

SPIRIT LAKE CHILDREN'S CODE

CHAPTER 1: JUVENILE COURT

§1-1-101 Purpose. This code shall be construed to effectuate the following public purposes:

1. The purpose of this Code shall be to protect our children through stabilizing and strengthening families, whenever possible, and most importantly to assure the safety and welfare of the children. It shall also be the purpose of this Code to protect the peace and security of the community.
2. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of our children coming within the provisions of this Code.
3. It is our conviction that protection of the children of the Spirit Lake Reservation is primarily the responsibility of the parents. However, when parents falter, and children or the Tribe or Tribal Community are harmed, the Tribe must intervene to correct the situation and protect the child.
4. To provide judicial and other procedures through which the provisions of this Code are executed and enforced and in which the parties are assured a fair hearing and their applicable civil and other legal rights are recognized and enforced.
5. To ensure that children who commit juvenile offenses maintain responsibility for their actions and to

apply a program of supervision, care and rehabilitation consistent with the protection of the Spirit Lake Tribal Community.

§1-1-102 Juvenile Court.

The Tribal Court, when exercising jurisdiction under this code, shall be known as the Juvenile Court and any duly appointed judge of the Spirit Lake Tribal Court, when exercising jurisdiction under this Code, shall be known as the Juvenile Judge.

§1-1-103 Jurisdiction.

1. The Spirit Lake Tribal Court shall have exclusive jurisdiction over any child custody proceedings involving a child residing or domiciled within the exterior boundaries of the Spirit Lake Reservation.
2. The Spirit Lake Tribal Court shall retain exclusive jurisdiction over children who are wards of the Spirit Lake Tribe, notwithstanding residence or domicile, sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child, which it would have had if the child had remained on the Spirit Lake Reservation. Such jurisdiction shall include the power to effect or cause the return of the child or the child's transfer to another location pursuant to law.
3. The Spirit Lake Tribal Court may petition for a transfer of any court proceeding for the foster care placement of, termination of parental rights or adoptive proceedings of an enrolled member.

child not domiciled or residing within the boundaries of the Spirit Lake Reservation according to the provisions of the Indian Child Welfare Act and in accordance to Chapter 3 of this Title.

4. The Court shall have jurisdiction over any Indian child domiciled or residing upon or found upon the reservation or who has been transferred to the Tribal Court under the Indian Child Welfare Act and over all persons having care, custody and control of such children in the following situations:
 - (a) Concerning any child who has violated any Spirit Lake Tribal Law, within the jurisdiction of the Spirit Lake Tribe.
 - (b) Concerning any child who is deprived, dependent, unruly, or involved in child custody proceedings as those terms are defined in Chapter 3 of this Title.
 - (c) Proceedings to terminate the legal parent-child relationship.
 - (d) The judicial consent, employment or enlistment of a child in the Armed Forces and to emergency medical or surgical treatment of the child who is under the custody of the court.
5. The Tribal Court shall have jurisdiction over the following situations:
 - (a) Proceedings for the adoption of a child.
 - (b) Proceedings for the commitment of a mentally retarded or mentally ill child.

- (c) All proceedings to determine the custody of or to appoint a legal guardian or custodian of the person of the child.
- (d) All proceedings over non-Indian minors who are within the jurisdiction of the Tribe in matters concerning child custody or regarding deprived children.
6. The Tribal Court shall have jurisdiction over Indian minors who commit of delinquent acts or unruly acts. However, the Spirit Lake Tribal Court will not have jurisdiction to process juvenile delinquency hearings or adjudication on juveniles who commit delinquent acts outside the jurisdiction of the Spirit Lake Tribal Court. Once the court with the proper jurisdiction adjudicates the child delinquent, tribal follow-up services may be provided on a courtesy basis.
7. Tribal Court shall have the jurisdiction over Child Welfare Transfers to Tribal or State Court.
- (a) The Tribal Juvenile Court, in its discretion, is authorized to transfer any child's case arising within Tribal jurisdiction, said child not being a member or eligible for membership in the Tribe, to the Court of the child's Indian Tribe, or if the child is a non-Indian, to the Courts of the state where the child is a resident or domiciled, upon the petition of Tribal Social Services or the Tribal Juvenile Prosecutor, either parent, a custodian or guardian, the child's Tribe, or an

appropriate official of the child's state of residence.

(b) In making such transfers the Tribal Court may consider:

- (1) the best interests of the child, and
- (2) any special needs or mental or physical disease or condition of the child and family and the ability of the Tribe and the receiving jurisdiction to meet those needs; and
- (3) if the transfer is requested prior to adjudication, whether witnesses necessary to the adjudication can attend in the receiving jurisdiction; and
- (4) emotional, cultural, and social ties of the child and the child's family; and
- (5) the likelihood that the same child and family would return to the Tribal jurisdiction within a reasonable time and come before the Juvenile Court again.

(c) Upon entering an order transferring a case as provided in this Section, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the child's case to the Clerk of Court of the receiving jurisdiction by certified mail, return receipt requested. The Juvenile Court may retain physical custody of the child pending an order or notice of

acceptance from the receiving jurisdiction,
and upon receiving such an order as long as
reasonably necessary for the protection of
the child until completion of physical
transfer to the receiving jurisdiction.

§1-1-104 Full Faith and Credit.

Orders of state courts and other tribal courts
involving children over whom the Juvenile Court could
assume jurisdiction shall be recognized and given full
faith and credit if:

- (a) The issuing court had jurisdiction over the
parties and the subject matter;
- (b) The procedures specified in the Indian Child
Welfare Act, if applicable, were properly
followed; and
- (c) Due process and all other applicable civil rights
were accorded all interested parties.

§1-1-105 Notice of Legal Rights.

- (a) At the first appearance before the Court for an
alleged delinquent or unruly act, the child and
his parent/s or guardian/s shall be fully advised
by the Court of their legal rights, including:
 - (1) The difference between admitting or denying
a charge;
 - (2) The right to an adjudicatory hearing to
determine whether or not the minor is guilty
of the offense charged;
 - (3) The right to be represented by an attorney
of their own choosing and at their own
expense at every phase of the proceedings;

- (4) The right against self-incrimination;
- (5) The right to subpoena witnesses;
- (6) The right to cross-examine those witnesses called by the Tribe.

§1-1-106 Tribal Juvenile Prosecutor Duties.

The Prosecutor shall represent the Tribe in the interest of a child in all proceedings subject to this Title in which the Spirit Lake Tribe is a party.

§1-1-107 Proceedings; Civil in nature.

Proceedings in children's cases shall be regarded as civil proceedings with the Court exercising equitable power. Children's cases shall be handled separately from adult cases.

§1-1-108 Initiation of Proceedings; Petitions.

- (a) All court proceedings under this chapter shall be entitled "Delinquency Petition" or "Status Offense Petition" or "Petition for Declaration of Deprived Child". Such petition shall set forth the following information:

1. The name and birthdate of the youth.
2. The name of the parent or custodian of the youth.
3. The basis of the Court's jurisdiction.
4. An allegation that the child is a deprived, delinquent or unruly child and a plain statement of facts supporting this allegation.
5. If filing a Delinquency Petition, list any delinquent or status offenses committed in sufficient detail to inform the minor of the

violations, date of commission of the act(s), corresponding section numbers to the Spirit Lake Law and Order Code or the Spirit Lake Children's Code, and attach supporting documentation to indicate probable cause of the alleged violation(s).

6. Any facts relevant to the present physical or legal custody of the child.

7. Whether temporary custody of the child is requested by a Social Service Agency on behalf of the child and/or family.

8. If the petition alleges that a child is habitually and without justification absent from school, the petition shall also allege the following:

- (a) that the school and a child's parent/guardian/custodian have held a meeting or the child's parent/guardian/custodian have refused to attend a meeting to discuss the child's habitual and unjustified absence from school;
- (b) that the school has provided an opportunity for counseling to determine whether a curriculum change would resolve the child's problem and if the local school board or governing authority provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative

education program if that is a reasonable alternative;

- (c) that the school has conducted a review of the child's educational status which may include medical, psychological and/or educational testing of the child to determine whether learning problems may be a cause of the child's absence from school, and, if so, what steps have been taken to overcome the learning problems;
- (d) that the social worker or other appropriate official of the child's school has conducted an investigation to determine whether social problems may be a cause of the child's absence from school, and, if so, that appropriate action has been taken; and
- (e) that the school has sought assistance from appropriate agencies and resources available to the school or has referred the matter to social services for the purpose of utilizing and coordinating such agencies resources.

§1-1-109 Summons; Issuance; Answer; Service.

After the petition has been filed, summonses shall be issued to:

1. The minor.
2. The minor's parents, guardian or custodian.
3. Any person the court believes necessary for the proper adjudication of the hearing; and
4. Any person, in the Court's discretion, believed to be necessary for the proper adjudication of the hearing.

The summons shall require the person as directed to appear before the Court at a specific time and answer the allegations. A copy of the petition shall be attached to the summons.

The summons may be delivered personally by a Tribal Law Enforcement Officer, an appointee of the Court, by mail, or may serve the summons by publication according to the Spirit Lake Law and Order Code. The summons shall be issued at least five (5) days before each hearing including weekends and holidays.

§1-1-110 Promise to Appear.

A parent, guardian, or custodian may issue a written promise to appear before the Juvenile Court which shall constitute sufficient notice and service of notice. Any such person issuing the above promise, who fails to appear without just cause, shall be subject to contempt of Court. The written promise shall be filed with the record of the case.

§1-1-111 Procedure.

