

**TITLE III
DOMESTIC RELATIONS**

CHAPTER 1. PURPOSE AND DEFINITION

Section 1. Purpose and Definitions

- A. The Santee Sioux Nation finds that the Tribe's interest over family relations is an integral part of Tribal self-government and the Tribe's history and culture, that it is exceedingly important to the Tribe to support the preservation of families, that families thrive when they receive appropriate emotional and financial support, and that the lives of children and families improve by strengthening parental responsibility for family and child support. The Tribe encourages the development of Tribal law and policies and procedures that protect and preserve the continuity of family and promote a uniform, efficient and equitable recognition and implementation of these responsibilities.
- B. Unless otherwise stated or required by the context, the words and phrases used in this Title shall have the same meaning of words and phrases as defined in the Title IV Child Welfare.

Section 2. Jurisdiction over Family Relations

- A. The Family Court shall have jurisdiction over all family relations matters affecting or involving: dissolution or annulment of a marriage; support; custody of a minor child; appointment and removal of guardians; all rights and remedies for establishing paternity; termination of parental rights; and all other matters within the jurisdiction of the Tribal Court concerning children or family relations.
- B. The Family Court shall have the authority to issue all orders necessary to ensure the welfare and safety of children and families within the jurisdiction of the Tribe, including the issuance of subpoenas and orders of restriction, the imposition of fines and sanctions for contempt, and such other orders as may be appropriate.
- C. The Family Court shall give full faith and credit to the public acts, records and judicial decrees applicable to family relation matters of any Court of competent jurisdiction as provided by this Title.
- D. For the purposes of any investigation or pre-trial conference, the Family Court Judge may order alternative dispute resolution and/or may employ the services of probation programs, and the Tribe's medical and public health staff. Such family relations personnel shall also be available to assist in any probate matter.
- E. In any family relations matter, the Judge may retain jurisdiction thereof until its final disposition, as the Court deems necessary.

Section 3. Investigations

- A. In any pending family relations matter the Judge may cause an investigation to be made with respect to any circumstance of the matter which may be helpful or material or relevant to the proper disposition of the case. Such investigation may include an examination of the parentage of any child, the child's age, habits and history, inquiry into the home conditions, habits and character of the child's parents or guardians, and an evaluation of the child's mental or physical condition.
- B. In any action for dissolution of marriage, such investigation may include an examination into the age, habits, family history of the parties, the financial ability of the parties to furnish support to either spouse or any dependent child.
- C. Whenever an investigation has been ordered, the case shall not be disposed of until the report has been filed as hereinafter provided and counsel and the parties have had a reasonable opportunity to examine it prior to the time the case is to be heard. Any report of an investigation shall be filed with the Court Clerk and mailed to all counsel of record.

Section 4. Records and Hearing

The Court shall, upon the request of either party or of counsel for any minor child, or if the Judge presiding over the case determines that the welfare of any children involved or the nature of the case so requires, direct the hearing of any matter under this Title to be heard in chambers or in Court from which the public and press have been excluded. The records and papers in any family relations matter shall be kept confidential and not open to inspection, except upon order of the Court for good cause.

CHAPTER 2. PROTECTION ORDERS

Section 1. Relief From Abuse by Family or Household Member

Any family or household member who has been subjected to a continuous threat of physical injury or other abuse by another family or household member may make an application to the Tribal Court for relief under this Section.

Section 2. Court Orders, Duration

- A. The application shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application, the Court shall order that a hearing on the application be held not later than fourteen (14) days from the date of the order. Such hearing may at the discretion be a telephonic hearing.
- B. In its discretion the Court may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the Court sees fit. Such orders may include temporary child custody or visitation

rights and such relief may include, but is not limited to, an order restraining the respondent from:

1. Imposing any restraint upon the person or liberty of the applicant;
 2. Threatening, harassing, assaulting, molesting, or attacking the applicant; or
 3. Entering the family dwelling or the dwelling of the applicant.
- C. If an applicant alleges an immediate and present physical danger to the applicant, the Court may issue an Ex Parte Order granting such relief as it deems appropriate. If a postponement of a hearing on the application is requested by either party and granted, the order shall not be continued except upon agreement of the parties or by order of the Court for good cause shown.
- D. Upon the granting of an Ex Parte Order the Court shall provide two certified copies of the order to the applicant. Upon the granting of an order after notice and hearing the Court shall provide two certified copies of the Order to the applicant and a copy to the respondent. The Court shall send a certified copy of all restraining orders to the appropriate law enforcement agency within forty-eight hours of its issuance.

Section 3. Extension of an Order

No order of the Court shall exceed ninety (90) days except that an order may be extended by the Court upon the motion of the applicant for additional time as the Court deems necessary.

Section 4. Service

- A. If the respondent has not appeared upon the initial application, service of a motion to extend an order may be made by certified or registered mail directed to the respondent at his or her last known address.
- B. Whenever possible, the Tribal Police shall cause notice of the hearing, a copy of the application, and any Ex Parte Order issued to be served on the respondent not less than seven (7) days before the hearing; provided that the applicant shall cause such notice to be served whenever the Tribal Police may not effectuate such service.

Section 5. Contempt and Violation

- A. When a motion for contempt is filed for violation of a restraining order there shall be an expedited hearing. Such hearings shall be held within seven (7) days of service of the motion on the respondent, provided service on the respondent is made not less than twenty-four hours (24) before the hearing; the hearing may at the discretion of the Court be a telephonic hearing.
- B. If the Court finds the respondent in violation of an order, the Court may impose such sanctions as the Court deems appropriate.

- C. An action under this Part shall not preclude the applicant from seeking any other civil or criminal relief.

