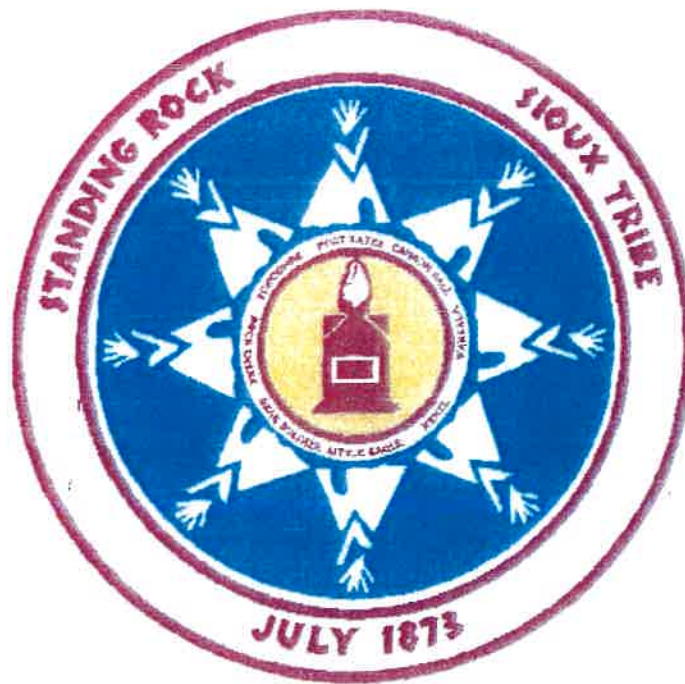


# **TITLE VI**

## **CHILDREN'S CODE**

**Of the Standing Rock Sioux Tribal Code of Justice**



**AS AMENDNED BY THE  
STANDING ROCK SIOUX TRIBE  
MARCH 2003**

## RESOLUTION NO. 062-03

**WHEREAS**, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934, with the exception of Article 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

**WHEREAS**, the Standing Rock Sioux Tribe, pursuant to the amended Constitution of the Standing Rock Sioux Tribe, Article IV, Section 1[c] and 1[o], is authorized to promote and protect the health, education and general welfare of the members of the Tribe; to manage, protect and preserve the property of the Tribe and to safeguard and promote the peace, safety, morals, physical and general welfare of the Tribe; and

**WHEREAS**, the Standing Rock Sioux Tribe Judicial Committee shall have the duty and responsibility to propose ordinances to govern the conduct of Indians on the Reservation, and the maintenance of law and order and the administration of justice by the courts on the Reservation and defining their duties and powers pursuant to Standing Rock Sioux Tribe Code of Justice Section 19-205 [c] [5] and [6]; and

**WHEREAS**, the Judicial Committee has posted the amendments to the Children's Code, Title VI, and have received comments, and has reviewed the proposed amendments in light of comments; and

**WHEREAS**, the Judicial Committee at a duly called Special Meeting on March 4, 2003, duly moved and seconded and passed a motion to recommend to the Standing Rock Sioux Tribal Council to adopt the proposed amendment.

**NOW THEREFORE BE IT RESOLVED**, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under the Constitution of the Standing Rock Sioux Tribe, the foregoing amendments to the Children's Code, Title VI, be and the same is hereby approved.

**BE IT FURTHER RESOLVED**, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

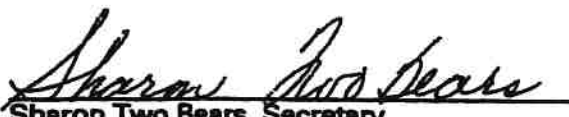
### CERTIFICATION

We, the undersigned, Chairman and Secretary of the Tribal Council of the Standing Rock Sioux Tribe, hereby certify that the Tribal Council is composed of [17] members of whom 14 constituting a quorum, were present at a meeting thereof, duly and regularly, called, noticed, convened and held on the 4<sup>th</sup> day of MARCH, 2003, and that the foregoing resolution was duly adopted by the affirmative vote of 13 members, and 0 opposing, and with 1 not voting. THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.

DATED THIS 14<sup>th</sup> DAY OF MARCH, 2003.

ATTEST:

  
Charles W. Murphy, Chairman  
Standing Rock Sioux Tribe

  
Sharon Two Bears, Secretary  
Standing Rock Sioux Tribe

[Official Tribal Seal]

## **Title VI - CHILDREN’S CODE**

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# **TITLE VI CHILDREN'S CODE**

## **CHAPTER 1 PURPOSE**

### **6-101 PURPOSE**

The Children's Code shall be interpreted and construed to fulfill the following purposes:

- A. To provide for the welfare, care and protection of the children of the Standing Rock Sioux Tribe or those Indian children found or residing on the Standing Rock Sioux Indian reservation;
- B. To preserve the unity of Indian families by providing needed services and Separating the child from his parents only when necessary;
- C. To discourage delinquent acts and to protect the communities interest by providing supervision, care and rehabilitation; and
- D. To ensure that off-reservation courts return Tribal children to the reservation when required or requested.

## **CHAPTER 2 DEFINITIONS**

### **6-201 DEFINITIONS**

For the purpose of this Code, the words and phrases shall have the following meanings. The use of he/his means he or she, his or her, and singular includes plural.

- A. **ABANDON.** When a parent leaves a child without adequate communication or fails to support a child and there is no indication of the parent's willingness to assume their parental role(s).
- B. **ADULT.** Any person subject to the jurisdiction of the Standing Rock Sioux Tribe who is eighteen (18) years of age or older.
- C. **CHILD.** Any enrolled or eligible for enrollment Indian under eighteen (18) years of age. A child conceived but not born is deemed an existing person so far as may be necessary for its interests and welfare to be protected in the event of its subsequent birth.

**D. CHILD-IN-NEED-OF-SUPERVISION.**

A child who:

- (1) Has no parent, guardian, or custodian available and willing to care for him;
- (2) Has suffered or is likely to suffer physical harm, resulting from the intentional or negligent acts or omissions of a parent, guardian or custodian of the child;
- (3) Has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being, taking into account any special physical or mental needs if the child; except that the poverty of the parents or guardian shall not constitute the sole reason for removing the child;
- (4) Has been sexually abused by the parent, guardian or custodian, other household member, or other person;
- (5) Has been emotionally abused or neglected by the parent, guardian or custodian, or other household member;
- (6) Has committed delinquent acts or status offenses as a result of pressure, guidance or approval by the parent, guardian or custodian;
- (7) Has been exposed to continued alcohol use and/or abuse to such a degree that the well-being of the child is being affected;
- (8) Is in need of treatment and whose parents, guardian, or other custodian has refused to participate in treatment as ordered by the court;
- (9) Has been allowed to be chronically truant or other inattention of educational needs.
- (10) A delinquent child whose parent has difficulty in caring for a child due to child's behavior and/or resistance.

**E. COURT.**

The Standing Rock Tribal children's court when exercising jurisdiction under this code.

**F. CUSTODIAN.**

Person, other than a parent or guardian, or social services or other appropriate agency, to whom legal custody of the child has been given, provided that the term does not include any person who has only physical custody.

**G. DELINQUENT ACT.**

An act, which, if committed by an adult is designated a crime under Title IV of the Standing Rock Sioux Tribal Code of Justice or other applicable Tribal ordinance(s).



**H. DELINQUENT CHILD.**

A child who has been adjudicated by the Court to have committed a delinquent act.

**I. EMOTIONAL ABUSE.**

A pattern of behavior that attacks a child's emotional development and sense of self-worth. Or the failure of a person to provide a child with a nurturing environment characterized by the qualities of appropriate attention, support, and affection, as provided by the caretaker to the child. Failure to provide a child with nurturing environment may result in slowing the child's psychological growth and development.

**J. EXTENDED FAMILY MEMBER.**

Any person who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent, or other relationship as recognized by Tribal custom or tradition.

**K. FOSTER HOME.**

A facility licensed or certified by any federal, tribal or state organization, which is eligible for payments for providing specialized care to children.

**L. GUARDIAN.**

A person or organization appointed by a court of the law, other than a parent having the duty, responsibility and authority to provide care, shelter and control of a child.

**M. GUARDIAN AD LITEM.**

An adult appointed by the court to represent the best interests of the child in any proceeding involving that child.

**N. INDIAN CUSTODIAN.**

Any Indian person who has legal custody of an Indian child under tribal law or custom or under state law, to whom temporary physical care, custody and control has been transferred by the parent of such child.

**O. MINOR.**

A person who is:

(1) Under eighteen (18) years of age. .

