

**TITLE 7  
MENTAL HEALTH  
AND  
INVOLUNTARY COMMITMENTS**

**CHAPTER 1  
INVOLUNTARY COMMITMENT  
FOR SUBSTANCE DEPENDENCE**

**Section 7-1-1. Purpose.** The provisions of this Chapter are intended to provide procedures for:

- (1) Providing prompt evaluation and treatment of persons who are substance dependent or abusing alcohol or drugs during pregnancy;
- (2) Safeguard individual rights;
- (3) To protect unborn children from the harms of prenatal alcohol and drug consumption;
- (4) Provide continuity of care for individuals who are substance dependent; and
- (5) Encourage the full use of all existing agencies, professional personnel, and other resources to prevent duplication of services.

**Section 7-1-2. Construction.** This chapter shall be construed to provide the least restrictive form of treatment available which is in the best interests of the substance dependent person.

**Section 7-1-3. Definitions.** The following definitions shall apply to this Chapter:

- (1) **Drugs:** Means all forms of narcotics, hallucinogens, controlled substances including cannabis, depressants, stimulants, and other drugs whose use, possession, or transfer is restricted or prohibited by law
- (2) **Imminent danger to self:** Means:
  - 1) Behavior due to substance intoxication as that term is defined by DMS4 which supports a reasonable expectation that the person will inflict serious physical injury upon himself

in the very near future. Such behavior shall be evidenced by recent acts which constitute a danger of suicide or self-inflicted serious injury. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in the light of the person's recent previous acts, it is substantially supportive of an expectation that the threat will be carried out; or

- (2) Recent behavior or related physical condition which show there is a danger of serious personal harm in the very near future as evidenced by an inability to provide for some basic human needs such as food, clothing, shelter, physical health or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person's substance dependence.
- (3) Imminent danger to others: Means behavior due to substance intoxication which supports a reasonable expectation that the person will inflict serious physical injury upon another person in the very near future. Such behavior shall be evidenced by recent acts which constitute a danger of serious physical injury to another person. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts, it is substantially supportive of an expectation that the threat will be carried out.
- (4) Person requiring emergency treatment: means a person who is:
  1. Pregnant and abusing alcohol or drugs or who is pregnant and has tested positive for alcohol or drugs, or
  2. An intravenous drug user, or
  3. Under the influence of alcohol or drugs and is an imminent danger to self or others as those terms are defined herein.
- (5) Person requiring treatment: means a person who is substance dependent as that term is defined by the

Diagnostic and Statistic Manual of Mental Disorders, 4th Ed. (DSM4).

- (6) Qualified Mental Health Professional: Means any one of the following:
1. Licensed Physician;
  2. Licensed Psychologist;
  3. Licensed Professional Counselor;
  4. Licensed Psychiatric nurse with a masters degree from an accredited education program and two years of supervised clinical experience in a mental health setting;
  5. Licensed clinical social worker with masters degree from an accredited training program;
  6. Licensed independent nurse practitioner certified in mental health.

**Section 7-1-4. Procedure for commencement of an action for involuntary commitment.** Proceedings for the involuntary commitment and treatment of an alleged person requiring treatment or person requiring emergency treatment may be commenced by any person 18 years of age or over by presenting an affidavit to the tribal prosecutor alleging the facts which subject the person to an order for involuntary commitment.

**Section 7-1-5. Tribe to act as Petitioner/Tribal Prosecutor to represent petitioner.** In all cases brought under this Title, the Tribe shall be the petitioner. The tribal prosecutor shall represent the petitioner.

**Section 7-1-6. Investigation by tribal prosecutor/Petition for commitment.** The tribal prosecutor shall at once investigate the grounds upon which the affidavit for commitment are based, and if the prosecutor determines based upon the investigation the person meets the definition of a person requiring treatment or a person requiring emergency treatment, the prosecutor shall prepare a petition for involuntary commitment which shall contain the following information:

- (1) The name, address and age of the person who who presented the affidavit required by section

7-1-4;

- (2) The name, address, age, marital status and occupation, if known, of the alleged person requiring treatment;
- (3) The name, address, when known, of the persons nearest relatives or guardian or, if none, of a friend of the person;
- (4) The facts upon which the allegations are based.

The Petition shall be filed with the Tribal Court along with the affidavit required by Section 7-1-4 and a written report of the prosecutor. The Petition and other required documents shall be filed within seven days of receipt of the affidavit or within 24 hours of receipt of the affidavit in the case of an individual requiring emergency treatment.

**Section 7-1-7. Petition to be accompanied by Certificate of examination.** A petition for involuntary commitment shall be accompanied, where possible, with a certificate of examination by a qualified mental health professional or certified chemical dependency counselor. If no certificate accompanies the petition the petition must set forth the reasons that an examination could not be secured.

**Section 7-1-8. Contents of certification of examination.** The certificate of examination shall be based upon a personal examination of the individual and shall contain the following information:

1. Evaluation of the person's physical, social, and educational condition;
2. A conclusion as to whether the person meets the criteria of a person requiring treatment, with a clear explanation of what conclusion was derived from the evaluation required.
3. If the report concludes that the person meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary commitment.
4. The signature of the examiner who prepared the reports.

**Section 7-1-9. Transmittal to the tribal judge/review.** Upon filing of a petition with the court, the clerk of

courts shall immediately transmit said petition to the tribal judge, provided that if the petition alleges that the individual is in need of emergency treatment, the petition shall be transmitted no later than twenty four hours after it is filed. The judge shall review the petition and determine whether it meets the requirements of Sections 7-1-6, 7-1-7 and 7-1-8. The judge shall then determine whether the petition establishes probable cause to believe that the respondent meets the criteria of a person requiring treatment or a person requiring emergency treatment. If the judge determines probable cause exists, the judge shall issue and file an order setting the time and date for a hearing within seven days or within 24 hours in the case of an individual requiring emergency treatment. The judge shall also issue notice of the hearing to all interested persons within the time limit set out above.

**Section 7-1-10. Immediate apprehension of person alleged to be in need of emergency treatment.** After reviewing a Petition for emergency treatment of an individual and determining probable cause therefore the judge shall file an order for the immediate apprehension, detention and examination of the Respondent at a facility he may designate for a period not to exceed longer than twenty four hours.

**Section 7-1-11. Notice.** Certified copies of the Petition and Notice of Hearing shall be personally served on the Respondent by tribal law enforcement or a tribal process server at least five days prior to the hearing or immediately after issuance by the judge in the case of a person requiring emergency treatment. The notice of hearing shall include the following:

- a. Notice of the time, date and place of hearing and directing the Respondent to there appear in person and notifying him that if he should fail to do so the Judge may issue a warrant directing law enforcement to secure the protective custody and to cause his personal appearance and attendance at the hearing;
- b. Notice to the Respondent of his right to be represented by legal counsel.
- c. Notice (except in the case of a petition for emergency treatment) that the Respondent must be examined by a qualified mental health professional or physician designated by the judge, either voluntarily appearing for the examination within twenty-four hours after

service of the notice, or by being apprehended by law enforcement and detained for examination and hearing upon order of the Judge issued after failure of the Respondent to appear voluntarily.

- d. Notice of the right of the Respondent to obtain an additional examination at his own expense.

**Section 7-1-12. Counsel for the Respondent.** The Respondent shall be entitled to legal counsel at every stage of the proceeding in accordance with the Indian Civil Rights Act.

**Section 7-1-13. Mandatory reporting requirements.** All persons employed by the Tribe who are covered by the terms of their job duties by Public 101-630 shall be required to report suspected alcohol and drug use by a pregnant woman to tribal social services, law enforcement or the tribal prosecutor.

**Section 7-1-14. Persons acting in good faith not to be subject to civil or criminal liability.** Any person acting in good faith upon either actual knowledge or reliable information who shall make application for commitment pursuant to this Title or who shall make a report under 7-1-13 shall not be subject to civil or criminal liability for such act.

**Section 7-1-15. Examination by court order.** If the Respondent, upon receiving notice of the hearing, refuses to be examined by a qualified mental health professional or a chemical dependency counselor, the judge may issue a warrant and detain the person at a facility he may designate as long as is necessary to complete the examination, and hold a hearing, but in no event longer than seventy two hours excluding Saturdays, Sundays, and Holidays, if evaluation services are not available on those days.

**Section 7-1-16. Examiner to report to the Court/Respondent's right to obtain additional report.** After an examination, the qualified mental health professional or certified chemical dependency counselor shall either transmit a certificate to the court or report to the court that the execution of a certificate is not warranted. The Respondent has the right to obtain an additional examination at his or her own expense which may be placed in evidence before the court.

**Section 7-1-17. Presence of Respondent at hearing.** The Respondent shall be present at all hearings unless his or her attorney has agreed that the Respondent be excused, the

reasons for which shall be noted for the record. The Respondent's attorney may subpoena and cross-examine witnesses and present evidence on the Respondent's behalf.

**Section 7-1-18. Clear and convincing evidence required for finding of need for treatment.** If the court finds that the Respondent is a person in need of treatment, the court may by written findings of fact and conclusions of law order the Respondent to undergo either inpatient or outpatient treatment at a facility designated by the court.

**Section 7-1-19. Alternatives to inpatient treatment to be considered.** Before ordering inpatient treatment the Court shall make a determination of what is the least restrictive form of treatment available which is in the best interests of the Respondent.

**Section 7-1-20. Filing and issuance of findings and order.** The findings and order of the Court shall be filed with the Clerk of Courts who shall have certified copies served upon the Respondent and the Administrator of the facility designated by the court.

**Section 7-1-21. Transportation of patient.** The court shall order tribal law enforcement to transport the Respondent to the designated facility for inpatient treatment. The court may order a friend or relative to transport the Respondent.

**Section 7-1-22. Care pending admission to facility.** If it shall be shown to the satisfaction of the Court that a Respondent who is found to be in need of treatment as provided in this Title cannot at once be admitted to the designated facility, and cannot, with safety, be allowed to go at liberty, the Court shall require that the Respondent be suitably and humanely provided for otherwise until such admission can be had, or until the need therefore no longer exists.

**Section 7-1-23. Patients to be free from physical restraint and isolation.** Patients shall have the right to be free from physical restraints and isolation. Only emergency situations, when it is likely that patients could harm themselves or others and when less restrictive means of restraint are not feasible, may a patient be physically or chemically restrained or placed in isolation, provided further that this measure may be used only on a qualified mental health professional's written order which explains the rationale for such action. The written order may be entered only after the qualified mental health professional has personally seen the patient and evaluated the need for

restraint or isolation. Such written order shall be for no more than twenty four hours and must be renewed if restraint or isolation are to be continued.

