

CHAPTER XIII

DETENTION OF MENTALLY ILL PERSONS

Section 1

Definitions

As used in this Chapter, these terms shall be construed as follows:

- (a) "Department" shall mean the Director of the Shoshone Bannock Tribal Human Services Department, Fort Hall, Idaho.
- (b) "Mentally ill person or individual" shall mean a person or individual who is in such mental condition that he is in need of supervision, treatment, care or restraint, or who is of such mental condition that he is dangerous to himself or to the person or property of others and is in need of supervision or restraint.
- (c) "Patient" shall mean an individual committed to the custody of the Director of the Shoshone Bannock Tribal Human Services Department, Fort Hall, Idaho.
- (d) "Licensed Physician" shall mean an individual licensed under the laws of Idaho to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.
- (e) "Designated Examiner" shall mean any licensed physician or person designated by the Shoshone Bannock Business Council as specially qualified by training or experience in the diagnosis of mental or related illness. Such persons shall be psychiatrists, clinical psychologists, neurologists, physicians, surgeons, or those persons who have obtained at least a Master's Degree in the field of Social Work, Psychology, Counselling, Psychiatric Nursing, or a closely related field.
- (f) "Court" shall mean the Shoshone Bannock Tribal Court, unless otherwise specified.

Section 2

Jurisdiction

Proceedings for the involuntary care and treatment of mentally ill persons shall be had in the Shoshone Bannock Tribal Court. Personal jurisdiction of the Court shall extend to any person found within the exterior boundaries of the Fort Hall Reservation, Idaho.

Section 3

Commitment Procedures

- (a) Proceedings for the involuntary care and treatment of a person believed to be mentally ill may be commenced by filing in the Court a petition signed by a friend, relative, spouse or guardian

of the individual, or by a licensed physician. Said petition must be accompanied by a certificate of a designated examiner stating that he has examined the person named in the petition and is of the opinion that he is mentally ill and should be hospitalized or otherwise cared for and treated by the Department. If the person named in the petition refuses to submit to an examination by a designated examiner, a written statement to this effect shall be filed with the petition by the petitioner instead of a certificate. The petition must be notarized in all cases.

(b) When the Court receives a petition and a written statement that the person named therein has refused to submit to an examination by a designated examiner, the Court shall direct at least two (2) designated examiners to make such an examination of the proposed patient as may be practicable under the circumstances and report to the Court their findings as to the mental condition of the proposed patient and his need for custody, care or treatment by the Department.

If the proposed patient has been detained pursuant to this Law and Order Code, the Court must issue such examination order no later than twenty-four (24) hours after the proposed patient has been detained, weekends and holidays excluded. The designated examiner's certificates must be filed with the Court no later than forty-eight (48) hours after the designated examiners receive the examination order from the Court, weekends and holidays excluded.

(c) When the Court receives a petition accompanied by a designated examiner's certificate, the Court shall, within twenty-four hours thereafter, weekends and holidays excluded, direct at least one (1) additional designated examiner to examine the proposed patient and report to the Court his or her findings as to the mental condition of the proposed patient and his need for custody, care or treatment by the Department.

If the proposed patient has been detained pursuant to this Law and Order Code, said report must be filed with the Court no later than forty-eight (48) hours after the designated examiner receives the examination order from the Court, weekends and holidays excluded.

The Court may terminate the proceedings and dismiss the petition without taking any further action in the event the report of the Court appointed examiner is to the effect that the proposed patient is not mentally ill.

(d) If the time restrictions put forth in subsections (b) and (c) of this Section are not met, the proposed patient must be released and the petition dismissed upon motion of the petitioner, the proposed patient or upon the Court's own motion.

(e) If the petition states a belief that the individual named therein is likely to injure himself or others if allowed to remain at liberty, the Court shall issue an order authorizing any health officer, police officer or the Department to take the individual into protective custody to await hearing.

Section 4

Notice

When the Court has received the petition and the reports of the designated examiners, it shall appoint a time and place for hearing which may be held immediately but may not be held later than fifteen (15) days from the receipt of such petition and reports, weekends and holidays included. Notice of said hearing shall be given to the proposed patient, his legal guardian, if any, or to his spouse, parents, or nearest known other relative, if any, or friend. If, however, the Court has reason to believe that notice would likely be injurious to the proposed patient, notice to him may be omitted. Notice shall be given in accordance with the rules and procedures which govern notice in civil hearings under this Code.

Section 5

Hearing Procedures

The hearing may be held at any place within the exterior boundaries of the Fort Hall Reservation, Idaho not likely to have a harmful effect on the proposed patient's health or well-being.

In all proceedings under this section any existing provision of law prohibiting the disclosure of confidential communications between physician and patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to his condition.

The proposed patient, the petitioner, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses, and the Court may at its discretion receive the testimony of any other person. The proposed patient must be present at the hearing unless the Court is convinced that his or her presence would be either harmful to his or her health or would be too disruptive to the proceedings.

The hearing shall be conducted in as informal a manner as may be consistent with the orderly procedure of the Court. The Court shall receive all relevant and material evidence which may be offered and the rules of evidence shall not apply.

Section 6

Right to Representation

The proposed patient shall have the right to be represented by an Advocate of the Shoshone Bannock Judicial System. If neither he nor others provide such representation prior to the hearing, the Court shall appoint an Advocate for that purpose.

