

Title X - Family Code

Chapter 1. Adoption

- Sec. 101. Purpose of adoption
- Sec. 102. Definitions (for Section 101-112)
- Sec. 103. Who may file adoption petition
- Sec. 104. Petition for adoption
- Sec. 105. Required consents
- Sec. 106. Withdrawal of consents
- Sec. 107. Investigation report
- Sec. 108. Hearing on adoption
- Sec. 109. Report and final decree of adoption
- Sec. 110. Adoption records
- Sec. 111. Contents of adoption order
- Sec. 112. Name and legal status of adopted minor

Chapter 2. Marriage

- Sec. 201. Policy of the Tribes
- Sec. 202. Requirements
- Sec. 203. Prohibited marriages
- Sec. 204. Marriage of person having existing spouse
- Sec. 205. Blood test
- Sec. 206. Marriage license
- Sec. 207. Marriage ceremony
- Sec. 208. Jurisdiction
- Sec. 209. Indian custom marriage
- Sec. 210. Recognition of foreign marriages

Chapter 3. Annulment and Divorce

- Sec. 301. Jurisdiction over annulment and divorce cases
- Sec. 302. Annulment
- Sec. 303. Divorce
- Sec. 304. Child custody
- Sec. 304a. Child custody actions outside divorce and annulment proceedings
- Sec. 304b. Enforcement of child support orders
- Sec. 305. Division of property
- Sec. 306. Alimony
- Sec. 307. Paternity
- Sec. 308. Temporary alimony and custody awards
- Sec. 309. Recognition of foreign divorces and annulments

Chapter 1. Adoption

Sec. 101. Purpose of adoption.

The purpose of this Part is to protect the rights and promote the welfare of Indian children,

natural parents and adoptive parents.

Sec. 102. Definitions (for Sections 101-112).

(a) Adult -- A person eighteen (18) years of age or older.

(b) Minor -- A person less than eighteen (18) years of age.

(c) Parent --

(1) a child's mother;

(2) a father as to whom a child is legitimate;

(3) a person adjudicated to be a child's father;

(4) a natural father of an illegitimate child who shows reasonable interest, concern, and responsibility for the child during the first thirty (30) days of the child's life or prior to the mother's consent to have the child adopted.

Sec. 103. Who may file adoption petition.

Any adult may file a petition to adopt an Indian minor residing within the Reservation, or a minor tribal member not residing on the Reservation. The Court may also hear petitions transferred from state courts pursuant to 25 U.S.C. 1911(b). In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition. In any case where all persons petitioning to adopt a child are not Indians, the petition shall not be granted unless:

(a) no Indian is available who is willing to adopt the child;

(b) the petitioners agree in writing that the Fort Peck Tribal Court shall retain exclusive jurisdiction over custody of the child, wherever domiciled or resident.

Sec. 104. Petition for adoption.

A petition for adoption shall be filed with the Court, on a form prescribed by the Court. It shall be verified under oath by the adoptive parent or parents, and shall contain

(1) the full name, the residence, and the sex of the child, and documentary proof of the date and place of the birth of the child to be adopted;

(2) the full name, the residence, date and place of birth, and occupation of the adoptive parent or parents and documentary proof of their marital status;

(3) proof of all consents required under Section 105 of this Title, and any court order terminating the parent-child relationship between the natural parent and the child to be adopted;

(4) an agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child; and

(5) a full description and statement of value of all property owned or possessed by the child.

Sec. 105. Required consents.

Consents to adoption shall be acknowledged before an officer duly authorized to take acknowledgments and witnessed by a representative of the Court. Consents to adoption shall be required from:

(a) The child's parents, provided that no consent shall be required as to any parent whose parent-child rights have been terminated by court order with respect to the child to be

adopted. A minor parent may consent to an adoption provided the parents of the minor concur. The Court may waive consent by the minor's parents if it finds that their withholding of such consent is unreasonable;

(b) any legal guardian of the child appointed under this Title;

(c) the child, if twelve (12) years of age or older, provided that the Court may waive this requirement, if it deems it necessary for the best interests of the child.

Sec. 106. Withdrawal of consents.

No consent to adoption shall be withdrawn unless authorized by order of the Court, after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, and to the person seeking to withdraw consent. The Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal. The entry of an order of adoption renders any consent irrevocable.

Sec. 107. Investigation report.

Within five (5) days after the filing of a petition for adoption, the Court shall request a juvenile officer, social worker, or similar employee of the Bureau of Indian Affairs or the Tribes to inquire into, investigate, and report in writing to the Court as to the suitability of the child for adoption, the financial ability, fitness and general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

Sec. 108. Hearing on adoption.

