

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved

Council Adopted
09-30-99

Chapter 34C
SISSETON-WAHPETON SIOUX TRIBAL CODE
CHILD SUPPORT ACT

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34C-01-01 Purpose

The Tribe, in order to assure uniformity for child support orders entered by the Tribal Court, and to provide certain guidelines to tribal court judges when setting child support orders, does hereby enact this section laying out the considerations for the tribal court when establishing support obligations and authorizing the Tribe's Judicial Committee and court to establish judicial guidelines for child support.

34C-02-01 Definitions- For purposes of this Title

A. "Absent Parent" means a parent of a child or children either during the course of marriage or outside marriage who is not providing the custodial parent with child support for the benefit of the child or children, or whom is not residing with the child or children and thus not providing parental control and supervision, and who is bound by an administrative or court order to pay child support;

B. "Child Support" means the financial obligation an absent parent has towards his or her children whether such action is established through judicial or administrative process, by stipulation, or by any other process recognized by tribal law. The financial obligation of an absent parent shall be met through the payment of moneys or through the provision of other goods and services as ordered by the tribal court;

C. "Court" means a court of the Sisseton-Wahpeton Sioux Tribe,

D. "Court Order" means any order for support established by a court of competent jurisdiction;

E. "Custodial Parent" means the parent or other guardian who has legal custody of a child or children pursuant to a court order or who exercises physical custody over a child on the basis of an agreement between the parents or because one parent has absented himself from the child's home.

F. "Gross Income" is income from any source, including but not limited to salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, interest trust income, annuities, capital gains, unemployment compensation, worker's compensation, disability insurance benefits, tips, gifts, prizes, alimony, general assistance payments and any per capita payments. It also includes in-kind contributions calculated at reasonable market value.

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G. "in-Kind Contributions" are those contributions to the support of a minor child other than cash contributions. Examples include: food or sustenance provided to the child and his family in the form of game or fish, necessities provided to the family such as heating wood or fuel, or necessary day care services.

34C-03-01 Setting of Child Support Obligation

In any case where the tribal court is determining the paternity of a child, decreeing a divorce between parties or establishing child support for a custodial parent when the absent parent is away from the home for more than 30 days, the tribal court shall set an amount of support to be paid by an absent parent to the custodial parent using the standards set out herein. Upon request by either parent, the Court may review any order of child support every three years to determine if more or less support is called upon under the child support guidelines. If there is a substantial and material change of circumstances, any party may petition the tribal court for a modification of child support at any time. All support orders entered by the Tribal Court shall contain a record of the obligors Social Security number.

34C-04-01 Presumptive Child Support

The presumptive child support established by guidelines adopted by the Judicial Committee with consultation by the Tribal Court shall be rebuttably presumed to be the correct amount of support to be awarded in any child support proceeding to establish or modify an order of support. Every order or decree setting or modifying a child support order shall state the presumptive amount of support and justify either an upward or downward deviation based upon the deviations prescribed by the Court.

34C-05-01 Establishing Child Support Guidelines:

The Sisseton-Wahpeton Sioux Tribe, in consultation with the Tribal Court, shall establish child support guidelines which must, at a minimum:

- a. Take into consideration all gross income of the absent parent;
- b. Be based on specific and descriptive criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child or children for housing, clothing, food, education, health care, and goods and services required by physical and mental disability;

c. Provide for the children's health care needs either through assuring Indian Health Service coverage, or benefits that supplement those benefits, and providing for each parent to pay his/her share of uninsured medical expenses;

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d. Consider the economic condition of the absent parent and his ability or inability to obtain gainful employment within the reservation;

e. Provide for review and revision, where appropriate, of the child support guidelines, when needed, and at least once every four years to ensure that the amounts provided for in the guidelines are periodically adjusted for increases or decreases associated with the cost of caring for children on the Lake Traverse reservation;

f. Allow for deviation from the guidelines based upon factors such as: the amount of visitation exercised by the absent parent, including provisions for abatement of support, when the absent parent exercises visitation for a consecutive period of more than 29 days; whether the absent parent provides the transportation for visitation; income contributed to the child by third persons including extended family members of the absent parent; income contributed to the absent parent by a third party including spouse; special medical needs of the child; day care expenses; age of the child; the responsibility of the absent parent to support other children, either in his care or children he is paying support for; and any other ground cited by the Committee or court. In any case where deviation is granted the Court shall expressly state the ground for deviation.

g. Consider the in-kind contributions of the absent parent as child support and develop guidelines that take into consideration the in-kind contributions of the absent parent and his family.

