

## TITLE 10

### DOMESTIC RELATIONS

#### Part 1

##### General Provisions and Definitions.

10-1-101. Short title. This act may be cited as the "Crow Uniform Marriage and Divorce Act."

10-1-102. Purposes of Act. This act shall be liberally construed and applied to promote its underlying purposes, which are to:

- (1), Provide adequate procedures for the solemnization and registration of marriage;
- (2) Strengthen and preserve the integrity of marriage and safeguard family relationships;
- (3) Promote the amicable settlement of disputes that have arisen between parties to a marriage;
- (4) Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- (5) Make reasonable provision for spouse and minor children during and after litigation; and
- (6) Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole bases for its dissolution.

10-1-103. Uniformity of Application and Construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those Indian tribes and states which enact it.

10-1-104. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage, licensed, solemnized, and registered as provided in this act is valid in the Crow Indian Reservation. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of the Crow Tribe.

10-1-105. Form of Application, License, Certificate, and Consent.

(1) The Crow Tribal Court shall prescribe, the form for an application for a marriage license, which shall include the following information:

- (a) Name, sex, address, date and place of birth of each party to the proposed marriage;
- (b) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse.

- (c) Name and address of the parents or guardian of each party;
- (d) Whether the parties are related to each other and if so their relationship;
- (e) Name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship relationship with respect to the child have been terminated.

(2) The Crow Tribal Court shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

10-1-106. License to Marry. When a marriage application has been completed and signed by both parties to a prospective marriage, and at least one (1) party has appeared before the clerk of the Crow Tribal Court and paid the marriage license fee of fifteen dollars (\$15), the clerk of the Crow Tribal Court shall issue a license to marry in a marriage certificate form upon being furnished:

- (1) Satisfactory proof that each party to the marriage will have attained the age of eighteen (18) by the time the marriage license is effective, or will have attained the age of sixteen (16) years and has obtained judicial approval as provided in section 10-1-108; and
- (2) Satisfactory proof that the marriage is not prohibited; and
- (3) A certificate of the results of any medical examination required by the laws of the Crow Tribe.

10-1-107. Effective Date of License. A license to marry becomes effective throughout the Crow Indian Reservation three (3) days after the date of issuance, unless the judge of the Crow Tribal Court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

10-1-108. Judicial approval. (1) The Tribal Court may order the clerk of the Tribal Court to issue a marriage license and a marriage certificate form to a party aged sixteen (16) or seventeen (17) years who has no parent capable of

consenting to his marriage, or has the consent of both parents, or of the parent having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The Tribal Court may require both parties to participate in a reasonable period of marriage counseling with a designated counselor as a condition of the order for issuance of marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and that marriage will serve his or her best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The Tribal Court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

10-1-109. Solemnization and Registration. (1) A marriage may be solemnized by a judge of the Crow Tribal Court, a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor or justice of the peace or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the Clerk of the Crow Tribal Court.

(2) If a party to a marriage is unable to be present at the solemnization, he or she may authorize in writing a third person to act as proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the Tribal Court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the Clerk of the Tribal Court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

1.0-1-110. Prohibited Marriages. (1) The following marriages are prohibited:

(a) A marriage entered into prior to the dissolution of an earlier marriage of one or more of the parties;

(b) A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) A marriage between an uncle and a niece, or between an aunt and a nephew, whether the relationship is by the half or whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

3) Children born of a prohibited marriage are legitimate.

10-1-111. Declaration of Invalidity. (1) The Tribal Court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) A party lacked capacity to consent to the marriage at the time the marriage was entered into, either because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(b) A party lacked the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was entered into, the other party did not know of the incapacity;

(c) A party was under the age of sixteen (16) years or was age sixteen (16) or seventeen (17) years and did not have the consent of his parents or guardian or judicial approval; or

(d) The marriage is prohibited.

