

**TITLE VII  
(7)**

**Mental Illness & Chemical Dependence**

**Standing Rock Sioux Tribal Code of Justice**



**Ordinance No. 320-11**

**Resolution No. 753-11 Repeals  
Chapter one  
INVOLUNTARY COMMITMENTS**

**Approved on  
December 12, 2011  
By  
Standing Rock Sioux Tribal Council**

## **ORDINANCE NO. 320-11**

**NOW THEREFORE BE IT RESOLVED**, that **TITLE VII - MENTAL HEALTH, CHAPTER 1 - INVOLUNTARY COMMITMENTS** of the Tribal Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby repealed with the new **TITLE VII - MENTAL HEALTH, CHAPTER 1 - INVOLUNTARY COMMITMENTS** as attached.

**[DOCUMENT ATTACHED 7-101 to 7-106]**

## **RESOLUTION NO. 753-11**

**WHEREAS**, the Standing Rock Sioux is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934 [48 Stat. 964], with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

**BE IT FURTHER RESOLVED**, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV of the Constitution of the Standing Rock Sioux Tribe, as amended, the forgoing **ORDINANCE NO. 320-11**, repealing all prior Ordinances regarding **TITLE VII - MENTAL HEALTH, CHAPTER 1 - INVOLUNTARY COMMITMENTS** of the Tribal Code of Justice is repealed and replaced with the attached new **TITLE VII - MENTAL HEALTH CHAPTER 1 - INVOLUNTARY COMMITMENTS** which is hereby **APPROVED**; and

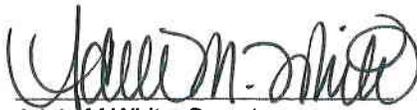
**BE IT FURTHER RESOLVED**, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

## **CERTIFICATION**

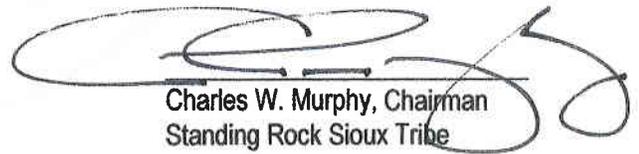
**We**, the undersigned, Chairman and Secretary of the Tribal Council do hereby certify that the Tribal Council is composed of **[17]** members of whom **16** constituting a quorum, were present at a meeting, thereof, duly and regularly called, noticed, convened and held on the **12<sup>th</sup>** day of **DECEMBER, 2011**, and that the foregoing resolution was adopted by the affirmative vote of **13** members, with **0** opposing, and with **3** not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.**

**DATED THIS 12<sup>th</sup> DAY OF DECEMBER, 2011.**

**ATTEST:**



Adele M White, Secretary  
Standing Rock Sioux Tribe



Charles W. Murphy, Chairman  
Standing Rock Sioux Tribe

**[OFFICIAL TRIBAL SEAL]**

Meeting Date 12-12-2011  
Motion No. 33

TITLE VII – Mental Illness and Chemical Dependence

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# Title VII

## MENTAL ILLNESS AND CHEMICAL DEPENDENCE

### Chapter 1 - INVOLUNTARY COMMITMENTS

#### **7-101. Definitions**

1. "Law Enforcement Officer" shall mean any officer authorized by tribal, federal or state authority to arrest and detain person.
2. "Least Restrictive Facility" shall mean such facility as will provide the least restrictive environment for the safe detention of a mentally impaired person requiring emergency detention or treatment as in reasonably available on the Reservation, pending action by the Tribal Court. This may, if a medical facility is not available or adequate, include detention in a jail facility.
3. "Mental Health Professional" shall include:
  - (a) A licensed physician or doctor of osteopathy.
  - (b) A licensed Physician's Assistant.
  - (c) A psychologist with at least a master's degree and licensed to provide clinical mental health services.
  - (d) A licensed social worker acting on behalf of a Tribal or other Reservation based governmental agency.
  - (e) A licensed addiction counselor.
  - (f) A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
4. "Mentally Impaired Person" shall mean a person with an organic, cognitive, emotional or behavioral disorder, including substance abuse, which substantially impairs his or her capacity for self-control, judgment or discretion in the conduct of personal affairs and social relations.
5. "Person Requiring Emergency Detention or Treatment" shall mean a mentally impaired person in need of immediate detention or treatment in order to avoid physical harm to himself or herself or others or to the property of another person.
6. "Person Requiring Treatment" shall mean either:
  - (a) A person who is mentally impaired and, as a result of that impairment, can be reasonably expected in the near term to intentionally or unintentionally cause physical harm to himself or herself or any other person or to the property of another person.