Within five (5) days after the written report required by Section 107 is filed, the Court shall fix a time for hearing on the petition for adoption. Notice of the hearing shall be provided to the adoptive parent or parents, any person whose consent is required, and, where possible, all interested persons whose consent is not required under Section 105. The adoptive parent or parents shall appear personally at the hearing. All other persons whose consents are necessary to the adoption shall appear personally, unless represented by a person having a power of attorney authorizing such person to represent them for the purpose of the adoption or unless such person cannot be found. The judge shall separately examine all persons appearing and if satisfied as to the suitability of the child for adoption, the validity of the consents to adoption, the financial ability, fitness, and responsibility of the adoptive parents, and that the best interests of the child will be promoted by the adoption, may enter a final decree of adoption. In the case of a child who has been in the custody of the petitioners and provided for by them for more than one (1) year, the decree shall be final. Where the child has not been in the custody of the petitioners for one (1) year, the Court shall enter an interim decree, and place the child in the legal custody of the petitioners for a period of not less than one (1) year prior to entering a final decree of adoption.

Sec. 109. Report and final decree of adoption.

Where an interim decree is entered, the Court, after the child has been in the custody of the petitioners for one (1) year, shall request a supplementary written report under the same procedures as in Section 107, as to the welfare of the child, and current conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court until the child to be adopted has lived and resided for a period of at least one (1) year in the home of the adoptive parents. In any case where the Court finds that the best interests of the child

will not be served by the adoption, a guardian shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request the Bureau of Indian Affairs to provide such services to assist in the placement and the care of the child.

Sec. 110. Adoption records.

All records, reports, proceedings, and orders in adoption cases are confidential records of the Court and shall not be available for release to or inspection by the public. Such records, reports, proceedings and orders shall be made available to the Superintendent of the Fort Peck Agency for use in fulfilling authorized functions. For good cause shown, information contained in such records shall be released to the adopted persons after reaching legal majority, upon petition to the Court.

Sec. 111. Contents of adoption order.

The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings. A true and correct copy of each adoption order shall be filed with the Secretary of the Tribal Executive Board and with the clerk of the Court.

Sec. 112. Name and legal status of adopted minor.

Minors adopted by order of the Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of persons and as to property as natural children or heirs of the persons adopting them.

Chapter 2. Marriage

Sec. 201. Policy of the Tribes.

It is the policy of the Tribes to promote legal marriage as described in Sections 205 through 207 because legal marriages contribute to stable family relationships and a positive moral climate on the Reservation.

Sec. 202. Requirements.

For a man and a woman to be married under this Chapter, each must:

- (a) be at least sixteen (16) years of age;
- (b) freely consent to the marriage; and
- (c) if under eighteen (18) years of age, obtain the consent of their custodial parents or legal guardian, if any.

Sec. 203. Prohibited marriages.

Two (2) persons shall not be married under this chapter who are related by blood to each other in any of the following degrees:

- (a) Parent and child;
- (b) Grandparent and grandchild;
- (c) Brother and sister, or half-brother and half-sister;
- (d) Aunt and nephew, or uncle and niece, whether the relationship is by half or whole blood;
- (e) Cousins in the first degree.

Any attempted marriage between persons so related shall be null and void from the time of the marriage forward.

Sec. 204. Marriage of person having existing spouse.

A person having an existing spouse shall not be married to another under this Title. A person having an existing spouse is one who has been married under this Title, or under the laws of another Tribe, state, or foreign nation, and whose marriage has not been terminated by:

- (1) a divorce or annulment recognized as valid by the Tribe, state, or foreign nation which granted it, and which complies with due process of law;
- (2) the death of the spouse; or
- (3) the absence and believed death of the spouse for five (5) years or more.

Sec. 205. Blood test.

Persons wishing to be married must each undergo a blood test. The test shall be administered by a duly licensed physician and shall be a standard serological test or such other examination as may be necessary for the discovery of syphilis. The test shall be given not more than thirty (30) days before the application for a marriage license.

Sec. 206. Marriage license.

