

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 43

TITLE VI

ADOPTION

S.W.S.T. CODE  
 Amendment  
 New Adoption  
Judicial Approval  
62-06-85  
Council Adm.  
62-06-85

43-01-01 PURPOSE

The purpose of this section is to protect the rights and promote the welfare of children, natural parents, and adoptive parents of the Sisseton-Wahpeton Sioux Tribe.

43-02-01 DEFINITIONS

The terms listed below, whenever used in this Code shall mean as follows:

43-02-02 Adult - a female person eighteen (18) years of age or older, and a male person twenty-one years of age or older.

43-02-03 Child - a female person seventeen (17) years of age or less, and a male person twenty (20) years of age or less, inclusive.

43-02-04 Court - the Sisseton-Wahpeton Sioux Tribal Court.

43-02-05 Guardianship of the Person - the duty and authority vested in a guardian or a minor. It includes the general power to make decisions in major matters affecting the life and development of the minor, including but not limited to, such decisions as consent to major medical, psychiatric and surgical treatment; consent to marriage; and consent to enlistment in the Armed Forces of the United States; authority to represent the minor in legal actions when the parent-child relationship has been terminated by Court order with respect to the parents, or only living parent; or when there is no living parent, the authority to consent to adoption of the child and to make any other decision concerning the child which the child's parents could make.

43-02-06 Legal Custody - shall mean the right given by the Court to the custody and control of the child and the responsibility to provide for the daily care of the child, unless otherwise specified by Court order.

43-02-07 Minor - a person less than eighteen (18) years of age.

43-02-08 Parent - (1) the mother; (2) the father; and (3) an adoptive parent. Parent does not include a parent as to whom the parent-child relationship has been terminated by Court order.

- 43-02-09 Parent-Child Relationship - all rights, privileges, duties and obligations existing between parent and child, including inheritance rights.
- 43-02-10 Protective Supervision - a legal status created by Court order whereby the child is under the protection and supervision of the Court.
- 43-02-11 Relatives of the Child Within the Second Degree Either by Blood or Affinity - step-parents, sisters, brothers, grandparents, aunts and uncles.
- 43-02-12 Tribe - the Sisseton-Wahpeton Sioux Tribe.
- 43-03-01 **JURISDICTION**  
The Juvenile Court of the Sisseton-Wahpeton Sioux Tribe shall have original jurisdiction in all matters related to the adoption of children of the Sisseton-Wahpeton Sioux Tribe.
- 43-04-01 **PETITION FOR ADOPTION**  
The petition for adoption shall be filed with the Court on a form prescribed by the Court, unless other format is acceptable to the Court, in its discretion. It shall be verified under oath by the adoptive parent(s) and shall contain:
1. The full name, residence, and place of birth, date, and sex of the child, with attached documentary proof of the date and place of the birth of the child to be adopted;
  2. Documentary proof of the child's membership status in the Sisseton-Wahpeton Sioux Tribe;
  3. The full name, residence, date and place of birth, and occupation of the adoptive parents, with attached documentary proof of their marital status;
  4. Proof of parental consent to the adoption where the petitioners are relatives of the child either by blood or affinity, except in cases where the natural parents have abandoned the child and cannot be located or in cases where there is documentary proof of a Court order terminating the parent-child relationship with respect to each living parent of the child to be adopted;
  5. An agreement by the adopting parent that it is their desire that the relationship of parent and child be established between them and the child; or
  6. A full description and statement of value of all property owned or possessed by the child.

43-05-01 WHO MAY FILE A PETITION

Any adult person residing within the jurisdiction of the Court may file a petition to adopt an Indian minor child. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition. The adoptive applicants must be ten (10) years older than the child.

43-06-01 PETITION BY RELATIVES

No petition for adoption by relatives of the child shall be granted each parent of the child or, if there is not living parents, the guardian of the child's person consent in writing to the adoption of the child by the petitioners. A minor parent may consent to an adoption provided the parents of the minor parent concur; provided, however, that the Court may waive consent by the minor's parents if it finds that the withholding of such consent is not in the best interests of the minor parent or the child of the minor parent.