- (a) The rules of juvenile procedure herein set forth shall apply in all proceedings under this Title. To the extent that any procedure is not specifically set forth herein, the general rules

of civil procedure in the Spirit Lake Law and Order Code shall apply.

- (b) In cases involving an allegation of delinquency by means of commission of an offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges and immunities of an accused in a criminal case, however, the juvenile shall not have the right to a jury trial.
- (c) The Spirit Lake Tribal Court shall have the authority to create rules of Court to provide for any procedure or forms necessary for the efficient, orderly and just resolution of cases under this Title only by written rules, not inconsistent with this Title or the Rules of Civil Procedure set forth in the Spirit Lake Law and Order Code, by filing said rules in the office of the Clerk of Court. All parties and their attorneys shall have access to the written court rules.
- (d) Amendment of pleadings. When it appears, during the course of any proceeding in a child's case that the evidence presented points to material facts not alleged in the petition, the Court may proceed to consider forthwith the additional or different matters raised by the evidence. In such an event, the Court, on motion of any interested party or on its own motion, shall direct that the petition be amended to conform to the evidence.

(e) Continuance. On the court's motion or by motion of the minor, his parents, guardian, custodian or attorney, the court, for good cause shown, may continue the hearing for a reasonable time.

(f) Dismissal. The Court may dismiss a petition at any stage of the proceedings provided the Court specifically sets forth the reasons for the dismissal on the record and in the Order of Dismissal.

Grounds for such a dismissal include but are not limited to a motion to dismiss made by the prosecutor, a finding by the court that the allegations set forth in the petition were not established beyond a reasonable doubt or in custody cases pursuant to Title 3 and 9 of this Code, or a finding that the action was brought in bad faith to embarrass, annoy or harass.

(g) Presence of Parents; Protection of Child. The Court shall endeavor to insure the presence at the hearing of one or both parents or the guardian of the child. The Court may appoint a guardian ad litem to protect the welfare of the child; whether or not a parent or guardian is present.

(h) Consolidation of Proceedings. When more than one child is involved in a home situation which may be found to constitute deprivation as defined in Chapter 3 of this Title, the proceedings may be consolidated, except that separate hearings may be held with respect to the disposition. The above provision shall not apply to delinquency cases.

§1-1-112 Pre-hearing Examinations and Inquiries.

The Court may order that a child named in a petition, that has been filed, be examined by a physician, surgeon, psychiatrist, or psychologist, and may place the child in a hospital or other facility for such examination.

The Court may also order an examination of a parent or guardian whose ability to care for the child is at issue if the Court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental or emotional condition may be a factor in causing the deprivation or delinquency of a child. The Court, in its discretion, may utilize the Tribal Social Services as an investigator.

§1-1-113 Hearings; Record.

A verbatim record by either stenographic or a mechanical recording device shall be taken in all cases processed through Juvenile Court. The Court may dispense with such record at the Court's discretion but no sooner than 60 days after the time for appeal has expired. In no event shall a record be dispensed with if a case is to be further reviewed by the Court.

§1-1-114 Records; Use in other Court.

Neither the record in the Tribal Juvenile Court nor any evidence given therein shall be released for use in any proceeding in any other court, without written consent of a Tribal Judge. No information shall be released unless a signed request for the information indicating whom is requesting the release and the purpose for which the information will be used is placed in the file. No records

shall be released after the minor turns eighteen years of age.

§1-1-115 Juvenile Court Clerk; Records Confidential.

There shall be a Clerk of the Juvenile Court. She shall schedule all hearings, file all papers, including the findings and final order in proceedings under this Title and shall note, the date of such filings on the papers. Final orders shall be served on all parties, as evidenced by a Certificate of Service, and the original order shall be filed in the Court file.

The records and papers shall be subject to examination by said clerk, the judges of the Court, the prosecutors, the probation officer and the juvenile officer. Others may examine such records and papers only with a written order of the Tribal Court Judge as set forth in this Code.

§1-1-116 Law Enforcement Juvenile Records.

Law Enforcement records and files concerning a minor shall be kept separate from the records and files of adults. All law enforcement records and files concerning minors shall be confidential and shall not be open to inspection except as ordered by the Spirit Lake Tribal Court for good cause.

§1-1-117 Photo's and fingerprints.

Unless otherwise provided in this Title, no juvenile shall be photographed or fingerprinted by authorities unless permission is granted by the court through court order.

§1-1-118 Hearings; Evidence.

Written reports and other material relating to the child's mental, physical and social history and conditions, must be received in evidence, and may be considered as probative by the court along with other evidence. The Court may require that the person who wrote the report or prepared the material appear in person or telephonically as a witness if he is reasonably available. Further, the Court shall inform the child, his parents, legal guardian, or custodian of the right to cross-examination concerning any written report or other material.

§1-1-119 Conduct of Hearings.

- (a) Private and Closed. All hearings shall be separate from other proceedings and shall be private and closed to the public. Only the parties, their attorneys' witnesses, and other persons requested by the parties and approved by the Court may be present at the hearing.
- (b) Denial of Allegations. If the allegations are denied, the Court shall hear the evidence and decide whether or not the allegations were committed.
- (c) Admission of Allegations. The Court must find that an admission is voluntary and knowingly given.
- (d) Standard of Proof. The standard of proof for an adjudicatory hearing shall be proof beyond a reasonable doubt, and for hearings involving an involuntary custody cases involving social services, the standard of proof shall be clear and convincing evidence.

- (e) The Adjudicatory Hearing shall take place within 90 days of the Initial Appearance, unless the Defendant has requested a continuance or good cause is established for extending that time period.
- (f) Maintaining Order during the Hearing. Upon request of the Court, the Captain of Police or his appointee or other officer shall aid the Court in maintaining order during any hearing.
- (g) Expert witnesses. The Court may allow any of the following experts to testify provided that the Court is persuaded that the testimony will assist the Judge regarding an issue of the case. Lay expert witness is any individual without extensive professional training, but who does have extensive experience in the delivery of child and family services to the Spirit Lake Tribal community. Community expert witness is any person recognized by the Juvenile Judge of the Spirit Lake Tribal Court as an expert in Tribal customs as they pertain to family organization and child rearing practices. Qualified expert witness is any professional person having a substantial educational background in the area of his/her specialty.
- (h) Interpreters. In any proceeding under this Title, an interpreter shall be provided for a parent, guardian, custodian or any other person acting as a parent who does not fully understand the English Language. Said interpreter shall interpret, after taking oath to faithfully and truly interpret in a language that the parent,

guardian or custodian or any person acting as a parent understands, that which he is requested to interpret.

§1-1-120 Waiver into Adult Court.

The Court may, in its discretion, allow prosecution of any delinquent juvenile, fifteen (15) years or older, as an adult if it is alleged that the minor has allegedly committed an act, which would have been a crime if committed by an adult.

The Court shall have a hearing to consider the following factors and any relevant testimony to determine whether a waiver is appropriate.

In determining whether the waiver should take place the Court shall consider the following as well as any other factors the Court deems appropriate:

- (1) the juvenile history of the minor,
- (2) the attempts taken through the Juvenile system to rehabilitate the minor,
- (3) the home environment of the minor,
- (4) the age of the minor and the potential for rehabilitation, and
- (5) the serious nature of the alleged act committed.

In such cases where the Court determines that justice would best be served by a waiver, the petition filed under this Code shall be dismissed, and a criminal complaint shall be filed by the Adult Criminal Prosecutor.

§1-1-121 Disposition.

The Court will proceed to the dispositional

hearing if the allegations are established by a valid admission or by the required standard proof. The dispositional hearing shall take place within 60 days of the Adjudicatory Hearing or the admission unless good cause is demonstrated for the delay or the Defendant requests a continuance at any point in the proceedings.

The Court shall enter a written judgment setting forth the findings, decision and disposition. No judgment order of decree of the Tribal Juvenile Court shall operate after the child becomes 18 years of age unless the Court deems that it is the best interests of the individual or the Tribe to continue its jurisdiction. This jurisdiction shall in no event extend beyond the child's 21st birthday.

§1-1-122 Authority of the Court.

- (a) The Court shall make such orders for the commitment, custody and care of the minor or take such other actions as it may deem advisable or appropriate for a proper determination and disposition of the case, including custody or placement of the juvenile.
- (b) Social Services. The Court has discretion in directing the participation of Social Services or other tribal agencies to assist the Court in investigating a child's case or in fashioning a remedy in the child's best interests. The Court shall utilize such social services as may be furnished by any tribal, federal or state agency as applicable.
- (c) Custody of Juvenile pending hearing. Pending final disposition of the case, the juvenile shall be subject to the order of the Court and may be

permitted to remain in control of parents, guardians or persons having his custody, or under the supervision of the probation officer or he may be detained in a place designated by the Tribe.

- (d) Medical Examinations and Care. The Court may order medical examinations and prescribe such care as may be required for juveniles under the Court's jurisdiction.

§1-1-123 Disposition Alternatives.

The Court shall have broad discretionary power with respect to commitments and judgments, and its authority shall include, but is not limited to, the power to commit the juvenile. If the Court shall find that the child is deprived, delinquent, or unruly as those terms are defined in Chapter 3 of this Title, and such an order has been duly entered, the Court may proceed as follows:

- (a) Place the child under supervision in his own home, or in the custody of a relative or other proper person upon such terms as the court shall determine;
- (b) Commit the child to a suitable private home, suitable institution or agency, or to a suitable school or institution, or may be detained in a place provided by the tribe, or order the child into programs or order the minor to perform specific acts as specified by the Court if the child has damaged, destroyed, vandalized or stolen another person's property. The program or specific acts will be geared toward paying back the victims of delinquent acts.

