquent obligor's child support obligation from each per capita payment until the child support obligation expires or is terminated.

Section 3.08` Medical Support.

Subd. 1. Any payments made under this Section shall be in addition to a child support payment made under Section 3.06. Unless the Tribal Court orders otherwise, it is presumed that any medical support obligation continues until the child reaches the age of 18.

Subd. 2. Unless the parent who has not been ordered to pay support has comparable or better group dependent health insurance coverage available at a more reasonable cost, the Tribal Court shall order the person paying support to name the minor child as beneficiary and dependent on any health and dental insurance plan that is available to that parent.

Subd. 3. If the Tribal Court finds that dependent health or dental insurance is not available to the parent required to pay support, the Tribal Court may require that parent to obtain dependent health or dental insurance, or to be liable for reasonable and necessary medical or dental expenses of the child.

Subd. 4. If the dependent health or dental insurance obtained by the parent required to pay support does not pay all the reasonable and necessary medical or dental expenses, that parent shall be liable for all or a portion of the medical or dental expenses of the child not covered by the required health or dental plan.

Subd. 5. The Tribal Court shall require the parent ordered to pay support to provide dependent health and dental insurance for the benefit of the custodial parent, if it is available at no additional cost.

Subd. 6. If the parent ordered to provide insurance fails to maintain the medical or dental insurance for the benefit of the children, she or he shall be liable for any medical or dental expenses incurred from the date of the Tribal Court order.

Subd. 7. The provisions regarding medical support may be modified or waived by the Tribal Court at its discretion if the parties demonstrate to the Tribal Court's satisfaction that the minor children are currently eligible for comparable medical services through the Indian Health Service.

Subchapter D: Child Custody and Visitation Upon Divorce

Section 4.01 Custody.

Subd. 1. Determinations regarding custody of the children of the parties will be made based on the best interests of the children. When making a custody determination, the Tribal Court shall consider Tribal membership/affiliation of the parents or petitioning parties if not a parent and may give preference to Tribal members only if to do so is in the best interests of the child.

Subd. 2. "Best interests of the child" means all relevant factors to be considered by the Tribal Court including, but not limited to:

- (a) The wishes of the child's parent or parents as to custody;
- (b) The reasonable preference of the child, if the Tribal Court deems the child to be of sufficient age to express preference;
- (c) The child's primary caretaker;
- (d) The intimacy of the relationship between each parent and the child;
- (e) The interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
- (f) The child's adjustment to home, school, and community;
- (g) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- (h) The permanence, as a family unit, of the existing or proposed custodial home;
- (i) The mental and physical health of all individuals involved;
- (j) The capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child with an appreciation of the child's culture and religion or creed, if any;
- (k) The child's Tribal or cultural background; and
- (l) The effect of domestic abuse on the child if such abuse has occurred within the household of the child. Domestic abuse means:
 - (i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or

- (ii) criminal sexual conduct, as defined by Minnesota state statutes, committed against a minor family or household member by an adult family or household member.

Section 4.02 Visitation.

Subd. 1. In any proceeding for divorce, the Tribal Court shall, upon the request of either parent, grant visitation rights that will be in the best interests of the child. If the Tribal Court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development, the Tribal Court shall restrict visitation by the noncustodial parent as to time, place, duration, or supervision and may deny visitation entirely, as the circumstances warrant. A parent's failure to pay support because of the parent's inability to do so will not be sufficient cause for denial of visitation.

Subd. 2. The custodial parent shall not move the residence of the child to another state or to another reservation except upon order of the Tribal Court or with the consent of the noncustodial parent, when the noncustodial parent has been given visitation rights by the decree. If the Tribal Court determines after hearing that the purpose of the move is to interfere with visitation rights given to the noncustodial parent by the decree, the Tribal Court shall not permit a change of residence described herein.

Subd. 3. Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of Tribal Court and may be sufficient cause for reversal of custody.

Subd. 4. The Tribal Court shall modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Except as provided below, the Tribal Court may not restrict visitation rights unless it finds that:

- (a) The visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development; or
- (b) The noncustodial parent has chronically and unreasonably failed to comply with Tribal Court-ordered visitation.

Section 4.03 Effect of Certain Convictions on Custody and Visitation Rights.

Subd. 1. If a person with Tribal Court-ordered custody or visitation rights is convicted of a crime, the Tribal Court may, on petition from the other parent:

- (a) Grant temporary custody to the petitioning parent, unless it finds that another custody arrangement is in the best interests of the child; or
- (b) Suspend visitation rights, unless it finds that visitation with the convicted person is in the best interests of the child.

Subd. 2. The Tribal Court shall expedite proceedings under this section. The defendant has the burden of proving that continued custody or visitation with the defendant is in the best interests of the child.

Section 4.04 Per Capita Payments.