43-07-01 PETITION BY PERSONS WHO ARE NOT RELATIVES

Petition for adoption by persons who are not relatives by blood or affinity, or community recognition, shall not be entertained unless prior to filing the petition:

1. The parent-child relationship has been terminated by Court order with respect to each living parent of the child sought to be adopted and a certified copy of the termination order is attached to the petition; and
2. A guardian of person of the child has been appointed by the Court.

43-08-01 CONSENT OF ADOPTION

43-08-02 Forms of Consent - Consents to adoption shall be witnessed by a Judge or representative of the Court.

43-08-03 Consent by a Child Aged Twelve (12) or Older - The adoption of a child twelve (12) years of age or older shall not be granted without the child's consent, given in Court or in writing, in such form as the Court may direct.

43-08-04 Filing of Consent - Written consents, where required by this law, shall be attached to the adoption petition. A consent by a guardian of the child's person shall be accompanied by evidence satisfactory to the Court establishing the guardian's authority to consent to adoption of the child.

43-08-05 Withdrawal of Consent - Consent to adoption may be withdrawn, when authorized by order of the Court, up until the time that the final adoption decree is entered. The Court shall not grant permission to withdraw consent unless it finds that the best interests of the child shall be served by such withdrawal.

43-08-06 Consent Irrevocable After Order of Adoption - The entry of a final order of adoption renders any consent irrevocable unless the consent was obtained by force or fraud.

43-08-07 Adoption - Persons over the age of eighteen (18) years may, through agreement with both parties, be adopted. The procedure of adoption shall be the same or may be completed by custom, without Court procedure.

43-09-01 **INVESTIGATIVE REPORT**

Within five (5) days after the filing of a petition for adoption the Court shall request the assistance of the Sisseton-Wahpeton Sioux Tribe Child Protection Program; the Bureau of Indian Affairs Branch of Welfare; an agent of the State; or a probation officer, where participating in the supervision of custody of the child, to investigate and report, in writing, to the Court within thirty (30) days as to the suitability of the child for adoption, as well as financial, moral, and physical fitness and general background of the adoptive home and of the adoptive parent or parents, and to make written recommendations on the proposed adoption.

43-10-01 **HEARING ON ADOPTION**

Within five (5) days after the written report required by Section 43-09-01 above is filed, the Court shall fix a time for hearing on the petition for adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. At or prior to the hearing, any natural parent who is consenting to the adoption must appear personally before the Judge, in open Court or in chambers, so that the Court can determine the voluntariness and understanding with which the consent was given. All other persons whose consent is necessary to the adoption shall be duly notified and may appear or be represented by a person having power of attorney authorizing such person to represent them for the purpose of the adoption. The Judge shall examine all persons appearing and, if satisfied as to the suitability of the child for adoption, the validity of the consent to adoption, and financial, moral, and physical fitness and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption in the case of a child who has been in the custody of the petitioners and provided for by them for more than one (1) year; or may place the child in the legal custody of the petitioners for a period of not less than six (6) months prior to entering

a final decree of adoption; or, if the Court is satisfied that the adoption petition will not be in the best interests of the child, the petition shall be denied, and the guardian instructed to arrange suitable care for the child, and the Court may request the Tribal Child Protection Program, the Bureau of Indian Affairs Branch of Welfare, State agencies, or other agencies authorized to provide such services to assist in the placement and care of the child.

**43-11-01 REPORT AND FINAL DECREE OF ADOPTION**

Six (6) months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report, under the same procedures followed in Section 43-09-01 as to the welfare of the child and the current situation and conditions of the adoptive home and adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court until the child to be adopted has lived and resided for a period of at least six (6) months in the home of the adoptive parents. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian of person shall be appointed and suitable arrangements made for the care of the child shall be made, as otherwise authorized in the Juvenile Code.