- (c) Authority to order a child into working in community betterment projects.
- (d) Place the child in detention.
- (e) Require the parents of the delinquent child, unruly child or deprived child, to be involved in the treatment process of a child, if it can be clearly shown that the parents of the child are contributing factors in the child's delinquent behavior.
- (f) The Court may order such care and treatment as the Court deems is in the best interests of the child.
- (g) The Court/Tribe may permit removal of a deprived, delinquent or unruly juvenile from the reservation by the person or institution in whose custody the juvenile is given, on condition that such custodian produce the juvenile when required by the Court.
- (h) No adjudication of any child with the jurisdiction of the Tribal Court shall operate to impose any of the civil disabilities ordinarily resulting from a conviction, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction. The disposition of a child or any evidence given in the Court shall not be admissible as evidence against the child in any case or proceeding in any other court, nor shall such disposition or evidence operate to disqualify a child in any future civil service examination, appointment or application.

§1-1-124 Place of Detention or Shelter Care.

- (a) Juvenile Offender. A child alleged to be a Juvenile offender may be detained, pending a hearing in the following places:
 - (1) A foster care facility on the reservation licensed or approved by the tribe; or
 - (2) A detention home on the reservation approved by the tribe; or
 - (3) A detention facility for juveniles; or
 - (4) A private home on the reservation.
- (b) Unruly Child. An unruly child may be detained pending a hearing, in the following places:
 - (1) A foster care facility on the reservation approved by the tribe; or
 - (2) A private family home on the reservation approved by the tribe; or
 - (3) A detention facility for juveniles; or
 - (4) A shelter care facility approved by the tribe.
- (c) Exceptions. An alleged juvenile offender who is 16 years of age or older may be detained in a jail or facility used for the detention of adults only if:
 - (1) A facility as described in 1, 2, 3 or 4 of the Juvenile Offender Section 1-1-124 is not available or would not assure adequate supervision of the minor; or
 - (2) Detention is in a cell separate from adults; and
 - (3) Adequate supervision is provided twenty-four hours per day.

§1-1-125 Standards for Shelter Care and Detention Facilities.

The standards for shelter care and detention facilities for juveniles shall be according to the current federal standards governing the Bureau of Indian Affairs for detaining juveniles. The Tribe may, however, adopt its own regulations.

The judge of the Juvenile Court of the Spirit Lake Juvenile Court shall, at least biannually, inspect any jail or detention center, which in the preceding calendar year, was used for the confinement of any juveniles. The judge shall note in the record of the court whether the jail or detention- center is a suitable place of confinement of juveniles.

§1-1-126 Judgments of Support.

The person or persons required by law to support the juvenile may be ordered by the Court to pay to the guardian or institution a reasonable sum in accordance with the Child Support Guidelines set forth in the Spirit Lake Law and Order Code for the support, maintenance or education of such juvenile. Such orders shall have the force and effect of judgments for money and shall be enforceable as such under the Spirit Lake Law and Order Code.

§1-1-127 Orders relating to judgments or support.

If the person or persons so ordered to pay for the support maintenance or education of a dependent, neglected or delinquent juvenile shall be employed for wages, the Court may order that the sum to be paid by him shall be withheld from his wages and paid directly to his guardian or institution.

§1-1-128 Arrest/Taking a child into custody.

A child may be taken into custody pursuant to an order of the Court or pursuant to a Juvenile Apprehension and Detention Order when the Court has reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary, that the child is avoiding process or has failed to appear before the Court despite having been given notice according to this Title, that the child is a danger to the community, or that the child has run away from his parents, guardians or other custodians.

The person taking the child into custody shall immediately notify the child's-parents, guardian or other custodian and the Juvenile Division of the Tribal Court of the status of the child's physical custody.

§1-1-129 Search Warrants or Juvenile Apprehension and Detention Orders.

A Search Warrant or Juvenile Apprehension and Detention Order may be issued by the Juvenile Court to search any place for the recovery of any child within the jurisdiction of the Court regarding a child believed to be a delinquent child, unruly child or a deprived child as those terms are defined in Chapter 3 of this Title.

Such a warrant or order shall be issued only on the conditions that the application for the warrant or order shall:

- (1) Be sworn to or affirmed before the Court; and
- (2) Name or describe with particularity the child sought; and

- (3) State that the child is believed to be a delinquent, unruly or deprived child and the reasons upon which such belief is based; and
- (4) State the address or legal description of the place to be searched.

§1-1-130 Issuance of Search Warrants or Juvenile Apprehension and Detention Orders.

If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a warrant or order identifying by name or describing with particularity the child sought and the place to be searched for the child. The warrant or order shall be directed to any law enforcement officer authorized by law to execute it wherein the place to be searched is located. The warrant or orders shall state the grounds or probable cause for its issuance. The warrant or order shall be served at any time unless the Court otherwise directs.

A copy of the warrant or order shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one is home, a copy shall be left in plain sight within the place searched. If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility or as otherwise directed by the Court.

The warrant or order shall be returned to the issuing Court, immediately upon service, and the officer shall subscribe on the warrant the officer's name, the date and time of service, and the place the child was delivered. A copy of the warrant shall be forwarded to the Tribal Juvenile Prosecutor or Intake Officer. If the child was

not found, such information shall be subscribed on the warrant and the warrant returned to the Tribal Court.

§1-1-131 Basic Rights After Arrest.

If a child is taken into custody for a delinquent or unruly act he or she shall be afforded all the due process procedures as would be an adult. The Miranda warnings shall be given anytime the minor is in custody or reasonably believes the minor is in custody and is being questioned about a delinquent act. In such a case, the minor and the minor's parents/guardian/custodian shall be informed of the following:

- (1) The minor has a right to remain silent;
- (2) Anything the minor says can and will be used against the minor in court;
- (3) The minor has a right to the presence of his parent/guardian/custodian during questioning; and
- (4) The minor has a right to an attorney/advocate at the minor's own expense.

The child/child's parents may obtain an attorney at any time at their own expense. The parents, guardian or custodian must be present before the child is questioned about the delinquent or unruly act.

An officer of the law who arrests a juvenile for violation of law, shall immediately notify the probation or juvenile officer of the arrest and shall place the juvenile in such custody as the probation or juvenile officer directs, pending hearing by the Court.

§1-1-132 Juvenile Arrest; 72 Hour Hearing.

Any juvenile arrested for a violation of law must have a hearing within 72 hours of the arrest, if the minor is

being held in detention, to decide if further detention is warranted. Weekends and Holidays are not counted in the time calculation. If further detention is warranted the Court may impose commitments and pursuant to this Title. If further detention is not warranted the child must be released immediately.

§1-1-133 Modifications, Revocation or Extension of an Order.

- (a) Upon Motion the Court may modify, revoke or extend an order at any time upon the motion of the following:
 - (1) The minor;
 - (2) The minor's parent, guardians or custodian;
 - (3) The agency having placement authority; or
 - (4) Upon the Court's own motion.
- (b) Automatic Termination. When a juvenile offender or minor in need of care reached eighteen (18) years of age, all judgments affecting the minor shall automatically terminate.

§1-1-134 Special Rule of Procedure; Traffic Violations.

The Court may adopt special rules of procedure to govern proceedings involving violations by children of traffic laws or ordinances.

§1-1-135 Appeals.

Unless otherwise addressed in this Title, an Appeal in the Tribal Court may be taken from any final order, decree, or judgment of the Tribal Juvenile Court. Such appeal shall be taken in the same manner in which is set forth in the rules and procedures of the Northern Plains Intertribal

Court of Appeals. The name of the child shall not appear on the record of the appeal.

§1-1-136 Stay Pending Appeal.

Unless the Court stays its order pursuant to the Spirit Lake Law and Order Code, an appeal shall not stay the order or decree appealed from in a child's case.

§1-1-137 Records.

For purposes of appeal, a record of the proceedings shall be made available to the minor, his parents, guardian, or custodian. Costs of obtaining this record shall be paid by the party seeking the appeal

CHAPTER 2: PROBATION, DIVERSIONS AND INFORMAL ADJUSTMENTS

§2-1-101 Probation Officer.

The Spirit Lake Tribal Court shall have authority to appoint any number of responsible persons of good moral character to serve as probation officers. All such officers will take an oath as may be required by the Tribal Court to perform their probationary duties. Such oath and order of the appointment will be filed with the Tribal Clerk of Court.

§2-1-102 Removal of Probation Officers.

If warranted and documented, disciplinary action may be taken, to include dismissal of probation officers by a judge of the Spirit Lake Tribal Court, if the probation officer is involved in a violation of tribal, state or federal law.

Probation officers may also be removed for nonperformance of their duties prescribed by the Spirit Lake Tribal Code in accordance with the Spirit Lake Personnel Manual.

§2-1-103 Job Description.

Responsible for performing field work in the supervision and rehabilitation of adjudicated juvenile probationers on personal, social, family, employment, psychological, financial, and school problems. The probation officer shall also work with community groups and community law enforcement authorities in establishing and coordinating community projects.

§2-1-104 Duties of Probation Officers.

Probation Officers shall supervise adjudicated juvenile probationers. Make investigations and file petitions regarding juveniles under the supervision of the probation officer.

Prepare pre-sentence reports for the court with information such as the court may require. Be present in court when cases are heard concerning juvenile probationers. Recommend a probation plan to the court for suggested disposition of a case.

Implement a probation or parole plan by officer including recommendation for return to the court for violation of probation or for termination of supervision if the situation demands revocation of supervision. Furnish any such related services as the court may require.

§2-1-105 Probation Violations.

The Court may modify or set aside any order or decree made by it but no modification of an order placing a child on probation shall be made upon an alleged violation of the terms of probation, until there has been a hearing after due notice to all persons concerned. The standard of proof shall be by a preponderance of the evidence.

