WHITE EARTH RESERVATION TRIBAL COUNCIL
A/K/A WHITE EARTH BUSINESS COMMITTEE
WHITE EARTH BAND OF CHIPPEWA INDIANS

Resolution No. 019-13-001

WHEREAS, the White Earth Reservation Tribal Council is the duly elected governing body of the White Earth Reservation pursuant to Article IV, Section 1, of the revised constitution of the Minnesota Chippewa Tribe, as amended, and organized under Section 16, of the Act of June 18, 1934 (48 Stat. 984), and

WHEREAS, the White Earth Reservation Tribal Council, also known as the White Earth Reservation Business Committee, is the duly authorized governing body of the White Earth Band, and

WHEREAS, the White Earth Reservation Tribal Council is responsible to assure the public health, welfare and safety of tribal members on the Reservation, and

WHEREAS, the White Earth Reservation Tribal Council is familiar with the debilitating effects suffered by tribal members who are addicted to drugs and alcohol; and the devastation caused by untreated mental illness, and

WHEREAS, the White Earth Reservation Tribal Council on June 6, 2011 passed Resolution No. 019-11-004 which enacted a civil commitment code to assist tribal members who are determined to be a danger to themselves or others in accessing appropriate treatment and services, and

WHEREAS, the White Earth Reservation Tribal Council finds that revisions to the civil commitment code passed on June 6, 2011 are necessary to facilitate civil commitment of tribal members who are addicted to drugs and alcohol; or who suffer from untreated mental illness, now

THEREFORE BE IT RESOLVED, that the White Earth Reservation Tribal Council hereby approves the revised White Earth Band of Ojibwe Civil Commitment Code to be included in the White Earth Band of Chippewa Comprehensive Law and Order Code.

We do hereby certify that the foregoing resolution was adopted by a vote of 3 for, 0 against, 0 silent, a quorum being present at a special meeting of the White Earth Reservation Tribal Council held on October 29, 2012 in White Earth, Minnesota.

Erma J. Vizenor, Chairwoman

Robert J. Durant, Secretary/Treasurer

WHITE EARTH BAND OF OJIBWE
CIVIL COMMITMENT CODE
TITLE 29

Chapter 1

SHORT TITLE, FINDINGS, PURPOSE AND DEFINITIONS

Section 1. Title.

Title 29 shall be titled "Civil Commitment Code".

Section 2. Findings.

(a) The White Earth Tribal Council hereby finds and determines that it is in the best interests of the White Earth Nation to make laws which provide for the health and welfare of its members; and
(b) The White Earth Tribal Council further finds and determines that it is in the best interests of the White Earth Nation to provide a forum which is fair, accessible and culturally appropriate for the protection of its members who may be mentally ill, chemically dependent, or a danger to themselves or others; and
(c) The White Earth Tribal Council further finds and determines that it is in the best interest of the White Earth Band of Ojibwe that all cases involving the civil commitment of White Earth tribal members and other Indians who reside within the exterior boundaries of the White Earth reservation be adjudicated through the White Earth Tribal Court.
(d) The White Earth Tribal Council hereby finds and determines that the White Earth Nation has never waived civil jurisdiction over the members of the tribe, other Indians residing within the exterior boundaries, as such the Tribe's civil jurisdiction remains intact.

Section 3. Purpose.

This Code shall be liberally construed and applied to carry out its purpose and intent and the Code shall:

a) Protect, enhance and exercise the inherent sovereignty of the White Earth Nation; and
b) Simplify, clarify, modernize and revise the law governing the civil commitment of tribal members and other Indians residing within the exterior boundaries of the White Earth reservation in need of protection; and
c) Protect and enhance the due process rights of the people of the White Earth Nation and those who enter or reside within the exterior boundaries of the White Earth Reservation; and
d) Preserve the peace, harmony and safety of the people of the White Earth Nation and those who enter or reside within the exterior boundaries of the White Earth Reservation.

Section 4. Definitions.