Persons wishing to be married must obtain a marriage license from the Fort Peck Tribal Court. To obtain a license, the persons must attest before the judge of the Tribal Court, or in an affidavit

- (1) that they are at least sixteen (16) years of age,
- (2) that they freely consent to the marriage,
- (3) if they are under eighteen (18) years of age, that their custodial parents or guardians, if any, consent to the marriage (the written consent of the parents or legal guardians, if any, of any person under eighteen (18) years of age shall also be presented to the judge),
- (4) that they are not related to each other in a manner prohibited by Section 203 of this Title and
- (5) that they have no existing spouse as defined in Section 204 of this Title. Where necessary, the judge may require the testimony or affidavit of any person necessary to substantiate such information. Each applicant must also file with the Court a certificate signed by a duly licensed physician stating that the applicant has been given a blood test as provided in --

Section 205 of this--

Title, and that in the opinion of a physician the applicant is not infected with syphilis in communicable form. If a judge is satisfied that the above requirements are met, the judge shall issue a marriage license to the applicants. The marriage license shall be valid for thirty (30) days and shall be in substantially the following form:

Fort Peck Marriage License

To any person authorized to perform the marriage ceremony:

You are hereby authorized to join in marriage _____ of _____,
_____ and _____ of _____, _____, within
thirty (30) days
of the date specified below.

Dated this ____ day of _____, 19____.

Fort Peck Tribal Court Judge

The Court shall give one (1) copy of the marriage license to the applicants and shall retain one (1) copy for its records.

Sec. 207. Marriage ceremony.

A marriage ceremony may be performed by a judge of the Fort Peck Tribal Court, or by an ordained or recognized minister, priest, or other leader of any religious faith, who shall issue a marriage certificate in substantially the following form:

Fort Peck Marriage Certificate

I hereby certify that _____ of _____ and _____ of _____, having obtained a valid marriage license, appeared before me on the _____ day of _____, and were joined in marriage.

Signed:

Witnesses:

The marriage certificate shall be signed by two (2) witnesses other than the persons being married and the person performing the marriage ceremony. Marriage certificates shall be returned to the Fort Peck Tribal Court which shall retain the original and deliver a copy to the persons married.

Sec. 208. Jurisdiction.

Under this Title, marriage licenses may be issued and marriage ceremonies performed where at least one (1) party is an Indian, and at least one party has been a bona fide resident within the boundaries of the Fort Peck Reservation for a period of six (6) months immediately preceding the application for a license.

Sec. 209. Indian custom marriage.

Indian custom marriage and divorce among Indians on the Fort Peck Indian Reservation remains abolished.

Sec. 210. Recognition of foreign marriages.

A marriage duly licensed and performed under the laws of the United States, any Tribe, state, or foreign nation shall be recognized as valid by the Fort Peck Tribal Court for all purposes.

Chapter 3. Annulment and Divorce

Sec. 301. Jurisdiction over annulment and divorce cases.

The Court shall have jurisdiction over annulment, divorce and any paternity, child custody, division of property, child support or alimony decree pursuant to such annulment or divorce, where at least one (1) party to the marriage is an Indian, and at least one (1) party has been a bona fide

resident within the boundaries of the Fort Peck Reservation for a period of ninety (90) days immediately preceding the filing of the action.

Sec. 302. Annulment.

(a) Petition. For any marriage performed under this Chapter, one (1) or both of the parties may, within one (1) year of the date of marriage, submit a petition of annulment to the Court, stating as grounds that: (1) one (1) or both parties was under sixteen (16) years of age at the time of the marriage; (2) one (1) or both parties did not freely consent to the marriage; (3) the parties were related to each other in a manner prohibited by Section 203 of this Title; or (4) one (1) or both parties had an existing spouse at the time of the marriage. The petition shall be sworn before a notary public or other official designated to verify signatures.

(b) Service of process. Each defendant in an annulment proceeding shall be served with a copy of the complaint as provided under Title VIII, Section 102 of this Code.

(c) Response. If the non-petitioning spouse does not agree with the petition's allegations as to grounds for annulment or the division of property or custody of children proposed by the petition, the non-petitioning spouse may file with the Court a response within twenty (20) days of receiving the petition. The response shall be sworn before a notary public or other official designated to verify signatures, and shall contain an explanation of why there are no valid grounds for annulment or why the division of property or custody of children proposed in the petition is not appropriate. A copy of the response shall be served on the petitioning spouse.

(d) Hearings and decree. Where such a response is received, the Court shall hold a hearing on the matter. If (1) no response is received from the defendant after twenty (20) days, or (2) the Court determines that there are valid grounds for annulment, the Court shall enter a decree of annulment. The decree shall state the grounds for annulment, and shall be signed by the presiding judge. A copy of the decree shall be delivered to each of the parties, and the original retained for the records of the Court. In extraordinary circumstances and for good cause shown, an annulment granted where the non-petitioning spouse did not respond may be set aside by order of the Court. Annulment voids a marriage from the time of the marriage forward.

Sec. 303. Divorce.

(a) Grounds. A divorce shall be granted where the Court finds that (1) irreconcilable differences have caused the irreparable breakdown of the marriage or (2) the parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least six (6) months immediately preceding the filing of the petition. Divorces shall be granted without regard to the fault of the parties.

