

**SECTION 1.** In Southern Ute Tribal Code, **repeal and reenact, with amended and relocated provisions**, title 8 as follows:

**TITLE 8**

**SOUTHERN UTE INDIAN TRIBAL CODE**

**PROTECTIVE SERVICES CODE**

**ARTICLE 1. GENERAL PROVISIONS**

**8-1-101.** **Purpose.** The purpose of this Title is to ensure protection and access to services for individuals, including but not limited to those suffering from mental illness and substance use disorders, elders, and At-risk adults. These individuals are often the most vulnerable. Through this Title, the Tribe seeks to protect individuals who cannot protect themselves or cannot properly care for themselves because of Self-neglect, Abuse, mental illness, substance use, or a combination of these. Because these individuals are our family members, we seek to ensure that families have the necessary legal means, if necessary, to help care for their loved ones.

**8-1-102.** [Formerly 8-3-102 and 8-4-103] **Definitions.** Unless the context otherwise requires:

- (1) [Formerly 8-4-103(1) **Abuse.** ~~Means an~~ Intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional ~~abuse~~ mistreatment, or cruel ~~punishment treatment~~ of an ~~elder or~~ At-risk adult ~~which~~ THAT results in physical pain or mental anguish, including but not limited to sexual abuse and exploitation.
- (2) **Adult.** An individual at least 18 years of age.
- (3) **At-risk adult.** A Person 18 years of age or older who is susceptible to Abuse, Financial exploitation, or Neglect because the individual is unable to perform or obtain services necessary for their health, safety, or welfare, or lacks sufficient understanding or capacity to make or communicate responsible decisions concerning their Person or affairs.
- (4) **Caretaker.** Any of the following:
  - (a) A Person who is required by applicable law, including Tribal custom, to provide services or resources to an At-risk adult;

- (b) A Person who volunteers to provide services or resources to an At-risk adult; or
  - (c) An institution or agency and its employees required by applicable law, Tribal custom, or through any agreement to provide services or resources to an At-risk adult.
- (5) **Conservator.** A Person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to guardianship or other protection order. The term includes a limited, emergency, temporary substitute, or co-conservator.
- (6) **Danger to self or others.** A Person who poses a substantial risk of self-harm as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm resulting from a mental health or substance use disorder or a Person who poses a substantial risk of harm to others as manifested by evidence of recent homicidal or other violent behavior directed at others, or by evidence that others are placed in reasonable fear of violent behavior and serious physical harm resulting from the at-risk person's mental health, physical impairment, or substance use disorder.
- (7) **Drugs.** A drug or other substance, or immediate precursor, included in the Controlled Substances Act (21 U.S.C. §801 et seq.) and implementing regulations (21 CFR Part 1308).
- (8) **Evaluator.** A court-appointed neutral investigator and evaluator in guardianship and conservatorship cases.
- (9) **Exploitation** ~~means an~~ An act or omission that:
- (a) Uses deception, harassment, intimidation, or undue influence to permanently or temporarily deprive an At-risk adult of the use, benefit, or possession of anything of value;
  - (b) Employs the services of a third party for the profit or advantage of the Person or another Person to the detriment of the At-risk adult;
  - (c) Forces, compels, coerces, or entices an At-risk adult to perform services for the profit or advantage of the Person or another Person against the will of the At-risk adult; or
  - (d) Misuses the property of an At-risk adult in a manner that adversely affects the At-risk adult's ability to receive health care or health-care benefits or to pay bills for basic needs or obligations.

- (10) **Financial exploitation.** Unauthorized or wrongful use of an At-risk adult's funds, property or other resources for another Person's profit or benefit.
- (11) **Gravely disabled.** A condition in which a Person, because of a Mental health disorder, is incapable of making informed decisions about or providing for their essential needs without significant supervision and assistance from other people.
- (a) As a result of being incapable of making these informed decisions, a Person who is gravely disabled is at risk of substantial bodily harm, worsening of a serious physical illness, significant psychiatric deterioration, or mismanagement of their essential needs that could result in substantial bodily harm.
- (b) A Person of any age may be "gravely disabled," but such term does not include a Person whose decision-making capabilities are limited solely by a developmental disability. Additionally, a Person who is gravely disabled may not be considered "at-risk" and in need of protective services if they have adequate supervision or assistance from other people.
- (12) **Guardian.** A Person of suitable age and discretion as determined by a court appointed to:
- (a) take or provide for the custody of an At-risk adult;
- (b) make decisions with respect to the personal affairs of the At-risk adult; and
- (c) care for that Person's health, safety, and welfare and provide for education and medical care as needed.
- (d) The term includes a limited, emergency, temporary substitute and co-guardian, but not a Guardian ad litem.
- (13) **Guardian ad litem.** A Person certified by the Tribal Court to have received appropriate training, and appointed by the Tribal Court to conduct an independent investigation and prepare an independent recommendation to the Tribal Court regarding the best interests of an individual in a particular proceeding or for a specified duration while a case is active in the Tribal Court.
- (14) **Incapacitated person.** An adult, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an

extent that the adult lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance, which may include incapacitation due to substance use.

- (15) **Intervening professionals.** The following Persons may act as intervening professionals to ~~effect~~ initiate an involuntary hold:
- (a) A certified Peace officer;
  - (b) A Person licensed and in good standing to practice medicine in any state or a psychologist licensed to practice and in good standing to practice in any state;
  - (c) A registered professional nurse who through postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing;
  - (d) A licensed marriage and family therapist, licensed professional counselor, or licensed addiction counselor, who through postgraduate education and additional preparation has gained knowledge, judgment, and skill in psychiatric or clinical mental health therapy, forensic psychotherapy, or the evaluation of Mental health disorders;
  - (e) A licensed clinical social worker;
  - (f) ~~Tribal Services~~ A Tribal Social Services social worker; or
  - (g) Other professionals that the Tribal Council may authorize by resolution.
- (16) **Intoxicated person or person under the influence of alcohol or substances.** A Person whose mental or physical functioning is temporarily but substantially, impaired from using alcohol, drugs, or other mood-altering or consciousness-altering substances.
- (17) **Lay person.** A Person identified by an individual who is detained on an involuntary emergency commitment hold, certified for short-term treatment, or certified for long-term care and treatment under this Code, who is authorized to participate in activities related to the individual's involuntary emergency commitment, short-term treatment, or long-term treatment, including court appearances, discharge planning, and

grievances. The individual may rescind the lay person's authorization at any time.

- (18) **Least restrictive environment.** The most appropriate and therapeutic setting available.
- (19) **Least restrictive services.** Acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent situations of actual mistreatment or Self-neglect.
- (20) **Letters.** Court ordered authorization issued in a guardianship or conservatorship, or other protective custody proceeding under this ~~Title~~ Code.
- (21) **Mental health disorder.** ~~Include one~~ One or more substantial disorders of the cognitive, volitional, or emotional processes that significantly impairs judgment or capacity to recognize reality or to control behavior. An intellectual or developmental disability is insufficient to either justify or exclude a finding of a mental health disorder pursuant to the provisions of this Title.
- (22) **Neglect.** A failure to provide for the basic needs of an At-risk adult, including but not limited to:
  - (a) Failing to supply resources, care, or supervision required to provide for basic needs;
  - (b) Interfering with delivery of necessary resources and services;
  - (c) Failing to report Abuse of an At-risk adult; or
  - (d) Failing to provide services or resources to aid in the At-risk adult's practice of religion, tradition, or custom.
  - (e) ~~Notwithstanding the provisions of~~ Despite paragraph (a) of this subsection, the withholding, withdrawing, or refusing of any medication, any medical procedure or device, or any treatment, including but not limited to resuscitation, cardiac pacing, mechanical ventilation, dialysis, artificial nutrition and hydration, any medication or medical procedure or device, in accordance with any valid medical directive or order, or as described in a palliative plan of care, is not deemed Caretaker neglect.

- (f) As used in this subsection, “medical directive or order” includes a medical durable power of attorney, a declaration as to medical treatment, a medical order for scope of treatment form executed, and a CPR directive.
- (23) Peace officer. Any commissioned member of any law enforcement department or division of the Southern Ute Indian Tribe or any other jurisdiction.
- (24) **Person.** An individual 18 years of age or older, estate executor or representative, trustee, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (24) Professional person. A person licensed to practice medicine in this state, a psychologist licensed to practice in this state, or a person licensed and in good standing to practice medicine in another state or a psychologist licensed to practice and in good standing in another state who is providing medical or clinical services at a treatment facility.
- (25) **Protected person.** An individual for whom a court has ordered appointment of a Guardian or Conservator, or other protective services under a protection order under this Title Code or for whom a protective order from another jurisdiction has been recognized by the Tribal Court.
- (26) **Protective placement.** The arrangement for care of an At-risk adult in a hospital, nursing home, residential care facility, or other suitable place, or a transfer from one facility to another with consent of that Person or with legal authority.
- (27) **Protective services.** Services provided to an At-risk adult to prevent Abuse, Financial exploitation, or Neglect, including Self-neglect. Such services include, but are not limited to:
- (a) Receiving and investigating reports of Abuse, Financial exploitation, or Neglect, including Self-neglect;
  - (b) The provision of casework and counseling services;
  - (c) Arranging for, coordinating, delivering where appropriate, and monitoring services, including medical care for physical or mental health needs;
  - (d) Protection from mistreatment;

- (e) Assistance with application for public benefits;
  - (f) Referral to community service providers;
  - (g) Initiation of guardianship proceedings; and
  - (h) Initiation or participation in guardianship or conservatorship proceedings in other jurisdictions, where appropriate.
- (29) **Respondent.** Either an individual alleged in a petition filed under this Code to have a Mental health disorder, be Gravely disabled, or have a Substance abuse disorder, or an individual certified for commitment, short-term treatment, outpatient treatment, or long-term treatment, under this Code.
- (30) **Reservation.** The Southern Ute Indian Reservation.
- (31) **Self-neglect.** An act or failure to act whereby an At-risk adult substantially endangers their health, safety, welfare, or life by not seeking or obtaining services necessary to meet essential human needs. Choice of lifestyle or living arrangements shall not, by itself, be evidence of Self-neglect. Refusal of medical treatment, medications, devices, or procedures by an adult with decisional capacity or on behalf of an adult by a duly authorized surrogate medical decision maker or in accordance with a valid medical directive or order, or as described in a palliative plan of care, shall not be deemed Self-neglect. Refusal of food and water in the context of a life-limiting illness shall not, by itself, be evidence of Self-neglect.
- (32) **Substance use disorder.** When a Person habitually uses alcohol, drugs, or other mood or consciousness altering substances, legal or illegal, resulting in substantial impairment to their health, physical or cognitive ability, or ability to take care of their daily needs ~~A physical or psychological dependence on a controlled substance that develops following the use of the controlled substance on a periodic or continuing basis~~ and is demonstrated by appropriate observation and tests by a person licensed to practice medicine OR A LICENSED BEHAVIORAL HEALTH PROFESSIONALS.
- (33) **Tribal Court.** The Southern Ute Indian Tribal Court.
- (34) **Tribe.** The Southern Ute Indian Tribe.

- (35) **Undue influence.** The use of influence to take advantage of an At-risk adult's vulnerable state of mind, neediness, pain, or emotional distress.

**8-1-103. Tribal Court Authority.**

- (1) **Scope of Authority.** The Tribal Court shall have authority to issue protection orders for adults who live on or are present within the Tribe's Reservation. This authority includes orders regarding the At-risk adult's property located within the Tribe's Reservation or subject to the Tribe's laws.
- (2) In addition to its general authority to issue protection orders for adults who live on or are present within the Tribe's Reservation under Section 8-1-103(1), the Tribal Court may exercise authority to issue protection orders when the Person for whom the protection order is sought is a member of the Southern Ute Indian Tribe, whether or not that Southern Ute Tribal Member lives on the Reservation.

**8-1-104. Jurisdiction.** The Tribal Court shall have jurisdiction over Persons for whom a protection order is requested under this Title who live on or are present within the Reservation. Tribal Court's jurisdiction shall extend to any Person that: files a petition for guardianship, accepts appointment as a Guardian or Conservator, or otherwise consents to Tribal Court jurisdiction, and may extend to the family of a Protected person.

**8-1-105. Concurrent or Continuing Jurisdiction.** Tribal Court retains concurrent or continuing jurisdiction over Protected persons whether on or off the Reservation when the Tribal Court appoints a Guardian, Conservator, or authorizes protective orders under this Code.

**8-1-106. Transfer of Jurisdiction.**

- (1) **Transfer from Tribal Court to Another Court.** After issuing a protection order, the Tribal Court may transfer the proceeding to another court elsewhere if the Tribal Court is satisfied that a transfer will serve the best interest of the Protected person.
- (2) **Filed Proceedings in Another Court.** If a protection order or proceeding is pending elsewhere and a petition for protective services is filed in Tribal Court, the Tribal Court shall notify the original court and, after consultation with that court, assume or decline jurisdiction, whichever is in the best interest of the Protected person subject to the proceeding.
- (3) **Transfer of Guardianship or Conservatorship from Another Court to Tribal Court.** After appointment of a guardianship or conservatorship by

a court in another jurisdiction, the Tribal Court may accept transfer of the proceeding from that jurisdiction when transfer is in the Protected Person's best interest.

**8-1-107. Consolidation of Proceedings.** If guardianship or conservatorship and protective custody proceedings involving the same individual are pending in Tribal Court, the proceedings may be consolidated.

**8-1-108. Criminal Prosecutions.** This Code is a civil code, but any Person who commits Abuse, Financial exploitation, or Neglect of an At-risk adult may also be prosecuted under applicable criminal law. Criminal prosecutions are independent and separate from civil proceedings arising from the same events.

## Article 2. AT-RISK ADULT PROTECTION

**8-2-101. Mandatory Duty to Report.**

- (1) Any Person specified in 8-2-101(2) who has reasonable cause to know or suspect that an At-risk adult has been subjected to Abuse, Financial exploitation, Self-neglect, or Neglect must immediately report to Tribal Social Services or Southern Ute Police Department.
- (2) Any person specified in 8-2-101(2) who has observed the At-risk adult being subjected to circumstances or conditions that could reasonably result in Abuse, Financial exploitation, Self-neglect, or Neglect must immediately report to Tribal Social Services or Southern Ute Police Department.
- (3) It shall be mandatory for-the following Persons to make an initial report immediately upon having reasonable cause to know or suspect Abuse, Financial exploitation, Self-neglect, or Neglect:
  - (a) Physicians, naturopaths, chiropractors, optometrists, physicians' assistants, and osteopaths, including those in training;
  - (b) Medical examiners and coroners;
  - (c) Registered nurses and licensed practical nurses;
  - (d) Hospital, clinic, and nursing home personnel engaged in the admission, care, or treatment of patients;
  - (e) Psychologists and other mental health professionals;

- (f) Social workers, religious practitioners, and Tribal employees whose primary duties involve providing services to Tribal elders or At-risk adults;
- (g) Tribal Finance Department staff;
- (h) Dentists and dental hygienists;
- (i) Law enforcement personnel;
- (j) Tribal Court-appointed Guardians and Conservators;
- (k) Fire protection personnel, emergency medical technicians, and paramedics;
- (l) Pharmacists;
- (m) Victim advocates;
- (n) Senior Center staff;
- (o) Southern Ute Housing Department staff;
- (p) Any Person or agency, including employees, with fiduciary duties to At-risk adults, such as attorneys, accountants, property managers, or financial institutions; and
- (q) Any Caretaker, staff member, employee, volunteer, or consultant for any licensed or tribal care facility, agency, home, or governing board.

**8-2-102. Notification of Other Agencies.**

- (1) The Southern Ute Police Department shall immediately notify the appropriate social services agency after receiving a report of Abuse, Financial exploitation, or Neglect, including Self-neglect.
- (2) Tribal Social Services shall notify the law enforcement agency responsible for investigations upon a receipt of a report or after a preliminary investigation showing that Abuse, Financial exploitation, Self-neglect, or Neglect has occurred to an At-risk adult.

**8-2-103. Failure to Report.** Any Person required to report who fails to report suspected or actual Abuse, Financial exploitation, Self-neglect, or Neglect, as required by this

Code, shall be subject to a civil penalty according to the civil penalty schedule, after notice and an opportunity for a hearing in Tribal Court.

- (1) **Immunity for Reporting.** Any Person, except a perpetrator or Person acting with the perpetrator, who makes a report of Abuse, Financial exploitation, Self-neglect, or Neglect is immune from any civil or criminal liability on account of such report or participation in making such report, so long as such action was taken in good faith and not in reckless disregard of the truth.
- (2) **Offer of Services.** Tribal Social Services shall immediately offer services to an At-risk Adult if, after receiving a report and after a preliminary investigation, Tribal Social Services believes that an incident of Abuse, Financial exploitation, or Neglect, including Self-neglect, has occurred.

**8-2-104. Rights of At-risk adults, Their Families, and Caretakers.**

- (1) The At-risk adult, the family, and Caretaker(s) have the following rights:
  - (a) To attend Tribal Court proceedings pertaining to the At-risk adult;
  - (b) To have independent medical, psychological, or psychiatric evaluations at their own expense; and
  - (c) At-risk adults have the right to counsel.
- (2) An At-risk adult has the right to be made aware of the services offered.
- (3) At-risk adults have a right to obtain services offered. Families and Caretakers cannot refuse services for the At-risk adult.
- (4) The Tribal Court may exclude or attach appropriate conditions to the attendance of families and Caretakers at Tribal Court proceedings when it is in the At-risk adult's best interest or when there is reason to believe that there may be undue influence, harassment, or intimidation by the Caretaker or family members of the At-risk adults. The Tribal Court shall balance the privacy and safety rights of the At-risk adults against the rights of the Caretakers and family to attend the hearings. The Tribal Court must make written findings regarding the conditions imposed and the best interest of the At-risk adult.

