

**TITLE XI**  
**MENTAL HEALTH CODE**

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## TITLE XI

### MENTAL HEALTH CODE

#### CHAPTER 11.1

##### **Purpose, General Provisions and Definitions**

11.101 **Statement of Policy.** It is the policy of the Saginaw Chippewa Indian Tribe to promote the health, safety, culture and general welfare of the Tribal Community; to recognize mental illness and substance use disorders as diseases subject to a variety of treatment alternatives and choices; to recognize that the person who has a mental illness or a substance use disorder is entitled to the opportunity to heal in the least restrictive and most culturally relevant environment.

11.102 **Purpose.** The purpose of this code is to:

- (1) Provide Saginaw Chippewa members or other persons subject to the Community Court's jurisdiction, who may be mentally ill, seriously mentally ill or struggling with a substance use disorder, such care and treatment as will be suited to the needs of the person and to ensure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity, belief system, and personal and cultural integrity.
- (2) Provide Saginaw Chippewa Tribal Police, Behavioral Health Services, and the Community Court the authority and jurisdiction to facilitate involuntary mental health examination and treatment options. However, no person shall be involuntary committed to inpatient or outpatient treatment for a mental health or substance use diagnosis at any facility unless that person meets the legal criteria for such commitment as defined in this code.
- (3) Provide Saginaw Chippewa members or other persons subject to the Community Court's jurisdiction, who are in danger of harming one's self or others to be taken into custody for further medical examination and determination of further appropriate treatment.
- (4) Provide Saginaw Chippewa members or other persons subject to the Community Court's jurisdiction, who may lack sufficient understanding or capacity to make or communicate mental health or substance use treatment decisions, care and treatment as will be suited to the needs of the person and to ensure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal and cultural integrity.

- (5) When appropriate, encourage the use of less restrictive alternatives that are available or adequate before considering institutionalized care and whenever possible to do so in a community-based setting.
- (6) Assure that due process of law is accorded any person coming under the provisions of this Code.

11.103 **Jurisdiction.** Actions brought under this code shall be heard in the Saginaw Chippewa Community Court (also referred to as the Saginaw Chippewa Tribal Court). The Community Court shall have jurisdiction over all causes of action arising within the territorial jurisdiction of the Court as described in Chapter 3.102 of the Saginaw Chippewa Tribal Law Title III.

11.104 **Effective Date.** This Code shall become effective immediately upon the date it is adopted by formal action of the Tribal Council.

11.105 **Severability.** If any section, provision, or portion of this Chapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, then the remained of this Chapter shall remain in full force and effect.

11.106 **Definitions.**

- (1) “Assessment” means the systematic evaluation of information gathered to determine the nature and severity of the patient’s mental illness or substance use problem, or both, and the patient’s need and or motivation for services.
- (2) “Clinical certificate” means the written conclusion and statements of mental health professional that a person is a person requiring treatment, together with the information and opinions, in reasonable detail, that underlie the conclusion.
- (3) “Court” means the Saginaw Chippewa Community (Tribal) Court.
- (4) “Department” means Saginaw Chippewa Tribal Behavioral Health Department.
- (5) “Discharge” means an absolute, unconditional release of a person from a facility by action of the facility or a court.
- (6) “Emergency situation” means a situation in which a person is experiencing a serious mental illness, substance use disorder, or a minor experiencing a serious emotional disturbance, and 1 of the following applies:

- (a) The person can reasonably be expected within the near future to physically injure himself, herself, or another person, either intentionally or unintentionally.
  - (b) The person is unable to provide himself or herself food, clothing, or shelter or to attend to basic physical activities such as eating, toileting, bathing, grooming, dressing and this inability may lead in the near future to harm to the person or to another person.
  - (c) The person's judgment is so impaired that he or she is unable to understand the need for treatment and his or her continued behavior as a result of the mental illness, substance use disorder, or emotional disturbance can reasonably be expected in the near future to result in physical harm to the person or to another person.
- (7) "Facility" means a residential facility for the care or treatment of persons with serious mental illness, substance use disorder, or serious emotional disturbance.
- (8) "Formal voluntary hospitalization" means hospitalization of a person based on both of the following:
- (a) The person's execution of an application for voluntary hospitalization.
  - (b) The hospital director's determination that the person is clinically suitable for voluntary hospitalization.
- (9) "Functional impairment" means both of the following:
- (a) With regard to serious emotional disturbance, substantial interference with or limitation of a minor's achievement or maintenance of 1 or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills.
  - (b) With regard to serious mental illness, substance use disorder, substantial interference or limitation of role functioning in 1 or more major life activities including basic living skills such as eating, bathing, and dressing; instrumental living skills such as maintaining a household, managing money, getting around the community, and taking prescribed medication; and functioning in social, vocational and educational contexts.
- (10) "Guardian" means a person appointed by a court and given power and responsibility to make certain decisions about the care of another person.

