

**TITLE V  
TRIBAL JUVENILE JUSTICE CODE**

**CHAPTER 1 SHORT TITLE, PURPOSE AND DEFINITIONS**

**Section 1. Short Title**

Title V (Chapters 1 through 29) shall be entitled "The Juvenile Justice Code" code).

**Section 2. Purpose**

- A. The Juvenile Justice Code shall be liberally interpreted and construed to fulfill the following expressed purposes:
1. 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 children coming within the provisions of this code;
  2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
  3. To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute therefore a program of supervision, care, and rehabilitation consistent with the protection of Community;
  4. To achieve the purposes of this code in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;
  5. To separate clearly in the judicial and other processes affecting children under this code the "juvenile offender" and the "family in need of services," and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children and families;
  6. 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 civil and other legal rights recognized and enforced;
  7. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and;
  8. To preserve and strengthen family ties whenever possible; to preserve and strengthen the child's cultural and ethnic identity wherever possible; and;
  9. To secure for any child removed from his home that care, guidance, and control as nearly equivalent as that which he should have been given by his parents to help him develop into a responsible, well-adjusted adult; and;
  10. To improve any conditions or home environment which may be contributing to his delinquency; and at the same time, and;

11. To protect the peace and security of the community and its individual residents from Juvenile violence or Law-breaking.
12. To provide a forum where an Indian child charged to be "delinquent" or a "status offender" in other jurisdictions may be referred for adjudication and/or disposition.

### Section 3. Definitions

#### A. As used in this code:

1. **"Adjudicatory Hearing"**: A proceeding in the juvenile court to determine whether a child has committed a specific "juvenile offense" or is a "child whose family is in need of services" as set forth in a petition.
2. **"Adult"**: An individual who is eighteen (18) years of age or older (see the definition of "transfer to tribal court").
3. **"Alcohol or Substance Abuse Emergency Shelter or Halfway House"**: An appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.
4. **"Apardon"**: When a parent leaves a child without communication or fails to support a child and there is no indications of the parent's willingness to assume his parental role(s) for a period exceeding one (1) year.
5. **"Child"**: An individual who is less than eighteen (18) years old (see the definition of "transfer to tribal court").
6. **"Consent Decree"**: A court order which suspends a "juvenile offender" or "family in need of services" proceeding prior to adjudication and continues the child or the family under supervision under terms and conditions negotiated with the juvenile counselor and agreed to by all parties.
7. **"Counsel"**: An advocate or attorney.
8. **"Court" or "Juvenile Court"**: The Juvenile Court of the Santee Sioux Tribe.
9. **"Curriculum Change"**: Includes but is not necessarily limited to: (a) a change in a child's instructor, if available; (b) a change in the scheduling of a child's classes, if available; (c) reassignment of a child into another class section, if available; (d) a change in the content of a child's course of instruction, if available; and (e) a change in the child's school, if available. (See the definition of "family in need of services.")
10. **"Custodian"**: A person, other than a parent or guardian, to whom legal custody of the child has been given.

11. **"Delinquent Act"**: An act, which, if committed by an adult, is designated a crime under the Santee Sioux Tribal Law and Order Code.
12. **"Detention"**: Exercising authority over a child by physically placing them in any juvenile facility designated by the court and restricting the child's movement in that facility.
13. **"Dispositional Hearing"**: A proceeding in the juvenile court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense(s)" or is a child whose "family is in need of services."
14. **"Domicile"**: A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
15. **"Emergency Foster Home"**: Placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night.
16. **"Family in Need of Services" Means:**
  - a. A family whose child, while subject to compulsory school attendance, is habitually and without justification absent from school; or
  - b. A family wherein there is allegedly a breakdown in the parent-child relationship based on the refusal of the parents, guardian, or custodian to permit a child to live with them or based on the child's refusal to live with his parents, guardian or custodian; and
  - c. In either of the foregoing situations:
    - i. The conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the juvenile court is essential to provide the treatment, rehabilitation or services needed by the child or his family; or
    - ii. The child or his family are in need of treatment, rehabilitation or services not presently being received and the intervention of the juvenile court is essential to provide this treatment, rehabilitation or services.

(See chapters 17 through 29 of this code for specific "family in need of services" procedures).

17. **"Foster Home"**: Placement with a family whose home has been licensed to accept placement of children under the age of eighteen (18).
18. **"Guardian"**: A person assigned by a court of law, other than a parent, having the duty and authority to provide care, shelter, and control of a child.
19. **"Group Home"**: A residential detention facility which is licensed to care for children under the age of eighteen (18).
20. **"He/His"**: The use of he/his means he or she, his or her, and singular includes plural.
21. **"Interim Care"**: The status of temporary physical control of a child whose family is "in need of services" (see the definition of "family in need of services").
22. **"Juvenile Counselor"** The juvenile counselor or the juvenile probation officer or any other appropriately titled person who performs the duties and responsibilities set forth in Chapter 7 of this title.
23. **"Juvenile Court"**: The Santee Sioux Tribal Court when exercising jurisdiction under this Code.
24. **"Juvenile Court Judge"**: Any judge of the Santee Sioux Tribal Court when exercising jurisdiction under this Code.
25. **"Juvenile Facility"**: Any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, and shelter homes (see individual definitions).
26. **"Juvenile Offender"**: A child who commits a "juvenile offense" prior to the child's eighteenth (18) birthday.
27. **"Juvenile Offense"**: A criminal violation of the Law and Order Code of the Tribe which is committed by a person who is under the age of eighteen (18) at the time the offense was committed.
28. **"Juvenile Presenter"**: The juvenile presenter or juvenile presenting officer or juvenile petitioner or any other person who performs the duties and responsibilities set forth in Chapter 7, Section 3 of this Code.
29. **"Juvenile Shelter Care Facility"**: Any juvenile facility other than a secure juvenile detention facility (see the definitions of "juvenile facility" and "secure juvenile detention facility").
30. **"Least Restrictive Alternative"**: This term in the Code directs the Court to select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonable related to the

Court's objectives and must be the restrictive way of achieving that objective.

31. **"Minor"**: a) A person under eighteen (18) years of age who is not emancipated; b) A person eighteen (18) years of age or older concerning whom proceedings are commenced in Juvenile Court prior to his eighteenth (18th) birthday. (c) A person eighteen (18) years of age or older who is under the continuing jurisdiction of the Juvenile Court.
32. **"Minor-in-need-of-care"**: A minor who: a) has no parent, guardian or custodian available and will to care for him; or b) has been subjected to injury, sexual abuse, or negligent treatment or maltreatment by a person who is legally responsible for the minor's welfare under circumstances which indicate that the minor's health, welfare and safety are harmed thereby. "Negligent" treatment or maltreatment shall mean an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the minor's health, welfare and safety; or c) Has not been or cannot be provided with adequate food clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well being.
33. **"Parent"**: Includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
34. **"Probation"**: A legal status created by court order whereby a "juvenile offender" is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the court. A "juvenile offender" on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.
35. **"Protective Supervision"**: A legal status created by court order under which a "juvenile offender" is permitted to remain in his home or is placed with a relative or other suitable individual and supervision and assistance is provided by the court, a health or social services agency or some other agency designated by the court.
36. **"Restitution"**: Financial or other reimbursement by the child to the victim, and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to persons, and lost wages resulting from injury, which are a direct and proximate result of the delinquent act. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.
37. **"Secure Juvenile Detention Facility"**: A facility which (a) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (b) restricts the movement of those placed in the locked

cells or rooms, and (c) complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et seq.

38. **"Shelter Home"**: A residential facility which is licensed to care for children under the age of eighteen (18) in an unrestricted setting.
39. **"Time"**: In computing any period of time prescribed under this Title, the day of the act or even from which the designated period of time to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a Legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in computation.
40. **"Transfer to Tribal Court"**: Transferring a child from the jurisdiction of the juvenile court to the jurisdiction of the tribal court according to chapter 4 of this title which results in the termination of the juvenile court's jurisdiction over that offense.
41. **"Tribal Court"**: The adult court for the Santee Sioux Tribe.
42. **"Other Terms"**: Any term not defined in the Title shall be understood to have the meaning ascribed to it in the Definitions section of the Indian Child Welfare Act, P.L. 95-608, 25 U.S.C. 1901 et seq.

## **CHAPTER 2 THE COURT SYSTEM**

### **Section 1. Establishment**

There is hereby established for the Santee Sioux Tribe of the Santee Indian Reservation a Court to be known as the Santee Sioux Juvenile Court.

### **Section 2. Judges**

The Santee Sioux Tribal Juvenile Court shall consist of judge who shall be appointed by the Chief Judge from among all the judges of the Santee Sioux Tribal Court.