(2) Eighteen (18) years of age but under the age of twenty-one (21) concerning whom proceedings are commenced in Children's Court prior to his eighteenth (18th) birthday.

(3) Eighteen (18) years of age but under the age of twenty-one (21) who is under the continuing jurisdiction of the Children's Court.

(4) One who has been conceived but not born.

**P. NEGLECT.**

The failure to provide a child with the necessities of life, food, clothing, shelter, or medical care.

(1) Physical Neglect- the failure of the person(s) responsible for the child's care to provide necessary food, shelter, medical care, supervision, or education to a child under the age of 18.

(2) Educational neglect- is the excessive number of days the child is absent or tardy from school.

(3) Emotional Neglect- the failure of a person to provide a child with a nurturing environment.

(4) Neglect or whose child:

(a) including an unborn child under eighteen years of age and accompanies his/her parents in a bar.

(b) is under the age of eighteen years of and has teen unexcused absences in one quarter from school.

**Q. NURTURING ENVIRONMENT.**

A nurturing environment is characterized by the qualities of appropriate attention, support, and affection, as provided by the caretaker to the child. Failure to provide a child with a nurturing environment may result in slowing the child's psychological growth and development.

**R. PARENT.**

Includes a natural or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

**S. PHYSICAL ABUSE.**

Includes physical acts that caused or could have caused non accidental or intentional injury to the child.

(1) Physical abuse includes the use of alcohol or other intoxicating or controlled substance during pregnancy.

**T. PRESENTING OFFICER.**

That individual designated by the Court/Tribe to represent the Tribe in all

proceedings in this Title and in which the Tribe is a party to the proceeding.

**U. SEXUAL ABUSE.**

Involvement of the child is sexual activity to provide sexual gratification or financial benefit to the perpetrator,

**(1) Categories of sexual abuse:**

- (a) Contacts for sexual purposes;
- (b) Prostitution;
- (c) Pornography;
- (d) Fondling
- (e) Unwanted sexual touching;
- (f) Sexually provocative language;
- (g) Exhibitionism;
- (h) Oral/vaginal/anal penetration;
- (i) Other sexually exploitive activities.

**V. TRUANCY.**

A child who is habitually or flagrantly absent or tardy from school without proper authorization or habitually disobedient at school.

**CHAPTER 3  
THE COURT**

**6-301 ESTABLISHMENT.**

- a. There is hereby established for the Standing Rock Sioux Tribe of the Standing Rock reservation a Court to be known as the Standing Rock Sioux Tribal Children's Court. The Children's Court shall constitute a subdivision of the Standing Rock Sioux Tribal Court.
- b. This Title supersedes all prior versions of Title V, Chapter 4, and Title XXVII and replaces Title VI of the Standing Rock Tribal Code of Justice, with said provisions being repealed by passage of this Title.
- c. Appeals from Children's Court shall be subject to the provisions of Title I of the Standing Rock Tribal Code of Justice.

**6-302 JURISDICTION OF THE COURT.**

**a. TRIBAL PROCEEDINGS.**

The Court has exclusive original jurisdiction of all proceedings involving children under this code, wherein:

- (1) The child is domiciled on or is a resident of the Standing Rock Sioux

reservation;

(2) The child, within thirty (30) days before the filing of the proceeding, had been domiciled on the Standing Rock Sioux reservation with his parent, guardian or custodian and the child is absent from the reservation because of his removal by a person claiming his custody or for other reasons, and a parent, or person who has assumed parental role, continues to live on the reservation;

(3) The child is a ward of the Court, as codified At 25 D.S.C. 1911 (a);

(4) It is in the best interest of the child that the Children's Court assume jurisdiction because:

(a) The child and his parents, or the child and at least one contestant, having a significant connection with the reservation and there is available to the Children's Court substantial evidence concerning the child's present or future care, protection, cultural heritage, and personal relationships.

(b) The child is physically present on the Standing Rock Sioux reservation and:

(1) The child has been abandoned;

(2) It is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse; or

(3) The child is otherwise neglected.

(5) The child is not physically present on the Reservation, but his present placement was made pursuant to an Order from the Children's Court.

#### **6-303 AUTHORITY OF THE COURT.**

- a. The Court is authorized to cooperate fully with any tribal federal, state, public or private agency in order to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code.
- b. The Court shall utilize such social services as may be furnished by any tribal, federal, or State agency.
- c. The Court may negotiate a contract with tribal, federal, or state agencies and departments on behalf of the Tribal Council for the care and placement of children whose status is adjudicated under this Court, subject to the approval of the tribal council before expenditure of funds.
- d. The Court may accept or decline other tribal or state court transfers of child custody proceedings.

#### **6-304 INTERPRETER.**

In any proceeding under this code, an interpreter shall be available for a parent, guardian, custodian, or any other person acting as parent who does not fully understand the English language. Said interpreter shall interpret, after taking an oath to faithfully and truly interpret in a language that the parent, guardian, custodian, or any person acting as parent understands.

#### **6-305 RECORDS OF THE COURT.**

- a. Following each hearing, the Court shall enter a written judgment setting forth its findings, decision, and disposition.
- b. A record of all hearings under this Code shall be made and preserved.
- c. All Court records shall be confidential and shall not be open to inspection to anyone but the following:
  - (1) The child's attorney, lay counselor, guardian ad litem, with the Court approval;
  - (2) The child, the child's parent, guardian, or custodian;
  - (3) The court counselor;
  - (4) The presenting officer;
  - (5) The juvenile officer;
  - (6) The Indian child welfare worker, when necessary;
  - (7) The Tribal social worker assigned to the case;
  - (8) The victim in a delinquency proceeding, upon written request from the victim and approval from the Court;
  - (9) State agencies, for good cause, upon request to the court, after a hearing to which the child, the child's attorney or guardian ad litem, the child's parent or guardian and the court counselor have been provided with proper notice and an opportunity to be heard.
- d. The Principal of the appropriate school where the child is enrolled shall be notified and provided with any offense/ incident report(s) and the petition, if file, of instances where a child is picked and detained for alcohol or drug related offenses.

#### **6-306 LAW ENFORCEMENT RECORDS.**

- a. Law enforcement records and files concerning a child shall be kept separate from the records and files of adults.
- b. All law enforcement records and files concerning a child shall be confidential and shall not be open to inspection to anyone but the following:
  - (1) The child and the child's attorney or guardian ad litem;
  - (2) The child's parent, guardian, or custodian;

- (3) The court counselor;
- (4) The presenting officer;
- (5) The juvenile officer;
- (6) The Indian Child Welfare worker, when necessary;
- (7) The Tribal Social Worker assigned to the case; and
- (8) Tribal or federal law enforcement officials, when investigating a crime or preparing a pre-sentence investigation report for the tribal or federal court.

**6-307 EXPUNGEMENT.**

When a child, who has been the subject of any juvenile offender proceeding before the court, attains his eighteenth (18th) birthday, the Chief Judge of the Tribal court may order the juvenile clerk of the Court to seal the court records, or may upon application to the Court, have the records, including records of traffic offenses, sealed.

**6-308 MEDICAL EXAMINATION.**

The Court may order a medical examination for any child involved in any proceeding under this code.

**6-309 STANDARDS FOR SHELTER CARE AND DETENTION FACILITIES.**

- a. The Children's Court judge, or social services agency subject to the approval the Tribal Council and the Chief Judge of the Tribal Court, shall adopt written rules and regulations governing the operation of shelter care and detention facilities. The tribal council may assign the responsibility for such facilities to another qualified tribal agency.
- b. The rules and regulations shall include but are not limited to the following:
  - (1) Occupancy and cleanliness standards;
  - (2) Heat, water, and light standards;
  - (3) Personnel standards and visiting privileges;
  - (4) Provisions for educational opportunities;
  - (5) Provisions for the opportunity to attend religious ceremonies, including traditional ceremonies;
  - (6) Provisions for medical and dental care; and
  - (7) Provisions for food, clothing, and other personal items.

## **CHAPTER 4 DELINQUENT CHILDREN**

### **6-401. PETITION.**

- a. Any person may submit to the Standing Rock Sioux Tribal Children's Court, petition to have any child subject to the jurisdiction of the Court declared a delinquent child.
- b. The petition shall include the following:
  - (1) The name, address, and telephone number of the petitioner;
  - (2) The name of the child;
  - (3) The name of the child's parent, guardian, or custodian, if known;
  - (4) The reason(s) why the petitioner believes the child is a delinquent child;
  - (5) The tribal code of provision, which is alleged to have been violated, if known;
  - (6) The facts on which the allegations are based, including:
    - (a) The date and time;
    - (b) The location at which the alleged facts occurred;
  - (7) Any available supporting evidence, including affidavits or written statements from social workers, childcare professionals, or members of the community.
- c. All petitions shall be referred to the presenting officer.