34C-06-01 Public Assignment of Child Support Rights- Establishment and Amount of Obligation

A. Assignment

1. Any person who receives Temporary Assistance for Needy Families (TANF) either from the State of South Dakota or the Tribe shall, upon applying for such benefits, assign all accrued child support rights and the right to future support to the Tribe through the execution of an assignment of support rights. Said assignment shall authorize the Tribe to bring an action in the Tribal Court, or other appropriate court of competent jurisdiction, to both establish a support order and to collect on that order from the absent parent.

2. Any other person, not receiving TANF benefits, may apply to the Tribe or the State Office of Child Support Enforcement (OCSE) in South Dakota for services and execute an assignment of support rights to the Tribe for the establishment and collection of support. In those non-TANF cases, the Tribe or State OCSE shall be entitled to collect

a fee from the custodial parent for the collection of support in accordance with a fee schedule to be set by the Tribal Court.

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3. Any person, required to execute an assignment of support rights to the Tribe, but whom refuses to do so without good cause or who fails to cooperate with the Tribe in the collection of support shall be subject to a sanction in the amount of \$50.00 of the TANF grant for the first refusal, 50% for the second refusal and exclusion from the TANF program for a third refusal. Good cause to refuse cooperation shall include the following situations:

a. When the custodial parent has a well-founded fear of violence from the non-custodial parent as evidenced by the existence of a order of protection in which the custodial parent is protected from the absent parent;

b. When the child was the product of rape or incest which was reported to appropriate law enforcement officials within a reasonable time after the commission of such an act;

c. Legal proceedings for adoption are pending in court;

d. A licensed social service agency is working with the family to determine whether or not the child should be relinquished.

34C-07-01 Child Support Agreements

Agreements regarding child support may be submitted to the Court. All such agreements shall be accompanied by financial affidavits, including pay stubs and an expense report if a person is self-employed, submitted by each Party disclosing the financial condition of each party as required to determine a presumptive child support order. If the agreed amount of support deviates from the presumptive amount of support the parties shall furnish statements explaining why they have agreed to a lesser amount than that presumed. The Court may reject an agreed-upon support amount if the parties do not demonstrate good grounds for deviating from the presumptive amount.

34C-08-01 Modifications

After passage of guidelines by the Tribal Judicial Committee and Court, current child support orders may be modified to conform to the guidelines, unless the amount of support previously entered was the result of an agreement which the Court finds to be equitable in light of the guidelines. In no case may the Court retroactively modify an order for support previously entered, except after an appropriate petition for modification has been filed. Parties shall be notified every three years that they have the right to seek a modification of existing support orders.

34C-09-01 Voluntary Unemployment or Underemployment

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Where either parent is voluntarily unemployed or underemployed the Court shall compute the amount of support based upon the potential earning capacity of the unemployed or underemployed person. In making that determination the Court shall consider: 09-30-99

- A. Prior employment and educational background and history;
- B. Availability of employment in the area which the parent is qualified for;
- C. Prevailing wage rates and unemployment rate in the area;
- D. In no circumstance shall a parent who is a member of the Tribe be subject to a determination that he/she voluntarily became unemployed or underemployed because he returned to the reservation for purposes of being closer to his family.

34C-10-01 Collection of Child Support Obligations

A. Purpose

1. It is the intent of this Title of the Child Support Act to allow for the prompt collection and enforcement of child support from absent parents in a manner that is consistent with due process of law under the Tribe's constitution and the Indian Civil Rights Act, while permitting the tribal court and tribal child support agency to use all lawful methods to collect support for children.