- (b) A person who is mentally impaired and, as a result of that impairment, can be reasonably expected in the near term to be unable to attend to his or her basic physical needs or activities of daily living to a degree that will cause physical harm to himself or herself to any other person.

**7-102. Emergency Detention and Treatment and Initial Hearing.**

- (a) When a Law Enforcement Officer or a Mental Health Professional has reasonable cause to believe that an individual is a Person Requiring Emergency Detention or Treatment, he or she may take that Person into Emergency Detention and take that Person to the Least Restrictive Facility available, on the Reservation, to safely detain that person. Any Mental Health Professional is authorized to prescribe and administer such care and treatment as is consistent with his or her licensed authority as he or she shall deem necessary and appropriate, pending hearing before the Tribal Court.
- (b) Immediately upon being taken into custody, the detainee shall be advised of the purpose of the detention and the nature of any medical care and treatment to be rendered and of his or her right to legal counsel, to be provided not later than the Initial Hearing.
- (c) Upon arrival at the place of detention, the person authorizing detention shall prepare a written report which shall contain, at a minimum, specific details of the grounds upon which he or she determined that the detainee was a Person Requiring Emergency Detention or Treatment, the names and addresses and telephone numbers, if available, of any witnesses and the circumstances under which the need for detention was determined and detention effected.
- (d) Any person detained under the authority of this section shall be brought before the Tribal Court for the Initial Hearing on the next day that the Court is in session. Detention and treatment shall not be continued thereafter except on order of the Tribal Court.
- (e) All reasonable efforts shall be made by the person ordering detention to notify the detainee's guardian, if any, any spouse and next-of-kin residing on the Reservation of the detention and Initial Hearing. The detainee shall be represented by the Tribal Defender at the Initial Hearing and at all points thereafter, unless the detainee, being competent to do so, declines after being advised of the right to counsel at Tribal expense. The detainee shall be entitled to counsel of his or her choice, subject to counsel's admission to the Tribal bar.
- (f) If any person entitled to notice under subsection (e) has not had the opportunity to appear at the Initial Hearing, or, having appeared, needs additional time to prepare for appearance, the Court shall continue the hearing to the earliest available opening on the Court calendar, not to exceed 10 (ten) Court business days, for which notice may be reasonable made upon parties entitled to notice, to review the necessity of continued detention and treatment.

- (g) If the Tribal Court shall order treatment of a detainee at any place off the Reservation, the detainee shall remain under the continuing and exclusive jurisdiction of the Tribal Court and the commitment order shall so provide.
- (h) at any point that the Tribal Court determines that the Person Requiring Emergency Detention or Treatment is no longer a threat to himself or herself or to others or their property, the Court shall terminate the detention and treatment. However, if there appears to be clear and convincing evidence to determine that release will result in non-compliance with prescribed medical treatment with resulting relapse, the commitment may be continued.
- (i) The quantum of proof for continued detention and treatment shall be by clear and convincing evidence.
- (j) The Court shall, during the pendency of any commitment under this Title, require such medical reports and periodic review hearings as the Court shall determine appropriate to the case.
- (k) Any order of the Tribal Court shall be subject to review by the Standing Rock Supreme Court, whether interlocutory or not.

**7-103. Confidentiality of Proceedings.**

All proceedings under this Title shall be confidential, open only to parties subject to notice under §7-102 (e), witnesses, and detainees and their counsel, except on written waiver by the detainee or by order of the Tribal Court for good cause.

**7-104. Immunity.**

Any person acting to report, detain, or order or provide treatment under this Title, shall be immune from any civil or criminal liability while acting in good faith.

**7-105 Non-Emergency Petitions.**

Any person may petition the Tribal Court for the detention or treatment of any person subject to the civil jurisdiction of the Standing Rock Sioux Tribal Court. Petitions for emergency detention may be granted only on the showing that the respondent is a Person Requiring Emergency Detention or Treatment. Mentally Impaired Person's otherwise may be detained or treated only upon due process notice and hearing.

