

## Title II

### Health and Welfare

#### Chapter 1

#### ALCOHOL AND DRUG ABUSE TREATMENT ACT

##### Section 1. Purpose

The Santee Sioux Nation Tribal Council in order to prevent Alcohol and Drug Abuse declares:

- A. Alcoholism and drug abuse are major health and social problems afflicting an alarmingly high percentage of the members of the Tribe; whereas treating it as a health problem permits early detection and prevention of alcoholism and drug abuse and effective treatment and rehabilitation relieves police and other law enforcement agencies of an inappropriate burden that impedes their important work and better serves the interest of the public;
- B. Alcohol and drug related offenses cost the Tribe and its members great human suffering in deaths injuries, suicide, sickness, crime, domestic violence, child abuse, neglect, incest, abandonment, and delinquency;
- C. Alcohol and drug related offenses cost the Tribe and its members great economic loss.
- D. Alcohol and drug related offenses seriously threatens the social and economic stability and security of the Tribe and many families;
- E. Alcoholism and drug abuse are illnesses, which require treatment and rehabilitation through the coordinated efforts of community health and social services, law enforcement agencies, employers, and concerned individuals; and
- F. Alcohol and drug abuse presents a need for prevention and intervention programs designed to reach the members of the Tribe who are alcohol and drug abusers.

##### Section 2. Definition of Terms

Terms used in this Chapter, shall mean.

- A. Alcoholic - is a person who suffers the chronic progressive and potentially fatal disease of alcoholism, as characterized by tolerance, physical dependence, pathological, organic changes or both; all of which are the direct or indirect consequences of alcoholism.
- B. Director - shall mean the Director of the Alcohol Program.
- C. Alcohol Program - is a Tribal Alcohol Program recognized by the Santee Sioux Nation Tribal Council

- D. Incapacitated by Alcohol or Drugs - means that a person, as a result of the use of alcohol or one or more other drugs is unconscious or has his judgment impaired so that he is incapable of making a rational decision in respect to a need for treatment.
- E. Intoxicated Person - is a person whose mental or physical state is substantially impaired by the use of alcohol or drugs.
- F. Treatment - shall mean the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, or vocational rehabilitation and career counseling which may be extended to alcohol or drug abusers.

### **Section 3. Development Of Programs**

Tribal Alcohol Program(s) shall develop plans and programs for the prevention and treatment of alcoholism and drug abuse in cooperation with Tribal, State and national agencies.

### **Section 4. Statistical Data**

Tribal Alcohol Program(s) shall keep statistical information, on number of persons treated, frequency of admission and readmission, and duration of treatment.

### **Section 5. Contracts For Use Of Public Treatment Facilities**

Tribal Alcohol Program(s) may contract, subject to the approval of the Tribal Council, any contracts necessary or incidental to the performance of its duties and the execution of its powers, with public, private, and Tribal agencies, for treatment services rendered.

### **Section 6. Rules And Policies For Treatment**

The Alcohol Program shall adopt rules for the treatment of persons in the program.

### **Section 7. Application For Voluntary Treatment**

Any person may apply for voluntary treatment directly to a Tribal Alcohol Program or other treatment facility. A person who voluntarily admits him/her self for treatment must comply with all established procedures.

### **Section 8. Protective Custody**

- A. Any person intoxicated or who appears to be in need of help in a public or private place may be taken into protective custody by the police and taken to the Tribal detention center or another approved detention facility recognized by the Tribal Council. If the person is intoxicated, they should be held-not less than twelve, (12) hours and not more than seventy-two (72) hours after which time they shall be released upon recommendation by an alcohol counselor, or
- B. Any person picked up the fifth time within one year under protective custody shall be brought before the court under Section 8a of this Title, and may upon a finding by the Court be transferred to an appropriate health care facility for proper treatment, at the time specified by the court.

- C. Any pregnant woman using alcohol may be brought before the Court under Section 8a of this Title and may upon a finding by the Court be committed to an appropriate treatment facility, at the time specified by the Court.
- D. Failure to comply with Section 8b or Section 8c above shall be grounds for the accused to be charged with disobedience to the lawful orders of the court which carries a maximum penalty of a one hundred and twenty-five dollar (\$125.00) fine and three (3) months in jail.

**Section 9. Protective Custody Not An Arrest**

Protective custody under this section is not an arrest.