B. Wage Withholding

1. In any case where the Tribal Court has set a child support order, or has honored an order of support from a foreign jurisdiction under 28 U. S.C. §1 738B, the Court shall enter an order directed to the employer of the absent parent, requiring that employer to withhold and pay the amount of present support, plus any amount to be paid on arrearages, to the tribal court as payee for the custodial parent, Tribe (if the child is receiving TANF benefits or foster care benefits from the Tribe), or State (if the child is receiving TANF or foster care benefits from the State). The Tribal Court shall establish procedures for the disbursement of amounts collected under this section, either to the Tribal or state agency due the amounts collected. Income withholding under this section is mandatory even if the absent parent is not delinquent in paying his support.

2. If the employer of the absent parent is the Tribe or a tribal entity, the Tribe or that entity shall be required to withhold the amount of support and pay to the Tribal Court just as any other employer is required to do, provided the income withholding order comes from the Sisseton-Wahpeton Sioux Tribal Court. The Tribe and its entities are not required to honor any wage withholding order from a foreign jurisdiction unless said order has been filed with the Tribal Court and the Tribal Court has honored that order. In no

way shall this section be construed as a waiver of the Tribe's sovereign immunity from _____
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3. The failure of any employer to comply with an order from the tribal court directing an income withholding shall subject the employer to a penalty in the amount of \$1 00.00 for the first violation and \$500.00 for every subsequent violation.

4. The Tribal Court, shall establish a uniform income withholding order which shall be utilized in any case of income withholding. That form, at a minimum, must:

a. Be served upon both the employer and child support obligor by first class mail, at the time of the commencement of the income withholding;

b. Notify the child support obligor of his right to request a hearing, within 10 days of the notice, in the tribal court if the income withholding order is in violation of tribal law, or is creating a severe hardship upon him or his existent family. If a request for hearing is filed, the Court may stay the income withholding order at its discretion pending the hearing;

c. Notify the employer that it has seven days from the date the monies were due and payable to the obligor to pay the amount over to the Tribal Court;

d. Permit the employer to charge a nominal amount, not to exceed \$5.00 for the compliance with the income withholding order;

e. Notify the employer and the child support obligor of the priorities for payment should the obligor be paying support for other children pursuant to a previous income withholding order from the Court;

f. Notify the employer that it shall be subject to a fine in the amount of \$500 for any employee it discharges or disciplines because of the receipt of an income withholding order from the tribal court, or for a fine in the amount of \$1 00,00 for a first violation and \$500.00 for any subsequent violation for refusal to comply with an income withholding order from the tribal court. This penalty shall not be applicable for an employee's refusal to comply with a wage withholding order from a foreign jurisdiction unless said order has been filed with the tribal court and honored by the tribal court;

g. Notify the employer that any income withholding order for support takes precedence over any other lawful debt owed by the child support obligor.

C. Collection of Support From Other Sources

1. In any case where the Tribal Court has entered a judgment for child support arrearages against a child support obligor, the Court shall forward the judgment to the

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appropriate state IV-D agency (State Child Support Enforcement) with a request that that receiving agency:

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- a. Apply for an intercept of the child support obligors federal or state tax refund, if applicable, in the amount identified by the tribal court as the appropriate arrearages. Said amounts intercepted shall be applied to any amounts owed the Tribal or State agency for past support of the child, and then to the amount owed the custodial parent;
- b. Apply for the intercept of any worker's compensation or unemployment compensation benefits owed the obligor in the amount identified by the tribal court. Said amounts intercepted shall be applied first to any amounts owed the Tribal or State agency for past support of the child, and then to the amount owed the custodial parent;
- c. Apply for any other collection efforts available to the receiving agency including liens against real or personal property under the jurisdiction of the receiving agency, and/or suspension of drivers or other licenses issued by the state jurisdiction;
- d. Apply for any parental locator services that can assist the custodial parent in the location of the absent parent to assure collection of child support;
- e. Apply for any financial institution data match programs that the State IV- D agency operates which would permit the development of information about any tribal child support obligor who maintains a financial institution account, including a request that the State agency impose liens upon any accounts held by the obligor and pay said amounts first to any Tribal or State agency owed moneys for supporting said child and then to the custodial parent,
- f. Apply for any credit bureau reporting that the State IV-D agency operates with regard to state orders for support.