Notice and a hearing shall also be required in any other case in which the effect of modifying or setting aside an Order, may be to deprive a parent of the legal custody of the child, to place the child in a child care facility or agency. Transfer from one foster home to another may be effected without notice and hearing.

§2-1-106 Periodic Reports.

The Court shall require the probation officer, guardian or institution to furnish such periodic reports concerning the juvenile, as the Court may deem necessary or desirable.

§2-1-107 Removal of Juvenile; Violation of Probation.

The Court may order the removal of a delinquent juvenile from his parents or legal guardian, but no such order shall be made without first giving a warrant directing that a minor be taken into custody if the court finds probable cause to believe the minor has violated the terms of the child's probation.

§2-1-108 Diversion Agreements.

Prior to the Initial Appearance, the Tribal Juvenile Prosecutor or the Juvenile Intake Officer may divert any juvenile's case, except a case alleging assault and battery or sexual abuse, from the Court process.

Diversion shall be made by entering into a contract with the child, the child's parents or other guardian or custodian whereby all agree to undergo a specified plan of conduct or treatment including an agreement to do or refrain from doing certain acts. The Tribal Prosecutor shall agree not to proceed with the petition in the case so long as the child, the child's parents or other guardian or custodian comply with the contract.

Each contract shall contain the following:

- (1) The specified facts or allegations, including dates that gave rise to the filing of the petition.

- (2) The specific treatment programs, if any, the parents, guardian or custodian and the child agree to complete successfully and the duration.
- (3) The specific tasks which the child, the child's parents, guardian or custodian agree to do or refrain from doing.
- (4) A fixed, limited time for the contract not to exceed one year.
- (5) That the Tribal Prosecutor shall not pursue the petition that is the subject of the contract if the child, child's parents, guardian or custodian comply with each of the contract terms for the full terms of the contract.
- (6) That each party has received a copy of the contract.

No diversion contract may place physical custody of the child in any person, agency other than the parents, guardian or custodian unless the contract bears the written approval of the Judge.

§2-1-109 Record of successful diversion.

If the parties participating in a diversion contract successfully complete the terms of the contract, the Tribal Prosecutor shall dismiss the petition that was the subject of the diversion contract and no such record shall be entered on the juvenile's record.

§2-1-110 Diversion contracts admissible.

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence. The child, child's parents, guardian or custodian may choose to

prove the contract and show their compliance with the terms as a defense to a petition filed concerning the matter of the contract. Upon a showing of compliance, the Court shall dismiss the petition. However, if the Court finds by a preponderance of the evidence that the contract has been violated, the Court shall then proceed with an adjudicatory hearing on the original petition.

§2-1-111 Informal Adjustments.

The Court may allow the Tribal Juvenile Prosecutor or the Juvenile Intake Officers to hold an informal conference with the minor and the minor's parents, guardian, or custodian to discuss alternatives to proceeding formally with further hearings if the admitted facts bring the case within the jurisdiction of the Court and an informal adjustment of the minor would be in best interest of the minor and the Tribe. The minor and his parents, guardian or custodian must consent to an informal adjustment with knowledge that the consent is voluntary.

§2-1-112 Written Agreement to informal adjustment.

The Juvenile Prosecutor or the Juvenile Intake Officer shall set forth in writing the agreements and conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation. Agreements shall be signed by the Judge and have the same force and effect as an order of the Court. An informal adjustment period shall not exceed six (6) months.

§2-1-113 Record of informal adjustment.

An informal adjustment shall be entered as an admission to the allegations into the record of the juvenile.

§2-1-114 Violation of informal adjustment.

The informal adjustment contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are admissible as evidence. The child, child's parents, guardian or custodian may choose to prove the contract and show their compliance with the terms thereof as a defense to a subsequent action involving the contract. The Tribal Juvenile Prosecutor may proceed with a contempt action as well as any action pursuant to the Spirit Lake Law and Order Code if an alleged violation of the contract has taken place.

CHAPTER 3: CHILDREN AND SOCIAL SERVICES

§3-1-101 Definitions:

1. Child: Any person less than 18 years of age including an unborn child.
2. Adult: Any person 18 years of age or older.
3. Delinquent Act: A. Any Indian child who has violated any offenses as enumerated in the Spirit Lake Tribal Code of Law & Order.
4. Status Offense: Laws or ordinances, which apply only to children or an act committed by a child, which is in violation of a statute, but if committed by an adult would not constitute a crime.
5. Delinquent Child: Any child who has committed a delinquent act.
6. Adjudicatory Hearing: The hearing to determine whether the allegations of a petition (pursuant to this Title) are supported by the evidence. The giving or pronouncing of a judgment or order in a case.
7. Delinquency Petition: A written request to the court that it preside over a case involving a juvenile who has allegedly committed a delinquent act. 1-1-108 (A) 3(A-E)
8. Extended Family Member: A person who is the child's grandparent, aunt or uncle, brother, sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin or stepparent or any person related by blood or marriage to the family or any individual who is viewed by the family as a relative in accordance with customs of the Spirit Lake Tribe, or any person related by blood or marriage to the child and having significant contacts with the child.

In situations where the relationship is not formally established by blood or marriage, however, two reliable witnesses must attest to the relationship.

9. Foster Care Placement: Means the arrangement for the care of any child in a licensed facility such as: shelter care, a foster home or child caring institution, or in the home of an extended family member.

10. Juvenile Court: Means the tribal court with jurisdiction over child custody matters, juvenile delinquent acts, status offenses and deprived children.

11. Indian Child: Means children of Indian descent who are enrolled or enrollable in a Federally Recognized Indian Tribe, band or community, or who has significant contacts or identification with an Indian community, or who is eligible to utilize existing services within the community such as the tribal school, public health services, or tribal programs.

12. Pre-Adoptive Placement: Means the temporary placement of a child in a licensed foster home, home of a relative or institution after the termination of parental rights, but prior to an adoptive placement.

13. Receiving Foster Home: Means a home available for the immediate placement of children when taken into custody or pending medical examination and court disposition.

14. Adoptive Placement: Means the placement of a child who is legally free for adoption with a family through a Tribal Court Adoption Decree.

15. Detention: Means the act of exercising authority over a minor by physically placing the minor in any juvenile facility designated by the court and restricting the minor's movement in that facility.

16. Probation: Means allowing a person convicted of a delinquent act or status offense to go at large, generally under the supervision of a probation officer.

17. Best Interest of the Child: Shall refer to the medical psychological, educational, physical, spiritual and emotional needs of a child which can reasonably be provided to insure the best opportunity for a successful life.

18. Abandon: Refers to the leaving of a child for a prolonged period of time without the parent or legal custodian making proper arrangements for his care nourishment or to the willful leaving of a child by the parent(s) or legal custodian with no intent of returning to the child. The age of the child and other individual circumstances will be considered in determining the definition of "a prolonged period of time".

19. Tribal Court: Refers to the Spirit Lake Tribal Court as established by the Spirit Lake Tribe.

20. Deprived child means a child who is abused physically, emotionally or sexually, a child who is neglected, or exploited including but not limited to a child:

(1) who has suffered or is likely to suffer a physical injury, inflicted upon the child other than by accidental or by negligent means, or due to an action of the parent or custodian, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or serious physical or emotional harm as determined by appropriate medical or professional personnel.

The following are examples of circumstances in which a youth could be found to be an abused child, this list is not intended to be all-inclusive.

- (a) A child who has been excessively beaten or suffered other unusual or inappropriate corporal punishment.
 - (b) A child who suffers injury to his or her psychological functioning, as determined by an appropriate professional person, as a result of psychological abuse.
 - (c) A child subjected to inadequate or non-nutritional foods, when the parent or custodian of the child has ability to provide adequate foods, or has refused Tribal or other assistance available for the supplying of such necessities.
 - (d) A child who has been subjected to obscene or indecent sexual activities as a result of pressure, guidance or approval of the child's parents or custodian.
- (2) A minor whose parents or custodian failed to provide foods, clothing, shelter, medical attention, hygiene, education, supervision, as the child needs for normal development, although the parent or custodian was able to furnish such needs or has refused tribal or other assistance for the furnishing of such needs, and such failure is likely to result in serious harm to the child as determined by appropriate medical or professional persons.
- (3) A minor who has no parent or custodian available or willing and able to care for the child.
- (4) A minor who is found to be in one or more of the following situations:
- (a) Any child who is involved in sexual activity with an adult.
 - (b) Any child forced to perform sexual services in exchange debts or favors.

- (c) Any child who is forced to perform sexual acts by other minors.

This includes any contacts or interactions between a child and an adult in which the child is being used for the sexual stimulation of the perpetrator or another person. These acts, when committed by a person who is either significantly older than the victim or in a position of power to control over another child, may be considered sexual abuse.

(5) A minor is neglected when found to be in one or more of the following situations, dependent on proof that parental or legal guardian action or failure to act has resulted in serious harm to the child.

- (a) A child whose parents fail to love, guide or pay attention to him/her.
- (b) A child whose parents fail to protect the child.
- (c) A child who is in need of special care and treatment but who has parents that do not support and obtain that care for the child.
- (d) A child who receives no moral, spiritual, or intellectual instructions or supervision from the parents.
- (e) A child who is separated or isolated from other members of the family (locked in or out).
- (f) A rejected child.
- (g) A child whose parents have unrealistic expectations for him/her.
- (h) A child whose parents or others verbally harass, tease, swear at and-or ridicule the child.
- (i) A child whose health is endangered by excessive exposure to alcohol, drugs, tobacco, firearms or

explosives, and whose parents do not seek available help for their child's well being.