For purposes of this Code, the terms defined in this section have the meanings given them.

Chemical Dependency. "Chemical Dependency" means the use of any chemical substance, legal or illegal, that creates behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety of an individual or that person's dependents.

Danger to themselves or others. "Danger to themselves or others" means a person who is chemically dependent or mentally ill as defined by this code and who as a result of that chemical dependency or mental illness presents a clear danger to the safety of themselves or others as demonstrated by the facts that

a. the person has engaged in an overt act causing or attempting to cause serious physical harm to themselves or another; and
b. there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on themselves or another.

Examiner. "Examiner" means a person who is knowledgeable, trained, and practicing in the diagnosis and assessment or in the treatment of the alleged impairment, and who is:

a) a licensed physician;
b) a licensed psychologist who has a doctoral degree in psychology or who became a licensed consulting psychologist before July 2, 1975;
c) a tribally licensed mental health professional; or
d) an advanced practice registered nurse certified in mental health.

Health Officer. "Health officer" means a licensed physician, licensed psychologist, licensed social worker, registered nurse working in an emergency room of a hospital, or psychiatric or public health nurse, or an advanced practice registered nurse (APRN), and formally designated members of a pre-petition screening unit.

Interested Person. "Interested Person" means an adult, including but not limited to, a tribal official, including a tribal employee, and the legal guardian, spouse, parent, legal counsel, adult child, next of kin, significant other or other person designated by a proposed patient; or a representative of the White Earth Behavioral Health Services.

Intellectually Disabled Person. "Intellectually Disabled Person" means any person:

a) who has been diagnosed as having significantly sub-average intellectual functioning existing concurrently with demonstrated deficits in adaptive behavior and who manifests these conditions prior to the person's 22nd birthday; and
b) whose recent conduct is a result of an intellectual disability, traumatic brain injury or developmental disability and poses a substantial likelihood of physical harm to self or others in that there has been
    a. a recent attempt or threat to physically harm self or others, or

b. a failure and inability to obtain necessary food, clothing, shelter, safety, or medical care.

Licensed Psychologist. "Licensed psychologist" means a psychologist licensed by the Minnesota Board of Psychology and recognized by the White Earth Tribal Council, and possessing the qualifications for licensure in that jurisdiction.

Licensed Physician. "Licensed physician" means a medical doctor licensed by the Minnesota Medical Board of Medical Practice and recognized by the White Earth Reservation Tribal Council to practice medicine or a medical officer of the Indian Health Service in performance of official duties.

Mental Illness. "Mental illness" means an organic disorder of the brain or a clinically significant disorder of thought, mood, perception, orientation, memory, or behavior that is listed in the clinical manual of the International Classification of Diseases (ICD-9-CM), current edition, code range 290.0 to 302.99 or 306.0 to 316.0 or the corresponding code in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-MD), current edition, Axes I, II, or III, and that seriously limits a person's capacity to function in primary aspects of daily living such as personal relations, living arrangements, work, and recreation.

a) An "adult with acute mental illness" means an adult who has a mental illness that is serious enough to require prompt intervention.
b) For purposes of case management and community support services, a "person with serious and persistent mental illness" means an adult who has a mental illness and meets at least one of the following criteria:
    a. the adult has undergone two or more episodes of inpatient care for a mental illness within the preceding 24 months;
    b. the adult has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding 12 months; and
    c. the adult:
        i. has a diagnosis of schizophrenia, bipolar disorder, major depression, or borderline personality disorder;
        ii. indicates a significant impairment in functioning; and
        iii. has a written opinion from a mental health professional, in the last three years, stating that the adult is reasonably likely to have future episodes requiring inpatient or residential treatment, of a frequency described in clause (1) or (2), unless ongoing case management or community support services are provided;
    d. the adult has, in the last three years, been committed by a court as a person who is mentally ill under this Title or another jurisdiction, or the adult's commitment has been stayed or continued; or
    e. the adult
        i. was eligible under clauses (a) to (b), but the specified time period has expired; and
        ii. has a written opinion from a mental health professional, in the last three years, stating that the adult is reasonably likely to have future episodes

requiring inpatient or residential treatment, of a frequency described in clause (a) or (b), unless ongoing case management or community support services are provided.

