

S.W.S.T. CODE
 Amendment - Draft
 New Adoption
Judicial Approved
05-05-88
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SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 38

JUVENILE CODE

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38-01-01 PURPOSE AND CONSTRUCTION

It is the purpose of this Juvenile Code to provide each child coming before the Tribal Juvenile Court such case, guidance and control, preferably in his/her own home, as will serve his/her welfare and the best interests of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation; to preserve and strengthen family ties; to preserve and strengthen the child's cultural and Tribal identity; to secure for any child removed from his/her home that care, guidance, and control as nearly equivalent to that which he/she should have been given by his/her parents to help him/her develop into a responsible, well-adjusted adult; to improve any conditions or home environment which may be contributing to his/her delinquency; and at the same time, to protect the peace and security of the community and its individual residents from juvenile violence or law breaking.

38-02-01 CRUELTY TO OR ABUSE OF A CHILD, INCLUDING AN UNBORN CHILD, OR MINOR

Any person who causes or permits a child to be:

1. Abused, exposed, torture, tormented, or cruelly punished;
2. Placed in or to remain in a situation that endangers his/her life, physical, mental or emotional health;
3. Cruelly confined;
4. Deprived of necessary food, shelter or medical care;
5. Left unattended or unsupervised, if under the age of fourteen (14) years, in circumstances that a prudent person would consider having a risk of substantial harm to the child;
6. Subjected to sexual abuse, sexual molestation or sexual exploitation by his/her parent, guardian, custodian or any other person; or
7. Subjected to mental injury by reason of any of the foregoing, is guilty of an offense.
8. Placed at risk for birth defects by using alcohol and/or other substances during pregnancy.

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Any person convicted under 38-02-01 shall be sentenced to imprisonment for a minimum of one (1) year in jail or to a fine of five thousand dollars (\$5000.00), or to both such imprisonment and fine, plus court costs, except that the court may suspend all or any part of such sentence if a pregnant woman is committed to protective custody under Chapter 26.

38-03-01 **DEFINITIONS**

38-03-02 ABUSED CHILD - A child who is abused, exposed, tortured, tormented or cruelly punished; placed in or to remain in a situation that endangers his/her life, physical, mental or emotional health; cruelly confined; deprived of necessary food, shelter or medical care; placed at risk for birth defect by mother's use of alcohol and/or other substances during pregnancy; left unattended or unsupervised, if under the age of fourteen (14), in circumstances that a prudent person would consider having a risk of substantial harm to the child; subject to sexual abuse, sexual molestation or sexual exploitation by his/her parent, guardian, custodian, or any other person or subjected to mental injury by reason of any of the following sections.

38-03-03 PHYSICALLY ABUSED CHILD - Is one found to be in one or more of the following situations:

1. Punishments of a nature that could be considered cruel and unusual;
2. A child who has clearly visible physical injuries or is knocked unconscious.
3. A child whose parents have failed to provide the child's basic needs for food, shelter, and clothing;
4. A child, including an unborn child, whose health is endangered by exposure to alcohol, drugs, tobacco; and/or
5. A child whose home life is dangerous (e.g., excessive drinking, excessive numbers of people in the house, no food, etc.).

38-03-04 EMOTIONALLY ABUSED CHILD - Is one found to be in one or more of the following situations, dependent upon proof of parental or legal guardian action which has resulted in serious harm to the child:

1. A child whose parents fail to love, listen, guide, or pay attention to him/her;
2. A child who receives no moral, spiritual or intellectual instruction from his/her parents;

3. A child who is separated or isolated from other members of the family (locked in or locked out);
4. A rejected child;
5. A child whose parents have unrealistic expectations of him/her;
6. A child whose parents or others verbally harass, tease, swear at, and/or ridicule him/her;

38-03-05 SEXUALLY ABUSED CHILD - Sexual abuse of a child means any act however slight, of sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism fellatio, cunnilingus, analingus, the filming or photographing of child engaging in a sex act or in the simulation of such act, any intrusion, however slight, of any part of the body or any object into the genital or anal openings of another person's body, any touching of the breasts or the genitalia or anus of any person with the intent to arouse; or gratify the sexual desire of either party and any other sexual activity including nudity if sexual activity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.
(SEE PENAL CODE, SECTION 26-15-02)

38-03-06 NUTRITIONALLY ABUSED CHILD - Is one found to be in one or more of the following situations:

1. A child, including an unborn child, whose parents provide inadequate or inappropriate foods (e.g., alcohol, smokeless tobacco, excessive junk foods, etc.);
2. A child whose parents misuse benefits intended for the child, including selling or squandering food stamps, commodities, B.I.A., grocery orders, Aid to Dependent Children, child support payments; and/or
3. A child who is expected to provide his/her own nutrition during prolonged, unsupervised baby sitting for themselves and other children.

38-03-07 ACT - Means the Indian Child Welfare Act, P.L. 95-608.

38-03-08 ADJUDICATION - Means a finding by the court that the facts stated in the petition have been proven and that subsequent judgment has ensued.

38-03-09 ADULT - Means any person who has reached his/her eighteenth (18) birthday.

38-03-10 B.I.A. - Means Bureau of Indian Affairs.

- 38-03-11 CHILD - Means a person who is enrolled in or eligible for enrollment in the Sisseton-Wahpeton Sioux Tribe, or any other Indian on the Reservation, who is less than eighteen (18) years of age, or any person still subject to the continuing jurisdiction of the Tribe Juvenile Court, or, unless the context indicates otherwise, the unborn child of any such person.
- 38-03-12 CHILD CUSTODY PROCEEDING - Means any voluntary or involuntary administrative or judicial action which may result in the change of custody of a child, (temporary or permanent) from his/her parent(s) or other custodians, or, in the case of an unborn child, any administrative or judicial action which may result in a parent being taken into protective custody.
- 38-03-13 CHILD IN NEED OF SUPERVISION - Is a child found to be in one or more of the following situations:
1. A child who is habitually truant;
 2. A child who is unamenable to parental control;
 3. A child who is a habitual runaway;
 4. A child who habitually so deports himself/herself so as to injure or endanger the health or well-being of himself/herself or others.
- 38-03-14 CHILD PLACEMENT AGENCY - Means any agency licensed by the Tribe or the State of South Dakota to receive children for placement or adoption; the Sisseton-Wahpeton Sioux Tribe Child Protection Program, or any agency receiving children for placement or adoptions in another State, which agency is licensed or approved as required by law.
- 38-03-15 C.P.P. - Means the Child Protection Program of the Sisseton-Wahpeton Sioux Tribe.
- 38-03-16 COMMITTEE - Means the Judicial Committee of the Sisseton-Wahpeton Sioux Tribe.
- 38-03-17 COMMUNITY EXPERT WITNESS - Means an individual recognized by the Juvenile Judge of the Sisseton-Wahpeton Sioux Tribal Court as an expert in Tribal customs as they pertain to family organization and child rearing practices.
- 38-03-18 COURT - Means the Tribal Juvenile Court of the Sisseton-Wahpeton Sioux Tribe unless the Tribal or some other Court is clearly defined.
- 38-03-19 DELINQUENT CHILD - Means any child under the age of eighteen (18) years within the jurisdiction of the Court who violates any of the offenses enumerated in the Code of Offenses of the Sisseton-Wahpeton Sioux Tribe, particularly those which apply only to children.

- 38-03-20 DEPENDENT CHILD - Is a child found to be in one or more of the following situations:
1. A child who is homeless or destitute or without proper support or care;
 2. A child who lacks proper care by reason of the mental or physical condition of the parent(s), guardian or custodian.
- 38-03-21 DEPRIVATION OF CUSTODY - Means transfer of legal custody by the Court from a parent or the parents or a previous custodian to another person, agency, or institution.
- 38-03-22 DETENTION - Means the temporary care in the Juvenile Center of children who require secure custody, in physical restricting facilities pending court disposition or transfer to another jurisdiction.
- 38-03-23 DIVERSION - Means any informal probationary status whose focus is to help a juvenile keep out of trouble without formal court action. Diversion covers any juvenile brought before the Court because of his own misconduct but not formally adjudicated.
- 38-03-24 ECAGWAYA. OR "TRADITIONAL ADOPTION" - Means according to Tribal Custom, the placement of a child by his natural parent(s) with another family but without any Court involvement. After a period of two (2) years in the care of another family, the court, upon petition of the adoptive parents, will recognize that the adoptive parents, in custom or traditional adoption have certain rights over a child even though parental rights of the natural parents have never been terminated. Traditional adoption must be attested to by two (2) reliable witnesses. The court, in its discretion, on a case by case basis, shall resolve any questions that arise over the respective rights of the natural parent(s) and the adoptive parent(s) in the custom adoption. The decision of the Court shall be based on the best interests of the child and on recognition of where the child's sense of family is. Ecagwaya is to raise or to take in as if the child is a biological child. The Court shall take "Judicial Notice" after proper due process proceedings, that, indeed, Ecagwaya is a custom and tradition of the Tribe.
- 38-03-25 EXTENDED FAMILY - Means any person related by blood or marriage to the family or any individual who is viewed by the family as a relative in accordance with customs of the Sisseton-Wahpeton Sioux Tribe. In situations where the relationship is not formally established by blood or marriage, the relationship must be attested to by two (2) reliable witnesses.