- (j) A child whose parent(s), have failed to provide the child's basic needs for food, shelter and clothes.
- (k) A child whose life style is dangerous (eg. excessive drinking, excessive drug use, excessive numbers of people in the home without providing for the child's basic needs.

(6) A minor who is in one or more of the following situations is an abused or exploited child:

- (a) Forced to work excessively for little or no pay other than normal household duties or chores.

(5) A child whose parent(s) misuse benefits intended for the child including selling or squandering food stamps, commodities, and TANF monies.

(6) A child whose parent(s) consistently fail to maintain food in the household.

(7) A child who is abandoned.

21. An Unruly Child: Is a minor found to be in one or more of the following situations:

- (a) A child who is habitually truant from school.
- (b) A child whose parents, despite making a reasonable effort, cannot control him or her.
- (c) A child who habitually runs away from parent or custodian.
- (d) A child who so deports himself/herself so as to injure or endanger the child's own well being or the well being of others.

22. Guardian: A person who has been granted legal

custody of a child by the Tribal Court of appropriate jurisdiction. The person who has been granted care, custody and control of the child by the Court. It includes the rights of legal custody as well as the right to consent to marriage, enlistment in the Armed Forces, major medical, surgical or psychiatric treatment.

23. Permanent Guardianship: Court appointed guardian over a child on a permanent basis. Permanent Guardianship is an alternative only when adoption and return of the child to the parents is not possible.

24. Legal Custody: Means subject to any limitations, which may be imposed by the juvenile court, a relationship embodying the following rights and duties:

- (a) The right and duty to have input in and help determine major life decisions regarding the child such as religion, education, etc.
- (b) The duty to provide a child with food, clothing, shelter, education, and medical care.
- (c) The right in an emergency to authorize surgery or other extraordinary care.

25. Custodian: Means the person, persons, agency or institution responsible for the care and supervision of the child. This also refers to an individual having physical custody of the child.

26. Physical Custody: Means the physical presence or physical control over a child by an adult or agency.

27. Guardian-Ad-Litem: Means an individual appointed by the Court to represent the best interest of the child in an advocacy role.

28. Foster Care: Means the temporary provision of a substitute family for a child for a planned period of time. The substitute family must be a licensed foster home.

29. Permanent Foster Care: Means the court ordered placement of a child in a foster home on a permanent basis. Permanent foster care may be indicated only when return of the child to the parents is not possible after a reasonable period of time, when adoption is not a reasonable possibility. When permanent guardianship is not possible and when emancipation is not possible.
30. A Foster Home: Means a home which has been licensed by a Social Service Agency, including Tribal Social Services according to standards established by the Tribal Council.
31. A Child Placement Agency: Means Tribal Social Services or another social service agency or adoption agency approved by the Tribe to receive a child for placement or adoption.
32. Child Custody Proceedings: Means any voluntary or involuntary administrative or judicial action, which may result in the removal of the child from his/her parents.
33. Termination of Parental Rights: Means the voluntary or involuntary severance of a parent's rights, duties and responsibilities to a child by the Court.
34. Emancipation: Means the legal action by the Court declaring a minor an adult capable of meeting his or her own needs. The court may emancipate a minor upon demonstration to the Court that said minor can be responsible in meeting his/her needs (i.e. education, medical, shelter, foods and clothing and is able to be responsible in his/her affairs).
35. Least Restrictive Alternative: Means the use of the least drastic method of achieving and meeting the needs of the child. This refers to method of intervention in the family, placement needs of the child, educational needs of the child, medical needs of the child, and psychological

and emotional needs of the child. Least restrictive alternative shall not be construed to prevent the best interests of the child from being met.

36. Protective Supervision: Means a legal status created by a court order following adjudication where the child is permitted to remain in the child's home, and supervision and assistance to correct the issues are provided by social services as designated by the court.

38. Residence or domicile means physical presence of the parent, custodian or guardian of the child with the intent to remain within the boundaries of the Spirit Lake Reservation prior to the filing of the action. However, the court may find domicile even if the child is not physically present on the Spirit Lake Reservation if the child has been taken from the Spirit Lake Reservation in bad faith, but only if the child had resided within the boundaries of the Spirit Lake Reservation prior to the taking.

RIGHTS & RESPONSIBILITIES

It is the purpose in setting forth the following rights and responsibilities to set forth in clear terms what is expected of children, parents, foster parents and social services agencies with respect to families who are in need. The tribal court shall have the broadest of powers under the Spirit Lake Constitution and the Spirit Lake Law and Order Code to construct orders and fashion any remedy to ensure that all of the following rights and responsibilities are adhered to in order to protect the children of the Spirit Lake Tribe.

§3-1-102 The rights and responsibilities of the natural parent(s) of a child in foster care or in the custody of another person, agency or institution other than the natural parents are:

- (a) The right to visitation subject to the court's modification in a court order.
- (b) The right to consent to, be informed of, and to be involved in determining the medical and psychological needs of the child.
- (c) The right to choose the child's religion.
- (d) The right to be involved in planning for the child.
- (e) The right to be treated with respect and have information kept confidential unless otherwise set forth in this Code.
- (f) The right and responsibility to assistance and, support in obtaining appropriate resources to improve the family's functioning in aiding the return of the child to the family.

§3-1-103 The rights of the child in foster care or in the custody of another person, agency or institution other than the natural parents are:

- (a) The right to visit the natural parents or guardian subject to modification by court order.
- (b) The right to nurturance.
- (c) The right to food, clothing and shelter.
- (d) The right to inheritance, unless otherwise modified by court order.
- (e) The right to protection and to be safe.
- (f) The right to an education appropriate for the child's needs.

- (g) The right to medical care.
- (h) The right to be involved and informed of planning, if of the appropriate age.
- (i) The right to privacy.
- (j) The right to assistance from appropriate resources in meeting his/her emotional, psychological, educational and medical needs.
- (k) The right to be supervised by the agency or person having care and control of the minor.
- (l) The right to be represented by a Guardian-Ad-Litem whenever deemed appropriate by the court.

§3-1-104 The rights and responsibilities of the foster parents are:

- (b) The right and responsibility to be informed of planning for the child.
- (c) The responsibility, with the agency, of providing food medical and clothing for the child.
- (d) The responsibility of providing shelter for the child.
- (e) The right and responsibility to meet the emotional needs of the child.
- (f) The right to assistance from the supervising social service agency in meeting the needs of the child.
- (g) The responsibility of keeping the supervising agency informed of the status of the child.
- (h) The responsibility of confidentiality regarding the child and the natural parents.
- (i) The rights and responsibility of continued education regarding foster parenting, the needs of foster children, and planning for children.

- (j) The right to obtain emergency medical treatment for the child.
- (k) The responsibility to monitor the child.

§3-1-105 The rights and responsibilities of the social service agency are:

- (a) The right to open and honest communication with the foster parents, child, natural parents, and courts regarding the welfare of the child.
- (b) The responsibility of assisting the natural parent and the foster parents in meeting the psychological, emotional physical, educational and medical needs of the child.
- (c) The responsibility of assisting the natural parents in seeking and obtaining appropriate assistance in improving the natural family's functioning in order to promote the return of the child. The responsibility to have a written plan setting forth in clear terms the parental requirements in regaining parental custody of the children in the care and control of social services as set forth in the Permanent Planning section of this Code.
- (d) The responsibility to encourage cooperation and input from the parents or guardians in developing this plan.
- (e) The right to sign for emergency medical treatment when the court or natural parents are unavailable.
- (f) The responsibility of insuring confidentiality of the child, natural parents, and foster parents.

- (g) The responsibility to accept and execute the order(s) of the court as those orders relate to children to be placed in or who are in the care and control of social services.
- (h) The responsibility to further the educational needs of children, and to ensure that the child's educational needs are being met by attending IEP meetings, 504 meetings or reporting lack of cooperation in meeting the child's educational needs to the tribal court in a written report including the efforts made to obtain services.
- (i) The responsibility to educate the caretakers related to the welfare of children.
- (j) The responsibility to monitor and supervise the children in the care and control of social service and to document the child's needs, progress or lack thereof.
- (k) The responsibility to maintain ready access to the case managers by telephone and in person.
- (l) The responsibility to maintain an emergency number for use by law enforcement and the Tribal Court that provides telephone access to a social worker 24 hours a day.
- (m) The responsibility to notify the Tribal Court and the Guardian Ad Litem whenever a child in the care and control of tribal social services is moved from one location to another.

§3-1-106 Authority of Medical Doctor.

A Medical Doctor has legal authority to examine a child suspected of physical or sexual abuse, without consent of the parent or custodian.

§3-1-107 Service Providing.

For the purpose of assisting families and the children to correct problems occurring in the home or community the Tribal Court may order the family or legal custodian into a treatment program to be rendered by a service provider. A service provider may be one or more of the following: a social service agency, mental health, school counselors or any other agencies or institutions that are deemed appropriate by the Court.

§3-1-108 Guardian Ad Litem.

- (a) Appointment. Upon the filing of a Petition, the Tribal Court may appoint an adult Guardian Ad Litem, to act as the legal advocate for the child in the proceedings upon the Petition and to represent the best interest of the child. Q
- (b) Qualifications. The appointee should not be an individual directly involved in the case before the Court.
- (c) Duties and Responsibilities of Guardian Ad Litem. The Guardian Ad Litem, once appointed by the Court, shall have as his primary duty to impartially represent the best interests of the child. However, the Court may choose to direct the Guardian Ad Litem to do an investigation with respect to certain issues pending before the Court and report back to the Court certain findings in relation to the investigation. The Guardian Ad Litem must submit a report to the Court outlining the results of his/her

investigation into the child's situation. The report shall include:

1. An assessment of the child's present environment.
2. Resources which the child requires.
3. A description of the child's extended family and the possibility of using it as a resource.
4. A description of the family support system.
5. A statement requesting an evaluation of the child if it is deemed necessary by the Guardian Ad Litem.
6. A statement regarding the child's wishes.
7. A statement regarding the Guardian Ad Litem's recommendations.