Unless the per capita distribution ordinance of the Community directs otherwise, any per capita payments that the children of a marriage may receive will be under the control of the custodial parent, to be used in the children's best interests. In the event of a conflict between this Domestic Relations Code and the Membership Privilege and Gaming Revenue Allocation Ordinance, the latter shall control.

Section 4.05 Modification of Custody Orders.

Subd. 1. Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than one year after the date of the entry of a decree of dissolution containing a provision dealing with custody, except in accordance with Subdivision 3 of this Section.

Subd. 2. If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within two years after disposition of the prior motion on its merits, except in accordance with Subdivision 3 of this Section.

Subd. 3. The time limitations prescribed in Subdivisions 1 and 2 of this Section shall not prohibit a motion to modify a custody order if the Tribal Court has reason to believe that there may be persistent and willful denial or interference with visitation, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development. The Court shall make such determination(s) based upon the affidavits of the parties.

Subd. 4. The Tribal Court shall not modify a prior custody order after hearing on the motion unless it finds, upon the basis of facts that have arisen since the prior order or that were unknown to the Tribal Court at the time of the prior order, that a change has occurred in the circumstances of the child or the custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the Tribal Court shall retain the custodian established by the prior order unless the Tribal Court finds:

- (a) The custodian agrees to the modification;
- (b) The child has been integrated into the family of the petitioner with the consent of the custodian; or
- (c) The child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be

caused by a change of environment is outweighed by the advantage of a change to the child.

Subchapter E: Antenuptial Agreement

Section 5.01 Scope of Antenuptial Agreements.

Subd. 1. Antenuptial contracts may cover both marital and separate property of the spouses, except that the parties may not contract regarding any per capita payments from the Community.

Subd. 2. Antenuptial contracts may include provisions governing children of the spouses, but such provisions will only be upheld as long as they are determined by the Tribal Court to be in the best interests of the children involved at the time of enforcement of the contract. Antenuptial contracts may not include provisions governing the per capita payments by the Community to children.

Section 5.02 Requirements of Valid Antenuptial Contracts.

Subd. 1. Each party must fully disclose his or her assets to the other party and schedules of each party's assets must be attached to the antenuptial contract.

Subd. 2. No antenuptial agreement which is substantively or procedurally unfair either at the time of execution or at the time of enforcement will be valid. Time of execution is the moment of the signing of the contract. Time of enforcement is the moment at which the contract will be activated. The Tribal Court will determine the fairness of the contract.

Section 5.03 Burden of Proof.

The burden of proof to prove invalidity of an antenuptial contract is on the person challenging the validity of the contract. He or she must demonstrate by clear and convincing evidence that the contract is unfair, or that the circumstances surrounding execution and/or enforcement render the contract unfair.

Subchapter F: Paternity

Section 6.01 Children Born During a Marriage.

Subd. 1. The husband of a child's mother is presumed to be the father of any child born during the marriage.

Subd. 2. A biological father who is not the husband of the child's mother may challenge the presumption of paternity of the husband only with the written consent of the mother.

Section 6.02 Children Born Outside of Marriage.

Subd. 1. The paternity of a child born outside of a marriage may be established by blood testing, as ordered by a Tribal Court upon a motion by the mother of the child; or

Subd. 2. The paternity of a child born outside of a marriage may be established by acknowledgement of paternity by a man not excluded by blood testing or DNA testing, with the permission of the child's mother. The permission and the acknowledgement must be filed with the Clerk of Tribal Court in order to be valid.

Subd. 3. The mother of a child born out of wedlock has legal custody of the child unless the Tribal Court grants legal custody to another person or transfers legal custody to an agency.

Section 6.03 Application of the Laws of Intestate Succession to Children Born Outside of Marriage.

Subd. 1. A child born outside of a marriage whose paternity has been established may inherit by intestate succession from his or her father.

Subd. 2. A child born outside of a marriage whose paternity has not been established may inherit from his or her father by intestate succession only if she or he can establish by clear and convincing evidence to the Tribal Court that the alleged father acknowledged her or him as his child. Proof of acknowledgement shall include, but is not limited to, testimony by other family members that the child was accepted as the son or daughter of the man from whom he or she wishes to inherit.

Section 6.04 Determinations of Paternity by the Tribal Court.

In actions to determine the paternity of a child, the judgment of the Tribal Court establishing the identity of the father of the child shall be conclusive in all subsequent proceedings in the Department of the Interior relating to the determination of heirs and rights of inheritance.

Section 6.05 Procedure to Determine Father and Child Relationship.

Until amendment of this Code, the Tribal Court may apply the procedure set forth in Minnesota Statutes §§ 257.57 - 257.73 to determine father and child relationship. Use of the procedure contained in Minnesota statutes shall not be deemed an adoption of Minnesota law by the Community and the procedures so adopted shall be subject to modification by the Community.