(2) A declaration of invalidity under subsection (1) (a) through (c) may be sought by any of the following persons and must be commenced within the time specified, but in no event may declaration of invalidity be sought after the death of either party to the marriage:

(a) For lack of capacity to consent because of mental incapacity or infirmity, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(b) For lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(c) For lack of capacity to consent because of force, duress, or fraud, no later than two (2) years after the petitioner obtained knowledge of the described condition;

(d) For the reasons set forth in subsection (1)(d) by either party no later than four (4) years after the petitioner obtained knowledge of the described condition;

(e) For the reasons set forth in subsection (1) (c) the underage party, his parent or guardian, prior to the time the underage party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reasons set forth in subsection (2)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the reservation attorney, or a child or either party, at any time prior to the death of one (1) of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interest of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this act relating to property rights of the spouses, maintenance, support, and custody, of the children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

10-1-112. Putative Spouse. Any person who has cohabitated with another to whom he is not legally married and in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminated his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following the termination of his status, whether or not the marriage is prohibited (section 10-1-110) or declared invalid (section 10-1-111). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interest of justice.

10-1-113. Application. All marriages contracted within the Crow Indian Reservation prior to the effective date of this act, or outside the Crow Indian Reservation, that are valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties, are valid within the Crow Indian Reservation.

10-1-114. Validity of Common Law Marriage. Common law marriages are not recognized by the Crow Tribe.

10-1-115. Dissolution of Marriage—Legal Separation. (1) The Tribal Court shall enter a decree of dissolution of marriage if:

a. The Court finds that one of the parties, at the time of the action commenced, was domiciled within the Crow Indian Reservation for ninety (90) days next proceeding the filing of the findings;

(b) The Court finds that the marriage is irretrievably broken, which findings shall be supported by evidence;

(i) That the parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding, or

(ii) That there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) The Court finds that the conciliation provisions of the Crow Conciliation Law and of section 10-1-118 either do not apply or have been met; and

(d) To the extent it has jurisdiction to do so, the Court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property; or provided for a separate later hearing to complete the matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court shall enter the decree in that form unless the other party objects.

10-1-116. Procedure—Commencement—Pleadings—Abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) The age, occupation, and residence of each party and his length of residence on the reservation;

(b) The date of the marriage and the place at which it was registered;

(c) That the jurisdictional requirements of section 10-1-115 exist and that the marriage is irretrievably broken in that either:

- (i) The parties have lived separate and apart for a period of more than one hundred eighty (180) days next preceding the commencement of this proceeding; or
- (ii) There is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

- (d) The names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;
  - (e) Any arrangements as to support, custody, and visitation of the children and maintenance of a spouse;
  - (f) The relief sought.
- (2) Either or both parties to the marriage may initiate the proceeding.
  - (3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Crow Tribal Rules of Civil Procedure, and may within twenty (20) days after the service file a verified response. No decree may be entered until twenty (20) days after the date of service.
  - (4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time are abolished
  - (5) The Court may join additional parties proper for the exercise of its authority to implement this act.

10-1-117. Temporary Order or Temporary Injunction. (1) In the proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or for support following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and amounts requested:

- (2) As a part of the motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:
  - (a) Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;
  - (b) Enjoining a party from molesting or disturbing the peace of the other party or of a child;
  - (c) Excluding a party from the family home or from the home of the party upon the showing that physical or emotional harm would otherwise result;
  - (d) Enjoining a party from removing a child from the jurisdiction of the court; and
  - (e) Providing other injunctive relief proper in the circumstances.
- (3) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for response has elapsed.
- (4) A response may be filed within twenty (20) days after service of notice of motion or at the time specified in the temporary restraining order.
- (5) On the basis of the showing made and in conformity with section 10-1-121 and 10-1-122, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.
- (6) A temporary order or temporary injunction:
  - (a) Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceedings;
  - (b) May be revoked or modified before final decree on a showing by affidavit of the fact necessary to revocation or modification of a final decree under section;and
  - (c) Terminates when the final decree is entered or when the petition for dissolution, or legal separation is voluntarily dismissed.

10-1-118. Irretrievable Breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Court, after hearing, shall make a finding whether the marriage is irretrievably broken.