**Section 10. Protective Custody Procedure**

The police shall notify a Tribal Alcohol Program promptly when a person is taken into protective custody.

**Section 11. Police Not Criminally Or Civilly Liable**

The police when in compliance with this chapter acting in the course of their official duty shall not be subject to criminal or civil liability.

**Section 12 Treatment Petition**

Proceedings for the involuntary treatment of a person in need or treatment may be started by an immediate family member of the person in need who is eighteen (18 ) years or older by supplying necessary information alleging that the person is incapacitated by alcohol and/or drugs. The petition shall contain the following:

- A. Name, address, age of petitioner.
- B. Name, address, age, marital status and occupation of the person in need of treatment.
- C. Names, addresses, enrollments, and relationships, of the person's nearest relatives, or of a friend.
- D. The allegations shall include statements by the petitioner, statements by the Tribal Police or other persons having knowledge of that person's drug and/or alcohol abuse; and, a statement of the person's condition, and other information to support the need for treatment.

**Section 13 Review Of The Petition**

The court shall review the petition to determine if it meets the requirements of Section 12 of this chapter. The Court reserves the right to review the petition in a telephonic hearing. The court shall determine whether the petition establishes probable cause to believe that the respondent meets the criteria of a person requiring treatment, as defined in Section 2 of this chapter,

- A. If probable cause is established, the court shall order a suitable person(s) to submit written background report upon which the petition is based.

B. If probable cause is not established, the petition shall be dismissed.

#### **Section 14 Appointment Of Counsel**

If the person cannot employ his own counsel, suitable counsel may be appointed by the Tribal Judge. Appointed counsel may be a licensed attorney or lay advocate. Assignment of counsel should be made within twenty four (24) hours prior to the hearing or immediately in the case of a person requiring emergency treatment.

#### **Section 15 Immediate Apprehension Of Person Requiring Treatment**

After reviewing the petition for treatment and if probable cause is shown, the court shall enter an order for immediate apprehension and detention of respondent for the purposes of examination if a certificate of examination does not accompany petition, and for respondents presence at the hearing. The person may be detained at an appropriate facility no longer than seventy-two (72) hours, excluding Saturdays, Sundays and holidays if evaluation services are not available on those days.

#### **Section 16 Certificate Of Examination**

A certificate of examination shall be attached to the petition, or if none is attached, a statement shall be included in the petition why one could not be obtained. The certificate of examination of the individual requiring treatment and shall be conducted by a physician within seventy-two (72) hours after apprehension of respondent in the case of respondent requiring Emergency Treatment. It shall contain the following information:

- A. Evaluation of the respondent's physical and mental condition.
- B. Conclusion as to whether the respondent meets the criteria of a person requiring treatment with a clear explanation of how that conclusion was derived.
- C. Signature of the examining physician.
- D. A record of all drugs, medication or other treatment prescribed within the seventy-two (72) hour period.

#### **Section 17 Notice Of Hearing**

Upon filing the petition, accompanied by the certificate of examination, the Clerk of Courts shall set the time and date for the hearing no later than five (5) days after the petition is filed. A copy of the petition, certification of examination, and summons, shall be personally serve upon the respondent, a notice of hearing, along with a copy of the petition, and certificate of examination shall be issued to the petitioner and to the respondents relatives named in the petition. Summons shall, also include the respondent's right to have witnesses appear and testify on his behalf or other documentation he/she have to support his/her case.

#### **Section 18 Examination By The Court**

In the event the respondent upon receiving notice of the hearing refuses to be examined by a qualified mental health professional or a physician, the court may issue a warrant and detain the person at a facility it may designate as long as is necessary to complete the examination, and hold a hearing, but in no event longer than seventy-two (72) hours, excluding Saturdays, Sundays and holidays, if, evaluation services are not available on

those days. The Court reserves the right to issue warrants and hold hearings telephonically.

### **Section 19 Precautions Against Drugs Hampering Defense**

After an examination, the examining mental health professional physician shall transmit a certificate to the court and personally appear at the hearing. The alleged mentally ill person has the right to obtain an additional examination at his own expense, which may be placed in evidence before the Court.

### **Section 20 Personal Service**

If personal service can not be made on respondent, the summons shall be published for 3 week(s).