- 38-03-26 FOSTER CARE - Means the placement of a child in a family setting, temporarily or in a permanent foster care when the return of a child or children is not possible after a reasonable length of time, when adoption is not a possibility, when permanent guardianship is not possible and when emancipation is not possible.
- 38-03-27 GUARDIAN - Means a guardian of the person and not a guardian of property of estate.
- 38-03-28 GUARDIAN AD LITEM - Means individual appointed by the Courts to represent the best interests of the child in an advocacy role.
- 38-03-29 GUARDIAN OF THE PERSON - Also includes legal custody, if legal custody is not vested in another person, agency, or institution.
- 38-03-30 H.S.B. - Means the Human Service Board of the Sisseton-Wahpeton Sioux Tribe.
- 38-03-31 A.R.C. - Means the Adolescent Residential Center of the Sisseton-Wahpeton Sioux Tribe.
- 38-03-32 JUDGE - Means the Juvenile Judge of the Sisseton-Wahpeton Sioux Tribe.
- 38-03-33 LAY EXPERT WITNESS - Means an individual without extensive professional training, but who does have extensive experience in the delivery of child and family services to the Sisseton-Wahpeton Sioux Tribal community.
- 38-03-34 LEGAL CUSTODY - Means subject to any limitations which may be imposed by the Juvenile Court, a relationship embodying the following rights and duties:
1. The right to physical custody of a child.
 2. The right and duty to protect, train and discipline a child.
 3. The duty to provide a child with food, clothing, shelter, education, and ordinary medical care.
 4. The right to determine whether and with whom a child shall live.
 5. The right in an emergency, to authorize surgery or other extraordinary care.
- 38-03-35 MINOR PARENT - Means a parent under the age of eighteen (18).

38-03-36 NEGLECTED CHILD - Is a child found to be in one or more of the following situations:

1. A child whose parents, guardian, or custodian fails or refuses to provide necessary subsistence, education, or medical care, or any other care necessary for his health and well-being while capable of doing so;
2. A child who lacks adequate parental control by reasons of the fault or habits of his parent(s), guardian or custodian;
3. A child, under fourteen (14) years of age, who is left without competent supervision overnight for other than emergency reasons;
4. A child exposed to physically dangerous situation as a result of parental negligence;
5. A child, under fourteen (14) years of age, who is left alone or unsupervised in a vehicle.
6. A child, including an unborn child, under eighteen (18) years of age who accompanies his/her parents in a bar;
7. A child left with an irresponsible babysitter (e.g., babysitter is intoxicated, too young, leaves child unattended, etc.);
8. A child, including an unborn child, under eighteen (18) years of age who is allowed access to alcoholic beverages, drugs, or tobacco, excluding use for medicinal or traditional practices;
9. A child who is eighteen (18) years of age, or under, who has more than ten (10) unexcused absences from school in one quarter;
10. A child who is not dressed adequately for weather conditions;
11. A child who is allowed to be out and unsupervised after curfew;
12. A child who is not immunized from preventable diseases and whose parent (s) or guardian fails to respond to three contacts and/or well-child clinic appointments made by health providers, except in cases where the parent's spiritual beliefs prohibit them from doing so and a signed statement to that effect is documented in the child's medical record and in the Maternal/Child Health Program's files.

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- 38-03-37** OPEN ADOPTION - means those adoptive placements made through the Court when most, but not all parental rights have been terminated. Open adoption allows the Court to insure that an older child who has established bonds of affection with its natural parents is able to maintain a relationship with its natural parents, while at the same time becoming part of another family.
- 38-03-38** QUALIFIED EXPERT WITNESS - means a professional person having a substantial educational background in the area of his/her specialty and extensive knowledge of prevailing social and cultural standards and child rearing practices of the Sisseton-Wahpeton Sioux Tribe.
- 38-03-39** PROBATION - means legal status of a child created by Court Order following an adjudication based on a violation of the Code of Offenses of the Sisseton-Wahpeton Sioux Tribe, where the child is permitted to remain in its home under prescribed conditions and under supervision by a Probation Officer designated by the Court subject to return to the Court for violation of any conditions prescribed.
- 38-03-40** PROTECTIVE SUPERVISION - Means legal status created by Court Order following adjudication of neglect or dependency where the child is permitted to remain in his/her own home, and supervision and assistance to correct the neglect or dependency is provided by the Child Protection Program or other agency designated by the Court.
- 38-03-41** RESIDUAL PARENT RIGHTS AND DUTIES - Means those rights and duties remaining with parents after legal custody of guardianship, or both, have been vested in another person or agency including but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitations, unless restricted by the Court. If no guardian has been appointed, residual parental rights and duties also include the right to consent to marriage, to enlistment in the Armed Forces, and consent to major medical, surgical, or psychiatric treatment.
- 38-03-42** STANDARD ADOPTION - Means those adoptive placements occurring after all parental rights and obligations have been terminated by the Court.
- 38-03-43** TERMINATION OF PARENTAL RIGHTS - Means permanent elimination of all parental rights and duties, including residual parents rights and duties by Court Order, unless other wise decreed by the Court. The Court may, in its discretion, terminate parental rights while at the same time restricting adoptive placement to a family willing to allow the children continued contact with their natural parents.
- 38-03-44** PARENT - Means any biological parent(s); of an Indian child, or any person who has lawfully adopted an Indian Child, including ecagwaya placement.

- 38-03-45 SHELTER - Means the temporary care of children in foster group care facilities pending Court disposition or transfer to another jurisdiction.
- 38-03-46 STATE - Means State of South Dakota.
- 38-03-47 TRIBE - Means the Sisseton-Wahpeton Sioux Tribe.
- 38-03-48 RESERVATION - Means the Lake Traverse Indian Reservation, as established by Treaty of February 19, 1867.
- 38-03-49 CUSTODIAN - Means the person(s), agency or institution responsible for the care and supervision of the child.
- 38-03-50 PROTECTIVE SUPERVISION - Means a legal status created by Court Order following adjudication of neglect, abuse or dependency and may be directed to an agency able to provide such supervision.
- 38-03-51 EMANCIPATION - Means the legal action by a court declaring a minor an adult capable of meeting his/her own needs. The Court may emancipate a minor upon demonstration that said minor can be responsible for meeting his/her needs. It may be conditional or absolute, complete or partial.
- 38-03-52 CONFIDENTIALITY - Means that no information regarding an individual(s) shall be released without the express consent in writing, attested to by the individual(s) or their parent(s) or legal guardian. The Tribal Court shall review said consent and make its determinations accordingly. The Court may, at times, on its own motion, release or suppress any information requested in the best interests of justice to the child(ren). Confidentiality is also the responsibility of support staff and investigative agencies. They shall not reveal identities and sources without express consent of the court.
- 38-03-53 DISCOVERY IN CHILD WELFARE MATTERS - Discovery shall be permitted in child welfare cases by court order. Orders shall not be over-board nor excessively burdensome on the party from whom discovery is being sought, and shall consider the nature of the proceeding causing the need for discovery. Discovery orders shall be issued after notice to the opposing party and an opportunity for objection. The location and identity of foster homes shall not be discoverable unless the foster parents are identified as witnesses.
- 38-04-01 **DUE PROCESS OF LAW TO AFFORDED**
- 38-04-02 **PROCEDURES ESTABLISHED**
All procedures and provisions established herein shall be construed and applied so as to provide due process of law to both children and adults subject to this Juvenile Code:

1. Due process shall include the right to legal representation in accordance with the Tribal Code.

38-05-01 JURISDICTION

38-05-02 ORIGINAL AND EXCLUSIVE JURISDICTION

Except as otherwise specifically provided, the Juvenile Court shall have original jurisdiction over any Indian Child domiciled or residing upon or found upon the Reservation, or who has been transferred to the Juvenile Court under the Indian Child Welfare Act, and over all persons having care, custody, or control of such child. The Sisseton-Wahpeton Sioux Tribe shall retain original and exclusive jurisdiction over children as wards of the Tribe notwithstanding residence or domicile, sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child(ren), which it would have if the child(ren) had remained on the Reservation. Such jurisdiction shall include the power to effect or cause the return of the child(ren) or transfer to another location and custody pursuant to law(s) herein contained. The Sisseton-Wahpeton Tribal Court may effect the transfer of any court proceeding for the foster care placement of, termination of, parental rights or adoptive proceedings of any child(ren) not domiciled or residing within the boundaries of the Sisseton-Wahpeton Sioux Tribe, in accordance with the provisions of the Indian Child Welfare Act. The Sisseton-Wahpeton Sioux Tribal Court may also enter into agreements with court of other jurisdictions, wherein those Courts will adjudicate the circumstances occurring within their jurisdictions then transfer the proceedings to the Tribal Court for disposition and/or placement. This will constitute a "bifurcated" hearing. The preceding shall include but is not limited to the following circumstances:

1. Concerning any child who has violated any Tribal, local or municipal ordinance, within the jurisdiction of the Sisseton-Wahpeton Sioux Tribe.
2. Concerning any child who is a neglected or dependent child, as defined in Section 38-03-01 of this Code.
3. Concerning any child who:
 - (a) Being subject to compulsory school attendance is habitually truant from school, or is defiant of persistent efforts by parents or school authorities; or
 - (b) Habitually disobeys the reasonable and lawful demands of his parents, guardian, or other custodian and is ungovernable and beyond their control to such an extent as to clearly endanger his own welfare or the welfare of others.

4. Proceedings to terminate the legal parent-child relationship, including termination of residual parental rights and duties.
5. For the judicial consent to marriage, employment, or enlistment of a child into the Armed Forces, and to emergency medical or surgical treatment of the Child who is under the custody of the Court.
6. The Juvenile Court shall also have original jurisdiction of the following proceedings which shall be governed by the laws relating thereto without regard to the other provisions of this Juvenile Code:
 - (a) Proceedings for the adoption of a child;
 - (b) Proceedings for the commitment of a mentally retarded or mentally ill child;
 - (c) All proceedings to determine the custody of or to appoint a legal guardian or custodian of the person of a child.
7. The definitions of Sections 38-02-01, 38-03-23, 38-03-24, 38-03-25, 38-03-26, 38-03-27, 38-03-28, 38-03-29, 38-03-30, 38-03-31, and 38-03-32, shall include those non-Indians male or female, under the age of eighteen (18) years, who are within the jurisdiction of the Tribe.

38-06-01 TRANSFER OF CASES

If, during the pendency of a criminal or quasi-criminal proceeding in the Tribal Court, including a preliminary hearing, it shall be ascertained that the person charged was less than eighteen (18) years of age at the time of committing the alleged offense, the Court shall transfer the case to the Tribe's Juvenile Court, together with all papers, documents, and transcripts of a testimony connected therewith. The Tribal Court shall order the person to be taken forthwith to the Tribal Juvenile Court or to the Adolescent Residential Center or shall release him/her to the custody of his/her parent(s) or guardian or other person legally responsible for him/her to be brought before the Tribal Juvenile Court at a time designated by it. The Juvenile Court shall then proceed as provided herein.

38-07-01 TRANSFER

Exercise of jurisdiction over a child on probation or under protective supervision or of a child who is otherwise under the continuing jurisdiction of the Court, may be transferred by the Court to a Court of another jurisdiction if the Court consents; or to any Court with proper jurisdiction over the child in a pending action.

38-08-01 FELONY CASES

If the petition in the case of a child fourteen (14) years of age or older alleges that he/she committed an act which would constitute a felony or a serious misdemeanor if committed by an adult, and if the Court, after full investigation and hearing, finds it would be contrary to the best interest of the child or the public, or the Tribe, to retain jurisdiction, the Court may enter an order certifying to that effect and directing that the child be held for criminal proceedings in the Tribal Court. The provisions of Section 38-02-01 of the Juvenile Code and other provisions relating to Court procedures in children's cases shall to the extent they are pertinent, be applicable to such hearings held under this Section.

38-09-01 JURISDICTION OVER ADULTS

The Juvenile Court shall exercise jurisdiction over any adult in the following cases:

1. In any criminal case which the offense is one designated for the protection of children, and the Tribal Court certifies the case to the Juvenile Court for disposition. In such cases, trial of the Adult in the Juvenile Court shall be handled according to the Sisseton-Wahpeton Sioux Tribal Rules of Criminal Procedure, and the Court may sentence the convicted adult in any manner available to the Tribal Court. Certification of such cases shall occur only when it is made to appear to the Tribal Court that some interest of the Juvenile Court in a matter pending before it will be served thereby.
2. In any case in which a child has come within the jurisdiction of the Juvenile Court, that Court shall have authority to exercise jurisdiction over adults to the extent necessary or reasonably believed necessary to make proper disposition of the case, including authority to punish for contempt, committed either in or out of the Court's presence.

38-10-01 CONTINUANCE OR JURISDICTION

Jurisdiction obtained by the Court of a child through adjudication under Section 38-21-01 of this Juvenile Code shall continue for purposes of this Code until he/she becomes eighteen (18) years of age, unless terminated prior thereto. The Court, may at its discretion continue jurisdiction after eighteen (18) years of age when such continuance best serves the interests of both the child and the Tribe.

38-11-01 TERMINATION OF JURISDICTION

The continuing jurisdiction of the Court shall terminate:

1. Upon order of the Court which may be made at any time; or
2. Upon transfer of proceedings in felony cases under Section 38-05-01 of this Juvenile Code. The continued jurisdiction of the Court is not terminated by marriage; or
3. Upon the child's eighteenth (18th) birthday unless otherwise ordered by the Court. When a person eighteen (18) years of age or older who is under the continuing jurisdiction of the Juvenile Court pursuant to this Code violated any Tribal, State, Federal, or local law, the Tribal Juvenile Court shall have concurrent jurisdiction of the new offense.

38-12-01 JURISDICTION PROVIDED UNDER THE INDIAN CHILD WELFARE ACT

38-12-02 POLICY

It is the policy of the Indian Child Welfare Act to maintain the relationship between Indian children and the Tribal and cultural communities which they are otherwise tied. The Sisseton-Wahpeton Sioux Tribe, through this Juvenile Code, commits itself to assuming jurisdiction over all those Indian children, members of or eligible for enrollment in the Tribe, who are involved in custody proceedings outside the territorial jurisdiction of the Juvenile Court; and for whom a return to the jurisdiction of the Tribe is appropriate.

38-12-03 NOTICE OF HEARING TO THE SISSETON-WAHPETON SIOUX TRIBE

Whenever an involuntary child custody proceeding is initiated which may result in the removal (permanent or temporary) of a child who is a member of or eligible for enrollment in the Sisseton-Wahpeton Sioux Tribe from his/her parent(s) or guardian, or Indian custodian, the petitioner shall notify the Juvenile Court Judge of the Sisseton-Wahpeton Sioux Tribe by registered mail with return receipt requested.

38-12-04 GUIDELINES TO THE COURT FOR THE ACCEPTANCE OR REFUSAL OF TRANSFER UNDER THE INDIAN CHILD WELFARE ACT

1. Reasons for Accepting Transfer
 - (a) Child has strong ties with Reservation and/or extended family;
 - (b) Child has recently moved from the Reservation;
 - (c) Child has been abandoned;

- (d) Parent(s) request that child be returned and raised on the Reservation;
- (e) Child desires to return to the Reservation;
- (f) Child's on-reservation family is stable and strong;
- (g) The Reservation has resources available to meet the needs of the child.

2. Reasons for Refusing Transfer

- (a) Child is of mixed marriage where primary family ties and/or identity are with the non-members;
- (b) Child is old enough to reason and does not want to return to the Reservation;
- (c) Child has no ties with the Reservation;
- (d) Child has multiple problems for which there are no possible on-reservation program or resources;
- (e) When either parent contests the transfer.

38-13-01 POWERS AND DUTIES

38-13-02 POWERS AND DUTIES OF THE TRIBAL COURT

The Tribal Juvenile Court shall have the same powers and duties as provided for other Tribal Courts in this Law and Order Code.

38-14-01 JUDGES

38-14-02 RULES AND REGULATIONS

All rules and regulations pertaining to Judges in the Sisseton-Wahpeton Sioux Tribal Code of Laws shall be applicable to the Judge of the Juvenile Court. The Judge of the Juvenile Court shall render a decision no later than ninety (90) days after a hearing involving a minor.