CHAPTER 3. MARRIAGES

Section 1. Authority to Join Persons in Marriage

The Santee Sioux Nation Tribal Court shall have jurisdiction over marriages on Indian's residing on the Santee Sioux Reservation and of other persons who consent to the Court's jurisdiction. Judges of the Santee Sioux Nation Tribal Court are authorized to perform marriage ceremonies.

Indian marriages consummated prior to the adoption of this Code and thereafter whether according to State Law or Tribal custom, are declared valid and subject to annulment as is provided in Chapter 4 Section 2 of this Title.

Section 2. Marriage License Required

- A. A man and a woman may be joined in marriage on the Santee Sioux Nation Reservation provided that:
1. At least one of the applicants is a member of the Santee Sioux Nation and has resided on the reservation for three months or the persons have been certified by Tribal Council Resolution as being eligible to be married on the Reservation;
 2. The marriage ceremony is performed within the Santee Sioux Nation Reservation;
 3. Both applicants have attained the age of 18 years;
 4. Both applicants have complied with the license requirements of this Title.
- B. Persons under eighteen (18) years of age but who have attained the age of sixteen (16) years at the time of their application for a marriage license may be joined in marriage provided they have the consent of their parents or guardians. Such consent shall be in writing and signed before a Judge of the Santee Sioux Nation Tribal Court. A Judge of the Santee Sioux Nation Tribal Court may, in the absence of a parent or guardian, sign a consent upon a showing of good cause. Such consent shall be filed as a part of the license application pursuant to this Section.
- C. Persons under eighteen (18) years of age but who have attained the age of sixteen (16) years and have been validly joined in marriage shall be deemed emancipated.

Section 3. Requirements for Issuance of Marriage License

- A. The Tribal Clerk shall issue a marriage license when both applicants have appeared before the Clerk, made application for a license, and provided the requisite information as provided in this Title. The application shall be dated,

signed and sworn to, or affirmed by, each applicant. In the event that the applicants make application separately, the last dated application shall be deemed the date of application.

- B. The application shall state each applicants' name, age, tribal affiliation, occupation, address, birth place, marital status (whether divorced or widowed), names and dates of birth of any minor children, and conservatorship or guardianship status, if any; and both applicants shall submit a certified birth certificate. Any person who intentionally provides false information may be subject to the full penalties provided by Tribal law.
- C. Marriage license applications and copies of the marriage license shall be filed in the Tribal Clerk office as a part of the official records of the Tribe, and a duplicate original marriage license shall be given to the married parties.

Section 4. Marriage Certificate

The person who joins any persons in marriage shall certify upon the marriage license certificate the fact, time and place of the marriage, and return it to the Tribal Clerk for filing within ten days of the marriage ceremony.

Section 5. Recognition of Marriages Performed Off the Reservation

All marriages celebrated off of the Santee Sioux Nation Reservation shall be deemed valid, provided the marriage was legal in the jurisdiction where celebrated.

CHAPTER 4. DISSOLUTION OF MARRIAGE AND ANNULMENT

Section 1. Jurisdiction

- A. The Tribal Court shall have jurisdiction over all complaints seeking a decree of dissolution of marriage or annulment provided that at least one party to the action is a member of the Tribe and has resided on the reservation for at least three months.
- B. Whenever the requirements of subsection a. are met and one party to the action resides out of or is absent from the Santee Sioux Nation Reservation, or that person's whereabouts are not known, the Judge may make an order of notice as he deems reasonable. After the notice has been given and proved to the Court, the Court may hear the complaint if it finds that the absent party has received actual notice that the complaint is pending. If it appears that the absent party has not received or has refused to accept such notice, the Court may hear the case; provided that if it finds cause, the Court may order such further notice to be given as it deems reasonable and continue the complaint until the order is complied with.

Section 2. Grounds for dissolution of marriage or annulment

- A. A marriage is dissolved only by the death of one of the parties or by a decree of dissolution of marriage. A decree of dissolution of marriage shall be granted upon

a finding that the marriage has broken down irretrievably. Divorce may be granted for any of the following reasons which shall be used solely as a guide for the Judge:

Adultery
Extreme Mental Cruelty
Willful Desertion
Willful Neglect
Habitual Intemperance
Mutual consent

1. Adultery Defined -

Adultery is the unlawful sexual intercourse of a married person with one of the opposite sex, and when the crime is committed between parties only of which married, both are guilty of adultery.

2. Extreme Cruelty Defined -

Extreme Cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other, by one party of the marriage.

3. Desertion Defined –

Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal is desertion.

When one party is induced by the stratagem or fraud of the other to leave the dwelling place, or to be absent, and during the absence, the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

Separation by consent with or without the understanding that one of the parties will apply for a divorce, is not desertion.

Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed-during such absence or separation.

Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, and the other refuses it, such refusal is desertion.

If one party deserts the other, and before the expiration of the statutory period required to make the desertion a good cause for divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

4. Willful Neglect Defined –

Willful neglect is the neglect of the husband or wife to provide each other the common necessities of life, either one having the ability to do so.

5. Habitual Intemperance Defined –

Habitual intemperance is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of time from properly attending to business or which would reasonably inflict great mental anguish upon the innocent party.

6. Mutual Consent Defined –

Mutual consent is an agreement between husband and wife to terminate their marital relationship. Consent obtained by fraud or force, is not mutual.

7. Willful desertion, willful neglect, habitual intemperance, or mutual consent must continue for six (6) months before either is grounds for divorce.