- (2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing the petition and the prospect for reconciliation, and shall:
  - (a) Make a finding whether the marriage is irretrievably broken; or
  - (b) Continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the Court's calendar, and may suggest to the parties that they seek

counseling The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.  
(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

10-1-119. Separation Agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant to their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support;

(a) Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, or

(b) If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has not found the terms unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of the separation agreement set forth in the decree are automatically modified by modification of the decree.

10-1-120. Disposition of Property. (1) In a proceeding for a dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both however and whenever acquired, and whether the title thereto is in the name of the husband or wife or both, in making the apportionment the court shall consider the duration of the marriage, and prior marriage of either party, antenuptial agreement of the parties, the age, health, station, occupation, amount and source of income, vocational skills, employ ability, estate, liabilities and needs of each of the parties, custodial revisions, whether the apportionment is in lieu of or in addition to maintenance, and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates, and the contribution of a spouse as a homemaker or to the family unit. In disposing of the property acquired prior to the marriage; property acquired by gift, bequest, devise or descent; property acquired in exchange for property by gift, bequest, devise, or descent; the' increased value of the property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including the nonmonetary contribution of a homemaker; the extent to which such contributions have facilitated the maintenance of this property and whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interest of the children by setting aside a portion of the jointly and separately held estates of the parties and a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependant, or incompetent children of the parties.

10-1-121 Maintenance. (1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property to provide for his reasonable needs, and

(b) Is unable to support himself through appropriate employment or is a custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

- (a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
- (c) The standard of living established during the marriage;
- (d) The duration of the marriage; and
- (e) The age and the physical and emotional condition of the spouse seeking maintenance; and
- (f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

10-1-122 Child Support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, and after considering all relevant factors including:

- (1) Financial resources of the child;
- (2) The financial resources of the custodial-parent;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and his education needs;
- (5) The financial resources and needs of the non-custodial parent.

10-1-123 Representation of the Child. The court may appoint an attorney or lay representative authorized to practice before the court to represent the interest of a minor dependent child with respect to his support, custody, and visitation. The court shall enter an order for cost and fees in favor of the child's attorney or lay representative. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs shall be waived.

10-1-124 Payment of Maintenance or Support to the Court.

- (1) Upon its own motion or upon the motion of either party, the court may order at any time that maintenance or support payments must be made to the clerk of the Tribal Court as trustee for the remittance to the person entitled to receive the payments.
- (2) The clerk of the Tribal Court shall maintain records listing the amount of the payments, the date payments are required to be made, and the names and addresses of the agencies affected by the order.
- (3) The parties affected by the order shall inform the clerk of the Tribal Court of any change of address or other condition that may affect the administration of the order.

10-1-125 Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payer of the funds two (2) weeks after the service upon him of notice that it has been made. The payer shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payer may deduct from each payment a sum not exceeding one dollar (\$1) as reimbursement for cost. An employer shall not discharge or otherwise discipline an employee as the result of a wage or salary assignment authorized by this action.

10-1-126 Costs—Attorney's Fees. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this act and for attorney's fees, including sums for legal services rendered and cost incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

10-1-127 Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal and appeal from the decree of dissolution that does not challenge the findings that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than six (6) months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of the Tribal Court shall give notice of the entry of the decree of dissolution or legal separation if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name to be restored.

#### 10-1-128 Independence of Provisions of Decree or temporary Order

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

#### 10-1-129 Modification and Termination of Provisions for Maintenance, Support, and Property

Disposition.(1) Except as otherwise provided in subsection 6 of section 10-1-119, the provisions of any decree respecting maintenance or support may be modified by a court only as to installments accruing subsequent to the motion for modification and either:

(a) Upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(b) Upon written consent of the parties. The provisions as to property disposition may not be revoked or modified by court except:

(i) Upon written consent of the parties, or

(ii) If the court finds the existence of conditions that justify a reopening of a judgment under the laws of the Crow Tribe.

(2) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of the parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment to the extent just and appropriate in the circumstances.