### **Section 3. Powers and Duties**

No adjudication upon the status of any child in the jurisdiction of the Juvenile Court shall be deemed criminal or be deemed a conviction of crime, unless the Juvenile Court refers the matter to the adult Santee Sioux Tribal Court. Therefore, the disposition of a child or of evidence given shall not be admissible as evidence against the child in any proceedings in another court.

### **Section 4. Authority of Court**

The Juvenile Court is authorized to cooperate fully with any federal, state, tribal, public or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purposes of this Code.

## **Section 5. Appointment of Probation Officers**

The Santee Sioux Tribal Council shall appoint such probation officers, clerks and other persons as may be required to carry out the work of the Court. Probation officers of the adult Santee Sioux Tribal Court may serve also for the Juvenile Court, or other persons so appointed may be appointed to serve with or without pay.

## **Section 6. Duties and Powers of Probation Officers**

The probation officer shall make preliminary inquiries and social studies, and such other investigations as the judge may direct, and shall keep written records of such investigations or studies, and shall make reports to the judge as provided in this Code or as directed by the judge. Upon the placing of any person upon probation or under protective supervision, the probation officer shall explain to the child, if old enough, and the parents and other persons concerned, what the meaning and conditions of the probation or protective custody are and shall give them the necessary instructions. The probation officer shall keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report thereon to the judge as he may direct. Probation officers shall use all suitable methods to aid persons on probation or under protective supervision to bring about improvements in their conduct or conditions, and shall perform such other duties in connection with the care, custody or transportation of children as the Court may require. Probation officers shall have the powers of police officers for purposes of this Juvenile Code but shall, whenever possible, refrain from exercising such powers except in urgent situations in which a regular police officer is not immediately available.

## **Section 7. Tribal Officer**

Any tribal police or law enforcement officer may carry out the duties of "officer" under this Title. An officer shall represent the people of the Santee Sioux Tribe at all proceedings herein.

## **Section 8. Guardian Ad Litem**

The Juvenile Court, under the proceeding authorized by this Title may appoint, for the purposes of that proceeding, a guardian ad Litem for a minor where the Court finds that the minor does not have natural or adoptive parent, guardian or custodian willing and able to exercise effective guardianship.

## **Section 9. Order**

When a minor is transferred to adult Tribal Court, the Juvenile Court shall issue a written transfer order containing reasons for its order. The transfer order constitutes a final order for purposes of appeal.

## **Section 10. Indian Child Welfare Act**

It is intended that the provisions of this Title be consistent with and carry out the purposes of the Indian Child Welfare Act, 25 U.S.C. §§1901, et seq. All applicable provisions of that Act shall be deemed to be incorporated by reference in this Title and in the event of conflict between provisions of that Act and this Title, provisions of that Act shall apply.

## **CHAPTER 3 JURISDICTION OF THE JUVENILE COURT**

### **Section 1. Exclusive Original Jurisdiction**

There is hereby established for the Santee Sioux Tribe of the Santee Reservation a court to be known as the Santee Sioux Juvenile Court. The juvenile court has exclusive original jurisdiction over all proceedings established in this code in which an Indian child residing in or domiciled on the reservation is:

#### **A. Juvenile Offender**

Alleged to be a "juvenile offender" as defined in Chapter 1, Section 3 of this Title, unless the juvenile court transfers jurisdiction to the tribal court according to Chapter 4 of this Title; or

#### **B. Family In Need of Services**

Alleged to be a child whose family is "in need of services" as defined in Chapter 1, Section 3 of this Title.

## **CHAPTER 4 TRANSFER TO TRIBAL COURT**

### **Section 1. Transfer Petition**

An officer of the court may file a petition requesting the juvenile court to transfer the child to the jurisdiction of the adult tribal court if the child is sixteen (16) years of age or older and is alleged to have committed an act which would have been considered a serious crime if committed by an adult.

### **Section 2. Transfer Hearing**

The juvenile court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to tribal court. The transfer hearing shall be held within ten (10) days of receipt of the petition by the court. Written notice of the time, place and purpose of the hearing is to be given to the child and the child's parent, guardian, or custodian at least three (3) days before the hearing. At the commencement of the hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights under Chapter 8, of this Title.

### **Section 3. Deciding Factors in Transfer Hearing**

- A. The following factors shall be considered when determining whether to transfer jurisdiction of the child to tribal court
1. The nature and seriousness of the offense with which the child is charged;
  2. The nature and condition of the child, as evidenced by his age, mental and physical condition; and
  3. The past record of offenses.



#### **Section 4. Standard of Proof in Transfer Hearing**

- A. The juvenile court may transfer jurisdiction of the child to tribal court only if the court finds clear and convincing evidence that both of the following circumstances exist:
1. There are no reasonable prospects for rehabilitating the child through resources available to the juvenile court; and
  2. The offense(s) allegedly committed by the child evidence a pattern of conduct which constitutes a substantial danger to the public.

#### **Section 5. Pre-Hearing Report in Transfer Proceedings**

At least three (3) days prior to the transfer hearing, the petitioner shall prepare a pre-hearing report for the juvenile court and make copies of that report available to the child and the child's advocate, parent, guardian or custodian. The pre-hearing report shall address the issues described in Chapter 4, Section 3 and Section 4 above.

#### **Section 6. Written Transfer Order**

A child may be transferred to tribal court only if the juvenile court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with Section 4 above. This written order terminates the jurisdiction of the juvenile court over the child with respect to the juvenile offense(s) alleged in the petition. No child shall be prosecuted in the tribal court for a criminal offense unless the case has been transferred to tribal court as provided in this chapter.

### **CHAPTER 5 JUVENILE COURT PROCEDURE**

#### **Section 1. Non-Criminal Proceedings**

No adjudication upon the status of any child in the jurisdiction of the juvenile court shall be deemed criminal or be deemed a conviction of a crime unless the juvenile court transfers jurisdiction to the tribal court according to Chapter 4 of this code.

#### **Section 2. Use in Other Proceedings**

The adjudication, disposition, and evidence presented before the juvenile court shall be inadmissible as evidence against the child in any proceeding in another court, including the tribal court.

#### **Section 3. Rules of Procedure**

The procedures in the juvenile court shall be governed by the rules of procedure for the tribal court which are not in conflict with this code.

## **CHAPTER 6 RELATIONS WITH OTHER AGENCIES**

### **Section 1. Cooperation and Grants**

The juvenile court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aid to carry out the purposes of this code. This authority is subject to the approval of the tribal council if it involves an expenditure of tribal funds.

### **Section 2. Social Services**

The juvenile court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense;

### **Section 3. Contracts**

The juvenile court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the tribal council for the care and placement of children whose status is adjudicated by the juvenile court subject to the approval of the tribal council before the expenditure of tribal funds;

### **Section 4. Transfers from Other Courts**

The juvenile court may accept or decline transfers from other states or tribal courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition.

## **CHAPTER 7 JUVENILE COURT PERSONNEL**

### **Section 1. Juvenile Court Judge**

- A. **Appointment**  
The juvenile court judge(s) shall be appointed or elected in the same manner as the tribal court judge(s).
- B. **Qualifications**  
The general qualifications for juvenile court judge(s) shall be the same as the qualifications for tribal court judge(s). In addition, juvenile court judges shall have significant prior training and/or experience in juvenile matters.
- C. **Powers and Duties**  
In carrying out the duties and powers specifically enumerated under this juvenile justice code, judges of the juvenile court shall have the same duties and powers as judge of the tribal court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, the power to issue subpoenas, and the power to issue search warrants.

- D. **Disqualification or Disability**  
The rules on disqualification or disability of a juvenile court judge shall be the same as those rules that govern tribal court judges.

## **Section 2. Juvenile Advocate/Juvenile Probation Officer**

- A. **Appointment**  
The court shall appoint juvenile counselors or juvenile probation officer(s) to carry out the duties and responsibilities set forth in this code. The chief judge of the tribal court shall certify annually to the tribal council the number of qualified juvenile counselor(s) or juvenile probation officer(s) needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile counselors" or "juvenile probation officers" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.
- B. **Qualifications**  
The juvenile counselors and probation officers must have an educational background and/or prior experience in the field of delivering social services to youth.
- C. **Resource Development**  
The juvenile court counselor shall identify and develop resources on the reservation, in conjunction with the juvenile court and the tribal council, to enhance each tribal child's potential as a viable member of the tribal community.
- D. **Duties**
1. Make investigations as provided in this code or as directed by the court;
  2. Make reports to the court as provided in this code or as directed by the juvenile court;
  3. Conduct informal adjustments;
  4. Provide counseling services;
  5. Perform such other duties in connection with the care, custody or transportation of children as the court may require.

