

## **Title XI - Involuntary Commitment**

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## **Chapter 1. Procedures for the Involuntary**

### **Sec. 101. Purpose.**

The purpose of this Chapter is to provide procedures for the treatment of persons with mental health problems, while protecting the rights of all persons to due process of law.

### **Sec. 102. Construction.**

This Chapter shall be construed to provide the least restrictive treatment or detention available which will serve the needs of mentally-ill persons for recovery and rehabilitation while protecting the safety of the persons to be treated and members of the community.

### **Sec. 103. Definitions.**

As used in this Chapter, the terms listed below shall mean as follows:

- (a) Applicant. A person who makes an application for the admission of another into a treatment center;
- (b) Administrator. The chief officer of a treatment facility;
- (c) Treatment facility. Any center for the treatment of mentally ill, drug or chemically dependent, and/or alcoholic persons, including a detoxification center, whether on or off the Reservation;
- (d) Detoxification center. Any center exclusively for the treatment of alcoholic persons, whether on or off the Reservation;
- (e) Mentally ill person. A person with a mental or emotional disease or disorder which impairs the capacity to use self-control, judgment or discretion in caring for fundamental

personal needs or conducting social relations;

(f) Alcoholic person. A person who has a history of chronic, excessive drinking of alcoholic beverages and as a result of such drinking regularly and for significant periods of time loses powers of self-control, judgment or discretion in caring for fundamental personal needs or conducting social relations;

(g) Drug or chemically dependent person. A person who has a history of chronic, excessive use of drugs or chemicals, and as a result of such drug or chemical use regularly and for significant periods of time loses powers of self-control, judgment or discretion in caring for fundamental personal needs or conducting social relations;

(h) Respondent. A person who has been recommended by formal application under this Chapter for treatment;

(i) Detainee. Any person who is under observation, care of treatment in a treatment facility;

(j) Dangerous. A person who if remaining undetained presents a likelihood of imminent and serious bodily harm to self or others, as evidenced by recent overt acts or threats.

**Sec. 104. Application for involuntary commitment.**

Any person, including the administrator of any treatment facility, may submit to the Fort Peck Tribal Court an application to have any person subject to the jurisdiction of the Court involuntarily committed to a treatment facility for the mentally ill. Such application shall include (1) the name, address and telephone number of the applicant, the respondent, and, if known, the next of kin of the respondent; (2) the reason(s) why the applicant believes the respondent is mentally ill and dangerous to self and others; (3) any available supporting evidence, including affidavits or written statements from physicians, psychologists, other mental health professionals or members of the community concerning the mental health of the respondent and the danger respondent poses to self or others.

**Sec. 105. Preliminary hearing.**

After receiving an application, the Court shall immediately schedule a preliminary hearing, to be held immediately if possible and in all cases (a) within forty eight (48) hours of the time of detention if the respondent is being held in emergency detention and (b) within seventy two (72) hours if the respondent is not being detained. The Court shall make all reasonable attempts to notify, by telephone or other means, the respondent and the respondent's next of kin of the time and place of the preliminary hearing, and the respondent's rights (a) to retain counsel at respondent's expense, and to have counsel provided by the Tribes if the respondent is unable to afford counsel and if he/she is unable to otherwise obtain counsel without cost; (b) to be present and (c) to testify, present documentary evidence, call witnesses and ask questions of all witnesses. Prior to the preliminary hearing, the Court shall order the examination of respondent by a psychiatrist, physician, psychologist or other mental health care professional. The preliminary hearing shall be conducted informally and shall be closed to the public unless the respondent or his/her authorized representative requests otherwise and the Court so orders. If the Court determines, based on the evidence at the preliminary hearing, that there is probable cause to believe the respondent is mentally ill and dangerous, such that respondent is likely to cause bodily harm to self or others before a final hearing could be held, the Court may commit the respondent to

an appropriate treatment center pending a final hearing. Such final hearing shall be held within ten (10) calendar days of the preliminary hearing unless the detainee or the detainee's authorized representative requests a postponement.

**Sec. 106. Emergency detention.**

(a) Any person who has reason to believe another person is mentally ill and as a result poses an extraordinary danger to his/her own safety or the safety of others may report such person to a law enforcement officer indicating why it is believed that the person is mentally ill or dangerous. A law enforcement officer receiving such a report shall promptly investigate the person alleged to be mentally ill and dangerous.

(b) Whether or not there is a report, a law enforcement officer or licensed physician may take into emergency detention any person subject to the jurisdiction of the Court who the officer or licensed physician, following investigation, has probable cause to believe is mentally ill and extraordinarily dangerous to self or others. A licensed physician or law enforcement officer who takes a person into emergency detention shall immediately make all reasonable efforts to notify the detainee's next of kin. Where possible, such person shall be taken to a health care or treatment facility on the Reservation.