Patient. "Patient" means any person who is receiving treatment or has been committed under this Code.

Tribal Law Enforcement officer. "Tribal Law Enforcement officer" means a White Earth Reservation Police Officer, or other licensed law enforcement officer operating with permission of the White Earth Tribal Council, when engaged in the authorized duties of office.

Person who is Chemically Dependent.
A "person who is chemically dependent" means any person who has developed an addiction to a mood-altering chemical. Chemical dependency includes both drug addiction and alcoholism. A person who is chemically dependent is unable to stop drinking or taking a particular mood-altering chemical despite serious health, economic, vocational, legal, spiritual, and social consequences, fails to make proper decisions or conduct themselves in such a manner which can manifest in a substantial likelihood of physical harm to self or others.

Person who is Mentally Ill.

a) A "person who is mentally ill" means any person who is intellectually disabled as defined by this code or who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:
    a. a failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
    b. an inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
    c. a recent attempt or threat to physically harm self or others; or
    d. recent and volitional conduct involving significant damage to substantial property.

b) A person is not mentally ill under this section if the impairment is solely due to:
    a. epilepsy;
    b. mental retardation;
    c. brief periods of intoxication caused by alcohol, drugs, or other mind-altering substances; or
    d. dependence upon or addiction to any alcohol, drugs, or other mind-altering substances.

Prepetition Screening Team. "Prepetition Screening team" is a team of professionals assigned by the Tribal Court to examine a petition for civil commitment. The team will consist of Health Officers from the fields of health and mental health, a licensed chemical use assessor and counselor, and may also include law enforcement and a representative from the White Earth Legal Department. The Pre-petition screening team shall examine all legal documentation as well the subject of the petition to determine the validity of the petition, and whether alternatives to civil commitment exist. The team will make an objective recommendation to the Tribal Court based on their evaluation of the evidence and information.

Proxy. A "proxy" is a legally authorized health care proxy, agent, or guardian may exercise the patient's rights on the patient's behalf.

Safety. "Safety" means protection of persons or property from potential danger, risk, injury, harm, or damage.

Screening Team. "Screening Team" is a collection of professional who sole purpose is to evaluate the petition being considered.

Substance Abuse. "Substance Abuse" means a continued pathological use, overindulgence in, or excessive use of, a drug, medication or other chemical leading to effects that are detrimental to the individual's physical and mental health, or the welfare of others.

Substance Dependence. "Substance Dependence" means a persistence use of alcohol or other drugs despite problems related to use of the substance. Compulsive and repetitive use may result in tolerance to the effect of the drug and withdrawal symptoms when use is reduced or stopped.

Substance Use Disorder. "Substance Use Disorder" incorporates the definitions of "Substance Abuse" and "Substance dependence" into a single definition which is recognized as a diagnosable term for purposes of this Code. This definition can be used in place of separate and interchangeable diagnosis of substance abuse and substance dependence.

Treatment Provider. "Treatment Provider" means any detoxification center, hospital, inpatient or outpatient treatment facility, half way house, or supportive housing, for persons who are mentally ill, mentally retarded, or chemically dependent as designated by the White Earth Reservation Tribal Council.

Weekends or Holidays. "Weekends or Holidays" shall mean Saturday and Sunday during the normal week. "Holidays" shall include any federal, state, and tribal holidays recognized as a day that normal work is not scheduled. Holiday also shall include any work day being designated by the White Earth Tribal Council where normal work is cancelled or where tribal operations or offices are closed.

White Earth Behavioral Health. "White Earth Behavioral Health" is the tribal agency created by the authority of the White Earth Reservation Tribal Council to provide diagnosis and treatment of the mental health and chemical dependency as required under this Code. The Term

"White Earth Behavioral Health" includes White Earth Substance Abuse and White Earth Tribal Mental Health.