**Section 7-1-24. Noncompliance with Court Order.** If the Respondent does not comply with any Order under this Title, the Court shall conduct a hearing for the purpose of determining compliance or noncompliance, and if noncompliance is determined, the Court may modify its original order and direct the individual to undergo a more restrictive form of treatment. The court may also hold the Respondent in contempt of court and implement the contempt provisions of Title 1, Chapter 3. At least five days notice of the hearing shall be given to the Respondent.

**Section 7-1-25. Court supervision of treatment plan.** The Court shall request monthly status reports from the mental health professionals or chemical dependency counselor on all Respondents who have been involuntarily committed until such time as treatment is no longer required. The court shall also conduct a review hearing at 60 day intervals on all Respondents remaining under an Order for involuntary commitment. Respondent's shall have the right to be present at the hearing and have the assistance of counsel. If at any time it comes to the attention of the Court that the treatment of a Respondent has not been successful, the Court shall conduct a hearing and may modify its original order and order the individual to follow the aftercare recommendations of the primary care provider.

**Section 7-1-26. Records and proceedings to be closed.** All actions brought under the Title and the records thereof shall be closed and subject to inspection only by the Respondent, his counsel, the Prosecutor, Tribal Counseling staff and the Administrator of the facility in which the Respondent has been admitted by order of the court. The court may authorize other interested parties to attend any hearing.

**Section 7-1-27. Appeals from Court's decision.** Appeals from the Court's decision shall be made to the tribal appeals court. The Respondent shall have the right to an expedited appeal from an order of involuntary commitment. The appeal shall be limited to a review of the proceedings of the Court and shall not be a de novo hearing.

This Title was enacted by the FSST Executive Committee on July 15, 1998, by Resolution # 98-48 dated July 15, 1998.

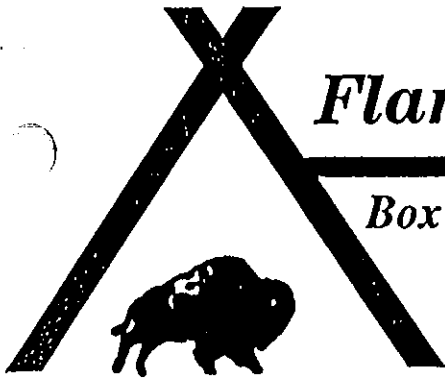


# *Flandreau Santee Sioux Tribe*

*Box 283 Flandreau, SD 57028*

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## RESOLUTION 00-20

WHEREAS, the Flandreau Santee Sioux Tribe is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act with a Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24<sup>th</sup>, 1936, and amended February 7<sup>th</sup>, 1941, and further amended November 16<sup>th</sup>, 1967, and further amended November 14<sup>th</sup>, 1984, and further amended May 23<sup>rd</sup>, 1990, and further amended May 12<sup>th</sup>, 1997, and

WHEREAS, Article III, Section 1 of said revised Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee, and

WHEREAS, pursuant to Article VIII, Section 1 (f) of said revised Constitution and By-laws, the Executive Committee has authority to promulgate ordinances governing and regulating the conduct of all individuals on the Reservation, and

WHEREAS, pursuant to said powers, the Executive Committee enacted Title 7, Mental Health and Involuntary Commitment, to the FSST Law and Order Code on July 15, 1998 by Resolution 98-48, and

WHEREAS, the FSST Judicial Code Committee has recommended that Title 7 be amended to add provisions which authorize tribal law enforcement to detain intoxicated individuals and place them in appropriate detoxification facilities, and

WHEREAS, the Executive Committee agrees with the Judicial Code Committee's recommendation regarding amendment to Title 7 to provide authorization for detention for detoxification.

NOW THEREFORE BE IT RESOLVED, that the Executive Committee hereby amends Title 7, Mental Health and Involuntary Commitments by adding Chapter 1 (A) entitled "Emergency Commitment of Intoxicated or Incapacitated Persons" which shall read as follows:

Chapter 1A  
EMERGENCY COMMITMENT OF INTOXICATED OR  
INCAPACITATED PERSONS

Section 7-1A-1. Protective custody of intoxicated or incapacitated persons-emergency commitment and detention. Any person who appears to be intoxicated or incapacitated by the effects of alcohol or drugs in a public place, and who is clearly dangerous to the health and safety of himself or others, may be taken into protective custody by tribal law enforcement authorities, acting with probable cause. If a person is taken into protective custody under this Chapter, he or she shall be taken forthwith to an approved treatment facility offering detoxification services for emergency commitment. If emergency commitment is not appropriate, as determined by the administrator of the facility or an authorized designee, the person may be detained as a patient in protective custody until no longer intoxicated, or up to forty-eight hours after admission. If no approved treatment facility is readily available the person shall be taken to an emergency medical service or jail, but only until the person is no longer intoxicated or incapacitated or only so long as may be necessary to prevent injury to himself or others.

For purposes of this section the term "incapacitated by alcohol or drugs" means that the person, as a result of the use of alcohol or drugs, is unconscious or his judgment is otherwise so impaired that he is incapable of

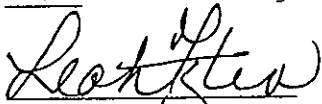
realizing and making a rational decision with respect to his need for treatment.

**Section 7-1A-2. Procedure for taking persons into protective custody.** A tribal law enforcement officer who detains a person pursuant to Section 7-1A-1 for protective custody shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. A taking into protective custody under this section is not an arrest. No entry or other record may be made to indicate that the person has been arrested or charged with a crime.

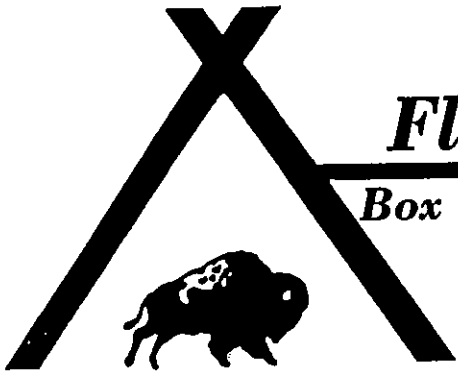
**Section 7-1A-3. Immunity from liability for law enforcement officers.** Tribal law enforcement authorities that act in compliance with sections 7-1A-1 and 7-1A-2 are acting in the course of their official duty and are not criminally or civilly liable therefor.

#### CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 12 day of April 2000, by the Executive Committee at which a quorum was present of 6 for 0 against, and 1 not voting.

  
Leah Fyten  
Tribal Secretary

  
Thomas Ranfranz  
Tribal President



# *Flandreau Santee Sioux Tribe*

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## RESOLUTION NO. 98-48

WHEREAS, the Flandreau Santee Sioux Tribe is a federally recognized Indian Tribe organized pursuant to a Constitution and By-Laws approved by the Secretary of the Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, and further amended November 16, 1967, and further amended November 14, 1984, and further amended May 17, 1997, and

WHEREAS, Article III of said amended Constitution and By-Laws provides that the governing body of the Tribe shall be the Executive Committee, and

WHEREAS, under Article VIII, Section 1 (f) of said revised Constitution and By-laws the Executive Committee has the power to promulgate and enforce ordinances regulating the conduct of all persons on the reservation, and

WHEREAS, pursuant to Article VIII, Section 1 (f) the Executive Committee has enacted the FSST Tribal Law and Order Code, and

WHEREAS, said Law and Order Code does not have a code for mental health involuntary commitments, and

WHEREAS, the Native American Advocacy Project has developed a final draft of the Unified Tribal Mental Health Code dealing with mental illness commitments and the Tribe has developed a final draft of a mental health code dealing with substance abuse commitments, and

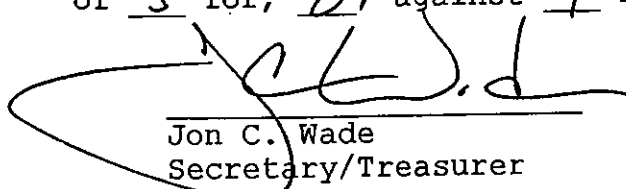
WHEREAS, the Executive Committee has determined that said codes should be enacted to deal with substance abuse and mental illness issues.


NOW THEREFORE BE IT RESOLVED, that the Executive Committee hereby enacts Title 7 of the Flandreau Santee Sioux Law and Order Code which consist of Chapter 1, Involuntary Commitment for Substance Dependence and Chapter 2, Treatment of Persons With Mental Illness or Dual Diagnosis.

BE IT FURTHER RESOLVED, that all previous resolutions, laws and acts taken by the Executive Committee which deal with any matter covered under Title 7 and which are inconsistent therewith are hereby repealed and of no further force or effect.

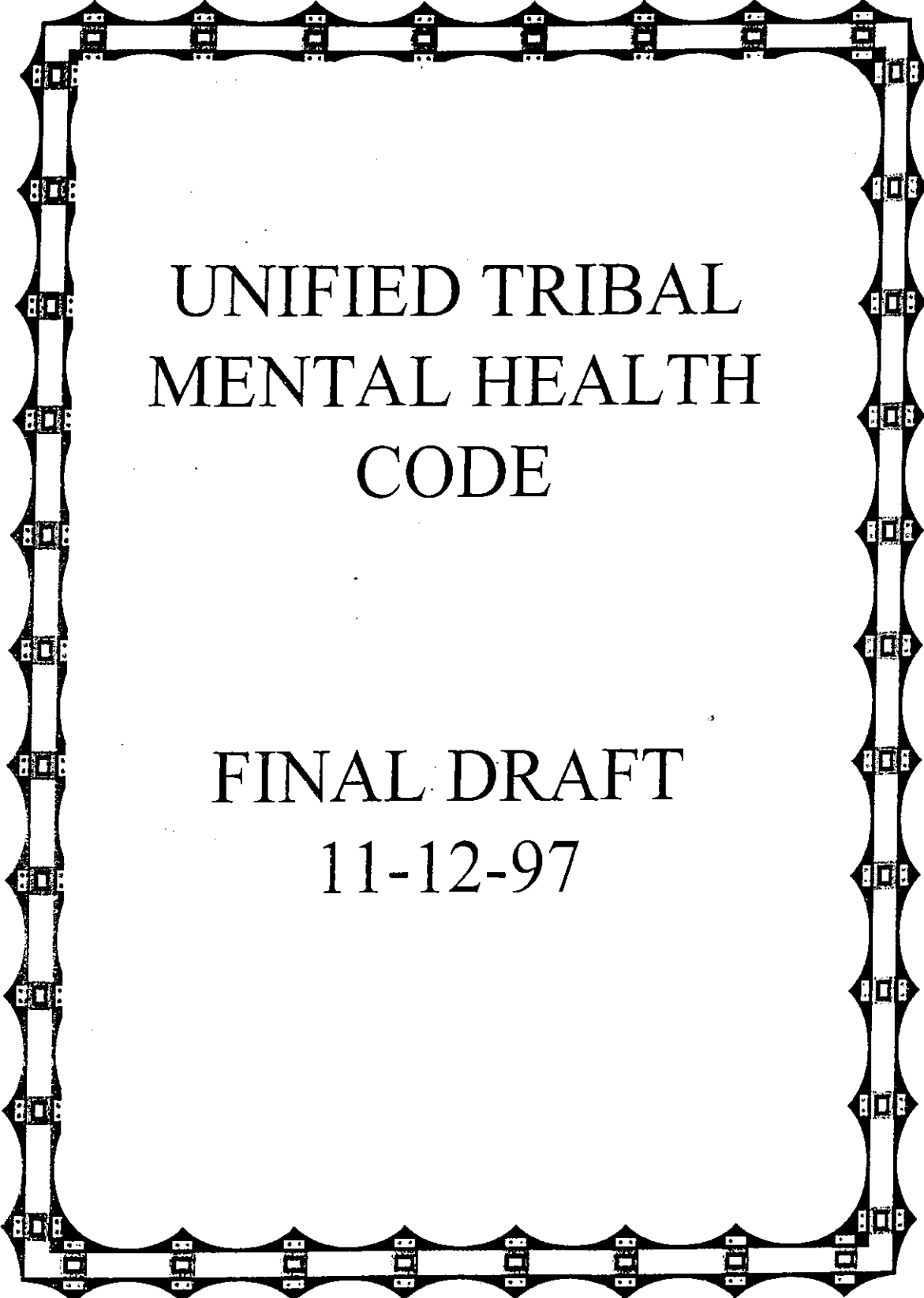
CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 15 day of July, 1998, by the Flandreau Santee Sioux Executive Committee at which a quorum was present by a vote of 3 for, 0, against 1 not voting.

