

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 39

TERMINATION OF THE PARENT-CHILD RELATIONSHIP

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
02-06-85
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39-01-01 PURPOSE

The purpose of this Chapter is to provide for the termination of the parent-child relationship by order of the Sisseton-Wahpeton Sioux Tribal Court, the court action is intended primarily for those situations where all other remedies by the Sisseton-Wahpeton Sioux Tribal Court, or other Courts where the action has been transferred to the Tribal Court of the Sisseton-Wahpeton Sioux Tribe pursuant to the Indian Child Welfare Act of 1978, have been proven ineffective and exhausted in the attempt to maintain the stability of the family.

39-01-02 It shall further be the purpose of this Chapter to delineate meaningful and clear guidelines to be applied to cases involving termination of the parent-child relationship, to ensure the competent, stable and on-going care of the child by prompt and final adjudication.

39-02-01 JURISDICTION

The Sisseton-Wahpeton Sioux Tribal Court shall have jurisdiction over all actions for the termination of the parent-child relationship where the parents of the child are enrolled members of the Sisseton-Wahpeton Sioux Tribe and where the child is a member of the Sisseton-Wahpeton Sioux Tribe or is eligible for enrollment.

39-03-01 WHO MAY FILE A PETITION

A parent may file a petition for voluntary termination of the parent-child relationship.

39-03-02 One parent may file a petition for termination of the parent-child relationship between the other parent and the child.

39-03-03 A guardian or custodian or any other persons having knowledge of the circumstances and an interest in the child may file a petition for the termination of the parent-child relationship with respect to either or both parents.

39-04-01 CONTENTS OF THE PETITION

The petition for termination of the parent-child relationship shall include:

1. The name, date of birth, place of residence, and enrollment status of the petitioner;

2. The name, sex, date of birth, place of birth, residence of the child and enrollment status of the child, if known;
3. The relationship of the petitioner to the child, or the fact that no relationship exists;
4. The names, addresses, dates of birth, residences and enrollment status of the parents, if known;
5. Where the child's parent is a minor, the names, mailing addresses and residences, and enrollment status of the minor parent's parents or guardian, if known. If voluntary termination of the parent-child relationship, the minor parent's parents must consent to the action in writing;
6. The name, mailing address and residence, and enrollment status of the person having legal custody or guardianship of the child, or acting in the place of the parent(s) of the child, if known; and
7. The grounds on which termination of the parent-child relationship is sought.

39-05-01 REQUIRED DOCUMENTS

In all proceeding for the termination of the parent-child relationship, the petitioner is to submit at the time of filing the petition, the following documents:

1. A certified copy of the child's birth certificate and enrollment verification.
2. Where the child's parent is a minor, a certified copy of the minor parent's birth certificate and enrollment verification.

39-06-01 FILING FEE

No fee will be assessed for any proceeding for termination of the parent-child relationship.

39-07-01 REPRESENTATION

In any proceeding for termination of the parent-child relationship, the Court shall appoint an advocate to represent the child as his counsel and guardian ad litem.

39-07-02

If the parent(s) of the child desire to be represented by counsel but are indigent, the Court, at its discretion, shall appoint either professional or lay counsel for such parent(s).

39-08-01 SOCIAL STUDY PRIOR TO HEARING

When a petition is filed with the Court for termination of the parent-child relationship, the Court shall request a social study to be submitted within thirty (30) days of receipt of said request, from the Child Protection Program and may request studies from the Bureau of Indian Affairs Branch of Welfare, or from the State, or other agencies authorized to provide such services.

39-09-01 NOTICE

Within ten (10) days after the social study has been submitted, the Court shall set the time and place for a hearing, and shall cause notice to be given to the petitioner and personally serve upon the parent(s) of the child, the person standing in place of the parent(s), the guardian of the person of the child, and other persons having legal custody of the child.

39-09-02

If the residence of the parent(s) is unknown or cannot, with due diligence, to the satisfaction of the Court, be ascertained, or if the parent(s) cannot be personally served on the Reservation, or have departed to avoid service, or conceal themselves, the Court may order service to be made by publication for at least three (3) consecutive weeks in a newspaper serving the Reservation which the Court determines is most likely to give notice of the pending hearing. The Court shall also direct a copy of the notice to be forthwith sent by first class mail, to the parent(s) last known mailing address.