- (11) “Habitual User” means a person who is brought to the attention of law enforcement for being substance impaired, who meets the criteria for involuntary admission under the provisions of this code and who has been taken into custody for such impairment or in such an impaired condition three or more times during the previous 12 months.
- (12) “Hospitalization” or “hospitalize” means to provide mental health treatment for a person as an inpatient in a hospital.
- (13) “Informal voluntary hospitalization” means hospitalization of a person based on all of the following:
  - (a) The person’s request for hospitalization.
  - (b) The hospital director’s determination that the person is clinically suitable for voluntary hospitalization.
  - (c) The person’s agreement to accept treatment.
- (14) “Involuntary mental health treatment” means court-ordered hospitalization, alternative treatment, or combined hospitalization and alternative treatment.
- (15) “Mental health professional” means a person who is trained, licensed in the State of Michigan, and experienced in the area of mental illness/substance use disorder and who is 1 of the following:
  - (a) A physician who is licensed to practice medicine or osteopathic medicine.
  - (b) A psychologist.
  - (c) A registered professional nurse.
  - (d) A social worker.
  - (e) A professional counselor.
  - (f) A marriage and family therapist.
- (16) “Mental illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (17) “Minor” means a person under the age of 18 years.

- (18) “Minor requiring treatment” means either of the following:
- (a) A minor with a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
  - (b) A minor having a severe or persistent emotional condition or substance use disorder characterized by seriously impaired personality development, person adjustment, social adjustment, or emotional growth, which is demonstrated in behavior symptomatic of that impairment.
- (19) “Person in loco parentis” means a person who is not the parent or guardian of a minor, but who has either legal custody of a minor or physical custody of a minor and is providing support and care for the minor.
- (20) “Person requiring treatment” means one of the following:
- (a) A person who has mental illness and/or substance use disorder, and who as a result of that mental illness/ substance use disorder can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself or herself or another person, and who has engaged in an act or acts or made significant threats that are substantially supportive of the expectation.
  - (b) A person who has mental illness and/or substance use disorder, and who as a result of that mental illness/ substance use disorder is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the person to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
  - (c) A person who has mental illness and/or substance use disorder, whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose continued behavior as the result of this mental illness/ substance use disorder can reasonably be expected, on the basis of competent clinical opinion, to result in significant physical harm to himself or herself or others.
- (21) “Protective custody” means the temporary custody of a person by a police officer with or without the person’s consent for the purpose of protecting that person’s health and safety, or the health and safety of the public, and



for the purpose of transporting the person, if the person appears, in the judgment of the police officer, to be a person requiring treatment.

Protective custody is civil in nature and is not to be construed as an arrest.

- (22) “Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year that has resulted in functional impairment that substantially interferes with or limits the minor’s role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:
- (a) A substance use disorder.
  - (b) A developmental disorder.
- (23) “Serious mental illness” means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed with the past year and has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:
- (a) A substance use disorder.
  - (b) A developmental disorder.
- (24) “Subject of petition” means a person regarding whom a petition has been filed with the Court asserting that the person is or is not a person requiring treatment or for whom an objection to involuntary mental health treatment has been made.
- (25) “Substance Abuse” means the taking of alcohol or other drugs at dosages that place a person’s social, economic, psychological, and/or physical welfare in potential hazard to the extent that a person loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof.
- (26) “Substance Use Disorder” or “SUD” means a chronic disorder in which repeated use of alcohol, drugs, or both, results in significant and adverse consequences. Substance use disorder includes substance abuse.
- (27) “Suitable for hospitalization” means a determination concerning a minor that all of the following criteria are met:

- (a) The minor is requiring treatment.
- (b) The minor is in need of hospitalization and is expected to benefit from hospitalization.
- (c) An appropriate, less restrictive alternative to hospitalization is not available.

11.107

**Confidentiality of Records.**

- (1) All communications, oral or written, of any person who is the recipient of services under this Chapter shall be confidential and privileged information.

All information obtained and records prepared in the course of providing any services under this code shall be confidential and privileged and shall remain confidential and privileged after the person is discharged from the facility. Except as otherwise provided by Tribal law or other applicable law including but not limited to the federal HIPAA law, no person having access to confidential information may disclose this information without consent of the adult patient or legally responsible person, provided, however, a HIPAA covered entity or business associated receiving the confidential information may use and disclose such information as permitted or required under 45 CFR Part 164, Subpart E.

- (a) In communication between qualified professionals in the provision of services or appropriate referrals.
- (b) A qualified professional may disclose confidential information to law enforcement when, in the qualified professionals opinion, there is a likelihood of danger to the health or safety of the person or others or there is a likelihood of the commission of a violent act toward another or others so that law enforcement may be alerted. The information that may be disclosed includes but is not limited to the nature of the harm or violence, the location of harm or violence and or victims, the identity of the recipient of services.
- (c) When the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in the section shall be construed to compel a physician, psychiatrist, psychologist, social worker, nurse, attorney, or other professional person, to reveal information which has been given to him or her in confidence by members of a

patient's family.

- (d) To the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he or she may be entitled. Disclosure is limited to the confidential information necessary to establish financial benefits for the person. After the establishment of these benefits, consent of the person or guardian is required for further release of confidential information under this section.
- (e) To the Court as necessary for the administration of the law.
- (f) To persons authorized by an order of Court.

## CHAPTER 11.2

### CIVIL ADMISSION AND DISCHARGE PROCEDURES

11.201

#### **Informal Voluntary Hospitalization.**

- (1) **Request.** A person 18 years of age or over may be hospitalized as an informal voluntary patient if he or she requests hospitalization as an informal voluntary patient and if the hospital director considers the person to be clinically suitable for that form of hospitalization. Unless the hospital requires that the request be made in writing, the person may make the request orally.
- (2) **Termination.** An informal voluntary patient shall be allowed to terminate his or her hospitalization and leave the hospital at any time during the normal day shift hours of the hospital.