(b) Petition. One (1) or both parties may file a petition with the Court, sworn before a notary public or other official designated to verify signatures. The petition shall state the grounds for divorce and the facts and circumstances substantiating those grounds.

(c) Service of process. The defendant in a divorce proceeding shall be served with a copy of the complaint as provided under Title VIII, Section 102 of this Code.

(d) Response. The non-petitioning spouse may file a response to the petition within twenty (20) days of receipt of the petition. Such response may state the background facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property or custody of children different from any proposed by the petition.

(e) Hearing.

(1) In all divorce cases, the Court shall order and hold a hearing, unless the parties have stipulated to all matters and issues pending in which case the Court shall have the discretion to enter a decree without a hearing if the Court is convinced the stipulation is fair and equitable. The hearing shall be held within six (6) months after the date the petition is filed. Where the custody of children is at issue in the case, the Court may order a home study by an appropriate social worker or other professional, to be completed and submitted to the Court prior to the hearing. The purpose of the home study shall be to assist the Court in determining the custody issue.

(AMENDED AS PER RESOLUTION NO. 1836-89-1 AND RE-AFFIRMED BY RES. NO. 2084D-89-3, DATED 03/13/89, AND RES. NO. 2347-89-5, DATED 05/08/89.)

(2) At the hearing, both spouses shall have an opportunity to testify, cross-examine the other spouse and any witnesses, call and question other witnesses, and present documentary evidence.

Each spouse may retain counsel or be otherwise represented in the proceeding. The hearing shall be closed to the public unless both spouses agree otherwise.

(f) Filing fees. A fee of seventy-five dollars (\$75.00) shall be paid at the time any action for divorce under this Code is filed, provided, that upon a showing satisfactory to the Court that the petitioner is indigent, the Court shall waive all or so much of the filing fee as may be appropriate in the circumstances, keeping in mind that no person shall be barred from the Court because of lack of funds for filing.

Sec. 304. Child custody.

(a) In any action for annulment or divorce, or concerning the custody of a child born to the parties out of wedlock, the Court shall have authority to determine the custody of any child of the marriage, or any other child in the custody of either party under eighteen (18) years of age. The Court may grant custody to one (1) parent, or may grant joint custody, specifying the periods during which each parent shall have custody. In each case, the Court shall determine the visitation rights, if any, of the non-custodial parent.

(b) The determination of custody shall be based on the best interests of the child, and there shall be no presumption that a parent is better suited to be custodial parent based on that parent's gender. Where appropriate, the Tribal Court may also order that the non-custodial parent make periodic payments to cover a portion or all the expenses of care and education of the child. Orders concerning child custody may be modified at any time, on motion of either party, following an additional home study and hearing as provided in Section 303(e) of this Title. In determining the best interests of the child, the Court shall consider the relative ability of the parents to provide adequate food, clothing, shelter, medical care, love and emotional support and day-to-day supervision. The Court shall also take into account the desires of the child. Difference in financial means alone shall not be the deciding factor.

(AMENDED AS PER RESOLUTION(S) NO. 1287- 86-7, 1834-89-1, AND RE-AFFIRMED BY RES. NO. 2084F-89-3, DATED 03/13/89.)

Sec. 304a. Child custody actions outside divorce and annulment proceedings .

The Court shall have authority to determine custody of children as between parents, grandparents, and legal guardians, or as between parents, grandparents, or legal guardians and anyone with actual physical custody of the child, either pursuant to a court order or otherwise,

where there is no divorce or annulment proceeding pending. Such a custody proceeding shall commence with the filing of a written petition by the parent, grandparent, or legal guardian.

The Court shall have jurisdiction over this action if at least one (1) party to the action is an Indian, and at least one (1) party has been a bona fide resident within the boundaries of the Fort Peck Reservation for a period of ninety (90) days immediately preceding the filing of the action.

In ruling on a custody petition, the Court shall employ the standards set forth in Section 304, and may order periodic support payments as set for in that section. After the Court rules on the petition, neither party may file another custody petition for six (6) months absent a substantial change in circumstances. Any such change shall be described in the petition. Where abuse, neglect, or abandonment of the child is suspected, a petition may be filed under IX CCOJ 501 at any time. **(AMENDED AS PER RESOLUTION NO. 1909-2001-6, DATED 06/12/01 AND RESOLUTION NO. 1287-86-7, DATED 07/28/86.)**

Sec. 304b. Enforcement of child support orders.