- B. An annulment shall be granted if the marriage is void or voidable under the laws of the Tribe or of the state in which the marriage was performed.
- C. The Santee Sioux Tribal Court of the Santee Sioux Nation shall have jurisdiction to hear and determine matters of annulment upon the application of one of the parties:
 - 1. When either party to the marriage shall be incapable of consenting thereto.
 - 2. When the consent was obtained by force or fraud.

3. When the party making application was of unsound mind at the time of the marriage.
 4. When either party was at the time of the marriage incapable of consummating the marriage and the incapacity is continuing.
 5. When the marriage was invalid on one of the grounds as set forth under the state laws of Nebraska.
- D. If, after termination of any of the foregoing defects, the parties shall continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of such defect.
- E. Procedures for annulment must be instituted by the party laboring under the disability or upon whom the force or fraud is imposed.
- F. The legitimacy of children conceived or born prior to judgment shall be conclusive only as against the parties to the action and those claiming under them.

Section 3. Service and Filing of Complaint

A proceeding for dissolution of marriage or annulment shall be commenced by the filing and service of a complaint in the Tribal Court.

The complaint shall allege the grounds for annulment; or in a proceeding for separation or divorce that the parties are incompatible; and shall set forth:

- A. The age, occupation and residence of each party and his/her length of residence in this state;
- B. The date of the marriage and the place at which it was registered;
- C. That the jurisdictional requirements exist in that either the parties are Indian or that the parties have consented to the Court's jurisdiction;
- D. The names, ages and addresses of all living children of the marriage and whether the wife is pregnant;
- E. Any arrangements as to support, custody and visitation of the children and maintenance of a spouse; and
- F. The relief sought.

Either or both parties to the marriage may initiate the proceeding. If one party commences the proceeding, the other party must be served in the manner set forth in Santee Sioux Nation Rules for Civil Procedure and may, within thirty (30) days after the date of service, file a verified response. No decree may be entered until ninety (90) days after the date of service.

The Court may join additional parties proper for the exercise of its authority to implement this act.

Section 4. Rules of Procedure

Until comprehensive rules of procedure are established for civil causes of action in Tribal Court, the rules of procedure enacted in Appendix A of this Code and procedure established in Sections 6,7,8 and 9 of this Chapter shall be followed in all actions brought under this Title. Where necessary and practical, and where not inconsistent with the above-referenced Sections and the provisions of this Title, the Court shall follow the rules of procedure and principles of law applicable to similar claims arising under the laws of the State of Nebraska.

Section 5. Private Hearing

When necessitated by the interests of justice and the persons involved, the Court shall, upon its own motion or a motion of either party or of counsel for any minor child, direct the hearing of any matter under this Part to be private, and thereupon shall exclude all persons except the officers of the Court, the Court reporter, their witnesses and counsel.

Section 6. Stipulation of Parties and Finding of Irretrievable Breakdown

- A. In any action for dissolution of marriage, the Court shall make a finding that a marriage breakdown has occurred where the parties, and not their attorneys, execute a written stipulation that their marriage has broken down irretrievably or, where both parties are physically present in Court, stipulate that their marriage has broken down irretrievably, and the parties have submitted an agreement concerning the custody, care, education, visitation, maintenance or support of their children, if any, and concerning spousal support and the disposition of property.
- B. The testimony of either party in support of that conclusion shall be sufficient.
- C. In any case in which the Court finds, after hearing, that a cause enumerated in Section 2. of this Part exists, the Court shall enter a decree dissolving the marriage or granting an annulment.

Section 7. Conciliation Period

- A. On or after the Appearance date to the complaint seeking the dissolution of a marriage and prior to the expiration of the 90 day period specified in Section 8 of this Part, either spouse or counsel for the minor child may submit a request for conciliation/alternative dispute resolution to the Court. The Court shall thereafter enter an order that the parties meet with a conciliator/mediator mutually acceptable to them or, if the parties cannot agree as to a conciliator, with a conciliator named by the Court. The conciliator should be a person experienced in marriage counseling.
- B. Within such 90 day period or within 30 days of the request, whichever is later, there shall be two mandatory consultations with the conciliator by each party to

explore the possibility of reconciliation or of resolving the problems which might lead to continuing conflicts following the dissolution of the marriage. Failure of either party to attend these consultations, except for good cause, shall preclude further action on the complaint for six months from the date of the return day; provided the Court may terminate such stay upon motion of either party and for good cause shown. Further consultations may be held with the consent of both parties.

- C. All communications during these consultations shall be absolutely privileged, except that the conciliator shall report to the Court whether or not the parties attended the consultations.
- D. The reasonable fees of the conciliator shall be paid by one or both of the parties as the Court directs.
- E. The Court may establish a registry of mediation services as a reference to parties filing for dissolution of marriage to address property, financial, child custody, and visitation issues.

Section 8. Waiting Period

- A. After the expiration of ninety (90) days following the Appearance date to the complaint for dissolution of marriage or annulment, or after the expiration of six months where proceedings have been stayed under Section 7.b., the Court may proceed on the complaint, the case may be heard and a decree granted thereon.
- B. Nothing herein shall prevent any interlocutory proceeding within the ninety-day period; nor shall the ninety-day or the six-month period apply in actions for annulment.

Section 9. Legal Counsel for Minor Children

- A. The Court may appoint legal counsel for any minor children of the parties at any time after the return day of the complaint, if the Court deems it to be in the best interest of the child or children. Legal counsel may be a licensed attorney or a lay advocate. The Court may appoint legal counsel on its own motion, or at the request of either of the parties or of the legal guardian of any child, or at the request of any child who is of sufficient age capable of making an intelligent request. The reasonable fees of the appointed legal counsel shall be paid by one or both of the parties as the Court directs.
- B. Notwithstanding subsection a., in any case before the Court where it finds that the custody, care, education, visitation or support of a minor child is in actual controversy, the Court may make any order regarding the matter in controversy prior to the appointment of counsel where it finds immediate action necessary in the best interest of any child.

