

## Chapter 34A

### SISSETON-WAHPETON OYATE UNIFORM PARENTAGE ACT

#### **34A-01-01 Policy**

The Sisseton-Wahpeton Oyate recognizes the right of every child to the physical, mental, emotional and monetary support of his or her parents and the right of every child to have a recognized father and mother under this Chapter.

#### **34A-01-02 Purpose**

The Oyate, in order to assure uniformity for paternity orders entered by the Tribal Court (Court), and to provide certain guidelines to Judges when establishing paternity, does hereby enact this Chapter setting forth standards for the Court when establishing paternity. The Oyate hereby establishes and authorizes the Sisseton Wahpeton Oyate Title IV-D Child Support Enforcement Office (SWOCSE) with the authority to establish paternity; to develop appropriate forms; to implement on-going and periodically update procedures for the establishment of paternity for any child up to eighteen (18) years of age who seek to establish the existence of the parent and child relationship.

#### **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 under the age of eighteen (18) years.

#### **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 43 of the Code of Laws of the Sisseton Wahpeton Oyate.

**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 or born within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce or after a decree of separation;
  - b. Before the birth of the child, he and the mother of the child married each other and the child is born during the marriage or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce or after a decree of separation;
  - c. 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;
  - d. He is obligated to support the child under a written voluntary promise or has signed a Voluntary Acknowledgment of Paternity;
  - e. 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;
  - f. If genetic tests show that he is not excluded and the statistical probability of his parentage is ninety-five percent or higher;
  - g. He has adopted the child.

2. 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    Voluntary Acknowledgement of Paternity**

The Court shall give full faith and credit to a signed and notarized Voluntary Acknowledgement of Paternity (VAP) signed in any Tribal, Territory or State jurisdiction which contains the social security numbers, signatures of both parents, which are dated and notarized by a Clerk of Court

or Notary Public, with appropriate seal. The Court shall also provide the alleged father the opportunity to voluntarily acknowledge paternity in any proceeding to establish paternity.

### **34A-07-01-02 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 or during the date of an administrative or judicial proceedings relating to the child (including a proceeding to establish a support order) in which the person(s) who signed the VAP is a party.
3. After the 60-day period referred to in 34A-07-02(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 VAP.

### **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 SWOCSE, 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 or is a minor, 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 to establish paternity.
5. The SWOCSE or SWOCPS need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the SWOCSE, it would not be in the best interests of the child to establish paternity.

#### **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 Sisseton-Wahpeton Oyate Law and Order Code, Chapter 21, Rule 3(d).
4. An action to determine the existence of the father and child relationship for enrollment purposes only may be brought at anytime if the action is brought by the child. Any other party must bring the action prior to the death of the alleged father.
5. The establishment of paternity under this Chapter has no effect on SWO enrollment or membership.

#### **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 Oyate 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 or 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, a legal custodian 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 a presumption of paternity as set forth in Section 34A-06-1 and the Court orders child support pending completion of the testing.

**34A-13-01 Genetic Tests**

1. The court may, and upon the sworn statement of a party shall, require the child, alleged father and mother to submit to genetic tests. The testing is required in contested cases if request is supported by sworn statement alleging or/denying paternity by the party alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or by the party denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties. The tests must be:

Performed by an accredited laboratory which perform, at reasonable cost, legally and medically-acceptable genetic tests which intend to identify the father or exclude the alleged father.

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

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

#### **34A-13-02 Cost of Genetic Testing**

The costs of genetic testing may be allocated as follows:

1. In a proceeding commenced by a private party, the party bringing the action must bear the cost of genetic testing;
2. In proceedings commenced by the SWOCSE, costs of genetic testing shall initially be advanced by the SWOCSE and may be ordered to be reimbursed where the party being tested is found to be the parent by genetic testing;
3. A private party may request the SWOCSE to conduct the genetic testing provided a Title IV-D application for services is filled out by the party seeking testing and arrangements for reimbursement is made.

#### **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. The certified documentation of the genetic tests results are admissible as evidence of paternity without further testimony regarding foundation, accuracy, or authenticity unless objected to and sustained by the Court. Telephonic testimony from the laboratory may be allowed.
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 genetic 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-15-02    Service of Process**

1. The SWO Codes of Law, Section 21-14-02, Rule 2(c) provides the manner in which Service of Process is accomplished. In addition to personal service and publication of the initial pleadings, service by certified mail, with return receipt on file with the SWOCSE shall also constitute valid service.
2. Service of subsequent pleadings is accomplished by regular first class mail at the party's last known address.
3. The SWOCSE shall accept all filings by personal delivery to the SWOCSE Clerk of Court; by regular first class mail; by facsimile, provided the originals are received by the SWOCSE Clerk of Court within five (5) calendar days; or, by electronic filing.
4. All Motions must be filed with the SWOCSE Clerk of Court within ten (10) calendar days of the time set for hearing.
5. Service of Motions for Order to Show Cause must be made by personal service, publication or by certified mail, with return receipt on file with the SWOCSE.
6. The provisions for Service of Process set forth herein, shall also be applicable to Chapter 34C, the SWO Child Support Act.

**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 with the exception of the child being conceived as a result of rape or incest.
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.

**34A-18-01 Default**

1. Except as provided in subsection 3 below, 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 below, 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 SWO 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**

1. **Non-Title IV-D Cases:** The Court may assess reasonable fees of experts and other costs of the action and pretrial proceedings, including genetic tests, to be paid by the parties in proportion to amounts as may be determined by the Court or may be assessed against the party who caused the costs to be incurred.
2. **Title IV-D Cases:** In SWOCSE cases, the costs incurred by the SWOCSE relating to the establishment of paternity may be initially absorbed by the SWOCSE and are subject to reimbursement as may be ordered by the Court. The SWOCSE

shall be authorized to charge an initial administrative fee to initiate the test and seek reimbursement if paternity is established.

**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. The court shall furnish on request a transcript or copy of the hearing 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 Full Faith and Credit**

The Court shall give full faith and credit to a determination of paternity made by another jurisdiction whether established through a VAP or through administrative or judicial processes. The Court must be satisfied that the foreign jurisdiction had personal and subject matter jurisdiction over the Respondent/Defendant and that all due process standards have been met.

**34A-28 27-01 Severability**

Sisseton-Wahpeton Oyate  
Judicial Committee

New Code  Amended Code  Repealed Code

Tribal Council Resolution No. \_\_\_\_\_

Judicial Committee Adoption Date 1/24/17

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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.