11.202

#### **Formal Voluntary Hospitalization.**

- (1) **Request.** A person 18 years of age or over may be hospitalized as a formal voluntary patient if the person executes an application for hospitalization as a formal voluntary patient or the person assents and the full guardian of the person or the limited guardian with authority to admit executes an application for hospitalization and if the hospital director considers the person to be clinically suitable for that form of hospitalization.
- (2) **Termination.** A formal voluntary patient 18 years of age or over shall not be hospitalized more than 3 days, excluding Sundays and holidays, after the patient gives written notice of an intention to terminate his or her

hospitalization and leave the hospital.

- (3) **Continued Hospitalization After Request for Termination.** If a written notice of termination of hospitalization is given to the hospital and the hospital director determines that the patient is a person requiring treatment and should remain in the hospital, the hospital director or other suitable person shall within 3 days, excluding Sundays and holidays, file an application with the Court. The application shall be accompanied by 1 clinical certificate executed by a psychiatrist and 1 clinical certificate executed by a physician. If an application is filed, the hospital may continue hospitalization of the patient pending a hearing.

11.203

**Protective Custody and Involuntary Admission Procedures.**

- (1) **Police Officer Observation.** If a police officer observes a person conducting himself or herself in a manner that causes the police officer to reasonably believe that the person is a person requiring treatment, the police officer may take the person into protective custody and transport the person to the nearest hospital for assessment and examination.
- (2) **Outside Presence of Police Officer.** If a police officer has reason to believe based upon the information of another party, that the person has conducted themselves in such a way that causes the police officer to believe the person is a person requiring treatment, the police officer may take the person into protective custody and transport the person to the nearest hospital for assessment and examination.
- (3) **Use of Force and Protective Steps.** If a police officer is taking a person into protective custody, the police officer may use that kind and degree of force that would be lawful if the police officer were effecting an arrest for a misdemeanor without a warrant. In taking the person into custody, a police officer may take reasonable steps for self-protection. The protective steps may include a pat down search of the person in the person's immediate surroundings, but only to the extent necessary to discover and seize a dangerous weapon that may be used against the officer or other persons present. These protective steps shall be taken by the police officer before the person is transported to a hospital for assessment and examination. The taking of a person into protective custody is not an arrest. The police officer shall inform the person that he or she is being held in protective custody and is not under arrest. In some circumstances a person taken under protective custody may be placed in a Tribal holding cell.
- (4) **Examination and Detention Period.** A hospital shall receive and detain a person presented for assessment and examination under this section for

not more than 72 hours. During that time the person shall be examined by a physician. If the examining physician does not certify that the person is a person requiring treatment, the person shall be released immediately. If the examining physician does certify that the person is a person requiring treatment, the patient's hospitalization may continue pending a hearing.

- (5) **Criteria for Involuntary Admissions for Substance Use Impairment.** Criteria for protective custody, emergency admission, and other involuntary assessment, involuntary treatment, and alternative voluntary assessment for minors, for purposes of assessment and stabilization and for involuntary treatment. A person meets the criteria for involuntary admission if there is a good faith reason to believe that the person is substance use impaired, and because of such chronic impairment:
- (a) Has lost the power of self-control with respect to substance use; and
  - (b) Has either
    - (1) inflicted, or threatened or attempted to inflict, or unless admitted to treatment or custody is likely to inflict physical harm on himself or herself or another; or
    - (2) is in need of substance use services and, by reason of substance use impairment, his or her judgment has been so impaired that the person is incapable of appreciating his or her need for such services and of making a rational decision in regarding services; however the simple refusal to receive substance use services does not constitute evidence of lack of judgment with respect to his or her need for such services.
- (6) **Protective Custody and Involuntary Admission Co-Occurring Mental Health and Substance Use Impairment.** It is not necessary to determine or attempt to define if a mental health issue or substance use impairment is the primary cause of the behavior that leads the police officer or court to believe the person needs treatment at the time of protective custody or involuntary admission. Mental health and substance use impairment disorders often co-occur and aggravate each other. The police officer will transport the person to the nearest hospital for an assessment and examination that will make further treatment recommendations, if any.
- (7) **No Civil Liability of Police Officer.** A police officer who acts in compliance with this act is action in the course of official duty and is not civilly liable for the action taken. This does not apply to a police officer who, while acting in compliance with this act, engages in behavior involving gross negligence or willful or wanton misconduct.