- C. Counsel for the child or children shall be heard on all matters pertaining to the interest of any child so long as the Court deems such representation to be in the best interest of the child.

Section 10. Orders Regarding Custody and Care of Minor Children

- A. In any controversy before the Court as to the care or custody of a minor child, and at any time after the return day of any complaint under this Part, the Court may make or modify any proper order regarding the education and support of the child, and of care, custody and visitation if it has jurisdiction under the provisions of this Part. The Court may assign the custody of any child to the parents jointly, to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The Court may also make any order granting the right of visitation of any child to a third party, including, but not limited to, grandparents.
- B. In making or modifying any order with respect to custody or visitation, the Court shall be guided by the best interests of the child, giving consideration to the wishes of the child of sufficient age and maturity, and the circumstances, if relevant, of the parents.
- C. In determining whether a child is in need of support and, if so, the respective abilities of the parents to provide support, the Court shall take into consideration all the factors enumerated in Section 4. of Part V. of this Title.
- D. A parent not granted custody of a minor child shall not be denied the right of access to the academic, medical, hospital or other health records of such minor child unless otherwise ordered by the Court for good cause shown.
- E. Where the parents of a minor child live separately, the Court may, on the petition of either party and after notice given to the other, make any order as to the custody, care, education, visitation, and support of any minor child of the parties.
- F. In making any order under this Part, the Court shall be guided by the best interests of the child, giving consideration to the wishes of the child of sufficient age and maturity.
- G. Executions and earning assignments in accordance with Section 4.e. of Part V. of this Title shall be available to effectuate any support order in all actions for dissolution or annulment of marriage.

Section 11. Joint Custody

- A. For the purposes of this Section, "joint custody" means an order awarding legal custody of the minor child to both parents, providing for joint decision-making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents. The Court may award joint legal custody without awarding joint physical custody.

- B. There shall be a presumption that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agreed in Court at a hearing for the purpose of determining the custody of the minor child of the marriage. If the Court declines to enter an order awarding joint custody pursuant to this Section, the Court shall state in its decision the reasons for denial of an award of joint custody.

Section 12. Non-parent Custody

- A. In any dispute as to the custody of a minor child involving a parent and a non-parent, there shall be a presumption that it is in the best interests of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody.
- B. In any proceeding as to the custody of a minor child, and on any complaint under this Part, the Court may allow an interested third party with a significant interest in the matter to intervene upon motion. The Court may award full or partial custody, care, education, and visitation rights of such child to such third party upon such terms and conditions as it deems to be in the best interests of the child.

Section 13. Visitation Rights

- A. The Court may grant the right of visitation of any child or children to any person, upon an application of such person if the Court finds that it is in the best interests of the child. Such order shall be according to the Court's best judgment based upon the facts of the case and subject to such conditions and limitations as it deems equitable, provided the grant of such visitation rights shall not be contingent upon any order of financial support by the Court.
- B. Visitation rights granted in accordance with this Section shall not be deemed to have created parental rights in the person to whom such visitation rights are granted.

Section 14. Orders regarding Children and Support in Annulment Cases

In any petition for annulment, the Court may make such order regarding any child of the marriage and concerning any support as it might make in an action for dissolution of marriage. The child of any void or voidable marriage shall be deemed legitimate.

Section 15. Payment of Attorney's Fees

In any proceeding seeking relief under the provisions of this Title, the Court may order either spouse or, if such proceeding concerns the custody, care, education, visitation or support of a minor child, either parent, to pay the reasonable attorney's fees of the other or of the child in accordance with their respective financial abilities.

Section 16. Restoration of Former Name

At the time of entering a decree dissolving a marriage or granting an annulment, or any time after entering such a decree, the Court shall, upon the request or motion of the

spouse whose name is to be changed, restore the birth name or former name of such spouse.

Section 17. Review of Agreements; Incorporation into Decree

- A. In any case under this Title where the parties have submitted to the Court an agreement concerning the custody, care, education, visitation, maintenance or support of any of their children or concerning spousal support or the disposition of property, the Court shall inquire into the financial resources and actual needs of the spouses and their respective fitness to have physical custody of or rights of visitation with any minor child, in order to determine whether the agreement of the spouses is fair and equitable under the circumstances.
- B. If the Court finds the agreement fair and equitable, it shall become part of the Court file, and if the agreement is in writing, it shall be incorporated by reference into the order or decree of the Court.
- C. If the Court finds that the agreement is not fair and equitable, it shall make such orders as to finances and custody as the circumstances require.
- D. If the agreement is in writing and provides for the care, education, maintenance or support of a child beyond the age of eighteen, it may also be incorporated or otherwise made a part of any order and shall be enforceable to the same extent as any other provision of such order or decree.

Section 18. Effect of Decree

A decree of annulment or dissolution shall give the parties the status of unmarried persons and they may marry again.

Section 19. Notice of Court Decrees

The Court Clerk shall, on or before the fifteenth day of each month, file a notice with the Santee Sioux Department of Health and Human Services and the Tribal Clerk of each dissolution or annulment of marriage granted in the preceding month, stating the names and addresses of the parties to the marriage, the date of granting of the dissolution or annulment, and any name change granted by the Court. Before a final decree is entered, the parties or their attorneys shall supply the Court Clerk with such information as is necessary to complete the notice.