39-09-03

The Court may give notice for the presence of experts who have knowledge of the particular case, including physicians, psychiatrists, mental health professionals, and social workers, and may request the presence of witnesses or other persons whom the Court finds to have a direct interest in the case, and any individual from the community cognizant of the traditional child rearing methods and attitudes of the Tribe that "professional" individuals from outside the Tribe may neither be aware of nor understand.

39-10-01 HEARING

The hearing may be conducted in an informal manner. In addition to those persons entitled to notice, other persons may be admitted at the discretion of the Court, if their presence is requested by any person entitled to receive notice of the hearing. The general public shall be excluded.

39-11-01 VOLUNTARY TERMINATION OF PARENTAL RIGHTS

The Court may terminate the parent-child relationship when the parent(s) desire to voluntarily relinquish such rights. In assuming custody on voluntary termination of parental rights, the Court shall ensure but not be limited to the following:

1. No voluntary termination of parental rights shall occur before the child is ten (10) days old;
2. No voluntary termination of parental rights shall occur until a written report has been submitted to the Court by the child Protection Program indicating that social services have been offered to the parent(s) that this course of action has been fully explained to and is understood by the parent(s) and that such action is in the best interests of the child and/or parent(s).
3. When possible, both parents shall appear in Court for the termination proceedings. In all proceedings for voluntary termination of parental rights, the parent(s) in whose custody the child resides must appear in Court; provided, however, that under any circumstance, the parent(s) may waive--in writing, before a court officer, notary public or other persons authorized to administer oaths--the right to appear or the right to notice of the hearing, or both;
4. In any proceeding for voluntary termination of parental rights, when the Court has reasonable doubt as to the emotional state of mind of the petitioner(s), or to the ability to understand the finality of this action, the Court shall assume custody of the child for a period not to exceed six (6) months in order to provide the parent(s) with additional time to consider their decision, under the following conditions:
 - (a) When delaying the termination proceedings, the Court shall request provision of social services to the parent(s) in order to assure the validity of this decision by the parent(s); and
 - (b) Within six (6) months of the initial proceeding, the Court shall either return custody of the child to the parent(s) or process the petition for voluntary termination of parental rights.

39-12-01 NON-VOLUNTARY TERMINATION OF PARENTAL RIGHTS

The Court may terminate the parent-child relationship where one or more of the following grounds are substantiated, despite conviction of Child Abuse and/or Child Neglect under Chapter 26, Sections 26-14-01 and 26-16-01:

1. The parent(s) have abandoned the child in that the child was left in destitute circumstances or where the child was left under such circumstances that the identity of the parents are unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to that child within three (3) months following the finding of the child;

2. Emotional illness, mental illness, or deficiency of the parent(s) of such duration or nature as to render the parent(s) unlikely to care for on-going physical, mental, and emotional needs of the child;
3. The parent(s) have substantially, continuously, or repeatedly neglected the child in that they have refused to provide, while financially able or offered means to do so, adequate food, clothing, shelter, education, medical or surgical care;
4. Physical and/or sexual abuse of the child and/or mental or emotional abuse and/or neglect of the child;
5. Excessive use of intoxicating beverages or narcotics or dangerous drugs by the parent(s) and/or the child while the child was in the physical custody of the parent(s);
6. Lengthy imprisonment by a single parent;
7. Repeated gross lewd and lascivious behavior of by the parent(s);
8. Repeated contributing to the delinquency of the child, which conduct or status is found by the Court, with the assistance of competent medical and social work professionals, presently cause or likely to cause serious harm to the physical and emotional development of the child, including gross behavioral disorders, alcoholism, habitual delinquency or convictions of crimes, or gross lewd, lascivious or anti-social behavior;
9. Unexplained injury or death of a sibling when a preponderance of the evidence indicates parental responsibility for the injury or death; and
10. Reasonable efforts by appropriate public or private child-care agencies have been unable to rehabilitate the family.