38-14-03 COOPERATION WITH OTHER AGENCIES

The Judge of the Tribal Juvenile Court may cooperate with the Federal Government in any program for training personnel employed or preparing for employment in the Tribal Juvenile Court, and may receive and expend funds from Federal or State sources or from private donations for such purposes. Subject to the approval of the Judicial Committee, the Judge of the Tribal Juvenile Court may contract with public or non-profit institutions of higher learning for the training courses of its own, and may hire experts on a temporary basis for such purposes; and may cooperate with Federal and State agencies in personnel training programs.

38-14-04 PLACEMENT OF CHILDREN

1. In making a decision to place children in homes or institutions other than with one or both of the natural parents of the child; the Court shall, in all cases in which such action would not obviously be contrary to the child's best interest, determine whether or not there are relatives, friends, or other persons living on the Reservation who would be willing and able to provide a suitable temporary or permanent living environment for the child. The Court shall give consideration to and due regard for Tribal or family customs relative to the raising of children and shall endeavor to place all children requiring such homes with cultural backgrounds similar to that which the child would have enjoyed if properly raised by its natural parent(s).

2. In order to enable the Court to place children in a manner consistent with the foregoing subsection, whenever possible, the Court shall utilize the Child Protection Program as its principal resource in the recruitment of Indian families suitable for child placement and willing to accept and care for children placed on either a permanent or temporary basis, or both. The Court shall, if necessary, determine the fitness of a home into which a child is to be placed at, or immediately prior to the time such placement is made.

3. The Judge may contract, on behalf of the Tribe, with agencies or departments of the Federal Government, or with agencies or departments of the State of South Dakota or other States, for the care and placement of children whose status is adjudicated under this Code subject, however, to the approval of the Judicial Committee before expenditure of any Tribal Funds.

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38-15-01 OTHER OFFICER APPOINTMENTS, SALARIES, AND DUTIES

38-15-02 APPOINTMENT OF PROBATION OFFICERS

The Judicial Committee with advice of the Chief Judge shall appoint such Probation Officers, Clerks, and other persons as may be required to carry out the work of the Court. Probation Officers of Adult Tribal Court may also serve for the Juvenile Court, or other persons so appointed may be appointed to serve with or without pay.

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38-15-03 DUTIES AND POWERS OF PROBATION OFFICERS

The Probation Officer shall make preliminary inquiries and social studies and such other investigations as the Judge may direct, and shall keep written records of such studies and investigations, and shall make reports to the Judge as provided in this Code or as directed by the Judge. Upon

placing of any person upon probation or under protective supervision, the Probation Officer shall explain to the child, if old enough, and the parent(s), the meaning and conditions of probation or protective supervision and shall give them necessary instructions, the Probation Officer shall keep them informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the Judge, as he/she may direct. Probation Officers shall use all suitable methods to aid persons who are on probation or under protective supervision to bring about improvement in their condition, and shall perform such other duties in connection with the care and custody, or transportation of children as the Court may require. Probation Officers shall have the power of Police Officers of the purposed of this Juvenile Code.

38-15-04 COURT ADMINISTRATOR (CLERK OF COURTS)

Duties for these officers are the same for the Juvenile Court as described under the Tribal Code for the Tribal Court.

38-15-05 COMPENSATION

The compensation and terms of employment of all employees in the Tribal Juvenile Court shall be fixed by the Judicial Committee with the advice of the Chief Judge.

S.W.S.T. CODE
 Amendment
 New Adoption
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04-27-88
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05-05-88

38-16-01 COURTS

38-16-02 SESSIONS

Court sessions shall be held within the Reservation, at the Tribal Court or the ARC, except in those cases under the Indian Child Welfare Act which require court presence in other jurisdictions. Court shall be scheduled under the presiding Judge's direction.

38-16-03 FACILITIES

Suitable courtrooms for the hearing of cases, and office space, equipment, and supplies for the use of the Judge, Officers, and employees of the Court shall be addressed in the annual budget provided to the Tribal Council by the office of the Chief Judge pursuant to Chapter 21-11-02.

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38-17-01 ADULTS

38-17-02 PROCEDURES APPLICABLE

Except when specific procedures are otherwise specified in this Juvenile Code, all matters concerning adults or the rights of any adult which comes before the Juvenile Court need not be handled according to procedures established for the Tribal Court, but may be handled in an informal manner as in juvenile cases provided, however, that the Court shall see to it that due process standards are observed.

38-17-03 CONSENT TO JURISDICTION BY PERSONS LIVING OFF THE RESERVATION

Any adult living off the Reservation who obtains custody of a child from the Juvenile Court either personally or as the result of association with an agency or institution to which such placement has been awarded, shall be deemed to have consented to the jurisdiction of the Sisseton-Wahpeton Sioux Tribal Juvenile Court for all purposes of actions in any way related to such custody of the child subject thereto. In every placement through the Court, both custody and on-going jurisdiction shall remain with the Juvenile Court of the Tribe.

38-18-01 PROCEDURES

38-18-02 RULES OF PROCEDURE

The rules and forms governing practice and procedure and policies shall be subject to review and adoption by the Tribal Council. Copies of such rules and forms shall be made available for public inspection by the Clerk of the Juvenile Court.

38-18-03 COMMENCEMENT OF ACTIONS

1. Except as otherwise provided hereafter, proceedings in children's cases before the Juvenile Court are commenced by petition. All proceedings in Juvenile Court shall be closed to the public.
2. In case of violation of motor vehicle or boating laws and ordinances, or fish and game laws and ordinances, a petition shall not be required. The issuance of a traffic or other citation or summons shall be sufficient to invoke jurisdiction of the Tribal Court unless the Court shall otherwise order, no preliminary investigation shall be required in such cases.
3. Whenever the court is petitioned by a police officer or any other person alleging that a child is or appears to be within the Court's jurisdiction, the Clerk of Courts shall notify a Probation Officer or other designated person who shall make a preliminary inquiry to determine whether the interests of the public, the Tribe, or child require that further action be taken. The report on the preliminary investigation shall be filed with the Court without unnecessary delay.
4. The Court may determine that police reports or reports by other social services related agencies having contact with or custody or supervision over a child be filed with the Court in lieu of a preliminary investigation; in which case, further preliminary investigation as provided herein shall not be required unless otherwise specifically ordered.

5. As an alternative to filing a petition, the Court may, with the assistance of Probation Officers or other designated individuals, make such non-judicial adjustments of the case as is practicable without a petition and proceedings thereunder. Such adjustments shall be made only in cases in which the facts are admitted and established prima facie jurisdiction in the Tribal Juvenile Court, and further provided, that consent is obtained from the parent(s) or other custodians also from the child, if in the Court's opinion, he/she is of suitable age and discretion. Efforts to effect a non-judicial adjustment may not extend for a period of more than six (6) months without the permission of the Judge of the Juvenile Court who may extend such intervention.

6. Petitions - Consent. The petition shall set forth in simple and brief language the facts which bring the child within the jurisdiction of the Court, as provided in Section 38-05-02 of this Code. The petition shall further state:
 - (a) The name, age, and residence of the child;
 - (b) The names and residences of the parent(s);
 - (c) The name and residence of his/her guardian, if there is one;
 - (d) The name and address of the nearest known relative, if no parent or guardian is known;
 - (e) The name and residence of the person having physical custody of the child; and

if any of the facts herein required to be stated are not known by the petitioner, the petitions shall so state.

38-18-04 VERIFICATION OF PETITION

The statements in the petition may be made upon information and belief and the petition shall be verified.

38-18-05 PETITIONS

The petition may be prepared and filed by a Probation Officer, Police Officer, parent, guardian, the Child Protection Program, or other Tribally recognized agency or concerned individual with knowledge of the facts. At any time after a petition is filed, the Court may make an order for temporary custody of the child or, in the case of an unborn child, temporary protective custody of the parent.

38-18-06 EXAMINATIONS

The Court may, upon such conditions of notice and hearing, if any, as it deems best, order that a child concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist or psychologist, and may place the child in a hospital or other facility for such examination. The Court may also order an examination of a parent or guardian whose ability to care for the child is at issue if the Court finds evidence presented at the hearing that the parents' or guardians' physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the child. Such examination may be ordered only for purposes of custody disposition and with consent of the parent or guardian. Whenever an unborn child is the subject of an examination, the unborn child may be examined without the consent of the parent.

38-18-07 PETITIONS - DISMISSAL

The Court may dismiss a petition at any stage of the proceedings.