## **Section 3. Juvenile Presenter**

- A. **Appointment**  
The court shall appoint juvenile presenters to carry out the duties and responsibilities set forth in this code. The chief judge of the tribal court shall certify annually to the tribal council the number of qualified juvenile presenters needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile presenters" or "juvenile presenting officers" or "juvenile petitioners" or any other title which

the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

**B. Qualifications**

The qualifications of the juvenile presenter(s) shall be the same as the qualifications for tribal court personnel and a presenter should have prior significant experience working for a court system, social services agency or educational agency.

**C. Duties**

1. File petitions with the court as provided in this code;
2. Represent the tribe in all proceedings under this code; and
3. Perform such other duties as the court may order.

**Section 4. Additional Court Personnel**

The court may set qualifications and appoint additional juvenile court personnel such as guardians ad litem, court appointed special advocates (CASAs), juvenile advocates, and/or referees whenever the court decides that it is appropriate to do so.

**CHAPTER 8 RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS**

**Section 1. Privilege Against self-incrimination**

A child alleged to be a "juvenile offender" or a child whose family is "in need of services" shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the child is taken into custody shall not be questioned except to determine identity, to determine the name(s) of the child's parent or legal custodian, or to conduct medical assessment or treatment for alcohol or substance abuse under Chapter 14, Section 3 of this code when the child's health and well-being are in serious jeopardy.

**Section 2. Admissibility of Evidence**

In a proceeding on a petition alleging that a child is a "juvenile offender" or a child whose family is "in need of services":

- A. An out-of-court statement that would be inadmissible in a criminal matter in tribal court shall not be received in evidence;
- B. Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition;
- C. Unless advised by counsel, the statements of a child made while in custody to a juvenile counselor, including statements made during a preliminary inquiry, informal adjustment or pre-dispositional study, shall not be used against the child in determining the truth of allegations of the petition;

- D. A valid out-of-court admission or confession by the child is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence;
- E. Neither the fact that the child has at any time been a party to a "family in need of services" proceeding nor any information obtained during the pendency of such proceedings shall be received into evidence.

### **Section 3. Fingerprinting and Photographs**

A child in custody shall not be fingerprinted nor photographed for criminal identification purposes except by order of the juvenile court. If an order of the juvenile court is given, the fingerprints or photographs shall be used only as specified by the court.

### **Section 4. Right to Retain Counsel**

- A. In "juvenile offender" and "family in need of supervision" cases, the child and his parent, guardian or custodian shall be advised by the court and/or its representative that the child may be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the court in its discretion may appoint counsel for the child.

### **Section 5. Explanation of Rights**

- A. At his first appearance before the juvenile court, and at each subsequent appearance before the court, the child alleged to be a "juvenile offender" or a child whose family is "in need of services" and the child's parent, guardian or custodian shall be informed by the court of the following:
  - 1. The allegations against him;
  - 2. The right to an advocate or attorney at his own expense;
  - 3. The right to testify or remain silent and that any statement made by him may be used against him;
  - 4. The right to cross-examine witnesses;
  - 5. The right to subpoena witnesses on his own behalf and to introduce evidence on his own behalf, and
  - 6. The possible consequences if the allegations in the petition are found to be true.

## **CHAPTER 9 JUVENILE OFFENDER--TAKEN INTO CUSTODY**

### **Section 1. Taking A Child Into Custody**

- A. A law enforcement officer may take a child into custody when:
  - 1. The child commits a "juvenile offense" in the presence of the officer; or

2. The officer has a reasonable suspicion to believe a "juvenile offense" has been committed by the child being detained; or
3. An appropriate custody order or warrant has been issued by the court authorizing the taking of a particular child.

**B. Complaint**

1. A Complaint may be filed by a the juvenile presenter, probation officer or tribal attorney and shall contain:
  - a. A citation to the Santee Sioux Tribal Code provision which the minor is alleged to have violated; and
  - b. Name, age and address of the minor who is subject of the complaint, if known, and
  - c. A plain and concise state of the facts upon which allegations are based, including the date, time and location at which the alleged facts occurred.

**C. Warrant**

1. The juvenile court may issue a warrant in accordance with this Code directing that a minor be taken into custody if the Juvenile Court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

**Section 2. Provision of Rights**

- A. At the time the child is taken into custody as an alleged "juvenile offender," the arresting officer shall give the following warning:
1. The child has a right to remain silent;
  2. Anything the child says can be used against the child in court;
  3. The child has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning, and;
  4. The child has a right to, an advocate or, attorney at his own expense.

**Section 3. Release or Delivery from Custody**

- A. A law enforcement officer taking a child into custody shall give the warnings listed in Chapter 9, Section 2 above to any child he takes into custody prior to questioning and then shall do one of the following:
1. Release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or
  2. Release the child to a relative or other responsible adult tribal member if the child's parent, guardian, or custodian consents to the release. (If the child is twelve (12) years of age or older, the child and his parent, guardian or custodian must both consent to the release); or

3. Deliver the child to the juvenile counselor, or to a juvenile facility as designated by the court, or to a medical facility if the child is believed to need prompt medical treatment, or is under the influence of alcohol or other chemical substances to the point of requiring medical treatment.

#### **Section 4. Review by Juvenile Counselor or Juvenile Facility**

- A. The juvenile counselor or juvenile official at the juvenile facility (as designated by the court) shall, immediately upon delivery of the child for custody, review the need for continued custody and shall release the child to his parent, guardian or custodian in order to appear at the hearing on a date to be set by the court, unless:
  1. The act is serious enough to warrant continued detention and;
  2. There is probable cause to believe the child has committed the offense(s) alleged, and;
  3. There is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings; or
  4. There is reasonable cause to believe that the child will commit a serious act causing damage to person or property.
- B. If a minor is not released to his parent, guardian or custodian, the probation officer, juvenile presenter, or appropriate court personnel shall immediately explore alternative pre-adjudication custody arrangements and prepare recommendations for temporary care and custody for presentation at the custody hearing.

#### **Section 5. Notification of Family**

If a child is taken into custody and not released to his parent, guardian, or custodian, the person taking the child into custody shall immediately attempt to notify the child's parent, guardian, or custodian. All reasonable efforts shall be made to advise the parent, guardian, or custodian of the reason for taking the child into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent. If notification cannot be provided to the child's parent, guardian, or custodian, the notice shall be given to a member of the extended family of the parent, guardian, or custodian and to the child's extended family.

#### **Section 6. Approved Facilities- Below Sixteen (16) Years**

- A. A minor alleged to be a juvenile offender may be detained, pending Court hearings, in the following places:
  1. A foster care facility on the Reservation approved by the Tribe; or
  2. A Secure Juvenile Detention Facility or Juvenile Shelter Care Facility approved by the Tribe; or
  3. A private family home on the on the Reservation approved by the Tribe; or

4. An Alcohol or substance abuse emergency or shelter or Halfway House approved by the Tribe.

### **Section 7. Criteria for Selecting Juvenile Facility**

A. If the juvenile counselor or juvenile official at the juvenile facility (as designated by the court) determines that there is a need for continued custody of the child in accordance with Chapter 9, Section 4 of this Title, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

1. A child may be detained in a Secure Juvenile Detention Facility (as defined in Chapter 1, Section 3) as designated by the court only if one or more of the following conditions are met:
  - a. The child is a fugitive from another jurisdiction wanted for a felony offense; or
  - b. The child is charged with murder, sexual assault, or a crime of violence with a deadly weapon or which has resulted in a serious bodily injury; or
  - c. The child is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention; or
  - d. The child is charged with committing one of the following acts which would be an offense if the child were an adult: vehicular homicide, abduction, rape, arson, burglary or robbery or
  - e. The child is already detained or on conditioned release for another "juvenile offense,"
  - f. The child has a demonstrable recent record of willful failures to appear at juvenile court proceedings; or
  - g. The child has made a serious escape attempt; or
  - h. The child requests in writing that he be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child
2. A child may be housed in a Juvenile Shelter Care Facility (as defined in Chapter 1, Section 3 of this Title) as designated the court only if one of the following conditions exist:
  - a. One of the conditions described in Chapter 9, Section 7 (A) (1) above exists; or
  - b. The child is unwilling to return home or to the home of an extended family member; or
  - c. The child's parent, guardian, custodian, or an extended family member is unavailable, unwilling, or unable to permit the child to return to his home;



- d. There is an evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the child.
3. A child may be referred to an Alcohol or Substance Abuse Emergency Shelter or Halfway House (as defined in Chapter 1, Section 3 of this Title) if it is determined that there is a need for continued custody of the child in accordance with Chapter 9, Section 4 and 1) the child has been arrested or detained for a "juvenile offense" relating to alcohol or substance abuse, 2) there is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the court; and 3) the child is not deemed to be a danger to himself or others.

