

Chapter 34A
SISSETON-WAHPETON SIOUX TRIBAL CODE
UNIFORM PARENTAGE ACT

34A-01-01	Policy.....	1
34A-02-01	"Parent and Child Relationship" Defined.....	1
34A-03-01	Relationship not Dependent on Marriage.....	1
34A-04-01	Minor Parent Obligation.....	1
34A-05-01	How Parent and Child Relationship Established.....	1
34A-06-01	Presumption of Paternity.....	1
34A-07-01	Challenges to Voluntary Acknowledgment of Paternity.....	2
34A-08-01	Determination of Father and Child relationship-Who may bring action When action may be brought.....	3
34A-09-01	Statute of Limitations.....	3
34A-10-01	Jurisdiction.....	4
34A-11-01	Parties.....	4
34A-12-01	Support Pending Trial Proceedings.....	4
34A-13-01	Genetic Tests.....	4
34A-14-01	Evidence Relating to Paternity.....	5
34A-15-01	Civil Action-Trial.....	5
34A-16-01	Evidence Relating to Costs of Pregnancy, Childbirth, and Genetic Testing.....	6
34A-17-01	Judgment or Order.....	6
34A-18-01	Default.....	7
34A-19-01	Costs.....	8
34A-20-01	Enforcement of Judgment or Order.....	8
34A-21-01	Modification of Judgment or Order.....	8
34A-22-01	Right to Obtain Counsel - Free Transcript on Appeal.....	9
34A-23-01	Hearing and Records - Confidentiality.....	9
34A-24-01	Action to Declare Mother and Child Relationship.....	9
34A-25-01	Promise to Render Support.....	9
34A-26-01	Birth Records.....	9
34A-27-01	Severability.....	10

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34A-01-01 Policy

The Sisseton-Wahpeton Sioux Tribe recognizes the right of every child to the physical, mental, emotional and monetary support of his or her parents under this Chapter.

34A-02-01 "Parent and Child Relationship" Defined

As used in this chapter, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

34A-03-01 Relationship not Dependent on Marriage

The parent and child relationship, including support obligations, extends equally to every child and to every parent, regardless of the marital status of the parents.

34A-04-01 Minor Parent Obligation

A child's mother or a person found to be the father of a child under this chapter is not relieved of support and maintenance obligations to the child because he or she is a minor.

34A-05-01 How Parent and Child Relationship Established

The parent and child relationship between a child and:

1. The natural mother may be established by proof of her having given birth to the child, or under this chapter.
2. The natural father may be established under this chapter.
3. An adoptive parent may be established by proof of adoption under the Adoption Code, chapter 34B of the Code of Laws of the Sisseton-Wahpeton Sioux Tribe.

34A-06-01 Presumption of Paternity

1. A man is presumed to be the natural father of a child if:

a. He and the child's natural mother are or have been married to each other, even though the marriage is or could be declared invalid, and the child is born or conceived during such marriage;

b. After the child's birth, he and the child's natural mother have married each other even though the marriage is or could be declared invalid, and he is named, with his written consent, as the child's father on the child's birth certificate;

c. He is obligated to support the child under a written voluntary promise.

d. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

e. If genetic tests show that he is not excluded and the statistical probability of his parentage is ninety-five percent or higher.

2. The tribal court shall give full faith and credit to voluntary acknowledgment of paternity affidavits signed in any State or Tribal jurisdiction which have the social security numbers of both parents, and, after consultation with the States or other Tribes, other common elements as determined by such designee;

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

34A-07-01 Challenges to Voluntary Acknowledgment of Paternity

An individual who has signed a voluntary acknowledgment of paternity may rescind the acknowledgment if done:

1. Within 60 days of signing; or

2. Before the date of an administrative or judicial proceeding relating to the child(including a proceeding to establish a support order) in which the signor is a party.

3. After the 60-day period referred to in 34A-07-01(1) has passed, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities(including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

4. The tribal court shall not permit or require a hearing to ratify an unchallenged acknowledgment of paternity.

34A-08-01 Determination of Father and Child Relationship—Who May Bring Action-When Action May be Brought

1. An action to determine the existence of the father and child relationship, whether or not such relationship is already presumed under section 34A-06-01 of the chapter, may be brought by the child; the mother; a pregnant woman; any person or public agency who has custody of, or is providing or has provided financial support to the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.. The complaint shall be verified and shall name the person or persons alleged to be the father of the child.