CHAPTER 5. SUPPORT OF CHILD AND SPOUSE

Section 1. Support and Use of Family Home Pending Decree

During the pendency of any complaint or petition under this Title, and after a hearing duly held, the Court may award alimony and support to either party from the date of filing an application thereof with the Court. In determining the award, the Court shall consider the factors enumerated in Sections 2 and 3 of this Part. The Court also may award exclusive use of the family home to either of the parties, provided that a non-tribal member spouse may be awarded use of Tribal housing only when such party also has

been given custody of any minor tribal member children during their minority, and provided further that such use shall be in accordance with Tribal Housing Authority's policies and regulations.

Section 2. Assignment of Property

- A. At the time of entering a decree dissolving or annulling a marriage, the Court may assign to either party all or any part of the estate of the other. The Court may require that title to any non-trust real property pass to either party or may order the sale of such non-trust real property when, in the Court's judgment, it is the proper mode to carry the decree into effect.
- B. In determining the nature and value of the property, if any, to be assigned, the Court, after hearing the evidence and witnesses, shall consider the following factors: the length of the marriage; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties; the opportunity of each for future acquisition of capital assets and income; and the tribal interests, if any, in such property. The Court shall also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates.

Section 3. Alimony

- A. At the time of entering the decree dissolving or annulling a marriage, the Court may order either party to pay alimony to the other, in addition to or in lieu of an award pursuant to Section 2 of this Part.
- B. In determining whether alimony shall be awarded, and the duration and amount of the award, the Court shall hear the evidence and witnesses, if any, of each party, and, except as provided in any approved stipulation, shall consider the following factors: the length of the marriage; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties; and the award, if any, which the Court may make pursuant to Section 1. of this Part; the Tribal interests, if any, in the source of income; and in the case of a parent to whom the custody of minor children has been awarded, the desirability of such parent's securing employment.

Section 4. Parents' Obligation for Support of Minor Child

- A. Upon or subsequent to entering the decree dissolving or annulling a marriage, the Court may order the parents of a minor child of the marriage to financially support the child according to their respective abilities, if the child is in need of such financial support.
- B. In determining whether a child is in need of financial support, and if in need, the respective abilities of the parents to provide such support and the amount and duration thereof, the Court shall consider the following factors: the age, health, station, earning capacity, amount and sources of income, estate, vocational skills, employability of each of the parents; the age, health, occupation, educational

status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child; and any tribal interests in or benefits available to either of the parents or minor child, including, but not limited to, health care and education.

- C. In making its determination of financial support for a minor child, the Court may be guided by the State of Nebraska's Child Support and Arrearage Guidelines. At any time the Court may deviate from the Child Support and Arrearage Guidelines, if Court finds that the application of the Guidelines would be inequitable or inappropriate. The Court would make a determination of financial support based on the testimony of the parties and the factors described in Section 4(b).
- D. The Court shall make and enforce the decree for the financial support of the child as it considers just. The Court may order either parent to name any child under eighteen as a beneficiary of any medical or dental or benefit plan carried by such parent or available to such parent on a group basis through employment.
- E. Whenever an obligor is before the Court in proceedings to establish, modify, or enforce a support order, and such order is not secured by a wage assignment or garnishment, the Court may require the obligor to execute such wage and earning assignment.

Section 5. Modification of Alimony or Support Orders and Judgments

- A. Unless and to the extent that the decree precludes modification, any final order for the payment of periodic alimony or financial support for a minor child may at any time thereafter be modified by the Court upon a showing of a significant change in the circumstances of either party. In determining whether to modify a child support order, the Court shall consider the division of real and personal property between the parties set forth in the final decree and the benefits accruing to the child as a result of such division.
- B. In an action for dissolution or annulment of marriage in which a final judgment has been entered providing for the payment of alimony by one party, the Court may, in its discretion and upon notice and hearing, modify, suspend, reduce or terminate such alimony if it is shown that the party receiving alimony is living under circumstances which the Court finds has resulted in a change of circumstances that has significantly altered the financial needs of that party.
- C. No order for periodic payment of child support or alimony may be subject to retroactive modification, except that the Court may order modification with respect to any period during which there is a pending motion for modification from the date of service of notice of such pending motion upon the opposing party.

Section 6. Contempt Orders

When any person is found in contempt of an order of the Court, the Court may award to the petitioner a reasonable attorney's fee and the fees of the officer serving the contempt

citation, such sums to be paid by the person found in contempt. The costs of commitment of any person imprisoned for contempt of Court by reason of failure to comply with such an order shall be paid by the Tribe.

CHAPTER 6. PATERNITY PROCEEDINGS

Section 1. Determination of Paternity and Support

The Santee Sioux Nation Family Court shall have jurisdiction over all suits brought to determine the paternity of a child provided that the Court has personal jurisdiction over the putative father. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of support and inheritance.

Section 2. Proceedings

- A. Paternity proceedings are commenced by filing a complaint alleging that the person named as therein is the father of the child and petitioning the Court to issue an Order of Paternity.
- B. An action under this Part may be brought by any person having an interest in the matter or by an appointed tribal representative in the name of the Santee Sioux Nation.
- C. The Court shall schedule a hearing on the matter, which shall be closed to the public.
- D. The testimony of both the mother and putative father shall be solicited in connection with such proceeding.

Section 3. Blood Tests

- A. In any proceeding in which a question of paternity is an issue, the Court, upon motion of any party, may order the mother, her child, and the putative father or the husband of the mother to submit to one or more blood grouping tests, to be made by a qualified physician or other qualified person designated by the Court, to determine whether or not the putative father or husband of the mother can be excluded as being the father of the child. The results of such tests shall be admissible in evidence only in cases where such results establish definite exclusion of the putative father or such husband as the father of the child.
- B. In any proceeding in which a question of paternity is an issue, the Court, upon motion of any party, may order genetic tests which shall mean human leukocyte antigen tests, or DNA tests, to be performed, unless a putative father or husband has been excluded by prior blood grouping tests. Such tests shall be made by a hospital, accredited laboratory, qualified physician, or other qualified person designated by the Court, to determine whether or not the putative father or husband is the father of the child. The results of such tests shall be admissible in

evidence to establish either definite exclusion of the putative father or husband, or as evidence that he is the father of the child.