### **6-402 SCREENING THE PETITION.**

Upon receipt of a petition, the petition shall be screened by the presenting officer.

The presenting officer shall recommend that:

- a. The petition be dismissed for lack of merit and the child released if said child, is in custody;
- b. A transfer petition be filed, pursuant to section 6-411 of this code;
- c. A preliminary adjudication hearing be held;
- d. Further proceedings begin pursuant to the petition;

### **6-403 TAKING A DELINQUENT CHILD INTO CUSTODY.**

- a. Any law enforcement officer, the Court or the presenting officer may take an alleged delinquent child into custody pursuant to the criteria as provided in section 6-405 of this Code.
- b. The parent, guardian or custodian shall be notified immediately after an alleged delinquent child is placed in detention or shelter care.

- c. In no event shall a child be kept in custody without a Court Order for more than seventy-two (72) hours.

#### **6-404 APPLICATION TO THE COURT.**

- a. Any law enforcement officer, Presenting Officer, or Court who takes a delinquent child into custody without a court order shall:
  - (1) Immediately notify the presenting officer;
  - (2) Shall notify the parent(s) of the child; and
  - (3) Submit to the presenting officer a petition under section 6-401 of this code, within seventy-two (72) hours.
  - (4) Deliver the child to a medical facility if the child is believed to be in need of prompt medical attention and/or treatment.
- b. The presenting officer, immediately, upon delivery of the alleged delinquent child, shall review the need for detention or shelter care and shall:
  - (1) File with the Court a Petition alleging the child to be a delinquent child.

#### **6-405. CRITERIA FOR DETENTION OR SHELTER CARE.**

Grounds for detention or shelter care exists if a law enforcement officer has probable cause to believe that a delinquent act has been committed and that the child has committed the delinquent act and

- a. The presenting officer or law enforcement officer determines that the act is serious enough to warrant detention or shelter care; and
- b. The presenting officer has reasonable cause to believe the child will leave the jurisdiction of the Court and/or there is reasonable cause to believe that the child will commit other delinquent acts causing harm to person(s) or damage to property; or
- c. The child is under the influence of alcohol, drugs or inhalants, in which case the child shall not be released until Preliminary Breath Test (PBT) is .000.

#### **6-406 PLACE OF DETENTION OR SHELTER CARE**

- a. A child alleged to be a delinquent child may be detained, pending a court hearing, in the following places:
  - (1) A detention home or facility approved by the Tribe or Tribal court; or
  - (2) A private family home or foster care facility on the reservation approved by the tribe.



**6-407. RELEASE OF A CHILD FROM CUSTODY.**

Upon review of the need for detention the petitioning officer shall:

- a. Release said child to his parent, guardian or custodian unless detention or shelter care is appropriate pursuant to section 6-405 of this Code; and
- b. In all cases the child should be released to his parent, guardian or custodian within seventy-two (72) hours of the time taken into detention, unless ordered by the court to be detained longer.
- c. Where the guardian or custodian cannot be located after the expiration of the seventy-two (72) hour limit, a petition for child-in-need-of-supervision shall be filed by the presenting officer, and the child shall be placed in the custody of a relative, social services, or other agency approved by the Tribe, pending further disposition of the matter.

**6-408. PRELIMINARY ADJUDICATION HEARING.**

- a. Once the presenting officer has filed the Petition, the clerk shall schedule a preliminary adjudication with the child, his parent, guardian or custodian.
- b. The parents or guardian of the child shall be informed of the following rights at the preliminary adjudication:
  - (1) The right to deny the allegations in the petition;
  - (2) The right to admit to the allegations in the petition;
  - (3) The right to a final hearing;
  - (4) The right to counsel at their own expense;
  - (5) The right to confront and cross examine the witnesses against them;
  - (6) The right to subpoena any witnesses on their behalf;
  - (7) The right to a trial by jury, provided the child waives into adult court and the offense alleged is punishable by imprisonment; and
  - (8) The right to testify or not testify regarding the allegations.
- c. The presenting officer and juvenile officer may recommend:
  - (1) To proceed to a final hearing if the child denies the allegations in the petition;
  - (2) Any disposition alternative in the best interest of the child, if the child admits to the allegations in the petition.
- d. The presenting officer shall set forth, in writing, the agreements and conclusions reached at the preliminary adjudication and the disposition agreed to by the parties for remedying the situation.
  - (1) The juvenile officer shall review the child's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the juvenile officer concludes that positive results are not being achieved, the juvenile officer may recommend that he

presenting officer proceed with other disposition alternatives.

- (2) When the probationary period has been completed to the satisfaction of the juvenile officer and presenting officer, they shall inform the court and the case shall be concluded.
- (3) All actions taken concerning the written agreement must be approved and signed by the children's court judge.

**6-409. FINAL ADJUDICATORY HEARING.**

The final hearing shall be held within sixty (60) days of the filing of the petition, unless further extended by the Court.

- a. The Court shall serve prior written notice of the date, time and place of the final hearing upon:

- (1) Any person authorized to represent the child;
- (2) The child's parent, guardian or custodian; and
- (3) Such witnesses the court deems necessary.

Notice shall be served in person, or by certified mail, return receipt requested. The Court shall issue subpoenas to any person(s) the Court believes necessary for the proper adjudication of the matter. The subpoena shall be served personally by a law enforcement officer or designated official of the Court.

Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at their place of residence or business with any adult who also resides or works there and the adult signs and indicates job title, if at the place of work; or, by certified mail, return receipt requested. Subpoenas must be issued and served at least five (5) days prior to the hearing.

- b. Procedure.

- 1) The presenting officer shall present the matter to the court.
- (2) The child and the child's parent(s) or guardian must be physically present at the final hearing.
- (3) The hearing shall be closed to the general public.
- (4) The child or his authorized representative, and the parent, guardian or custodian may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at their own expense.
- (5) The Court may call such witnesses, as it deems necessary.
- (6) On the Court's motion, or motion of the presenting officer, the child, his parent, guardian, custodian, or authorized representative, the court may

continue the hearing.

- c. If the Court shall find, after final hearing, that there is evidence beyond a reasonable doubt that the child is a delinquent child, the Court shall determine the proper disposition of the child. The disposition alternatives shall be made immediately following the adjudication, unless the parties or the Court requests a separate hearing to determine the proper disposition. If a separate disposition hearing is requested, proper notice shall be given to all parties.

#### **6-410 DISPOSITION ALTERNATIVES.**

The Court shall make such disposition as is in the best interests of the child. If placement is to be outside the child's home, the Court shall order the least restrictive placement that will promote rehabilitation and treatment of the child.

- a. The Court shall prepare an order stipulating terms of supervision, calculated to assist and benefit the child, which regulate the child's activities and are within the child's ability to perform.
- b. If the Court determines placement in a detention facility is warranted, it shall be, for a term no longer than six (6) months, per offense.
- c. Where a delinquent child has been placed in an approved facility or in an adult detention facility, the juvenile officer shall each month conduct a review, to determine if the child should remain in the approved facility or adult detention facility. If the juvenile officer feels that the child is not likely to commit additional delinquent acts if released, the officer shall inform the Court and the Court may conduct a review to determine whether the child shall be released and the conditions, if any, to the release.

#### **6-411 TRANSFER OF PROCEEDINGS TO TRIBAL COURT.**

- a. The presenting officer or the child may file a petition requesting the Court to transfer the child to the jurisdiction of the Tribal Court, to have the child tried as an adult, if the child is fourteen (14) years of age or older and is alleged to have committed a delinquent act.
- b. A transfer hearing shall be held within fifteen (15) days of receipt by the Court, of the petition to transfer proceedings to Tribal Court.
- c. The following factors shall be considered when determining whether to transfer proceedings to Tribal Court:
  - (1) The nature and seriousness of the offense with which the child is charged;
  - (2) The nature and condition of the child, as evidenced by his age, mental and physical condition;
  - (3) The past record of delinquencies of the child.
  - (4) Court efforts at rehabilitation of the child;

- (5) The parents'/guardians effort at supervision of the child, and/or involvement in rehabilitation;
- (6) Whether the child has consented to a transfer for the purposes of requesting a jury trial.
- d. The court may transfer jurisdiction of the child to Tribal Court if the Court finds clear and convincing evidence that both of the following conditions exist:
  - (1) There are no reasonable prospects for the rehabilitation of the child through resources available to the court; and
  - (2) The past or pending acts allegedly committed involve a pattern of conduct which is contrary to the best interests of the child or the community.
- e. The child, parent(s), guardian or custodian and representative shall be present at the hearing. The hearing shall be separate from other proceedings and shall be private and closed to the public.
- f. On the Court's motion, or the motion of the presenting officer, the child, his parent, guardian, custodian, or attorney, the Court may continue the hearing.
- g. Upon transfer of proceedings to Tribal Court, the procedure utilized shall be as provided in Title III of the Standing Rock Sioux Tribal Code of Justice.