**7-106. Duties of the Chief Prosecutor.**

The Chief Prosecutor shall initiate any petitions for detention and treatment under this Title and shall provide forms and assistance appropriate and necessary to carry out the provisions of this Title and shall represent the petitioner or, in the absence of a petitioner shall proceed in the name of the Standing Rock Sioux Tribe.

## **Chapter 2. THE INVOLUNTARY TREATMENT OF MENTALLY ILL PERSONS.**

### **7-201. Petition for Involuntary Treatment & Affidavits.**

Any person shall present the information necessary for the commitment of an individual for involuntary treatment for mental illness to the individual designated by the Tribal Court. The petition must be verified by affidavit of the petitioner and contain assertions that the respondent is a person requiring treatment; the facts, in detail, that are the basis of that assertion; the names, if known, and address of the nearest relative or guardian of the respondent, or , if none, of a friend of the respondent. The petition may be accompanied by one or more supporting affidavits otherwise corroborating the petition. Any petition signed by a person under fourteen years of age must bear the signature of a mental health professional.

In assisting the person in completing the petition, the Tribal Court may direct a qualified mental health professional to investigate and evaluate the specific facts alleged by the petitioner. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the signature of a mental health professional.

A written report of the results of the investigation must be delivered to the Tribal Court. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner. The Designated Individual shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. The Designated Individual who determines there are insufficient grounds for filing a petition may refer the petitioner to other community resources.

### **7-202. Review of Petition for Involuntary Treatment – Probable Cause Established – Respondent Notified of Rights.**

- (1) Upon the filing of a petition for involuntary treatment for mental illness, the Chief Clerk or any Assistant Clerk of the court shall immediately notify a judge who shall review the petition and accompanying documentation to determine whether it complies with requirements of Section 7-201 and whether it established probable cause to believe the respondent meets the criteria of a person requiring treatment. If probable cause has not been so established, the petition must be dismissed.
- (2) If probable cause has been established, the Judge shall cause to be served on the respondent or if a minor his or her parent or guardian, copies of the petition and supporting documentation. This must be accompanied by a notice informing the respondent of the procedures required by this chapter. This notice also must include notice of the respondent's right to a preliminary and a treatment hearing when in custody under Section 7-217 or, if not in custody, the right to a treatment hearing; of the right to be present at the hearing; of the right to an independent evaluation; and of the right to counsel and to an independent expert examiner. If an independent expert examiner is to be appointed, the respondent will pay for the examination.

**7-203. Examination of Respondent.**

If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, or clinical psychologist then the court shall order the respondent to be examined by an expert examiner chosen by the respondent or one appointed by the court.

**7-204. Involuntary Treatment – Examination – Report.**

The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within forty eight (48) hours, exclusive of weekends or holidays, of custody unless the respondent has been released from custody within that time period. Any expert examiner conducting an examination under this section may consult with, or request participation in the examination by, and qualified mental health professional.

This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The reports must contain:

- (1) Evaluations of the respondent's physical condition and mental status.
- (2) A conclusion as to whether the respondent meets the criteria of a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
- (3) If the report concludes that the respondent meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
- (4) The signature of the expert examiner who prepared the report.

If the expert examiner concludes that the respondent does not meet the criteria of a person requiring treatment, the court may without taking any other additional action, terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent does meet the criteria of a person requiring treatment, or makes no conclusion thereon, the court shall set a date for a preliminary hearing and shall give notice of this hearing to the persons designated in Section 7-206. If the respondent is in custody, the preliminary hearing date must be within seven days of the date respondent was taken into custody through emergency detention under Section 7-217 unless a delay or continuance is concurred with by the respondent or unless extended by the Judge for good cause shown. If the preliminary hearing is not required, the treatment hearing must be held within seven days of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

**7-205. Combination of Preliminary and Treatment Hearings.**

When the consent of the court, the parties may waive the preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing.

**7-206. Notice of Hearings.**

The Court shall cause notice of a petition and of the time and place of any hearings under this chapter to be given to: the respondent; his parents, if a minor; his counsel; the petitioner; the Designated Individual; the director of any treatment facility in which the respondent is being treated; the spouse of the respondent, if his or her whereabouts is known; the guardian, if any, of the respondent; and such other relatives or persons as the court may determine. The notice must be given at least 3 days in advance of the hearing date to permit preparation for the hearing.