**8-2-105. Confidentiality and Penalties for Noncompliance.**

- (1) The identity of the Person reporting Abuse, Financial exploitation, Neglect, or Self-neglect, is confidential and must not be released, unless

the reporter consents or the Tribal Court determines that the At-risk adult needs exceed the reporter's right to privacy and orders disclosure. The reporter's identity may be released only to the extent necessary to protect the At-risk adult.

- (2) Records of investigations concerning Abuse, Financial exploitation, or Neglect, including Self-neglect, are confidential. Tribal Social Services, law enforcement, Tribal Court officials, attorneys, coroners, medical staff, and any other Person whom the Tribal Court determines has reasonable cause to have access may view the records.
- (3) Anyone who violates this section shall be subject to a civil penalty ~~of up to \$5,000~~ according to the civil penalty schedule, after notice and an opportunity for a hearing in Tribal Court.

**8-2-106. Privileged Communication.** A claim of privileged communication between Persons required to report and their clients or patients and between spouses is not grounds for excluding evidence in any judicial proceeding resulting from a report.

**8-2-107. Investigation.**

- (1) A Tribal Social Services worker shall investigate the report of Abuse, Financial exploitation, or Neglect, including Self-neglect, within 72 hours of receiving a report and prepare a written report within 10 days after an investigation is complete based upon the following as necessary and available:
  - (a) Personal interviews that may include the At-risk adult, the immediate family and Caretaker(s), alleged perpetrator(s), employees of involved agencies, and any other Persons with pertinent information;
  - (b) Medical records;
  - (c) Financial records;
  - (d) Assessments of the At-risk adult's living conditions; ~~and~~
  - (e) Any other observations, assessments, documents, or photographs that may aid in completing the report; and
  - (f) Other evidence of Abuse or Neglect-

- (2) If admission to the At-risk adult's residence or access to the At-risk adult cannot be obtained, the Tribal Court, upon good cause shown and without notice, may issue an order to allow interviews, examinations, photography, video recordings, or investigation. Any Person who fails or refuses to comply with the Tribal Court order may be held in civil or criminal contempt of Tribal Court.

**8-2-108. Report.** The written report prepared by Tribal Social Services shall contain the following:

- (1) The At-risk adult's name, address or location, telephone number, and known tribal affiliation, if any;
- (2) The name, address or location, telephone numbers of the Persons or agency suspected of Abuse, Financial exploitation, or Neglect, and known tribal affiliation, if any;
- (3) The condition of the At-risk adult;
- (4) The names of witnesses and sufficient information to issue subpoenas;
- (5) The name, address or location, and telephone number of Caretakers;
- (6) A description of the act(s) or omissions that are alleged to be Abuse, Financial exploitation, Neglect, or Self-neglect; and
- (7) Any other information helpful in establishing Abuse, Financial exploitation, or Neglect, including Self-neglect.

**8-2-109. Responsibilities and Duties of Tribal Social Services.**

- (1) Tribal Social Services shall conduct investigations in conjunction with the Southern Ute Police Department and other agencies to the extent joint investigations are possible and deemed appropriate.
- (2) Tribal Social Services shall be the agency responsible for the coordination of social service investigations of all reports of known or suspected incidents of At-risk adult Abuse, Financial exploitation, or Neglect, including Self-neglect.
- (3) Tribal Social Services shall be on-call to respond to such reports.
- (4) Tribal Social Services must provide individuals that are at-risk of mistreatment or self-neglect with provisions of protective services when that individual consents to protective services.

- (5) When an individual that is at risk of mistreatment or self-neglect does not consent to protective services, and there is no other appropriate Person willing or able to petition the court, Tribal Social Services must petition the court for specific protective services and for appointment of a Guardian or Conservator as necessary.

**8-2-110. Emergency Removal.**

- (1) If there is probable cause to believe that an emergency exists and an At-risk adult is at risk of immediate bodily injury or death, a law enforcement officer may protect the At-risk adult by transporting the At-risk adult to a safe location, including to an appropriate facility, or by removing the perpetrator(s).
- (2) After the At-risk adult is removed or adequately protected, the law enforcement officer involved shall notify Tribal Social Services within 24 hours.

**8-2-111. Petition for an Emergency Adult Protection Order.** If Tribal Social Services determines that the At-risk adult needs immediate protective services, it may:

- (1) File a petition for an emergency protection order in the applicable jurisdiction.
- (2) A petition filed in Tribal Court shall include the following:
  - (a) The basis for the Tribal Court's jurisdiction;
  - (b) The name, date of birth, tribal affiliation, census number, and address or location of the At-risk adult, if known;
  - (c) The name, address, and telephone number of any Person having responsibility for the care of the At-risk adult, if known;
  - (d) A plain and concise statement of the facts upon which the petition is based;
  - (e) A summary of the attempts to secure consent from the At-risk adult or anyone with legal authority to give consent for the At-risk adult; and
  - (f) The proposed protective services for the At-risk adult.

**8-2-112. Emergency Adult Protection Order.**

- (1) The Tribal Court may issue an Emergency Adult Protection Order, including an order without advance notice or hearing, authorizing protective services, including protective placement, upon proof by a preponderance of the evidence that an At-risk adult:
  - (a) Is at risk of immediate bodily injury or death; or
  - (b) Is in Immediate risk of Financial exploitation; and
  - (c) Is an Incapacitated person as defined in this Title and cannot consent to services.
- (2) The Emergency Adult Protection Order shall:
  - (a) Set forth findings with regard to the evidence;
  - (b) Allow protective placement only if the evidence indicates that it is the least restrictive alternative appropriate under the circumstances;
  - (c) Order Tribal Social Services to investigate the situation and arrange for appropriate services to be provided; and
  - (d) Include such other provisions as are deemed necessary to protect the At-risk adult, including issuing temporary injunctions placing restrictions on the financial accounts of the At-risk adult.
- (3) The duration of the Emergency Adult Protection Order shall not exceed 5 calendar days, unless a hearing is held at which the parties, including the At-risk adult, have received notice and are provided the opportunity to contest the Order.
- (4) The Tribal Court shall provide copies of the Emergency Adult Protection Order to all interested parties, including the At-risk adult.

**8-2-113. Emergency Adult Protection Order Hearing.**

- (1) Whenever an Emergency Adult Protection Order has been issued, the Tribal Court shall conduct a hearing on the issue of the necessity of continuing the order pending the filing of a petition for a long-term adult protection order.

- (2) The hearing on the Emergency Adult Protection Order shall be held within 5 business days, after an ex parte Emergency Adult Protection Order is issued.
- (3) All parties are entitled to a copy of the petition, notice of the hearing date, and an opportunity to be heard.
- (4) The Tribal Court shall determine an At-risk adult's capacity, degree of incapacity, and whether Abuse, Financial exploitation, Self-neglect, or Neglect has occurred based on a preponderance of the evidence standard of proof.

**8-2-114. Long-Term Adult Protection Order Petition and Hearing Procedure.**

- (1) If Tribal Social Services determines that the At-risk adult needs long-term protective services, Tribal Social Services, through legal counsel, shall file a petition for long-term protection, which shall include the requirements in Section 8-2-111.
- (2) The Civil Procedure Code shall govern the procedures under this Section unless otherwise provided for in this section.

**8-2-115. Long-Term Adult Protection Order.**

- (1) If the Tribal Court determines by clear and convincing evidence that there is incapacity or evidence of Abuse, Financial exploitation or Neglect, including Self-neglect of an At-risk adult, the Tribal Court shall issue a written order that may include:
  - (a) Ordering an evaluation, assessment, or other services to protect the At-risk adult;
  - (b) Ordering Tribal Social Services to prepare a plan to deliver protective services that provides the least restrictive alternative to satisfy the At-risk adult's needs;
  - (c) Restraining any perpetrator from contact with the At-risk adult and from committing further abusive acts;
  - (d) Requiring any Person with knowledge to account for the At-risk adult's funds or property;
  - (e) Requiring any perpetrator to pay restitution to the At-risk adult for damages resulting from the perpetrator's wrongful act(s);

- (f) Appointing a Guardian or Conservator, or both, for the At-risk adult in accordance with Article 3 of this Title; or
  - (g) Removing the At-risk adult from the place where Abuse, Financial exploitation, or Neglect, including Self-neglect, has occurred.
- (2) If the allegations of the petition are not sustained, the Tribal Court shall dismiss the matter.
  - (3) The Tribal Court shall conduct a review of the need for continued protection orders every 6 months or upon motion of an interested party.

**8-2-116. At-Risk Adult Protection Team.**

- (1) The At-Risk Adult Protection Team (Team) shall be a multidisciplinary group and shall be advisory in nature. It is not intended to undermine the authority and responsibility of individual agencies, but it is designed to promote cooperation, communication, and consistency among agencies.
- (2) Every report of At-risk adult Abuse, Financial exploitation, or Neglect, including Self-neglect, investigated by Tribal Social Services where Tribal Social Services has determined that an adult is at-risk and in need of protection shall be presented to the Team, to evaluate and to assess the timeliness and appropriateness of Tribal Social Services' intervention.
- (3) In cases the Team determines to be substantiated, the Team may recommend to Tribal Social Services appropriate services and treatment to promote the well-being of At-risk adults and to reduce elder and At-risk adult Abuse, Financial exploitation and Neglect, including Self-neglect, on the Reservation.
- (4) **Duties.** The duties of the Team include the following:
  - (a) Reviewing Abuse, Financial exploitation and Neglect, including Self-neglect, cases where Tribal Social Services has determined that an adult is at-risk and in need of protection, including a summary report and the services being offered to the At-risk adult and family in connection with the reported Abuse, and determining whether Tribal Social Services' determination is founded;
  - (b) Making recommendations to Tribal Social Services with suggestions for further action or a statement that the team has no recommendations or suggestions; and

- (c) Maintaining confidentiality of information and signing a confidentiality agreement.

**8-2-117. Membership.**

- (1) The Team shall consist of not less than 10 members, which shall include the following:
  - (a) A tribal elder representative with relevant experience in areas related to protective services for adults;
  - (b) A representative from the Tribal Health Department;
  - (c) A representative from Tribal Behavioral Health; and
  - (d) A Southern Ute Police Department officer.
- (2) The remaining members may be appointed from the following departments, agencies or categories:
  - (a) Attorney from the Legal Department;
  - (b) La Plata County Adult Protective Services;
  - (c) A medical doctor;
  - (d) CHR Manager;
  - (e) Southern Ute Victim Services;
  - (f) LaPlata County Health Department;
  - (g) FBI victim services;
  - (h) US Attorney's Office;
  - (i) A traditional practitioner with relevant experience; or
  - (j) A Person from any category in subsection (1) above.

**8-2-118. Coordinator.** The Tribal Social Services Division Head, or an individual designated by the Tribal Social Services Division Head, shall serve as the coordinator of the Team.

**8-2-119. At-Risk Adult Protection Team By-Laws.** The At-Risk Adult Protection Team shall be governed according to by-laws approved by Tribal Council.

**Article 3. ADULT GUARDIANSHIP AND CONSERVATORSHIP**

**8-3-101. Petition.**

- (1) Any Person including, but not limited to the Tribal Social Services, may petition the Tribal Court for the appointment of a Guardian or Conservator. The Tribal Court may itself initiate proceedings to appoint a Guardian or Conservator if such appointment appears necessary and no other Person has initiated such a proceeding.
- (2) The petition must include the following:
  - (a) The petitioner's name and current address;
  - (b) The petitioner's relationship to the At-risk adult and interest in the appointment;
  - (c) To the extent known, the At-risk adult's name, age, tribal affiliation, location, and principal residence;
  - (d) To the extent known to the petitioner, the At-risk adult's legal spouse, adult children, and parents, adult with whom the At-risk adult currently resides and has resided for more than 6 months, or at least one relative closest in kinship who can be found, including all of their addresses;
  - (e) The name and address of each Person responsible for the care or custody of the At-risk adult, including their treating physician;
  - (f) The name and address of each legal representative of the At-risk adult;
  - (g) The name and address of each Person nominated as Guardian or Conservator by the At-risk adult;
  - (h) The name and address of each proposed Guardian or Conservator and the reason why the proposed Guardian or Conservator should be selected;
  - (i) To the extent known to the petitioner, a general list of the At-risk adult's real and personal property with an estimate of its value, including but not limited to cultural, ceremonial, or traditional

objects, trust property, and tribal assignments or allotments wherever located;

- (j) The source and amount of any anticipated income or receipts, such as tribal distributions, insurance, and retirement benefits;
- (k) The present conditions and circumstances that warrant the appointment of a Guardian or Conservator; and
- (l) A request that Letters of Guardianship or Conservatorship be issued to the petitioner or another suitable Person to act as Guardian or Conservator of the At-risk adult.

- (3) Tribal departments or agencies and other governmental entities that can assist in providing current addresses shall provide that information to the requesting party upon receipt of a written request from that party.

**8-3-102. Notice of Hearing.** Notice shall be in accordance with Title 2 – Civil Procedure Code.

**8-3-103. Personal Service.**

- (1) A copy of the petition and notice of the hearing on the petition must be served personally on the respondent in accordance with the Civil Procedure Code and not less than 10 days before the hearing, except in the case of emergency proceedings. The notice must:
  - (a) Include a statement that the At-risk adult must be physically present at the hearing unless excused by Tribal Court;
  - (b) Inform the At-risk adult of their rights under Article 3 of this Title at the hearing; and
  - (c) Include a description of the nature, purpose, and consequences of an appointment of guardianship or conservatorship.
- (2) A failure to serve the At-risk adult with a notice substantially complying with this subsection precludes Tribal Court from granting the petition.
- (3) A copy of the petition and notice of the hearing meeting the requirements of this section must be given to the Persons listed in the petition.

**8-3-104. Pre-Hearing Procedures.**

- (1) **Schedule Hearing.** Upon receiving a petition, Tribal Court must set a date and time for hearing the petition. Hearing shall be set no less than 21 days from the filing of the petition.
- (2) **Court-Appointed Counsel for the At-risk adult.** Tribal Court must appoint a court-appointed attorney to represent the At-risk adult in the proceeding if:
  - (a) The At-risk adult requests a court-appointed attorney and the Tribal Court finds that the At-risk adult is indigent;
  - (b) The Evaluator recommends a court-appointed attorney; or
  - (c) Tribal Court determines the respondent needs representation.
- (3) **Informal Settlement.** Before the hearing, the Tribal Court will confirm with the parties whether they have attempted to informally resolve this matter by a family meeting, by some culturally appropriate means, or by any other means. At any time, the parties may agree to resolve a guardianship or conservatorship matter through informal means, subject to Tribal Court approval.

**8-3-105. Professional Evaluation.**

- (1) At any time during the pendency of the case, the Tribal Court may order a professional evaluation of the At-risk adult or of the At-risk adult's property, circumstances, or any other matters appropriate to evaluate the allegations in the petition. The Tribal Court must order an evaluation if the At-risk adult so demands.
- (2) If the Tribal Court orders an evaluation, the At-risk adult must be examined by a physician, psychologist, forensic accountant, or other individual who is qualified to evaluate the At-risk adult's alleged impairment or allegations in the petition.
- (3) The Evaluator shall promptly file a written report with the Tribal Court and provide copies to the At-risk adult and petitioner and the report must include:
  - (a) A description of the nature, type, and extent of the At-risk adult's specific cognitive and functional limitations, if any;
  - (b) An evaluation of the At-risk adult's mental and physical condition and, if appropriate, educational potential, adaptive behavior, and social skills;

- (c) A prognosis for improvement and a recommendation as to the appropriate treatment or habilitation plan; and
- (d) The dates of any assessment or examination upon which the report is based.

**8-3-106. Hearings.**

- (1) **Attendance.** Unless excused by the Tribal Court for good cause, the At-risk adult, the proposed Guardian, and the proposed Conservator, if a different Person, must attend Tribal Court hearings.
- (2) **At-risk adult not present.** A hearing under this section may proceed without the At-risk adult in attendance if the Tribal Court finds that:
  - (a) The At-risk adult consistently and repeatedly has refused to attend the hearing after having been fully informed of the right to attend and the potential consequences of failing to do so; or
  - (b) There is no practicable way for the At-risk adult to attend and participate in the hearing even with appropriate supportive services and technological assistance.
- (3) **Securing At-risk adult's attendance.** Petitioner must make every reasonable effort to secure the At-risk adult's attendance at Tribal Court hearings.
- (4) **At-risk adult rights.** The At-risk adult may present evidence, subpoena witnesses and documents, examine, cross-examine witnesses, and otherwise participate in the hearing.
- (5) **Hearing participation.** Any Person may be permitted to participate in the proceeding if the Tribal Court finds it is in the best interest of the At-risk adult. Tribal Court may grant the request to participate in the hearing without a hearing only if there is no objection. The Tribal Court may attach appropriate conditions to the participation of the Person testifying.
- (6) **Closed hearings.** The hearing may be held in a manner that reasonably accommodates the At-risk adult and shall be closed, unless the At-risk adult requests it to be open.