  
Jon C. Wade  
Secretary/Treasurer

  
Richard P. Allen  
President

*Title 7  
Chapter 2*



UNIFIED TRIBAL  
MENTAL HEALTH  
CODE

FINAL DRAFT  
11-12-97

**Contents of Article \_\_\_\_\_ TREATMENT OF PERSONS WITH MENTAL ILLNESS OR DUAL DIAGNOSIS**

**Section 1 Preamble**..... 4

**Section 2 Definitions**

    Subsection: 1 Person with a severe mental illness.....Page 5

    Subsection: 2 Person with a dual diagnosis.....Page 5

    Subsection: 3 QMHP (Qualified Mental Health Professional).....Page 5

    Subsection: 4 Criteria for involuntary commitment.....Page 5

    Subsection: 5 Cultural liaison.....Page 6

    Subsection: 6 Least restrictive alternative.....Page 6

    Subsection: 7 Treatment program.....Page 6

    Subsection: 8 Danger to self and/or others.....Page 7

    Subsection: 9 Informed consent.....Page 7

    Subsection: 10 Legal representative.....Page 7

**Section: 3 Voluntary Admissions**

    Subsection: 1 Requirements for voluntary admission.....Page 8

    Subsection: 2 Immediate discharge of adult voluntary patient after notice of intent to terminate.....Page 8

    Subsection: 3 Emergency detention of voluntary inpatient after notice of intention to terminate.....Page 8

    Subsection: 4 Commitment of voluntary patient who has not applied for release-Reasons.....Page 9

    Subsection: 5 Notice to voluntary patients of release procedure-Acknowledgment of notice-Display in wards.....Page 9

    Subsection: 6 Explanation required prior to acceptance of voluntary inpatient-Informed consent-Application form.....Page 9

    Subsection: 7 Assessment of need for continued admission-Informed consent required for continued admission-Substitute informed consent.....Page 10

    Subsection: 8 Exercise of substituted informed consent by guardian.....Page 10

**Section: 4 Involuntary commitment of a person with severe mental illness or dual diagnosis**

    Subsection: 1 Protective custody/mental illness hold.....Page 11

    Subsection: 2 Petition asserting need for immediate intervention of person with mental illness or person apprehended.....Page 11

    Subsection: 3 Order for apprehension of subject-transportation to facility.....Page 11

    Subsection: 4 Notice to apprehended person of right to hearing and legal representation.....Page 11

    Subsection: 5 Professional examination of person apprehended.....Page 12

    Subsection: 6 Results of examination-Detention pending hearing.....Page 12

    Subsection: 7 Time limit for involuntary commitment hearing.....Page 12

    Subsection: 8 Testimony of qualified mental health professional on availability and appropriateness of alternatives.....P: 12

    Subsection: 9 Testimony of community resources and/or cultural liaison or supportive persons.....Page 12

Subsection: 10 Court to make final determination where person voluntarily admits himself/herself.....Page 12

Subsection: 11 Ninety-day commitment.....Page 13

Subsection: 12 Refusal of admission and commitment when medical condition exceeds treatment program's capacity.....Page 13

Subsection: 13 Review hearing after involuntary commitment order-Notice-Rights and procedures.....Page 13-14

**Section: 5 Hearings Procedure-Commitment Hearing**

Subsection: 1 Filing and issuance of findings and order.....Page 15

Subsection: 2 Tribal prosecutor to represent petitioners.....Page 15

Subsection: 3 Personal service of notice of hearing-Contents of notice.....Page 15

Subsection: 4 Assignment of legal representation for the alleged mentally ill person-Time allowed.....Page 15

Subsection: 5 Interrogatories to be answered with mental health professionals certificate or examination.....Page 15

Subsection: 6 Precautions against drugs hampering defense.....Page 15-16

Subsection: 7 Personal appearance at hearing-Presentation of evidence-Choosing not to appear.....Page 16

Subsection: 8 Rules of evidence.....Page 16

Subsection: 9 Appeals from court's decision.....Page 16

**Section: 6 Rights Section**

Subsection: 1 Individual privacy and dignity to be respected.....Page 17

Subsection: 2 "Person" defined.....Page 17

Subsection: 3 Commitment not conclusive on competence.....Page 17

Subsection: 4 Notice of rights furnished patient-Display.....Page 17

Subsection: 5 Rights enumerated-Limitations on rights.....Page 17-18

Subsection: 6 Right to treatment through spiritual means.....Page 18

Subsection: 7 Right of access to advocacy services.....Page 18

Subsection: 8 Labor for benefit of facility.....Page 18

Subsection: 9 Discharge not conditioned on labor-Compensation exempt from facility charges.....Page 18

Subsection: 10 Comprehensive individualized treatment program-Right to participate in planning-Purpose of program-Periodic review.....Page 18-19

Subsection: 11 Aftercare plan to facilitate discharge.....Page 19

Subsection: 12 Examination and review of behavioral status after admission.....Page 19

Subsection: 13 Review of need for continued treatment-Release if implementation of treatment plan untimely.....Page 20

Subsection: 14 Application for transfer from involuntary to voluntary status.....Page 20

Subsection: 15 Emergency surgery or treatment-Documentation of necessity.....Page 20

Subsection: 16 Right to refuse research, experimental or intrusive procedures.....Page 20-21

Subsection: 17 Informed consent for electroconvulsive therapy.....Page 21

Subsection: 18 Psychosurgery, aversive stimuli and substantial deprivations prohibited.....Page 21

Subsection: 19 Restrictive treatment procedures-Documentation-Prior approval-Limitation.....Page 21-22



	Subsection: 20 Seclusion or restraint-Clinical justification required- Rationale-Appropriate manner.....	Page 22
	Subsection: 21 Asserting grievances.....	Page 22
	Subsection: 22 Habeas corpus available for committed, confined, detained or restrained person.....	Page 22
	Subsection: 23 Provisions of title do not replace or limit other rights.....	Page 23
	Subsection: 24 Exercise of rights.....	Page 23
	Subsection: 25 Notification as to admission or commitment to, discharge from a treating facility.....	Page 23
<b>Section: 7</b>	<b>Hearing Procedure-Psychotropic Medication</b>	
	Subsection: 1 Petition for authority to administer psychotropic medication.....	Page 24
	Subsection: 2 Service of petition and notice of hearing-Content-Appointment of legal representation-Court calendar.....	Page 24
	Subsection: 3 Court-ordered use of psychotropic medication when person incapable of consent.....	Page 24
	Subsection: 4 Time limit for court-ordered administration of psychotropic medication-Review of necessity of treatment.....	Page 25
	Subsection: 5 Compensation of appointed legal representative/advocate by tribal court.....	Page 25
	Subsection: 6 Access to attorney/legal representative and private physician.....	Page 25
	Subsection: 7 Personal appearance at hearing not compulsory-Presenting evidence.....	Page 25
	Subsection: 8 Emergency administration of psychotropic medication-Length of treatment limited.....	P 26
<b>Section: 8</b>	<b>Medical Records</b>	
	Subsection: 1 Individual records required-Contents-Confidentiality.....	Page 27
	Subsection: 2 Information closed to public inspection-Sealed upon termination of proceedings.....	Page 27
	Subsection: 3 Confidentiality of information acquired in course of providing mental health services.....	Page 27
	Subsection: 4 Access to own records.....	Page 27-28
	Subsection: 5 Released information approved by administrator-Record of release.....	Page 28
<b>Section: 9</b>	<b>Discharge of Patients</b>	
	Subsection: 1 Notification to guardian that inpatient treatment is no longer required.....	Page 29
	Subsection: 2 Release treatment program-Transportation.....	Page 29
	Subsection: 3 Leave status-Limit-Reviews and hearings.....	Page 29
	Subsection: 4 Discharge of involuntary patient on changed behavior.....	Page 29

## **Section: 2 DEFINITIONS**

### **Subsection:1 Person with a severe mental illness:**

An individual with a severe mental disorder which substantially impairs conduct of personal affairs and/or social relations and/or basic human needs of life. Mental retardation, other developmental disability, alcohol and/or substance abuse, or criminal behavior do not alone constitute severe mental illness.

### **Subsection: 2 Person with a dual diagnosis:**

One who meets the definition for severe mental illness along with one or more of the following conditions: mental retardation, acquired traumatic brain injury, other developmental disability, chronic alcohol and/or substance addiction.

### **Subsection: 3 QMHP (Qualified Mental Health Professional):**

"Licensed" means currently licensed in any state.

Any one of the professions listed:

- a. Licensed physician
- b. Licensed psychologists
- c. Licensed professional counselor
- d. Licensed psychiatric nurse with a masters degree from an accredited education program and two years of supervised clinical experience in a mental health setting.
- e. Licensed clinical social worker with a masters degree from an accredited training program
- f. Licensed independent nurse practitioner certified in mental health

Each QMHP is encouraged to meet endorsement requirements including cultural competency training, legal procedure training regarding article \_\_\_\_\_ and mental illness training. See reference

### **Subsection: 4 Criteria for involuntary commitment:**

A person is subject to involuntary commitment if all of the following criteria are met:

- a. The person has a severe mental illness or dual diagnosis:
- b. Due to the severe mental illness or dual diagnosis, the person is a danger to self or others;
- c. The person needs immediate treatment to prevent serious physical harm to self or others:  
and
- d. The person is likely to receive therapeutic benefit from treatment.