These duties begin at the time of appointment and end at the time all issues before the court are resolved. All guardians ad litem shall, whenever practical, be required to personally visit the place of residence of the child and shall, if practical, meet with the child.

§3-1-109 Receipt of Indian Child Welfare Act Referrals.

Referral of cases shall be received by the person or persons who shall be designated to receive such referrals. Upon receipt of referral, the person so receiving shall immediately deliver the referral to the Chief Judge of the Tribal Court, or in the absence of the Chief Judge, to some other judge of the Tribal Court.

§3-1-110 Duties of the Chief Judge/ Indian Child Welfare Act Referral.

The Chief Judge of the Tribal Court, or such other Judge as the Chief Judge shall designate, shall receive the

referral and, shall immediately determine and direct the Tribal designee whether to request of the referring court the twenty (20) days extension necessary to prepare the case, if necessary.

§3-1-111 Investigation and determinations of Indian Child Welfare Referrals.

Upon receipt of referral and request of the twenty (20) day extension, the Judge shall investigate the referrals or direct appropriate tribal personnel to assist in the investigation. The investigation shall include the following:

- (1) Contact appropriate sources to determine the child's membership and tribal status.
- (2) Investigate and determine whether the child custody referral is one properly referred to the Tribe under the Indian Child Welfare Act.
- (3) Contact the parent, guardian or custodian by registered mail with return receipt requested and notify them of the referral and possible transfer of the case to the tribal jurisdiction.
- (4) Contact social, medical, legal or other such sources to obtain necessary information regarding the circumstances of the case.
- (5) Make a decision as to whether the transfer of the case would be appropriate and in the best interests of the child.
- (6) The Court may consider the past and present residences of the child, the child or child's family ties with the Tribe or the tribal community, any special conditions of the child

and the ability of tribal or reservation facilities to deal with such conditions.

- (7) Determine whether jurisdiction should be taken before or after the adjudication stage of the proceedings considering the location of the witnesses, documents, and other evidence and the existence of subpoena and other process limitations of tribal jurisdiction.
- (8) Consider continuity in the child's surroundings and emotional contact.
- (9) The wishes of the child's family, extended family, and other interested persons.
- (10) Notify the parent, guardian or custodian of the child, and other interested parties of the decision regarding transfer. Notification to parent, guardian or custodian shall be by registered mail, addressee only, return receipt requested.

If the Judge of the Tribal Court shall determine that the transfer is in the best interests of the child, the Judge shall file or cause to be filed a petition with the referring court for transfer of jurisdiction to the Tribal Court.

If the Judge of the Tribal Court shall determine that the transfer is not in the best interests of the child, the Judge shall then determine whether, without transfer, the Court should intervene in the proceedings in the referring court, and if so, cause such intervention procedures to be initiated.

The Judge of the Tribal Court shall complete the above duties within ten (10) business days after receiving the notice of referral, unless request has been made, in

writing by registered mail, for 20 day extension as provided in the Indian Child Welfare Act.

If a notice that the Tribe wishes to intervene is sent to the referral court, the Judge of the Tribal Court shall immediately notify Social Services and order that agency to file a petition at the earliest practicable date, to begin adjudication hearing or disposition hearing.

§3-1-112 Emergency Custody of Child.

If it appears, from an affidavit or sworn statement presented to the Tribal Judge, that the welfare of the child requires immediate protection the Judge may endorse an emergency order for placement of the child in a facility or with an agency as designated by the Court.

If it appears that a child is in danger for whatever reason and the Court is unavailable to issue an emergency order, an officer of the Court including a police officer, a probation officer or a social worker may make an emergency removal of a child. The individual removing the child shall notify Tribal Social Services immediately upon removal and Social Services shall make arrangements for appropriate medical shelter or foster care if such removal is deemed necessary for the welfare of that child.

Such removals shall be done on an emergency basis only. Tribal Social Services shall post of list of emergency foster homes or shelters at the Fort Totten Police Department and shall make available a telephone number that provides at least one caseworker on call and available for consult 24 hours a day for emergency situations. The officer and/or worker who makes an emergency removal of a child shall submit a written report on the incident to Tribal Social Services and the Tribal

Court within 24 hours of the removal non-inclusive of weekends and holidays.

Tribal Social Services shall file a petition, a copy of the report and an affidavit within 72 hours of the actual removal. The affidavit shall set forth the findings of the Social Services investigation into the case and the basis for Social Services request for temporary custody.

At that time, the Tribal Court may review the petition, reports, and affidavits and consider any testimony. If the Court finds that the child is imminent danger, the Court may issue a Temporary Custody Order ex parte. Said ex parte Order shall be for not more than 30 days. The Court shall cause a copy of the ex parte order and notice to be given to necessary parties and shall have a full hearing on the matter within the 30 day period.

§3-1-113 Termination of Emergency Removal.

In no case shall emergency removal without a court order extend beyond 72 hours, excluding weekends and holidays. At the expiration of this period, the Court shall cause the child to be returned to the child's parent or guardian, or shall order Tribal Social Services to file a petition requesting that the child be found deprived, delinquent or unruly and requesting temporary custody of the child.

§3-1-114 Permanent Planning.

Permanent planning is based on the premise that each child has a need and right to a permanent home. In accordance with the Indian Child Welfare Act, the primary goal of permanency planning is the maintenance of the family and reunification of the biological family.

Upon placement of the child outside of the child's home, Social Services or any other agency designated by the Court, shall establish a case plan directed at correcting the causes of the child's removal and focus on reunification of the family if possible.

Such plan shall be reviewed by the social worker, and biological parents within a three-month period of time and at three-month intervals thereafter. The court may request a review of the plan at any time. At this review, the agency shall consider the progress of the service plan, discuss the plan with and allow meaningful input by the child's parent, guardian or custodian and modify the plan as needed.

At the end of a two year period of time from the date of placement, a permanent plan for the child's custody shall be in place for the child. If a permanent plan is not in effect the Court must be shown just cause as to why a permanent plan should not be put into effect within three months, and steps shall be implemented to complete the permanent plan within that three-month period of time.

If a preponderance of the evidence demonstrates that the biological parent(s) or legal guardian or custodian will not or cannot make changes necessary for the reunification of the family at any time prior to two years of placement of the child, the court must be shown cause as to why a permanent plan regarding the child's custody should not be put into effect within three months and steps shall be implemented to complete the permanent plan within three months of time.

§3-1-115 Plan requirements.

The case plan shall contain:

- (1) A brief social and family history;
- (2) A brief statement of the causes of the court exercising jurisdiction over the case;
- (3) The specific treatment programs the family is required to complete, their duration, and what is expected to be accomplished.
- (4) The specific actions the parents, guardian or custodian or child should be ordered to do or refrain from doing and the reasons therefore.
- (5) The specific treatment or other social services offered by the Tribe or other agencies, which the family should be required to accept.
- (6) The person or agency to be vested with custody of the child if the child cannot remain in his own home (the foster care address should be listed), and a detailed plan describing how and when the child will be returned to the home, if that is the goal, under supervision and when the court supervision should cease.
- (7) The goals of the plan whether that be reunification, independent living, guardianship or adoption.
- (8) The case plan shall be filed with the court and a copy delivered to all parties at the earliest opportunity.

§3-1-116 Order of preference.

The order of preference for pre-adoptive home shall be the same for foster care placement preference. The

preference for adoptive placements in absence of good cause to the contrary shall be:

- (1.) a member of the child's extended family;
- (2.) other members of the child's tribe;
- (3.) other Indian families;
- (4.) Non-Indian families.

Legal Guardianship, in the absence of good cause to the contrary, shall have the same order of preference.

§3-1-117 Factors in placement.

In all cases, the child placement agency shall place the child in the least restrictive alternative and according to the best interests of the child. The child's safety shall be of paramount importance.

CHAPTER 4: REPORTING CHILD ABUSE AND NEGLECT

§4-1-101 Purpose.

It is the purpose of this chapter to protect the health and welfare of children by encouraging the reporting of abused or neglected children and to encourage the provision of services which adequately provide for the protection and treatment of abused and neglected children and to protect them from further harm.

§4-1-102 Basis for Report.

Persons who have reasonable cause to suspect that a minor child has been abused or neglected shall report the abuse or neglect to the social services or any other agency designated by the Tribe. Social Services shall then forward a copy of the report to the child protection team.

§4-1-103 Child Protection Team.

The Tribal, Federal or State Social Services agency, in cooperation with IHS and BIA shall develop, maintain and coordinate the services of a multidisciplinary child protection team. The team may be composed of representatives of appropriate health, mental health, social services, educational, legal and law enforcement agencies.