**43-12-01 ADOPTION RECORDS**

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal age of majority, or upon order of the Court upon showing of good and sufficient cause.

**43-13-01 CONTENTS OF ADOPTION ORDER**

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearings.

**43-13-02** Within five (5) days after the final decree of adoption has been entered by the Court, the Division of Vital Statistics of the State Board of Health shall be notified by the Clerk of Court that the adoption has taken place, giving the full name, sex, birth date, and names of natural parents, in order that a new record of birth in the new name and with the name or names of the adopting parents can be recorded; and said Division shall be provided with a certified copy of the final decree of adoption.

**43-14-01 NAME AND LEGAL STATUS OF ADOPTED CHILD**

Minor children adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of persons and property as children or heirs of the persons adopting them.

**43-15-01 CUSTOM ADOPTIONS**

Custom adoptions without Court procedure, for minors or adults, are fully recognized by this Code when recorded with the Tribal Enrollment Committee.

**43-16-01 SEVERABILITY**

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

S.W.S.T. CODE

Amendment

New Adoption

Judicial Approved

02-24-88

Council Adopted

03-01-88

## Section V

### ADOPTION PLACEMENT GUIDELINES

When a child becomes eligible for adoption through either Tribal or State court, the Child Protection Program has a responsibility to provide a placement for the child with a family who can provide the love, security and permanence which enables the child to most fully develop his/her talents as an adult. The focus is not only the immediate need for placement; but also the long range development of the child which will enable him or her to become an adult who is a credit not only to himself and his adoptive family but to the entire Tribe.

Adoptive planning for each child in the custody of the Child Protection Program is always toward achieving a placement in the best interests of that child.

### PRIORITY FOR ADOPTIVE PLACEMENTS

In making non-relative adoptive placements, the Child Protection Program will have as a priority the placement of every child with a Tribal member in the three (3) county area of the Lake Traverse Reservation. The objective in making local placements is to allow every child for whom adoption is sought the opportunity to grow up in a familiar setting and within the culture of his heritage.

Because, such placements are not available to each child, or at times not in the child's best interest, or not allowed by the court; the following priority has been established for adoptive placements:

1. Placement with a member of the extended family of the child.
2. Placement with a Tribal member within the three (3) county area of the Lake Traverse Reservation.
3. Placement with a Tribal member living away from the reservation.
4. Placement with a Indian family who are not members of the Tribe.
5. Placement with a non-Indian family who resides in the three (3) county area, are sensitive to and aware of the history and traditions of the Tribe; and have shown by their prior activities a sense of kinship with the Tribe.

Extended family means any blood relative or individual perceived by custom as being a relative.

Tribal member means any enrolled member of the Sisseton-Wahpeton Sioux Tribe.

Indian means anyone who is at least 1/4 degree of Indian ancestry.

#### FEES

Adoptive fees are waived for Indian families as a result of the 638 funding in the Child Protection Program. Non-Indian families wishing to make an application for Adoption will be charged a fee as required by the Title XX Contract. Such fees will be based on State guidelines.

A non-Indian family applying to adopt an older or handicapped child or sibling group (traditionally termed hard to place children) will not be charged a fee for services.

#### APPLICATION

The Child Protection Program accepts applications from anyone desiring to adopt through the Program. Acceptance for study or completion of the study is not a guarantee that placement of a child will occur.

#### QUALIFICATIONS FOR ADOPTIVE FAMILIES

The primary qualification for an adoptive family is the ability of both adoptive parent(s) and natural children to accept a child into their family and provide that child with a nurturing environment. This is the key in evaluating the potential for success of any adoptive family. This assessment is achieved by interview with parent(s), children and references to ascertain the ability of the family to provide a wholesome environment for the child.

Assessment of a prospective applicants ability to provide on-going care also, includes an evaluation of the applicants physical and mental health, financial ability to take on this responsibility and housing space. Religious belief are a criteria when the natural parent(s) express a religious preference for their child.