**Subsection: 5 Cultural liaison:**

A person with significant knowledge of the patient's local and tribal traditional: culture, language, ceremonial practices and extended family dynamics. Preference shall be given to an enrolled member of a Federally recognized tribe.

**Subsection: 6 Least restrictive alternative:**

The treatment and treatment conditions which separately and in combination are no more intrusive or restricting of mental, social, spiritual and physical freedom than necessary to achieve the therapeutic benefit. Local community and voluntary options must be ruled out.

This includes but is not limited to the following:

1. Outpatient Treatment
2. Day Treatment
3. Outpatient Commitment
4. Care by Traditional Healers
5. Community Support
6. Voluntary Hospitalization
7. Self Help Groups

These considerations shall include:

- a. patient cultural values and preferences
- b. duration of treatment (inpatient or outpatient)
- c. physical safety of patient and others
- d. risks and benefits of treatment to the patient
- e. proximity of the treatment program to the patient's residence
- f. availability of family and community resources and support

**Subsection: 7 Treatment program:**

A treatment program means public or private facility or unit thereof which provides mental health diagnosis, observation, evaluation, care, treatment or rehabilitation when the individual resides on the premises including, but not limited to a hospital, institution, clinic, mental health center or facility, or satellite thereof.

**Subsection: 8      Danger to self and/or others:**

- a.      A person as a result of a severe mental illness or dual diagnosis can reasonably be expected within the very near future to intentionally or unintentionally seriously physically harm himself/herself or another person; or
- b.      A person as a result of a severe mental illness or dual diagnosis who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation the threat(s) will be carried out; or
- c.      A person as a result of a severe mental illness or dual diagnosis is unable to attend to his/her basic physical needs, such as food, clothing, shelter or health, in order to avoid serious harm to himself/herself in the very near future and having demonstrated that inability by failing to meet those basic physical needs.

**Subsection: 9      Informed consent:**

"Informed consent" consent voluntarily, knowingly and competently given without any element of force, fraud, deceit, duress, threat or other form of coercion after conscientious explanation of all information that a reasonable person would consider significant to the decision in a manner reasonably comprehensible to general lay understanding.

**Subsection: 10      Legal representative:**

Any person permitted to practice in the respective tribal court.

## **Section: 3 VOLUNTARY ADMISSIONS**

### **Subsection : 1 Requirements for voluntary admission.**

The facility director or administrator may receive as a voluntary patient any individual eighteen years of age or older who understands the nature of voluntary inpatient treatment, is capable of giving informed consent, and voluntarily executes a written application of admission, if the following requirements are met:

1. If, after examination by a staff psychiatrist, the facility director or administrator determines that the applicant is clinically suitable for inpatient treatment. In the event of the unavailability of a staff psychiatrist, admission may be granted pending an examination by a staff psychiatrist within one working day;
2. A less restrictive treatment alternative is inappropriate or unavailable;
3. The individual is in need of and will likely benefit from treatment which is available at the facility;
4. The requirements in Section 3, Subsection 6 have been met;
5. The person does not have medical needs which are beyond the capacity of the Center or inpatient facility.

The person eighteen years of age or older voluntarily seeks admission to an inpatient psychiatric facility without any element of force, duress, threat or other form of coercion and the facility director or administrator determines, after the explanation required in Section 3, Subsection 6, that the person is incapable of exercising an informed consent to the admission, the person may be admitted upon exercise of a substituted informed consent by a guardian in accordance with Section 3, Subsection 8.

### **Subsection :2 Immediate discharge of adult voluntary patient after notice of intent to terminate.**

Except as is provided in Section 3, Subsection 3, a voluntary patient eighteen years of age or over has the right to immediate discharge upon written notice of his/her intention to terminate inpatient treatment. Upon informing a staff member of the inpatient psychiatric facility of the intention to terminate inpatient treatment, the facility shall promptly supply the patient with the required written form.

### **Subsection : 3 Emergency detention of voluntary inpatient after notice of intention to terminate.**

If a written notice of termination of inpatient treatment is given to the facility pursuant to Section 3, Subsection 2, the notice is not withdrawn, and the facility director or administrator or attending psychiatrist has probable cause to believe that the patient requires emergency intervention under the criteria in Section 2, Subsection 4 and should remain in the facility, the director or administrator or attending psychiatrist may initiate a mental illness hold detaining the patient for a period not to exceed twenty-four hours, not including weekends or holidays, from the facility's receipt of the patient's written notice of intention to terminate. The director or administrator shall immediately advise the patient that he/she is being detained on a twenty-four hour mental illness hold and explain the nature of such hold.

**Voluntary Admissions, Article \_\_\_\_\_**

The director or administrator shall forthwith notify the tribal court of the time of receipt of the notice to terminate, the time the hold was initiated and the circumstances necessitating the hold. This information shall also be made part of the signed petition, the patient's medical records and be delivered to the patient. If a petition pursuant to Section 4, Subsection 2 is not filed with the court within twenty-four hours of the facility's receipt of the patient's written notice of intention to terminate, the patient shall be immediately discharged. The twenty-four hour period does not include weekends or holidays.

**Subsection : 4            Commitment of voluntary patient who has not applied for release - Reasons.**

An inpatient psychiatric facility director, the center administrator or an attending psychiatrist may file a petition pursuant to Section 4, Subsection 2, for the commitment of a voluntary patient if clinically indicated, even though a written notice of intention to terminate inpatient treatment has not been received. Reasons for the filing of such petition shall be limited to the following:

1.     The facility director, the center administrator or an attending psychiatrist has probable cause to believe that the patient meets the criteria in Section 2, Subsection 4; and
2.     The patient, including a person admitted upon exercise of a substituted informed consent by a guardian pursuant to Section 3, Subsection 1, is unwilling or unable to consent to treatment deemed necessary by the treating physician and there are no other appropriate treatments to which the patient is willing or able to consent; or
3.     The patient is unable or unwilling to affirm consent to continued admission as required in Section 3, Subsection 7.

**Subsection : 5            Notice to voluntary patients of release procedure - Acknowledgment of notice  
-Display in wards.**

Upon voluntary admission, and at the end of the first six months of hospitalization, and annually thereafter, the patient shall be given a separate written notice of release procedures. In addition, a copy of the written notice shall be given to any one other person designated by the patient. The patient shall acknowledge deliverance of the notice in writing, or an affidavit that he/she was so informed shall be attached to his/her record. Every voluntary patient has the right to discharge upon request as provided in Section 3, Subsection 2. Detailed release procedures in simple and non-technical language shall be permanently and prominently displayed in every psychiatric ward.

**Subsection : 6            Explanation required prior to acceptance of voluntary inpatient -  
Informed consent - Application form.**

Before an individual is accepted for voluntary inpatient treatment at an inpatient psychiatric facility, an explanation shall be made to him/her of the nature of such status, including the types of treatment available, and restraints or restrictions to which he/she may be subject including possible conversion to involuntary status as provided in this section together with a statement of his/her rights under this article. This explanation shall be given in the persons Native language or with assistance of an interpreter when necessary.

An informed consent as defined in Section 2, Subsection 9 shall be obtained orally and in writing upon an application form which shall contain in bold print and simple language the substance of Section 3, Subsections 2-5. In addition, the application form shall include the following representations:

1. The applicant understands that his/her treatment will involve inpatient status:
2. He/she is willing to be admitted to the facility;
3. He/she consents to such admission voluntarily, without any element of force, duress, threat or other form of coercion.

The consent shall be part of the person's record. In addition, a copy of the signed application and a written statement of the patient's rights under this article shall be given to the patient and to any person designated by the patient.

**Subsection: 7            Assessment of need for continued admission - Informed consent required for continued admission - Substitute informed consent.**

Thirty days after the voluntary admission of a patient and every ninety days thereafter, the facility director or center administrator shall review the patient's record and assess the need for continued admission. If continued admission is indicated, the facility director or center administrator shall consult with the patient and request from the patient an oral and written affirmation of his/her informed consent to continued admission. If a patient was admitted upon the substituted informed consent of a guardian as provided in Section 3, Subsection 1, and continues to be incapable of exercising an informed consent to continued admission, a substituted informed consent to continuing admission shall be obtained from the guardian. The notification, request and affirmation shall become part of the patient's record. A patient's guardian's failure to affirm his/her informed consent to continued admission constitutes notice of an intention to terminate inpatient treatment as provided in Section 3, Subsection 2.

**Subsection: 8            Exercise of substituted informed consent by guardian.**

A guardian with authorization by the appointing court may exercise a substituted informed consent in accordance with the requirements in Section 3, Subsection 6 for the sole purpose of admission of a person to an inpatient psychiatric facility or the center. Upon the exercise of such a substituted informed consent, the facility director or center administrator may admit the person as a voluntary patient if the criteria in Section 3, Subsection 1 are met and the guardian has signed the application for admission required in Section 3, Subsection 1, inclusive.

**Section: 4            INVOLUNTARY COMMITMENT OF A PERSON WITH SEVERE MENTAL ILLNESS OR DUAL DIAGNOSIS**

**Subsection: 1            Protective custody/mental illness hold.**

A peace officer may apprehend any person that he/she has probable cause to believe requires emergency intervention based on danger to self or others. The peace officer shall transport the person to an appropriate medical/mental health or detention facility. A jail may not be used for custody until the availability of other facilities has been explored and exhausted. No person may remain in jail for longer than 24 hours before examination.

**Subsection: 2            Petition asserting need for immediate intervention of person with mental illness or person apprehended.**

When any person is alleged to be severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm of himself or others, any person, eighteen years of age or older, may petition the tribal court where such allegedly severely mentally ill person is found, stating the factual basis for concluding that such person is severely mentally ill and in immediate need of intervention. The petition shall be upon a form and be verified by affidavit. The petition shall be of a set format. See appendix A.

**Subsection: 3            Order for apprehension of subject-Transportation to facility.**

After examination of a petition, the court may order the apprehension and transportation of a person where he or she has probable cause to believe meets the criteria in Section 2, Subsection 4 to an appropriate treatment program.

**Subsection: 4            Notice to apprehended person of right to hearing and legal representation.**

Immediately after the person is taken into custody he/she shall be notified both orally and in writing of his/her right to immediately contact a person of his/her choosing, to immediately contact and be represented by a legal representative, and that he/she will be examined by a qualified mental health professional, within 24 hours of being taken into custody to determine whether custody should continue and, if so, the right to an independent examination, and to a hearing within 5 days excluding weekends and holidays. Such notice will be given to the tribal judge.

**Subsection: 5            Professional examination of person apprehended.**

A qualified mental health professional other than the person bringing the petition or initiating the hold shall perform an examination, including a mental status examination and chemical dependency evaluation of the person. Preceding the examination, the qualified mental health professional shall identify himself/herself to the person and explain the nature and purpose of the examination, including the fact that it is being performed to assist in the determination of whether custody should continue and that the examination may be used as evidence in an involuntary commitment hearing. The qualified mental health professional shall immediately report his/her written findings to the court.