**Involuntary Admission by Petition.**

- (1) **Petition.** Any person 18 years of age or over may file with the Court a petition that asserts that a person is a person requiring treatment.
- (2) **Contents and Attachments.** The petition shall contain the facts that are the basis for the assertion, the names and addresses, if known, of any witnesses to the facts, and, if known, the name and address of the nearest relative or guardian. The petition shall be accompanied by the clinical certificate of a physician, unless after reasonable effort the petitioner could not secure an examination. If a clinical certificate does not accompany the petition, an affidavit setting forth the reasons an examination could not be secured shall also be filed. A clinical certificate that accompanies a petition shall have been executed within 72 hours before the filing of the petition and after personal examination of the person.
- (3) **Involuntary Assessment, Exam and Admission Period.**
  - (a) If the petition is accompanied by 1 clinical certificate, the Court shall order the person to be examined by a psychiatrist.
  - (b) If the petition is not accompanied by a clinical certificate, and if the Court is satisfied a reasonable effort was made to secure an examination, the Court shall order the person to be examined by a psychiatrist or a licensed psychologist.
  - (c) The person may be involuntarily received and admitted at the place of the assessment and examination as long as necessary to complete the assessment and examination or examinations, but not more than 72 hours.
  - (d) After any examination ordered under this section, the examining physician shall either transmit a clinical certificate to the Court or report to the Court that execution of a clinical certificate is not warranted.
- (4) **Noncompliance with Order of Examination and Protective Custody.** If it appears to the Court that the person will not comply with an order of assessment and examination under this section, the Court may order a police officer to take the person into protective custody and transport him or her to the designated hospital for the ordered assessment and examination or examinations.
- (5) **Right to Remain in Home Pending Examination.** Unless the person has

been ordered hospitalized, he or she shall be allowed to remain in his or her home or other place of residence pending an ordered assessment and examination or examinations and to return to his home or other place of residence upon completion of the assessment and examination or examinations. However, if the person is homeless this provision shall not apply and the Court may order a placement in its discretion.

- (6) **Immediate Involuntary Hospitalization.** If it appears to the Court that the person requires immediate involuntary mental health and/or substance use treatment in order to prevent physical harm to himself or herself, or others, the Court may order the person hospitalized and may order a police officer to take the person into protective custody and transport the person to a designated hospital. If the assessments, examinations and clinical certificates of the psychiatrist, are not completed within 72 hours after hospitalization, the person shall be released. However, if the assessments, examinations and certificates are not completed due to the lack of cooperation of the person, the person may remain hospitalized long enough to complete the assessments, examinations and certificates at the discretion of the Court.

11.205

**Court Hearings.**

- (1) **Date.** The Court shall fix a date for every hearing convened under this chapter. The hearing shall be convened promptly, but not more than 7 business days, after the Court's receipt of any of the following:
- (a) An application for hospitalization, which shall serve as a petition for a determination that a person is a person requiring treatment, a clinical certificate executed by a physician, licensed psychologist or clinical certificate executed by a psychiatrist.
  - (b) A petition for a determination that a person is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, or clinical certificate executed by a psychiatrist.
  - (c) A petition for a determination that a person continues to be a person requiring treatment and a clinical certificate executed by a psychiatrist.
  - (d) A petition for discharge.
- (2) **Notice.**
- (a) The Court shall cause notice of a petition and of the time and place

of any hearing to be given to the subject of the petition, his or her attorney, the petitioner, the prosecuting attorney, the hospital director of any hospital in which the subject of a petition is hospitalized, the spouse of the subject of the petition if his or her whereabouts are known, and the guardian, if any, of the subject of the petition. Notice shall be given at the earliest practicable time and sufficiently in advance of the hearing date to permit preparation for the hearing.

- (b) Within 4 days of the Court's receipt of the documents described in section 11.205 (1), the Court shall cause the subject of the petition to be given a copy of the petition, a copy of each clinical certificate executed in connection with the proceeding, notice of the right to a full court hearing, notice of the right to be present at the hearing, notice of the right to be represented by legal counsel, and notice of the right to an independent clinical evaluation.
- (c) If notice cannot be effected prior to the hearing due to lack of a fixed or known address, or lack of known or regular whereabouts, a good faith effort shall be made to notify the subject of the petition, and such efforts shall be noted in the record in the event prior notice is not successfully effected.

(3) **Legal Counsel.**

- (a) Every person who is the subject of a petition is entitled to be represented by legal counsel. Unless an appearance has been entered on behalf of the subject of a petition, the Court shall, within 48 hours after its receipt of any petition together with the other documents required, appoint counsel to represent the subject of the petition, except that if a person has been involuntarily hospitalized, the Court shall then appoint counsel within 24 hours after it receives notice of the hospitalization, or as soon thereafter as practicable. However, the subject of the petition, parent(s), guardian, legal representative, or custodian must pay any fees for such legal counsel, and/or appointed counsel. The Tribe shall not be responsible for any fees for any legal and/or appointed counsel under this Code.
- (b) If, after consultation with appointed counsel, the subject of a petition desires to waive his or her right to counsel, he or she may do so by notifying the Court in writing.
- (c) Legal counsel shall consult in person with the subject of a petition at least 24 hours before the time set for a court hearing whenever



possible, provided whereabouts of the subject of a petition are known.

(d) Legal counsel for the subject of a petition who is hospitalized pending the Court hearing shall consult in person with the person not more than 3 business days after the petition has been filed with the Court.

(e) After the consultation required in subsection (c) or (d), counsel promptly shall file with the Court a notice stating that he or she personally has seen and has consulted with the subject of a petition as required by this section.

(4) **Right to Presence at Hearings.** The subject of a petition has the right to be present at all hearings. This right may be waived by a waiver of attendance signed by the subject of a petition, witnessed by his or her legal counsel, and filed with the Court or it may be waived in open court at a scheduled hearing. The subject's right to be present at a hearing is considered waived by the subject's failure to attend the hearing after receiving notice as required, provided the subject has had an opportunity to consult with counsel as required. The Court may exclude the subject from a hearing if the subject's behavior at the hearing makes it difficult or impossible to conduct the hearing. The Court shall enter on the record its reasons for excluding the subject of a petition from the hearing. The subject's presence may be waived by the Court if there is testimony by a physician or licensed psychologist who has recently observed the subject that the subject's attendance would expose the subject or another to the great risk of harm.