**7-207. Right to Counsel – Indigence – Waiver.**

- (1) Every respondent under this Title is entitled to representation by the Tribal Court Advocate or counsel of his or her choosing, at his or her own expense.
- (2) If, after the Preliminary Hearing and, consultation with counsel, the respondent wants to waive the right to counsel or the right to the Treatment Hearing provided for under this chapter, the respondent may do so by notifying the court in writing. The notification must clearly state the respondent's for the waiver.

**7-208. Duty of Designated Individual in Court Proceedings.**

The Designated Individual shall appear and represent the Tribe in all court proceedings and hearings under this chapter.

**7-209. Respondent's Attendance at Hearings.**

The respondent must be present at all hearings. The Judge must be notified if the respondent has been medicated within twenty-four hours of the beginning of the hearing or an adjourned session thereof, and of the probable effects of the medication.

**7-210. Medication Pending Treatment Order.**

A person who is the subject of a petition for hospitalization has the right to refuse medication and other forms of treatment before the preliminary or treatment hearing. However, a physician may prescribe medication or a less restrictive alternative if it is necessary to prevent bodily harm to the respondent or others or to prevent imminent deterioration of the respondent's physical or mental condition. The respondent has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescribing physician, the need for the medication still exists or discontinuation would hamper preparation of and participation in the proceedings.

**7-211. Involuntary Treatment – Preliminary Hearing.**

At the preliminary hearing the Judge shall review the report of the expert examiner. During the hearing the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may also receive the testimony of any other interested person. The Judge may receive evidence that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing, if the court does not find probably cause to believe that the individual is a person requiring treatment, the petition must be dismissed. The person must be ordered released from detention if that person has been detained before the hearing. If the court finds probably cause to believe that the respondent is a person requiring treatment, it shall consider less restrictive alternatives to involuntary detention and treatment. The court may then order the respondent to undergo up to fourteen days treatment under a less restrictive alternative or, if it finds that such alternatives are not in the best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility or a combination of such treatment and alternative treatment facility or a combination of such treatment and alternative treatment under the criterion established by Section 7-213.

The Court shall specifically state to the respondent, and give written notice, that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

**7-212. Involuntary Treatment Hearing.**

The involuntary treatment hearing, unless waived by the respondent, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within seven days of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner prior to the treatment hearing if so requested.

At the hearing, evidence in support of the petition must be presented by the Designated Individual. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other Interested persons. All persons not necessary for the conduct of the proceedings must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and power of subpoena are available to the respondent. The court shall receive all relevant and material evidence under rules adopted by the court. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

If an individual is found at the involuntary treatment hearing to be a person requiring treatment, the findings and conclusions must be entered in the record of the proceedings and the court may:

- (1) Order the individual to undergo a program of treatment other than inpatient hospitalization in a treatment facility.
- (2) Order the individual to undergo a program of treatment on an inpatient basis in a treatment facility including in any public institution or in any private hospital with the agreement of the facility in question or if the attending physician agrees.

- (3) Order the individual to undergo a program of treatment on an inpatient basis in a treatment facility as in (2) above followed by treatment on an outpatient basis at the same or another treatment facility following discharge from the inpatient facility at the discretion of the facility or the attending physician.

The reasons supporting the court's particular treatment order must be entered in the record.

**7-213. (1) Involuntary Treatment Order**  
**(2) Alternatives to Hospitalization.**  
**(3) Noncompliance with Alternative Treatment Order.**  
**(4) Application for Continuing Treatment Order.**

(1) Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent, of treatment programs other than inpatient treatment in a treatment facility which has been prepared and submitted by a treatment facility, expert examiner, or mental health professional. If the court finds that a treatment program other than inpatient treatment in a treatment facility is adequate to meet the respondent's treatment needs and insufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than such inpatient treatment is appropriate, either as the sole treatment ordered or following a periods of inpatient treatment of either a specified period or at the discretion of the inpatient treatment facility.

(2) If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the Designated Individual shall apply to the court to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is files. Based upon the evidence presented at hearing and other available information, the court may:

- (a) Continue the alternative treatment order;
- (b) Consider other alternatives to inpatient treatment in a treatment facility, modify the court's order, or direct the individual to undergo another program of alternative treatment; or
- (c) Enter a new order directing that the individual be treated on an inpatient basis in a treatment facility until discharged from such facility with or without ordering a program of alternative treatment to commence upon discharge from the treatment facility.