**Subsection: 6            Results of examination-Detention pending hearing.**

If the examination required in Section 4, Subsection 5 does not support a finding that the person meets the criteria for involuntary commitment in Section 2, Subsection 4, the person shall be released. Following such a release, the tribal court shall provide or arrange for reasonable transportation if the person so chooses. If the Tribal Court, as a result of the examination required in Section 4, Subsection 3, and an investigation of the petition for emergency intervention, determines that the person meets criteria, the court may order that the person continue to be detained in an appropriate facility including if necessary the Mickelson Center, pending the hearing.

If the examination required does not support a finding that the person meets the criteria for involuntary commitment, he/she shall be released, unless otherwise meets outpatient commitment criteria in Section 8, Subsection 6.

**Subsection: 7            Time limit for involuntary commitment hearing.**

Within five days, excluding weekends and holidays, after the person is taken into custody he/she shall be provided an involuntary commitment hearing.

**Subsection: 8            Testimony of qualified mental health professional on availability and appropriateness of alternatives.**

The tribal court conducting the involuntary commitment hearing shall order testimony by a qualified mental health professional who shall assess the availability and appropriateness of treatment alternatives including treatment programs other than inpatient treatment and specifically including whether programs are available in the areas where the person resides. Testimony by the QMHP shall include what alternatives are or should be made available, what alternatives were investigated, and why any investigated alternatives are not deemed appropriate. If the tribal court determines that alternatives to inpatient treatment are appropriate, commitment for inpatient treatment to an inpatient psychiatric facility may not be ordered and commitment shall be to the least restrictive treatment alternative.

**Subsection: 9            Testimony of community resources, and/or cultural liaison or supportive persons on availability and appropriateness of treatment alternatives.**

The tribal court may order testimony by a community resource and/or cultural liaison or supportive person who shall assess and interpret the availability and appropriateness of a treatment alternative.

**Subsection: 10           Court to make final determination where person voluntarily admits himself/herself.**

If the person is willing to admit himself/herself to a treatment program on a voluntary basis and the admission is deemed suitable by the facility or program, the court shall make the final determination.

**Subsection: 11      Ninety-Day commitment.**

**Ninety-day initial commitment period**

- a.      Upon completion of the hearing, the tribal court may order the involuntary commitment of the person for an initial period not to exceed ninety days if the court finds by clear and convincing evidence, supported by written findings of fact and conclusions of law. that:
1.      The person meets the criteria in Section 2, Subsection 4
  2.      The person needs and is likely to benefit from the treatment which is proposed: and
  3.      The commitment is to the least restrictive treatment alternative. The tribal court may dually commit the person to the Indian Health Service for placement and/or transfer to appropriate treatment program.
- b.      If the above findings are not made, the tribal court shall order that the person be released. Following such release, the tribal court shall provide or arrange for reasonable the person with transportation to the community/district where the person was taken into custody if the person chooses. If the tribal court orders the involuntary commitment of the person, the tribal court shall immediately notify the person and the person's legal representative of the right to appeal.

**Subsection: 12      Refusal of admission and commitment when medical condition exceeds treatment program's capacity.**

The facility may refuse the admission and commitment of a person under this section who has a medical condition which exceeds the capacity of the facility.

**Subsection: 13      Review hearing after involuntary commitment order - Notice - Rights and procedures.**

Within ninety days after the involuntary commitment of a person who is still under the commitment order, the tribal court which services the community in which the person is receiving treatment shall conduct a review hearing to determine whether the person continues to meet the criteria in Section 4, Subsection 11. Notice of the review hearing shall be given to the person and the person's legal representative if the person has retained legal representation at least five days prior to the hearing. If the person has not retained legal representation at the time of the notice, the tribal court shall immediately appoint legal representation to represent the person.

At the time the notice of hearing is given, the person and the person's legal representative shall be informed of all evidence that will be considered at the review hearing. Any evidence subsequently discovered shall be immediately transmitted to the person and the person's legal representative. The rights and procedures applicable during an initial commitment hearing are applicable to review hearing. A petition need not be filed.

The tribal court may order the continued involuntary commitment of the person to the same or an alternative placement or program for up to six months if clear and convincing evidence supported by written findings of fact and conclusions of law that the criteria in Section 2, Subsection 4 are met.

If continued involuntary commitment is ordered, a review in the manner provided in this section shall be conducted within six months after the order. If continued involuntary commitment is ordered, the next review shall be held within six months after the order. If the second six-month review justifies continued commitment, the tribal court may order continued involuntary commitment for up to twelve months. Subsequent reviews shall be conducted within each twelve months thereafter that the person remains under commitment.

If the tribal court orders the continued involuntary commitment of the person, the tribal court shall immediately notify the person and the person's legal representative of the person's right to appeal pursuant to Section 5, Subsection 9.

If findings that justify continued commitment are not made, the tribal court shall order that the person be discharged from involuntary commitment. Following discharge, the tribal court shall provide or arrange the person with transportation to the community/district where the person was taken into custody if the person so chooses. In no instance may tribal police transport persons of the opposite sex without an attendant which must be the same sex as the patient. The tribal court may order additional reviews at their discretion.

## **Section: 5            HEARINGS PROCEDURE-COMMITMENT HEARING**

### **Subsection: 1            Filing and issuance of Findings and Order.**

The Findings and Order of the Court shall be filed with the Clerk of Courts who shall have certified copies served upon the respondent, and the IHS Service Unit Director or the Administrator of the Tribal or private facility designated by the Tribe.

### **Subsection: 2            Tribal prosecutor to represent petitioners.**

In any proceeding for involuntary commitment, review or detention, or in any proceeding challenging commitment or detention, the tribal prosecutor for the community in which the proceeding is held shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to commitment or detention.

### **Subsection: 3            Personal service of notice of hearing-Contents of notice.**

Copies of the petition and notice of hearing shall be personally served immediately by the law enforcement prior to the hearing. The notice of hearing shall include the following:

1. Notice of the time, date, and place of hearing;
2. Notice to the person of the right to be represented by counsel retained by the person or appointed by tribal court wherever the hearing is to be held;
3. Notice that the person will be examined by a qualified mental health professional or physician designated by the court within twenty-four hours of being taken into custody;
4. Notice that the medical records of the person will be available to the qualified mental health professional or physician and legal representative.

### **Subsection: 4            Assignment of legal representation for the alleged mentally ill person-Time allowed.**

If upon the completion of the evaluation required in Section 4, Subsection 5, it is determined that a hearing shall be held and the alleged mentally ill person has not or cannot employ his/her own legal representative, the tribal court shall immediately assign legal representative to represent the interests of the person. In each case, a person must be represented by a legal representative.

### **Subsection: 5            Interrogatories to be answered with mental health professionals certificate or examination.**

If a hearing is held on a petition for involuntary commitment, a certificate of the qualified mental health professional shall be completed. See Appendix B

### **Subsection: 6            Precautions against drugs hampering defense.**

The qualified mental health professional or physician treating the patient shall take all reasonable

**Hearings Procedure-Commitment Hearing, Article \_\_\_\_\_**

precautions to ensure that at the time of the hearing the person alleged to be mentally ill shall not be so under the influence of, or so suffer the effects of, drugs, medication or other treatment as to be hampered in preparing for or participating in the hearing. The tribal court, at the time of the hearing, shall be presented with a record of all drugs, medication and other treatments such person has received during the seventy- two hours immediately prior to the hearing.

**Subsection: 7            Personal appearance at hearing - Presentation of evidence-Choosing not to appear.**

The person may appear personally at any hearing and testify on his/her own behalf, but may not be compelled to do so. He/she has the right to subpoena and cross-examine witnesses and to present evidence. If the person chooses not to appear, his/her legal representative shall state on the record that the person has been informed of the hearing and of his/her right to appear and chooses not to exercise this right. Documentation of the reasons for the person's decision may not be required. The tribal court may exclude any person not necessary for the conduct of the proceedings from the hearings, except any person requested to be present by the proposed patient.

**Subsection: 8            Rules of evidence.**

The rules of evidence shall be followed at all hearings and reviews held pursuant to this article.

**Subsection: 9            Appeals from court's decision.**

Appeals from the court's decision shall be made to the Court of Appeals. The respondent shall have the right to an expedited appeal from an order of involuntary inpatient treatment. Otherwise, he/she has the same rights as in a criminal appeal. The appeal shall be limited to a review of the proceedings of the court and shall not be a de novo hearing and respondent may request a transcript of the hearing before the court where a stenographer is used or a copy of a tape recording of the hearing. If the respondent is indigent, the tribe will supply the material without cost to the respondent.

## **Section: 6            RIGHTS**

### **Subsection: 1            Individual privacy and dignity to be respected.**

Each person has the right to a humane environment that affords appropriate individual privacy, individual dignity and reasonable protection from harm. These rights shall be respected at all times and upon all occasions, including any occasion when the person is taken into custody, detained or transported in accordance with the provisions of this article.

### **Subsection: 2            "Person" defined.**

For the purpose of this code, the term "person" means any individual subject to the authority of this article.

### **Subsection: 3            Commitment not conclusive on competence.**

Notwithstanding any other provision of law, no person may be deemed incompetent to manage his/her affairs, to contract, to hold professional, occupational or other licenses, to marry and obtain a divorce, to register and vote, to make a will, or to exercise any other rights or privileges accorded to citizens solely by reason of his/her detention, admission or commitment under this article.

### **Subsection: 4            Notice of rights furnished patient - Display.**

Each person admitted or involuntarily detained or committed has the right to be informed promptly upon entering the facility or program and periodically thereafter, both verbally and in writing in language and terms appropriate to such person's condition and ability to understand, of the rights described in this code. A notice, listing and describing in language and terms appropriate to the ability of persons to whom such notice is addressed to understand the rights described in this section, shall be prominently displayed in locations accessible to such persons. Any such institution shall furnish or make available an interpreter for effectuating this section.

### **Subsection: 5            Rights enumerated - Limitations on rights.**

Any person, if otherwise qualified, has the right to:

- a. Refuse to be photographed or fingerprinted;
- b. Remain silent and fully clothed;
- c. Be allowed access to toilet facilities upon request, to have limited access to his/her own money unless a conservator has been appointed, and keep as much money in his/her personal possession as he/she deems necessary, to purchase his/her personal articles such as variety store items, and at least two hours of exercise each day;
- d. Receive any visitors during regular visiting hours, to communicate with individuals outside the facility, to send and receive uncensored and unopened mail and be given adequate writing paper, pencils, envelopes and stamps, and to have access to a telephone. Local calls shall be allowed without charge and the person shall be allowed long distance calls if he/she is able to pay for them or call collect;

- e. Wear his/her own clothes and keep his/her own toilet articles and have adequate storage space for his/her personal effects;
- f. Converse with others in private;
- g. Receive prompt, adequate medical treatment for illness;
- h. Participate in religious services, on a voluntary basis, in accordance with the person's needs, desires and capabilities and also in accordance with their basic right to freedom of religion.