Where no on-Reservation treatment facility or health care facility can provide the emergency treatment or protection needed by the detainee to protect him/her from imminent harm, a law enforcement officer or licensed physician may place such person in an appropriate treatment facility off the Reservation. In no event shall emergency detention be continued beyond forty eight (48) hours without a preliminary hearing. Upon taking a person into emergency detention, the law enforcement officer or licensed physician shall immediately submit an application to the Tribal Court under Section 104 of this Chapter. Upon receiving such an application, the Court shall order the prompt examination of the detainee by a psychiatrist, physician, psychologist or other mental health care professional.

(c) A person brought to a health care or treatment facility shall immediately be examined by a physician. If the physician determines that in his/her professional opinion such person is mentally ill and dangerous, such person shall be admitted to the facility. Otherwise, such person shall be released and transported home. The administrator shall as soon as practicable notify the Court of the admission or release of any respondent, and submit a report to the Court giving his/her reasons, to the extent possible, as to why he/she believes the detainee is or is not a mentally ill person and dangerous.

**Sec. 107. Final hearings.**

(a) When a final hearing shall be held. The Tribal Court shall hold a final hearing as soon after the application is filed as possible, and immediately following receipt of detailed observations by a physician sufficient to enable the Court to make a determination as to whether the detainee is mentally ill and dangerous. Where such detailed observations are available within forty eight (48) hours of the filing of the application, the preliminary and final hearings shall be consolidated unless the detainee or the detainee's authorized representative objects.

(b) Notice. The Court shall serve prior written notice of the date, time and place of the final hearing upon the detainee, any person designated by the detainee, and the spouse and parents and/or guardians of the detainee. Notice shall be served in person or by certified mail, return receipt requested. The notice shall also specify that the detainee (or any other party served with notice)

has a right to retain counsel at his/her own expense, and that if he/she cannot afford counsel and cannot otherwise obtain counsel, the Tribes will provide counsel, that he/she has a right to be present and to testify, present documentary evidence, call witnesses and ask questions of all witnesses.

(c) Procedures. The detainee must be physically present at the final hearing. The detainee is entitled to be represented by counsel. If the detainee cannot afford counsel, and cannot otherwise obtain counsel without cost, the Tribes shall provide counsel. Hearings shall be closed to the general public, unless a public hearing is requested by the detainee or his/her authorized representative and the Court orders the hearings to be open. Where necessary, the hearing shall be held at the treatment facility. The Court shall require the testimony of a mental health professional and at least one (1) physician based on an examination of the detainee, presenting the facts and circumstances concerning the detainee's mental health and dangerousness. For the purposes of the preceding sentence, a mental health professional shall mean a person who meets the Indian Health Service requirements for the position of Mental Health Specialist GS-001-01, or who holds a masters degree in social work or related field, or a more advanced psychiatric degree. The detainee, or his/her authorized representative, may summon or produce such witnesses and evidence as they may desire. The Court shall have the power to issue subpoenas to compel the testimony of witnesses or the production of books, records, documents or any other physical evidence related to the determination of the case and not an undue burden on the person possessing the evidence. Subpoenas shall be issued as provided in Title VIII (Civil Procedures) of this Code. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena proceeding issued and served may be cited and held in contempt.

(d) Order of continued detention. If the Court shall find, after final hearing, that there is clear and convincing evidence that the detainee is mentally ill and dangerous, it shall enter an order directing the continued detention and treatment of such person. Otherwise, the detainee shall be ordered immediately released.

**Sec. 108. Continued jurisdiction of the Courts: reports required.**

The Court shall retain jurisdiction until such time as the detainee is discharged from the treatment center. For detention to continue, the detainee must receive regular care and treatment appropriate for the detainee's illness. The administrator of the treatment center shall furnish signed monthly reports in writing to the Court. Such reports shall outline the treatment being administered to the detainee, the detainee's progress toward recovery and the administrator's recommendation as to the need for continued detention.

**Sec. 109. Petition for release.**

The detainee, or the detainee's authorized representative, may at any time petition the Court for release from the treatment facility. The petition shall be in writing, but need not be in any particular form. Grounds for release include the improved mental health of the detainee such that the detainee is no longer mentally ill or dangerous. Upon receipt of a petition for release, the Court shall review the petition, and serve a copy upon the petitioner, detainee and administrator. The administrator shall respond to the petition within seven (7) calendar days. If, after consideration of the petition and administrator's response, the Court finds substantial evidence that the detainee may no longer be mentally ill or dangerous, the Court shall order and hold a hearing on the matter, following the procedures set forth in Section 107.

**Sec. 110. Annual review.**

Whether or not the detainee has filed a petition for release, the Court shall hold a hearing not less than once each year, following the procedures under Section 107 of this Chapter, to determine if the basis for the original detention still exists. If the Court finds that there is no longer clear and convincing evidence that the detainee is mentally ill and dangerous, the Court shall order the detainee immediately released.

## **Chapter 2. Involuntary Commitment of Alcoholic and Drug or Chemically Dependent Persons**

**Sec. 201. Purpose.**

The purpose of this Chapter is to provide procedures for the treatment of persons with drug or chemical dependence, and/or alcoholism problems, while protecting the rights of all persons to due process of law.