- A. If, after personal service has been made on respondent, or after the expiration of the publication period, respondent fails and refuses to appear for the hearing, the court shall issue a Bench Warrant to show cause, why he/she should not be held in Contempt of Court.

### **Section 21 Presence Of Respondent At The Hearing**

The person requiring treatment shall be present at all hearings with counsel.

### **Section 22 Clear And Convincing Evidence Required**

If the court finds by clear and convincing evidence that the respondent is in need of treatment, in order to prevent respondent from endangering himself or others the court may order-him/her to undergo appropriate treatment. The person committed shall complete the full cycle of treatment at the designated facility.

### **Section 23 Records To Be Confidential**

All records and information on persons committed to treatment shall remain confidential and privileged except to the person committed. Any breach of confidentiality shall be grounds for possible termination of employment.

## **Chapter 2**

### **INVOLUNTARY TREATMENT OF MENTALLY ILL PERSONS**

#### **Section 1. Definitions**

- A. Mental Health Professional means:
  - 1. A licensed psychiatrist;
  - 2. A licensed clinical psychologist;
  - 3. A social worker with a bachelor's degree from an accredited program;
  - 4. A registered nurse with a minimum of two years of psychiatric or psychological clinical experience under the supervision of a qualified mental health professional as defined by (1) and (2) above;

5. A licensed physician.
- B. Mentally Ill Person - means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, or discretion in the conduct of personal affairs and social relationships. "Mentally Ill Person" does not include a mentally retarded or mentally deficient person of significantly sub-average general intellectual functioning which originated with impairment in adaptive behavior. Drug addiction and alcoholism do not, per se, constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness.
- C. Persons Requiring Treatment - means either:
1. A person who is mentally ill, and who, as a result of such condition can reasonably be expected to inflict intentional or unintentional and imminent serious physical harm on himself or another person, and who has engaged in an act or acts that substantially support this expectation; or
  2. A person who is mentally ill, and who as a result of such condition is unable to attend to his basic physical needs, such as food, clothing, or shelter; that, must be attended to for him to avoid serious harm, and who has demonstrated that inability by failure to meet those basic physical needs.
- D. Person Requiring Emergency Treatment - means a mentally ill person in such condition that immediate treatment is necessary for the protection from physical harm of himself and others.
- E. Counsel - means a licensed attorney or lay advocate.

## **Section 2. Person Acting In Good Faith Not Subject To Civil Or Criminal Liability**

Any person acting in good faith upon either actual knowledge or reliable information, who shall make application for commitment pursuant to this Chapter, shall not be subject to civil or criminal for such act. Any person, who without probable cause shall make application for commitment, alleging that another person is mentally ill, may be liable for prosecution.

## **Section 3. Treatment Petition**

Proceedings for the involuntary treatment of an allegedly mentally ill individual may be commenced by any of the allegedly mentally ill individual's immediate family members who are eighteen (18) years of age or older, by presenting information necessary for preparation of an application in the form of a petition. The petition shall contain the following information:

- A. The name, address, and age of petitioner;
- B. The name, address, age, marital status and occupation when known, of the alleged person requiring treatment.
- C. The name, address, when known, of said person's nearest relatives, or, if none, of a friend of the person; and

- D. The facts upon which the allegations are based, including statement by the individual signing the petition, statement by Tribal Police or other person having knowledge of his her illness, and a specification, where known, of the nature of the mental illness.

#### **Section 4. Review Of Petition By Court**

The Court shall review the petition to see if it meets the requirements of Section 3 of this chapter. The Court shall determine whether the petition establishes probable cause to believe that the respondent meets the criteria of a person requiring treatment or a person requiring emergency treatment. If probable cause has not been established, the petition shall be dismissed. If probable cause is found to exist, the Court shall order a suitable person or person's to submit a written background investigation upon which petition is based.

#### **Section 5. Appointment Of Counsel**

If the person cannot employ his own counsel, a Tribal Judge may appoint suitable counsel, who may be a lay advocate. Assignment of counsel shall be made, within seventy-two (72) hours prior to the hearing or immediately in the case of a person requiring emergency treatment.

#### **Section 6. Immediate Apprehension Of Alleged Mentally Ill Persons**

After reviewing a petition for emergency treatment, and if probable cause is shown, the court shall enter and order for immediate Apprehension and Detention of the alleged ill person.