Reasonable limitations may be placed on these rights on an individual basis if each limitation is essential in order to prevent the person from violating a law or to prevent substantial and serious physical or mental harm to himself/herself or others. Each limitation shall be approved by the administrator or facility director and shall be documented in the person's record, stating the reasons for such limitations, and the length of time such limitation is imposed.

**Subsection: 6 Right to treatment through spiritual means.**

Nothing in this article or in any rule adopted pursuant thereto may be construed to deny treatment by spiritual means through prayer for any person detained for evaluation or treatment, who desires such treatment, but not in conflict with Section 6, Subsection 5.

**Subsection: 7 Right of access to advocacy services.**

Notwithstanding Section 6, Subsection 5, a person has a right to access any available rights protection service for the purposes of protecting the rights described in this section and in other provisions of law.

**Subsection: 8 Labor for benefit of facility.**

A person may perform labor which contributes to the operation and the maintenance of the facility for which the facility would otherwise employ someone only if the person voluntarily agrees to perform the labor and if the person is compensated appropriately and in accordance with all applicable federal labor laws.

**Subsection: 9 Discharge not conditioned on labor - Compensation exempt from facility charges.**

In no event may discharge be conditioned upon the completion of any labor performed under Section 6, Subsection 8 and if the person is indigent, no compensation will be taken from the person's wages.

**Subsection: 10 Comprehensive individualized treatment program - Right to participate in planning - Purpose of program - Periodic review.**

- a. Each person has the right to the implementation of a comprehensive individualized treatment program developed by appropriate qualified mental health professionals, including a psychiatrist. Such treatment plan shall include contacts with the IHS Mental Health who may include the cultural liaison in the treatment plan development process. The treatment plan shall be consistent

with current standards for facilities programs and may not consist solely of chemical or drug therapy under any circumstances unless supported by sufficient psychiatric and medical opinion.

- b. A person has the right to ongoing participation, in a manner appropriate to such person's capabilities in the planning of services to be provided such person. This includes the right to participate in the development and periodic review and revision of the plan and the opportunity to invite an independent advocate to speak on their behalf. In connection with such participation the person has a right to be provided with a reasonable explanation, in terms and language appropriate to such person's condition and ability to understand the following:
1. Such person's general mental condition and, if a physical examination has been provided, such person's general condition;
  2. The objective of treatment;
  3. The nature and significant possible adverse effects of recommended treatments;
  4. The reasons why a particular treatment is considered appropriate;
  5. The reasons why certain rights enumerated under Section 6. Subsection 5. may have been limited;
  6. Any appropriate and available alternative treatments, ceremonial practices, services and types of providers of mental health services.
- c. Treatment programs shall be designed to achieve discharge at the earliest possible time and to maximize each person's development and acquisition of perceptual skills, social skills, self-direction, emotional stability, effective use of time, basic knowledge, vocational and occupational skills and social and economic values relevant to the community in which he lives.
- d. A qualified mental health professional who is a member of the person's treatment team shall periodically review, follow-up and update all individualized treatment programs.
- e. Notice of the treatment team meetings shall be made to the local IHS/Tribal Mental Health Program. With the patient's consent, family may be notified of treatment team meetings by IHS/Tribal Mental Health case worker.

**Subsection: 11 Aftercare plan to facilitate discharge.**

To facilitate discharge at the earliest possible time, each person has the right to an aftercare plan which outlines available services and recommendations for continued post-discharge placement or treatment.

**Subsection: 12 Examination and review of behavioral status after admission.**

Each person shall have a physical and mental examination and review of behavioral status within twenty-four hours after admission.



**Subsection: 13      Review of need for continued treatment - Release if implementation of treatment plan untimely.**

No later than ten days after a person is committed, the administrator, facility director or, if the person is not committed to an inpatient psychiatric facility, the director of the program shall have the person and his/her records examined to determine whether the commitment should be continued, and whether a treatment plan complying with Section 6, Subsection 10 has been implemented. If a treatment plan has not been implemented within ten days, the person shall be released immediately unless he/she agrees to continue with treatment on a voluntary basis. Within thirty days after such review, and within every ninety days thereafter, the administrator or other such director shall have the person and his/her records examined to determine whether the commitment should be continued.

**Subsection: 14      Application for transfer from involuntary to voluntary status.**

Each person under an order of involuntary commitment has the right to apply for and give consent to transfer to voluntary status. Such transfer shall be forthwith granted unless the person is unable to understand the nature of voluntary status or the transfer would not be in the best interest of the person, in which case such findings shall be entered in the person's medical record and shall be reviewed every sixty days. If transfer to voluntary status occurs, notice shall be given to the tribal court which initiated the commitment and the commitment may be dismissed.

**Subsection: 15      Emergency surgery or treatment - Documentation of necessity.**

Surgery and any other medical procedures may be performed without the patient's consent or court order if the life of the recipient is threatened and there is not time to obtain consent or a court order or if patient is incapable of giving informed consent and consent is obtained from members of the incapacitated person's family who are available to consent, in the order stated:

- a.      The spouse, if not legally separated;
- b.      An adult child;
- c.      A parent;
- d.      An adult sibling;
- e.      A grandparent or an adult grandchild;
- f.      An adult aunt or uncle or an adult niece or nephew.

Documentation of the necessity for the medical procedure shall be entered into the patient's record as soon as practicable. Non-emergency surgery or other medical procedures may be performed with the patient's consent.

**Subsection: 16      Right to refuse research, experimental or intrusive procedures.**

Except as provided in Section 6, Subsection 17, any adult person who is admitted as an inpatient or outpatient, who is involuntarily committed or who is detained prior to a commitment hearing shall not be subjected to research and experimental procedures without consent and review by the tribal court.

The person also has the right to refuse any treatment including electroconvulsive therapy and psychotropic medication. If an involuntarily committed person refuses treatment, psychotropic medication may be administered if it is ordered by the court under the criteria in Section 7. Subsection 3.

**Subsection: 17      Informed consent for electroconvulsive therapy.**

No adult person may be the subject of electroconvulsive therapy unless written informed consent is obtained from the person. Informed consent may be withdrawn at any time, is effective immediately, and thereafter be reduced to writing. If the attending physician determines that the person is incapable of exercising informed consent, such treatment may be provided only if ordered after a hearing before the court. If the court finds that the person is incapable of consenting to such treatment because the person's judgment is so affected by the mental illness that the person lacks the capacity to make a competent, voluntary, knowing decision concerning such treatment, the court may order the administration of such treatment. The court's order may extend up to six months or be consistent with involuntary commitment review hearings. Electroconvulsive therapy may be administered only by a physician.

**Subsection: 18      Psychosurgery, aversive stimuli and substantial deprivations prohibited.**

No person may be administered or subjected to psychosurgery, aversive stimuli or substantial deprivations. Aversive stimuli shall include anything which, because it is believed to be unreasonably unpleasant, uncomfortable or distasteful to the person, is administered or done to the person for the purpose of reducing the frequency of a behavior but does not include restrictive treatment procedures implemented in accordance with Section 6, Subsection 19. Substantial deprivations include the withdrawal or withholding of basic necessities or comforts which is intended to subject the person to significant discomfort, inconvenience or unpleasantness.

**Subsection: 19      Restrictive treatment procedures - Documentation prior approval -  
Limitation.**

- a. Restrictive treatment procedures which impose physical restrictions on the person may not be considered seclusion or restraint as provided for in Section 6, Subsection 20, if carried out as a part of an approved behavioral treatment program, developed in accordance with Section 6, Subsection 10. If restrictive treatment procedures involve physical restraint or placing a person alone in a separate room, appropriate attention shall be paid every fifteen minutes to the person, especially in regard to regular meals, bathing and use of the toilet. There shall be documentation in the person's record that such attention was given to the person.
- b. Prior to its implementation, restrictive treatment procedures shall be approved by a peer committee review, and shall be subject to continuing review and approval every ninety days, or sooner upon request for review by the patient, attending staff, treatment team member or treating qualified mental health professional. Each incident requiring the implementation of a restrictive treatment procedure shall be documented in the person's record. An approved restrictive treatment procedure shall require a written order at least every fifteen days during the first sixty days of implementation and every thirty days thereafter.
- c. Restrictive treatment procedures may not be employed as punishment or for the convenience of staff; and may be implemented in the treatment plan only as necessary to prevent assaultive or

otherwise harmful behaviors, with specific conditions justifying its use including occurrence of antecedent behavior to be documented in the treatment plan.

A person shall be released from restrictive treatment procedures upon completion of a reasonable pre-set period of time during which the targeted behaviors are not present.

**Subsection: 20      Seclusion or restraint - Clinical justification required - Rationale - Appropriate manner.**

- a. The use of seclusion or restraint requires clinical justification and shall be employed only to prevent immediate harm to the person or others, or if less restrictive means of restraint are not feasible. Seclusion or restraint may not be employed as punishment or for the convenience of staff. Seclusion or restraint may be authorized only by a qualified mental health professional, physician's assistant or nurse practitioner.
- b. The rationale for the use of seclusion or restraint shall address the inadequacy of less restrictive intervention techniques. A personal clinical assessment of the person shall be conducted and clinical justification for the use of seclusion and restraint shall be documented in the person's records when the procedure is implemented. A report shall be prepared and included in the person's record. The implementation of seclusion or restraint may not exceed one hour, at which time an order from a qualified mental health professional, physician's assistant or nurse practitioner is required if seclusion or restraint is to be continued. The order shall be entered in the person's records as soon as possible, but not more than twenty-four hours after implementation of the order. Each written order for seclusion or restraint shall be time-limited and shall not exceed twenty-four hours.
- c. Seclusion or restraint may not be used in a manner that causes undue physical discomfort, harm or pain to the person. Appropriate attention shall be paid every fifteen minutes to a person in seclusion or restraint, especially in regard to regular meals, bathing and the use of the toilet, unless more frequent attention is warranted. There shall be documentation in the person's record that such attention was given to the person.

**Subsection: 21      Asserting grievances.**

A person may assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure which provides a meaningful review.

**Subsection: 22      Habeas corpus available for committed, confined, detained or restrained person.**

Any person involuntarily committed by a tribal court and any person confined or in any manner detained or restrained is entitled to the benefit of the writ of habeas corpus. If the court finds that the criteria in Section 2, Subsection 4 are met, the court may authorize continued involuntary commitment. Such authorization is not a bar to the issuing of the writ the second time if it is alleged that the criteria in Section 2, Subsection 4 are no longer met.