(5) **Participation of Tribal Prosecutor.** The Tribal Prosecutor shall participate in hearings convened by the Court, except that a Tribal Prosecutor need not participate in or be present at a hearing whenever a petitioner or some other appropriate person has retained private counsel who will be present in court and will present to the Court the case for requiring treatment.

(6) **Documents, Witnesses and Cross-Examination.** The parties in a proceeding under this chapter have the right to present documents and witnesses and to cross-examine witnesses. The Court shall receive all relevant, competent, and material evidence which may be offered. The subject of the petition must be allowed to testify or decline to testify at the subject's choice.

(7) **Testimony of Physician or Psychologist.** A person may not be found to require treatment unless at least 1 physician or licensed psychologist who

has personally examined that person testifies in person or by written deposition at the hearing. A written deposition may be introduced as evidence at the hearing only if the attorney for the subject of the petition was given the opportunity to be present during the taking of the deposition and to cross-examine the deponent. This testimony or deposition may be waived by the subject of a petition. A person may be found to require treatment even if the petitioner does not testify, as long as there is competent evidence to establish that the person meets the criteria of a person requiring treatment.

- (8) **Independent Clinical Evaluation.** If requested before the first scheduled hearing or at the first scheduled hearing before the first witness has been sworn on an application or petition, the subject of a petition in a hearing has the right at his or her own expense, to secure an independent clinical evaluation by a physician, psychiatrist, or licensed psychologist of his or her choice relevant to whether he or she requires treatment and whether he or she should be hospitalized or receive treatment other than hospitalization.
- (9) **Court Orders.** Copies of court orders issued pursuant to this chapter shall be given to the person who is the subject of the order provided whereabouts of the person is known; to the person's guardian, if a guardian has been appointed; to the person's attorney; to the hospital director of any hospital in which the person is or will be a patient.
- (10) **Burden of Proof.** The Court shall not find that a person is a person requiring treatment unless that fact has been established by a minimum of the preponderance of the evidence. However, if hospitalization is initially sought for 30 or more days, or continued petitions lead the hospitalization to exceed 30 or more days, a judge must find that the facts establish the person continues to need treatment by a clear and convincing evidence standard, or the person must be discharged.

11.206

**Findings and Dispositions.**

- (1) **Disposition of a Person Not Requiring Treatment.** If the Court finds that a person is not a person requiring treatment, the Court shall enter a finding to that effect and, if the person has been hospitalized before the hearing, shall order that the person be discharged immediately.
- (2) **Disposition of a Person Requiring Treatment.** If a person is found to be a person requiring treatment, the Court shall do 1 of the following:
  - (a) Order the person hospitalized in a hospital recommended by Tribal Behavioral Health.

- (b) Order the person to undergo a program of treatment that is an alternative to hospitalization and that is recommended by Tribal Behavioral Health.
- (c) Order the person to undergo a program of combined hospitalization and alternative treatment as recommended by Tribal Behavioral Health.

(3) **Treatment Program as Alternative to Hospitalization.**

- (a) Before ordering a course of treatment for a person found to be a person requiring treatment, the Court shall do all of the following:
  - (1) Determine whether a treatment program that is an alternative to hospitalization or that follows an initial period of hospitalization is adequate to meet the person's treatment needs and is sufficient to prevent harm that the person may inflict upon himself or herself or upon others within the near future.
  - (2) Determine whether there is an agency or mental health professional available to supervise the person's alternative treatment program.
  - (3) Inquire as to the person's desires regarding alternatives to hospitalization.
- (b) If the Court determines that there is a treatment program that is an alternative to hospitalization that is adequate to meet the person's treatment needs and prevent harm that the person may inflict upon himself or herself or upon others within the near future and that an agency or mental health professional is available to supervise the program, the Court shall issue an order for alternative treatment or combined hospitalization and alternative treatment. The order shall state the name of the mental health agency or professional that is directed to supervise the person's alternative treatment program. The order may provide that if a person refuses to comply with a psychiatrist's order to return to the hospital, a police officer shall take the person into protective custody and transport the person to the designated hospital.

(4) **Initial, Second or Continuing Order for Involuntary Mental Health Treatment.**

- (a) Upon a finding that a person is a person requiring treatment, the

Court shall issue an initial order of involuntary mental health treatment, which shall be limited in duration as follows:

- (1) An initial order of hospitalization shall not exceed 60 days.
- (2) An initial order of alternative treatment shall not exceed 90 days.
- (3) An initial order of combined hospitalization and alternative treatment shall not exceed 90 days. The hospitalization portion of the initial order shall not exceed 60 days.

(b) Upon receipt of a petition before the expiration of an initial order and a finding that the person continues to be a person requiring treatment, the Court shall issue a second order for involuntary mental health treatment, which shall be limited in duration as follows:

- (1) A second order of hospitalization shall not exceed 90 days.
- (2) A second order of alternative treatment shall not exceed 1 year.
- (3) A second order of combined hospitalization and alternative treatment shall not exceed 1 year. The hospitalization portion of the second order shall not exceed 90 days.