He or she may be detained at an appropriate facility, it may designate as long as necessary to complete the examination and hold a hearing but no longer than seventy-two (72) hours, excluding Saturdays, Sundays, and Holidays, if evaluation services are not available on those days.

#### **Section 7. Place Of Hearing**

The hearing shall be conducted at such a place as the Court may designate as proper and humane, with due regard to the comfort and safety of the alleged mentally ill person and others.

#### **Section 8. Petition To Be Accompanied By Certificate Of Examination**

A petition for treatment shall be accompanied, where possible, with a certificate of a qualified mental health professional. If no certificate accompanies the petition, the petition must set forth the reasons that an examination could not be secured.

#### **Section 9. Contents of Certificate of Examination**

The certificate of examination shall be based upon a personal examination of the individual and shall be conducted within seventy-two (72) hours after the filing of the petition. It shall contain the following information:

- A. Evaluations of the respondent's physical and mental conditions;

- B. 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 required;
- C. 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.
- D. The signature of the examiner who prepared the reports.
- E. Record of all drugs, medication or other treatment prescribed to person within seventy-two (72) hours.

### **Section 10. Notice**

Certified copies of the petition, and a summons of hearing shall be personally served on the alleged mentally ill person at least five (5) days prior to the hearing or immediately in the case of a person requiring emergency medical treatment. The summons of hearing shall include the following:

- A. Notice of the time, date, and place of hearing and directing the alleged mentally ill person to appear in person and notifying him that if he should fail to do so, the Court may issue a warrant directing the Tribal Police to secure the protective custody to said alleged mentally ill person and to cause his personal appearance at said hearing.
- B. Notice to the alleged mentally ill person of his right to be represented by counsel at his own expense or of counsel selected and appointed by the Tribal Judge to represent him.
- C. Notice to the alleged mentally ill person of his right to have witnesses testify on his behalf and any other documentation that the person may have to support his case.
- D. Notice that the alleged mentally ill person must be examined by a qualified mental health professional or physician, either by voluntarily appearing for the examination within twenty-four (24) hours after service of the summons, or by being apprehended by the Tribal Police and detained for examination upon order of alleged mentally ill person to appear voluntarily.
- E. Notice of the right of the alleged mentally ill person to obtain an additional examination at his own expense. In a case requiring emergency treatment, the notice shall state that this right may be exercised after commitment for emergency treatment.

### **Section 11. Examination By Court Order**

In the event the respondent upon receiving notice of the hearing refuses to be examined by a qualified mental health professional or a physician, the Court may issue a warrant and detain the person at a facility it may designate as long as is necessary to complete the examination, and hold a hearing, but in no event longer than seventy-two (72) hours,

excluding Saturdays, Sundays, and holidays, if, evaluation services are not available on those days.

**Section 12. Examiner To Report To Court**

After an examination, the examining mental health professional or physician shall transmit a certificate to the court and personally appear at the hearing. The alleged mentally ill person has the right to obtain an additional examination at his own expense, which may be placed in evidence before the Court.

**Section 13. Precautions Against Drugs Hampering Defense.**

The qualified mental health professional or physician treating the patient, shall take all reasonable precautions to ensure that; at the time of the hearing, the person alleged to be mentally ill shall not be so under the influence of, or so suffer the effects of drugs, medication, or other treatment as to be hampered in preparing for or participating in the hearing. The Court at the time of the hearing shall be presented a record of all drugs, medication, and other treatment such person has received during the seventy-two (72) hours immediately prior to the hearing.

**Section 14. Presence Of the Alleged Mentally Ill Person at Hearing**

The alleged mentally ill person and his attorney shall be present at all hearings unless the patient's counsel has agreed that the alleged mentally ill person be excused; the reasons for which shall be noted in the record. The alleged mentally ill person's counsel may subpoena and cross-examine witnesses and present evidence.

**Section 15. Clear And Convincing Evidence Required For Finding Of Mental Illness**

If the Court finds by clear and convincing evidence that the respondent is mentally ill and that treatment is necessary in order to prevent the respondent from endangering himself or others, the Court, by written findings, may order him to undergo either inpatient or outpatient treatment at an appropriate mental health facility.

**Section 16. Alternatives To Hospitalization Must Be Exhausted**

Before ordering inpatient treatment, the Court shall assess the availability and appropriateness for the respondent of a treatment program other than hospitalization.