**Subsection: 23      Provisions of title do not replace or limit other rights.**

The provisions of this article may not be construed as replacing or limiting any other rights, benefits or privileges afforded any person pursuant to other provisions of law, the Constitution of Tribe, State and the United States.

**Subsection: 24      Exercise of rights.**

The exercise of rights afforded in this article are not subject to any reprisal, including reprisal through the actual or threatened denial of any treatment, benefits, privileges or other rights.

**Subsection: 25      Notification as to discharge from a treating facility.**

When a person is discharged from the treating facility, his/her legally appointed guardian, IHS/tribal mental health and tribal prosecutor shall be notified of such action.

## **Section: 7            HEARING PROCEDURE-PSYCHOTROPIC MEDICATION**

### **Subsection: 1            Petition for authority to administer psychotropic medication.**

If an involuntarily committed person refuses, the administrator or attending psychiatrist or facility director may petition the tribal court for the authority to administer psychotropic medication to an involuntarily committed patient if, in the opinion of the administrator or facility director or attending psychiatrist and the person's treating physician, psychotropic medication will be medically beneficial to the person and is necessary because:

- a.     The person presents a danger to himself/herself or others;
- b.     The person cannot improve or his/her condition may deteriorate without the medication; or
- c.     The person may improve without the medication but only at a significantly slower rate.

### **Subsection: 2            Service of petition and notice of hearing -Content -Appointment of legal representative - Court calendar.**

Certified copies of the petition and notice of hearing shall be personally served by the appropriate law enforcement personnel on the person immediately upon the filing of the petition. The notice of hearing shall include the following:

- a.     Notice of the time, date and place of hearing and directing the person to appear in person;
- b.     Notice of the person's right to be represented by an attorney at his/her own expense or a legal representative appointed by the court if he/she is indigent, and
- c.     Notice of the person's right to seek an opinion of an independent psychiatrist at his/her own expense.

Upon the filing of the petition the court shall immediately appoint legal representation for the person if an attorney has not been retained. A date shall be set for the hearing within five working days of the filing of the petition, and this hearing shall be a priority on the court calendar.

### **Subsection: 3            Court-ordered use of psychotropic medication when person incapable of consent.**

If the court finds by clear and convincing evidence that the person is incapable of consenting to treatment with psychotropic medication because his/her judgment is so affected by his/her mental illness that he/she lacks the capacity to make a competent, voluntary and knowing decision concerning the medication and the administration of the recommended psychotropic medication is essential under the criteria in Section 7, Subsection 1, the court may order the administration of psychotropic medication.

**Subsection: 4            Time limit for court-ordered administration of psychotropic medication -  
Review of necessity of treatment.**

The court may authorize the administration of psychotropic medication. The court's order must be reviewed consistent with involuntary commitment review hearings. The court's order shall terminate if the person is judicially restored as competent to consent to or refuse the administration of psychotropic medication or if the person's treating physician or the medical director of the facility or, if the facility does not have a medical director, a consulting psychiatrist determines that the administration of psychotropic medication is no longer necessary under the criteria set forth in Section 7, Subsection 1. Transfer from inpatient to outpatient treatment while the person is under an order of involuntary commitment does not, in itself, terminate the court's order. The necessity of treatment with psychotropic medication shall be reviewed and approved under the criteria in Section 7, Subsection 1, at least every thirty days by the treating physician and the medical director of the facility or, if the facility does not have a medical director, a consulting psychiatrist after a personal examination of the person. If the treating physician or the medical director or such consulting psychiatrist determines that the medication is no longer necessary under the criteria in Section 7, Subsection 1, the court's order shall terminate. A copy of the results of the personal examination and the determination of the treating physician's and the medical director or consulting psychiatrist shall be made part of the person's medical records.

**Subsection: 5            Compensation of appointed legal representative/advocate by tribal court.**

The legal representative/advocate appointed by the court to represent the interests of the person shall be paid by the tribal court excluding legal service programs. The legal representative/advocate shall be compensated for necessary expenses incurred incident to the proceedings.

**Subsection: 6            Access to attorney/legal representative and private physician.**

Notwithstanding, Section 6, Subsection 5, a person may communicate with his/her attorney/legal representative or a private physician subject to the facility's normal access restrictions. The person's attorney or other legal representative shall have reasonable access to the person, the area where the person has received treatment, resided, been detained or had access, and to all records and information pertaining to the person.

**Subsection: 7            Personal appearance at hearing not compulsory - Presenting evidence.**

The person may appear personally at any hearing and testify on his/her own behalf. Except for the hearing required in Section 7, Subsection 2, the person may not be compelled to appear or testify. He/she may subpoena and cross-examine witnesses and present evidence. If the person chooses not to appear, his/her attorney/legal representative shall state on the record that the person has been informed of the hearing and of his/her right to appear and chooses not to exercise his/her right. Documentation of the reasons for the person's decision may not be required. The court may exclude any person not necessary for the conduct of the proceedings from the hearings, except any person requested to be present by the patient.

**Subsection: 8      Emergency administration of psychotropic medication - Length of treatment limited.**

If it is ordered by a physician, psychotropic medication may be administered to a person in an emergency to prevent serious physical harm to the person or to others. Psychotropic medication may also be administered if the attending physician and one other physician determine that administration of the medication is necessary to prevent significant deterioration of the person's severe mental illness and that the person's potential for improvement would be permanently impaired if the treatment is not provided. Medication treatment may be continued for up to ten days. The reason for the treatment shall be documented in the patient's medical record.

## **Section: 8            MEDICAL RECORDS**

### **Subsection:1            Individual records required - Contents - Confidentiality.**

A complete statistical and medical record shall be kept current for each person receiving mental health services, or being otherwise detained under this article. The record shall include information pertinent to the services provided to the person, pertinent to the legal status of the recipient, required by this article or other provision of law, and required by rules or policies. The material in the record shall be confidential in accordance with the provisions of this article and the Federal Privacy Act.

### **Subsection: 2            Information closed to public inspection - Sealed upon termination of proceedings.**

Any information acquired by a person pursuant to his/her authority under this article regarding any person subject to any proceedings under this article shall not be open to public inspection, and any records regarding such person shall be sealed upon the termination of proceedings for which the information was acquired, and shall be opened only by order of the tribal court. Any action contrary to this section is considered breach of confidentiality.

### **Subsection: 3            Confidentiality of information acquired in course of providing mental health services.**

Information in the record of a person, and other information acquired in the course of providing mental health services to a person, shall be kept confidential and are not open to public inspection. The information may be disclosed outside the mental health program or inpatient facility, whichever is the holder of the record, only if the holder of the records and the person or his/her legally appointed guardian, consent or, in the absence of such consent, in the circumstances and under the conditions set forth in Section 8, Subsection 1-5, inclusive, and in conformity with federal law.

### **Subsection: 4            Access to own records.**

- a.     A person has the right to access, upon request, his/her mental health records per policies and procedures of the treating facility.
- b.     Obligation to disclose confidential information. If requested, information shall be disclosed:
  1.     Pursuant to orders or subpoenas of a court of record;
  2.     To a prosecuting attorney, a legal representative or to a qualified mental health professional as necessary for him/her to participate in a proceeding governed by this article;
  3.     To a legal representative representing a person who is presently subject to the authority of this article or who has been discharged when that person has given his/her consent;
  4.     If necessary in order to comply with another provision of law;



5. To the treating facility, if the information is necessary to enable the treating facility to discharge a responsibility placed upon it by law; or
6. To local law enforcement for purpose of investigation of an alleged criminal act either committed by or upon the treatment center patient while at the treating facility. Any such crimes occurring by or against a patient committed to a facility under this code. such facility shall immediately report the crime or incident to the appropriate tribal attorney general or prosecutor's office.

**Subsection: 5            Released information approved by administrator - Record of release.**

Any release of information by the holder of the record shall be approved by the administrator or facility director holding the records. The holder of the record shall keep a record of any information released, to whom, the date it was released and the purpose for such release. If information is disclosed, the identity of the individual to whom it pertains shall be protected and may not be disclosed unless it is relevant to the authorized purpose for which disclosure was sought.

## **Section: 9            DISCHARGE OF PATIENTS**

### **Subsection: 1            Notification to guardian that inpatient treatment no longer required.**

If the administrator or facility director or attending psychiatrist has determined that a person under a guardianship has received maximum benefits of inpatient treatment and no longer requires such treatment and is eligible and has been accepted for placement or treatment in a community setting, the guardian shall be so notified. The guardian shall remove the person within three days upon such notification. If the guardian fails to remove the person, the administrator may notify the court where the guardianship proceedings were held for further disposition.

### **Subsection: 2            Release treatment program - Transportation.**

If, prior to the hearing required in Section 4, Subsection 11, the administrator of the treatment facility determines that the person no longer meets the commitment criteria, that person shall be released and his/her record sealed in accordance with the provisions of law. Following such release, the referring tribal court shall provide or arrange for the person with transportation to the community/district from where he/she was taken custody if the person so chooses.

### **Subsection: 3            Leave status - Limit - Reviews and hearings.**

A patient, upon approval of the administrator or facility director, may be placed on leave status from the Center or facility. The patient's legal admission status at the Center or facility shall remain in effect. Leave may not be longer than thirty days and may not extend beyond the duration of any involuntary commitment under which the patient was admitted. While on leave, an involuntarily committed patient shall receive all the reviews and hearings as mandated by this article or be discharged.

### **Subsection: 4            Discharge of involuntary patient on changed behavior.**

A patient involuntarily committed shall be discharged when, in the opinion of the administrator, or facility director, or if the person is not committed to an inpatient psychiatric facility, the director of the program, the patient no longer meets the commitment criteria.

**Section: 10    Outpatient commitment**

Subsection: 1    Petition asserting need for intervention of person with mental illness.

Subsection: 2    Requirements of examination

Subsection: 3    Results of examination

Subsection: 4    Time limit for outpatient commitment

Subsection: 5    Notice requirements

Subsection: 6    Outpatient commitment criteria

Subsection: 7    Results of hearing

Subsection: 8    Noncompliance with treatment order-Alternative treatment-Notice and right to legal representation/advocate.

Subsection: 9    Appeals from court's decision

**Section: 10                    OUTPATIENT COMMITMENT**

**Subsection: 1            Petition asserting need for intervention of person with mental illness.**

When any person is alleged severely mentally ill and in such condition that outpatient commitment is necessary, any person eighteen years of age or older, may petition the tribal court where such alleged severely mentally ill person is found, stating the factual basis for concluding that such person is severely mentally ill and in need of outpatient commitment. The petition shall be upon a form verified by affidavit. The petition shall contain the following information:

- (1)    A statement by the petitioner that he/she believes, on the basis of personal knowledge, that such person is suffering from a severe mental illness as defined in Section 2, Subsection 1.
- (2)    The specific nature of the mental illness;
- (3)    Summary of the information upon which the statement of severe mental illness is based: and
- (4)    A statement of facts which caused the person to come to the petitioner's attention

**Subsection: 2            Requirements of examination.**

After examination of a petition filed under Section 4, Subsection 2, the tribal court may order the person to undergo an examination by a qualified mental health professional. A certified copy of the order for examination shall be personally served on the alleged severely mentally ill person by the tribal police. The qualified mental health professional who does the examination cannot also be the petitioner.