2. In any case where the Tribal Court establishes that a child support obligor owes more than \$1,000 in back child support to either the custodial parent or a tribal or state agency and after a show cause hearing establishes that the obligor has the ability to pay said support obligation and has wrongfully refused to do so, the Tribal Court may order the suspension of the obligors gaming license, hunting and fishing license, business license or any other license issued by the Tribe including the privilege to drive on the reservation public highways. Said license may be suspended under the following conditions:

- a. The Court shall allow the obligor to retire the child support arrearages by paying periodic payments to the Court and if the obligor complies with said order by making the first payment, he shall regain his license or licenses, subject to a further suspension if the obligor fails to make future periodic payments for no substantial reason;

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b. The obligor shall be permitted to demonstrate that the suspension of the license will cause a severe hardship upon himself or his existent family,

c. The obligor shall be permitted to appeal any suspension of his license or licenses to the appropriate tribal appellate court during which time his license will not be suspended.

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3. Any judgment entered by the Tribal Court against a non-custodial parent shall automatically act as a lien against any real or personal property owned by that parent, except it shall not operate as a lien against any trust or allotted land without consent of the Department of Interior. This section shall also apply when a judgment has been entered by another jurisdiction.

D. Collection of Support from Parents of Children in Tribal Foster Care

In any case where the Court collects child support amounts from a parent of a child in Tribal Foster care, those monies shall be promptly paid to the Child Protection program for the Tribe which may expend those monies in its discretion for the best interest of the children in foster care and other purposes.

34C-10-02 District Withholding When in Arrears

In any case where the Court determines that a tribal member is in arrears of more than \$300.00 under a child support order, the Office of Child Support may apply for a Withholding Order for any District Distribution to that district member. This shall include District holiday monies, birthday monies, and other general monies distributed to all district members excluding Medical Emergency, Home Repair and Hardship monies.

34C-11-01 Creation of Tribal Child Support Enforcement Unit

A. Purpose and Authority

There shall be created an entity called the Sisseton-Wahpeton Sioux Tribal Child Support Enforcement Unit, which shall have the authority to operate a child support enforcement program in compliance with the Child Support Enforcement Act. Said entity shall have the following authority-

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1. To apply to any state child support enforcement program for a cooperative agreement or to any federal agency for direct funding to operate a tribal child support enforcement program in compliance with the Sisseton-Wahpeton Sioux Child Support Enforcement Act. Any agreement reached shall be subject to final approval by the Tribal Council,

2. To accept an assignment of child support from any custodial parent or other guardian, including a tribal child protection or foster care program, of any child receiving TANF or foster care assistance either from a tribal or state agency, or from any other custodial parent wishing to receive assistance from the tribal child support enforcement unit;

3. To file actions in the Tribal Court on behalf of any custodial parent or child owed child support from a non-custodial parent located either on or off the reservation;

4. To charge a nominal fee, not to exceed \$1 0.00, from any custodial parent not receiving TANF or any other form of state or tribal assistance who applies for services from the Unit;

5. To work cooperatively with the Judicial Committee in developing appropriate procedures for the filing of paternity actions and support actions in the tribal court, including complying with any federal regulations regarding timelines for the filing of actions and the disbursement of moneys received, for the referral of tribal court judgments for child support to other state and federal agencies for collection efforts, and for the expenditure of any moneys received by the Tribe for the collection of child support either from a state through a cooperative agreement or directly from the federal government.

B. Location of Said Unit

The Tribal Child Support Collection Unit shall be housed in the office of the Tribal Prosecutor at the Tribal Court or at the Tribe's Department of Social Services.

C. Severability

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