**8-3-107. Appointment of a Guardian or Conservator or Both.**

- (1) If the Tribal Court finds a Guardian or Conservator is necessary, it will appoint a consenting Person who is most suitable to act as Guardian or Conservator. Any Person 18 years of age or older subject to the jurisdiction of the Southern Ute Indian Tribal Court under applicable law or by consent may serve as Guardian or Conservator.
- (2) The Tribal Court shall require a background check for all proposed Guardians or Conservators before appointing Persons as Guardians or Conservators.
- (3) The Tribal Court shall make reasonable inquiry to determine whether the proposed Guardian or Conservator is suitable and will exercise the powers and carry out the duties and responsibilities in the best interest of the At-risk adult.
- (4) The Tribal Court shall also inquire of the proposed Guardian or Conservator's plan as to how the proposed Guardian or Conservator will provide for the care of the At-risk adult, and of the proposed Guardian of the property of the At-risk adult as to the plan for the management of the property of the At-risk adult and to provide for the At-risk adult's financial care. The Tribal Court shall make such orders with respect to the plan as the Tribal Court deems to be in the best interest of the At-risk adult.
- (5) The Tribal Court shall give preference to the At-risk adult's relatives and to the Person preferred by the At-risk adult. However, in all cases, the Tribal Court shall ultimately determine the Guardian or Conservator on the basis of the At-risk adult's best interests.
- (6) In the absence of a qualified relative or alternative, the Tribal Social Services may be appointed as a Guardian or Conservator. The Tribal Court will also give preference to the Tribal Social Services if in the best interests of the At-risk adult.
- (7) The Tribal Court order shall set forth the authority of the Guardian or Conservator, state whether a security bond for their performance is required, and state the duration of the appointment.
- (8) Within 14 days after an appointment, the Tribal Court must send or deliver to the Protected person, and to all other Persons given notice of the hearing on the petition, a copy of the Letters of Guardianship or Conservatorship or order of appointment, together with a notice of the right to request termination or modification.

**8-3-108. Required Findings.**

The Tribal Court may:

- (1) Appoint a Guardian or Conservator for an At-risk adult only if it finds by clear and convincing evidence that:
  - (a) The At-risk adult is an incapacitated Person; and
  - (b) The At-risk adult's identified needs cannot be met by less restrictive means, including use of appropriate and reasonably available technological assistance.
- (2) If appropriate, treat the petition as one for a protective custody or other protection order under Article 2 of this Title or enter any other appropriate order.
- (3) Dismiss the petition if the required findings cannot be made by clear and convincing evidence.

**8-3-109. Appointment Powers.** Tribal Court, whenever feasible, must grant a Guardian or Conservator only those powers required by the At-risk adult's limitations and demonstrated needs and make appointive and other orders that will encourage the development of the At-risk adult's maximum self-reliance and independence.

**8-3-110. Emergency Guardian or Conservator.**

- (1) Appointment of Emergency Guardian. If the Tribal Court finds, by a preponderance of the evidence, that appointing an emergency Guardian or Conservator will likely prevent substantial harm to the At-risk adult's health, safety, welfare, or finances, and no other suitable Person appears to have authority and willingness to act in the circumstances, the Tribal Court, on its own or on petition by a Person interested in the At-risk adult's welfare, may appoint an emergency Guardian or Conservator whose authority may not exceed 60 days and who may exercise only the powers specified in the order.
- (2) Appointment Without Notice. The Tribal Court may appoint an emergency Guardian or Conservator for an adult without notice and without notice to the adult's attorney only if the Tribal Court finds from affidavit or testimony that the At-risk adult's physical health, safety, financial welfare, or personal welfare will likely be substantially harmed before a hearing with notice on the appointment can be held.
- (3) Appointment of Attorney or Guardian ad litem. Immediately upon appointment of an emergency Guardian or Conservator, the Tribal Court may appoint ~~a lawyer~~ an attorney to represent the At-risk adult or appoint

a Guardian ad litem to report to the Tribal Court throughout the emergency guardianship or conservatorship, depending on the At-risk adult's capacity and as determined by the Tribal Court. The At-risk adult is responsible for the cost of any ~~lawyer~~ attorney appointed to represent the At-risk adult under this Article unless the Tribal Court finds the At-risk adult is indigent. If Tribal Court finds the At-risk adult is indigent then the Tribal Court may appoint ~~a lawyer~~ an attorney.

- (4) **Notice.** Except as otherwise provided in Subsection (2) of this Section, reasonable notice of the time and place of a hearing on the petition must be given to the At-risk adult and any other interested Persons as the Tribal Court directs. If the At-risk adult is not present at the hearing, the Tribal Court must give notice of the appointment within 48 hours after the appointment and provide all documents filed in the case to the At-risk adult, At-risk adult's attorney or Guardian ad litem, and any other interested Persons.
- (5) **Hearing After Emergency Appointment.** If the emergency appointment hearing was held without notice, the Tribal Court must hold a hearing on the emergency appointment within 5 days to review the need for and the scope of an emergency guardianship or conservatorship and the appropriateness of the Person appointed, unless good cause exists for extending the time for a hearing.
- (6) **Removal or Modification of Emergency Guardian or Conservator.** Upon motion by an interested party, the Tribal Court may hold a hearing to remove an emergency Guardian or Conservator, to modify the powers granted, or to extend the emergency guardianship or conservatorship at any time in the Tribal Court's discretion when necessary. The emergency Guardian's or Conservator's authority may be extended once for not more than 60 days if the Tribal Court finds that the conditions for appointment of an emergency Guardian or Conservator in this section still exist. The other provisions of this Article concerning Guardians or Conservators apply to an emergency Guardians, except that the standard of proof for appointment of an emergency Guardian or Conservator is by a preponderance of the evidence.
- (7) **Automatic Termination.** An appointment for an emergency Guardian or Conservator will automatically terminate if a petition for guardianship or conservatorship is not filed while the emergency guardianship or conservatorship is pending.
- (8) Appointment of an emergency Guardian or Conservator without notice is not a determination of the At-risk adult's incapacity.

**8-3-111. Removal and Replacement of Guardian or Conservator.**

- (1) **Removal or Modification of Guardianship or Conservatorship.** The Tribal Court on its own or upon motion by an interested party, may hold a hearing to remove a Guardian or Conservator, to modify the powers granted, or to extend the guardianship or conservatorship at any time in the Tribal Court's discretion when necessary.
- (2) **Replacement of Guardian or Conservator.** If the Tribal Court finds following a hearing that a Guardian or Conservator is not effectively performing their duties and the Protected person's welfare requires immediate action, Tribal Court may appoint a replacement Guardian or Conservator. The authority of any Guardian or Conservator previously appointed is suspended once a replacement Guardian or Conservator has been appointed.
- (3) **Powers of Replacement Guardian or Conservator.** Except as otherwise ordered by Tribal Court, a replacement Guardian or Conservator so appointed has the powers set forth in the previous order of appointment.
- (4) **Notice of Replacement Guardian or Conservator.** The Tribal Court shall notify the Protected person, the affected previous Guardian or Conservator, or any other interested Persons, of any change in appointment of guardianship or conservatorship, within business 5 days after any replacement of a Guardian or conservatorship.
- (5) **Removal of Replacement Guardian or Conservator.** The Tribal Court may at any time remove a replacement Guardian or Conservator or modify the powers granted for good cause shown. The other provisions of this Article apply to a replacement Guardian or Conservator.

**8-3-112. Bond.**

- (1) **Bond Requirement.** The Tribal Court must require a bond to assure the faithful performance of the Guardian or Conservator's duties and to protect the Protected person's assets unless the Tribal Court finds the extent or value of the assets is not sufficient to warrant the posting of a bond.
- (2) **Exemption For Tribal Departments.** Tribal government departments acting as Guardians or Conservators for Protected persons are not required to obtain a bond.

- (3) **Bond Amount.** The bond must be sufficient to cover the aggregate capital value of the assets of the estate, plus one year's estimated income, and minus:
  - (a) The value of assets deposited under arrangements requiring an order of the Tribal Court for their removal; and
  - (b) The value of any real property that the fiduciary, by express limitation, lacks power to sell or convey without Tribal Court authorization.
- (4) **Surety Consent to Tribal Jurisdiction.** By executing a bond, the surety consents and submits to the jurisdiction of the Tribal Court that issued letters of guardianship or conservatorship in a proceeding in which the surety is named as a party. Notice of the proceeding must be given to the surety at the address shown in the records of the Tribal Court.
- (5) **Bond Charged to Protected Person's Estate.** Unless otherwise directed by the Tribal Court, the cost of the bond shall be charged to the Protected person's estate.
- (6) **Bond Alternatives.** In the alternative to a bond, the Tribal Court may impose restrictions on access to, or transfer of, the assets of the conservatorship estate.

**8-3-113. Oath and Letters of Guardianship or Conservatorship.**

- (1) A Guardian or Conservator appointed by the Tribal Court shall be required to take an oath promising to faithfully perform the duties.
- (2) After the Guardian or Conservator takes the oath and files any required security with the Tribal Court, the Tribal Court shall issue letters of guardianship or conservatorship, including any limitations on the Guardian's or Conservator's authority.

**8-3-114. Inventory and Appraisal.**

- (1) Within 15 calendar days after the appointment of an Evaluator, the Evaluator shall prepare and submit to the Tribal Court an inventory of the Protected person's property and assets, including traditional and cultural items.
- (2) If the Tribal Court requires an appraisal, it shall be made by a disinterested and qualified Person, who shall certify the appraisal. The appraiser may receive reasonable compensation for their services. If no appraisal is

required, the Evaluator shall certify under oath to the estimated value of the assets not appraised.

**8-3-115. Administration of Conservatorships and Guardianships.**

- (1) Tribal Court shall monitor guardianships and conservatorships, including but not limited to the monitoring and review of Guardians' and Conservators' reports and plans and maintaining separate accounts for the Protected person's funds.
- (2) **Reports.** The Guardian or Conservator must report to the Tribal Court regarding the administration of the estate at least quarterly, or more frequently if ordered by the Tribal Court. The Tribal Court will hold a hearing annually or more frequently if needed.
- (3) **Report Contents.** Unless the Tribal Court orders otherwise, a report must contain:
  - (a) A copy of the most recently approved plan and a statement whether there have been any deviations from the plan and, if so, an explanation about the deviation;
  - (b) The mental, physical, and social condition of the **Protected person**;
  - (c) The living arrangements of the **Protected person** during the reporting period;
  - (d) If the **Protected person** is living in a facility, whether the Guardian or Conservator considers the facility's current plan for support, care, treatment, or habilitation consistent with the adult's preferences, values, prior directions, and best interest;
  - (e) A list of the services provided to the **Protected person**;
  - (f) The extent to which the **Protected person** has participated in decision making;
  - (g) A summary of the Guardian's or Conservator's visits with the **Protected person**, including the dates of the visits;
  - (h) List of the assets of the estate under the Guardian or Conservator's control and a list of the receipts, disbursements, and distributions during the period for which the report is made;

- (i) To the extent feasible, a copy of the most recent reasonably available financial statements evidencing the status of bank accounts, investment accounts, and mortgages or other debts of the individual subject to guardianship/conservatorship with all but the last four digits of the account numbers and Social Security number redacted;
  - (j) Any business relationship or other conflict of interests between the Protected person and the Guardian or Conservator or any member of the Guardian's or Conservator's family;
  - (k) All actions taken on behalf of the Protected person;
  - (l) Any recommended changes in the plan for the guardianship or conservatorship and a recommendation as to the continued need for guardianship or conservatorship; and
  - (m) Any other requirements that the Tribal Court orders.
- (3) Evaluator. The Tribal Court may appoint an Evaluator or other suitable Person to review a report or plan, interview the Protected person, Guardian, or Conservator, and make any other investigation the Tribal Court directs. Tribal Court may order a Guardian or Conservator to submit the assets of the estate to an appropriate examination to be made in a manner the Tribal Court directs.
- (4) Records of Administration. A Guardian or Conservator must keep records of the administration of the estate. Upon a showing of good cause by any Person, the records of administration of the estate must be made available within 30 days unless the Tribal Court directs otherwise.
- (5) Failure to File a Report. Whenever a Guardian or Conservator fails to file a report or fails to respond to an order to show cause why the Guardian or Conservator should not be held in contempt of Tribal Court, the clerk of the Tribal Court or another Person designated by the Tribal Court may research the whereabouts of the Guardian or Conservator and shall have access to any available data for contact information.
- (6) Contact Information. For purposes of this section, "contact information" means name, residential address, business address, date of birth, date of death, phone number, e-mail address, or other identifying information.

**8-3-116. Compensation and Liability.**

- (1) **Reasonable Compensation for the Guardian.** Subject to Tribal Court approval, a Guardian is entitled to reasonable compensation for services as Guardian and to reimbursement for room, board, clothing, and other appropriate expenses advanced for the benefit of the Protected person subject to guardianship. If a Conservator other than the Guardian or a Person affiliated with the Guardian is appointed for the Protected person, reasonable compensation and reimbursement to the Guardian may be approved and paid by the Conservator without Tribal Court approval.
- (2) **Reasonable Compensation for the Conservator.** Subject to Tribal Court approval, a Conservator is entitled to reasonable compensation for services and reimbursement for appropriate expenses from the property of the Protected person subject to conservatorship.
- (3) **Determining Reasonable Compensation.** In determining reasonable compensation for a Guardian or Conservator, the Tribal Court, or a Conservator in determining reasonable compensation for a Guardian as provided in Subsection (1) shall consider:
  - (a) The necessity and quality of the services provided;
  - (b) The experience, training, professional standing, and skills of the Guardian or Conservator;
  - (c) The difficulty of the services performed, including the degree of skill and care required;
  - (d) The conditions and circumstances under which a service was performed, including whether the service was provided outside regular business hours or under dangerous or extraordinary conditions;
  - (e) The effect of the services on the Protected person subject to guardianship or conservatorship;
  - (f) The extent to which the services provided were or were not consistent with the Guardian's plan or Conservator's plan under Section 8-3-115 of this Title; and
  - (g) The fees customarily paid to a Person that performs a like service in the community.
- (4) A Guardian or Conservator need not use personal funds of the Guardian or Conservator for the expenses of the Protected person.

- (5) If the Protected person subject to guardianship or conservatorship seeks to modify or terminate the guardianship or conservatorship or remove the Guardian or Conservator, the Tribal Court may order compensation to the Guardian or Conservator for time spent opposing modification, termination, or removal only to the extent the Tribal Court determines the opposition was reasonably necessary to protect the interest of the individual subject to guardianship or conservatorship.

**8-3-117. Powers and Responsibilities of Guardians and Conservators.**

- (1) Except as otherwise specifically ordered or limited by the Tribal Court, a Guardian or Conservator must:
  - (a) Make decisions for the Protected person's custody, support, care, education, health, safety, and welfare.
  - (b) Exercise authority only as necessitated by the Protected person's limits and, to the extent possible, must encourage the Protected person to participate in decisions, act on their own behalf, and develop or regain the capacity to manage their own personal affairs.
  - (c) Consider the expressed desires and Protected person's personal values in making decisions.
  - (d) Act in the Protected person's best interest and exercise reasonable care, diligence, and prudence at all times.
  - (e) Become or remain personally acquainted with the Protected person and maintain sufficient contact with the person to know of the capacities, limitations, needs, opportunities, and physical and mental health.
  - (f) Take reasonable care of the Protected person's personal effects and bring proceedings if necessary to protect their property.
  - (g) Expend the Protected person's money for their current support, care, education, health, and welfare.
  - (h) Inform the Tribal Court of any change in the Protected person's dwelling or address, condition, health, welfare, or death.
  - (i) If otherwise consistent with the terms of a Tribal Court order relating to custody of the Protected person, take custody of the Protected person and establish their location, but may only

establish or move their location outside of the Reservation upon Tribal Court's express authorization. The Guardian or Conservator must get the Tribal Court's consent for any change of location for longer than 3 months.

- (j) Stand in a fiduciary relationship to the Protected person.
  - (k) Exercise a high degree of care in managing the estate of the Protected person. Conserve any excess money of the Protected person for future needs; if a separate Conservator has been appointed for the Protected person's estate, the Guardian must pay money to the Conservator, at least quarterly, to be conserved for the Protected person's future needs.
  - (l) Derive no personal benefit of any kind from managing the Protected person's estate.
  - (m) Be liable to the Protected person for any losses to the estate attributable to breach of these duties. Action to enforce such liability may be brought by the Protected person or a subsequently appointed Guardian or Conservator on behalf of the Protected person within 2 years after the appointment of a new Guardian or Conservator or the removal of the basis for the guardianship or conservatorship, whichever is later in time.
- (2) A Guardian or Conservator at any time may petition the Tribal Court for authority to do any act if the Guardian is uncertain. The Tribal Court may grant such authority after notice and a hearing if it appears to be in the Protected person's best interests.
- (3) Subject to the limitations set forth in this ~~Title~~ Code and except as otherwise limited by the Tribal Court, a Guardian or Conservator may:
- (a) Apply for and receive money payable to the Protected person or the Guardian or custodian for the Protected person's support under the terms of any benefits or insurance or any private contract, devise, trust, conservatorship, or custodianship;
  - (b) If otherwise consistent with the terms of any order by a Tribal Court or court of competent jurisdiction relating to custody of the Protected person, take custody of the Protected person and establish a place of custodial dwelling, ~~but may only establish or move the Protected person's place of dwelling outside the Reservation upon express authorization of the Tribal Court;~~

- (c) If a Conservator for the Protected person's estate has not been appointed with existing authority, commence a proceeding, including an administrative proceeding, or take other appropriate action to compel a Person to support the Protected person or to pay money for the Protected person's benefit;
  - (d) Consent to medical or other care, treatment, or service for the Protected person, giving consideration to prior expressions in a medical power of attorney; and
  - (e) If reasonable under all of the circumstances, delegate to the Protected person certain responsibilities for decisions affecting well-being.
- (4) The Tribal Court may specifically authorize or direct the Guardian to consent to the adoption or marriage of the Protected person.
  - (5) A Guardian may not revoke a medical durable power of attorney of which the Protected person is the principal without authorization of the Tribal Court. If a medical durable power of attorney is in effect, absent an order of the Tribal Court to the contrary, a health-care decision of the agent takes precedence over that of a Guardian.
  - (6) A Guardian may ~~not~~ initiate certification of a Protected person to a mental health care institution or facility, when necessary, ~~-except~~ in accordance with the procedure for involuntary treatment and evaluation of a Mental health disorder under this Title. To obtain hospital or institutional care and treatment for a Protected person's Mental health disorder or substance use disorder, a Guardian must proceed as provided under Articles 3 or 4 of this Title.
  - (7) The clerk shall keep a separate permanent file for each guardianship and conservatorship case and shall file all relevant papers, including petitions, notices, orders for hearing, among others. ~~Any duly appointed Guardian or Conservator shall be entitled to receive without charge certified copies of Letters of Guardianship or Conservatorship~~ The clerk shall make available certified copies of letters of guardianship or conservatorship, without charge, to appointed Guardians or Conservators.