## **CHAPTER 10 JUVENILE OFFENDER--DETENTION HEARING**

### **Section 1. Requirement of Detention Hearing**

Where a child who has been taken into custody is not released, a detention hearing shall be convened by the court within forty-eight (48) hours, exclusive of holidays and weekends, of the child's initial detention under Chapter 9 of this Title. Such hearing may be conducted telephonically if circumstances require.

### **Section 2. Purpose of Detention Hearing**

- A. The purpose of the detention hearing is to determine:
  1. Whether probable cause exists to believe the child committed the alleged "juvenile offense"; and
  2. Whether continued detention is necessary pending further proceedings.

### **Section 3. Notice of Detention Hearing**

- A. Notice of the detention hearing shall be given to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set. The notice shall contain:
  1. The name of the court;
  2. The title of the proceedings;
  3. A brief statement of the "juvenile offense" the child is alleged to have committed; and
  4. The date, time, and place of the detention hearing.
- B. If the minor's parent, guardian or custodian has not been contacted, the Juvenile Court or the probation officer/ juvenile presenter shall make immediate and recurring efforts to inform them that the minor has been taken into custody and the minor shall be released to the parent, guardian or custodian unless detention or shelter care is immediately necessary if the minor is not released to his parent, guardian or custodian, the Juvenile Court or probation officer shall place the

minor in detention or shelter care or approved facility pending the custody hearing.

#### **Section 4. Detention Hearing Procedure**

- A. Detention hearings shall be conducted by the juvenile court separate from other proceedings. At the commencement of the detention hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights under Chapter 8 of this Title, including the right of the minor, his parent, guardian or custodian their right to retain counsel at their own expense. The judge may continue the proceeding if it appears that additional time is necessary to obtain counsel. The minor his counsel, and his parent, guardian or custodian shall have the opportunity to be heard on his and their own behalf. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the court shall be admitted.

#### **Section 5. Standards to be Considered at Detention Hearing**

The court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in Chapter 9, Section 4 and Section 6 of this Title.

#### **Section 6. Finding at Detention Hearing**

- A. The minor shall be released to his parent, guardian, or custodian and ordered to appear at the hearing on a date and time to be set by the Court, unless:
1. The act is serious enough to warrant continued detention or shelter care; and
  2. There is a reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings; or
  3. There is reasonable cause to believe that the minor will commit a serious act causing damage to personal property.
- B. The Juvenile Court may release the minor under Title to a relative or other responsible adult Santee Sioux Tribal Member if the parent or guardian of the minor consents to the release. If the minor is twelve (12) years of age or older, the minor and his parent, guardian, or custodian must both consent to the release.

#### **Section 7. Rehearing the Detention Matter**

If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the hearing the court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

## **CHAPTER 11 JUVENILE OFFENDER--INITIATION OF PROCEEDINGS**

### **Section 1. Investigation by the Juvenile Presenter/Probation Officer**

- A. The juvenile presenter, juvenile probation officer, or tribal attorney shall make an investigation within seventy two (72) hours (exclusive of weekends and holidays) of the detention hearing or the release of the child to his parent, guardian, or custodian, to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the juvenile presenter or probation officer shall:
1. Recommend that no further action be taken; or
  2. Suggest to the child and the child's parent, guardian or custodian that they appear for an informal adjustment conference under Chapter 11, Section 2 and Section 3 of this Title; or
  3. Request a transfer to adult tribal court proceedings under Chapter 4 of this Title; or
  4. File a petition under Chapter 11, Section 4 of this title. The petition shall be filed within seventy-two (72) hours if the child is in custody. If the child has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

### **Section 2. Informal Adjustment**

- A. During the course of the preliminary investigation to determine what further action shall be taken, the juvenile presenter/ probation officer shall confer with the child and the child's parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.
- B. The juvenile counselor shall consider the following factors in determining whether to proceed informally or to file a petition:
1. Nature and seriousness of the offense;
  2. Previous number of contacts with the police, juvenile counselor or the court;
  3. Whether filing a petition or proceeding with an informal adjustment of the matter would be in the best interests of the minor and Tribe;
  4. Age and maturity of the child;
  5. Attitude of the child regarding the offense;
  6. Willingness of the child to participate in a voluntary program, and;
  7. Participation and input from the child's parent, guardian or custodian.

### **Section 3. Informal Conference**

- A. After conducting a preliminary investigation, the juvenile counselor, juvenile probation officer, juvenile presenter or other appropriate court personnel shall hold an informal conference with the child and the child's parent, guardian or custodian to discuss alternative courses of action in the particular case.
- B. The juvenile counselor shall inform the child, the child's parent, guardian or custodian of their basic rights under Chapter 8 of this code. Statements made by the child at the informal conference shall not be used against the child in determining the truth of the allegations in the petition
- C. At the informal conference, upon the basis of the information obtained during the preliminary investigation, the juvenile counselor may enter into a written agreement with the child and the child's parent, guardian or custodian specifying particular conditions to be observed during an informal adjustment period, not to exceed six (6) months. The child and the child's parent, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the court for a hearing in the case.
- D. The child shall be permitted to be represented by counsel at the informal conference. No statement made during the informal hearing conference may be admitted into evidence at an adjudicatory hearing or any proceeding against the minor under this Title.
- E. If the child does not desire to participate voluntarily in a diversion program, the juvenile counselor, juvenile probation officer, or juvenile presenter shall file a petition under Chapter 11, Section 4 of this Title.
- F. Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action taken in the case.
- G. The juvenile counselor, juvenile probation officer or juvenile presenter shall set forth in writing the conclusions reached at the informal adjustment conference and the disposition agreed to by the parties for remedying the situation. The juvenile counselor, juvenile probation officer, or juvenile presenter shall review the minor's progress every thirty (30) days. If at any time after the initial thirty day period, the officer concludes positive results or not being achieved, or if the child fails to successfully complete the terms of his informal adjustment agreement, the juvenile officer may file a petition in the case under Chapter 11, Section 4 of this Title.

### **Section 4. Filing and Content of Petition**

- A. Formal "juvenile offender" proceedings shall be instituted by a petition filed by the juvenile presenter on behalf of the tribe and in the interests of the child. The petition shall be entitled, "In the matter of a child" and shall set forth with specificity:
  - 1. The name, birth date, residence, and tribal affiliation of the child;
  - 2. The names and residences of the child's parent, guardian or custodian;

3. A citation to the specific section(s) of this code which give the court jurisdiction over the proceedings;
4. A citation to the criminal statute or other law or ordinance which the child is alleged to have violated;
5. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred; and
6. Whether the child is in custody and, if so, the place of detention and time he was taken into custody.

#### **Section 5. Issuance of Summons**

- A. After a "juvenile offender" petition has been filed, the court shall direct the issuance of summons to:
  1. The child;
  2. The child's parent, guardian or custodian;
  3. The child's counsel;
  4. Appropriate medical and/or alcohol rehabilitation experts; and;
  5. Any other person the court deems necessary for the proceedings.

#### **Section 6. Content of the Summons**

The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under Chapter 8 of this Title. A copy of the petition shall be attached to the summons.

#### **Section 7. Service of the Summons**

The summons shall be served upon the parties at least five (5) days prior to the hearing. The summons shall be delivered personally by a law enforcement official or appointee of the court. If the summons cannot be delivered personally, the court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be by publication. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of Court.

### **CHAPTER 12 JUVENILE OFFENDER - CONSENT DECREE**

#### **Section 1. Availability of Consent Decree**

At any time after the filing of a "juvenile offender" petition, and before the entry of a judgment, the court may, on motion of the juvenile presenter or that of counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the juvenile counselor and agreed to by all the

parties affected. The court's order continuing the child under supervision under this section shall be known as a "consent decree."

## **Section 2. Objection to Consent Decree**

If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the juvenile presenter after consultation with the juvenile counselor, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

## **Section 3. Duration of Consent Decree**

A consent decree shall remain in force for six (6) months unless the child is discharged sooner by the juvenile counselor. Prior to the expiration of the six (6) months period, and upon the application of the juvenile counselor or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. If the child objects to the extension the court shall hold a hearing and make a determination on the issue of extension.

## **Section 4. Failure to Fulfill Terms and Conditions**

If, either prior to a discharge by the juvenile counselor or expiration of the consent decree, the child fails to fulfill the terms of the decree, the juvenile presenter may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to Chapter 15 of this Title. If the child is found to have violated the terms of the consent decree, the court may:

- A. Extend the period of the consent decree; or
- B. Make any other disposition which would have been appropriate in the original proceeding.

## **Section 5. New Juvenile Offense Complaint**

If either prior to discharge or expiration of the consent decree, a new "juvenile offender" complaint is filed against the child and the juvenile counselor has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public, the juvenile presenter may:

- A. File a petition to revoke the consent decree in accordance with the Chapter 12, Section 4 of this code; or
- B. File a petition on the basis of the new complaint which has been filed against the child.