**7-214. Involuntary Treatment Orders.**

Any order for involuntary treatment on an inpatient basis in a treatment facility under this chapter must be for a period not to exceed ninety days. An order to alternative treatment must be for a period no to exceed six months.

**7-215. Petition for Continuing Treatment Orders.**

- (1) If, before the expiration of an order for treatment, the Designated Individual believes that a patient's condition is such that the patient continues to require treatment, he or she shall, not less than fourteen days before the expiration on the original order, petition the court for a determination that the respondent continues to be a person requiring treatment and for an order of continuing treatment, which order may be for an unspecified period of time.
- (2) A petition for an order authorizing continuing treatment must contain: a statement setting forth the reasons for the determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition must be accompanied by a report by a physician, psychiatrist, or clinical psychologist. The court shall set a hearing date which must be within fourteen days of the date of service of the petition.

**7-216. Right to Treat.**

The treatment facility personnel shall be able to treat a patient with prescribed medication or a less restrictive alternative if, in the opinion of a psychiatrist or physician, these treatments are necessary to prevent bodily harm to the patient or others or to prevent imminent deterioration of the respondent's physical or mental condition. Nothing in this chapter may be deemed to prohibit a hospital from rendering emergency medical care without the need to consultation, if in the exercise of sound medical judgment that care is immediately necessary for the well-being of the patient.

**7-217. Detention or Hospitalization – Emergency Procedure.**

- (1) When a law enforcement officer, physician, psychiatrist, clinical psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person or other persons of such an immediate nature that considerations of safety do not allow preliminary intervention by a Judge, the law enforcement officer, physician, psychiatrist, clinical psychologist, or mental health professional may cause the person to be taken into custody and detained in a treatment facility or public or private facility.
- (2) If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the judge, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody and be detained until the preliminary hearing, which must be held no more than seven days after the date of the order.
- (3) Detention under Subsection (2) may be:
  - (a) In a treatment facility where the director must be informed of the reasons why immediate custody has been order. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior

by the respondent which is likely to result in physical injury to himself or to others if allowed to continue, but may not otherwise provide, treatment to the respondent without the respondent's consent; or

- (b) In a public or private facility in the community which is suitable equipped and staffed for the purpose.
  
- (4) Immediately upon being taken into custody, the person must be advised of the purpose of custody, of the intended use and possible effects of any evaluation that the person undergoes, and of the person's right to counsel and to a preliminary hearing.
  
- (5) Upon arrival at a facility the law enforcement officer, physician, psychiatrist, clinical psychologist, or mental health professional who conveyed the person or who caused the person to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the law enforcement officer, physician, psychiatrist, clinical psychologist, or the mental health professional who caused the person to be conveyed. The written report must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act that constituted the basis for the belief that the individual is a person requiring treatment and that, because of such condition, there exists a serious risk of harm to that person or another person if the person is not immediately detained.
  
- (6) The period of emergency detention under this section shall be for no longer than forty-eight hours, exclusive of holidays and weekends unless, upon receipt of notice of the emergency detention, the petition is filed under this chapter in which case a preliminary hearing must be held within seven days after detention unless the petition has been dismissed or the person has voluntarily admitted himself for treatment, has requested or agreed to a continuance, or unless extended by the judge for good cause shown.

**7-218. Review of Current Status of Continuing Treatment.**

Every individual subject to an order of continuing treatment has the right to regular, adequate, and prompt review of his or her current status as a person requiring treatment. Six months from the date of any such order, and every year thereafter, the treatment facility where an individual is being treated shall review his status as a person requiring treatment and in need of inpatient treatment if such treatment is ordered. The results of each periodic review conducted under this chapter must be made part of the person's record and must be filed within five days of the review, in the form of a written report, with the court. The court shall promptly give notice of the results of the review to the patient, his counsel and his nearest relative or guardian.

If a periodic review report concludes that the patient continues to require treatment and the respondent objects to the conclusion, the patient shall have the right to an independent evaluation, which shall be the respondent's responsibility to arrange and to petition the court for discharge. This petition may be presented to the court or within seven days, excluding weekends and holidays after the report are received.

Upon receipt of the petition the court shall set a hearing date which must be within fourteen days of receipt of the petition. At the hearing, the burden of proof is the same as in an involuntary treatment hearing.