- C. The costs of the blood tests shall be chargeable against the party making the motion.

Section 4. Presumption of Paternity

A rebuttal presumption of paternity exists where one or more of the following factors is present:

- A. The child is born during the marriage of the parties or within 300 days of the termination of the marriage;
- B. The child is born to parties who attempted to marry but whose marriage is or could be declared void;
- C. The child is born to parties who have married or attempted to marry after the child's birth and the putative father has (i) acknowledged paternity in writing, (ii) consented to be named as the father on the child's birth certificate, or (iii) been ordered to pay child support;
- D. The putative father has openly held out the child as his natural child; or
- E. The putative father has signed a written acknowledgement of paternity.

Section 5. Judgment and Order of the Court

- A. If the putative father is found to be the biological father of the child, the Court shall make an Order of Paternity.
- B. The Court may order the father of the child to stand charged with the support and maintenance of such child, with the assistance of the mother if she is financially able, as the Court finds, in accordance with the child support provisions of this Title.

Section 6. Acknowledgment of Paternity

In lieu of or in conclusion of a paternity proceeding, the written acknowledgement of paternity executed by the putative father of the child when accompanied by an attested waiver of the right to a hearing and the right to an attorney, and a written affirmation of paternity executed and sworn or affirmed to by the mother of the child and filed with the Court, shall have the same force and effect as a judgment of the Court.

Section 7. Agreement to Support

- A. In conclusion of a paternity proceeding or in lieu of a contested support hearing, a written acknowledgment of support of the child in accordance with Tribal child support procedures under this Title, together with provisions for any reimbursement for past due support based on ability to pay, and any reasonable expense of prosecution of the petition, may be obtained in the manner prescribed

above, and such acknowledgment shall have the same force and effect, retroactively or prospectively in accordance with such agreement as an order of support by the Court.

- B. Wage executions and earning assignments in accordance with the Tribal child support procedures under this Title shall be available in paternity proceedings.

Section 8. Registration and Enforcement of Foreign Paternity Judgments

- A. The Court shall maintain a registry of paternity judgments from other jurisdictions. Any party to an action in which a paternity judgment from another jurisdiction was rendered may register the foreign paternity judgment in the Court without payment of a filing fee or other cost to the party.
- B. The party shall file a certified copy of the foreign paternity judgment and a certification that such judgment is final and has not been modified, altered, amended, set aside, or vacated and that the enforcement of such judgment has not been stayed or suspended. Such certificate shall set forth the full name and last-known address of the other party to the judgment.
- C. Such foreign paternity judgment so registered shall become a judgment of the Santee Sioux Nation Tribal Court and shall be enforced and otherwise treated in the same manner as a judgment of the Court.
- D. Within five days of the filing of the judgment and certification, the party filing such judgment and certification shall notify the other party to the paternity action of the filing of such judgment by registered or certified mail to the party's last known address or by personal service. The Court shall not enforce any such foreign paternity judgment until proof of service has been filed with the Court.

CHAPTER 7. ADOPTION

Section 1. Jurisdiction

- A. The Santee Sioux Tribal Court shall have jurisdiction to hear, pass upon and approve applications for family adoption of or by members of the Santee Sioux Nation.

Section 2. Adoption Petition

- A. Adoption proceedings shall be initiated by filing a petition with the Court, which shall conduct the proceedings in a manner that shall assure that all concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay representative at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses.
- B. A petition for adoption shall be signed by petitioners, witnessed by a Judge of the Santee Sioux Tribal Court, and shall specify:

1. The full names, ages and place of residence of the petitioners, and if married the place and date of the marriage.
 2. When the petitioners acquired or intend to acquire custody of the child and from what person or agency.
 3. The date and place of birth of the child, if known.
 4. The name used for the child in the proceeding, and if a change in name is desired, the new name.
 5. That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.
 6. A full description and statement of value of all property owned or possessed by the child.
 7. Facts, if any, which excuse consent on the part of a parent, to the adoption.
- C. Any surviving natural parent must consent in writing, unless the Court determines that the necessity of consent has been waived by acts of a natural parent that constitute willful abandonment of the child, or if the parent has been judicially deprived of the custody of the child on account of abuse or neglect.
- D. The person or persons seeking to adopt the child shall appear before the Court and be examined and the Court may require a report to be prepared by the Tribal Social Services Division or the Bureau of Indian Affairs or public agency or person designated by the Court to make such a report on the qualifications of the adoptive person or persons.
- E. If the child is over the age of fourteen (14) years, the child must also appear before the Court and consent in writing to such adoption.
- F. Unless the Court shall otherwise order, all hearings held in proceedings under this act shall be confidential and shall be held in closed Court without admittance of any person other than interested parties and their counsel. All papers, records and files pertaining to the adoption shall be kept as a permanent record by the Court and withheld from inspection. No person shall have access to such records except on order of the Judge of the Court for good cause shown.
- G. After the Court has heard all the facts in such an adoption proceeding, and believes that it is in the best of the child to be adopted, it shall enter an Order accordingly, which may be interlocutory or final, and cause the Order to be kept in the records of the Santee Sioux Nation, the Bureau of Indian Affairs and the appropriate agency of the State of Nebraska for statistical reporting.