The team shall be convened to supplement the single intake and protective services activities of the Tribal, Federal or State Social Services agency. Social Services shall be responsible in ensuring that the team receives the report of abuse or neglect. Social services shall bear the responsibility to investigate each and every report of

abuse and neglect in accordance with this Code and other applicable regulations. Social Services shall work in cooperation and in conjunction with the team. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cases of child abuse or neglect or sexual abuse of a child pursuant to this Code. The role of the team shall be to support the Social Services agency in providing services to abused and exploited children upon referral as deemed by the team to be necessary and appropriate for such children. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that the team may be capable of providing include, but are not limited to the following:

- (1) Medical diagnosis and evaluation services, including provision or interpretation of x-rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto: and
- (2) Telephone consultation services in emergencies and in other situations; and
- (3) Medical evaluation related to abuse or neglect, as defined by department policy or rule; and
- (4) Such psychological and psychiatric diagnosis and evaluation services for the child, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child abuse or neglect case, as a child protection team may determine to be needed; and
- (5) Short-term psychological treatment. It is the intent of the Tribe that short-term psychological treatment be limited to no more than six months

in duration after treatment is initiated, except that the appropriate social services administrator may authorize such treatment for individual children beyond this limitation if he/she deems it appropriate.

- (6) Case staffing to develop, implement, and monitor treatment plans for a child whose case has been referred to the child protection team. The team may provide consultation on any other child who has not been referred to it, but who is alleged or is shown to be abused, which consultation shall be provided at the request of the appropriate social services agency or at the request of any other professional involved with a child, his parent(s), guardian (s), custodian(s), or other care givers. A social services representative shall attend and participate in all such child protection team case staffings, consultations, or staff activities involving a child.
- (7) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.
- (8) Such training services for program and other department employees as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse and neglect cases.
- (9) Educational and community awareness campaigns on child abuse and neglect in an effort to enable citizens more successfully to prevent, identify,

and treat child abuse and neglect in the community.

§4-1-103 Who Must Report.

The following individuals are mandated by this Code to report known or suspected child abuse or neglect. Any person who is a:

- (A) physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider;
- (B) teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, or bus driver employed by any tribal, federal, public or private school,
- (C) administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, federal, public or private school,
- (D) child day care worker, headstart teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker,
- (E) psychiatrist, psychologist, or psychological assistant,
- (F) licensed or unlicensed marriage, family or child counselor,
- (G) person employed in the mental health profession, or
- (H) law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency

who is responsible for enforcing statutes and judicial orders.

A failure to immediately report known or suspected abuse or neglect to the local child protective services agency shall be fined not more than \$5000.00 or imprisoned for not more than six months or both.

§4-1-104 Reporting Non-attendance of school.

Any person who is aware that any school age child is not attending school is obligated to notify the Tribal Social Services Committee of such non-attendance. The Tribal Social Services shall investigate every such complaint within 48 hours and take appropriate action to get the child into school if he is not attending. Tribal Social Services shall cooperate with school officials to protect the best interests of the child.

§4-1-105 Who is encouraged to Report.

Any individual who knows of or suspects a child to be abused or neglected is encouraged to file a report.

§4-1-106 Confidentiality of Reporter/ Immunity from legal liability.

Any person, other than the alleged perpetrator, acting in good faith in the making of any report of child abuse or neglect, or in providing protective services under this code, is held immune from any liability, civil or criminal, that otherwise might result.

For the purpose of this section, the good faith of any person mandated to report cases of child-abuse/neglect shall be presumed.

Any information regarding the source of the child abuse or neglect report shall be kept confidential, and identity of the reporter shall not be disclosed. Disclosing the identity of the reporter or any information regarding the source of the abuse or neglect shall result in a fine of not more than \$500.00 for each violation.

§4-1-107 Reporting.

All persons mandated or permitted to report cases of known or suspected child abuse shall immediately file oral and/or written reports surrounding the circumstances with the Bureau of Indian Affairs Social Services, Tribal Social Services for any child whose home is located on the Spirit Lake Reservation, or located on tribal jurisdiction.

In the event the child's family residence is not located on the reservation or on tribal jurisdiction, such report shall be filed with county Social Services Office.

§4-1-108 Penalty for not Investigating.

Any person required by this chapter to investigate a case of known or suspected child abuse or neglect who willfully fails to do shall be fined in an amount not to exceed five hundred (\$500.00) dollars with costs.

§4-1-109 Investigation of the Report.

The filing of a report of Child abuse or neglect shall cause an immediate investigation within twenty four (24) hours to begin by social services. Social Services and the child protection team shall respond promptly to report of alleged neglect, abuse of exploitation of the child to

determine validity of the report. The team shall assess the damage to child resulting from neglect or abuse.

Social Services or the team shall evaluate the risk of further injury to the child in the home and determine whether the child should remain in the home or whether emergency action is required. The team shall determine and identify the family problem or problems, which contributed to or resulted in neglect or abuse. The team shall evaluate the potential for treatment of the underlying factors to correct conditions and rehabilitate the family. The team shall plan and initiate a course of treatment calculated to stabilize and rehabilitate the family through services of the protective agency and use of other appropriate community resources and services to meet special needs of the children and the parents.

The team shall invoke the authority of the Tribal Court in situations where there is active resistance to child protective intervention or a need to immediately protect the child from serious physical or emotional harm. In the event Social Services Agency requires assistance in investigation process, this code directs law and order to assist with the investigation.

§4-1-110 Interviewing the child.

When validation of a report of child abuse, neglect, exploitation can be accomplished only through an interview with the child, this contact may take place in the school, hospital, other medical facility or child care facility, with private access to the child facilitated by the administrator/officer who is presumed acting in good faith.

§4-1-111 Disclosure of Information.

During the process of investigation, there may be a need to gather information reasonably necessary to the investigation such as school records, police records, medical records, photographs and records of other agencies.

Such information shall be requested of the administrative officer of the facility, with civil immunity afforded such administrator/officer who is presumed acting in good faith.

§4-1-112 Protective Custody by a Physician.

Any physician examining a child with respect to whom abuse or neglect is known or suspected, after reasonable attempts to advise the parents, guardian or other person having responsibility for the care of the child, may if it appears that the child's health is in danger, keep the child in the custody of the hospital, or medical facility for a period of time not to exceed 96 hours. He must immediately notify the Tribal Court in order that child protective proceedings may be initiated

Emergency Medical Treatment and/or Examination

Upon the sworn testimony of one or more reputable physicians, the Tribal Court may order emergency medical for a child concerning whom a petition has been filed, pending the services of summons and petition upon his parents, guardian or custodian.

§4-1-113 Legal Authority.

Legal authority is granted by this code to the physicians to examine any child suspected to be physically/sexually abused and/or neglected without written

or verbal consent of the parent or custodian in the event parent or custodian is the alleged perpetrator or refuses such exam.

§4-1-114 Photographs and X-rays.

Any person or official required by this Code to report known or suspected child abuse, neglect or deprivation, may cause to be taken color photographs of the areas of injury visible on a child who is the subject of a report, and if indicated by medical consultation, cause to be performed a radiological examination of the child without the consent of the child's parents or guardian.

All photographs taken pursuant to this section of the Code shall be taken by law enforcement officials upon the request of any person or official required to report under this chapter.

All photographs and x-rays taken, or copies of them shall be made available to the Tribal Court at the time of the Court hearing.

§4-1-115 Severance clause.

In the event that any section under this Title is held to be invalid for any reason, the remaining sections shall remain in full force and effect.

SPIRIT LAKE CHILDREN'S CODE
CHAPTER 5: CUSTOMARY ADOPTION

5-1-101 Purpose

- (1) The purpose of this chapter is to provide culturally relevant legal procedures that will promote stability and both legal and psychological permanency for children who are in the care and control of Tribal Social Services; and
- (2) To facilitate adoptions in a manner that is consistent with the customs and traditions of the Spirit Lake Tribe and the Dakota culture; and
- (3) To provide foster children with legally recognized permanent parent(s) while still retaining the birth parents, relatives, and other significant people in the child's kinship network.

5-1-102 Application

This Chapter shall be applicable to all children within the care and control of Spirit Lake Tribal Social Services. This Chapter shall also provide the procedure for recognition of the customary relationship forged in accordance with Ecagwaya provisions set forth in Title 9 , Chapter 6 of the Spirit Lake Law and Order.

5-1-103 Court Procedures

Customary adoptions shall include a ceremony or process, considered by the Tribe to be binding. The ceremony or process that is conducted will be dependent upon the existing relationship between the child and the perspective adoptive parent(s), in accordance with Spirit Lake Tribal customs and traditions and evidenced by testimony of traditional leaders recognized by the community.

The following procedures shall be followed by parties who wish to obtain formal recognition of a Customary adoption by the Spirit Lake Tribal Court:

- (1) A petition shall be filed in Tribal Court to Suspend the Parental Rights of the biological parents or Petitioners shall file for recognition of a Voluntary Suspension of Parental Rights.
 - a. If the Petition to Suspend Parental Rights is involuntary the Court shall set the matter for hearing within ten (10) days of receipt of the Petition.
 - b. If the Petition to Suspend Parental Rights is voluntary the Court shall enter a finding that the parental rights have been voluntarily suspended based upon the filing of Voluntary Suspension of Parental Rights form(s); and
 - c. Suspension of Parental Rights shall mean that the biological parents would have no authority to make any legal decisions whatsoever with respect to the child, could not have the child returned upon demand and would not be legally obligated to provide any personal, emotional or financial support, including child support, for the child during the term of suspension.
 - d. The burden of proof in any such matters shall be a preponderance of the evidence.
- (2) Once the Court has issued an order formally suspending the rights of the biological parents, a Petition to Recognize Customary Adoption shall be filed in Tribal Court to recognize that a customary adoption has occurred. Upon receipt of a Petition to Recognize Customary Adoption the Court shall set the matter for a hearing within ten (10) days. At the hearing the Court shall consider, among other factors:
 - a. The best interests of the child; and
 - b. The child's enrollment; and
 - c. Documentation from Tribal Social Services attesting to the Customary Adoption; and
 - d. Home study findings and recommendations shall include criminal background checks on adoptive parents and household members; and
 - e. Voluntary Placement Agreement(s); and
 - f. Affidavits of Parental Consent.