**8-3-118. Termination or Change in Appointment of Guardian or Conservator.**

- (1) The Protected person, the Guardian, Conservator, or a Person interested in the welfare of the Protected person may petition for:

- (a) Termination of the guardianship or conservatorship on the ground that a basis for appointment under Section 8-3-108 does not exist or termination would be in the best interest of the Protected person or for other good cause; or
  - (b) Modification of the guardianship on the ground that the extent of protection or assistance granted is not appropriate or for other good cause.
- (2) The appointment of a Guardian or Conservator terminates upon the death, resignation, or removal of the Guardian or Conservator or upon termination of the guardianship or conservatorship.
  - (3) Termination of the appointment of a Guardian or Conservator does not affect the liability of either for previous acts or the obligation to account for money and other assets of the Protected person.
  - (4) A Guardian or Conservator may petition for permission to resign, which may include a request for appointment of a successor Guardian or Conservator. A resignation of a Guardian or Conservator is effective when approved by the Tribal Court.
  - (5) The Tribal Court may appoint an additional or successor Guardian or Conservator at any time, to serve immediately or upon some designated event, ~~and may appoint a successor Guardian or Conservator if a vacancy occurs, or appoint in contemplation of a vacancy, to serve if a vacancy occurs.~~
  - (6) On termination of a conservatorship by reason of the death of the Protected person subject to conservatorship, the Conservator ~~promptly shall~~ must file a final report and petition for discharge on approval by the ~~court~~ Tribal Court of the final report. On approval of the final report, the Conservator shall proceed expeditiously to distribute the conservatorship estate to the individual's estate or as otherwise ordered by the Tribal Court. The Conservator must take reasonable measures necessary to preserve the conservatorship estate until final distribution is made.
  - (7) The Tribal Court shall issue a final order of discharge ~~on the approval~~ by ~~the Tribal Court of~~ approving the final report and ~~satisfaction by~~ after the Conservator ~~satisfying of~~ satisfies any other condition that the Tribal ~~court~~ Court imposed on the Conservator's discharge.

**8-3-119. Death of Protected Persons ~~Subject to Conservatorships.~~**

- (1) **Termination Upon Death.** A protection order terminates upon the death of the Protected person. Upon learning of the Protected person's death, any Person exercising power of Guardian or Conservator shall promptly give notice of death to the Tribal Court and all to other Persons designated to receive notice of subsequent actions in the protection order.
- (2) **Delivery of Will to Tribal Court.** If a Protected person dies, any Person exercising powers of Conservator for a Protected person shall deliver to the Tribal Court for safekeeping any will of the Protected person that is in the Conservator's possession or control, inform the personal representative or devisees named in the will of the delivery, and retain the estate for delivery to the personal representative of the decedent or to another Person entitled to it as may be ordered by the Tribal Court.
- (3) **Expenditures After Death.** After the death of the Protected person, the Conservator shall make no expenditures of conservatorship funds except with Tribal Court authorization other than necessary to preserve the assets of the estate. However, the Conservator may release funds for the funeral or final disposition of the deceased Protected person if necessary to do so under the circumstances
- (4) **Conservator as Personal Representative.** If 30 days after the death of the Protected person subject to conservatorship, no personal representative has been appointed and no application or petition for appointment is before the court, the Conservator may apply to exercise the powers and duties of a personal representative to administer and distribute the decedent's estate. The Conservator shall give notice to a Person nominated as personal representative by a will of the decedent of which the Conservator is aware. The court may grant the application if there is no objection and endorse the letters of office to note that the individual formerly subject to conservatorship is deceased and the Conservator has acquired the powers and duties of a personal representative.
- (5) **Final Report Within 40 Days.** Upon receiving notice of the death of a Protected person, the Conservator shall conclude the administration of the estate by filing a final report and a petition for discharge within 30 days of receiving the notice of death unless otherwise directed by the Tribal Court.

**8-3-120. Conservatorship of Trust Property.** The Tribal Court may appoint a Conservator of trust property using the procedures and safeguards outlined in this Title to convey or consent to conveying an interest in trust property if it appears the price to be paid is reasonable and adequate and that such sale is in the Protected person's best interests. The Tribal Court may enter an order authorizing such action. All actions taken by such Guardian or Conservator consenting to

conveying trust property shall be subject to the approval of the Superintendent of the Bureau of Indian Affairs, Southern Ute Agency, if required by applicable law.

**8-3-121. Guardian Ad Litem.**

- (1) **Court appointment of Guardian Ad Litem.** The Tribal Court at any time may appoint a Guardian ad litem for an At-risk adult or Protected person only if the Tribal Court determines the individual's interests otherwise would not be adequately represented. The Tribal Court may appoint a Guardian ad litem if the Tribal Court determines that there are allegations of:
  - (a) Abuse or endangerment, Neglect, Self-neglect, or failure to protect funds or property; or
  - (b) Inadequate representation by the Guardian or Conservator of the At-risk Adult or Protected person's best interest.
- (2) The Tribal Court shall state on the record the duties of the Guardian ad litem and the reasons for the appointment.
- (3) In a contested hearing, the Guardian ad litem must be an attorney licensed in Tribal Court.
- (4) **Guardian Ad Litem Duties.** It is the duty of the Guardian ad litem to:
  - (a) Attend training before appointment by the Tribal Court or before representing an At-risk adult or Protected person;
  - (b) Conduct an independent investigation of the At-risk adult's or Protected person's best interests;
  - (c) Learn about the At-risk adult or Protected person and their family;
  - (d) Engage with the Protected person during at-least monthly in-person visits if the Protected person is in the local region, or at-least quarterly in-person visits if the Protected person is located more than 150 miles from the Reservation boundaries;
  - (e) Make independent recommendations to the Tribal Court regarding the At-risk adult's or Protected person's living situation and needed services;
  - (f) Participate in Tribal Court proceedings, including presenting written recommendations, calling and examining witnesses as

- necessary, and representing the At-risk adult's or Protected person's best interests as directed by the Tribal Court;
- (g) Monitor the At-risk adult's or Protected person's situation until the Tribal Court releases the case or the appointment is terminated under the provisions of Section 8-3-118(7) below; and
  - (h) Make regular reports to the Tribal Court regarding the At-risk adult's or Protected person's circumstances and as required by Tribal Court order.
- (5) **Representation of Best Interests.** Guardians ad litem represents the At-risk adult's or Protected person's best interests, as defined by the Tribal Court order appointing the Guardian ad litem, which may include health, safety, property, and day-to-day care and may differ from other parties' interests or the At-risk adult or Protected person's wishes. Guardians ad litem shall not interfere with law enforcement, health providers, or service agencies performing lawful or Tribal-Court ordered services involving the At-risk adult or Protected person, but the Guardian ad Litem may report to the Tribal Court any activities that they believe are contrary to the At-risk adult's or Protected person's best interests.
- (6) **Tribal Court Orders Appointing Guardians Ad Litem.** Tribal Court orders appointing Guardians ad litem shall include the following information:
- (a) Any required training before representing the At-risk adult or Protected person;
  - (b) The specific reasons for the appointment;
  - (c) ~~The term of the Guardian ad litem appointment, which may be.~~  
The Tribal Court may set the term as follows:
    - (i) A ~~particular~~ set period of time;
    - (ii) To begin at appointment and expire ~~Thirty~~ 30 days after submission of a Tribal Court ordered report;
    - (iii) Until the Tribal Court determines that the At-risk adult or Protected person no longer needs to be represented by a Guardian ad litem;

- (iv) The Tribal Social Services Department, or another Person is appointed Guardian or Conservator for the At-risk adult or Protected person; or
- (iv) The At-risk adult or Protected person dies;
- ~~(v)~~(d) ~~However, the~~ The Guardian ad litem appointment ~~shall~~ automatically ~~terminate~~ terminates when the guardianship or conservatorship is terminated;
- ~~(d)~~(e) The scope of the Guardians ad litem services, ~~including~~ include:
  - (i) Conducting an independent investigation to determine the At-risk adult's or Protected person's best interests, as defined by the Tribal Court;
  - (ii) Preparing specific written recommendations regarding:
    - (1) Allegations of incapacity or the need for financial protection;
    - (2) Appropriateness of limitations to or termination of a guardianship or conservatorship;
    - (3) Issues raised by an Evaluator's report;
    - (4) Issues raised in a Guardian or Conservator's report;
    - (5) Issues raised by other relevant parties; or
    - (6) Other issues as directed by the Tribal Court;
  - (e) Requirements for participation in Tribal Court proceedings and quarterly reviews;
  - (f) Specific issues that the Guardian ad litem will advocate for and represent the best interests of the At-risk adult or a Protected person in a Tribal Court proceeding;
  - (g) Requirements for preparing and serving reports on the Tribal Court and other parties; and
  - (h) The scope of information and documents that must be made available to the Guardian ad litem and any limitations on the Guardians ad litem use of confidential information.

**8-3-122. Confidentiality of Records.**

- (1) **Guardianship and Conservatorship Records.** Tribal Court guardianship and conservatorship files are confidential and shall remain closed to public access. Documents and information obtained by the Tribal Court are not public records and shall be open for inspection only upon an order of the Tribal Court based on a finding of good cause, except to the extent they would otherwise be open to inspection from the providing entity. Tribal Court guardianship and conservatorship records are available to:
  - (a) The At-risk adult or the Protected person who is the subject of the report or evaluation, without limitation as to use;
  - (b) The petitioner, Evaluator, and ~~petitioner's and At-risk adult's or Protected person's attorneys~~ attorneys for the petitioner, At-risk adult or Protected person, for purposes of the proceeding;
  - (c) Unless the Tribal Court orders otherwise, an agent appointed under a power of attorney for health care or power of attorney for finances ~~At-risk adult~~ for the At-risk adult or Protected person; ~~and~~
  - (d) Tribal Social Services;
  - (e) Guardians ad litem; ~~or~~ and
  - (f) Any other Person by a Tribal Court order upon a showing of good cause to the Tribal Court.
- (2) **~~Mental Health~~ Treatment Records.** The registration and other records of treatment facilities shall remain confidential and fully protected in accordance with applicable law and are privileged to the patient.
- (3) **Tribal Court Records.** Tribal Court records are confidential. Tribal Court records in these proceedings are confidential and are not open for inspection to ~~any but~~ anyone except the following:
  - (a) The At-risk adult; the Protected person, the Guardian, Conservator or custodian; Guardian ad litem;
  - (b) The At-risk adult or Protected person's counsel; Evaluator; Tribal Court personnel directly involved in the handling of the case; and
  - (c) Any other Person, as permitted by an order of the Tribal Court.

- (4) **At-Risk Adult Protection Team.** All At-Risk Adult Protection Team members shall maintain strict confidentiality with regard to all matters referred to the At-Risk Adult Protection Team. A violation of confidentiality ~~shall constitute~~ is cause for termination of membership on the At-Risk Adult Protection Team and may result in a civil fine.

**8-3-123. Emergency Orders.** Tribal Court may issue an emergency order in any proceeding under this Title.

**[Formerly Article 2] Article 4. MENTAL HEALTH SERVICES**

**8-4-101. [Formerly 8-2-101] Voluntary Application for Mental Health Services.**

- (1) **[Formerly 8-2-101(1)]** Nothing in this Article ~~shall~~ limits the right of any ~~Person individual~~ to ~~make~~ voluntarily ~~application~~ apply at any time to Tribal, public, or private agencies for professional ~~purposes for~~ mental health services.
- (2) Voluntary patients are afforded all rights and privileges customarily granted by hospitals to their patients.

**8-4-102. Voluntary Outpatient Mental Health Services for Minors.** Despite any other provision under the Southern Ute Indian Tribal Code, a minor, 12 years of age or older, may consent to receive outpatient mental health from a facility or a licensed professional without parental consent.

**8-4-103. [Formerly 8-2-101(2)] Voluntary Inpatient Mental Health Services for Minors.**

- (1) ~~Notwithstanding~~ Despite any other provision under the Southern Ute Indian Tribal Code, a minor, 15 years of age or older, or any lower age permitted under Colorado law, may alone consent to receive inpatient mental health services ~~to be rendered by a hospital or a person licensed to practice medicine from a facility~~. Parental consent is not required in this instance. However, ~~the professional person rendering mental health services to any minor may advise the parent or legal guardian of the minor of the services given or needed without the consent or knowledge of the minor he~~ minor's mental-health services provider may advise the parent or legal guardian of the services given or needed without the minor's consent or knowledge.
- (2) **[Formerly 8-2-101(3)]** ~~When~~ A parent or legal guardian ~~of a minor makes voluntary application for mental health services on behalf of a minor, the~~

~~minor's consent is not required~~ may apply for voluntary hospitalization for a minor without the minor's consent.

- (3) **[Formerly 8-2-101(4)]** A ~~person~~ hospital ~~may release a minor~~ who is voluntarily hospitalized ~~may be released at his~~ at the patient's request or the request of a parent or guardian ~~the parent or Guardian's request,~~ unless release ~~of such person represents~~ would represent a danger to the community or to ~~himself~~ the patient. If a minor voluntarily admitted subsequently revokes consent after admission, a review of the need for hospitalization must occur immediately.
- (4) A minor who no longer meets the standards for hospitalization specified in Subsection (3) of this Section shall be discharged.
- (5) Treatment by prayer in the practice of any religion that teaches reliance on traditional spiritual means alone for healing shall be considered a form of treatment.
- (6) The medical and legal status of all voluntary patients receiving treatment for Mental health disorders in inpatient or custodial facilities must be reviewed at least every 6 months by the Tribal Health Department, the Tribal Social Services Division, or other involved tribal department providing oversight.
- (7) Voluntary patients shall be afforded all the rights and privileges customarily granted by facilities to their patients.

**8-4-104. [Formerly 8-2-103] Emergency Commitment Procedure.**

- (1) ~~When any person appears to be mentally ill, and as a result of such mental illness appears to be in imminent danger to others or to himself if he remains at liberty, a peace officer upon probable cause and with such assistance which may be required may take the person into protective custody or cause him to be placed in a facility designated or approved by the Social Services Director for seventy-two (72) hour treatment and evaluation.~~ **Emergency Commitments by Intervening Professionals.** When an Intervening professional reasonably believes that an individual appears to have a Mental health disorder and, as a result of the Mental health disorder, appears to be an imminent danger to the themselves or others or appears to be Gravely disabled, the Intervening professional may cause the individual to be taken into protective custody and transported to a facility designated by Tribal Health for an emergency commitment hold. If such a facility is not available, an Intervening professional or a Peace officer may transport the individual to an emergency medical services facility. The Intervening professional may request assistance from a Peace

officer or a secure transportation provider for assistance in detaining and transporting the individual, or assistance from an emergency medical services provider in transporting the individual.

- (2) ~~After taking such a person into custody, the sheriff or peace officer shall file in court a statement setting forth the circumstances under which the person was taken into custody. There shall be no fee for filing such statement.~~ When an individual is taken into custody under this Code but not charged with any crime related to the circumstances giving rise to the emergency protective custody, the Person must not be detained in a jail or other place used for the confinement of individuals charged with or convicted of criminal offenses. Unless otherwise required by law, a Peace officer may transport the Person to an emergency medical services facility or facility designated by Tribal Health even if a warrant has been issued for the Person's arrest if the Peace officer believes it is in the best interest of the individual.
- (3) ~~The court, as soon as possible after filing of the officer's report, shall make a written order:~~ Any Intervening professional applying for an for an emergency commitment for an individual under this Section shall present an application to an emergency medical services facility or a facility designated by Tribal Health Department, in writing, stating the circumstances under which the individual's condition was called to the attention of the Intervening professional and further stating sufficient facts, obtained from the Intervening professional's personal observations or obtained from others whom the Intervening professional reasonably believes to be reliable, to establish that the individual has a mental health disorder and, as a result of the mental health disorder, is an imminent danger to the themselves or others or is Gravely disabled.
- (a) ~~Discharging the person in custody; or~~ The application must indicate when the individual was taken into custody and who brought the individual's condition to the attention of the Intervening professional. A copy of the application must be furnished to the individual being evaluated, and the application must be retained by the Intervening professional.
- ~~(b) — Confining the person for observation, diagnosis or treatment pursuant to Section 5 of this article.~~
- (4) ~~The person to be evaluated, or his legal guardian, shall be provided with a copy of a written statement of the circumstances in which the emergency commitment arose and the exact length of his ordered detention. The facility conducting the treatment and evaluation shall also receive a copy~~

~~of this factual information sheet~~ If an approved facility admits the individual, it may detain for evaluation and treatment up to 72 hours, excluding Saturdays, Sundays, and holidays if evaluation and treatment are not available on those days. Nothing in this Section prohibits an approved facility from involuntarily holding the individual in order to stabilize the individual in accordance with applicable law, or if the treating professional determines that the individual's physical or Mental health disorder impairs the individual's ability to make an informed decision to refuse care and the provider determines that further care is indicated.