38-18-08 PROFESSIONAL ATTORNEYS

Professional attorneys who have met the requirements of the Tribal Code may appear in any proceeding before the Tribal Juvenile Court. When a person is entitled to be represented by a professional attorney of his/her own choice and at his/her own expense in the Tribal Juvenile Court, he/she shall be so advised by the Judge at the commencement of any proceedings before such Court.

38-19-01 SERVICE OF PROCESS AND SEARCH WARRANTS

38-19-02 SUMMONS - WHEN REQUIRED

After a petition is filed and after such further investigation as the Court may direct, the Court shall promptly issue a summons. No summons is required as to persons who appear voluntarily or who file a written waiver of service with the Clerk of Court at or prior to hearing.

38-19-03 SUMMONS - CONTENT - REQUIREMENTS

The summons shall contain the name of the Court, title of proceedings, and (except for a published summons) a brief statement of the substance of the allegations in the petition. A published summons shall simply state that a proceeding concerning the child is pending in the Court and that adjudication will be made. The summons shall require the person or persons who have physical custody of the child to appear personally and bring the child before the Court at a time and place stated. If the person so summoned is not the parent(s), or guardian of the child, then a summons shall also be issued to the parent(s), or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing. No summons need be issued to a parent(s) whose parental rights have been terminated.

38-19-04 SUMMONS - OTHER PERSONS

Summons may be issued to any person within the jurisdiction of the Court requiring the appearance of any person whose presence the Court deems necessary.

38-19-05 IMMEDIATE CUSTODY OF CHILD

If it appears, from the affidavit or sworn statement presented to the Judge, that the welfare of the child requires placement in detention or shelter care or other appropriate care, the Judge, when a petition is filed, may endorse upon the summons an order that an officer serving the summons shall at once take the child or the parent of an unborn child into custody or may issue a separate emergency custody or detention order for placement in a facility or with an agent as designated by the court.

38-19-06 EMERGENCY CUSTODY OF CHILD

If it appears that a child, including an unborn child, is in danger for whatever reason and if the Court is unavailable to issue a custody order; any officer of the Court, including a Police Officer, a Probation Officer, or a Child Protection Program worker, may make an emergency removal of a child, or take the parent of an unborn child into protective custody, if such removal is deemed necessary for the welfare of that child. Such removals shall be done on an EMERGENCY basis only. The Officer and/or worker who makes an emergency removal of a child shall submit a written report on the incident, along with a petition for a custody order before the end of the next working day of the Court. The Court shall make a temporary protective custody order at this time, pending further disposition.

38-19-07 EMERGENCY MEDICAL TREATMENT

Upon sworn testimony of one or more reputable physicians, the Court may order emergency medical or surgical treatment which is immediately necessary for a child concerning whom a petition has been filed; pending the service or summons and petition upon his/her parents, guardian, or custodian.

38-19-08 COMPULSORY ATTENDANCE OF WITNESSES

A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his/her own behalf or on the behalf of the child. A guardian ad litem or a Probation Officer shall be entitled to compulsory process for the attendance of witnesses on behalf of the children or on behalf of the Tribe.

38-19-09 MANNER OF SERVICE - BY WHOM SERVED

1. Services of summons or process and the petition shall be made by a Probation Officer but upon request of the Court, such service may be made by another Peace Officer, or by another suitable person selected by the Court.

2. Services of summons and petition may be made by delivering a copy to the person summoned; provided, however, that parents of a child living together at their usual place of abode may be both served personally by delivering to either parent, copies of the summons and petition; one copy for each parent.
3. If the Judge is satisfied that personal service of the summons and petition is impractical under the circumstances he/she may order service by registered mail, with return receipt requested, to be served. Service shall be completed upon return to the Court of the signed receipt.

38-19-10 SUBSTITUTED SERVICE - JURISDICTION

If the parent, parents or guardian required to be summoned under Section 38-19-01 hereof, cannot be found within the jurisdiction of the court, the fact of their child's presence within the original boundaries of the Lake Traverse Reservation shall confer jurisdiction on the Court in proceedings in children's cases under this code as to any absent parent or guardian, provided that due notice has been given in one of the following manners:

1. If the address of the parent or guardian is unknown, by sending a copy of the summons and petition by registered mail with return receipt requested to be signed by the addressee only, or by personal service outside the Reservation. Service by registered mail shall be completed upon return to the Court of the signed receipt.
2. If the address of whereabouts of the parent(s) or guardian outside the Reservation cannot, after diligent inquiry, be ascertained, by publishing a summons in a newspaper having general circulation on the Reservation. The summons shall be published once a week for three (3) consecutive weeks. Service shall be complete on the last day of the publication.

38-19-11 SERVICE - TIME REQUIRED

In the case of service on the Reservation, service completed no less than forty-eight (48) hours before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction. In case of service outside the Reservation, service completed no less than five (5) days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

38-19-12 SEARCH AND SEIZURE WARRANTS

If it appears to the Court upon an affidavit sworn to by a Police Officer or any other person and upon examination of other witnesses, if required by the Court, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the Court, the Court may issue a warrant authorizing a duly authorized Police Officer or Probation Officer to search for the child. Upon serving such warrant upon the person in possession of the premises, specified in the warrant, the officer making the search may enter the house or premises, if necessary by force, in order to remove the child. The officer must thereupon take the child to the Court or to the place of detention or shelter designated by the Court in accordance with Section 38-21-01 hereof.

38-20-01 INVESTIGATIONS AND HEARINGS

38-20-02 SOCIAL INVESTIGATIONS

Whenever practicable, the Court shall require that a social investigation be made and a report be submitted to the Court in writing in all cases under Section 38-05-02 of this Code in which a petition has been filed, except violations of traffic, fish and game boating laws and ordinances.

38-20-03 SOCIAL INVESTIGATIONS - SCOPE

The investigations shall cover the child's home environment, history and associations, present condition of the child's future care. In cases involving the duty of support, the study shall include such matters as earnings, assets, financial obligations and employment. Investigations shall be made by qualified expert witnesses, as determined by the Court.

38-20-04 PROCEEDING - CIVIL IN NATURE

Proceedings in children's cases shall be regarded as civil proceedings with the Court exercising equitable power. Children's cases under Section 38-05-02 of this Code shall be handled separately from adult cases under Section 38-09-01 hereof.

38-20-05 CONDUCT OF HEARINGS - INFORMAL IN MANNER

Hearings in children's cases shall be before the Court without a jury and may be conducted in an informal manner. The general public shall be excluded and only such persons shall be admitted whom the Judge finds have a direct and legitimate interest in the case or work of the Court. The child or one of his parents may be separately interviewed at any time at the discretion of the Court. The hearing may be continued from time to time, at a date specified by the Court. The Court must find that an admission of allegation is voluntary and knowingly given. The standard of proof for

a juvenile offender's adjudicatory hearing shall be proof beyond a reasonable doubt, and for all other hearings, the standard of proof shall be clear and convincing evidence. The Court will dismiss the petition if the allegations are not established by the required standard of proof or proceed to the dispositional hearing if the allegations are established by a valid admission or the required standard of proof.

38-20-06 HEARINGS - RECORD

A verbatim record by either stenographic or electrical or mechanical recording device shall be taken in all cases processed through the Juvenile Court. The Court may dispense with such record at its discretion but no sooner than sixty (60) days after the time for appeal has expired. In no event shall a record be dispensed with, if a case is to be further reviewed by the Court.

38-20-07 RECORDS - USE IN OTHER COURTS

Neither the record in the Tribal Juvenile Court nor any evidence given therein shall be released for use in any proceedings in any court without the express consent of the presiding judge in said case.

38-20-08 HEARINGS - TRIBAL COUNCIL

Upon the request of the Court, the Judicial Committee shall designate or appoint an attorney who shall represent the Tribe in the interests of a child in any proceedings in a child's case, or within another Court's jurisdiction.

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38-20-09 HEARING - EVIDENCE

For the purpose of determining proper disposition of the child, and for the purpose of establishing the fact of neglect or dependency, written reports and other materials relating to the child's mental, physical, and social history and condition must be received in evidence; and must be considered by the Court along with the other evidence, but the Court may require that the person who wrote the report or prepared the material appear as a witness if he/she is reasonably available.

38-20-10 CONSOLIDATION OF PROCESS

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

38-20-11 AMENDMENT TO PLEADING - CONTINUANCES

When it appears during the course of any proceeding in a child's case that evidence presented points to material facts not alleged in the petition, the Court may proceed to consider forthwith the additional or different matters raised by the evidence. In such event, the Court, on motion of any interested party, or its own motion, shall direct that the petition be amended to conform to the evidence. The Court shall grant such continuances as justice may require.