- a) If any party is a minor, he or she may be represented by his or her general guardian or a guardian ad litem appointed by the court, which may include an appropriate agency. The court may align the parties.
- b) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except for service or process, the taking of depositions to perpetuate testimony, and the ordering of blood tests under appropriate circumstances.

2. An action to declare the non-existence of the parent and child relationship may be brought by the child, the natural mother, or a man presumed to be the father under section 34A-06-01 of this chapter. Actions brought by the child, the natural mother, or a presumed father shall be brought by verified complaint.

3. After the presumption that a man presumed to be the father under section 34A-06-01(1) or (2) has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

4. Regardless of its terms, an agreement, other than a settlement approved by the court, between an alleged or presumed father and the mother or child, does not bar an action under this section.

34A-09-01 Statute of Limitations

1. An action to determine the existence of the father and child relationship to a child may be brought at any time prior to the child attaining the age of eighteen (18) years. Any action previously barred by a statute of limitations may be brought within the eighteen years set forth herein.

2. This section shall not extend the time within which a right of inheritance or a right to succession may be asserted beyond the time provided by law relating to distribution and closing of descendant's estates or to the determination of heirship, or otherwise.

3. This chapter is exempt from the two year statute of limitations for civil actions under the SWST Law and Order Code, Civil Matters, Chapter 33-03-01.

4. An action to determine the existence of the father and child relationship for enrollment purposes only may be brought at anytime prior to the death of the alleged father.

34A-10-01 Jurisdiction

1. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

2. The tribal court has jurisdiction of an action brought under this chapter in which any of the parties resides within the jurisdiction of the Sisseton-Wahpeton Sioux Tribe or conception took place within the jurisdiction. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by personal service of summons outside this reservation by registered mail with proof of actual receipt.

34A-11-01 Parties

1. The child may be made a party to the action. A child who is a minor must be represented by the child's parent whose parentage has been established under section 34A-05-01 or a guardian ad litem appointed by the court. The court may appoint a guardian ad litem for the child.

2. The natural mother, each man presumed to be the father under section 34A-06-01, and each man alleged to be the natural father, must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

34A-12-01 Support Pending Trial Proceedings

1. Upon motion by any party, the court shall order child support to be paid pending a final determination of paternity if there is clear and convincing evidence of paternity, based on genetic tests or otherwise. If the action is brought at the direction of the court and the final determination of paternity results in the nonexistence of a father and child relationship between the child and a party who was ordered to pay child support under this subsection, that party may seek reimbursement from the opposing party for that amount.

34A-13-01 Genetic Tests

1. The court may, and upon the sworn statement of a party shall, require the child, mother, or alleged father to submit to genetic tests, including tests of blood or other tissues. The testing is required in contested cases if request is supported by sworn statement alleging/denying paternity. The tests must be:

- a. Of a type generally acknowledged as reliable by accreditation bodies designated by the secretary of the United States department of Health and Human services;
- b. Performed by a laboratory approved by such an accreditation body; and
- c. Performed by an expert qualified as an examiner of genetic data or specimens, appointed by the court.

2. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiner of blood types.

3. The court must pay for court-ordered tests and obtain additional testing upon request and advance payment; the court has the option to recoup costs from father if paternity is established.

4. In all cases, the court shall determine the number and qualifications of the experts.

34A-14-01 Evidence Relating to Paternity

Evidence relating to paternity may include:

1. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.
2. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.
3. Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. These tests results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.
4. A voluntary acknowledgment of paternity after being given notice of rights and responsibilities.
5. All other evidence relevant to the issue of paternity of the child.

34A-15-01 Civil Action – Trial.

1. An action under this chapter is a civil action governed by the rules of civil procedure and the Federal Rules of Evidence except where noted otherwise within this chapter. The mother of the child and the alleged father are competent to testify and may be compelled to testify, except in cases of rape or incest.

2. Each party to any paternity or child support proceeding is required to file upon the tribal court upon entry of an order, and to update as appropriate, information on location and identity of the party, including Social Security number, residential and mailing addresses, telephone number, driver's license number, and name address, and telephone number of employer.

3. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

4. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court must be made a defendant in the action.