### **Chapter 3. INVOLUNTARY COMMITMENT OF CHEMICAL DEPENDENT PERSONS**

#### **7-301. Petition for Involuntary Treatment.**

Any person shall present the information necessary for the commitment of an individual for involuntary commitment for chemical dependency to the Designated Individual. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring treatment; the facts, in detail, that are the basis of the assertion; the names, and addresses, if known, of any witnesses to such facts; the petition may be accompanied by one or more supporting affidavits otherwise corroborating the petition. Any petition signed by a person under the age of fourteen must also bear the signature of a mental health professional.

#### **7-302. Review of Petition for Involuntary Treatment.**

- (1) Upon the filing of a petition for involuntary treatment for chemical dependency, the Chief Clerk or any Assistant Clerk shall immediately notify a Judge who shall review the petition and accompanying documentation to determine whether it complies with requirements of Section 7-301 and whether it establishes probably cause to believe the respondent meets the criterion of a person requiring treatment. If probably cause has not been so established, the petition must be dismissed.
- (2) If probably cause has been established, the judge shall cause to be serve on the respondent, and, if a minor, his nearest relative or guardian, copies of the petition and supporting documentation. This must be accompanied by notice informing the respondent of the procedures required by this chapter. This notice also must include notice of the right to a treatment hearing, of the right to be present at the hearing; of the right to have counsel at his own expense prior to the hearing, of the right to an independent evaluation at his her own expense. If an independent expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

#### **7-303. Court Ordered Examination.**

Unless the petition is accompanied by written evidence of an examination by an expert examiner who has examined the respondent within the last ninety days, the court shall order the respondent to be examined by an expert examiner of his own choice and own expense or one appointed by the court. At the request of the Designated Individual, the court may order the examination of the respondent despite written evidence of an examination as desired above.

#### **7-304. Examination – Report.**

The respondent must be examined within a reasonable time by an expert examiner for chemical dependency as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within seventy-two hours of custody exclusive of holidays and weekends, unless the respondent is released from custody within that

time period. If the expert examiner concludes that the respondent does not meet the criteria of a person requiring treatment, he shall so inform the court in writing and the court may without taking any other additional action terminate the proceedings and dismiss the petition.

If probable cause has been established, the judge shall cause to be served on the respondent copies of the petition and supportive documentation. This must be accompanied by a notice informing the respondent of the procedures required by this chapter. This notice also must include notice of the respondent's right to an independent evaluation; of the right to counsel. If an independent examiner is to be appointed, the respondent will arrange for and pay for the examination.

**7-305. Notice of Hearing.**

The court shall cause notice of a petition and of the time and place of any hearings under this chapter to be given to: the respondent, if a minor, his or her parent or guardian, his counsel, the petitioner, the Designated Individual, and such other relatives or persons as the court may determine. The notice must be given at least 3 days in advance of the hearing date to permit preparation for the hearing.

**7-306. Involuntary Treatment Hearing.**

At the involuntary treatment hearing, evidence in support of the petition must be presented by the Designated Individual. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested persons. All persons not necessary for the conduct of the proceedings must be excluded, except that the court may admit persons having a legitimate interest in the proceedings. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the rules of evidence adopted by the court. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner. If the respondent is a minor, the court may appoint a guardian ad litem if no parent or guardian is available to represent the interest of the minor, because of a conflict of interest or otherwise.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceedings, and order that the respondent be discharged if the respondent has been detained before the hearing.

If an individual is found at the involuntary treatment hearing to be a person requiring treatment, the findings and conclusions must be entered in the record of the proceedings and the court may;

- (1) Order the individual to undergo a program of treatment other than inpatient hospitalization in a treatment facility.
- (2) Order the individual to undergo a program of treatment on an inpatient basis in a treatment facility including in a public institution or in any private treatment facility including in a public institution or in any private treatment facility with the agreement of the facility in question or if the attending physician agrees for a period not to exceed ninety days.

- (3) Order the individual to undergo a program of treatment on an inpatient basis in a treatment facility as in (2) above followed by treatment on an outpatient basis at the same or another treatment facility following discharge from the inpatient facility.

The reasons supporting the court's particular treatment order must be entered in the record.