## **Section 6. Dismissal of Petition**

- A. A child who is discharged by or who completes a period under supervision without reinstatement of the original "juvenile offense " petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed

with prejudice. Nothing in this section precludes a civil suit against the child for damages arising from this conduct.

## **CHAPTER 13 JUVENILE OFFENDER -- ADJUDICATION PROCEEDINGS**

### **Section 1. Purpose and Conduct of Adjudicatory Hearing**

Hearings on "juvenile offender" petitions shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a "juvenile offense." At the adjudicatory hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in Chapter 8 of this title. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties shall be admitted.

### **Section 2. Time Limitations on Adjudicatory Hearings**

If the child remains in custody, the adjudicatory hearing shall be held within ten (10) days of receipt of the "juvenile offender" petition by the juvenile court. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days of receipt of the "juvenile offender" petition by the juvenile court.

### **Section 3. Notice of Hearing**

Notice of the adjudicatory hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with Chapter 11, Section 6 and Section 7 of this Title.

### **Section 4. Rights of Parties**

- A. The parties shall have all rights secured to them by federal or tribal law including, but not limited to:
1. Right to counsel at their own expense
  2. Right not to incriminate themselves
  3. The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence to be heard on their own behalf, and to examine witnesses.

### **Section 5. Denial of Allegations**

If the allegations in the "juvenile offender" petition are denied, the juvenile court shall set a date, in accordance with Chapter 13, Section 2 above, to hear evidence on the petition.

## **Section 6. Admission of Allegations**

- A. If the child admits the allegations of the petition, the juvenile court shall consider a disposition only after a finding that:
1. The child fully understands his rights under Chapter 8 of this Title, and fully understands the consequences of his admission
  2. The child voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for juvenile court action; and
  3. The child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations

## **Section 7. Juvenile Offender" Finding After Admission**

If the court finds that the child has validly admitted the allegations contained in the petition, the court shall make and record its finding and schedule a disposition hearing in accordance with Chapter 15 of this Title. Additionally, the court shall specify in writing whether the child is to be continued in an out of the home placement pending the disposition hearing.

## **Section 8. Juvenile Offender" Finding After Hearing**

If the court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the court shall make and record its finding and schedule a disposition hearing in accordance with Chapter 15 of this Title. Additionally, the court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing.

## **Section 9. Dismissal of Petition**

If the court finds that the allegations on the "juvenile offender" petition have not been established beyond a reasonable doubt it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

# **CHAPTER 14 JUVENILE OFFENDER --PREDISPOSITION STUDIES: REPORTS AND EXAMINATIONS**

## **Section 1. Predisposition Study and Report**

- A. The court shall direct the juvenile counselor, juvenile probation officer or juvenile presenter to prepare a written predisposition study and report for the court concerning the child, the child's family, environment, and any other matter relevant to need for treatment or other appropriate disposition of the case when:
1. The child has been adjudicated as a "juvenile offender"; or
  2. A notice of intent to admit the allegations of the petition has been filed.



## **Section 2. Contents of Predisposition Study and Report**

The report shall contain a specific plan for the child, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the community.

## **Section 3. Medical Assessment and Treatment for Alcohol or Substance Abuse**

The juvenile court may order a medical assessment of a child arrested or detained for a "juvenile offense" relating to or involving alcohol or substance abuse to determine the mental or physical state of the child so that appropriate steps can be taken to protect the child's health and well-being. The costs of testing and assessments are the responsibility of the minor and their parent, guardian, or custodian.

## **Section 4. Pre-Adjudication Examination of Emotionally Developmentally Disabled Child**

Where there are indications that the child may be emotionally disturbed or developmentally disabled, the court, on a motion by the juvenile presenter or that of the child, may order the child to be tested by a qualified psychiatrist, psychologist, social worker or licensed psychometrician prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as a part of the predisposition study and report, shall be conducted on an outpatient basis unless the court finds that placement in a hospital or other appropriate facility is necessary. The costs of testing and evaluation are the responsibility of the minor and their parent, guardian, or custodian.

## **Section 5. Pre-Disposition Examinations**

The court may order an examination of a child adjudicated as a "juvenile offender" by a physician, psychiatrist, or psychologist. The court may also, following the adjudicatory hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child is an issue before the court at the dispositional hearing. The costs of testing and evaluations are the responsibility of the minor and their parent, guardian, or custodian.

## **Section 6. Transfer for Diagnosis**

The court may order that a child adjudicated as a "juvenile offender" be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis with direction that the court be given a written report at the end of that period indicating the disposition which appears most suitable. The costs of treatment are the responsibility of the minor and their parent, guardian, or custodian.

## **Section 7. Submission of Reports**

Evaluations, assessments, dispositional reports and other material to be considered by the court in a juvenile hearing shall be submitted to the court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline.

The court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.

## **CHAPTER 15 JUVENILE OFFENDER -- DISPOSITION PROCEEDINGS**

### **Section 1. Purpose and Conduct of Disposition Hearing**

- A. The court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense." The court shall make and record its dispositional order in accordance with sections Chapter 15, Section 5 and Chapter 16 of this Title. At the disposition hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in Chapter 8 of this code. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties shall be admitted.

### **Section 2. Time Limitations on Disposition Hearings**

If the child remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within twenty (20) days after the adjudicatory hearing. A dispositional hearing may be held directly after an adjudicatory hearing if notice is waived by the minor and parent, guardian, or custodian.

### **Section 3. Notice of Disposition Hearing**

Notice of the disposition hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with Chapter 11, Section 6 and Section 7 of this Title. This provision may be waived by the minor and the parent, guardian, or custodian and a dispositional hearing may be commenced directly after an adjudicatory hearing.

### **Section 4. Evidence and Reports**

In the disposition hearing, the court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

### **Section 5. Disposition Alternatives**

- A. If a child is found by the court to be a "juvenile offender," the court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:

1. Permit the child to remain with parent, guardian, or custodian, subject to such conditions and limitations as the court may prescribe;
2. Place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the court may prescribe; order the child to pay restitution (as defined in Chapter 1, Section 3 of this Title);
3. Place the child under protective supervision (as defined in Chapter 1, Section 3 of this Title) under such conditions- and limitations as the court may prescribe;
4. Place the child on probation subject to conditions set by the Juvenile Court (as defined in section Chapter 1, Section 3 of this Title, under such conditions and limitations as the court may prescribe; or
5. Place the child in a juvenile facility designated by the court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or secure juvenile detention facility (see Chapter 1, Section 3 of this Title for individual definitions).
6. The dispositional orders are to be in effect for the time Limit set by the Juvenile Court, but no order shall continue after the minor reaches the age of eighteen (18) years of age.
7. The dispositional orders are to be reviewed at the Juvenile Court's discretion, but at least once every six (6) months.

## **CHAPTER 16 JUVENILE OFFENDER – REVIEW MODIFICATION, REVOCATION, EXTENSION OR TERMINATION OF DISPOSITIONAL ORDERS**

### **Section 1. Mandatory Review of Disposition Order**

Dispositional orders are to be reviewed at the court's discretion at least once every six (6) months.

### **Section 2. Modification, Revocation, or Extension of Disposition Order**

- A. The court may hold a hearing to modify, revoke, or extend a disposition order at any time upon the motion of,
  1. The child's parent, guardian or custodian;
  2. The child's counsel;
  3. The juvenile counselor;
  4. The juvenile presenter;
  5. The institution, agency or person vested with the legal custody of the child or responsibility for protective supervision; or
  6. The court on its own motion.

### **Section 3. Hearing to Modify, Revoke or Extend Disposition Order**

A hearing to modify, revoke or extend the disposition order shall be conducted according to Chapter 16, Section 1, Section 2, Section 3, and Section 4 of this Title.

### **Section 4 Automatic Termination of Disposition Order**

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one (1) year of the child's eighteenth (18th) birthday or after the child had reached eighteen (18) years of age, in which case the disposition order may not continue for more than one (1) year. The records concerning the child shall be destroyed according to Chapter 28, Section 3 of this Title.

## **CHAPTER 17 FAMILY IN NEED OF SERVICES -- INTERIM CARE**

### **Section 1. Limitation on Taking Into Custody**

No child whose family is the subject of a proceeding alleging that the family is "in need of services" (as defined in Chapter 1, Section 3) may be taken into custody unless such taking into custody is in accordance with provision for "interim care" (as defined in Chapter 1, Section 3 of this Title) set forth in Chapter 17, Section 1 through Section 9 of this Title).