(c) Upon receipt of a petition before the expiration of a second order and a finding that the person continues to be a person requiring treatment, the Court shall issue a continuing order for involuntary mental health treatment, which shall be limited in duration as follows:

- (1) A continuing order of hospitalization shall not exceed 1 year.
- (2) A continuing order of alternative treatment shall not exceed 1 year.
- (3) A continuing order of combined hospitalization and alternative treatment shall not exceed 1 year. The hospitalization portion of a continuing order for combined hospitalization and alternative treatment shall not exceed 90 days.

- (d) Upon receipt of a petition before the expiration of a continuing order of involuntary mental health treatment, including a continuing order or a 1 year order of hospitalization, and a finding that the person continues to be a person requiring treatment, the Court shall issue another continuing order for involuntary mental health treatment for a period not to exceed 1 year. The Court shall continue to issue consecutive 1 year continuing orders for involuntary mental health treatment until a continuing order expires without a petition having been filed or the Court finds that the person is not a person requiring treatment.
- (e) If a petition for an order of involuntary mental health treatment is not brought at least 14 days before the expiration of an order of involuntary mental health treatment, a person who believes that a person continues to be a person requiring treatment may file a petition for an initial order of involuntary mental health treatment.

(5) **Release of a person from Hospital to Alternative Treatment Program.**

- (a) If a person is subject to a combined order of hospitalization and alternative treatment, the decision to release the person from the hospital to the alternative treatment program shall be a clinical decision made by a psychiatrist designated by the hospital in direct consultation with the director of the alternative treatment program. Notice of the return of the person to the alternative treatment program shall be provided to the Court with a statement from a psychiatrist explaining the belief that the person is clinically appropriate for alternative treatment. At least 5 days before releasing a person from the hospital to the alternative treatment program, the hospital director shall notify the agency or mental health professional that is responsible to supervise the person's alternative treatment program that the person is about to be released. The hospital shall share relevant information about the person with the supervising agency or professional for the purpose of providing continuity of treatment.

(6) **Noncompliance with Court Order or Determination that Alternative Treatment Not Appropriate.**

- (a) During the period of an order for alternative treatment or a combined hospitalization and alternative treatment, if the agency or mental health professional who is supervising a person's alternative treatment program determines that the person is not complying with the Court order or that the alternative treatment

has not been or will not be sufficient to prevent harm that the person may inflict on himself or herself or upon others, then the supervising agency or mental health professional shall notify the Court immediately. If the person believes that the alternative treatment program is not appropriate, the person may notify the Court of that fact.

- (b) If it comes to the attention of the Court that a person subject to an order of alternative treatment or combined hospitalization and alternative treatment is not complying with the order, that the alternative treatment has not been or will not be sufficient to prevent harm to the person or to others, or that the person believes that the alternative treatment program is not appropriate, the Court may do either of the following without a hearing and based upon the record and other available information:
  - (1) Consider other alternatives to hospitalization and modify the order to direct the person to undergo another program of alternative treatment for the duration of the order.
  - (2) Modify the order to direct the person to undergo hospitalization or combined hospitalization and alternative treatment. The duration of the hospitalization, including the number of days the person has already been hospitalized if the order being modified is a combined order, shall not exceed 60 days for an initial order or 90 days for a second or continuing order. The modified order may provide that if the person refuses to comply with the psychiatrist's order to return to the hospital, a police officer shall take the person into protective custody and transport the person to the designated hospital.
- (c) If a person is hospitalized without a hearing after placement in an alternative treatment program, the person has a right to object to the hospitalization. Upon receipt of an objection to hospitalization, the Court shall schedule a hearing for a determination that the person requires hospitalization.

### **CHAPTER 11.3**

#### **CIVIL ADMISSION AND DISCHARGE PROCEDURES FOR MINORS**

##### **11.301 Hospitalization of Minor.**

- (1) A minor of any age may be hospitalized if both of the following

conditions are met:

- (a) The minor's parent, guardian, or a person acting in loco parentis for the minor requests hospitalization of the minor under this chapter.
  - (b) The minor is found to be suitable for hospitalization.
- (2) A minor 14 years of age or older may be hospitalized if both of the following conditions are met:
- (a) The minor requests hospitalization under this chapter.
  - (b) The minor is found to be suitable for hospitalization.
- (3) In making the determination of suitability for hospitalization, a minor shall not be determined to be a minor requiring treatment solely on the basis of 1 or more of the following conditions:
- (a) Brief periods of intoxication caused by substances such as alcohol or drugs or by dependence upon or addiction to those substances. Provided however, that a minor may be determined suitable for hospitalization if they meet the following criteria:
    - (1) Has lost the power of self-control with respect to substance use; and either
    - (2) (a) Has inflicted, or threatened or attempted to inflict, or unless admitted to treatment or custody is likely to inflict physical harm on himself or herself or another; or  
(b) Is in need of substance use services and, by reason of substance use impairment, his or her judgment has been so impaired that the person is incapable of appreciating his or her need for such services and of making a rational decision in regarding services; however the simple refusal to receive substance use services does not constitute evidence of lack of judgment with respect to his or her need for such services.
  - (b) Juvenile offenses, including school truancy, home truancy, incorrigibility, or acts of violence toward self or others.
  - (c) Sexual activity.
  - (d) Religious activity or beliefs.