Chapter 2

JURISDICTION

Section 1. Jurisdiction.

a) The White Earth Tribal Court shall have general jurisdiction over civil commitment matters as set forth under this title.

b) Persons subject to the Tribe's civil commitment jurisdiction include:
   a. Enrolled members of the White Earth Band of Ojibwe.
   b. White Earth descendants who reside within the exterior boundaries of the White Earth Reservation.
   c. Indians enrolled in federally recognized tribes who reside within the exterior boundaries of the White Earth Reservation.
   d. all other persons other than prohibited by Federal or State Law.

c) Territorial Jurisdiction.
   a. Except as provided in subsection (b), the jurisdiction of the Tribal Court shall extend to:
      i. All land within the exterior boundaries of the Tribe's reservation, including trust lands, fee patented land and rights of way running through the reservation; and
      ii. All land outside the boundaries of the Tribe's reservation held in trust by the United States for the benefit of the Tribe and its members; and
      iii. All other land considered "Indian Country" as defined by 18 U.S.C. sec. 1151 that is associated with the Tribe.

Chapter 3

STANDARDS, LIABILITY, RESTRICTION, DUE PROCESS, SPIRITUAL TREATMENT

Section 1. Standards.

a) The Tribal Court shall use the following standards:

   a. Danger to Self or Others. Either:
      i. a substantial risk that physical harm will be inflicted by the Respondent upon their own person, as evidenced by recent actions, threats, and attempts to inflict physical harm on oneself; or

ii. a substantial risk that physical harm will be inflicted by the Respondent upon another, as evidenced by recent actions, threats, and attempts to inflict physical harm on another.

b. Gravely Disabled. A condition in which a person, as a result of mental illness or chemical dependency, is in danger of serious physical harm because:
   i. they are not providing for their essential needs such as food, clothing, shelter, vital medical care, or safety;
   ii. they need, but are not receiving inpatient treatment for mental illness or chemical dependency, and
   iii. they are incapable of determining whether to accept such treatment because their judgment is impaired.

Section 2. Liability.

a) Any Petitioner acting in good faith upon either actual knowledge or reliable information shall not be subject to civil or criminal penalties for filing a petition for commitment under this Code.

Section 3. Suits against the Band.

a) The sovereign immunity from suit of the Band and every elected Reservation Tribal Council member, tribal official, tribal judge or attorney acting on behalf of the Band with respect to any action taken in an official capacity or in the exercise of the official powers of any such office, in any court, federal, state or tribal is hereby affirmed; nothing in this Code shall constitute a waiver of the Band's sovereign immunity.
b) No enforcement action taken pursuant to this Code, including the filing of an action by the Band or any agency of the Band in Tribal Court, shall constitute a waiver of sovereign immunity from suit of the Band, or any elected Reservation Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

Section 3. Restriction.

a) Except when ordered by the Tribal Court, no person subject to this Title shall be confined in a jail or correctional institution.

Section 4. Due Process Requirements.

a) Respondent has the right to be represented by counsel. Counsel shall be appointed to represent the Respondent with the first order issued by the Court. The Respondent may hire a different attorney than is appointed by the Court at their own expense.
b) Respondent, their counsel and, any court appointed guardian shall receive notice of all proceedings under this Title. All notices shall be personally served upon the Respondent

within a reasonable time prior to the hearing. Service of notice of hearings, motions, petitions and orders upon the Respondent's counsel or any court appointed guardian may be made by mail, facsimile, or email.

c) All hearings required under this Title shall include:
    a. the right to a closed hearing, and
    b. the right to request an open hearing, and
    c. the right to present and cross-examine witnesses.