**7-307. Right to Counsel – Indigence – Waiver.**

- (1) Every respondent under this Title is entitled to representation by the Tribal Court Advocate or counsel of his or her choosing at his or her own expense.
- (2) If, after consultation with counsel, the respondent wants to waive the right to counsel or the right to any of the hearings provided for under this chapter, the respondent may do so by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver. The issuance of a Final Order of Commitment shall render such waiver irrevocable.

**7-308. Alternatives to Inpatient Treatment.**

- (1) Before making its decision in an involuntary treatment order, the court shall assess the availability and appropriateness, based upon evidence submitted at the hearing, of a treatment program other than hospitalization. If the court finds that a treatment program other than treatment on an inpatient basis is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than inpatient treatment is appropriate.
- (2) If the respondent is not complying with an alternative treatment order or the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the Designated Individual shall apply to the court to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the evidence presented at hearing and other available information, the court may:
  - (a) Continue the alternative treatment order.
  - (b) Consider other alternatives to treatment on an inpatient basis, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the period specified; or
  - (c) Enter a new order directing that the individual be treated for a period not to exceed ninety days on an inpatient basis at a treatment facility.

**7-309. Involuntary Treatment Order.**

An order for involuntary treatment on an inpatient basis in a treatment facility under this chapter must be for a period not to exceed ninety days. An order for alternative treatment or for

inpatient treatment combined with alternative treatment must be for a period not to exceed six months.

**7-310. Detention for Detoxification.**

Whenever a law enforcement officer has a reasonable belief that an individual is under the influence of alcohol or any drug and detention of that individual is necessary to prevent harm or injury to that individual or others, he may cause the individual to be detained at a detoxification facility or a jail for a period not to exceed forty-eight hours. At the expiration of that time period the individual must be released unless proceedings are commenced under this chapter.

**7-311. Detention – Emergency Procedure.**

- (1) If a petitioner seeking the involuntary treatment of a respondent under this chapter requests that the respondent be taken into immediate custody and judge, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent or other persons, if the respondent is allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into custody and be detained as provided in Subsection (2), until the hearing, which must be held no more than seven days after the date of service of the order upon the respondent, unless the respondent is released from detention prior to the hearing within seven days of the beginning of the period of detention.
- (2) Detention under this section may be:
  - (a) In a treatment facility which must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to himself
  - (b) In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other facility is accessible.
- (3) Immediately upon being taken in custody, the person must be advised of the purpose of custody, of the intended use and possible effects of any evaluation that the person undergoes, and of the person's right to counsel.
- (4) Upon arrival at a facility the law enforcement officer, physician, psychiatrist, addiction counselor, psychologist or the mental health professional who caused the person to be conveyed must prepare a written report and file it with the court. The written report must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act that constituted the basis for the belief that the individual is a person requiring treatment and that, because of such condition, there

exists a serious risk of harm to that person, another person, of property if the person is not immediately detained.

## Chapter 4 GENERAL PROVISIONS

### 7-401. Legal Incompetence – Presumption – Finding.

- (1) No determination that a person requires treatment, no court order authorizing hospitalization or alternative treatment, nor any form of admission to a hospital gives rise to a presumption of, constitutes a finding of, or operates as an adjudication of legal incompetence
- (2) No order of commitment under any previous law of this Reservation, in the absence of concomitant appointment of a guardian, constitutes a finding of or operates as an adjudication of legal incompetence.

### 7-402. Transfer of Patients.

No person committed under this title may be transferred from one treatment facility to another without first notice to the patient and the patient's legal guardian, spouse, next of kin, if known, or a close friend of the patient and the court ordering treatment. The patient must be given an opportunity to protest the transfer and to receive a hearing on the protest. The person's objection to the transfer must be presented to the court within seven days after the notice of transfer was received. The court shall set a hearing date which must be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the person consents to a transfer, the court may enter an ex parte order authorizing transfer.

### 7-403. Rights of Patients.

Each patient of a treatment facility shall retain the following rights, subject only to the limitations and restrictions authorized by Section 7-216. A patient has the right:

- (1) To receive appropriate treatment for mental and physical ailments and for the prevention of illness or disability.
- (2) To the least restrictive conditions necessary to achieve the purposes of treatment.
- (3) To be treated with dignity and respect.
- (4) To be free from unnecessary restraint and isolation.
- (5) To visitation and telephone communications.
- (6) To send and receive sealed mail.
- (7) To keep and use personal clothing and possessions.