## CHAPTER 5 STATUS OFFENDERS

### 6-501 STATUS OFFENSES.

The following shall be considered status offenses for purposes of this Chapter:

- A. TRUANCY- A child who is habitually or flagrantly absent or tardy from school without proper authorization or habitually disobedient at school.
- B. RUNAWAY - A child who continually runs away from home and refuses to return when requested to do so.

- A child who stays out past the hours designated as follows:

- (1) During the school year, Sunday through Thursday, the hours of curfew shall be between 9:00 o'clock p.m. C.D.T., and 6:00 o'clock a.m. C.D.T., for children 14 and below:
- (2) During the school year, Sunday through Thursday, the hours of curfew shall be between 10:00 o'clock p.m. C.D.T., and 6 o'clock a.m. C.D.T., for children ages 15, 16 and 17;
- (3) During the school year, Fridays and Saturdays, the hours of curfew shall be between 12:00 o'clock a.m. C.D.T. and 6:00 o'clock a.m. C.D.T., for children between the ages of 15 and 17, inclusive for children, ages 14 and below, the hours of curfew shall be between 10:00 o'clock p.m. C.D.T. and 6:00 o'clock a.m. C.D.T.

(4) During the summer months, the hours of curfew shall be between 12:00 o'clock a.m. C.D.T. and 6:00 o'clock a.m. C.D.T. for children between the ages of 15 and 17, inclusive; for children, ages 14 and below, the hours of curfew shall be between 10:00 o'clock p.m. C.D.T. and 6:00 o'clock a.m. C.D.T.

(5) A child shall not be deemed to be in violation of curfew hours if they are with their parent(s) guardian(s); are in route to or from school activities, or are attending cultural or religious functions.

(6) For purposes of this subsection, the hours of curfew shall be the hours in the central time zone.

(7) Any child who is believed by law enforcement officers to be in violation of the hours established for curfew and has not committed any other delinquent or status offenses shall be picked up, transported, and detained until the child's parent(s) or guardian arrives at the detention facility to pick up the child.

**C. CONSUMPTION OR POSSESSION OF ALCOHOL, DRUGS, OR INHALANT**

A child, under the age of eighteen (18), who consumes, has consumed or has in their possession, alcoholic beverages, drugs or inhalants for unlawful purposes.

**6-502 PETITION.**

a. **WHO MAY FILE.** Any person may submit to the Standing Rock Tribal Children's Court a petition to have any child subject to the jurisdiction of the Court declared a status offender.

b. **CONTENTS OF PETITION.**

The petition shall include the following:

(1) The name, address, and telephone number of the petitioner;

(2) The name of the child;

(3) The name of the child's parent, guardian, or custodian, if known;

(4) The reason(s) why the petitioner believes the child is a status offender; and

(5) Any available supporting evidence, including affidavits or written statements from social workers, childcare professionals, or members of the community.

c. All petitions shall be referred to the presenting officer for screening. The presenting officer shall recommend that:

(1) The petition be dismissed for lack of merit;

(2) Further proceedings begin pursuant to the petition.

**6-503 TAKING A STATUS OFFENDER INTO CUSTODY.**

- a. Should the presenting officer or juvenile officer have probable cause to believe a child is a status offender the presenting officer or juvenile officer may recommend that an order be issued by the Court directing that an alleged status offender be taken into custody and placed in detention or shelter care. The presenting officer or juvenile officer may take the child into custody, pursuant to such an order.
- b. Any law enforcement officer shall take an alleged status offender into custody if it is determined by the officer that the child is under the influence of alcoholic beverages, drugs, or inhalants. For other status offenses, if the parent or guardian cannot be located or the officer determines that it would be in the best interest of the child, the child may be taken into custody.
- c. The parent, guardian or custodian and presenting officer shall be notified immediately after an alleged status offender is placed in detention, shelter care or medical facility.
- d. In no event shall a status offender be kept in custody for more than seventy two (72) hours, unless ordered by the Court, in writing, to be detained longer.

**6-504 RELEASE OF CHILD FROM CUSTODY.**

**a. LAW ENFORCEMENT OFFICER.**

A law enforcement officer taking an alleged status offender into custody shall:

- (1) Release the child to his parent, guardian, or custodian and notify the court counselor or child advocate of such release; provided however, that any child taken into custody shall not be released until that child registers .000 on the Preliminary Breath Test (PBT)
- (2) Deliver the child to the juvenile officer;
- (3) Deliver the child to detention or shelter care; or
- (4) Deliver the child to a medical facility if the child is believed to be in need of prompt medical attention and/or treatment.

**b. The presenting officer, immediately, upon delivery of the alleged status offender, shall review the need for detention or shelter care and shall:**

- (1) Release said child to his parent, guardian or custodian unless detention or shelter care is appropriate pursuant to section 5-106 of this code; and

(2) In all cases the child shall be released to his parent, guardian or custodian within seventy-two (72) hours of the time taken into custody, unless ordered, in writing, to be held longer by the court.

(3) Where the guardian or custodian cannot be located, or a petition for child-in-

need-of-supervision has been filed and a determination made, the court shall place the child in the custody of social services pending further disposition of the matter.

**6-505 PLACE OF DETENTION OR SHELTER CARE**

- a. A child alleged to be a status offender may be detained, pending a court hearing, in the following places:
- (1) A foster care facility on the reservation licensed or approved by the Tribe;
  - (2) A detention facility on the reservation approved by the Tribe; (3) A private family home on the reservation approved by the Tribe.
- b. An alleged status offender may be detained, pursuant to an order of the Court or for a violation of the Code, in a jailor facility used for the detention of adults only if:
- (1) A facility in section 6-505 a. is not available or would not assure adequate supervision of the child;
  - (2) Detention is in a cell separate but not removed from sight or sound of adults; and
  - (3) Adequate supervision is provided twenty-four (24) hours a day.

**6-506 CRITERIA FOR DETENTION OR SHELTER CARE.**

Criteria for detention or shelter care exists if the Court, child advocate or presenting officer determines that there is reasonable cause to believe that:

- (1) The child is likely to suffer physical or severe emotional harm if released to the parent, guardian or custodian;
- (2) The child may leave the jurisdiction of the Court;
- (3) The child may commit other status offenses.

**6-507 ADJUDICATION AND DISPOSITION HEARINGS.**

The preliminary adjudication and disposition shall proceed as set forth in 6-408, 6-409 and 6-410 of this Code.

**6-508 EXCEPTIONS.**

A status offender may not be committed to an off reservation institution unless they have been adjudicated to be a status offender on two (2) previous occasions or medical authorities determine it to be in the best interests of the child to be committed to a treatment/rehabilitation facility.

**CHAPTER 6**  
**CHILD-IN-NEED-OF -SUPERVISION**

**6-601. PETITION TO DECLARE A CHILD A CHILD-IN-NEED OF SUPERVISION**

- a. Any person may submit to the Standing Rock Tribal Children's Court a petition to have any child, subject to the jurisdiction of the Court, declared a child-in need of supervision.
- b. The petition shall include the following:
  - (1) The name, address and telephone number of the petitioner;
  - (2) The name of the child;
  - (3) The name and address of the child's parent, guardian or custodian, if known;
  - (4) The reason(s) why the petitioner believes the child is a child-in-need-of supervision; and
  - (5) Any available supporting evidence, including affidavits or written statements from social workers, childcare professionals or members of the community.
- c. All petitions under this section shall be referred to the juvenile officer or presenting officer of the Standing Rock Tribal Children's Court.

**6-602 SCREENING THE PETITION.**

- a. Upon receipt of a petition, the Court shall immediately have the petition screened by the juvenile officer or presenting officer. The juvenile officer or presenting officer shall determine if the petition is sufficient on its face to support a finding of child in need of supervision as defined in this Code.
- b. If the juvenile officer or presenting officer determines that the petition lacks merit, the petition shall be dismissed without further court proceedings.