### **Section 2. Interim Care Without Court Order**

A child may be taken into interim care by a law enforcement officer or child welfare officer without order of the court only when:

- A. The officer has reasonable grounds to believe that the child is in circumstances which constitute a substantial danger to the child's physical safety; or
- B. An agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement ordered by the court under Chapter 22 of this Title.

### **Section 3. Procedure for Interim Care**

- A. A law enforcement official or child welfare officer taking a child into custody under the interim care provisions of this code shall immediately:
  - 1. Inform the child of the reasons for the custody;
  - 2. Contact the juvenile counselor who shall designate placement of the child in an appropriate juvenile shelter care facility as designated by the court;
  - 3. Take the child to the placement specified by the juvenile counselor, or in the event of the unavailability of a juvenile counselor, to an appropriate juvenile shelter care facility as designated by the court; and,
  - 4. Inform the child's family in accordance with Chapter 17, Section 4 of this Title.

5. The officer does not have to file a request stating a family is “in need of services,” but he/she must still file a written report with the juvenile counselor, probation officer, or presenter stating his/her reasons for removal. This written report must be filed the next working day.

#### **Section 4. Notification of Family**

The law enforcement officer, child welfare officer or juvenile court personnel shall immediately notify the child's parent, guardian or custodian of the child's whereabouts, the reasons for taking the child into custody, and the name and telephone number of the juvenile counselor who has been contacted. Efforts to notify the child's parent, guardian or custodian shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent with regularity. If notification cannot be provided to the child's parent, guardian, or custodian, the notice shall be given to a member of the extended family of the parent, guardian, or custodian and to the child's extended family.

#### **Section 5. Time Limitation on Interim Care**

Under no circumstances shall any child taken into interim care under Chapter 17, Section 2 of this Title be held involuntarily for more than seventy-two (72) hours.

#### **Section 6. Restrictions on Placement**

- A. A child taken into interim care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses. If a child taken into interim care is placed in a facility used for the detention of "juvenile offenders" or alleged "juvenile offenders," he must be detained in a room separate from the "juvenile offenders" or alleged "juvenile offenders."
  1. A child alleged to be a child-in-need-of-care may be detained pending Court hearings, in the following places:
    - a. A family home of a member of the child's extended family; or
    - b. A foster care facility on the reservation approved by the Tribe;
    - c. A shelter care facility on the reservation approved by the Tribe;
    - d. A private Indian family home on the Reservation approved by the Tribe; or
    - e. A private non-Indian family on the Reservation approved by the Tribe; or
    - f. A tribal or state licensed facility off the Reservation.

## **Section 7. Restriction on Transportation**

A child taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest, unless this section cannot be complied with due to circumstances in which any delay in transporting the child to an appropriate juvenile shelter care facility would be likely to result in substantial danger to the child's physical safety. Said circumstances shall be described in writing to the supervisor of the driver of the vehicle within forty-eight (48) hours after any transportation of a child with an adult under arrest.

## **Section 8. Voluntary Services**

A. The juvenile counselor shall offer and encourage the child and the child's family, guardian or custodian to voluntarily accept social services. The Child Welfare officer may place the minor(s) in foster care if the placement is voluntarily consented to in writing by the following persons:

1. Both parents if the minor(s) lives at home with both parents;
2. The custodian parent if the one parent received custody of the minor(s) pursuant to a divorce decree; or
3. The legal guardian or custodian

The person(s) giving consent to placement can withdraw their consent to placement at any time, and if consent is withdrawn, the minor(s) shall be immediately returned to their parents(s), guardian, or custodian. At the time such consent is given the person(s) giving consent shall be given a copy of this section.

No voluntary placement shall exceed three months.

## **Section 9. Shelter and Family Services Needs Assessment**

If the child refuses to return home and if no other living arrangements agreeable to the child and to the child's parent, guardian or custodian agree to the child's return home, the child shall be returned home as soon as practicable by the child's parent, guardian or custodian. The juvenile counselor also shall refer the child and his family to an appropriate social services agency for a family services needs assessment.

## **CHAPTER 18 CUSTODY HEARING PROCEDURES FOR CHILD IN NEED OF CARE**

### **Section 1. Requirement of Detention Hearing**

Where a child who has been taken into custody pursuant to Chapter 17, Section 2, a custody hearing shall be convened by the court within seventy-two (72) hours, exclusive of holidays and weekends, of the child's initial custody under. Such hearing may be conducted telephonically if circumstances require.

## **Section 2. Purpose of Detention Hearing**

- A. The purpose of the detention hearing is to determine:
  - 1. Whether reasonable cause exists to believe the child is in immediate danger from his parent, guardian, or custodian and his removal from them is necessary; and
  - 2. Whether continued custody is necessary pending further proceedings.

## **Section 3 Notice of Detention Hearing**

- A. Notice of the custody hearing shall be given to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set. The notice shall contain:
  - 1. The name of the court;
  - 2. The title of the proceedings;
  - 3. A brief statement of the facts which warranted taking the child into custody; and
  - 4. The date, time, and place of the detention hearing.
- B. If the minor's parent, guardian or custodian has not been contacted, Or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that that further efforts are likely to produce the parent, guardian, or custodian, the Juvenile Court shall recess for not more than twenty-four (24) hours and direct the child welfare officer, law enforcement officer, or court personnel to make continued efforts to obtain the presence of the parent, guardian, or custodian. Notice of the custody hearing shall be given to the child and his parent, guardian, or custodian as soon as the time for the hearing has been established.

## **Section 4. Procedures at Custody Hearing**

- A. The Juvenile Court shall inform the child, his parent, guardian or custodian of their right to retain counsel at their own expense, and the judge shall continue the proceeding if it appears that additional time is necessary to obtain counsel.
- B. The Juvenile Court shall inform the child, and his parent, guardian or custodian that he need not be a witness against himself or otherwise incriminate himself.
- C. The minor, his counsel, and parent guardian, or custodian shall have the opportunity to be heard on his and their own behalf.

## **Section 5. Continued Custody**

- A. A minor shall be released to his parent, guardian, or custodian and ordered to appear at the hearing on a date to be set by the Court, unless:
1. There is reasonable cause to believe that the child is in immediate danger from his parent, guardian, or custodian and that his removal from them is necessary; or
  2. There is reasonable cause to believe the minor will run away so that he will be unavailable for further proceedings; or
  3. There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property. The Juvenile Court may release a minor under this Title to a relative or other responsible adult Tribal member if the parent, guardian, or custodian of the minor consents to the release. If the minor is twelve (12) years of age or older, the minor and his parent, guardian, or custodian must both consent to the release.

## **Section 6. Investigation by Child Welfare Officer**

The child welfare officer shall make an investigation within three (3) days of the custody hearing or the release of the minor to his parent, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of his investigations, the child welfare officer shall:

- A. Recommend that no further action be taken; or
- B. Suggest to the minor, his parent, guardian or custodian that they appear for an informal hearing pursuant to this Title; or
- C. Recommend that the juvenile presenter, juvenile probation officer, or juvenile counselor file a petition pursuant to this Title in the Juvenile Court to initiate further proceedings. The petition shall be filed within three (3) days if the minor is in detention or shelter care. If the minor has been previously released to his parent, guardian or custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

## **CHAPTER 19 INFORMAL HEARINGS FOR CHILD IN NEED OF CARE**

### **Section 1. Informal Hearing**

- A. The child welfare officer and the juvenile presenter, juvenile probation officer, or juvenile counselor may hold an informal conference hearing with the child and the child's parent, guardian or custodian to discuss alternatives to the filing of a petition if:
1. The admitted facts bring the case within the jurisdiction of the Juvenile Court; and
  2. An informal adjustment of the matter would be in the best interest of the minor and the Tribe; and



3. The minor and his parent, guardian or custodian consent to an informal adjustment with knowledge that the consent is voluntary.

Notice of the informal hearing shall be given to the minor and his parent, guardian or custodian and their counsel as soon as the time for the hearing has been established. This does not authorize the Juvenile Court's child welfare officer or other court personnel to compel any person to appear at any informal conference, produce any papers or visit any place.

### **Section 2. Informal Hearing - Evidence**

No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding under this Code.

### **Section 3. Informal Hearing - Disposition**

At the informal hearing, the probation officer, juvenile presenter, or juvenile counselor may:

- A. Refer the minor and the parent, guardian or custodian to a community agency for needed assistance; or
- B. Order terms of supervision calculated to assist and benefit the minor which regulate the minor's activities and which are within the ability of the minor to perform; or
- C. File a petition pursuant to this title. Any informal adjustment period shall not exceed six (6) months.