- (5) ~~No person may be detained longer than seventy-two (72) hours under this section unless treatment is unavailable on Saturdays, Sundays or holidays, in which case, the period may be extended for that amount of time only~~ If, in the opinion of the professional in charge of the evaluation, the individual can be properly cared for without being detained involuntarily, the individual will be provided the option of receiving services on a voluntary basis.
- (6) Each ~~person~~ individual admitted ~~under this section shall receive an evaluation and treatment to a facility must be evaluated as soon as possible after he is admitted.~~ admission and receive treatment as the condition requires. If a person no longer requires treatment within the seventy-two (72) hour time frame, he shall be released as soon as treatment is no longer effective in his case. The facility must release the Individual before 72 hours, excluding Saturdays, Sundays, and holidays, if evaluation and treatment are not available on those days, if, in the evaluation and treatment provider's opinion, the individual no longer requires evaluation or treatment. Persons who have been detained for 72-hour evaluation and treatment must be released, referred for further care and treatment on a voluntary basis, or certified for further treatment.

**8-4-105. [Formerly 8-2-105] Tribal Court Ordered Evaluation for ~~Mentally III~~ Persons with Mental Health Disorders, Petition Requirements and Procedures.**

- (1) Any Person may petition the Tribal Court alleging there is an individual who appears to have a Mental health disorder and, as a result of it, appears to be a danger to others or to themselves or appears to be Gravely disabled and request an evaluation of the individual's condition.
- (2) **[Formerly 8-2-105(3)]** The petition for ~~court~~ a Tribal Court-ordered evaluation ~~shall~~ must contain the following:
- (a) ~~The name and address of the petitioner and his interest in the case~~ Petitioner's name, address, and interest in the case;

- (b) ~~The name of the person for whom the evaluation is sought who shall be designated as the respondent and if known to the petitioner, the name, address, age, sex, mental status and the occupation of the respondent~~ Respondent's name, and if known, the address, age, sex, marital status, occupation, and any animals or dependent children in Respondent's care;
  - (c) ~~Allegations of fact indicating that the respondent may be mentally ill and as a result may be of danger to others or to himself or unable to care for himself and a showing that reasonable grounds warrant such an evaluation~~ Allegations that the Respondent may have a mental disorder and, as a result of the disorder, may be a danger to themselves or others or be Gravely disabled, showing reasonable grounds to warrant an evaluation;
  - (d) The name and address of every ~~person~~ Person known or believed by the petitioner to be legally responsible for the care, support, and maintenance of the ~~respondent if such information is~~ Respondent, if available; and
  - (e) If known, the name, address, and telephone number of ~~an the~~ attorney, if any, who has most recently represented the ~~respondent~~. ~~If there is no attorney, there shall be a statement as to whether or not the respondent meets the criteria established by the Legal Aid Agency operating on the Southern Ute Indian reservation,~~ Respondent and a statement as to whether the Respondent meets the criteria established by the Tribe for court-appointed counsel.
- (3) The petition shall be served upon the Respondent and anyone legally responsible for the Respondent's care.
- (4) ~~Upon receipt of a petition satisfying the above requirements, the court shall designate a facility approved by the Director of the Southern Ute Indian Social Services or a professional person to provide screening to determine whether there is probable cause to believe the allegations of the petition. The respondent shall be given written notice that a petition has been filed for an order for seventy-two (72) hour evaluation and the respondent's cooperation shall be solicited if possible~~ Upon receiving a petition meeting the requirements above, the Tribal Court shall designate a facility approved by Tribal Health or an Intervening professional, to screen the Respondent to determine whether there is probable cause to believe the allegations in the petition, unless a screening has been completed and a report has been included with the petition.

- (5) If necessary, the Tribal Court may order a Peace officer to transport the Respondent to a facility.
- (6) ~~[Formerly 8-2-105(5)] Following the initial screening, a facility or professional person designated by the court shall file his report with the court. The report shall include a recommendation as to whether there is probable cause to believe that the respondent is mentally ill and as a result of this mental illness is a danger to others or to himself or unable to care for himself and whether the respondent will voluntarily receive evaluation or treatment. The screening report shall be confidential and shall be furnished to respondent or his attorney or personal representative upon request~~ Following a screening described in subsection (4) of this Section, the facility or an Intervening professional, designated by the Tribal Court must file a report with the Tribal Court that recommends whether there is probable cause to believe the Respondent has a Mental health disorder, and as a result of it, is a danger to themselves or others, or is Gravely disabled, and whether the Respondent will voluntarily receive evaluation or treatment. The screening report is confidential and must be furnished to the Respondent and the Respondent's attorney or personal representative.
- (7) ~~[Formerly 8-2-105(6)] When it appears pursuant to the initial screening that probable cause exists to believe that respondent is mentally ill and as a result is a danger to others or to himself or is unable to care for himself, and that efforts have been made to secure the cooperation of the respondent who has refused or failed or been unable to accept evaluation voluntarily, the court shall issue an order for further evaluation and if necessary authorize a peace officer or court appointed professional person to take respondent into custody and place him in a facility designated by the Department of Social Services for an additional seventy two (72) hour treatment and evaluation period. At the time of taking respondent into custody, a copy of the petition and the order for evaluation shall be given to respondent; and his attorney or legal guardian if the same is known or to anyone else thereafter designated by the respondent~~ When it appears by petition and screening, that probable cause exists that a Respondent has a Mental health disorder and, as a result of it, is a danger to themselves or others, or is Gravely disabled, and that efforts have been made to secure the cooperation of the Respondent but the Respondent has refused or failed to accept evaluation voluntarily, the Tribal Court must issue an order for evaluation and treatment authorizing a Peace officer or a secure transportation provider to take the Respondent into protective custody and placing in a facility approved by Tribal Health for evaluation and treatment not to exceed 72 hours, excluding Saturdays, Sundays, and holidays, if evaluation and treatment are not available on those days.

- (8) **[Similar to 8-2-105(6)]** At the time of taking the Respondent into protective custody, a copy of the petition and the order for evaluation must be given to the Respondent and promptly thereafter to anyone else designated by the Respondent, Tribal Health, and to the Person in charge of the designated facility. If the Respondent refuses to accept a copy of the petition and the order for evaluation, such refusal must be documented in the petition and the order for evaluation.
- (9) **[Formerly 8-2-105(8)]** ~~If the respondent is taken into custody for evaluation treatment involuntarily, the person taking him into custody shall secure his property to the best of his ability~~ At the time the Respondent is taken into protective custody for evaluation or within a reasonable time thereafter, unless a responsible relative is in possession of the Respondent's personal property, the Person or agency with physical custody of the Respondent must take reasonable precautions to preserve and safeguard the personal property in the Respondent's possession or on the premises.
- (10) **[Formerly 8-2-105(7)]** ~~Respondent shall be evaluated as promptly as possible and shall not be detained longer than seventy two (72) hours unless treatment is unavailable on Saturdays, Sundays or holidays in which case treatment shall be extended by those times only.~~ The facility must evaluate the Respondent as promptly as possible and release within 72 hours, excluding Saturdays, Sundays, and holidays if evaluation and treatment are not available on those days, or refer for further care and treatment on a voluntary basis, or certify the Respondent for short-term involuntary treatment.
- (11) If a Respondent is evaluated at an emergency medical services facility and the evaluating professional determines that the Respondent continues to meet the criteria for an emergency mental health commitment pursuant to Section, the emergency medical services facility shall immediately notify Tribal Health if the facility cannot locate appropriate placement. Once notified, Tribal Health shall support the emergency medical services facility in locating an appropriate placement option on an inpatient or outpatient basis, whichever is clinically appropriate.
- (12) If an appropriate placement option cannot be located under this Section and the Respondent continues to meet the criteria for an emergency commitment under this Section and the Respondent has been medically stabilized, the emergency medical services facility may place the Respondent under a subsequent emergency commitment hold.
- (a) If the facility places the Respondent under a subsequent emergency commitment hold, the facility must immediately notify Tribal

Health, the Respondent's designated contact person, and the Tribal Court, and the Tribal Court shall immediately appoint an attorney to represent the Respondent.

- (b) The facility may notify the Tribal Court where the Respondent resides by mail. Once the Tribal Court is notified, the emergency medical services facility is not required to take any further action to provide the Respondent with an attorney unless specified in this Section.
  - (c) The emergency medical services facility shall notify Tribal Health after each emergency commitment hold is placed. Tribal Health is responsible for actively assisting the facility in locating appropriate placement for the Respondent. If the Respondent has been recently transferred from an emergency medical services facility to a facility designated by Tribal Health and the designated facility is able to demonstrate that the facility is unable to complete the evaluation before the initial emergency commitment hold is set to expire, the designated facility may place the Respondent under a subsequent emergency commitment hold and shall immediately notify Tribal Health and the Respondent's Lay person.
- (13) All emergency medical treatment facilities, hospitals, clinics, or other treatment facilities shall follow all applicable laws, rules, regulations, and policies, including but not limited to, procedures related to screenings, evaluations, Respondent's rights, medical records, confidentiality, discharge and discharge procedures, medication, notifications to Respondents and Respondent providers, and follow-up appointments and protocols.
- (14) Any Person that files a malicious or false petition under this Article for an evaluation of a Respondent may be subject to civil or criminal penalties under applicable laws.

**8-4-106. Emergency Transportation and Application For Emergency Commitment by Peace Officers and Emergency Medical Services Providers.**

- (1) When Peace officers or emergency medical services providers have probable cause to believe an individual is experiencing a behavioral health crisis or is Gravely disabled and, as a result, without professional intervention the individual may be a danger to the themselves or others, then the Peace officer or emergency medical services provider may take the individual into protective custody and transport the individual to an outpatient mental health facility, a facility, or other clinically appropriate

facility approved by Tribal Health. If such a service is not available, the individual may be taken to an emergency medical services facility.

- (2) An individual may not be transported pursuant to this subsection if an Intervening professional (other than a Peace officer) has assessed the individual during the same emergency event and determined the individual does not meet the criteria for an emergency commitment hold under this Section.
- (3) If Tribal Health staff is available and able to see the individual in a timely manner, the Peace officer or emergency medical services provider must arrange for the individual to be seen by Tribal Health staff before involuntarily transporting an individual.
- (4) The Peace officer or emergency medical services provider shall submit an application, in writing, to the facility when transporting an individual against their will under this Section. The written application must state the following:
  - (a) The circumstances under which the individual's condition was called to the attention of the Peace officer or emergency medical services provider;
  - (b) A statement of sufficient facts obtained from personal observations or obtained from others whom the Peace officer or emergency medical services provider reasonably believes to be reliable to establish that the individual is experiencing a behavioral health crisis or is Gravely disabled and, as a result, it is believed that without professional intervention the individual may be a danger to themselves or others; and
  - (c) The name of the individual and the time the individual was transported.
  - (d) A copy of the application must be furnished to the individual being transported.
- (5) Once the individual is presented to an outpatient mental health facility or facility approved by Tribal Health, an Intervening professional shall screen the individual immediately. If an Intervening professional is not immediately available, the individual must be screened within eight hours after arrival at the facility to determine if the individual meets criteria for an emergency commitment hold pursuant to this Article. Once the screening is complete and if the individual meets the criteria, the

Intervening professional shall first pursue voluntary treatment and evaluation. If the individual refuses or the Intervening professional has reasonable grounds to believe the individual will not remain voluntarily, the Intervening professional may place the person under an emergency commitment hold under Section 8-4-104.

- (6) If an individual is detained under this Section is transported to an emergency medical services facility, the involuntary transportation hold expires upon the facility receiving the individual for screening by an Intervening professional.
- (7) **[Similar to 8-2-111]** An individual detained under this Section has the following rights while being detained, which must be explained to the individual before being transported to a receiving facility:
- (a) To not be detained under an emergency transportation hold under this Section for longer than fourteen hours, to not be transported for longer than six hours, and to receive a screening within eight hours after being presented to the receiving facility. This subsection does not prohibit a facility from holding the individual as authorized by applicable Tribal, state, or federal law, including the federal “Emergency Medical Treatment and Labor Act”, 42 U.S.C. sec. 1395dd, or if the treating professional determines that the individual's physical or Mental health disorder impairs the individual’s ability to make an informed decision to refuse care and the provider determines that further care is indicated;
- (b) To request a phone call to an interested party prior to being transported. If the Peace officer or emergency medical services provider believes access to a phone poses a physical danger to the individual or someone else, the receiving facility shall make the call on the individual's behalf immediately upon arrival at the receiving facility;
- (c) To wear the individual's own clothes and keep and use personal possessions that the individual had in their possession at the time of detainment. A facility may temporarily restrict an individual’s access to personal clothing or personal possessions until a safety assessment is completed. If the facility restricts an individual’s access to personal clothing or personal possessions, the facility shall have a discussion with the individual about why the individual's personal clothing or personal possessions are being restricted. A licensed medical professional or a licensed behavioral health professional shall conduct a safety assessment as soon as possible. The licensed professional shall document in the

individual's medical record the specific reasons why it is not safe for the person to possess the individual's personal clothing or personal possessions;

- (d) To keep and use the individual's cell phone, unless access to the cell phone causes the individual to destabilize or creates a danger to the individual or others, as determined by a provider, facility staff member, or security personnel involved in the person's care;
- (e) To have appropriate access to adequate water and food, and to have the individual's nutritional needs met in a manner that is consistent with recognized dietary practices, to the extent reasonably possible at the receiving facility;
- (f) To be treated fairly, with respect and recognition of the individual's dignity and individuality; and
- (g) To file a grievance with the Tribal Health Department, Southern Ute Police Department or other Southern Ute law enforcement agencies, or applicable agencies governing the facilities, clinics, treatment facilities, or emergency medical facilities established to provide care.
- (h) An individual's rights under this section may only be denied if access to the item, program, or service causes the individual to destabilize or creates a danger to themselves or others, as determined by a licensed provider involved in the individual's care or transportation. Denial of any right must be entered into the individual's treatment record or the facilities approved form. Information pertaining to a denial of rights contained in the individual's treatment record must be made available, upon request, to the individual, the individual's attorney, or the individual's Lay person.

**8-4-107. [Formerly 8-2-106] Certification for Involuntary Short-Term Treatment.**

- (1) ~~A person detained for seventy-two (72) hours under the provisions of this code who has been evaluated may be certified for not more than three months of treatment under the following conditions~~ An individual detained and evaluated for up to 72 hours may be certified for up to 3 months of treatment under the following conditions:
  - (a) ~~The professional staff of the agency or facility providing the seventy-two (72) hour treatment and evaluation has analyzed the person's condition and has found the person mentally ill and as a~~

- ~~result of the mental illness is of danger to himself or unable to care for himself~~ The facility providing the 72-hour treatment and evaluation has determined the individual has a Mental health disorder and, as a result of the disorder, is a danger to themselves or others or is Gravely disabled;
- (b) ~~The person has been advised of the availability of voluntary treatment, but refuses to participate or reasonable grounds exist to believe that he will not remain in a voluntary treatment program~~ The individual refuses voluntary treatment or likely will not voluntarily remain in a treatment program. The individual's acceptance of voluntary treatment does not prevent certification;
- (c) ~~The facility which will provide short term treatment has been approved by the Social Services Director of the Southern Ute Indian Tribe~~ Tribal Health has approved the designated facility; and
- (d) The individual, the individual's legal guardian, and the individual's Lay person, if applicable, have been advised of the individual's right to an attorney and to contest the certification for short-term treatment.
- (2) ~~Notice of certification must be signed by a physician on the staff of the evaluating facility. The certification shall be filed with the court within five days of the date of certification~~ A Professional person on the staff of the evaluating facility must sign a certification stating facts sufficient to establish grounds to believe the individual has a Mental health disorder and, from the disorder, is a danger to themselves or others or is Gravely disabled.
- (a) The certification must be filed with the Tribal Court within 48 hours, excluding weekends and holidays, of the date of certification. Upon certifying the individual, the treatment facility will have custody of the individual.
- (b) The certification must provide recommendations if the certification should take place on an inpatient or outpatient basis.
- (3) ~~Copies of the certification shall be personally delivered to the respondent mailed to his attorney and the Southern Ute Indian Department of Social Services. A copy shall be kept by the evaluation facility as part of the person's record. Upon request of the respondent, certification notice shall be given to any other person he shall so designate. In addition to the copy of the certification, the respondent shall be given a written notice that a~~

~~hearing on certification may be held before the court or a jury upon written request directed to the court.~~ Within two business days of the filing of the certification, copies of the certification shall be personally delivered to the individual and served upon the individual's attorney, if any, and the Tribal Health Department by the clerk of the Tribal Court. Upon the individual's request, a copy of the certification will be given to any other designated Person. The certification must include a notification that the individual may challenge the certification at a Tribal Court hearing by submitting a written request sent to the Tribal Court. The treatment facility must maintain a copy of the certification as part of the individual's record.