**6-603 PLACING A CHILD IN EMERGENCY PROTECTIVE CUSTODY.**

- a. Upon reasonable belief that the child is a child in need of supervision and is likely to suffer serious harm if not removed from the home, a child may be placed in emergency protective custody by following:
  - (1) Any licensed physician;
  - (2) Any law enforcement officer;
  - (3) Any tribal or Bureau of Indian Affairs social worker;
  - (4) The juvenile officer; or,
  - (5) The presenting officer.
- b. When a child is placed in emergency protective custody without a court order by an authorized person under this section, such authorized person shall immediately



submit to the juvenile officer or presenting officer a petition as provided under section 6-601 of this code, not later than the next regular session of court.

- c. The parent, guardian or custodian shall be notified immediately, or as soon as possible, after a child is placed in emergency protective custody.
- d. In no event may a child be kept in emergency protective custody, without a court order, for more than seventy-two (72) hours.

#### **6-604 PRELIMINARY ADJUDICATION**

- a. After receiving a petition, the Court shall immediately schedule a preliminary adjudication to be held immediately if possible and in all cases:
  - (1) Within seventy two (72) hours of the time a child is placed in protective custody; or
  - (2) Within ten (10) days if the child is not in protective custody.
- b. Prior to the preliminary adjudication, the Court may order an examination of the child by a physician or other appropriate personnel as determined by the circumstances.
- c. The court shall make every reasonable attempt to notify, by telephone and other means, the child and the child's parent, guardian or custodian of the time and place of the preliminary hearing
- d. At the preliminary adjudication, the parent, guardian or custodian shall be advised that they have the right to:
  - (1) Obtain counsel at their own expense;
  - (2) Be present at all stages of the proceedings;
  - (3) To receive a copy of the petition, with any supporting affidavits or documentation;
  - (4) To testify and present documentary evidence at the final hearing;
  - (5) Call witnesses and, ask questions of all witnesses; at the final hearing and,
  - (6) The right to deny the allegations in the Petition. if denied, the Court shall schedule a final hearing and may continue with the placement of the child(ren)
- e. The court may appoint a guardian ad litem to represent the child in proceedings under this chapter.
- f. The preliminary adjudication hearing shall be conducted informally and shall be closed to the public.

#### **6-605 ADMISSION.**

At the preliminary adjudication, if the parent, guardian, or custodian acknowledges the contents of the Petition, the presenting officer, the juvenile officer, tribal, or Bureau of Indian Affairs social worker shall inform the court. If the

allegations in the Petition are admitted to by the parent(s), guardian, or custodian, the Court shall enter an order adjudicating the minor child to be a child in need of supervision, setting forth the stipulations agreed to by the parties.

**6-606 RELEASE OF CHILD FROM PROTECTIVE CUSTODY.**

If, prior to the final hearing, the juvenile officer or presenting officer determines that the child will not suffer, if returned to the parent, guardian or custodian, the Court may order the release of the child(ren) to the parent, guardian or custodian.

**6-607 FINAL HEARING.**

- a. The final hearing shall be held as soon after the petition is filed as possible. In all cases the final hearing shall be held within sixty (60) days of the filing of the petition, unless continued by the Court upon Motion of the juvenile officer, presenting officer or the parent(s), guardian or custodian, but in no case shall the final hearing be held beyond one hundred eighty (180) days of the filing of the petition.
- b. The court shall serve prior written notice of the date, time, and place of the final hearing upon:
  - (1) The child and any person authorized to represent the child;
  - (2) The child's Parent, guardian or custodian; and
  - (3) Such witnesses the court deems necessary. Notice shall be served in person or by certified mail, return receipt requested.
- c. The hearing shall be closed to the public, but the Court may in its discretion, allow extended family members of the child to be present.
  - (1) The presenting officer shall represent the Tribe and present the matter to the court.
  - (2) The child may be physically present at the final hearing at the discretion of the court.
  - (3) The hearing shall be closed to the public.
  - (4) The court may require the testimony of a physician based on an examination of the child.
  - (5) The child or his authorized representative, and the parent, guardian or custodian may summon or produce such witnesses and relevant evidence as they may desire, and may be represented by counsel at their own expense.
  - (6) The Tribe may summon witnesses and produce any relevant evidence.
  - (7) The court shall call such witnesses as it deems necessary.

(8) The Court shall be authorized, in its discretion, to accept licensed social workers as expert witnesses for the purposes of providing testimony in child in need of supervision cases.

(9) An out-of-court statement not otherwise admissible as hear say, is admissible in any proceeding if:

(a) The statement was made by a child under the age of eleven (11);

(b) The court finds that the content and circumstances of the statement and the reliability of the person to whom the statement is made provide sufficient basis for reliability; and

(c) The proponent of the statement notifies all parties prior to the hearing of his intent to offer the statement.

d. If the Court shall find, after final hearing, that there is clear and convincing evidence that the child is a child-in-need-of-supervision, the Court shall determine the proper disposition under this code. Otherwise, the petition shall be dismissed.

e. The court shall make such disposition as is in the best interests of the child. In all cases where the child is placed outside the home, the juvenile officer or tribal or Bureau of Indians social services agency, if the child is placed under tribal or Bureau of Indian Affairs social services supervision, shall prepare a service plan designed to obtain needed counseling and other services for the child and reunite the child with the family.

(1) The court may also order one of the following dispositions, in suggested order of preference:

(a) Return the child to the custody of the parent, guardian or custodian subject such counseling, treatment or other such services as are deemed necessary to keep the child in the home;

(b) Return the child to the custody of the parent, guardian, or custodian with the stipulation that the child and/or the parent, guardian or custodian attend and complete alcohol, drug, or chemical dependency treatment.

(c) Place the child in the custody of an extended family member on or off the reservation;

(d) Place the child in an Indian foster care home or facility licensed or approve by the Tribe;

(e) Place the child in a non-Indian foster care home or facility off the reservation, provided that such home or facility shall not be used for delinquent children as well.

#### **6-608 RETURN OF CUSTODY TO PARENT, GUARDIAN, OR CUSTODIAN.**

a. The child, the child's authorized representative, the parent, guardian or custodian may at any time petition the Court for return of a child-in-need

- supervision to the parent, guardian, or custodian.
- b. The petition shall include the following:
- (1) The name and address of the petitioner;
  - (2) The name of the child; and
  - (3) The criteria on which the petition is based.
- c. Criteria for return shall be that it would be in the child's best interest to be returned to the parent(s) or custodian(s) or the parent(s) have complied with the case service plan.
- d. Upon filing of a petition for the return of custody, the Court shall hold a hearing, to be held within thirty (30) days of the filing. Provided however, that hearing shall be necessary if the juvenile officer or tribe or Bureau of Indian Affairs social services agency recommends that return be made and all parties in agreement. The juvenile officer or social services agency must be notified by the clerk of any petition for return of custody.
- e. Petitions for return of children-in-need-of-supervision cannot be heard more often than every thirty (30) days, unless the Court determines that an emergency exists, or unless the juvenile officer or tribe or Bureau of Indian Affairs social services agency determines that:
- (1) There is a showing of good cause; or
  - (2) There is new evidence to support the petition.
- f. A hearing on a petition for return of a child-in-need-of-supervision may be consolidated with a review hearing under section 6-609 of this code.

**6-609 REVIEW FOR CHILDREN REMOVED FROM PARENT, GUARDIAN, OR CUSTODIAN.**

- a. Whether or not a petition for return is filed, the Court shall review the need for out of home placement or compliance with the case service plan every twelve (12) months from the order of disposition.
- b. The Court shall determine if the basis for the original removal does or does not remain in existence and/or compliance with the case service plan.
- c. If the court finds that there is no longer clear and convincing evidence that grounds for removal exist, the court shall order the return of the child to the parent, guardian, or custodian.

**6-610 DUTY TO REPORT ABUSE AND NEGLECT.**

- a. Any person who knows or has reasonable suspicion that a child was abused or that actions may result in the abuse of a child shall report such abuse or actions to tribal or Bureau of Indian Affairs social services or law enforcement officials.

- b. Persons who are mandated to report other acts alleging a child is a child-in-need-of-supervision; under this section shall include Chemical Dependency counselors, Physicians, Firefighter, Dentist, Hospital/Institutional Personnel, Health Practitioner, Chiropractor, Pharmacist, Nurses, Teachers, School Counselors, Other School Personnel, Social Workers, Social services agency personnel, Law Enforcement Personnel, Psychologist, Optometrist, Day Care personnel, Emergency Medical Technicians, Parole /Probation Officers, Court personnel, Commercial Film or Photo Processors.
- c. Those persons reporting, except those specified in section 6-610(b), may remain anonymous.
- d. Those persons required to report shall immediately cause such reports to be made to the responsible social services agency, law enforcement, or the tribal court. Oral reports shall be followed by written reports within forty-eight (48) hours, by those mandated to report.
- e. Any person who in good faith makes a report pursuant to this section or who testifies in any judicial proceeding arising from such report shall be immune from any civil or criminal liability because of such report or testimony. Any person who makes a report pursuant to this chapter in bad faith for the purpose of harassing those identified in the report, without reasonable cause to believe the report is true, is guilty of a class B misdemeanor.
- f. Any privilege of communication between husband and wife or between any professional person and his patient or client, except between an attorney and his client is abrogated and does not constitute grounds for preventing a report to be made or for excluding evidence in any proceeding regarding child abuse or neglect resulting from a report made under this code.
- g. Those persons mandated by section 6-610(b) to report a case of known or suspected child abuse or neglect, who knowingly fails to do so or willfully prevents someone else from doing so, shall be guilty of a class A misdemeanor and subject to the penalties thereof.