### **Section 4. Informal Hearing - Post-Disposition**

The juvenile probation officer, juvenile presenter, or juvenile counselor shall set forth in writing the conclusions reached at the informal hearing and the disposition agreed to by the parties for remedying the situation. The officer shall review the minor's progress every thirty (30) days. If at any time after the initial thirty day period, the officer concludes that positive results are not being achieved, the officer shall file a petition pursuant to this Title.

## **CHAPTER 20 FAMILY IN NEED OF SERVICES -- INITIATION OF PROCEEDINGS.**

### **Section 1 Who May Submit Requests**

Requests stating that a family is "in need of services" may be submitted by the child; the child's parent, guardian or custodian; an appropriate social services agency; law enforcement officer, school official and/or the juvenile counselor, probation officer, or presenter. A request stating that a child is habitually and without justification absent from school may also be submitted by an authorized representative of a local school board or governing authority of a private school but only if the request is accompanied by a declaration in which the authorized representative swears that the school has complied with each of the steps set forth in Chapter 20, Section 8 of this Title.

## **Section 2. Contents of Requests**

- A. The individuals filing a request stating a family is “in need of services” shall include the following:
1. The name, age and address of the minor(s) who is (are) the subject of the request; if known and;
  2. A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the facts occurred.

## **Section 3. Referral of Requests to Juvenile Counselor**

Requests stating that a family is "in need of services" shall be referred to the juvenile counselor, who shall assist either a child or a child's parent, guardian or custodian in obtaining appropriate and available services as well as assisting in any subsequent filing of a petition alleging that the family is "in need of services."

## **Section 4. Withdrawal of Request**

A request stating that a family is "in need of services" may be withdrawn by the party submitting the request at any time prior to the adjudication of any petition filed in proceedings.

## **Section 5. Authorization to File Petition**

A petition alleging that a family is "in need of services" shall not be filed unless the juvenile presenter has determined and endorsed upon the petition that the filing of the petition is in the best interest of the child and his family.

## **Section 6. Petition--Required Signatures**

A petition alleging that a family is in need of services" shall be signed by both the juvenile presenter and the party submitting the request as authorized in Chapter 20, Section 1 of this title..

## **Section 7. Petition--Form and Contents**

- A. A petition alleging that a family is "in need of services" shall be entitled, "In the Matter of the Family of... a child," and shall set forth with specificity.
1. The name, birth date and residence address of the child and whether the child is the complainant or respondent in the proceedings;
  2. The name and residence address of the parents, guardian or custodian of the child and whether the parents, guardian or custodian are the complainant or respondent in the proceedings;
  3. Allegations as the facts that would make the child a child-in-need-of-care; and

4. In the case of petition based upon a child's alleged habitual and unjustifiable absence from school, that a declaration as required under Chapter 20, Section 1 of this Title has been filed by a school official; and
5. The court intervention is necessary to secure services which are accessible to the court; and
6. The additional required allegations set forth in either Chapter 20, Section 7 or Section 8 of this Title.

**Section 8. Petition--Additional Required Allegations for School Absence**

- A. In addition to the allegations required under Chapter 20, Section 6 of this title, a petition alleging that a child is habitually and without justification absent from school shall also allege the following:
1. That the school and a child's parent, guardian or custodian have held a meeting or the child's parent, guardian or custodian has refused to attend a meeting to discuss the child's habitual and unjustified absence from school;
  2. That the school has provided an opportunity for counseling to determine whether a curriculum change (Chapter 1, Section 3 of this Title) would resolve the child's problem and if the local school board or governing authority of a private school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative education program;
  3. 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 in accordance with the school regulations 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;
  4. That a 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.

**Section 9. Petition-Additional Required Allegations for Breakdown in the Parent Child Relationship**

- A. In addition to the allegations required under Chapter 20, Section 6 of this Title, a petition alleging that there is a breakdown in the parent-child relationship shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:
1. The child and his family have participated in counseling or either the child or his family has refused to participate in family counseling;
  2. The child has been placed in the home of a relative, if available, or the child has refused placement in the home of a relative;

3. The child has sought assistance at an appropriate juvenile shelter care facility for runaways or the child has refused assistance from such a facility; and
4. The child has been placed in a foster home or the child has refused placement in a foster home.

#### **Section 10. Setting of the Hearing**

- A. Upon receipt of the petition, the Juvenile Court shall set a date for the hearing which shall not be more than twenty (20) days after the Juvenile Court receives the petition from the juvenile presenter, juvenile probation officer, or juvenile counselor. If the adjudicatory hearing is not held within twenty days (20) after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:
  1. The hearing is continued upon motion of the child; or
  2. The hearing is continued upon motion of the juvenile presenter, juvenile probation officer, or juvenile counselor by reason of the unavailability of material evidence or witnesses and the Juvenile Court finds that court personnel has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

#### **Section 11. Summons in a Family in Need of Services Proceeding**

- A. At least (5) days prior to adjudicatory hearing, the juvenile court shall issue summons to:
  1. The minor; and
  2. The minor's parent, guardian or custodian; and
  3. Any person the Juvenile Court believes necessary for the proper adjudication of the hearing; and
  4. Any person the minor believes necessary for the proper adjudication of the hearing.
- B. The summons shall contain:
  1. The name of the Court; and
  2. The title of the proceedings; and
  3. The date, time, and place of the hearing.

A copy of the petition shall be attached to the summons. The summons shall be delivered personally by a Santee Sioux Tribal officer or appointee of the Juvenile Court. If the summons cannot be delivered personally, the Court may deliver the summons by certified mail. If a person who has been issued a summons fails to appear at the hearing, that person shall be held in contempt of court.

## **CHAPTER 21 FAMILY IN NEED OF SERVICES -- CONSENT DECREE**

### **Section 1. Availability of Consent Decree**

At any time after the filing of a petition alleging that a family is "in need of services," and before the entry of a judgment, the court may, on motion of the juvenile presenter or that of the child, his parents, guardian or custodian, or their counsel, suspend the proceedings and continue the family under supervision under terms conditions negotiated with juvenile counselor and agreed to by all the parties affected. The court's order continuing the family under supervision under this section shall be known as a "consent decree."

### **Section 2. Objection to Consent Decree**

If the child or his parents, guardian or custodian object to a consent decree, the court shall proceed to findings, adjudication and disposition of the case.

### **Section 3. Court Determination of Appropriateness**

If the child or his parents, guardian or custodian do not object, the court shall proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

### **Section 4. Duration of Consent Decree**

A consent decree shall remain in force for six (6) months unless the family is discharged sooner by the juvenile counselor. Prior to the expiration of the six (6) months period, and upon the application of the juvenile counselor or any other agency supervising the family under a consent decree, the court may extend the decree for an additional six (6) months in the absence of objection to extension by the child or his parents, guardian or custodian. If the child or his parents, guardian or custodian object to the extension the court shall hold a hearing and make a determination on the issue of extension.

### **Section 5. Failure to Fulfill Terms and Conditions**

If, either prior to discharge by the juvenile counselor or expiration of the consent decree, the child or his parents, guardian or custodian fail to fulfill the express terms and conditions of the consent decree, the petition under which the family was continued under supervision may be reinstated in the discretion of the juvenile presenter in consultation with the juvenile counselor. In this event, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

### **Section 6. Dismissal of Petition**

After a family is discharged by the juvenile counselor or completes a period under supervision without reinstatement of the petition alleging that the family is in need of services, the petition shall be dismissed with prejudice.

## **CHAPTER 22 FAMILY IN NEED OF SERVICES – ADJUDICATORY HEARINGS AND DISPOSITION**

### **Section 1. Conduct of Hearings**

The Juvenile Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the minor is a minor-in-need-of-care. "Family in need of services" hearings shall be conducted by the juvenile court separate from other proceedings. At all hearings, the child and the child's family, guardian or custodian shall have the applicable rights listed in Chapter 20 of this Title. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties shall be admitted.

### **Section 2. Notice of Hearings**

Notice of all "family in need of services" hearings shall be given to the child, the child's parent, guardian or custodian, their counsel, and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with Chapter 11, Section 6 and Section 7 of this Title.

### **Section 3. Rights of Parties**

- A. The parties shall have all rights secured to them by federal or Santee Sioux Tribal Law, including, but not limited to:
1. Right to counsel at their own expense;
  2. Right not to incriminate themselves;
  3. The minor and the minor's parent, guardian or custodian shall be entitled to introduce evidence, to be heard on their own behalf, and to examine witnesses.

### **Section 4. Adjudicatory Hearing**

The court, after hearing all of the evidence bearing on the allegations contained in the petition, shall make and record its findings as to whether the family is a "family in need of services." If the court finds on the basis of clear and convincing evidence that the family is a "family in need of services," the court may proceed immediately or at a postponed hearing to make disposition of the case if the court does not find that the family is a "family in need of services" it shall dismiss the petition.