(3) The Court shall, after having a formal hearing and upon receipt of sufficient evidence shall issue an Order Recognizing Customary Adoption. The Order shall make specific findings as to:

- a. The best interests of the child; and
- b. The child's enrollment; and
- c. The procedures followed during the customary adoption including any home studies, family meetings, voluntary agreements, parental consent, ceremonies, and witnesses thereto; and
- d. Consistency between procedures followed during the adoptive process and the customs and traditions of the Tribe; and
- e. Names of the adoptive parent(s) and recognition that a lawful and binding parent-child relationship has been established in accordance with the customs and traditions of the Tribe.
- f. The burden of proof in any such matters shall be a preponderance of the evidence.

(4) Once Order Recognizing Customary Adoption has been finalized and duly served the Adoptive parents shall be eligible to Petition the Court for a Name Change and upon Court approval of said name change the Court shall forward said Order to the Department of Vital Statistics for a birth record change.

5-1-104 Recognition of Foreign Customary Adoption Orders

The Spirit Lake Tribe shall recognize the Customary Adoptive Orders issued by other Tribal Courts so long as the Order demonstrates that the parties were provided due process and that the adoption was conducted in accordance with the customs and traditions of the issuing jurisdiction.

**SPIRIT LAKE TRIBE
RESOLUTION NO. A05-09-133**

WHEREAS, the Spirit Lake Tribe of Indians acting under a revised Constitution dated May 5, 1960, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and as subsequently amended July 17, 1969; May 4, 1974; April 16, 1976; and May 3, 1981; and

WHEREAS, the Constitution of the Spirit Lake Tribe generally authorizes and empowers the Spirit Lake Tribal Council to enact ordinances and to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

WHEREAS, a thorough review of proposed amendments to the Spirit Lake Children's Code demonstrates the current philosophies, traditions and customs of the of the Spirit Lake Tribe and are necessary to provide the Tribe with an appropriate legal framework to enable the Tribe to continue to develop and progress for the welfare and benefit of the entire Spirit Lake Tribe; and

WHEREAS, during General Assemblies in October 1, 2008 and November 25, 2008, the Spirit Lake Tribal Social Services introduced the Customary Adoption Code for public review and comment; and

WHEREAS, the Spirit Lake Tribal Council has carefully reviewed and hereby approves Chapter 5: Customary Adoption for inclusion into the Spirit Lake Tribe Children's Code, which is a part of the Spirit Lake Law and Order Code; and

WHEREAS, the Spirit Lake Tribal Council intends to have Chapter 5: Customary Adoption take effect as part of the Spirit Lake Children's Code 11 days after the date of this enactment with prospective application in the juvenile division of the Tribal Court to all causes of action arising 11 days after the date of this resolution; and

NOW THEREFORE BE IT RESOLVED, the Spirit Lake Tribal Council hereby approves and enacts Chapter 5: Customary Adoption and incorporates the same into the Spirit Lake Children's Code. Chapter 5 of the Spirit Lake Children's Code shall have prospective application to all causes of action arising 11 days after the date of this resolution. Further, the Spirit Lake Tribal Council directs a copy of this resolution and the Spirit Lake Law and Order Code and a copy of Chapter 5: Customary Adoption be forwarded on this day to the Superintendent of the Fort Totten Agency pursuant to the Spirit Lake Constitution and Bylaws.

**SPIRIT LAKE TRIBE
RESOLUTION NO. A05-09-133**


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CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Spirit Lake Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members, of whom five (5) were present, constituting a quorum for a Special Meeting, which was duly called and convened this 18^h day of June, 2009 and approved by an affirmative vote of three (3) in favor, none (0) opposed, none (0) abstaining, one (1) absent. The Secretary-Treasurer does not vote and the Chairman votes only in cases of a tie.



Justin Yankton
Secretary-Treasurer



Myra Pearson
Chairperson

LEGISLATIVE HISTORY
TRIBAL COUNCIL ACTION(S)

(To be completed by duly elected and authorized Representative of the Spirit Lake Tribal Council)

Title of Code or Ordinance: _____ Title 5: Customary Adoption _____

Recommendations of the Spirit Lake Law and Order Committee have been reviewed and considered and Council hereby opts to:

- ☐ Require edits or revisions prior to opening this Code or Ordinance for public comment
☒ Accept the Code or Ordinance as submitted and open the Code or Ordinance for official public comment.

Date(s) of Introduction to Community at Generally Assembly:

1st Reading/ Comment period:

Date: _____ 10-1-08 _____ Time: _____

Location: _____ General Assembly/ Blue Building Conference Room _____

2nd Reading/ Comment period:

Date: _____ 11-25-08 _____ Time: _____

Location: _____ General Assembly/ Blue Building Conference Room _____

Formal Action(s) of Tribal Council at the conclusion of the Public Comment:

- ☒ The Spirit Lake Tribal Council passed the Code/ Ordinance into law as is
(see resolution #A05-09-133 and attached code provision or ordinance)
- ☒ forwarded to the BIA on the __ day of _____, 20__
- ☐ The Spirit Lake Tribal Council did NOT pass the Code/ Ordinance into law
(see meeting minutes as dated _____ and attached code provision
or ordinance)
- ☐ The Code or Ordinance will be referred back to the Law and Order
Committee for further review and revisions
- ☐ The Code or Ordinance will not be referred for review or revision

Recorded this _____ day of _____, 20__

(Tribal Seal)

Secretary- Treasurer
Spirit Lake Tribal Council

**SPIRIT LAKE TRIBE
RESOLUTION NO. A05-09-133**

WHEREAS, the Spirit Lake Tribe of Indians acting under a revised Constitution dated May 5, 1960, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and as subsequently amended July 17, 1969; May 4, 1974; April 16, 1976; and May 3, 1981; and

WHEREAS, the Constitution of the Spirit Lake Tribe generally authorizes and empowers the Spirit Lake Tribal Council to enact ordinances and to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

WHEREAS, a thorough review of proposed amendments to the Spirit Lake Children's Code demonstrates the current philosophies, traditions and customs of the of the Spirit Lake Tribe and are necessary to provide the Tribe with an appropriate legal framework to enable the Tribe to continue to develop and progress for the welfare and benefit of the entire Spirit Lake Tribe; and

WHEREAS, during General Assemblies in October 1, 2008 and November 25, 2008, the Spirit Lake Tribal Social Services introduced the Customary Adoption Code for public review and comment; and

WHEREAS, the Spirit Lake Tribal Council has carefully reviewed and hereby approves Chapter 5: Customary Adoption for inclusion into the Spirit Lake Tribe Children's Code, which is a part of the Spirit Lake Law and Order Code; and

WHEREAS, the Spirit Lake Tribal Council intends to have Chapter 5: Customary Adoption take effect as part of the Spirit Lake Children's Code 11 days after the date of this enactment with prospective application in the juvenile division of the Tribal Court to all causes of action arising 11 days after the date of this resolution; and

NOW THEREFORE BE IT RESOLVED, the Spirit Lake Tribal Council hereby approves and enacts Chapter 5: Customary Adoption and incorporates the same into the Spirit Lake Children's Code. Chapter 5 of the Spirit Lake Children's Code shall have prospective application to all causes of action arising 11 days after the date of this resolution. Further, the Spirit Lake Tribal Council directs a copy of this resolution and the Spirit Lake Law and Order Code and a copy of Chapter 5: Customary Adoption be forwarded on this day to the Superintendent of the Fort Totten Agency pursuant to the Spirit Lake Constitution and Bylaws.

**SPIRIT LAKE TRIBE
RESOLUTION NO. A05-09-133**

Page 2

CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Spirit Lake Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members, of whom five (5) were present, constituting a quorum for a Special Meeting, which was duly called and convened this 18^h day of June, 2009 and approved by an affirmative vote of three (3) in favor, none (0) opposed, none (0) abstaining, one (1) absent. The Secretary-Treasurer does not vote and the Chairman votes only in cases of a tie.



Justin Yankton
Secretary-Treasurer



Myra Pearson
Chairperson

LEGISLATIVE HISTORY
TRIBAL COUNCIL ACTION(S)

(To be completed by duly elected and authorized Representative of the Spirit Lake Tribal Council)

Title of Code or Ordinance: Title 5: Customary Adoption

Recommendations of the Spirit Lake Law and Order Committee have been reviewed and considered and Council hereby opts to:

☐ Require edits or revisions prior to opening this Code or Ordinance for public comment

☒ Accept the Code or Ordinance as submitted and open the Code or Ordinance for official public comment.

Date(s) of Introduction to Community at Generally Assembly:

1st Reading/ Comment period:

Date: 10-1-08 Time: _____

Location: General Assembly/ Blue Building Conference Room

2nd Reading/ Comment period:

Date: 11-25-08 Time: _____

Location: General Assembly/ Blue Building Conference Room

Formal Action(s) of Tribal Council at the conclusion of the Public Comment:

☒ The Spirit Lake Tribal Council passed the Code/ Ordinance into law as is (see resolution #A05-09-133 and attached code provision or ordinance)

☒ forwarded to the BIA on the __ day of _____, 20__

☐ The Spirit Lake Tribal Council did NOT pass the Code/ Ordinance into law (see meeting minutes as dated _____ and attached code provision or ordinance)

☐ The Code or Ordinance will be referred back to the Law and Order Committee for further review and revisions

☐ The Code or Ordinance will not be referred for review or revision

Recorded this _____ day of _____, 20__

(Tribal Seal)

Secretary- Treasurer
Spirit Lake Tribal Council