## **CHAPTER 7 CHILD CUSTODY**

### **6-701 PETITION FOR CUSTODY.**

- a. Any person having a legitimate interest in a child may file a petition for custody of that child.
- b. The petition for custody shall include:
  - (1) The name and address of the petitioner;
  - (2) The name and place of residence of the child;
  - (3) The name and address of the child's parent(s);
  - (4) The name and address of the person having legal custody of the child, if

different from the parent;

(5) The reason(s) the petitioner has filed the petition for custody and has established a residence for at least six months; and

(6) The relationship of the Petitioner to the minor child.

#### **6-702 CONSENT TO CUSTODY.**

- a. A parent, guardian, or custodian may file a written voluntary consent to custody of an Indian child under their care, on a form prescribed by the court.
- b. The consent to custody shall include:
  - (1) The name and address of the consenting party;
  - (2) The name and place of residence of the child;
  - (3) The reason(s) the voluntary consent is given; and
  - (4) A judge's certificate.
- c. The judge's certificate shall be included in the written consent to custody and shall state that:
  - (1) The terms and consequences of the consent were fully explained in detail to the consenting party;
  - (2) The responsibilities and obligations were fully understood by the petitioning and consenting party.

#### **6-703 INFORMAL HEARING.**

- a. An informal custody hearing may be appropriate when:
  - (1) A written consent to custody, pursuant to section 6-702 of this code, is filed with the court at the same time the petition for custody is filed;
  - (2) A petition for custody is filed, pursuant to section 6-701 of this code, by an extended family member of the child and the extended family member has the child(ren) in their physical custody for at least thirty (30) days;
  - (3) A petition for custody is filed, pursuant to section 6-701 of this code, by any other adult living on the Reservation, and has had the child(ren) in their physical custody for at least thirty (30) days and the parent(s) whereabouts are unknown;
  - (4) The child is twelve (12) years of age or older and expresses a desire to live with the petitioner.
- b. The informal hearing may be held immediately, if possible, after the petition for custody and the consent(s) if any, to custody are properly filed with the court or the other criteria set forth in the above section is met.
- c. If the informal hearing is not held immediately or is not appropriate, notice of hearing shall be served upon the parties by personal service, or by certified mail, return receipt requested, and the Court shall issue no temporary custody orders.

- d. The informal hearing shall be closed to the public. During the hearing, the Court shall inquire into the circumstances in the matter in order to determine whether the consent is truly voluntary.
- e. The court shall issue a written custody order, setting forth:
  - (1) A finding that the consent is voluntary, and the basis for that finding;
  - (2) The effective dates of the custody order;
  - (3) Any restrictions pertaining to the domicile of the child; and
  - (4) If necessary, the services that will be provided to resolve the problems that have rendered the consenting party temporarily unable to properly care for the child;
  - (5) If necessary, the date and time of final hearing;
  - (6) Obligations for child support.
- f. Any custody order issued pursuant to the informal procedures and without a hearing, must be noticed for hearing and a hearing must be held within forty-five (45) days of the issuance of the custody order. Notice must be given to the grandparents and other extended family members, where possible. If the hearing is not held or continued by the court within the forty-five (45) day time period, the order will expire.

**6-704. FORMAL HEARING.**

- a. The court shall schedule a formal hearing upon proper filing of a petition for custody, and a determination by the court that a formal hearing is appropriate. The petition must be heard within forty-five (45) days of filing, unless continued at the request of the parties or continued by the court.
- b. Notice of the date, time and place of the formal hearing shall be served upon the following:
  - (1) The consenting party, if any;
  - (2) The party petitioning for custody; and
  - (3) The parent(s), guardian(s), custodian(s) or other persons who have the legal custody or supervision
  - (4) Any other persons the court deems necessary to make a proper determination in the matter.
- c. Notice of formal hearing shall be by personal service, or, by certified mail, return receipt requested
- d. The court may order a social study be performed on the, the petitioner for custody. The social study shall be performed by the juvenile officer or other appropriate social services personnel in the discretion of the court.

- e. The social study shall, when appropriate or possible, include:
  - (1) Interview(s) of the child;
  - (2) Interview(s) of the consenting party;
  - (3) Interview(s) of the petitioner for custody;
  - (4) Interview(s) with school officials;
  - (5) Investigation of the conditions of the home of the consenting party; and
  - (6) Investigation of the conditions of the home of the petitioner for custody
- f. The individual performing the social study shall submit a written report of findings to the court.
- g. Based upon the social study and other appropriate and relevant information, the juvenile officer may make a recommendation to the court.

**6-705 CONDUCT OF HEARING.**

- a. The formal hearing shall be closed to the public.
  - (1) The parties shall present the matter to the court;
  - (2) The child may be physically present at the hearing, at the discretion of the court;
  - (3) The parties may summon or produce such witnesses and relevant evidence as they may desire;
  - (4) Where there has been a written consent filed with the court, the court shall inquire into the circumstances surrounding the consent to custody in order to determine whether the consent is truly voluntary.

**6-706 ORDER.**

- a. The court shall issue a written custody order applying the best interests of the child. The court may consider the wishes of the minor child if the child is twelve (12) years of age or older.
- b. The order shall set forth:
  - (1) The name and address of the family with whom the child will be placed;
  - (2) The effective dates of the custody order;
  - (3) If necessary, the tribal or Bureau of Indian Affairs social service or caseworkers describe the services that will be provided to resolve the problems which have rendered the consenting party temporarily unable to properly care for the child;
  - (4) If appropriate, visitation for the family and extended family, and other interested parties;



(5) Any restrictions pertaining to the domicile of the child;

(6) The basis upon which a change of custody is made;

(7) If placement is made off the reservation, a statement that the Children's Court retains exclusive jurisdiction over the child.

**6-707 CONTINUANCE.**

On the Court's motion, or the motion of a party, the court may continue the formal hearing for a reasonable time.

**6-708 RETURN OF CUSTODY.**

a. A party may, at any time, petition the court for return of custody. The petition shall include the following:

(1) The name and address of the petitioner for withdrawal of consent;

(2) The name and place of residence of the child;

(3) The name and address of the person having legal custody of the child; and

(4) The reason(s) why the petitioner wishes to have custody returned.

b. Based upon reports and other appropriate and relevant information, the Court may order a social study.

c. The court may hold an informal hearing pursuant to section 6-703 of this code if all parties are in agreement to the child being returned.

d. The court shall schedule and hold a hearing pursuant to section 6-704 of this code in any contested return of custody. The hearing must be held within forty five (45) days of the filing for return of custody.

**CHAPTER 8  
TERMINATION OF PARENTAL RIGHTS**

**6-801 PURPOSE.**

The purpose of this Chapter is to provide for the protection and promotion of the best interests of Indian children through the termination of the parent child relationship by court order.

**6-802 TERMINATION OF PARENTAL RIGHTS.**

a. **WHO MAY FILE.**

(1) One parent may file a petition for the termination of the parent-child relationship between the other parent and the child; provided however, that no petition for involuntary termination shall be accepted unless a petition for adoption is filed with the petition to terminate.

(2) The Tribe, acting on behalf of Child Protection Services may file a petition for

the termination of the parent-child relationship with respect to either or both parents, provided, however, that no petition for any involuntary termination shall be accepted unless a petition for adoption is filed with the petition to terminate.