38-20-12 SPECIAL RULES OF PROCEDURE - TRAFFIC, FISH AND GAME, AND BOATING ORDINANCE

The Court may adopt special rules of procedure to govern proceedings involving violations by children of traffic law or ordinances, and violations of fish and game, boating laws and ordinances.

38-20-13 PRESENCE OF PARENTS - PROTECTION OF CHILD

The Court shall endeavor to insure the presence at the hearing, of one or both parents, or of the guardian of the child. If neither is present, the Court may appoint a guardian ad litem to protect the interests of the child. A guardian ad litem may also be appointed whenever necessary for the welfare of the child; whether or not a parent or guardian is present.

38-20-14 GROUNDS FOR RE-HEARING

A parent, guardian, custodian, relative or friend of any child whose status has been adjudicated under this Code or any adult affected by a decree in a child's proceeding hereunder, may at any time, petition the Court for a new hearing on the grounds that new evidence which was not known or could not, with due diligence, have been made available at the original hearing and which might affect the decree, has been discovered. If it appears to the Court that there is such evidence which might affect the decree, it shall order a new hearing and make all such dispositions of the case as is warranted by all the facts and circumstances and the best interests of the child.

38-20-15 MAINTENANCE OF ORDER DURING HEARINGS

Upon request of the Court, the Chief of Tribal Police or his Deputy or other Officer shall aid the Court in maintaining order during any hearing.

38-21-01 ARREST AND DETENTION OF CHILDREN

38-21-02 ARREST OF CHILD

A child may be taken into custody by any Police Officer, Probation Officer, duly sworn Security Officer or Special Law Enforcement Officer without order of the Court in the following situations:

1. When, in the presence of the Officer, the child has violated a Tribal, State, Federal, or local law or ordinance;
2. When there are reasonable grounds to believe that he/she has committed an act which, if committed by an adult, would be a felony, or an offense under the Sisseton-Wahpeton Sioux Tribal Code; and there is reasonable cause to believe that such child, before a warrant or other Court can be obtained may:
 - (a) Flee the jurisdiction of the Court or conceal himself/herself to avoid arrest;
 - (b) Destroy or conceal evidence of the commission of an offense; and/or
 - (c) Injure or annoy another person or damage property belonging to another person.
3. When he/she is seriously endangered by his/her surroundings, and immediate removal appears to be necessary for his/her protection;
4. When there is reasonable grounds to believe that he/she has run away from his/her parents, guardian, or custodian.

38-21-03 CITIZEN'S ARREST OF CHILD

A private citizen may take a child into custody if the circumstances are such that he/she could make a citizen's arrest if an adult were involved. Taking a child into custody under this Section shall not be deemed an arrest.

38-21-04 NOTIFICATION OF PARENTS - RELEASE OF CHILD

When an Officer takes a child into custody, he/she shall immediately notify a parent or an adult person with whom the child lives if not the parent, or the custodian. Such notification shall be made by contacting the parent(s) or custodian personally or through the assistance of other officers or persons unless notification can be and is, in fact, made by phone. If a parent or custodian cannot, after due diligence be found or contacted, then such notice shall be given to the nearest relative or to an adult person who is well acquainted with the child. The parent or person notified shall be told why the child has been taken into custody and where the child is being held. The child shall then be released to the care of his/her parent(s) or other

responsible adult unless his/her immediate welfare of protection of the community requires he/she be detained. Before the child is released, the parent or other person to whom the child is released may be required by the person holding the child, to sign a written promise on forms supplied by the Court, to bring the child to the Court at a time set or to be set by the Court.

38-21-05 DETENTION OF CHILD

A child shall not be detained by the Tribal Police or at the police station any longer than is necessary to obtain his/her name, age, residence, and other identifying information and to contact his/her parents, guardian, or custodian. If he/she is not thereupon released as provided in the preceding Section, he/she must be taken without unnecessary delay to the Court or to the Adolescent Residential Center or shelter designated by the Child Protection Program.

38-21-06 DETENTION IN JAIL

When it is absolutely necessary and in the best interest of a child and/or the community for a youngster to be placed in the jail instead of the Adolescent Residential Center, prior authorization must be granted by the Judge.

In some cases, a juvenile may be placed in jail due to:

1. being intoxicated
2. is high on drugs
3. is a danger to self
4. is a danger to others
5. is threatening to commit suicide.

Strict supervision must be provided to the child while incarcerated by either Adolescent Residential Center staff, Tribal Police Officers, and/or Child Protection Program on-call workers. As soon as the child is under control, he/she must be transferred to another juvenile facility, foster home, or returned to the natural parents.

38-21-07 DETENTION - REPORTS TO COURT

The officer or other person who takes a child to a detention or shelter facility must notify the Court at the earliest possible opportunity that the child has been taken into custody and where he/she was taken. The officer or other person shall also promptly file with the Court a brief written report stating the occurrences or facts which bring the child within the jurisdiction of the Tribal Juvenile Court and give the reasons why the child was not released.

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38-21-08 RESTRICTIONS ON DETENTION

After immediate investigation by a duly authorized officer of the Court, the Judge or other authorized officer shall, upon written promise to bring the child to Court at a set time or without restriction, order the release of the child to his/her parents, guardian, or custodian, if it is found that he/she can be safely left in their care. If it is found that it is not safe to release the child, the Judge or authorized officer may order that the child be held in the Adolescent Residential Center or be placed in another appropriate facility, subject to further order of the Court.

38-21-09 DETENTION - DISCRETION OF JUDGE

After immediate investigation by a duly authorized officer of the Court, the Judge or other authorized officer shall, upon written promise to bring the child to Court at a set time or without restriction, order the release of the child to his/her parents, guardian, or custodian, if it is found that it is not safe to release the child, the Judge or authorized officer may order that the child be held in the Adolescent Residential Center or be placed in another appropriate facility, subject to further order of the Court.

38-21-10 THE FOLLOWING GUIDELINES SHALL BE MAINTAINED FOR DETENTION

S.W.S.T. CODE

Amendment

New Adoption

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07-06-88

1. During working hours when a child is in need of detention placement at the ARC, the Court will hold an informal detention hearing to determine the need and **appropriateness** of placement with approval of the Child Protection Program.
2. When a child is in need of detention placement during the night, on a weekend, or on a holiday, the Child Protection Program on-call worker will be notified for placement appropriateness and approval for continued placement.
3. No child shall be held in a placement facility for more than thirty (30) days without a treatment plan (a copy of which will be filed with the Court.) If the child needs to remain in a placement facility longer than the thirty (30) to ninety (90) day placement, the decision will rest with the placement agency. The main focus will be to rehabilitate and reintegrate the child into the natural home and community. A review hearing will be held prior to the ninety (90) day placement expiration. Monthly progress reports will be submitted to the Court from the referring agency.
4. No child under the age of twelve (12) or over the age of eighteen (18) years shall be placed in a juvenile facility, except in exceptional situations and then only at the discretion of the appropriate placement agency (See 38-21-06).

5. In situations where a juvenile is not being charged with a crime, but is in need of temporary placement, the referring agency, may request alternative placement for the juvenile providing that the juvenile is at least fourteen (14) years of age. The Court shall order the referring agency to develop a treatment plan with a copy to the Court within thirty (30) days.

38-21-11 PRIMARY CONSIDERATION - WELFARE OF THE CHILD

1. In placing a child under the guardianship or legal custody of an institution, the Court shall give primary consideration to the welfare of the child, and whenever practical, may take into consideration the religious preferences of the child and his/her parent and shall consider the factors set forth in Section 38-21-09 and 38-21-10.
2. No child found to come within the jurisdiction of the Court under Section 38-21-02 of this Code, shall be committed to, or placed in an institution or facility established for the care and rehabilitation of delinquent children, unless such child is found to be delinquent for the commission of an act that would be a crime or an offense if committed by an adult or unless said child has once before, within a period of six (6) months, been found to be within the jurisdiction of the Court.

38-21-12 ESTABLISHMENT OF CONDITIONS OF THE COURT

In support of a decree under Section 38-21-02 of this Code, the Court may make an order setting forth reasonable conditions to be complied with by the parents, the child, his/her custodian, or other person who has been made a party to the proceeding, including but not limited to, restrictions on the child's associates, occupation, and other activities and requirements, to be observed by the parents or custodians.

38-21-13 HOSPITALIZATION OF CHILD

With respect to a child within the jurisdiction of the Court, under this Section, the Court may order hospitalization in an authorized hospital if the Court finds, upon due notice to parents or guardian and special hearing conducted in accordance with any applicable laws and regulations, that the child is:

1. Mentally ill;
2. Because of his/her illness, likely to injure himself/herself or others if allowed to remain at liberty, or is in need of custody, care or treatment in a mental hospital.