### **Section 5. Predisposition Studies, Reports and Examinations**

The court may order any appropriate predisposition study, report or examination describing all reasonable and appropriate alternative dispositions. The report shall contain specific plans for the care of and assistance to the minor calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the minor under the proposed plan. Preference shall be given to the dispositional alternatives which are listed in this Title and select that which is the least restrictive of the minor's freedom and is consistent with the interests of the Tribe. The report shall contain specific reasons for not recommending placement of the minor with his parent, guardian or custodian.

The child welfare officer, juvenile presenter, juvenile probation officer, or juvenile counselor shall present the predispositional report to the Juvenile Court, the person selected by the minor to represent him at least one (1) day before the dispositional hearing.

## **CHAPTER 23           DISPOSITIONAL HEARING PROCEDURES CHILD IN NEED OF CARE**

### **Section 1.     Disposition Hearing**

The dispositional hearing shall not take place more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Juvenile Court shall hear evidence on the question of proper disposition.

### **Section 2. Notice to the Parties**

Notice of the dispositional hearing shall be given to the minor and his parent, guardian, or custodian and their counsel at least forty-eight hours before the hearing. Notice can be waived by consent of both the juvenile officer petitioning the case and the minor and his parent, guardian, or custodian. If notice is waived the dispositional hearing may occurred directly after the adjudicatory hearing.

### **Section 3. Dispositional Hearing- Evidence**

In that part of the hearing on dispositional issues all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues. The court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel if any.

### **Section 4.     Disposition Alternatives**

- A.     If the court finds that a family is a "family in need of services," the court may make record any of the following orders of disposition, giving due weight to the need to preserve the unity of the family whenever possible:
1.     Permit the child to remain with his parents, guardian or custodian subject to those conditions and limitations the court may prescribe, including the protective supervision (as defined in Chapter 1, Section 3 of this Title) of the child by a local social services agency;
  2.     Referral of the child and his parents, guardian or custodian to an appropriate social services agency for participation in counseling or other treatment program as ordered by the court;

3. Transfer legal custody of the child to any of the following if the family is found to be a "family in need of services" due to a breakdown in the parent-child relationship:
  - a. A relative or other individual who, after study by the juvenile counselor or other agency designated by the court, is found by the court to be qualified to receive and care for the child, or;
  - b. An appropriate agency for placement of the child in an appropriate juvenile shelter care facility (Chapter 1, Section 3 of this Title) for a period not to exceed thirty (30) days; with simultaneous directed referral of the family to a social services agency for counseling and/or other social assistance. A child may be placed under this section for an additional period not to exceed ninety (90) days after a hearing to determine the necessity of an additional placement.

### **Section 5. Restriction on Dispositional Placements**

The child shall not be confined in an institution established for the care and rehabilitation of "juvenile offenders" unless a child whose family is found to be "in need of services" is also found to be a "juvenile offender." Under no circumstances shall a child whose family is found to be "in need of services" be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

## **CHAPTER 24                    MODIFICATION, REVOCATION, OR EXTENSION OF DISPOSITIONAL ORDER FOR CHILD IN NEED OF CARE**

### **Section 1. Modification Hearing**

- A. A dispositional order of the Juvenile Court may be modified upon a showing of the change in circumstances. The Juvenile Court may hold a hearing to modify, revoke, or extend a disposition order at any time upon the motion of:
  1. The child's parent, guardian, or custodian;
  2. The child's counsel;
  3. The juvenile counselor;
  4. The juvenile probation officer;
  5. The juvenile presenter;
  6. The institution, agency or person vested with legal custody of the child or responsibility for protective supervision; or
  7. The court on its own motion.
- B. The Juvenile Court shall review the performance of the minor, the minor's parent, guardian or custodian and the child welfare officer and other persons providing assistance to the minor and the minor's family. In determining modification of the disposition the procedures for a dispositional hearing shall apply. If the request for review of disposition is based upon an alleged violation



of a Court order, the Juvenile Court shall not modify its dispositional order unless it finds clear and convincing evidence of the violation

## **Section 2. Notice and Rights of Modification Hearing**

Notice in writing of the hearing shall be given to the minor, the minor's parent, guardian, or custodian and their counsel at least forty-eight (48) hours before the hearing. The rights of the parties shall be the same as in a dispositional hearing.

## **Section 3. Termination of Disposition Order**

Any disposition order concerning a "family in need of services" shall remain in force for a period not to exceed six (6) months. The disposition order concerning a child whose family is found to be "in need of services" shall also automatically terminate when the child reaches his eighteenth (18th) birthday or is legally emancipated by the court.

# **CHAPTER 25 MANDATORY REPORTING**

## **Section 1. Report of Child Abuse**

Any medical personnel, school personnel, mental health personnel or social worker who has reasonable cause to believe that a minor has been abused or neglected as defined in Chapter 1, Section 3 shall be required to report such incident to the Santee Sioux Tribe Child Welfare Services or Santee Sioux Tribal Police.

# **CHAPTER 26 JUVENILE RECORDS**

## **Section 1. Juvenile Court Records**

- A. A record of all hearings under this code shall be made and preserved. All juvenile court records shall be confidential and shall not be open to inspection to any but the following:
1. The child;
  2. The child's parent guardian or custodian;
  3. The child's counsel;
  4. The juvenile court personnel directly involved in the handling of the case;
  5. Any other person by order of the court, having a legitimate interest in the particular case or the work of the court.

## **Section 2. Law Enforcement Records**

- A. Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection to any but the following
1. The child;
  2. The child's parent guardian or custodian;

3. The child's counsel;
4. Law enforcement personnel directly involved in the handling of the case;
5. The juvenile court personnel directly involved in the handling of the case;  
or
6. Any other person by order of the court, having a legitimate interest in the particular case or the work of the court.

### **Section 3. Expungement and Destruction of Records**

When a child who has been the subject of any juvenile court proceeding reaches his eighteenth (18th) birthday, or the disposition order is terminated if the disposition order extends beyond his eighteenth (18th) birthday, the court shall order the clerk of the court to destroy both the law enforcement records and the juvenile court records. The clerk of the court shall respond to all records inquiries as if no records had ever existed.

## **CHAPTER 27 JUVENILE APPEALS**

### **Section 1. Who Can Appeal**

Any party to a juvenile court hearing may appeal a final juvenile court order, including all transfer, adjudication and/or disposition orders except that the tribe cannot appeal an adjudication order.

### **Section 2. Time Limit for Appeal**

Any party to appeal a final juvenile court order or disposition shall file a written notice of appeal with the court within thirty (30) days of the final order or disposition.

### **Section 3. Record**

For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, and the child's counsel. Costs of obtaining this record shall be paid by the party seeking the appeal.

### **Section 4. Stay of Appeal**

A final court order or disposition of a hearing may be stayed by such appeal.

### **Section 5. Conduct of Proceedings**

All appeals shall be conducted in accordance with the tribal code and tribal court rules of procedure so long as those provisions are not in conflict with the provisions of this juvenile code.

## **CHAPTER 28 JUVENILE CURFEW**

### **Section 1. Curfew established - Minor Under Sixteen (16) Years**

It shall be unlawful for any minor under sixteen (16) years of age, without good cause, to be in or on any street, road, highway, alley, or other public place on the Santee Sioux Indian Reservation between the hours of 11:00 p.m. and 5:00 a.m. on any night without the permission of the minor's parent, guardian or employer, or unless accompanied by the parent, guardian or an adult twenty-one (21) years of age or older, who has been given permission by the parent, guardian or employer to accompany the minor.

### **Section 2. Penalty - Minor**

Any minor who shall be in violation of any of the above sections shall be taken into custody by a Santee Sioux Tribal law enforcement officer and returned to the home of the parent or guardian and returned to the custody of the parent or guardian. If such minor has been found to have been in violation of this Chapter during the previous one (1) year period, then the Santee Sioux Tribal law enforcement officer shall take the minor into custody and deliver the minor to the Santee Sioux Tribal Court either under the Juvenile offender or Minor-in-Need-of-Care chapters of this Code.

## **CHAPTER 29 MISCELLANEOUS PROVISIONS**

### **Chapter 1. Contempt of Court**

Any willful disobedience or interference with any order of the Juvenile court constitutes contempt of court in accordance with this Code.

### **Chapter 2. Support of Minors**

When temporary custody of a minor is vested by the Court in an individual or agency other than his parents or Juvenile detention facility, the Court may in the same or any subsequent proceeding inquire into the ability of the parents or any other person who may be obligated to support the minor and to pay any other expenses of the minor, including the expense of any medical, psychiatric, or psychological examination or treatment provided under order of the Court. The Court may, after due notice and a hearing on the matter require the parents or other person to pay the whole or part of such support and expenses, depending on their financial resources and other demands on their financial resources and other demands on their future.