- (4) Upon certification of the ~~respondent~~ individual, the facility designated for short-term treatment ~~shall have~~ has custody of the ~~respondent~~ individual.
- (5) **[Similar to 8-2-104]** Whenever a certification for treatment is filed with the Tribal Court, the Tribal Court shall ~~forthwith~~ immediately appoint ~~an a~~ Court-appointed attorney ~~or lay counsel~~ to represent the ~~respondent as guardian ad litem~~ individual. ~~The guardian ad litem may be one of respondent's choosing or if not, may be appointed on its own motion by the court. The guardian ad litem representing the respondent shall be provided with a copy of the certification immediately upon his appointment. The individual has the right to an attorney for all proceedings conducted pursuant to this Section, including any appeals. The petitioner must provide the individual's attorney with a copy of the certification immediately upon appointment. The individual may only waive the right to an attorney when the individual makes a knowing and intelligent waiver in front of the court.~~
- (6) ~~Respondent for treatment under this section or his guardian ad litem may at any time file a written request that certification for treatment, or treatment, be reviewed by the court or that the treatment be on an out-patient basis. If review is requested the court shall hear the matter within ten (10) days after the request and the court shall give notice to the respondent and his attorney and the certifying and treating facility of the time and place thereof. The hearing shall be held in accordance with this section. At the conclusion of the hearing the court may enter or confirm the certification for three month treatment, discharge the respondent, or enter any other appropriate order. Whenever it appears to the Tribal Court, by reason of a report by the treating professional person or Tribal Health or any other report satisfactory to the Tribal Court, that an individual detained for evaluation and treatment or certified for short-term treatment should be transferred to another facility for treatment and the safety of the respondent or the public requires that the individual be transported by a secure transportation provider or a law enforcement agency, the Tribal~~

Court may issue an order directing Peace officers or a secure transportation provider to deliver the Respondent to the designated facility.

- (7) ~~Records and papers in proceedings shall be kept separately in the clerk's office and five (5) days after release of respondent shall be sealed, not to be opened except under court order for good cause shown~~ under this Section must be maintained separately by the Tribal Court clerks. Upon the release of any individual in under this Article, the facility shall notify the Tribal Court clerk within five days after the release, and the Tribal Court clerk shall immediately seal the record in the case and omit the name of the individual from the index of cases in Tribal Court until and unless the individual becomes subject to an order of certification for long-term care and treatment under this Article or until and unless the Tribal Court orders the records opened for good cause shown. In the event a petition is filed for long-term care under this Article, the certification record may be opened and become a part of the record in the long-term care and treatment case and the name of the Respondent indexed.
- (8) An individual certified for short-term treatment may be discharged upon the signature of the treating medical professional and the medical director of the facility. An individual certified for short-term treatment on an outpatient basis may be discharged upon the signature of the approved professional person overseeing the individual's treatment, and the Professional person shall notify Tribal Health prior to the discharge. A facility or program shall make the individual's discharge instructions available to the individual, the individual's attorney, and the individual's legal guardian, if applicable, within 7 days after discharge, if requested. A facility or program that is transferring an individual to a different treatment facility or to an outpatient provider shall provide all treatment records to the facility or provider accepting the individual at least twenty-four hours prior to the transfer.

**8-4-108. [Similar to 8-2-106(7)] Tribal Court Review.**

- (1) The individual or the individual's attorney or Guardian ad litem, may at any time file a written request that the Tribal Court review the certification for treatment or the petition for involuntary commitment to treatment.
- (2) If review is requested, the Tribal Court must hear the matter within 10 business days after the request, and the Tribal Court must give notice to the individual, the individual's attorney, and the certifying and treating facility of the hearing's time and place.

- (3) The hearing must be held in accordance with the hearing procedures in Section 8-4-108. At the conclusion of the hearing, the Tribal Court may enter an order confirming the certification for up to 3 months treatment, discharge the individual, or enter any other appropriate order.

**8-4-109. [Formerly 8-2-107] Hearing Procedures.**

- (1) ~~Hearings before the court under this section shall be conducted in the same manner as other civil proceedings before such court. The burden of proof shall be upon the person or facility seeking to detain the respondent to show that there is probable cause that respondent is mentally ill and that as a result of such illness he is a danger to himself or to others or is incapable of caring for himself~~ At the first Tribal Court appearance, the Tribal Court must advise the individual of the following rights:
  - (a) The right to have an attorney, including a Tribal Court-appointed attorney if indigent;
  - (b) The right to a professional examination;
  - (c) The right to attend the hearing in-person, by teleconference or by telephone;
  - (d) The right to present evidence, testify, call witnesses and ask questions of all witnesses; and
  - (e) The right to challenge the detention by filing for a writ of habeas corpus.
  - (f) The right to appeal an order of the Tribal Court at the conclusion of any hearing when the Respondent is subject to an order for short-term treatment or long-term treatment care.
- (2) ~~Service of any notification, information or request for information, review or redetermination shall be accomplished by certified mail, return receipt requested, or in any manner provided by the Southern Ute Indian Tribe Rules of Civil Procedure and shall be sufficient for all purposes of this article~~ Hearings before the Tribal Court under this Section will be conducted as closed hearings in accordance with the Civil Procedure Code. The burden of proof is on the Person or facility seeking to commit or certify the individual to show, by clear and convincing evidence, that the individual has a Mental health disorder and, as a result of the disorder, is a danger to themselves or others, or is Gravely disabled. The Tribal Court, after consultation with individual's attorney, may appoint a professional to examine the individual and to testify about the

examination's results at the Tribal Court hearing. The appointed professional must act solely in an advisory capacity, and no presumption will attach to the findings.

- (3) ~~The court may appoint a professional person to examine the respondent for whom treatment is sought and to testify at the hearing before the court as to the results of his examination~~ All adversarial proceedings under this Article shall be conducted by an attorney acting for the Tribe.
- (4) ~~Every respondent subject to an order for treatment shall be advised of his right to have an attorney represent him and a right to file a habeas corpus proceeding in the federal court~~ A Tribal Court-appointed Guardian may intervene in the proceedings to present evidence and the views of the Guardian concerning the case.
- (5) ~~No person who has received evaluation or treatment under any provisions of this article shall be discriminated against because of such status~~ Tribal Court retains continuing jurisdiction over an individual receiving treatment, whether on or off the Reservation, to determine the need for continued treatment under this Title.
- (6) ~~All contracts, agreements and credits with or to any insane person shall be absolutely void as against such person, his heirs, or personal representative, but persons making such contracts or agreements with any insane person shall be bound thereby at the election of his conservators. Any property acquired from an insane person, if the other party knows of his mental disability, shall be restored to such insane person, his conservators, heirs, executors or administrators~~ A Lay person may submit an affidavit to the Tribal Court concerning the Lay person's relationship to the individual, how long the Lay person has known the individual, the Lay person's physical address, and the Lay person's views concerning the appropriate disposition of the individual 's case.

**8-4-110. [Formerly 8-2-108] Extension of ~~Term~~ Treatment.** If the professional in charge of the evaluation and treatment believes a period longer than ~~three~~ 3 months is necessary for ~~treatment of the respondent, he shall file with the court an extended certification request. Respondent shall be entitled to a hearing on the extended certification request under the same conditions as in the original certification. The attorney initially representing the respondent shall continue to represent that person unless the court appoints another attorney. In no case shall extended treatment occur longer than six (6) months without judicial review~~ the individual's treatment, then the professional in charge must file an extended certification request with the Tribal Court before the end of the initial certification period. The individual is entitled to a hearing on the extended certification

request, as in the original certification. Extended treatment may not exceed 3 months. The attorney initially representing the individual shall continue to represent the individual, unless the Tribal Court appoints another attorney.

**8-4-111. Certification for Involuntary Long-Term Treatment.**

- (1) Whenever an individual has received an extended certification for treatment pursuant Section 8-4-110, the Professional person in charge of the certification for short-term treatment or Tribal Health may file a petition with Tribal Court 30 days prior to the expiration date of the extended certification for long-term care and treatment of the individual under the following conditions:

  - (a) The professional staff of the agency or facility providing short-term treatment has analyzed the individual 's condition and has found that the individual has a Mental health disorder and, as a result of the Mental health disorder, is a danger to themselves or others or is Gravely disabled;
  - (b) The individual has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the individual will not remain in a voluntary treatment program, the individual 's acceptance of voluntary treatment does not prohibit an order pursuant to this Section; and
  - (c) The facility that will provide long-term care and treatment has been approved by Tribal Health to provide the care and treatment.
- (2) Every petition for long-term care and treatment must include a request for a hearing before the Tribal Court prior to the expiration of six months after the date of original certification and provide a recommendation as to whether the certification for long-term care and treatment should take place on an inpatient or outpatient basis. A copy of the petition must be delivered personally to the individual for whom long-term care and treatment is sought and electronically delivered to the individual 's attorney of record simultaneously with the filing.
- (3) Within 10 days after receipt of the petition, the individual or the individual's attorney may request a hearing before the Tribal Court filing a written request with the Tribal Court.
- (4) The Tribal Court shall determine whether the conditions of subsection (1) of this Section are met and whether the individual has a Mental health disorder and, as a result of the Mental health disorder, is a danger to the themselves or others or is Gravely disabled. The Tribal Court shall issue

an order of long-term care and treatment for a term not to exceed 6 months, discharge the individual for whom long-term care and treatment was sought, or enter any other appropriate order.

(a) An order for long-term care and treatment must grant custody of the individual to Tribal Health for placement with an agency or facility designated by the Tribal Health Department to provide long-term care and treatment. The Tribal Health Department may delegate the physical custody of the individual to a facility approved by Tribal Health and the requirement for the provision of services and care coordination.

(b) When a petition contains a request that a specific legal disability be imposed or that a specific legal right be deprived, the Tribal Court may order the disability imposed or the right deprived if the Tribal Court determines that the individual has a Mental health disorder or is Gravely disabled and that, as a result, the individual is unable to competently exercise the specific legal right or perform the function for which the disability is sought to be imposed. Any interested person may ask leave of the Tribal Court to intervene as a co-petitioner for the purpose of seeking the imposition of a legal disability or the deprivation of a legal right.

(5) An original order of long-term care and treatment or any extension of such order expires on the date specified, unless further extended as provided in this subsection.

(a) If an extension is being sought, the Professional person in charge of the evaluation and treatment shall certify to the Tribal Court at least 30 days prior to the expiration date of the order in force that an extension of the order is necessary for the care and treatment of the individual subject to the order in force, and a copy of the certification must be simultaneously delivered to the individual and electronically delivered to the individual 's attorney of record.

(b) At least 20 days before the expiration of the order, the Tribal Court shall give written notice to the individual and the individual 's attorney of record that a hearing upon the extension may be had before the Tribal Court upon a written request to the Tribal Court within 10 business days after receipt of the notice.

(c) If a hearing is not requested by the individual within such time, the Tribal Court may proceed ex parte.

- (d) If a hearing is timely requested, the hearing must be held before the expiration date of the order in force.
  - (e) If the Tribal Court finds that the conditions of subsection (1) of this Section continue to be met and that the individual has a Mental health disorder and, as a result of the Mental health disorder, is a danger to themselves or others or is Gravely disabled, the Tribal Court shall issue an extension of the order.
  - (f) Any extension must not exceed 6 months, but there may be as many extensions as the Tribal Court orders pursuant to this Section.
- (6) An individual certified for long-term care and treatment may be discharged from the facility upon the signature of the treating professional person and medical director of the facility, and the facility shall notify the Tribal Health Department prior to the individual 's discharge.
- (a) The facility shall make the individual 's discharge instructions available to the individual, the individual 's attorney, the individual's Lay person, and the individual 's legal guardian, if applicable, within one week after discharge, if requested.
  - (b) A facility that is transferring a individual to a different facility or to an outpatient program shall provide all treatment records to the facility or provider accepting the individual at least 24 hours prior to the transfer.

**8-4-112. Certification For Outpatient Treatment.**

- (1) Any individual certified under this Article may be provided treatment on an outpatient basis. The outpatient treatment provider shall develop a treatment plan for the individual receiving treatment on an outpatient basis with the goal of the individual finding and sustaining recovery. The treatment plan must include measures to keep the individual or others safe, as informed by the individual 's need for certification. The treatment plan may include, but is not limited to:
- (a) Intensive case management;
  - (b) Assertive community treatment;
  - (c) Peer recovery services;
  - (d) Individual or group therapy;

- (e) Day or partial-day programming activities;
  - (f) Intensive outpatient programs;
  - (g) Educational and vocational training or activities; and
  - (h) Housing and transportation assistance.
- (2) The individual, the individual's legal guardian, or the individual's Lay person, or any party at any Tribal Court hearing may contest an individual's treatment regimen, including Tribal Court-ordered medications, at any Tribal Court hearing related to the individual's certification for treatment.
- (3) The facility responsible for providing services to an individual on a certification on an outpatient basis shall proactively reach out to the individual to engage the individual in treatment. If the individual refuses treatment or Tribal Court-ordered medication and is decompensating psychiatrically, the Tribal Court may order a Peace officer or secure transportation provider to transport the individual to an appropriate, least restrictive designated facility in collaboration with Tribal Health and the provider holding the certification. The individual does not need to be imminently dangerous to the individual's self or others for the provider to request, and the Tribal Court to order, transportation to a facility for the individual to receive treatment and Tribal Court-ordered medications. The facility responsible for providing services to an individual on a certification on an outpatient basis shall provide the Tribal Court information on the facility's proactive outreach to the individual and the Professional person's and psychiatric advanced practice registered nurse's basis for medical opinion.
- (4) If an individual is placed in a more restrictive setting, the individual has the right to judicial review within 10 days after filing a written request.
- (5) In addition to any other limitation on liability, a Person providing care to an individual placed on short-term or long-term certification on an outpatient basis is only liable for harm subsequently caused by or to an individual who:
- (a) Has been terminated from certification despite meeting statutory criteria for certification under this Article; or

- (b) Provided services to the individual not within the scope of the Person's professional license, or was reckless or grossly negligent in providing services.
- (c) A provider is not liable if an individual's certification is terminated, despite meeting criteria for certification, if the provider is unable to locate the Respondent despite proactive and reasonable outreach.
- (6) An individual subject to a short-term or long-term certification on an outpatient basis has the following rights, in addition to those listed in this Article:

  - (a) To request a change to voluntary status. A change to voluntary status may be denied by the supervising professional person or advanced practice registered nurse with training in psychiatric nursing responsible for the individual s treatment if the Professional person or advanced practice registered nurse with training in psychiatric nursing determines reasonable grounds exist to believe that the individual will not remain in a voluntary treatment program.
  - (b) To be treated fairly, with respect and recognition of the individual's dignity and individuality, by all employees of the treatment facility with whom the respondent comes in contact;
  - (c) To appropriate treatment, which must be administered skillfully, safely, and humanely. An individual shall receive treatment suited to the respondent's needs that must be determined in collaboration with the respondent.
  - (d) To not be discriminated against on the basis of age, race, ethnicity, religion, culture, spoken language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity, or gender expression;
  - (e) To retain and consult with an attorney at any time;
  - (f) Within 48 hours after the Respondent's request, to see and receive the services of a patient representative, including a peer specialist, who has no direct or indirect clinical, administrative, or financial responsibility for the respondent;
  - (g) To have the individual 's behavioral health orders for scope of treatment or psychiatric advance directive reviewed and considered by the Tribal Court as the preferred treatment option for

involuntary administration of medications unless, by clear and convincing evidence, the individual's directive does not qualify as effective participation in behavioral health decision-making;

- (h) To have the individual's information and records disclosed to adult family members and a Lay person under applicable law;
- (i) To have access to a representative within the facility who provides assistance to file a grievance; and
- (j) To have the right to file a motion with the Tribal Court at any time to contest the certification.

**8-4-113. [Formerly 8-2-109] Termination of Treatment and Escape.**

- ~~(1) Certification for treatment shall terminate as soon as the professional person in charge of treatment of the respondent determines that respondent has received sufficient benefits from such treatment for him to leave. Whenever a certification has been terminated, the professional person in care of the facility providing treatment shall notify the court in writing within five (5) days of such determination.~~ An original or extended certification for short-term treatment, certification for extended treatment, or certification for long-term treatment, terminates as soon as, in the opinion of the professional in charge of the individual's treatment, the individual has received sufficient benefit from such treatment for treatment to end. Whenever a certification for extended treatment has been terminated, the professional in charge of providing treatment must notify the Tribal Court in writing within 5 business days of such determination. Such professional may also prescribe out-patient care or any other similar mode of treatment before termination.
- (2) An individual who leaves the facility before termination of treatment or extended treatment may be returned to the facility by Tribal Court order without a hearing or by the director of such facility without a Tribal Court order. After termination of treatment, the individual may be returned to the facility only in accordance with the provisions of this Article.

**8-4-114. Treatment Facilities and Medical/Psychiatric Care.**

- (1) Individualized Treatment and Care. A facility may administer medications, including by involuntary administration of medication, or provide treatment to individuals in accordance with the law of the jurisdiction where the facility is located.