Section 5. Respondent's Rights.

a) A Respondent has the right to access personal medical records. Every person subject to a proceeding or receiving services pursuant to this Code and the patient's attorney shall have complete access to all medical records relevant to the person's commitment. A provider may require an attorney to provide evidence of representation of the patient or an authorization signed by the patient.
b) A Respondent has the right to request a prepetition screening team to objectively examine the documents and information produced in support of the petition. The prepetition screening team will make a recommendation to the Tribal Court.
c) All persons admitted or committed to a treatment center shall be notified in writing of their rights regarding hospitalization and other treatment at the time of admission. This notification must include:
    a. The right to counsel including the name and contact information for the Respondent's court appointed counsel;
    b. The right to be present at the hearing either in person or via telephone;
    c. That the Petitioner bears the burden of proving by clear and convincing evidence that commitment of the Respondent is necessary;
    d. The right to provide testimony, present documentary evidence, call witnesses and ask questions of all witnesses;
    e. The right to obtain an additional examination; provided, if detained for emergency treatment, this latter right may be exercised only after commitment.

Section 6. Treatment by Spiritual Means.

a) Nothing in this Code shall be construed to preclude supplementary treatment by spiritual means for any person who desires such treatment, or to a minor if their parent, guardian, or conservator desires such treatment.

Section 7. Standards of Proof.

a) The standard of proof to order a prepetition screening team and release records for the purpose of review by the prepetition screening team is Probable Cause that the Respondent may be in need of civil commitment.
b) The standard of proof to order evaluation, release records, and/or apprehend and detain a Respondent is Probable Cause that the Respondent is in need of civil commitment.
c) The standard of proof to order the civil commitment of a Respondent is Clear and Convincing Evidence that the Respondent is in need of commitment.

Section 9. Severability.

a) If any clause, sentence, paragraph, section or part of this Code shall, for any reason, be adjudicated by a proper court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

Chapter 4

INVOLUNTARY COMMITMENT OF MENTALLY ILL PERSONS.

Section 1. Petition.

a) Proceedings for the involuntary treatment of an allegedly Mentally Ill Person may be commenced by any Interested Person by filing a petition with the Tribal Court of the White Earth Band of Ojibwe. The petition shall contain:
   a. The name, address, and age of Petitioner;
   b. The name, address, age, marital status and occupation, if known, of the Respondent;
   c. The name, address, if known, of Respondent's nearest relatives;
   d. The facts upon which the allegations are based, including a statement by the Petitioner alleging that the Respondent is a person who is a Danger to Self or Others or who is Gravely Disabled, a statement by medical personnel, law enforcement, or other persons having knowledge of Respondent's illness, and a statement, if known, of the nature of the mental illness;
   e. A statement addressing whether alternatives to commitment were explored and why such alternatives were rejected;
   f. A statement as to whether the Respondent or another person is at risk of death or great bodily harm necessitating immediate apprehension and detention; and
   g. Documentation in the form of medical reports, letters from persons with knowledge of the circumstances necessitating commitment, examiner's statements, affidavits, police reports, and/or other reliable documents supporting the allegations in the petition.

Section 2. Prepetition Screening Team.

a) Before a civil commitment is filed, a prepetition screening team, appointed by the Tribal Court, may examine the information and any documents provided in support of the petition. Upon the request of the Petitioner, the court shall issue an order appointing the pre-petition screening team and authorizing disclosure of medical, psychiatric, chemical dependency and other necessary records to the pre-petitions screening team and the tribal attorney.

b) The team shall make a recommendation to the Tribal Court on the validity of the petition for civil commitment, including a recommendation for a dismissal of the petition if the team feels it is warranted. The report by the team to the Tribal Court must include the following:
    a. Interview of the subject of the petition, or an explanation as to why the interview was not performed;
    b. Identify and investigate the alleged behavior which is the basis for the petition.
    c. Identify and explore alternatives to commitment and explain why these alternatives may or may not be appropriate.

c) In petitions requesting emergency detention where the Respondent is at risk of death or great bodily harm, the prepetition screening may be excused at the Tribal Court's discretion.

d) The Petitioner shall file the prepetition screening reports with the petition and supporting documents.