Section 7

Disposition

If, upon completion of the hearing and consideration of the record, the Court finds beyond a reasonable doubt that the proposed patient

1. is mentally ill, and
2. is, because of his ailment, likely to injure himself or the person or property of others if allowed to remain at liberty, or
3. is in need of custody, care and treatment and, because of his ailment, lacks sufficient insight or capacity to make responsible decisions with respect to his ailment,

it shall order his commitment to the Department who shall determine disposition of each patient for observation, care, treatment and evaluation for:

- a. an indeterminate period, or
- b. a temporary observational period not to exceed six (6) months.

If the commitment is for a temporary period the Court may at any time prior to the expiration of such period, on the basis of the report by the Department and such further inquiry as the Court may deem appropriate, order indeterminate commitment of the patient or dismissal of the proceedings and release of the patient.

In the absence of proof beyond a reasonable doubt concerning the mental condition of the proposed patient as described in subparagraphs 1,2 & 3 of this Section, the Court shall dismiss the proceedings and order the release of the proposed patient.

Section 8

Exceptions

Nothing in this Chapter or in any rule or regulation adopted pursuant thereto shall be construed to authorize the detention or involuntary commitment of an individual who:

1. is a patient under treatment by spiritual means alone, or through prayer in accordance with the tenets and practices of a recognized denomination or tribal custom or tradition where the treatment is being administered by a duly accredited practitioner thereof and who asserts to any authority attempting to detain him that he is under such treatment and who gives the name of the practitioner so treating him to such authority; and
2. can be properly cared for privately; and
3. would not present a substantial risk of injury to himself or to the person or property of others if allowed to remain at liberty.

Section 9

Notice of Commitment

Whenever a patient has been committed to the Department pursuant to this Chapter, on the application of any person other than the patient's legal guardian, spouse or next of kin, the Department shall immediately notify the patient's legal guardian, spouse, or next of kin if known.

Section 10

Discharge of Patients

The Department or its designated representative shall as frequently as practicable examine or

cause to be examined every patient, and whenever it is determined that the conditions justifying involuntary care and treatment no longer exist, discharge the patient, and make a report thereof to the Court.

Section 11

Conditional Release - Relapse

(a) The Department or its designated representative may release an improved patient on the condition that he receive outpatient or non-hospital treatment or such other reasonable conditions as may be specified in writing by the Department or its designated representative.

(b) The Department or its designated representative is authorized to issue an order for the immediate detainment of a conditionally released patient who has failed to fulfill the conditions of his release if it has reason to believe that conditions justifying involuntary care and treatment continue to exist.

(c) In the event it is reported to the Department or its designated representative by any two (2) persons who are either licensed physicians, health officers or peace officers, the Shoshone Bannock Tribal Prosecutor or a judge of the Court, that any patient who had been previously committed to the Department and who has been conditionally released from custody, has relapsed and is again in need of detainment, the Department or its designated representative is authorized to, and must order said patient to be detained immediately.

(d) Any order issued by the Department or its designated representative pursuant to subsection (b) or (c) of this Section must be made in writing and indorsed by a judge of the Court. Such indorsement shall authorize any peace officer or health officer to take the patient into protective custody and transport him back to the custody of the Fort Hall Jail Facility until the Department can send transportation for him.

Section 12

Petition for Review of Commitment Order

Any person committed to the Department pursuant to Sections 3-7 of this Chapter shall be entitled to a review of the order for his commitment on his own petition, or that of his legal guardian, parent, spouse, relative or friend to the Court. Upon receipt of the petition the Court shall conduct proceedings in accordance with Sections 3-7 of this

Chapter; except that such proceedings shall not be required to be conducted if the petition is filed sooner than six (6) months after the issuance of the order of commitment or sooner than one (1) year after the filing of a previous petition under this section.

Section 13

Right to Humane Care and Treatment

Every patient shall be entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice.

Section 14

Patient's Civil Rights

(a) Subject to the general rules and regulations of the institution or facility in which the patient has been placed, and except to the extent that the head of said institution or facility determines that it is necessary for the medical welfare of the patient to impose restrictions, every patient shall be entitled:

1. To communicate by sealed mail or otherwise, with persons, including official agencies, inside or outside the institution or facility; and
2. To receive visitors; and
3. To exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote unless he has been adjudicated incompetent and has not been restored to legal capacity.

(b) Notwithstanding any limitations authorized under this Section on the rights of communication, every patient shall be entitled to communicate by sealed mail with the Court.

(c) Any limitations imposed by the head of the institution or facility on the exercise of these rights by the patient and the reasons for such limitations shall be made a part of the clinical record of the patient.

Section 15

Right of Appeal

Any individual detained pursuant to this Chapter shall be entitled to appeal any final order of commitment pursuant to the rules and procedures found under Chapter 4 of this Code.

Section 16

Violations of Provisions

Any Indian person violating any provisions of Sections 13 or 14 of this Chapter shall be guilty of an offense and subject to a fine of not more than Five-Hundred Dollars (\$500) or a sentence of not more than six (6) months imprisonment, or both.

Any non-Indian person violating any provisions of Section 13 or 14 of this Chapter shall be subject to a civil cause of action by the patient or his legal guardian, spouse, parent or next of kin. In such civil action the named plaintiff(s) may be awarded punitive damages as well as general damages.

Any person found to have violated any provisions of Sections 13 or 14 of this Chapter who was employed by the Shoshone Bannock Tribe at the time the violation occurred shall also be subject to dismissal by the Business Council.

Section 17

Detention Pending Judicial Determination

Notwithstanding any other provision of this Code, no patient with respect to whom proceedings for judicial commitment have been commenced shall be released or discharged during the pendency of such proceedings, any subsequent review or appeal, unless ordered by the Court or a judge thereof upon the application of the patient, or his legal guardian, parent, spouse or next of kin, or upon the report of the Department or its designated representative that the patient may be released or discharged with safety.