- (2) ~~[Formerly 8-2-110(1)]~~ Any ~~person~~ Person receiving evaluation or treatment under ~~the provisions of this section is entitled to medical and psychiatric care and treatment. Records of the professional person in charge of treatment shall be made available to respondent or his attorney upon request~~ this Article is entitled to:
- (a) Medical and psychiatric care and treatment suited to meet individual needs;
  - (b) Delivered in such a way as to keep the Person in the least restrictive environment; and
  - (c) Delivered in such a way as to include the opportunity for family members' participation in the program of care and treatment when appropriate.
- (3) Any individual receiving an evaluation or treatment under this Article may petition the Tribal Court for release to a less restrictive setting within or without a treating facility or release from a treating facility when adequate medical and psychiatric care and treatment is not administered.
- (4) Nothing in this Section creates any right with respect to any Person other than the individual receiving evaluation, care, or treatment.
- (5) Treatment by prayer in the practice of any religion that teaches reliance on traditional spiritual means alone for healing shall be considered a form of treatment.

#### 8-4-115. Confidentiality of Records.

- (1) Registration information and other records of treatment facilities are confidential and may only be disclosed in accordance with the applicable laws where the facility is located.
- (2) Information and records may be disclosed only to a court within the jurisdiction, as necessary to administer this Article and to Persons authorized by a court order after notice and opportunity for hearing to the Person to whom the record or information pertains and the custodian of the record or information.
- (3) ~~[Formerly and similar to 8-2-110(1)]~~ ~~Any person receiving evaluation or treatment under the provisions of this section is entitled to medical and psychiatric care and treatment. Records of the professional person in charge of treatment shall be made available to respondent or his attorney upon request~~ Upon written request, treatment records must be made

available to the individual treated, their Guardian, their attorney, or personal physician. Such records are permanent records and are retained in accordance with applicable law.

- (4) Nothing in this Article shall be construed as rendering privileged or confidential any information, except written medical records and information that is privileged under applicable law, concerning observed behavior that constitutes a criminal offense committed at a facility providing services under this Article or any criminal offense committed against any Person while performing or receiving services under this Article.
- (5) The provisions of this Section shall not apply to physicians or psychologists called to testify concerning a criminal defendant's mental condition under applicable law.
- (6) Information and records may be disclosed to attorneys representing parties involved in actions under this Article.

**8-4-116. Request for Release of Information.** Any request for information about the location and facts of admission of an individual with a Mental health disorder by a family member or other Person is governed by the applicable laws where the facility is located.

**8-4-117. [Formerly 8-2-112] Charges for Patients.** The Tribal Court is not responsible for the costs of the care, support, maintenance and treatment of the Person. The Person may be responsible for the costs of the care, support, maintenance, and treatment provided under this Article.

- ~~(1) — Liability. When any person is admitted, committed, or transferred to any public institution either voluntarily or under court commitment, such person, his spouse or his parents, if he is a minor, shall be liable for the costs of the care, support, maintenance and treatment of such person to the extent and in the manner provided in this article.~~
- ~~(2) — Extent of Liability. There shall be assessed against the said patient, spouse or parents made liable under this section, or any of them, such part of the costs as they are respectively able to pay but they shall not be assessed against such persons in the aggregate more than the whole of the costs. Liability of each parent shall cease upon the patient's twenty first (21st) birthday.~~

**8-4-118. Appeals.** Tribal Court orders for short-term treatment or long-term care and treatment may be appealed according to the provisions in SUITC Title 3 - Appellate Code. Pending disposition by the Tribal Court of Appeals, the Tribal

Court may make such orders as the Tribal Court considers proper in the premises relating to the care and custody of the individual.

**8-4-119.** **Habeas corpus.** Any individual committed under this Article may at any time seek release by filing for a writ of habeas corpus.

**8-4-120.** **Voting in Public and Tribal Elections.** Any individual receiving evaluation, care, or treatment under this Code must be given the opportunity to exercise their right to register and to vote in public and Tribal elections. The agency or facility providing evaluation, care, or treatment shall assist the individual, upon the individual's request, to obtain voter registration forms and mail ballots and to comply with any other prerequisite for voting in public and Tribal elections.

**8-4-121.** **Administration.** The Tribal Health Department shall create policies and procedures and develop and distribute any applications or forms necessary to enforce this Article. The Tribal Health Department shall proactively train providers, facilities, judges, Intervening professionals, and Peace officers on the procedures in this Article, which must include an understanding of the criteria for invoking an emergency commitment hold, the definition of “Mental health disorder” and “Gravely disabled” and how a person who is gravely disabled may present physically and psychiatrically, and suggested templates and resources to be used by facilities to meet the requirements of the Article.

**8-4-122.** **Payment for Court-Appointed Attorneys.** To provide legal representation to individuals eligible for an attorney under this Code, the Tribal Court shall pay court-appointed attorney on a case-by-case basis on behalf of the Tribe, or shall pay lump-sum grants to and contract with individual attorneys, legal partnerships, legal professional corporations, public interest law firms, or nonprofit legal services corporations, from money appropriated by Tribal Council.

**8-4-123.** **Recognition of Tribal Court Commitment Orders in the State of Colorado.**

- (1) The state of Colorado, county, or municipal law enforcement agencies, Colorado state courts, hospitals, behavioral health facilities; health-care providers; and others within the state of Colorado responsible for providing services to the individuals subject to commitments ordered shall recognize commitment orders entered by the Tribal Court under this Code and that concerns individuals under the Tribal court's jurisdiction to the same extent as a commitment order entered by a Colorado state court.
- (2) A health-care provider may communicate with the Peace officers and the Tribal Court regarding a patient under the health-care provider's care under a Tribal Court commitment to the same extent that the health-care provider can communicate with officers of a court under a state court commitment order. Communications may include the nature of the

treatment needed and provided, a patient's medical and mental health status, the extent to which the patient poses a danger to the patient's self or the community, and, if necessary, the need for additional treatment.

- (3) If the Tribal Court issues an order rescinding the Tribal Court's original commitment order, the state, county, or municipal law enforcement agencies; state courts; hospitals; behavioral health facilities; health-care providers; and others within the state responsible for providing services to the person subject to a behavioral health commitment order shall recognize the order rescinding the Tribal Court's original commitment order and release the individual subject to the commitment order.
- (4) This Section applies to those subject to Tribal Court behavioral health commitment orders.

**Article 5. [Formerly Article 3] ~~ALCOHOLISM AND INTOXICATION TREATMENT~~  
ALCOHOL AND OTHER SUBSTANCE USE TREATMENT**

**8-5-101. [Formerly 8-3-104] ~~Duties of the Southern Ute Indian Tribal Council~~ Authority and Role of the Tribal Health Department.**

- (1) ~~It is the duty of the Southern Ute Indian Tribe to appoint an agency or agencies to do the~~ The Tribal Health Department may do the following:
  - (a) **[Formerly 8-3-104(1)(a)]** ~~Develop and encourage local and regional programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons , and foster plans and~~ programs to prevent alcohol and substance use disorders and intoxicated individuals in cooperation with other agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;
  - (b) **[Formerly 8-3-104(1)(b)]** ~~To coordinate the~~ Coordinate efforts and enlist ~~the assistance of all public and private agencies, organizations, or individuals interested in the prevention of alcoholism and treatment of alcoholics and intoxicated persons~~ other agencies, organizations, or individuals interested in preventing alcohol and substance use disorders and treatment for them;
  - (c) Use community mental health centers and clinics whenever feasible;
  - (d) Cooperate with the detention center in establishing and conducting programs to prevent and treat alcohol and substance use disorders;

- (e) **[Formerly 8-3-104(1)(c)]** ~~To cooperate~~ Cooperate with any ~~federal~~ agencies, police departments, ~~or~~ courts, ~~or other public or private agencies, organizations,~~ and individuals in establishing programs ~~for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and prepare curriculum material for use at all levels of school education~~ to prevent and treat alcohol and substance use disorders and to treat or care for intoxicated individuals;
- (f) **[Formerly 8-3-104(1)(d)]** Prepare, publish, evaluate and disseminate educational materials dealing with the nature and effects of alcohol and substance use;
- (g) **[Formerly 8-3-104(1)(e)]** Organize and foster ~~and participate in~~ training programs for all Persons engaged ~~the treatment of alcoholics and intoxicated persons in treating individuals with alcohol and substance use disorders and intoxicated individuals.~~ The program must include the dissemination of information concerning the nature and effects of alcohol and substance use;
- (h) Sponsor and encourage research into the causes and nature of alcohol and substance use disorders and treatment of individuals with these disorders and intoxicated individuals, and serve as a clearinghouse for information relating to these disorders;
- (i) **[Similar to 8-3-105(4)]** Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals and collect and make available relevant statistical information, including number of individuals treated, frequency of admission and readmission, and frequency and duration of treatment;
- (j) Advise the Tribal Council in preparing a comprehensive plan for treating individuals with alcohol and substance use disorders and intoxicated individuals for inclusion in the Tribe's comprehensive health plan;
- (k) Review all applicable health, welfare, and treatment plans to be submitted for funding under applicable legislation and advise the Tribal Council on provisions to be included relating to alcohol and substance use disorders, individuals with these disorders, and intoxicated individuals;

- (l) Assist in developing, and cooperating with alcohol and substance use education and treatment programs for Tribal employees and businesses;
  - (m) Use the support and assistance of interested Persons in the community, particularly individuals with alcohol and substance use disorders that are in remission, to encourage individuals with these disorders to voluntarily undergo treatment;
  - (n) **[Similar to 8-3-104(1)(c)]** Cooperate with Southern Ute Police Department and others in establishing and conducting programs designed to deal with the problem of individuals operating motor vehicles while under the influence of, or impaired by, alcohol and substances;
  - (o) **[Formerly 8-3-104(1)(f)]** ~~Encourage~~ Sponsor and encourage all appropriate health facilities to admit without discrimination ~~alcoholics and intoxicated persons,~~ individuals with alcohol and substance use disorders and intoxicated individuals and provide them with adequate and appropriate treatment;
  - (p) **[Formerly 8-3-104(1)(g)]** Encourage all health and disability insurance programs to include ~~alcoholism as a covered illness~~ alcohol and substance use disorders as a covered illness; and
  - (q) Develop and implement, as an integral part of alcohol use disorder treatment programs, an educational program for use in the treatment of individuals with alcohol use disorders and intoxicated individuals. The program must include the dissemination of information concerning the nature and effects of alcohol.
- (2) ~~The Southern Ute Indian Tribal Council, pursuant to this Code, shall Tribal Health~~ may establish comprehensive and coordinated programs ~~for the treatment of alcoholics and intoxicated persons to treat alcohol and substance use disorders and to use available services.~~ Insofar as funds are available to the ~~Southern Ute Indian~~ Tribe, ~~the program of the Tribe shall include all of the following:~~ the Tribe may develop coordinated programs for treatment.
- ~~(a) — Emergency treatment~~
  - ~~(b) — Inpatient treatment~~
  - ~~(c) — Intermediate treatment~~

~~(d) — Outpatient and follow-up treatment~~

(3) ~~Treatment may not be provided at a correctional institution except for inmates.~~ Tribal Health shall identify and use all available public and private resources in the program when possible.

~~(4)~~ [Relocated to 8-5-102(2)]

8-5-102. [Formerly 8-3-105] ~~Standards for Public and Private Treatment Facilities, Enforcement Procedures and Penalties,~~ and Approval and Use of Treatment Facilities.

(1) ~~The Southern Ute Indian Tribal Council or its agent shall establish standards for approving treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and set the fees to be charged for private inspections. This may concern only the fees to be charged for required inspections and this may concern only the health standards to be met and the standards of treatment to be afforded the patients.~~ The Tribal Health Department shall ensure that treatment facilities used are appropriately licensed and accredited. In approving placement in a treatment facility, Tribal Health will endeavor to select a placement that is best suited to meet the patient's needs, including cultural considerations. Tribal Health will maintain a list of approved treatment facilities.

(2) ~~The Southern Ute Indian Tribal Council or its agent periodically shall inspect and approve the public and private treatment facilities at reasonable times and in a reasonable manner.~~ The Tribal Council Tribe may contract for the use of to use any facility as an approved public treatment facility if the Southern Ute Indian Tribe or its agents or agencies of its policies Tribal Health director, subject to the Tribal Health Department's policies, considers it to be an effective, appropriate, and economical course to follow.

(3) ~~The Southern Ute Indian Tribe shall maintain a list of approved public and private facilities.~~ Tribal Health should periodically inspect approved treatment facilities at reasonable times and in a reasonable manner.

~~(4) — An approved facility shall file with the Southern Ute Indian Tribe, on request, data, statistics schedules and information that the Southern Ute Indian Tribal Council requires. If they fail to do so, they shall be removed from this list of approved treatment facilities.~~

8-5-103. [Formerly 8-3-106] ~~Acceptance of Treatment — Rules~~ Guidelines for Treatment. ~~An agency of the Southern Ute Indian Tribe shall~~ Tribal Health may

adopt ~~and may~~, amend, and repeal ~~rules~~ guidelines for acceptance of ~~persons~~ individuals to enter ~~the~~ treatment ~~program~~ programs, considering available treatment, resources and facilities for the purpose of early and effective treatment of ~~alcoholics and intoxicated persons~~ alcohol and substance use disorders. ~~Establishing the rules, the agency shall be guided by the following standards-~~ In establishing the guidelines, Tribal Health shall be guided by the following principles:

- ~~(1) — If possible, the patient shall be treated on a voluntary rather than an involuntary basis~~
- ~~(2) — The patient shall be initially assigned and transferred to outpatient or intermediate treatment unless he obviously requires inpatient treatment.~~
- ~~(3)~~(1) ~~A person~~ An individual shall not be denied treatment solely because ~~he~~ has they have withdrawn from treatment against medical advice on a prior occasion or because ~~he has~~ they have relapsed after earlier treatment.
- ~~(4)~~(2) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.
- (3) Treatment by prayer in the practice of any religion that teaches reliance on traditional spiritual means alone for healing shall be considered a form of treatment.
- (4) [Similar to 8-3-107(3)] Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

**8-5-104. [Formerly 8-3-107 and similar to 8-3-108] Voluntary Treatment of Alcoholics.**

- ~~(1) An alcoholic may apply for voluntary treatment directly to an approved treatment facility if the proposed patient is a minor or incompetent person. He or a parent or a legal guardian or other legal representative may make the application-~~ Any individual, including a minor or a minor's parent or legal guardian on behalf of the minor, may apply for treatment directly to an approved treatment facility.
- ~~(2) Subject to rules adopted by the administrator in charge of the public treatment facility, the facility may determine who shall be admitted for treatment.~~ If a person an individual is refused admission to an approved public treatment facility, he the Tribal Health Department shall, if possible, be referred to another approved public treatment facility refer the

individual to another approved treatment facility.

- (3) ~~If a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment if it appears to the administrator in charge of the facility that the patient is an alcoholic who requires help. The agency in charge shall arrange for assistance in obtaining supportive services in a residential facility.~~ An individual voluntarily admitted must be released immediately upon request.
- (4) **[Similar to 8-3-111]** If an individual is admitted to an approved treatment facility, the individual's family or next of kin must be notified as promptly as possible in accordance with federal confidentiality regulations for Substance use disorder patient records (42 CFR part 2, as amended). If an Adult requests that there be no notification, the Adult's request must be respected.

**8-5-105. [Formerly 8-3-109] Emergency Commitment and Protective Custody.**

- (1) When any ~~person~~ individual is intoxicated or incapacitated by alcohol ~~and could be dangerous~~ or other substances and is a ~~danger~~ to the health and safety of himself or others, such person shall be themselves or others, such individual may be taken into protective custody by law enforcement authorities. Peace officers acting with probable cause and placed in an approved treatment facility. ~~If no such approved treatment facility is available, he may be detained in an emergency medical facility or jail but only so long as may be necessary to prevent injury to himself or others or to prevent a breach of the peace. A law enforcement officer who acts in compliance with this section is acting in the course of his official duties and is not criminally or civilly liable therefor. Nothing in this subsection shall preclude an intoxicated or incapacitated person who is not dangerous to the health and safety of himself or others from being assisted to his home or like location by the law enforcement officer or emergency law enforcement officer.~~
- (2) The detaining Peace officer may protect themselves by reasonable methods but shall make every reasonable effort to protect the detainee's health and safety.
- (a) Taking an individual into protective custody under this Section is not an arrest, and an entry or other record is not made to indicate that the individual has been arrested or charged with a crime.

- (3) [Similar to 8-3-109(1)] If no such approved treatment facility is available, one may be detained in an emergency medical facility or jail, but only for so long as necessary to prevent injury to themselves or others or to prevent a breach of the peace. A Peace officer who acts in compliance with this Section is acting in the course of the official duties and is not criminally or civilly liable.
- ~~(2)~~(4) A ~~law enforcement officer~~ A Peace officer, physician, spouse, guardian or relative of the ~~person~~ individual to be committed or any other ~~responsible person~~ Person may make a written application for emergency commitment under this ~~section~~ Section directed to the administrator of the approved treatment facility. ~~The application shall state the circumstances requiring emergency commitment, including the applicant's personal observation and the specific statements of others. If any, upon which he relies in making application. A copy of this application shall be furnished to the person to be committed or to his guardian or personal representative~~
- (a) The application must state the circumstances requiring emergency commitment, including the applicant's personal observation and the specific statements of others, if any, relied upon for the application. .
- (b) A copy of the application must be given to the individual being committed.
- ~~(3)~~(5) ~~If the approved facility administrator or his authorized designee approves the application, the person shall be committed, evaluated, and treated for a period not to exceed five (5) days. The person shall be brought to the facility by a peace officer or any interested person. If necessary, the court may be contacted to issue an order to the Police or sheriff's department to transport the person to the facility~~ treatment facility finds sufficient grounds in the application, the facility may commit, evaluate, and treat the individual up to 5 days.
- ~~(4) — If the approved treatment facility administrator or his authorized designee determines that the application fails to sustain the grounds for emergency commitment as set forth in this code, that commitment shall be refused and the person detained released immediately and the person shall be encouraged to seek voluntary treatment, if appropriate~~
- ~~(5) — When the administrator determines that grounds for commitment no longer exist, he shall release the person committed under this section No person committed under this section shall be detained in any treatment facility for more than five (5) days except that a person may be detained~~

~~for longer than five (5) days in an approved facility if in that period of time a petition for involuntary commitment has been filed pursuant to this code. A person may not be detained longer than ten (10) days after the date of filing the petition for involuntary commitment.~~

~~(6)~~ **[Relocated to 8-5-106(4)]**

(6) **Transport.** A Peace officer or any interested Person may transport the individual to a treatment facility. If necessary, the Tribal Court shall issue an order to law enforcement to transport the individual to a treatment facility.