Section 3. Procedures for Commitment.

a) Upon receiving a petition, the Tribal Court shall make a determination of probable cause regarding the allegation set forth in the petition under section 1 of this chapter. The Tribal Court shall find probable cause to exist if any of the following applies to the respondent:
    a. Is a Person who is Mentally-Ill; and
    b. Poses an immediate Danger to Self or Others, or is Gravely Disabled; and
    c. Needs immediate care and treatment.

b) If the Tribal Court determines that there is no probable cause, the Tribal Court shall dismiss the petition and, if the Respondent is in custody, order the release of the Respondent.

c) If the Tribal Court determines that probable cause exists; the Tribal Court may enter an ex-parte order for immediate apprehension and detention of the Respondent in a treatment facility, or in the alternative, where an immediate safety concern does not exist, may order the Respondent to remain in the community and co-operate with services.

d) If the Court issues an order for apprehension and detention of the Respondent, a law enforcement officer, or other designated tribal official, shall personally serve the Respondent with a notice of the hearing, a copy of the petition and detention order and a written statement of the Respondent's right to an attorney and the standard upon which they may be committed. The law enforcement officer shall orally inform the respondent that they are being taken into custody as the result of a commitment petition.

e) Upon apprehension, the Respondent shall be examined within seventy two (72) hours and cannot be detained longer than forty-eight (48) hours without a hearing (excluding weekends and/or federal or tribal holidays).

f) If a commitment has been started because the Respondent was placed on a seventy two (72) hour hold, the Respondent shall be examined during the seventy two (72) hour hold period or within forty eight (48) hours of filing of the petition, whichever is later.

Section 4. Review by Mental Health Professional.

a) Upon receiving a petition, the Tribal Court shall notify White Earth Tribal Mental Health or White Earth Indian Health Services Mental Health for purposes of determining the proper treatment of the Respondent. The requirements of Section 1 above shall apply to all petitioners for the commitment and treatment of Mentally-Ill Persons.

Section 5. Examination of Respondent.

a) Upon receiving a petition and prior to the contested hearing, the Tribal Court shall order a psychological examination of the Respondent by an examiner. If the Respondent is not subject to emergency detention under Section 3, the Tribal Court shall enter and personally serve upon Respondent an order and summons to appear for the examination. If the Respondent fails to appear for the examination, the Tribal Court may enter an order for immediate apprehension and detention.

b) The examination shall be performed by a person qualified as an examiner under Chapter 1, Section 3 of this Title. The examination shall provide the following information:
   a. Diagnostic Impressions or Diagnosis,
   b. Basis for Diagnostic Impressions,
   c. Recommendation as to whether commitment is necessary;
   d. Recommendations for treatment.

Section 6. Hearings.

a) Upon receiving a petition, the Tribal Court shall schedule an initial hearing to review the petition:
   a. within forty-eight (48) hours of detention if the Respondent is being detained pursuant to Section 2 (excluding weekends or holidays); or
   b. within seventy-two (72) hours if the Respondent is not being detained (excluding weekends or holidays).

b) The initial hearing shall address the need for continued custody and order additional testing if necessary. The Respondent shall enter an admission or denial to the petition at the initial hearing.

c) If Respondent denies the petition a contested hearing shall be scheduled within fourteen (14) days of the hearing required under clause (a) of this section, unless there is a finding of good cause to set a date beyond fourteen(14) days, or a waiver on the record by Respondent to set a date beyond fourteen(14) days.

d) The Tribal Court shall evaluate whether Probable Cause continues to exist for the petition. If the Court continues to find that probable cause exists, the Court may continue to detain the Respondent, order Respondent to begin a treatment program, order Respondent to follow medical advice, or take any other necessary to protect the Respondent's well-being.