5. The trial must be by the court without a jury.

34A-16-01 Evidence Relating to Costs of Pregnancy, Childbirth, and Genetic Testing

1. Extrinsic evidence of authenticity as a condition precedent to admissibility is not required of billings by service providers for services relating to pregnancy, childbirth, and genetic testing except:

a) documentation of the chain of custody of the blood or tissue samples, accompanied by an affidavit or certification by the administering agency shall be provided.

2. Billings by service providers for services relating to pregnancy, childbirth, and genetic testing constitute prima facie evidence of the costs of those services.

34A-17-01 Judgment or Order

1. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

2. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amended birth registration be made under section 34A-26-01.

3. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of

the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

4. Support judgments or orders ordinarily must be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

5. The judgment or order must include the social security numbers of the child and of individuals determined to be the child's parents.

6. The tribe must give full faith and credit to a determination of paternity made by another tribe or state, whether established through voluntary acknowledgment or through administrative or judicial processes.

34A-18-01 Default

1. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has failed after service of process to plead or otherwise appear within the time permitted under the rules of civil procedure, and the fact is made to appear by affidavit or otherwise, the court shall enter an appropriate judgment by default establishing the existence of the father and child relationship.

2. Except as provided in subsection 3, if a person alleged to be the father in an action to determine the existence of the father and child relationship has pled or appeared in the action, but after being given proper notice by the SWST Tribal Court has failed to appear at a scheduled hearing, conference, or trial, or failed to appear for or refused to submit to genetic testing, and those facts are made to appear by affidavit or otherwise, the person, or if appearing by representative, the person's representative, must be served with written notice of the application for judgment at least eight days before the hearing on the application. If the person fails to appear at the hearing on the application or appears but fails either to cure a previous failure or refusal, or to provide satisfactory assurance of the person's willingness to cure a previous failure or refusal, the court shall direct the clerk to enter an appropriate judgment by default establishing the existence of the father and child relationship.

3. Judgment of default may not be entered:

a. When service of process has been made by published notice or by delivery of a copy to the court, until it is shown, by affidavit or otherwise, that the person is a presumed father or, if not a presumed father, that the person engaged in sexual intercourse with the child's mother at any possible time of conception;

b. Against a minor unless represented in the action by a parent, general guardian, or guardian ad litem;

c. Against an incompetent person unless represented in the action by a guardian with sufficient authority; or

d. If more than one person was alleged to be the father, and the evidence establishes the existence of the father and child relationship between the child and a person who has appeared and participated in the action, then a default judgment shall not be entered upon the person who failed to appear.

4. If the operation of this section requires the entry of judgments of default establishing the existence of the father and child relationship between a child and two or more persons, the court may grant relief from any of those judgments, on such terms as may be just, notwithstanding the passage of any period of time.

34A-19-01 Costs

The court may order reasonable fees of experts and the child's guardian ad litem and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportions and at times determined by the court.

34A-20-01 Enforcement of Judgment or Order

1. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

2. The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, child protection agency, TANF program, or other agency designated to administer them for the benefit of the child under the supervision of the court.

3. Willful failure to obey the judgment or order of the court constitutes contempt of court. All remedies for the enforcement of judgments apply.

34A-21-01 Modification of Judgment or Order

The court has continuing jurisdiction to modify a judgment or order for future support.

34A-22-01 Right to Obtain Counsel – Free Transcript on Appeal

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel.
2. The parent may retain counsel of the parent's own choosing and at the parent's own expense. The court may appoint counsel to represent the interests of a parent who is financially unable to obtain counsel. The court, or a person designated by the court, shall inform the parent of the right to counsel provided by this section.
3. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

34A-23-01 Hearings and Records – Confidentiality

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this chapter must be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any state agency or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

34A-24-01 Action to Declare Mother and Child Relationship

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this chapter applicable to the father and child relationship apply.

34A-25-01 Promise to Render Support

1. Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms.
2. In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

34A-26-01 Birth Records

1. Upon order of the court, request of a court of jurisdiction or a completed statement of voluntary acknowledgment, the state registrar of vital statistics shall prepare an amended birth registration consistent with the findings of the court.

2. The fact that the father and child relationship was declared after the child's birth may not be ascertainable from the amended birth registration but the actual place and date of birth must be shown.

3. The evidence upon which the amended birth registration was made and the original birth certificate must be kept in a sealed and confidential file and is subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

34A-27-01 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 judgment 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 the judgment shall have been rendered.