(a) When the Court has ordered periodic support payments under Sections 304 or 304a of this Title, and the parent does not pay as ordered, the Court shall use the same procedures to collect these payments as it would use to enforce any money judgment in a civil action. These procedures are set forth in Sections 304, 305, and 311 of Title VIII. In the case of execution proceedings under Section 304 and garnishment proceedings under Section 311, the Court may initiate the proceedings on its own motion.

(b) If the parent willfully refuses to make periodic support payments as ordered by the Court, and the procedures set forth in subsection (a) do not result in full payment, the Court may initiate criminal contempt proceedings under Section 426(b) of Title VII and in the event of conviction shall have available the full range of sanctions for Class A misdemeanors. No such proceedings shall be instituted if the parent fails to pay by reason of indigence.

(AMENDED AS PER RESOLUTION NO. 1287-86- 7, DATED 07/28/86.)

Sec. 305. Division of property.

When an annulment or divorce is granted, the Court shall make such equitable distribution of all real and personal property as it deems just and proper. With respect to trust property, the Court shall have the authority to make appropriate orders to distribute such property, but shall have no authority to order that any property or interest in property be removed from trust status, or to make any order that would result in such removal.

Sec. 306. Alimony.

When an annulment or divorce is granted, the Court may order either party to make periodic alimony payments as necessary for the support of the other party. Such orders may be modified at any time, on motion of either party, to reflect changes in either party's economic circumstances. Upon motion, the Court shall terminate alimony to any spouse who has remarried.

Sec. 307. Paternity.

(a) Jurisdiction. The Court shall have the jurisdiction to adjudicate the paternity of a child in divorce and annulment proceedings or upon petition to the Court, and to compel payments for support in any paternity action or in divorce and annulment proceedings.

(b) Petitions. Petitions for declaration of paternity may be filed with the Court by a complaining parent, by the minor acting through a custodian or guardian if the complainant dies or

is disabled or by the Tribes. The petition shall be sworn before a notary public or other official designated to verify signatures.

A petition to establish paternity may be brought in Tribal Court at any time before the child is eighteen (18) years and may be started before the birth of the child, but, unless the alleged father consents, trial will not be held until at least fifteen (15) days after the birth of the child.

(c) Service of process. The defendant in a paternity proceeding shall be served with a copy of the petition as provided under Title VIII, Section 102 of this Code.

(d) Response. The defendant in the paternity suit may contest the allegations in the petition by filing a response within sixty (60) days of receiving the petition. The response shall be sworn before a notary public or other official designated to verify signatures.

(e) Hearing. Where such a response is received, the Court shall hold a hearing on the matter. At the hearing the Court shall receive testimony from any witnesses called by the parties. The Court shall have the authority to order the defendant to submit to a blood test. The Court may receive the results of a blood test as evidence only if testimony interpreting the results is presented by the physician under whose supervision the test was given.

(f) Decree. If (1) no response is received from the defendant after sixty (60) days, or (2) the Court determines based on the evidence presented at the hearing that the defendant is the father of the child, the Court shall enter a decree of paternity. A copy of the decree shall be delivered to each of the parties, and the original retained for the records of the Court. In extraordinary circumstances and for good cause shown, a decree of paternity granted where the defendant did not respond may be set aside by order of the Court.

(AMENDED AS PER RESOLUTION NO. 1729-2007-06, DATED 06/11/07.)

Sec. 308. Temporary alimony and custody awards.

The Court may issue temporary orders during the pendency of an annulment or divorce proceeding as to child custody, alimony, and the possession of real and personal property, not held in trust for any individual. Such orders may be granted upon motion of either party, or on the Court's own motion. A hearing, for which ten (10) days advance notice shall be provided to the parties, shall be held prior to the issuance of such temporary orders, unless the Court determines that an emergency exists, or a party cannot be found, in which case such order may be issued ex parte. Emergency shall be interpreted to include, but not be limited to: a danger of physical abuse to the spouse or the parties' children, a severe emotional abuse, a lack of means for interim subsistence, or the danger the child will be removed from this jurisdiction. If an emergency is alleged by affidavit, an initial hearing and order shall be completed within twenty four (24) hours of the filing of such affidavit. In addition, if the initial order is issued ex parte, a full hearing on the temporary order shall be held within ten (10) days.

(AMENDED AS PER RESOLUTION NO. 1835-89- 1, AND RE-AFFIRMED AS PER RESOLUTION. NO. 2084E-89-3, DATED 03/13/89.)

Sec. 309. Recognition of foreign divorces and annulments.

A divorce or annulment duly granted under the laws of the United States, any Tribe, state, or foreign nation shall be recognized as valid by the Fort Peck Tribal Court for all purposes.