- (e) Political activity or beliefs.
- (f) Developmental disability, as such, including without limitation: autism, down syndrome, and/or fetal alcohol spectrum disorder.

11.302

**Evaluation of Minor.** A minor requesting hospitalization or for whom a request for hospitalization was made shall be evaluated to determine suitability for hospitalization as soon as possible, but no later than 3 days, excluding Saturdays, Sundays, and legal holidays, after the request is made.

- (1) The minor shall be evaluated by Mental Health professional to determine his or her suitability for hospitalization. In evaluating a minor's suitability for hospitalization, Mental Health professional shall do all of the following:
  - (a) Determine both of the following:
    - (1) Whether the minor is requiring treatment.
    - (2) Whether the minor requires hospitalization and is expected to benefit from hospitalization.
  - (b) Determine whether there is an appropriate, available alternative to hospitalization, and if there is, refer the minor to that program.
  - (c) If the minor is determined to be suitable for hospitalization, refer the minor to the appropriate hospital.
  - (d) If the minor is determined not to be suitable for hospitalization, determine if the minor needs mental health services. If it is determined that the minor needs mental health services, upon notification, Tribal Behavioral Health shall offer an appropriate treatment program for the minor, if the program is available, or refer the minor to any other appropriate agency for services.
  - (e) If a minor is assessed and found not to be clinically suitable for hospitalization, Tribal Behavioral Health shall inform the person or persons requesting hospitalization of the minor of appropriate available alternative services to which a referral should be made.

11.303

**Admission.** If a minor is referred to a hospital by Tribal Behavioral Health, the hospital director may accept the referral and admit the minor, or the hospital director may order an examination of the minor to confirm the minor's suitability for hospitalization. The examination shall begin immediately. If the hospital director confirms the minor's suitability for hospitalization, the minor shall be



scheduled for admission to the hospital. If the minor cannot be admitted immediately because of insufficient space in the hospital, the minor shall be placed on a waiting list and the executive director shall provide necessary interim services, including periodic reassessment of the suitability for hospitalization. The minor may be referred to another hospital. If the hospital director does not confirm the minor's suitability for hospitalization, the minor shall be referred to the executive director, who shall offer an appropriate treatment plan for the minor or refer the minor to any other agency for services.

11.304 **Examination, Tests and Evaluations.** If a minor is admitted to a hospital, the director of the hospital shall cause the minor to be examined by a child psychiatrist within 48 hours after the admission of the minor and shall immediately initiate any of the following tests and evaluations of the minor:

- (1) A comprehensive social and family history including family relationships.
- (2) A comprehensive educational test and an assessment of educational development.
- (3) Psychological testing.
- (4) An evaluation by the staff participating in the treatment of the minor.
- (5) Any relevant test, assessment, or study or, or related to, the minor.

11.305 **Emergency Admission of Minor.**

- (1) A minor's parent, guardian, or person in loco parentis may request emergency admission of the minor to a hospital, if the person making the request has reason to believe that the minor is requiring treatment and that the minor presents an immediate danger to self or others.
- (2) The request for emergency admission shall be made directly to the hospital. If the hospital director agrees that the minor needs emergency admission, the minor shall be hospitalized. If the hospital director does not agree, the request may be made pursuant to section 11.301.
- (3) A police officer may take the minor into protective custody and transport the minor to the appropriate hospital if:
  - (a) as a result of personal observation, has reasonable grounds to believe that a minor is requiring treatment; and
  - (b) that the minor presents a serious danger to self or others; and
  - (c) after a reasonable effort to locate the minor's parent, guardian, or

person in loco parentis, the minor's parent, guardian, or person in loco parentis cannot be located.

- (4) After transporting the minor, the police officer shall contact the Tribal Behavior Health Director or his/her designee and shall execute a written request for emergency hospitalization of the minor stating the reasons, based upon personal observation, that the police officer believes that emergency hospitalization is necessary. The written request shall include a statement that a reasonable effort was made by the police officer to locate the minor's parent, guardian, or person in loco parentis.
  - (a) If it is determined that emergency hospitalization of the minor is not necessary:
    - (1) the minor shall be returned to his or her parent, guardian, or person in loco parentis if an additional attempt to locate the parent, guardian, or person in loco parentis is successful;
    - (2) If the minor's parent, guardian, or person in loco parentis cannot be located, the minor shall be turned over to the protective services program.
  - (b) If it is determined that emergency admission of the minor is necessary, the minor shall be admitted to the appropriate hospital or to an appropriate alternative program. The Tribal Behavioral Health Director, or his/her designee, shall continue to try to notify the minor's parent, guardian, or person in loco parentis.
- (5) An evaluation of a minor admitted to a hospital under this section shall begin immediately after the minor is admitted. If the minor is not found to be suitable for hospitalization, the minor shall be released into the custody of his or her parent, guardian, or person in loco parentis, and if the minor is referred to Tribal Behavioral Health, Behavioral Health will determine if the minor needs mental health services. If it is determined that the minor needs mental health services, Tribal Behavior Health shall offer an appropriate treatment program for the minor, if the program is available, or refer the minor to another agency for services.