10-1-130 Jurisdiction—Commencement of Proceedings. (1) The Crow Tribal Court, competent to decide child custody matters, has jurisdiction to make a child custody determination by initial or modification decree if:

(a) The Crow Indian Reservation:

(i) Is the home of the child at the time of commencement of the proceedings; or

(ii) Has been the child's home within six (6) months before commencement of proceeding and the child is absent from this home because of his removal or retention by the person claiming custody or for other reasons, and a parent or person acting as parent continues to live within the Crow Indian Reservation; or

(b) It is in the best interest of the child that a court of the Crow Tribe assume jurisdiction because:

(i) The child and his parents or the child and at least one (1) contestant have a significant connection with the Crow Indian Reservation; and

(ii) There is available within the Crow Indian Reservation substantial evidence concerning the child's present or future care, protection, training, and personal relationship; or

(c) The child is physically present within the Crow Indian Reservation and:

(i) Has been abandoned; or

(ii) It is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) No other state or tribe has jurisdiction under prerequisites substantially in accordance with subsections (1)

(a), (1) (b), or (1) (c) of this section or another state or tribe has declined to exercise jurisdiction on the ground that the Crow Indian Reservation is the more appropriate forum to determine custody of the child; and

(ii) It is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in the Crow Reservation of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of the Crow Reservation to make a child custody determination.

(3) Physical presence of the child, while desirable is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the Tribal Court:

(a) By a parent, by filing a petition:

- (i) For dissolution or legal separation; or
- (ii) For custody of the child in the Tribal Court; or
- (b) By a person other than a parent, by filing a petition for custody of the child in the Crow Tribal Court, but only if he is not in the physical custody of one of his parents.
- (5) Notice of child custody proceeding shall be given to the child's parents, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon the showing of good cause, may permit intervention of other interested parties.

10-1-131. Best Interest of the Child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

- (1) The wishes of the child's parents as to his custody;
- (2) The wishes of the child as to his custodian;
- (3) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;
- (4) The child's adjustment to his home, school, and community; and
- (5) The mental and physical health of all individuals involved.

10-1-132 Temporary Orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in section 10-1-139. The court may award temporary custody under the standards of section 10-1-131 after a hearing or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or a legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds after a hearing, that circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

10-1-133 Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record of the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. The counsel may examine as a witness any professional personnel consulted by the court.

10-1-134 Investigations and Reports. (1) In contested custody proceedings, if a parent or child's custodian so requests, the court may order an investigation and report concerning custodial placement of the child. The investigation and report may be made by the tribal, BIA, or County Welfare Department.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen (16) unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received as evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing.; The investigator shall make available to counsel and to any party represented by counsel, the investigator's file of underlying data, and reports, complete text of diagnostic reports made to an investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person who he has consulted for cross-examination. A party may not waive his right of cross-examination prior to hearing.

10-1-135 Hearings. (1) Custody proceedings shall receive priority in being set for hearing:

(2) The court may tax as cost the payment of travel and other necessary expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court-without; a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary to protect the child's welfare, that the record of an interview, report, investigation, or testimony in a custody proceeding is kept secret, the court may make appropriate order sealing the record.

10-1-136 Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds after a hearing that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger Seriously the child's physical, mental, moral, or emotional health.

10-1-137 Judicial Supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court, after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the tribal, BIA, or County Welfare Department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are/carried out.

10-1-138 Modification. (1) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe that the child's present environment may endanger seriously his physical, mental, moral, or emotional health.

(2) The court shall not modify a prior custody decree unless it finds upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with consent of the custodian; or

(c) The child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(3) The attorney fees and costs shall be assessed against the party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

10-1-139. Affidavit Practice. A party seeking a temporary custody order or modification of a custody decree shall together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds an adequate cause for hearing the motion as established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

10-1-140. Application. (1) This act applies to all proceedings commenced on or after July 8, 1978, its effective date.

(2) This act applies to all pending actions and proceedings prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal is pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal of the new trial governs the appeal, the new trial, and any subsequent trial or appeal.

10-1-141. Application of the Crow Rules of Civil Procedure to proceedings under this act. (1) The Crow Rules of Civil Procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In Re The Marriage of.....and....."

A custody or support proceeding shall be entitled "In Re The(Custody) (Support) of....."

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all, pleadings in other matters under this act shall be denominated as provided in the Crow Rules of Civil Procedure.

(4) In this act, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one c the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.