(c) **Nothing in this subsection prevents a Peace officer from assisting an intoxicated individual, who is not dangerous to the health and safety of themselves or others, home or to an appropriate location with a responsible Person.**

**8-5-106. [Similar to 8-3-109(5)] Limitations on Emergency Commitment.**

(1) **No individual committed under this Section may be detained in any treatment facility for more than 5 days unless, during that period of time, a petition for involuntary commitment has been filed in accordance with this Code.**

(2) **When grounds for commitment no longer exist, the facility must discharge the individual committed.**

(3) **An individual may not be detained longer than 10 days, excluding weekends and holidays, after the date of filing the petition for involuntary commitment, unless valid medical reasons exist for detaining the individual longer.**

(4) **[Formerly 8-3-109(6)] Whenever a person an individual is involuntarily detained pursuant to this section, he shall immediately be advised by the facility administrator or his authorized designee, both orally and in writing, of his right to challenge such detention by application to the court for a writ of habeas corpus, to be represented by counsel at every stage of the proceeding relating to his commitment, and to have counsel and/or a guardian ad litem appointed by the court if he wants assistance of counsel under this Section, the individual must be advised, both orally and in writing, of the following rights:**

(d) **The individual may challenge the detention by applying to the Tribal Court for a writ of habeas corpus;**

- (e) The individual may be represented by ~~counsel~~ an attorney, at every stage of the proceeding, including a Tribal Court-appointed attorney if the individual cannot afford one;
- (f) The individual has the right to attend hearings in person, by video conference or by telephone.
- (g) To present evidence, provide testimony, call witnesses, and ask questions of witnesses at the hearing.
- (h) To have another examination after commitment.

**8-5-107. [Formerly 8-3-110] Involuntary Commitment by Petition and Tribal Court Order.**

- (1) ~~A person~~The Tribal Court may be committed~~commit an individual~~ to the custody of ~~the alcoholic~~an alcohol or substance use treatment facility upon a petition by ~~his~~the individual's spouse or ~~guardian~~Guardian, a relative ~~or, a physician or the administrator,~~ a Peace officer, Tribal Health staff , or any other Person and after a full hearing as set forth in charge of the of the approved treatment facility or any other responsible person~~section 8-5-109. The petition shall allege that the person is an alcoholic and that he has threatened or attempted to inflict or has inflicted physical harm upon himself or another or that he is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence or lack of judgment as to need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before admission of the petition unless the person whose commitment is sought has refused to submit to a medical examination in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition.~~
- (2) **[Similar to 8-3-110(1)]** The petition must allege and include the following:
  - (a) The name and address of the petitioner;
  - (b) The name, address, and Tribal affiliation, if known, of the Respondent;
  - (c) The facts to support the allegation the Respondent has an alcohol or substance use disorder;

- (d) The facts, if any, by which the Respondent has threatened or attempted to inflict or has inflicted physical harm on themselves or another;
  - (e) A statement that, unless committed, the Respondent is likely to inflict physical harm on themselves or another or that the Respondent is incapacitated by alcohol or a substance(s);
  - (f) A report of a licensed independent medical practitioner or a certified or licensed addiction counselor who has examined the Respondent within 10 days before submitting the petition, unless the Respondent whose commitment is sought has refused to submit to a medical or diagnostic examination or that examination cannot be made of the Respondent due to the Respondent's condition.
    - (i) The report must set forth the practitioner or counselor's findings in support of the petition's allegations unless the Respondent refused an examination, in which case the petition must state that the Respondent refused an examination, or that an examination cannot be made because of the individual's condition.
- (3) **[Similar to 8-3-110(1)]** The Tribal Court shall not grant a petition submitted under this Section unless there is documentation of the refusal by the Respondent to be committed to accessible and affordable voluntary treatment. The documentation may include, but is not limited to, notations in the Respondent's medical, behavioral health, or law enforcement records, or statements by licensed counselor, psychologist, a physician, advanced practice registered nurse, or witness.

**8-5-108. [Formerly 8-3-110(2)] Requirements upon Filing of Petition.**

- (1) Upon filing ~~of the petition with the Southern Ute Indian Tribal Court, the court shall fix a date for the hearing no later than ten (10) days after the date the petition was filed. A copy of the petition and of the notice of hearing including the date fixed by the court for a hearing shall be personally served upon the petitioner, the person whose commitment is sought and one of his parents or his legal guardian, if he is a minor. A copy of the petition and notice of hearing shall be mailed to any counsel for the person whose commitment is sought and the administrator in charge of the approved treatment facility to which the person may have been committed for emergency treatment and any other person the court believes advisable~~ , the Respondent must be notified of the right to:

- (a) Enter into a stipulated order for an expedited placement for treatment in an approved treatment facility; or
- (b) Contest the commitment proceeding.
- (2) If a stipulated order is entered, Tribal Health shall place the Respondent in an approved treatment program that reflects their level of need.
- (3) **[Similar to 8-3-110(2)]** If the Respondent exercises the right to contest the petition, the Tribal Court must set a hearing date no later than 10 business days after the petition is filed, excluding weekends and holidays, unless valid medical reasons exist for delaying the hearing.
- (4) **[Similar to 8-3-110(2)]** The Tribal Court must arrange for personal service of the petition and the notice of hearing on the Respondent or Respondents in accordance with the Southern Ute Rules of Civil Procedure Code.
- (5) **[Similar to 8-3-110(2)]** The Tribal Court shall send a copy of the petition and notice of hearing to the petitioner, any involved Tribal department, the Respondent's counsel and Guardian ad litem, if any, the treatment facility where the Respondent was committed for emergency treatment, and any other Person entitled to notice.

**8-5-109. [Formerly 8-3-110(3)] Hearing Procedures.**

- (1) At the hearing, the ~~court~~ Tribal Court shall hear all relevant testimony including, if possible, the testimony of at least one licensed physician or behavioral health professional ~~who has that~~ examined the person Respondent whose commitment is sought. ~~The person shall be present unless the court believes that his presence is likely to be injurious to him. In this event, the court shall appoint a guardian ad litem to represent him throughout the proceedings. If the person has refused to be examined by a licensed physician, he shall be given an opportunity to be examined by a court appointed, licensed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may commit the person to a licensed hospital for a period of not more than five (5) days for diagnostic examination. In such event, the court shall schedule a further hearing for final determination of commitment in no event later than five (5) days after the first hearing.~~
- (2) **[Similar to 8-3-110(3)]** If the Respondent has refused to be examined by a licensed physician or a behavioral health professional, the Respondent

must be given an opportunity to be examined by a court-appointed licensed physician, a licensed psychologist, or counselor.

- (3) [Similar to 8-3-110(3)] If the Respondent again refuses to be examined and there is sufficient evidence to believe that the allegations of the petition are true or if the Tribal Court believes that more medical evidence is necessary, the Tribal Court may order Tribal Health to conduct a diagnostic examination or commit the Respondent to a licensed hospital for a period of not more than 5 days for a diagnostic examination. In such event, the Tribal Court shall schedule a further hearing for final determination of commitment, in no event later than 5 days after the first hearing.
- (4) Hearings will be closed to the general public, unless a public hearing is requested by the Person or the authorized representative and the Tribal Court so orders.
- (5) All adversarial proceedings under this Article shall be conducted by an attorney acting for the Tribe.

**8-5-110. [Formerly 8-3-110(4)] Order for Commitment.**

- (1) If after the hearing and receiving all relevant evidence, including ~~the results of any~~ medical or diagnostic ~~examination by the licensed hospital, the court~~ results, the Tribal Court finds that grounds for ~~voluntary~~ involuntary commitment have been established by clear and convincing ~~proof it shall make an order of commitment to an approved treatment facility~~ evidence, the Tribal Court must order commitment to a treatment facility approved by Tribal Health.
  - (a) The Tribal Court has the right to delegate physical custody of the individual to a facility approved by Tribal Health.
- (2) [Similar to 8-3-110(4)] The Tribal Court may not order commitment, unless it determines the treatment facility will provide adequate and appropriate treatment for the Respondent, including Tribal cultural and Tribal language considerations (when available), and that the treatment is likely to be beneficial.
- (3) Upon the Tribal Court's commitment of the Respondent, the Tribal Court may order a Peace officer to transport the Respondent committed to the designated facility.

**8-5-111. [Formerly 8-3-110(5)] Commitment and Petition for Recommitment.**

- (1) ~~A person committed as provided in this section shall remain in the custody of the treatment facility for a period of thirty (30) days unless sooner discharged. At the end of the thirty (30) day period, he shall be discharged automatically unless the approved treatment facility, before expiration of the period, obtains a court order for his recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety (90) days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm another, the facility shall apply for recommitment if, after examination, it is determined that the likelihood still exists~~ A Respondent who is involuntarily committed will remain in the treatment facility's custody for 90 days or until earlier discharged.
- (2) [Similar to 8-3-110(5)] At the end of 90 days, the treatment facility must discharge the Respondent unless before the expiration of the 90-day period, the treatment facility receives a Tribal Court order for the Respondent's recommitment on the grounds set forth in Section 8-5-105 for an additional period not to exceed 90 days.
- (3) [Similar to 8-3-110(5)] The Tribal Health Department must file a petition to recommit if, after an examination, it is determined that the likelihood of the Respondent to inflict physical harm on themselves or another still exists.

**8-5-112** [Formerly 8-3-110(6)] **Recommitment.**

- (1) ~~A person recommitted as provided in subsection (5) of this section who has not been discharged by the treatment facility before the end of the ninety (90) day period shall be discharged at the expiration of that period unless the facility before expiration of the period, obtains a court order on the grounds set forth in this code for a further period not to exceed ninety (90) days~~ The treatment facility must discharge a Respondent recommitted by the 90th day, unless before the 90th day, a petition on the grounds in Section 8-5-105 for recommitment for up to 90 additional days has been filed and a hearing has been scheduled. Tribal Health Department shall apply for recommitment if, after examination, it is determined that the Respondent's likelihood to inflict physical harm on another still exists.
  - (a) Only two recommitment orders under this Article are permitted.
- (2) [Formerly 8-3-110(7)] Upon the filing of a petition for recommitment under subsections (5) and (6) of this section, the court shall fix a date for hearing no later than ten (10) days after the date the petition is filed. A copy of the petition and the notice of hearing shall be served or mailed as required by this section of the Southern Ute Indian Tribal Code. At the

~~hearing the court shall proceed as provided in this code~~ Upon receipt of a petition for recommitment, the Tribal Court must schedule a hearing date within 10 business days, excluding weekends and holidays, after the date the petition was filed, unless valid medical reasons exist for delaying the hearing.

- (3) **[Similar to 8-3-110(7)]** The Tribal Court shall also arrange for personal service of the petition and the notice of hearing on the Respondent and, if applicable, the Respondent's parent(s) or legal Guardian.
- (4) **[Similar to 8-3-110(7)]** The Tribal Court must send a copy of the petition and notice of hearing to the petitioner, any involved Tribal department, the Respondent's attorney, if any, the treatment facility where the Respondent was committed for emergency treatment; and any other Person entitled to notice.
- (5) **[Similar to 8-3-110(7)]** The hearing will be held in accordance with Section 8-5-109. The Tribal Court must advise the Respondent whose recommitment is sought of the rights in Section 8-5-106. The Tribal Court shall inform the Respondent whose or recommitment is sought of their rights to contest the application, to be represented by an attorney at every stage of any proceedings relating to the commitment and recommitment, and to have an attorney appointed by if the individual wants an attorney and is unable to obtain an attorney.
  - (a) If the Tribal Court believes that the Respondent needs an attorney, the Tribal Court must appointment an attorney for the Respondent regardless of the person's wishes.
- (6) **[Formerly 8-3-110(9)]** The person whose ~~commitment and/or~~ recommitment is sought shall be informed of his the right to be examined by a licensed physician of his the Respondent's choice. ~~In addition, the person shall also be informed that he has a right to counsel of his choosing.~~ If the Respondent is unable to obtain a licensed physician and requests examination by a physician, the Tribal Court must appoint a licensed physician.

**8-5-113. Transfer to a Different Treatment Facility.**

- (1) Tribal Health may authorize transfer of any individual committed from one approved treatment facility to another, if a different facility would be better suited to the individual's treatment needs.
- (2) If a competent patient or a spouse, Guardian, or immediate family member requests a transfer of the patient to another treatment facility, the Tribal

Court shall notify all involved Tribal departments and schedule a hearing to determine the appropriateness of a transfer.

**8-5-114. [Formerly 8-3-110(8)] Discharge of Individuals Committed.**

- (1) ~~A person committed to the custody of a treatment facility shall be discharged~~ The facility shall discharge an individual committed to its custody for treatment at any time before the end of the period for which ~~he~~ the individual has been committed if either of the following conditions is met:
- (a) In the case of an ~~alcoholic~~ individual with a substance use disorder committed on the grounds ~~he that the individual~~ is likely to inflict physical harm upon another, that ~~he the individual~~ no longer has an alcoholic condition which a substance use disorder that requires treatment ~~or the likelihood to inflict physical harm upon another no longer exists; or~~
- (b) In the case of an ~~alcoholic~~ individual with a substance use disorder committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, ~~and~~ or in the case of an individual with a substance use disorder committed on any grounds pursuant to this Section, that further treatment ~~will is~~ is not likely to bring about significant improvement ~~and the person's in the individual's~~ condition, or treatment is no longer appropriate, or that further treatment is unlikely to be beneficial.

**8-5-115. [Similar to 8-3-109(6)] Habeas Corpus.** An individual committed may at any time seek release by filing for a writ of habeas corpus.

**8-5-116. [Formerly 8-3-113] Payment for Treatment, Financial Ability of Patients.** A patient in an approved treatment facility, or the estate of the patient, or ~~person~~ Person obligated to provide for the cost of treatment and having sufficient financial ability is liable to the facility for the cost, maintenance, and treatment of the patient ~~therein~~ in accordance with ~~the rates established~~ Tribal policy.

- (1) ~~If treatment is provided by an approved public facility and the patient has not paid the charge therefor, the Southern Ute Indian Tribe is entitled to any payment received by the patient to which he may be entitled because of the services rendered from any private or public source available to the Southern Ute Indian Tribe because of the treatment provided the patient.~~

~~(2)~~ **[Relocated to 8-5-116]**

~~(3) — The Southern Ute Indian Tribe shall adopt rules governing financial ability that takes into consideration the income, savings, and the personal and real property of the person required to pay and any support being furnished by him to any person he is required by law to support.~~

**8-5-117. [Formerly 8-3-114] Criminal Law ~~-Limitations~~ Implications.**

~~(1) — No statute that makes drinking, being a common drunk, or being found in an intoxicated condition as the sole element of the offense giving rise to criminal or civil penalty will be allowed~~

~~(2)~~(1) Nothing in this ~~code will affect a~~ Code affects any law, ordinance, resolution or ~~rule prohibition~~ rule prohibition against ~~drunken driving~~ driving under the influence ~~of alcohol~~, or other similar offense involving the operation of a vehicle, aircraft, ~~or~~ boat, machinery, or other equipment or regarding the sale, purchase, possession, or use of alcohol ~~at stated times and places or by a particular class of person~~ or other substances.

~~(3)~~(2) The fact that ~~a person~~ an individual is intoxicated or incapacitated by alcohol or other substances shall not prevent ~~his being~~ arrest or ~~prosecuted~~ prosecution for the commission of any criminal act or conduct ~~not enumerated in subsection (1) of this section~~.

~~(4)~~(3) Nothing in this ~~code~~ Code shall be construed as a limitation upon the right of a ~~police officer~~ Peace officer to make an otherwise legal arrest, ~~notwithstanding~~ despite the fact that the arrested ~~person~~ individual may be ~~intoxicated~~ under the influence or incapacitated by alcohol or other substances.

**8-5-118. Powers of the Court.** The Tribal Court has the authority to issue and enforce all orders relating to this Code. The Tribal Court may hold any Person or individual in contempt of Tribal Court for any act, failure to act, or any violations of court orders under this Code. Any Tribal Court contempt proceedings are prosecuted according to Tribal law.

**ARTICLE 6. PENALTIES**

**8-6-101. Civil Assessment Fees.**

(1) The Tribal Council will establish a schedule of assessment fees for civil violations of this Code. Tribal Council may modify the schedule of assessment fees by subsequent enacted resolutions.

**Schedule of Civil Penalties**

<b>Offenses</b>	<b>Civil Penalties</b>
Failure to Report	Up to \$5,000
Failure to Comply with Confidentiality Requirement of Reporter (8-2-105)	Up to \$5,000
<u>Confidentiality of Records (8-3-122)</u>	<u>Up to \$5,000</u>