38-21-14 COMMITMENT

The Court may make an order committing a child within its jurisdiction to an authorized agency if the child has been found mentally deficient in accordance with the provisions of applicable laws and regulations.

38-21-15 TERMINATION OF PARENTAL RIGHTS

The Court may terminate all parental rights, provide it complies with the provisions of Chapter 39 of the Sisseton-Wahpeton Sioux Tribal Law and Order Code.

S.W. ~~38-21-16~~ **38-21-16 OTHER DISPOSITION OF CASES**

Amendment

The Court may make any other reasonable orders which are for the best interests of the child or are required for the protection of the public, pursuant to Section 28-21-06. The Court may combine several of the above listed modes of disposition where they are compatible.

New Adoption

Judicial Approved

04-27-88

Council Adopted

05-05-88

38-21-17 REVIEW OF CASES

An order under this Chapter for the placement of a child with an individual or an agency shall include a date set for review of the case by the Court with a new date to be set upon each review. As a guide, when extended custody is maintained over juveniles reviews should be submitted to the Court at least every three (3) months.

38-22-01 DISPOSITION OF CASES

38-22-02 FINDINGS OF JURISDICTIONAL FACTS (DISPOSITION OF CASE)

When a child is found to come within the provisions of Section 38-05-02 of this Code, the Court shall so adjudicate and make findings of the facts upon which it bases its jurisdiction over the child and shall enter its decree. Upon such adjudication, the Court may make the following dispositions by Court order:

1. Place the child or in the case of an unborn child, the parent on probation or under supervision in his/her own home, upon conditions determined by the Court;
2. Place the child in the legal custody of a relative or suitable person, with or within probation or protective supervision;
3. Vest placement rights over the child in the Child Protection Program, or a child placement agency as defined herein, for placement in a foster home or other facility, not including the South Dakota State Training School or any institutions;

4. Commit the child to an authorized Government boarding school or training or corrective institutions authorized to receive Indian children, except that a child found to come within the Court's jurisdiction solely on the grounds of neglect or dependency under Section 38-05-02 of this Code, may not be committed to any school or similar institution within or without the State, except for reasons of delinquency and/or status offenses;
5. The Court may commit a child to an institution or facility for short-term confinement, for the purpose of evaluation in accordance with accepted standards for the care and treatment of delinquent children;
6. Place the child in an approved Indian boarding school, on a ranch, a forestry camp, or other camp or similar facility, for care and for work, if possible, provided that the person, agency, or association operating the facility has been approved by the referring agency, or has complied otherwise with all applicable Tribal laws;
7. If the Court has assurance that the responsibility to make payments will rest on the child, and not his/her parents, guardian, or custodian, in order that the child be required to make restitution for damages or loss caused by his/her wrongful acts and may impose fines at its discretion;
8. Arrange for employment or work programs, to enable children to fulfill their obligations under subsection (7) of this Section, and for other purposed which deemed desirable by the Court;
9. In cases of violations of traffic laws or ordinances, the Court may, in addition to any other disposition, restrain the child from diving for such period of time as the Court;
10. Order that the child or in the case of an unborn child, the parent, be treated by a physician, medical specialist, psychologist, counselor, or that he/she receives other special care, and for such purposes may place the child, the parent, in a hospital, primary residential treatment center, or other suitable facility.
11. Appoint a guardian for a child or, in the case of an unborn child, the parent where it appears necessary to do so in the interests of the child, and may appoint a public or private institution or agency in which placement of the child or, in the case of an unborn child, the parent is vested, as such guardian.

S. W. S. T. CODE

Amendment

New Adoption

Judicial Approved

64-27-88

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38-22-03 REVIEW OF CASES

1. The period for review of a case shall be longer than every six (6) months.
2. In any case where a child has been referred to a licensed social service agency for adoptive placement and has not been placed within a one (1) year period of time, the Court may transfer placement rights to another agency.
3. In any case situation where a parental rights have not been terminated and a child continues under the care of social service agency, that agency will be required to submit, at least every six (6) months, or at times specified by the Court, a report indicating that services have been offered to the child's family and describing the reasons for continued out-of-home placement.

38-23-01 JUDGEMENT AND ORDERS

38-23-02 JUDGEMENT

No judgement, order, or decree of the Tribal Juvenile Court shall operate after a child becomes eighteen (18) years of age unless the Court deems that it is in the best interest of the individual or the Tribe to continue its jurisdiction.

38-23-03 ORDERS - TERMINATION - RENEWALS

An order vesting placement of a child in an individual agency, or institution shall be for an indeterminate period, but shall not remain in force longer than two (2) years from the date in is entered, unless with two (2) year period, the Court, after notice to the parties and a hearing, shall have reviewed the order and found its renewal necessary to safeguard the welfare of the child or the public interest, in which case, the order shall be extended for a two (2) year period. The findings of the Court and the reasons therefore shall be entered into the record with the review order or with the order denying renewal. An order placing the parent of an unborn child in protective custody shall be terminated or renewed or otherwise changed in accordance with Chapter 36, The Alcohol and Drug Treatment Act.

38-23-04 ORDERS - MODIFICATION

The Court may set aside or modify any order or decree made by it; but no modification of an order placing a child on probation shall be made upon an alleged violation of the terms of probation, until there has been a hearing after due notice to all persons concerned. Notice and hearing shall be required in any other case in which the effect of modifying or setting aside an order, may be to deprive a parent of the legal custody of the child, to place the child

in a child care facility or agency, or to transfer the child from one institution or agency to another; except that transfer from one foster home to another may be effected without notice and hearing.

38-23-05 ORDERS OF TERMINATION - NOTICE

Notice of an order terminating probation or protective supervision shall be given to the parents, guardian, custodian, and where appropriate, to the child.

38-23-06 EMERGENCY CUSTODY ORDERS

No child shall be held in custody for longer than one (1) year under an emergency custody order unless by special order. This provision shall be in effect for those emergency custody petitions filed after the date of enactment of this provision. The duration of any emergency custody order taking the parent of an unborn child into protective custody shall be subject to Chapter 36, The Alcohol and Drug Treatment Act.

38-23-07 COURT ADJUDICATION - NOT CRIMINAL IN NATURE

An adjudication by the Tribal Juvenile Court that a child is within its jurisdiction under Section 38-05-02 of this ordinance shall not be deemed a conviction of a crime.

38-24-01 SUPPORT OF CHILDREN

38-24-02 BY PARENTS

When placement of a child is vested by the Court in an individual or agency other than his/her parents or Government Boarding Schools, the Court may at the initial hearing or any subsequent proceeding inquire into the ability of the parents or any other person who may be obligated, to support the child and pay any other expenses of the child, including the expenses of medical, psychiatric, or psychological examination or treatment, provided under order of the Court. The Court may, after due notice of a hearing on the matter, require the parent(s) or other person to pay the whole, or part of such support and expenses, depending upon their financial resources and other demands on their funds. The amount so required to be paid at such intervals as the Court may direct, and unless otherwise ordered, payment is to be made to the Clerk of the Tribal Juvenile Court for transmission to the person or agency having placement of the child or to whom compensation is due. The Clerk of Court shall have authority to receive periodic payments toward the care and maintenance of the child, such as social security payments made in the name of or for the benefit the child.

38-24-03 PROCEDURE FOR PAYMENT

No Court order issued under the preceding Section against a parent or other person shall be entered unless summons has been served, a voluntary appearance is made, or a waiver of service is given. The summons shall specify that a hearing with respect to the financial support of the child will be held.

38-24-04 ENFORCEMENT OF SUPPORT ORDERS

1. An order entered under Section 38-24-02 and 38-24-03 against a parent or other person may be enforced by contempt proceedings, and shall also have the effect of a civil judgement at law. In addition to other remedies, the Court may issue an order to any employee, trustee, financial agency, or other person, firm, or corporation indebted to the parent or parents, or indebted to any other person ordered to make payments under this Code, to withhold and pay over the Clerk of Court, money due or to become due in excess of the lesser of the following:

- (a) The amount ordered to be paid by the Court under Section 38-24-02 and 38-24-03 hereof; and
- (b) One-fourth (1/4) of the amount due or becoming due the parent or other person at each regular or usual payday or day of disbursement.