**Sec. 202. Construction.**

This Chapter shall be construed to provide the least restrictive treatment or detention available which will serve the needs of drug or chemically dependent or alcoholic persons for recovery and rehabilitation while protecting the safety of the persons to be treated and members of the community.

**Sec. 203. Definitions.**

The definitions of Section 103 of this Title shall be applicable to this Chapter.

**Sec. 204. Application for involuntary commitment.**

Any person, including the administrator of any detoxification center, may submit to the Fort Peck Tribal Court an application to have any alcoholic or drug or chemically dependent person subject to the jurisdiction of the Court involuntarily committed to a detoxification center or other appropriate treatment facility. Such application shall include (1) the name, address and telephone number of the applicant, the respondent and, if known, the next of kin of the respondent; (2) the reason(s) why the applicant believes the respondent is alcoholic and dangerous to self or others, or drug or chemically dependent and dangerous to self or others; (3) any available supporting evidence, including affidavits or written statements from physicians or members of the community concerning the respondent's alcoholism, or drug or chemical dependence, and dangerousness.

**Sec. 205. Hearing.**

After receiving an application, the Court shall schedule a hearing to be held immediately if possible and in all cases (a) within forty eight (48) hours of the time of detention if the respondent is being detained at the detoxification center or other treatment facility and (b) within seventy two (72) hours if the respondent is not being detained. The Court shall make reasonable attempts to notify, by telephone or other means, the respondent and the respondent's next of kin of the time and place of the hearing, and the right of the respondent (a) to retain counsel at respondent's expense; (b) to be present and (c) to testify, present documentary evidence, call witnesses and ask questions of all witnesses. Prior to the hearing, the Court shall order the examination of respondent by a physician or other health care professional. The hearing shall be held informally, and shall be closed to the public unless the respondent or his/her authorized representative requests otherwise

and the Court so orders.

**Sec. 206. Disposition.**

If the Court determines that there is clear and convincing evidence that the respondent is an alcoholic or drug or chemically dependent person and dangerous it shall order detention (a) up to a maximum of thirty one (31) days total for an alcoholic person committed to a detoxification center, and (b) for such period as is required for treatment of a drug or chemically dependent person in a treatment facility, up to a maximum of six (6) months. If the Court determines that the evidence available as to whether the respondent is an alcoholic or drug or chemically dependent person and dangerous is inconclusive, the Court may order additional medical examination of the respondent, and an additional hearing, to be held within five (5) days of the first hearing, unless further time is requested by the respondent or his/her authorized representative. The Court may order the continued detention of a respondent pending an additional hearing if based on the evidence available at the first hearing the Court finds probable cause to believe that the respondent is an alcoholic or drug or chemically dependent person and dangerous. Otherwise, the Court shall order that the respondent be immediately released and transported home.

**Sec. 207. Emergency detention.**

(a) Any person who has reason to believe that another person subject to the jurisdiction of the Court is an alcoholic or drug or chemically dependent person and extraordinarily dangerous may report to a law enforcement officer the name, address and telephone number of such person and the facts and circumstances which show that the respondent is an alcoholic or drug or chemically dependent person and extraordinarily dangerous. A law enforcement officer receiving such a report shall promptly investigate the person alleged to be an alcoholic or drug or chemically dependent person and extraordinarily dangerous.

(b) Whether or not there is such a report, a law enforcement officer or licensed physician may take into custody any person subject to the jurisdiction of the Court who the officer or licensed physician, following investigation, has probable cause to believe is an alcoholic or drug or chemically dependent person and extraordinarily dangerous. Such person shall be taken and admitted (a) to a detoxification center on the Reservation if alcoholic or (b) to an appropriate treatment facility or health care facility on the Reservation pending a hearing on the matter. Where no on-Reservation treatment facility or health care facility can provide the emergency treatment or protection needed by the detainee to protect him/her from imminent harm, the law enforcement officer or licensed physician may place the detainee in an appropriate treatment facility off the Reservation. Upon taking a person to a detoxification center, treatment facility or health care facility, the law enforcement officer or licensed physician shall immediately submit an application to the Fort Peck Tribal Court under Section 104. A licensed physician or law enforcement officer who takes a person into emergency detention shall immediately make all reasonable efforts to notify the detainee's next of kin.

(c) A person brought to a detoxification center or treatment facility shall immediately be examined by a physician, or health care professional or, if none is available, by the person then in charge of the center. If the physician, administrator or person then in charge determines that in their professional opinion such person is an alcoholic or drug or chemically dependent person and dangerous, such person shall be admitted to the detoxification center or treatment facility. Otherwise, such person shall be released. The administrator shall immediately notify the Court of the

release of any respondent. The administrator shall within eight (8) hours of admitting such person to the detoxification center or treatment facility submit a report to the Court documenting, to the extent possible, whether the detainee is an alcoholic or drug or chemically dependent person and dangerous.