CHAPTER 8. EMANCIPATION

Section 1. Petition and Summons

- A. Any minor child who has attained the age of sixteen (16) years may petition the Court for a determination that he be emancipated. The petition for emancipation shall set forth with specificity:
 - 1. The name, sex, date and place of birth, present address and tribal affiliation of the minor child;
 - 2. The names, dates of birth, addresses, and tribal affiliation of the minor child's parents or guardian;
 - 3. The facts upon which emancipation is sought, and the basis for the Court's jurisdiction.
- B. Upon the filing of the petition, the Court shall cause a notice to be issued to the minor child and the minor child's parents or guardian.

Section 2. Hearing

- A. Upon the filing of a petition for emancipation, the Court shall set a time for hearing the petition. The time for the hearing shall not be more than thirty days after the filing of the petition.
- B. The Court shall cause a notice of the hearing to be given to the minor child, the parents or guardian of the minor child; or any other person whom the Court deems appropriate. The notice shall state that the minor child seeking emancipation has the right to be represented by counsel.
- C. Notice of the hearing and a copy of the petition, certified by the petitioner or his attorney or the Court Clerk, shall be served at least ten days before the date of the hearing by personal service on the persons enumerated in subsection b. of this Section. If personal service cannot be reasonably effected or the address of any person is unknown, a Judge or Court Clerk shall order notice to be given by registered or certified mail, return receipt requested, or if no such address is known, in a newspaper of general circulation in the region where the Court is located.
- D. Notice and appearance may be waived by a parent in writing before the Court, provided that such parent has been apprised by the Court of the meaning and consequences of the emancipation action. The parent who has executed such a waiver shall not be required to appear at the subsequent hearing.

Section 3. Conduct of Hearing; Investigation and Report

- A. At the hearing held on the petition for emancipation, any party to whom notice was given shall have the right to appear and be heard with respect to the petition.

If the parent who is consenting to the emancipation appears at the hearing, the Court shall explain to the parent the meaning and consequences of emancipation.

- B. Upon finding at the hearing or at anytime during the pendency of the petition that reasonable cause exists to warrant an investigation into the circumstances upon emancipation is sought, the Court may request the Santee Sioux Nation Health and Human Services Department to make an investigation and written report to the Court within forty-five (45) days from receipt of such request. The report shall indicate the physical, mental and emotional and financial condition of the minor child and shall contain such facts as may be relevant to determine whether the proposed emancipation will be in the best interests of the minor child.
- C. If such a report is requested, the Court shall schedule a hearing on the results of the investigation not more than thirty (30) days from the date of the expiration of the forty-five (45) day time period or receipt of the HHS report, whichever is earlier. The Court shall give reasonable notice of the investigation hearing to all parties to the first hearing at least ten days before the date of the investigation hearing.
- D. The report shall be admissible in evidence, subject to the right of any interested party to require that the person(s) making it appear as a witness and subject himself to examination.
- E. At either the hearing on the investigation or the first hearing, if no investigation and report has been requested, the Court may approve the petition for emancipation if it finds that emancipation is in the best interests of the minor child.
- F. If the Court denies a petition for emancipation, it may refer the matter to the Health and Human Services Department to assess the needs of the minor child.

Section 4. Order and Effect of Emancipation

- A. The Court shall make written findings in determining whether emancipation would be in the best interests of the minor child. The Court shall thereafter enter an order declaring the minor child emancipated if the Court finds that:
 - 1. Emancipation is in the best interests of the minor child;
 - 2. The minor child has entered into a valid marriage or is on active duty with the armed forces of the United States of America; or
 - 3. The minor child willingly lives separate and apart from the his parents or guardian, with or without their consent, and that the minor child is managing his own financial affairs, regardless of the source of any lawful income.
- B. An Order that a minor child is emancipated shall have the following effects: the minor child shall be free of control by his parents or guardian; the minor child may consent to medical, dental, or psychiatric care without parental consent,

knowledge, or liability; the minor child shall be entitled to his own earnings and to establish his own residence; the minor child may enter into a binding contract, buy and sell real and personal property, execute releases, sue and be sued in his own name; the minor child shall be deemed eligible to secure a marriage license, register a motor vehicle, and enlist in the armed services of the United States of America; the minor child may not thereafter be the subject of a petition as a neglected, abused, dependent or uncared for minor child; the parents of the minor child shall no longer be the guardians of the minor child, and shall be relieved of any obligations respecting the minor child's school attendance and support; and the minor child shall be emancipated for the purposes of parental liability for the minor child's acts.

- C. An Order that a minor child is emancipated shall not change the minor child's eligibility for Tribal housing and incentive benefits or other Tribal benefits as determined by Tribal law or policy.

CHAPTER 9. CHANGE OF NAME

Section 1. Authority to Grant Change of Name

In addition to its authority to grant a change of name in a dissolution of marriage matter, the Family Court shall have jurisdiction over petitions for a change of name, and may change the name of the petitioner, who shall thereafter be known by the name prescribed by the Court in its decree.

Section 2. Change of Name by Minor Child

In all proceedings for a change of name brought on behalf of a minor child, the parents of such child shall be necessary parties, shall be cited in the petition, and shall be served with the petition either by personal service or by mailing a copy of the petition to the parent's last-known address by registered or certified mail.