- b. The petition for termination of the parent-child relationship shall include:
  - (1) The name and place of residence of the petitioner;
  - (2) The name, sex, date and place of birth and residence of the child;
  - (3) The relationship of the petitioner to the child, if any;
  - (4) The name, address and date of birth of the parents, if known;
  - (5) Where the child's parent is a minor, the name and address of the child's grandparents, if known;
  - (6) The name and address of the person having legal custody or guardianship of the child, or acting in place of the parent of the child; and
  - (7) The ground(s) on which termination of the parent child relationship is sought

#### **6-803 VOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

- a. A parent may petition the court to voluntarily terminate their parental rights, provided however that a petition for adoption is filed with the voluntary petition to terminate.
- b. The petition shall include:
  - (1) The name and place of residence of the petitioner;
  - (2) The name, sex, date and place of birth and place of residence of the child;
  - (3) The name, address and date of birth of the parent;
  - (4) The name and address of the person having legal custody or guardianship of the child, or acting in place of the parent of the child; and
  - (5) The reason(s) for petitioning for termination of the parent-child relationship.
- c. A petition for voluntary termination of parental rights shall not be accepted unless:
  - (1) The petition is signed by the parent in the presence and with approval of the court;
  - (2) The petition is signed after thirty (30) days of the birth of the child;
  - (3) Is accompanied with a petition for adoption.
- d. At any time prior to the entry of the final order terminating parental rights, a parent may withdraw his or her consent to voluntarily terminate his or her parental rights.

#### **6-804**

When the court receives a petition it shall order a social study, in writing, prior to the hearing, from the juvenile officer or other appropriate social services personnel. The social study shall be submitted to the Court within ninety (90) days of the order for social study.

**6-805 NOTICE OF HEARING.**

- a. After a petition has been filed, and if the Court has ordered a social study, the court shall set the time and place for hearing. The hearing must be held within ninety (90) days of receipt of the social study.
- b. The court may appoint an adult to serve as representative of the child for proceedings under this section.
- c. The Court shall cause notice to be given by summoning:
  - (1) The petitioner;
  - (2) The child or his authorized representative;
  - (3) The parent, guardian or custodian; and
  - (4) Any such other persons as the court determines are necessary for the proper adjudication of the matter.
- d. Notice to the child and parent shall specify that each shall have the right to:
  - (1) Retain counsel at their own expense;
  - (2) Be present at the hearing;
  - (3) Testify, present documentary evidence; and
  - (4) Call witnesses and ask questions of all witnesses.
- e. Service shall be made personally by a law enforcement officer or an officer of the Court, by certified mail, return receipt requested. If personal service or service by certified mail is not possible, the Court shall publish notice in a newspaper designated to reach the parent (s), with said publication expenses to be paid by the Petitioner.

**6-806 WAIVER OF NOTICE AND APPEARANCE.**

- a. In the case of a petition for voluntary termination of parental rights by a parent the parent may waive, in writing, notice and appearance in court, provided:
  - (1) The court is assured that the parent understands the meaning and consequences of the termination action; and
  - (2) The waiver is verified in the presence of the judge.
- b. The waiver shall not be effective when:
  - (1) The parent of the child is a minor;
  - (2) The waiver is not verified by a judge or;
  - (3) The waiver is signed within thirty (30) days of the birth of the child.
- c. In those cases where the waiver is invalid, the court shall order a hearing.
- d. The hearing shall be closed to the public.

e. **TESTIMONY**

(1) The Court may require the testimony of a physician or other child care expert based upon an examination of the child.

(2) The child, the child's representative or the parent may summon or produce such witnesses or evidence as they may desire.

(3) The court may call such witnesses as it deems necessary.

**6-807 INVOLUNTARY TERMINATION OF PARENTAL RIGHTS HEARING.**

a. The presenting officer shall represent the Tribe in all involuntary termination proceedings.

b. The child may be physically present at the hearing, in the Court's discretion.

c. The hearing shall be closed to the public.

d. **TESTIMONY.**

(1) The court may require the testimony of a physician or child care expert based on an examination of the child.

(2) The child, the child's representative and the parent may summon or produce such witnesses or evidence as they may desire.

(3) The court may call such witnesses as it deems necessary.

e. On the Court's motion or on motion of the child, his parent, guardian, custodian or authorized representative, the Court may continue the hearing for a reasonable time.

**6-808 ORDER FOR TERMINATION OF PARENTAL RIGHTS.**

a. **TERMINATION.**

If the Court shall find, after hearing, that there is evidence beyond a reasonable doubt that:

(1) The child has continuously or repeatedly been abused or neglected, or has been abandoned so as to meet the criteria for a child-in-need-of-supervision under this code; and

(2) The services available cannot adequately reduce the likelihood of further abuse, neglect or abandonment; and

(3) The court finds that it would be in the best interests of the child to order a termination of the parent-child relationship, then the court shall order the termination of parental rights.

b. **VOLUNTARY TERMINATION.**

(1) In cases where a parent seeks to voluntarily terminate his or her parental rights, and in the absence of a waiver of notice and appearance, the Court shall explain in detail, on the record, the consequences of that decision, and question

the parent to determine whether any person has had undue influence on the decision of the parent to terminate his. or her parental rights; and

(2) The court enters a finding that the parent whose rights are to be terminated consented to the termination and has not withdrawn that consent for over one (1) year; and

(3) The court enters a finding that it would be in the best interest of the child to order a termination of the parent-child relationship, then

(4) The court may order a termination of parental rights.

#### **6-809 EFFECTS OF TERMINATION ORDER.**

- a. All rights, duties and obligations between the parent and the child, including the rights of inheritance, are terminated by a termination order.
- b. A termination Order shall have no effect upon the child's tribal membership or quantum of Indian blood.

### **CHAPTER 9 ADOPTION**

#### **6-901 PURPOSE.**

The purpose of this part is to protect the rights and promote the welfare of Indian children, natural parents and adoptive parents.

#### **6-902 PETITION.**

- a. Any adult may file a petition to adopt an Indian child when said child is within the jurisdiction of the children's court.
- b. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife, provided 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, but must consent in writing to the petition.
- c. In any case where all persons petitioning to adopt child are non-Indians, the petition shall not be granted unless:
  - (1) No Indian is available who is willing to adopt the child, after diligent efforts have been made by the Indian Child welfare worker or other social service personnel to locate an Indian family and a written report is submitted to the court that such efforts were made;
  - (2) The petitioners agree in writing that the Standing Rock Tribal children's court shall retain exclusive jurisdiction over custody of the child, wherever domiciled or resident; and
  - (3) The Standing Rock Sioux Tribal council, having met in executive session, approves of the petitioner (s) adopting the minor child by Resolution.

- d. A petition for adoption shall be filed with the court on a form prescribed by the court. It shall be verified under oath by the adoptive parent(s) and shall include:
- (1) The full name and the residence of the child;
  - (2) The sex of the child;
  - (3) Enrollment status of the adoptive child and where enrolled;
  - (4) Documentary proof of the date and place of birth of the child to be adopted;
  - (5) The full name and the residence of the adoptive parent(s);
  - (6) Certified copies of the birth certificates of the adoptive parent(s);
  - (7) Occupation(s) of the adoptive parent(s);
  - (8) Documentary proof of marital status of the adoptive parent(s);
  - (9) Proof of all consents required under section 6-903 of this code;
  - (10) Any court order terminating the parent-child relationship between the natural parent(s) and the child to be adopted;
  - (11) A statement from the adoptive parent(s) that it is his or their desire that the relationship of parent and child be established between him or them and the child
  - (12) A full description and statement of value of all property owned or possessed by the child; and,
  - (13) A statement of other documentary proof that the minor child has been in the physical custody of the petitioner(s) for at least one (1) year.

#### **6-903 CONSENTS TO ADOPTION.**

- a. Written consent to an adoption is required from:
- (1) The biological mother;
  - (2) The biological or acknowledged father;
  - (3) The Tribe if the minor child is under their supervision;
  - (4) The child, if the child is twelve (12) years of age or older.
- b. Written consent to adoption is not required of any person whose parental right: have been involuntarily or voluntarily terminated, by a court of competent jurisdiction.
- c. Written consent to an adoption shall be executed and acknowledged before the Court. Consent shall not be accepted or acknowledged by the Court until thirty (30) days after the birth of the child.
- d. A parent may file a waiver of notice and appearance with the clerk of the children's court.

#### **6-904 WITHDRAWAL OF CONSENT TO ADOPT.**

- a. Written consent to an adoption cannot be withdrawn after the entry of a final order of adoption.
- b. Written consent may be withdrawn prior to the final order of adoption upon:
- (1) Notice and opportunity to be heard, given to the petitioner(s) for adoption and

to the person(s) seeking to withdraw consent; and

(2) A showing, at a hearing before the Court that the consent was obtained by fraud, duress or coercion; or

(3) A showing, at a hearing before the Court that it would be in the best interests of the child to grant such withdrawal.