- (8) To regular opportunities for outdoor physical exercise
- (9) To participate in religious worship of choice
- (10) To be free from unnecessary medication.
- (11) To exercise all civil rights including the right of habeas corpus
- (12) Not to be subjected to experimental research without the express and informed written consent of the patient or of the patient's guardian.
- (13) Not to be subjected to psychosurgery, electroconvulsive treatment, or evasive reinforcement conditioning, without the express and informed written consent of the patient or of the patient's guardian.

**7-404. Limitations and Restrictions of Patients' Rights.**

The rights enumerated in Section 7-403 may be limited or restricted by the treating physician, psychiatrist, or clinical psychologist, if in his professional judgment to do so would be in the best interests of the patient. Whenever a physician, psychiatrist, or clinical psychologist responsible for treatment of a particular patient imposes a special restriction on the rights of the patient as authorized by the rules and regulations, a written order specifying the restriction and the reasons therefore must be signed by the physician, psychiatrist, or clinical psychologist and attached to the patient's chart. These restrictions must be reviewed at intervals or not more than fourteen days and may be renewed by following the procedure set out in this section.

**7-405. Notice and Statement of Rights;**

- (1) Whenever any person is detained under this title, the patient and, if possible, a responsible member of the patient's immediate family, a guardian, or a friend, if any, shall receive:
  - (a) A copy of the petition which asserted that the individual is a person requiring treatment.
  - (b) A written statement explaining that the individual will be examined by an expert examiner within seventy-two hours of detention, excluding weekends and holidays.
  - (c) A written statement in simple terms explaining the rights of the individual to a preliminary hearing, to be present at the hearing, and to be represented by counsel, if the individual is considered by an expert examiner or examiners as a person requiring treatment
  - (d) A written statement in simple terms explaining the rights of the individual to a treatment hearing, to be present at the hearing, to be represented by counsel, and the right to an independent medical evaluation, at his or her own expense.

- (2) If the individual is unable to read or understand the written materials, every reasonable effort must be made to explain them in a language the individual understand, and a note of the explanation and by who made must be entered into the patient's record.

**7-406. Limitation of Liability – Penalty for False Petition.**

- (1) A person acting in good faith upon either actual knowledge or reliable information who makes the petition for hospitalization of another person under this chapter is not subject to civil or criminal liability.
- (2) A physician, psychiatrist, clinical psychologist, mental health professional, employee of a treatment facility, Designated Individual, or law enforcement officer who in good faith exercises professional judgment in fulfilling an obligation or discretionary responsibility under this title is not subject to civil or criminal liability for acting unless it can be shown that it was done in bad faith.
- (3) A person who makes a petition for detention of another person without having good cause to believe that the other person is suffering from mental illness or the disease of alcoholism and as a result is likely to cause serious harm to himself or others is guilty of a class A misdemeanor.

**7-407. Confidential Records.**

All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this title and the presence or past presence of a patient in a treatment facility must be kept confidential and not as public records, except as the requirements of a hearing under this title may necessitate a different procedure. All information and records are available to the court and, may be disclosed only to:

- (1) Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have specific information disclosed.
- (2) Individuals to whom the respondent has given written consent to have specific information disclosed.
- (3) Persons legally representing the respondent, upon proper proof of representation and the respondent specifically give his or her written consent.
- (4) Persons authorized by a court order.

**7-408. Records of Disclosure.**

When any disclosure of information or record is made as authorized by Section 7-407 the physician in charge of the patient or the facility shall promptly cause to be entered into the patient's medical records the date and circumstances under which said disclosure was made, the names and relationships to the patients, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed.

**7-409. Expungement of Records.**

Following the discharge of a respondent from a treatment facility, a respondent may after seven years, or following the issuance of a Court Order denying a Petition for Commitment, a respondent may after one year, move to have all court records pertaining to the proceedings expunged on condition that he file a full release of all claims of whatever nature arising out of the proceedings.

**7-410. Rules and Regulation – Preparation of Forms.**

The court shall adopt and enforce such rules as may be necessary for the implementation of this title. The court is responsible for the preparation of the necessary and appropriate forms to enable compliance with this title.

**7-411. Records and Proceedings.**

A record must be made of all court hearings conducted under this title and a copy must be provided to the respondent upon request for purposes of appellate review of the proceedings.

**7-412. Appeal.**

The parties have the right to an appeal as provided for under Title 1 of this Code.