39-12-02 Where a child is not in the physical custody of the parent(s), the Court, in addition to the foregoing, shall also consider, but is not limited to the following:

1. Failure to provide a home or pay a reasonable portion of substitute physical care and maintenance where custody is lodged with orders;
2. Failure to maintain regular visitations or other contact with the child as designed in a plan to reunite the child with the parent(s);
3. Failure to maintain reasonably consistent contact or communication with the child; and

4. Lack of effort on the part of the parent(s) to adjust the circumstances, conduct or conditions to meet the needs of the child.

39-12-03 Where a child has been placed in foster care by a court order or has been otherwise placed by the parent(s) or others into the physical custody of such family, the Court shall consider whether the child has become integrated into the foster family to the extent that his familial identity is with that family; and whether the family or person is able and willing to permanently so integrate the child. The Court shall take into further consideration, but is not limited to the following:

1. The love, affection and other emotional ties existing between the child and the parent(s), and his ties with the integrating family;
2. The capacity and disposition of the parent(s) from whom the child was removed as compared with that of the integrating family to give the child love, affection, and guidance and continue the education of the child;
3. The capacity and disposition of the parent(s) from whom the child was removed and the integrating family to provide the child with food, clothing, medical care, and other physical, mental, or emotional needs;
4. Length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining such continuity;
5. The permanence as a family unit of the integrating family or person;
6. The moral fitness and physical and mental conditions of the parent(s) from whom the child was removed and that of the integrating family or person;
7. The home, school and community record of the child, both when with the parent(s) from whom the child was removed and when with the integrating family;
8. Reasonable preference of the child, if the Court deems the child is of sufficient capability to express a preference; and
9. Any other factor considered by the Court to be relevant to a particular placement of the child.

- 39-12-04** A petition for termination of the parent-child relationship may not be granted where the Court finds that the parental neglect and refusal to perform natural and legal obligations of the care and support was involuntary neglect and refusal due to financial difficulties, or inability to assume responsibilities of parenthood due to temporary emotional and mental disturbances and illness.
- 39-13-01 STANDARD OF PROOF**
In all proceedings under this Chapter, the standard of proof shall be beyond a reasonable doubt of the evidence.
- 39-14-01 ORDER**
Following the hearing for termination of the parent-child relationship, the Court shall enter such order as the circumstances warrant, and in the event the Court determines the parent-child relationship should be terminated, its order shall include proper findings relative to service of notice, appearances, the grounds on which the decision is made, and conclusions of law and judgement that the parent-child relationship between such designated persons is forever terminated. Such order may contain the right to consent to adoption without further notice to the parent(s).
- 39-14-02** The Court shall appoint a guardian, with priority in the order of relative, present foster parent(s), Child Protection Program, or other appropriate social services agencies, through adoption or otherwise.
- 39-14-03** The guardian shall be entitled to a certified true and correct copy of all such orders of instruments that may be necessary for the subsequent adoption of the child.
- 39-15-01 EFFECTS OF ORDER FOR TERMINATION**
All rights, duties and obligations between the parent(s) and the child are terminated by a termination order.
- 39-15-02** No adjudication of termination of the parent-child relationship shall effect the child's enrollment status as a member of this Tribe or a child's degree of blood quantum of this Tribe, or a child's rights from his natural parent(s).
- 39-16-01 CONFIDENTIALITY**
A verbatim recording either by stenographic or electrical or mechanical recording device shall be taken of the hearing and such record shall be stored as a permanent record of the Court and shall not be released thereof, unless the matter is brought on for appeal, in such case, a copy of the record shall be submitted to the Intertribal Court of Appeals upon the request of either the appellant or respondent as provided under the Uniform code of the Intertribal Court of Appeals.

39-16-02 The record of the testimony of the parties presented in any proceeding terminating the parental rights and responsibilities to a child, shall not be admissible in any civil, criminal, or any other cause or proceeding in any Court against a person named as the respondent under the above sections.

39-17-01 APPEAL

An appeal to the Intertribal Court of Appeals may be filed by either the petitioner or respondent within thirty (30) days from the date of filing the judgment and decree or order for termination of parent-child relationship in the manner provided by the Uniform Code of the Intertribal Court of Appeals.

39-18-01 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, 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 the judgement shall have been rendered.

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