- A. Observation - Upon completion of all testimony at the hearing, if the Court is in doubt whether such person is mentally ill and in need of treatment, the Court may order such a person to undergo observation, examination, and treatment at an appropriate mental health facility, a private hospital, or such facility as the Indian Health Service may designate, for a period of fourteen (14)~ days. The Court may adjourn the hearing until the end of said fourteen (14) day period and take final action based on the reports of the physician or mental health professional of the particular facility observing and treating the individual.

**Section 17. Filing and Issuance of Findings and Order**

The findings and order of the Court shall be filed with the Clerk of Court who shall have certified copies served upon the respondent, and the Indian Health Service Unit Director, or the Administrator of the Tribal or private facility designated by the Tribe.

**Section 18. Appeals From Court's Decision**

Appeals for the Court's decision shall be made to the Tribal Court of Appeals. The respondent shall have the right to an expedited treatment. Otherwise, he has the same rights as in a criminal appeal. The appeal shall be limited to a review of the proceedings at the lower court and shall not be a de novo hearing, and respondent may request a copy of a tape recording of the hearing. If the respondent is indigent, the Tribe will supply said material without cost to the respondent.

**Section 19. Transportation of Patient**

The Court shall appoint a suitable person to transport the patient to an appropriate facility.

**Section 20. Care Pending Admission to Facility**

If it shall be shown to the Court's satisfaction that any person found to be mentally ill and a fit subject for custody and treatment as provided in this title, cannot at once, be admitted to the designated facility and cannot, with safety, be allowed to go at liberty, the Court shall require that such patient shall be suitably and humanely provided for otherwise, until such admission can be had, or until the occasion therefore no longer exists.

**Section 21. Patients To Be Free From Physical Restraint And Isolation**

Patients shall have the right to be free from physical restraint and isolation. Except for emergency situations when it is likely that patients could harm themselves or others and when less restrictive means of restraint are not feasible, patients may be physically or chemically restrained or placed in isolation only on a qualified mental health professional's written order, which explains the rationale of such action. The written order may be entered only after the qualified mental health professional has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation.

- A. Emergency use of restraints, or isolation shall be for no more than one (1) hour, by which time a qualified mental health professional shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than twenty-four (24) hours and must be renewed by the Court if restraint or isolation are to be continued. While in restraint or isolation the patient must be seen by qualified personnel who will chart the patient's physical and psychiatric condition at reasonable intervals.

**Section 22. Treatment By Spiritual Means**

Nothing in this title or in any rule or regulation adopted pursuant thereto shall be construed to deny treatment by spiritual means through prayer for any person detained for evaluation or treatment who desires such treatment, or to a minor if his parent, guardian, or conservator desires such treatment.

**Section 23. Noncompliance With The Order**

If the individual ordered to undergo a program of treatment at any time does not comply with the order, the Court shall conduct a hearing for the sole purpose of determining noncompliance; and if noncompliance is determined, the Court may modify its original

order and direct the individual to undergo an alternative program of treatment. At least five (5) days notice of the hearing shall be given to the mentally ill person, and he may be represented by counsel at his own expense or the court may appoint representation.

**Section 24. Monthly Status Report**

The Tribal court shall request a status report when needed from IHS or other appropriate mental health professionals on all persons ordered to be treated involuntarily until such time as such treatment is no longer required.

**Section 25. Review Hearing –**

The Tribal Court shall conduct a review hearing at ninety (90) day intervals on all persons remaining under an order for involuntary treatment. The place of said review hearing shall be determined by the Court. The patient shall have the right to be present at that hearing, to be represented by counsel, and to subpoena and cross-examine witnesses. At the review hearing, the Court shall require the presentation of a report on the status of the mentally ill person, and on the need for continuing treatment. The report shall be prepared by a mental health professional and presented at the review hearing by the preparer.

**Section 26. Records**

A record shall be made of all hearings before the Court. Such record may be either by stenographic or tape recordings.

A. Records of the Court

All record and papers of the Court concerning any case shall be filed with the Clerk of Court who shall keep a separate and complete file of all findings and orders and transactions of the Court. .

B. Confidentiality of the Records

The records and papers of the Court concerning any case involving the treatment or commitment for treatment of any mentally ill person shall be available for inspection by the mentally ill person or his legal representative or guardian, or upon petition to Court, stating the reason such record is needed.