Section 3. Petition for Change of Name

- A. The Petition for Change of Name shall contain the following information:
1. The name of the petitioner, and if a minor child, the names of the minor child's parents;
 2. The petitioner's address, and if a minor child, the addresses of the minor child's parents;
 3. The reasons for requesting the change of name;
 4. The name by which petitioner has generally been known by, usually uses for motor vehicle license and registration, and in which the petitioner contracts bills, credit cards and bank accounts;

5. The proposed name, and if it has been used, the manner in which the name has been used and length of time of such use; and
 6. A statement that the petitioner has no past due debts, bears a good reputation in the community, has no purpose in making this application except to conform the petitioner's legal name to that by which he wants to be generally known (or other reason), and a disclosure of any arrest or conviction within the seven years preceding the petition.
- B. Any interested party may file a response to the petition within 20 days from the service date.

Section 4. Giving Public Notice

The Family Court shall publish a notice that a petition for a change of name has been filed in a local newspaper. Such publication shall occur once and shall contain only a statement that a petition has been filed by the petitioner, and shall not disclose any information from the petition.

Section 5. Decision on the Petition

The Court shall grant such petition for change of name unless it finds that it would result in injury to another person's legal rights. The Court shall provide notice of the Court's decision to the Tribal Clerk.

CHAPTER 10. Probate, Descent & Distribution

Section 1. Petition Proceedings

- A. When any member of the Tribe dies, leaving property other than an allotment, or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent may petition the Santee Sioux Tribal Court of the Santee Sioux Nation to have the Court determine the heirs of the decedent and to the decedent and to divide among the heirs such property of the decedent. The Court may, on its own motion, initiate probate proceedings after a reasonable time if the heirs and/or other interested parties have neglected to file a petition with due diligence for commencement of probate. No determination of heirs shall be made unless all possible heirs known to the Court, the Tribes, the Bureau of Indian Affairs and the claimant shall have been notified of the suit and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the Santee Reservation must be notified by registered mail and a copy of the notice must be preserved in the record of the case.
- B. When any member of the Tribe dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Santee Sioux Tribal Court shall, at the request of any person named in the will, determine the validity of the will after giving notice to appear in Court to all persons who might be heirs of the decedent. A will shall be deemed by the Court to be valid if the decedent had a sane mind and understood what he/she was doing when he/she made the will and was not subject to any

undue influence, and if the will was made in accordance with the laws of the State of Nebraska. If the Court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or their heirs.

- C. In under either of the two preceding subsections of this Code, the Santee Sioux Tribal Court may, in its discretion, appoint from among the survivors of a decedent, an administrator of the estate, who will take possession and control of the property of the decedent until the administrator of the estate has been completed and he/she has been discharged by Order of the Court.
- D. Prior to distribution of assets, the Court may direct that publication or other method of notice to creditors be given. Creditors may file a written statement of a claim with time and manner directed by the Court in its order of notification.

CHAPTER 11. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

Section 1. Foreign Judgment Defined

As used herein, "foreign judgment" means any judgment, decree or order of a Court of competent jurisdiction of any state or Tribe in the United States in any family relations matter for the custody, care, education, visitation, maintenance, support of children or of spouse, or the disposition of property of the parties to an existing or terminated marriage, in which both parties have entered an appearance.

Section 2. Filing of Judgment. Enforcement

- A. Any party to an action in which a foreign judgment has been rendered may file in the Tribal Court a certified copy of the foreign judgment together with a certification that such judgment is final, has not been modified, altered, amended, set aside or vacated and that the enforcement of such judgment has not been stayed or suspended, and such certificate shall set forth the full name and last-known address of the other party to such judgment and the name and address of the Court in the foreign jurisdiction which rendered such judgment.
- B. Such foreign judgment shall become a judgment of the Tribal Court and shall be enforceable provided that such judgment does not contravene the public policy of the Santee Sioux Nation. A foreign judgment so filed shall have the same effect and may be enforced or satisfied in the same manner as any like judgment of the Tribal Court; provided that in modifying or altering such foreign judgment, the substantive law of the foreign jurisdiction shall be controlling.
- C. The Court shall abide by any applicable federal law concerning family and child support, custody and enforcement matters, including, but not limited to, 28 U.S.C. § 1738B, the Full Faith and Credit for Child Support Orders Act.

Section 3. Notification

Within five days after the filing of such judgment and certificate, the filing party shall notify the other party of the filing by registered or certified mail at his or her last-known address or by personal service. The Court shall not act on any foreign judgment for a period of twenty days from the filing thereof and no action to enforce such judgment shall be taken until proof of service has been filed with the Court.

Section 4. Stay of Proceedings. Modifications. Hearing

- A. If either party files an affidavit and supporting Court documents with the Court that an appeal from the foreign judgment is pending in a foreign jurisdiction or that a stay of execution has been granted, the Court shall stay enforcement of the foreign judgment until the appeal is concluded or the stay of execution expires or is vacated.
- B. If a party files an affidavit and supporting Court documents with the Court that such foreign judgment has been modified or amended, the Court shall enforce such foreign judgment as so modified or amended.
- C. Upon motion to the Court, either party shall be entitled to a hearing on any disputed issue of fact or law concerning the enforceability of the foreign judgment in Tribal Court.

Section 5. Right to Action on Judgment Unimpaired

The right of a party to a foreign judgment to proceed by an action on the judgment instead of proceeding under this Part remains unimpaired.

CHAPTER 12. MISCELLANEOUS

Section 1. Forms

The Court Administrator of the Tribal Court shall prepare forms, including instructions in plain language, for applying to the Court for any complaint, remedy or relief available under this Title.

Section 2. Appeals

Appeals from decisions by the Family Court under this Title may be made by any party in accordance with the rules governing the Court of Appeals.

Section 3. Application of Law

All actions brought under this Title shall be determined by the Court in accordance with Tribal law. The Court may be guided, but not bound by, the principles of law applicable to similar claims arising under the laws of the State of Nebraska, of other Tribal Courts, or of the United States.