11.306 **Notice.** The parent or guardian or person in loco parentis of a minor shall be notified immediately of the admission of a minor to a hospital in any case where the parent or guardian of the minor did not execute the application for hospitalization. The notice shall be in the form most likely to reach the person being notified in an expeditious manner, and shall inform the person of the right to participate in any proceedings under this chapter.

11.307 **Consent.** A hospital shall request a parent or guardian or person in loco parentis of a minor admitted to a hospital under this chapter to give written consent for the

minor's treatment and for the release of information from agencies or persons involved in treating the minor before the hospitalization considered necessary by the hospital for the minor's treatment. If the hospital cannot obtain consent for treatment, the director of the hospital may proceed as warranted by the situation and the best interests of the minor.

11.308

**Review.**

- (1) Not more than 90 days after the admission of a minor to a hospital, and at 60 day intervals after the expiration of the 90 day period, the Tribal Behavioral Health Director shall request a review of the minor's suitability for hospitalization from the hospital director. Results of the reviews shall be transmitted promptly to all of the following:
  - (a) The minor, if the minor is 14 years of age or older.
  - (b) The parent, guardian, or person in loco parentis of the minor.
  - (c) The executive director of the hospital.
  - (d) The Court, if there was a court hearing on the admission of the minor.

11.309

**Objection to Hospitalization.**

- (1) An objection to the hospitalization of a minor may be made to the Court by any of the following persons:
  - (a) A person found suitable by the Court.
  - (b) The minor's parent, guardian, or person in loco parentis if the request for hospitalization was made by the minor or by a police officer.
  - (c) The minor who has been hospitalized, if the minor is 14 years of age or older.
- (2) An objection made to the Court pursuant to subsection (1) shall be made in writing not more than 30 days after the admission of a minor to a hospital, and may be made subsequently within not more than 30 days after the receipt of the periodic review of the minor's suitability for continued hospitalization. The objection shall state the basis on which it is being raised.

11.310

**Judicial Hearing.**

- (1) Upon receipt of an objection to hospitalization, the Court shall schedule a hearing to be held within 7 days, excluding Sundays and holidays. After receipt of the objection, the Court shall notify all of the following persons of the time and place for the hearing:
  - (a) The parents or guardian of the minor to whom the objection refers.
  - (b) The person filing the objection.
  - (c) The minor to whom the objection refers.
  - (d) The person who executed the application for hospitalization of the minor.
  - (e) The hospital director.
  - (f) The executive director.
- (2) The Court shall sustain an objection to hospitalization and order the discharge of the minor unless the Court finds by clear and convincing evidence that the minor is suitable for hospitalization. If the Court does not sustain the objection, an order shall not be entered, the objection shall be dismissed, and the hospital shall continue to hospitalize the minor.

11.311

**Notice of Intent or Oral Request to Terminate Hospitalization.**

- (1) A minor hospitalized under this chapter shall not be kept in the hospital more than 3 days, excluding Sundays and holidays, after receipt by the hospital of a written notice of intent to terminate the hospitalization of the minor executed by the minor's parent, guardian, or person in loco parentis or by the minor if the minor is 14 years of age or older and was admitted to the hospital upon his or her own request.
- (2) Upon receipt of an oral request to terminate hospitalization of a minor, the hospital promptly shall supply the necessary form for termination of hospitalization to the person giving notice.
- (3) If notice of intent to terminate hospitalization is received by a hospital and the director of the hospital determines that the minor to whom the notice applies should remain in the hospital, the director of the hospital or a person designated by the director of the hospital shall file, within 3 days, excluding Sundays and holidays, after receipt of the notice, a petition with the Court requesting an order to continue hospitalization of the minor. The petition shall be accompanied by 1 certificate executed by a child and adolescent psychiatrist and 1 certificate executed by either a physician or a

licensed psychologist. If a petition is filed with the Court, the hospital shall continue to hospitalize the minor pending a court hearing on the petition.

- (4) Upon receipt of a petition to continue hospitalization of a minor, the Court shall schedule a hearing to be held within 7 days, excluding Sundays and holidays, after receipt of the petition. The hearing shall be convened in accordance with section 11.205.
- (5) If the Court finds the minor to be suitable for hospitalization by clear and convincing evidence, the Court shall order the minor to continue hospitalization for not more than 60 days. If the Court does not find by clear and convincing evidence that the minor is suitable for hospitalization, the Court shall order the minor discharged from the hospital.

11.312 **Discharge.**

- (1) Upon periodic review of a hospitalized minor, if it is determined that the minor is no longer suitable for hospitalization, the director of the hospital shall discharge the minor from the hospital.
- (2) If a minor discharged has been hospitalized under a court order, or if court proceedings are pending, the Court shall be notified of the minor's discharge from the hospital.

11.313 **Transporting Minor for Evaluation.** If a person who requests hospitalization of a minor is unable, after reasonable efforts, to transport the minor for the evaluation, a request may be submitted to the Court for an order to transport the minor. If the Court is satisfied that a reasonable effort was made by the person requesting hospitalization to transport the minor for evaluation, the Court shall order a police officer to take the minor into protective custody for the purpose of transporting the minor immediately to the evaluation site, and if necessary, from the evaluation site to the hospital for admission. The person requesting the transport order shall meet the minor at the evaluation site and remain at the facility until the evaluation is completed.

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Legislative History

Title XI Mental Health Code enacted by Tribal Council Resolution 22-082 approved on April 20, 2022.