#### **6-905 INVESTIGATION REPORTS.**

a. Within thirty (30) days after the filing of a petition for adoption, the Court shall request that the juvenile officer, Court Counselor or other appropriate tribal or Bureau of Indian Affairs social services personnel investigate and report, in writing, to the Court as to:

(1) The suitability of the child for adoption;

(2) The enrollment status of the adoptive child, and if the child is not enrolled, an enrollment application has been filed;

(3) The financial ability of the adoptive parent(s);

(4) The federal, state and tribal background of the adoptive parent(s);

(5) The fitness of the adoptive parent(s); and

(6) The condition and fitness of the adoptive home.

b. Within ninety (90) days of the filing of a petition for adoption, the investigative agency shall submit a written report to the Court. The report shall include a recommendation on the adoption and may include investigation reports from other agencies in support thereof.

#### **6-906 HEARING ON ADOPTION.**

a. Once the report is filed, the Court shall fix a date and time for hearing on the petition for adoption which shall be held within 30 days of the filing of the report required by Section 6-905(b), above

b. Notice of the hearing shall be provided either in person or, if ordered by the Court, by certified mail, return receipt requested, to:

(1) The adoptive parent(s);

(2) Any person whose consent is required; and

c. The adoptive parent(s) must appear personally at the hearing. All other persons whose consent is required shall appear personally, unless:

(1) Represented by a person having power of attorney, authorizing such person to represent them for the purpose of the adoption;

(2) Such person can not be found; or

(3) A valid waiver of notice and appearance has been filed under section 6-903(d) of this Code.

- d. The judge shall separately examine all persons appearing and if satisfied as to the:

- (1) Suitability of the child for adoption;
- (2) Enrollment status of the adoptive child;
- (3) Validity of the consents to adoption and/or the termination of parental rights order;
- (4) Financial ability, fitness and responsibility of the adoptive parent(s);
- (5) In the Court's discretion, the child's consent to the adoption, if the child is twelve (12) years of age or older;
- (6) Reports and recommendation of the investigative agency;
- (7) Best interests of the child being promoted by the adoption; and
- (8) Order of preference of placement as set forth in 6-908; then The court may enter a decree of adoption.

**6-907 DECREE OF ADOPTION.**

In the case of a child that has been in the custody of the petitioner(s) for adoption for a period of one (1) year or more, and the absence of a petition to withdraw consent to adoption, and the adoptive child is an enrolled member of an Indian tribe, the decree shall be final.

**6-908 ORDER OF PREFERENCE FOR ADOPTION.**

- a. Where more than one family has petitioned to adopt a child, the order of preference shall be as follows:

- (1) A child's grandparents.
- (2) A member of the child's extended family residing on the reservation;
- (3) A member of the child's extended family residing off the reservation;
- (4) An Indian family residing on the reservation;
- (5) An Indian family residing off the reservation;
- (6) Non-Indians as set forth in section 6-902(c).

**6-909 CONTENTS OF ADOPTION ORDER.**

- a. The final order of adoption shall include:

- (1) Such facts as are necessary, to establish that the child is eligible and suitable for adoption; and
- (2) Facts to establish that the adoptive home and parent(s) 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 adduced at the hearing.
- (3) The Tribe shall retain jurisdiction over adopted child until the child reached



the age of eighteen (18).

b. Children adopted by order of the Court shall:

(1) Assume the surname of the person by whom they are adopted, unless the Court orders otherwise; and

(2) Be entitled to the same rights of persons and as to property as natural children or heirs of the persons adopting them.

(3) Not lose rights of enrollment for their biological children, if otherwise eligible for enrollment.

#### **6-910 ADOPTION RECORDS.**

a. All records, reports, proceedings and orders in adoption cases are confidential records of the court and shall not be available for release to or inspection by the public.

b. Such records, reports, proceedings and orders shall be made available to the superintendent of the standing Rock agency for use in fulfilling authorized functions, only upon approval of the Court.

c. A true and correct copy of each adoption order shall be filed with the clerk of the court.

d. For good cause shown, information contained in such records shall be released to the adopted persons after reaching the age of eighteen (18) years of age, upon petition to the Court.

#### **6-911 TRADITIONAL ADOPTION**

In accordance with tribal custom, traditional adoption begins with the placement of a child by his natural parents with another tribal family but without any court involvement. After a period of two years in the care of the family, the court, upon petition of the adoptive parents, will recognize that the adoptive parents in traditional adoption have certain rights over the child even though parental rights have not been terminated. Traditional adoption must be attested by two witnesses. The court, in its discretion, and on a case by case basis, shall resolve any questions that arise over the respective rights of the natural parents and the adoptive parents in the traditional adoption. The decision of the court shall be based upon the best interests of the child and on recognition of where the child's sense of family is.

## **CHAPTER 10 EMANCIPATION**

### **6-1001 PETITION.**

Any Indian child, his parent, guardian or custodian may petition the Children's Court to declare the child emancipated from parental supervision. The petition shall be certified by the juvenile Clerk of Court and contain the following:

- (1) That he or she is at least (16) years of age;
- (2) That he or she willingly lives separate and apart from his parent(s), guardian or custodian, with the consent or knowledge of his parent(s), guardian or custodian;
- (3) That he or she managing his own financial affairs or is capable of handling his own affairs;
- (4) The source of his or her income; and
- (5) A statement that:
  - (a) His or her source of income is not derived from unlawful activity; or
  - (b) He or she is lawfully married, with proof of said marriage attached to the petition; or
  - (c) The emancipation is by agreement between the child and his or her parent, guardian or custodian.

### **6-1002 HEARING.**

Upon receipt and filing of the petition, the clerk shall issue Notice of hearing to the following:

- (1) The child
- (2) The parent, guardian or custodian;
- (3) If the child is a ward or child-in-need-of supervision, notice shall be given to the appropriate social service agency and/or foster family;
- (4) Any other person entitled to the custody of the child.

### **6-1003 ORDER.**

If the Court finds that the child is a person that meets the requirements in the petition and that emancipation would not be contrary to his or her best interests, the Court shall issue an order declaring the child to be emancipated. An order of emancipation is appealable to the Supreme Court of the Standing Rock Sioux Tribe.

**6-1004**

An emancipated child shall be considered as being over the age of majority for the following purposes:

- (1) For the purpose of consenting to medical care and treatment, without parental consent;
- (2) For the purpose of his capacity to sue and be sued in his or her own name and enter into binding contracts;
- (3) For the purpose of establishing his or her own residence; and,
- (4) For the purpose of enrolling and attending any school or college.

**6-1005 REVOCATION OF EMANCIPATION.**

An emancipated child, his or her parent, guardian or conservator or any other person/agency, entitled to the custody of the child, may petition to have the order of emancipation set aside. The petition to set aside an order of emancipation will not be accepted or acted upon until the time for appeal of the initial order of emancipation has expired.

**6-1006 GROUNDS.**

The petition to revoke emancipation must allege that the child is unable to provide for his needs and has no means of support.

**6-1007 HEARING.**

Upon receipt of the petition to revoke emancipation, the Court shall cause notice of hearing to be issued in the same manner as provided for in 6-1002.

**6-1008 ORDER.**

If the petition to revoke emancipation is granted, the Court shall issue an order revoking the emancipation.

**CHAPTER 11  
TRANSFER AND INTERVENTION IN STATE  
COURT CHILD CUSTODY PROCEEDINGS**

**6-1101 PURPOSE.**

- a. The purpose of this chapter is to return Indian children involved in state child custody proceedings to the jurisdiction of the Standing Rock Sioux Tribe when appropriate and feasible, and to intervene in state child custody proceedings, and thus protect and promote the best interests of those Indian children and their families.

**6-1102 INTERVENTION AND TRANSFER.**

- a. The Tribe, upon receipt of notice of state Court child custody proceedings, as defined by the Indian Child Welfare Act, 25 U.S.C. 1903 (1), shall immediately notify the Indian Child Welfare Act worker.
- b. Upon receipt of notice of state court child custody proceedings, the Indian Child Welfare Act worker shall conduct an investigation to determine whether the Tribe should intervene and/or request transfer. Thereafter, the Tribe will make a determination on whether to request intervention and/or transfer
- c. The Tribe and/or Tribal Court may not accept a transfer, from state court unless:
  - (1) A parent or Indian custodian's petition for transfer is filed and is granted by the state court;
  - (2) The Tribe's petition to transfer is granted by the state court; and
  - (3) The Tribe accepts the transfer.
- d. If the Tribe makes an initial determination not to intervene and/or transfer, the parent Indian custodian or an extended family member may file with the Court, a petition requesting the Tribe to intervene and/or request transfer of the proceedings to tribal court. A petition to intervene and/or transfer shall be noticed for hearing and after the hearing the Court shall have the discretion to either grant or deny the request.