If the person alleged to be severe mentally ill does not appear within 24 hours after service before the qualified mental health professional designated by the tribal court to perform the examination, the court may issue a warrant and tribal police may take the person into protective custody and transport the person for an examination by a qualified mental health professional. The rights outlined in Section 6 shall be provided to the person both orally and in writing. Interrogatories shall be completed by the qualified mental health professional or physician pursuant Section 4.

Preceding the examination, the qualified mental health professional shall identify himself/herself to the person and explain the nature and purpose of the examination, including the fact that it is being performed to assist in the determination of whether the person requires outpatient commitment and that the examination may be used as evidence at a commitment hearing. The confidentiality code will be respected and the QMHP shall only disclose information necessary for the hearing.

**Subsection: 3            Results of examination**

After the examination, the examining qualified mental health professional shall immediately report his/her findings to the court. If outpatient commitment criteria are not met, the petition shall be dismissed. If the examination indicates that the alleged severely mentally ill person meets inpatient commitment criteria, the provisions of Section 4 may be implemented. If the examination finds that the alleged severely mentally ill person meets the criteria for outpatient commitment, the court shall order a hearing and shall file the petition for outpatient commitment and the qualified mental health professional's certificate with the clerk of courts.

**Subsection: 4            Time limit for outpatient commitment**

If probable cause exists that the person who is subject of the petition, is severely mentally ill and meets outpatient commitment criteria as defined in Section 10, Subsection 6, the court shall issue and file with the clerk of courts an order convening a hearing within five (5) days or six (6) if there is a Saturday, Sunday or holiday within that time frame. The hearing shall be conducted in such place designated by the court to facilitate humane treatment with due regard to the comfort and safety of the alleged severely mentally ill person and others.

**Subsection: 5            Notice Requirements**

A copy of the petition and notice of hearing shall be personally served immediately by the tribal police on the alleged severely mentally ill person prior to the hearing. The notice of the hearing shall include the following:

- (1) Notice of the time, date and place of the hearing and directing the alleged severely mentally ill person to their appearance in person and notifying him/her that if he/she should fail to do so, the court may issue a warrant directing the police to secure the protective custody of said alleged mentally ill person and to cause his/her personal appearance and attendance at said hearing;
- (2) Notice to the alleged severely mentally ill person of his/her right to be represented by counsel, said counsel to be either retained by himself/herself or appointed by a judge of the tribal court wherein the hearing is to be held;
- (3) Notice of the right of the alleged severely mentally ill person to obtain an additional examination at his/her own expense.

Notice of the time and date of hearing shall also be given to IHS/tribal mental health that services the area where the alleged severely mentally ill person resides.

The hearings shall be pursuant to the provisions of Section 4.

**Subsection: 6          Outpatient commitment criteria**

A person is ordered to outpatient commitment if:

- (1) Person has a severe mental illness;
- (2) Person has a history of hospitalizations to a treatment program;
- (3) Person is unlikely to comply with voluntary outpatient treatment;
- (4) Person is not likely to be a danger to self or others while complying with an outpatient treatment plan;
- (5) Person needs and is likely to benefit from outpatient treatment.

**Subsection: 7          Results of hearing.**

Upon completion of all the testimony, if the court finds by clear and convincing evidence that the alleged severely mentally ill person meets the criteria for outpatient commitment as defined in Section 10, Subsection 6, the court may commit such person to Indian Health Service/Tribal Mental Health which provides supervision, treatment and rehabilitation for individuals with severe mental illness. Such commitment will be for a period of time not to exceed 90 days. Review hearings shall be provided utilizing the same procedures as outlined in the initial hearing and shall be conducted every 90 days or at the court's discretion until it is determined that the person no longer meets the criteria for outpatient commitment.

**Subsection: 8          Noncompliance with treatment order-Alternative treatment-Notice and right to counsel/advocate.**

If the individual ordered to undergo a program of treatment does not comply with the order, the tribal court shall conduct a hearing for the sole purpose of determining compliance or noncompliance, and if noncompliance is determined, the court may modify its original order and direct the individual to undergo an alternative program of treatment consistent with the criteria in Section 10, Subsection 6. At least five days' notice of the hearing shall be given the person and he/she shall be represented by counsel/advocate.

**Subsection: 9          Appeals from court's decision**

Appeals from the court's decision shall be made to the Court of Appeals. The respondent shall have the right to an expedited appeal from an order of outpatient treatment. Otherwise, he/she has the same rights as in a criminal appeal. The appeal shall be limited to a review of the proceedings of the court and shall not be a de novo hearing and respondent may request a transcript of the hearing before the court where a stenographer is used or a copy of a tape recording of the hearing. If the respondent is indigent, the court will supply the material without cost to the respondent.

# PETITION FOR INVOLUNTARY COMMITMENT

\_\_\_\_\_ (TRIBAL COURT)  
\_\_\_\_\_ (SIOUX TRIBE) SS IN TRIBAL COURT  
\_\_\_\_\_ (INDIAN RESERVATION)

IN THE MATTER OF THE COMMITMENT OF: \_\_\_\_\_ PETITION  
Alleged Mentally Ill \_\_\_\_\_

I, \_\_\_\_\_, being first duly sworn on oath  
depose and petition as follows:

1. That I am \_\_\_\_\_ years of age reside  
at \_\_\_\_\_
2. That \_\_\_\_\_, the alleged mentally ill  
person resides \_\_\_\_\_
3. Alleged mentally ill person is \_\_\_\_\_ years of age (DOB: \_\_\_\_\_)
4. Alleged mentally ill person's marital status is \_\_\_\_\_
5. \_\_\_\_\_ is alleged mentally ill person's  
nearest relative.

That the following incidents and behaviors and/or statements of the alleged mentally ill person have caused me to believe that they are a danger to themselves and/or others: ( a person may be a danger to themselves because they cannot take care of themselves. Please be specific in your description and state how it is that you are aware of these incidents). If more space is needed - attach additional paper.)

**SAMPLE**

6. I believe

\_\_\_\_\_ is a danger to  
(Alleged mentally ill person)

himself/herself for the following reasons: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

**SAMPLE**

\_\_\_\_\_  
Petitioner

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_\_.

\_\_\_\_\_  
Notary

My commission expires \_\_\_\_\_ 19\_\_\_\_\_.

(Seal)

\_\_\_\_\_) THE \_\_\_\_\_  
\_\_\_\_\_) : SS \_\_\_\_\_  
\_\_\_\_\_)

\*\*\*\*\*  
In the Matter of \_\_\_\_\_ CERTIFICATION OF  
\_\_\_\_\_ QUALIFIED MENTAL HEALTH PROFESSIONAL  
\*\*\*\*\*

I have seen \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_  
19\_\_\_\_, and have made a careful personal examination.

As a result of such examination, I hereby certify that, according to my judgment, said person is mentally ill, and a fit subject for custody and treatment in the hospital for the mentally ill. I also certify that I have stated correctly the answers I have obtained, from the best sources within my knowledge, and from my observation, to the interrogations furnished, which interrogations and answers hereby accompany this certificate, and are given below.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Signature: \_\_\_\_\_  
Qualified Mental Health Professional

(I) HISTORY

(a) Informant:

- 1) Name \_\_\_\_\_
- 2) Address \_\_\_\_\_
- 3) Relationship \_\_\_\_\_

(b) Patient:

- 1) Full name \_\_\_\_\_
- AKA \_\_\_\_\_
- 2) Birth date \_\_\_\_\_
- Sex, race, education \_\_\_\_\_
- Occupation \_\_\_\_\_
- 3) Religion \_\_\_\_\_
- 6) Social Security No. \_\_\_\_\_
- 7) How long in South Dakota \_\_\_\_\_
- 8) Marital Status \_\_\_\_\_

(c) Wife/Husband:

- 1) Name \_\_\_\_\_
- 2) Address \_\_\_\_\_

(d) Father:  
(If a minor)

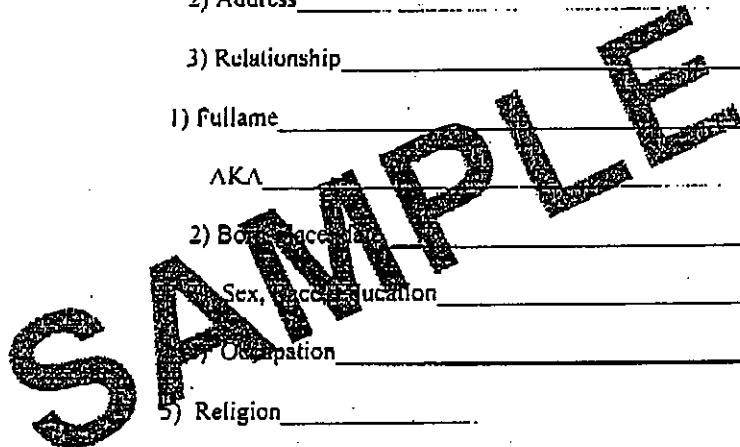
- 1) Full Name \_\_\_\_\_
- 2) Address \_\_\_\_\_

(e) Mother:  
(If a minor)

- 1) Full Name \_\_\_\_\_
- 2) Address \_\_\_\_\_

(f) Next of Kin:

- 1) Full Name \_\_\_\_\_
- 2) Address \_\_\_\_\_
- 3) Relationship \_\_\_\_\_





(g) Legally responsible relative/guardian: 1) Full name \_\_\_\_\_  
2) Address \_\_\_\_\_  
3) Relationship \_\_\_\_\_

(h) Military Service: \_\_\_\_\_ Yes \_\_\_\_\_ No

(i) Previous Treatment for Mental Illness: Give dates, places of treatment, dates of previous hospitalizations, etc.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(j) A review of previous behavior or acts which led to involuntary commitment or treatment which are similar or related to the person's present psychiatric condition or status: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(2) EXAMINATION FINDINGS

(a) Physical condition, including any special test results: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(b) Present Mental Condition: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(c) Is this patient considered to be a danger to himself/herself? If so, explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(d) Is this patient considered to be a danger to others? If so, explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(e) Diagnostic Impression: \_\_\_\_\_

(f) Is the person taking any medication or drugs? List them if known. In your opinion, do these have an effect on the person's current behaviours? If so, explain: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(g) In your opinion, could this person benefit from treatment? If so, please list the least restrictive alternatives: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(h) Qualified Mental Health Professional: \_\_\_\_\_ (Signature)

**SAMPLE**