38-24-05 SUPPORT FROM OTHER SOURCES

If the Court finds that the parent(s) are unable to pay for full or partial support, examination, treatment, and other expenses for the child, and that no other provision for the payment of such support has been made, or if the parent(s) or other person obligated to pay under Court order issued under this Chapter, have failed to make such payment, or if summons could not be served upon the parent(s) or other persons under Section 38-24-03 hereof, the Court shall request the Child Protection Program or any other tribal or Public agency or department of the United States, or the State with funds available for such purposes to pay for such support and other expenses and if such department or agency consents, it shall be so ordered by the Court.

38-24-06 PAYMENT DIRECTLY TO AGENCY - REPORT TO COURT - VISITS

Payments for child support may be made to a non-governmental agency in whom the Court vests legal custody, provided that the agency shall make periodic reports to the Court concerning care and treatment the child is receiving and his/her response to such treatment. Such reports shall be made at such intervals as the Court may direct, and shall be made with respect to every child at least every three (3) months. The agency shall also afford an opportunity for a representative of the Court to visit the child as frequently as the Court deems necessary.

38-25-01 APPEALS

38-25-02 PROCEDURES OF APPEALS

An appeal to the Tribal Court of Appeals may be taken from any order, decree, or judgement of the Tribal Juvenile Court. Such appeal shall be taken in the same manner in which appeals are taken from judgements or decrees of the Tribal Court. Except as provided in Chapter 38 of this Code, the appeal must be taken within thirty (30) days from the entry of the order, decree, or judgment appealed from.

38-25-03 STAY PENDING APPEAL

Unless the Court stays its order, the pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child or order the protective custody of a parent of an unborn child, the appeal shall be heard and decided at the earliest practical time. The name of the child or of any parent of an unborn child taken into protective custody will not appear on the record of appeal.

38-26-01 MISCELLANEOUS PROVISIONS

38-26-02 DISOBEDIENCE - CONTEMPT

Any person who willfully violates or refuses to obey any order of the Court, may be proceeded against for Contempt of Court. In the case of a juvenile on probation disobedience of rules of probation shall be grounds to terminate the probation.

38-26-03 PAYMENT OF FINES, PENALTIES, ETC.

Except as other wise provided by law, penalties and forfeiture imposed and collected by the Court shall be considered as Tribal Court revenue for the Tribal Court budgeting considerations. All Court revenues will be remitted to the Tribal Treasurer on a weekly basis for deposit to the Tribal Court account, as stated in Chapter 21, Section 21-15-04.

S.W.S.T. CODE

Amendment

New Adoption

Judicial Approved

04-27-88

Council Adopted

65-05-88

38-26-04 FILING FEES - WITNESS FEES, ETC., BY WHOM PAYABLE

There shall be no fees for filing a petition under Section 38-05-01 of this Code, nor shall any fee be charged by any Tribal officers for such services of process or for attendance in Court in any such proceedings. The cost of publication of summons and expense of a trial of an adult person, when approved by the Court, shall be paid by the Tribe.

38-26-05 RECORDS TO BE KEPT - ACCESSIBILITY

The Court shall keep records as may be required by the Judge. Records in children's cases shall be withheld from public inspection, but said records may be open to inspection by parents or guardians, and/or Attorneys involved in the proceedings and agencies to which placement or supervision of a child has been transferred may also have access to records, with careful monitoring by the presiding Judge.

38-26-06 JUVENILE COURT RECORDS

Except as provided in Section 38-26-05, the Court records shall be sealed and may be opened only at the discretion of the Judge and only upon a petition to the Juvenile Court, indicating the reasons for opening the records.

38-27-01 INFORMAL ADJUSTMENT HEARING

The Court may appoint a Hearing Officer, who may hold informal conferences with the minor and his/her parent(s), guardian or custodian to consider alternatives to filing a petition if:

1. The admitted facts bring the case within the jurisdiction of the Court;
2. An informal adjustment of the matter would be in the best interest of the minor and the Tribe;
3. The minor and his parent(s), guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary. The alternatives may consist of but are not limited to the following:
 - (a) Refer the minor, parent(s), guardian or custodian to a community agency for needed assistance.
 - (b) Order terms of supervision, calculated to assist and benefit the minor, which regulate the minor's activities, those activities to be within the ability of the minor to perform;
 - (c) Accept and monitor an offer of restitution if voluntarily made by the minor.

38-27-02 The Hearing Officer shall set forth in writing the adjustment agreement and conclusions reached at informal conferences and the disposition agreed to by the parties for remedying the situation. An informal adjustment period shall be six (6) months, unless said time is extended by the Court. The Hearing Officer shall review the minor's program every thirty (30) days. If at any time after the initial thirty (30) day period, but before the end of six (6) months, the Hearing Officer concludes that positive results are not being achieved, the Hearing Officer shall recommend that a petition be filed.

38-28-01 NON-DISCLOSURE

The name of any person who reports suspected child abuse shall not be disclosed to any person unless the person who reported such abuse specifically requests such disclosure or a judicial proceeding results from such report.

38-29-01 REPORT AN INVESTIGATION

Reports may be made to the Tribal Court Prosecutor, a Police Officer, Social worker, or the Child Protection Program. Anyone participating in good faith in the making of a report pursuant to the Sisseton-Wahpeton Sioux Tribal Juvenile Code provisions shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed and shall have the same immunity with respect to participation in any court proceeding resulting from such report. Reports shall be reduced to writing and contain the following:

1. Name, age, and address of child(ren) alleged to be abused;
2. Name and address of person or caretaker in charge of child(ren) who is subject of the report;
3. Name and address of alleged perpetrator;
4. Nature and extent of the abuse;
5. Persons who might have been aware of the abuse;
6. Date(s) and location(s) of when and where the alleged abuse occurred;
7. Any other pertinent information known to the person making the report.

38-30-01 PENALTY FOR FAILURE TO REPORT CHILD ABUSE

Any person who has reasonable cause to suspect or witnesses abuse of child, including an unborn child, shall report the suspected or witnessed abuse to a Police Officer, Child Protection Program worker, Social Worker, or Tribal Prosecutor immediately. Any person who, without good cause fails to report abuse or suspected child abuse shall be guilty of an offense and upon conviction thereof shall be sentenced to imprisonment for a maximum of one (1) year in jail or to a fine not to exceed five thousand dollars (\$5,000), or to both such fine and imprisonment, plus Court costs.

S.W.S.T. CODE
 Amendment
 New Adoption
 Judicial Approved
04-29-88
 Council Adopted
05-05-88

38-30-02 Persons over whom the Sisseton-Wahpeton Sioux Tribe does not have jurisdiction and who have failed to report suspected child abuse of those children under the jurisdiction of the Sisseton-Wahpeton Sioux Tribe shall be reported to the Criminal Investigator, who shall conduct an investigation into the allegations and submit his/her findings to the proper jurisdiction for probable prosecution.

38-31-01 CURFEW

It shall be unlawful for any minor child under the age of eighteen (18) years, to be abroad and unaccompanied by his/her parent, guardian, custodian, or a person (s) of lawful age having charge of the minor child by arrangement and direction of said minor child's parent, guardian or custodian, while in or at places within the jurisdiction of the Sisseton-Wahpeton Sioux Tribe, between the hours of 10:00 P.M. and 6:00 A.M, unless the minor is attending a school or church function, at which time the curfew will then be 11:00 PM. During the school year, the above curfew hours will be in effect; however, during the school vacation for the summer, the curfew hours will be from 11:00 P.M. to 6:00 A.M. (Also, see Section 38-03-36 (11)).

S.W.S.T. CODE
 Amendment
 New Adoption
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02-24-88
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03-01-88

38-32-01 PARENTAL LIABILITY

Any person, firm, association, or corporation (private or public), including the Tribe and its political subdivisions, which suffer damages to real or personal property or who suffer personal injury through malicious and wilful act of a minor child under the age of eighteen (18) who resides with its parents shall have a course of action against and recover from the parents of such child in a civil suit.

S.W.S.T. CODE
 Amendment
 New Adoption
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03-01-88

38-32-02 In each case, the amount of recovery against one or both of the parents shall be limited to actual damages of \$750.00 and court costs, and shall not apply to damages caused by the operation of a motor vehicle by the minor child.

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 New Adoption
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03-01-88

38-33-01 INTOXICATING BEVERAGES AND CONTROLLED SUBSTANCES

It shall be unlawful for any child under the age of eighteen (18) years to purchase, attempt-to-purchase, consume, or be under the influence of intoxicating beverages, or any controlled substance, or for any person to cause or contribute to any such child consuming or being under the influence of intoxicating beverages or any controlled substance. (Also, see Section 38-03-36 (8)).

38-34-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which judgement shall have been rendered.

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 Amendment
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