e) The Tribal Court shall serve written notice of the date, time, and place of all hearings upon the Respondent, any person designated by the Respondent, and the spouse, parents, and/or guardians of the Respondent. The notice shall include the alleged grounds for confinement, the standard of proof, and the Respondent's rights to:
   a. Be represented by court appointed counsel including the contact information of the court appointed counsel;
   b. Chose to hire an attorney of their choice, at their own expense, if the Respondent does not wish to be represented by the court appointed attorney and can afford to hire an attorney;
   c. be present either in person, by telephone, or by ITV for all hearings except contested hearings;
   d. be present for all contested hearings either in person or by ITV if authorized by the Court;
   e. testify, present documentary evidence, call witnesses and ask questions of all witnesses;
   f. obtain an additional examination; provided, if detained for emergency treatment, this latter right may be exercised only after commitment.

f) Contested Hearings:
   a. The contested hearing shall be tried as a civil matter and conducted in an informal manner.
   b. The Petitioner must prove by clear and convincing evidence at the contested hearing that the Respondent is in need of civil commitment.
   c. The Judge shall not be bound by rules of procedure or evidence applicable in other civil proceedings. The Judge shall admit and consider all relevant evidence presented at the contested hearing and shall take judicial notice of the file.
   d. The Respondent must be present in person or, by ITV if authorized by the Court. All efforts will be made to have the Respondent physically present at the contested hearing.
   e. Hearings shall be closed to the general public, unless a public hearing is requested by the Respondent or their authorized representative and the Tribal Court so orders.
   f. If necessary, the hearing shall be held at a Treatment Facility.
   g. The Tribal Court shall have the power to issue subpoenas to compel the testimony of witnesses or the production of books, records, documents or any other physical evidence related to the determination of the case. In the absence of justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be cited and held in contempt.

g) Order of Commitment: If the Tribal Court finds by clear and convincing evidence that the Respondent is a Mentally Ill Person, the Respondent is a Danger to Self or Others or the Respondent is Gravely Disabled, the Respondent is in need of immediate care and treatment, and no less restrictive alternatives exist, The Tribal Court may order:
   a. Commitment to an inpatient treatment program . The order shall state that the Respondent meets the criteria for civil commitment under the laws of the White Earth Band of Ojibwe;
   b. Commitment to community placement with attendance at appropriate outpatient services and other court ordered requirements as recommended by the examiner and White Earth Behavioral Health for a period of up to one hundred eighty (180) days.
   c. Commitment to a half way house or other supportive housing for up to ninety (90) days after the completion of an inpatient treatment program;
   d. Monitoring and supportive services as recommended by White Earth Tribal Mental Health for a period of up to one hundred eighty (180) days.
   e. The Tribal Court order will include the recommendations of White Earth Behavior Health and/or the treatment provider in making its determination for treatment and/or the length of time for the civil commitment under this section, if less than 180 days.
   f. Further assessment, if necessary;
   g. Authorization for the exchange of records between treatment providers and to the court and tribal attorney;
   h. A review of the proceedings within ninety (90) days.

h) The Civil Commitment Case Manager shall furnish monthly reports to the Tribal Court, Tribal Attorney, and the Respondent's Attorney outlining the treatment being administered, the Respondent's progress, and the Treatment Facility's recommendations including the need for continued detention. The Civil Commitment Case Manager shall provide a court report to the Tribal Court, Tribal Attorney, and Respondent's Attorney at least five (5) calendar days before each hearing addressing the progress the Respondent has made to date and the recommendations of the Civil Commitment Case Manager and the Treatment Facility.

Section 7. Petition for Release.

a) The Respondent, or an authorized representative, may at any time petition the Tribal Court for release from the Treatment Facility.

b) The petition for release need not be in any particular form. The Respondent may orally petition the court for release during a hearing, or may file a written Petition with the Court.

c) Upon receipt of a written petition for release, the Tribal Court shall review the petition, and serve a copy upon the Petitioner, Respondent and Treatment Facility. Upon receipt

of a written or oral petition for release, the Tribal Court shall allow the Petitioner seven (7) days to respond.

d) The Treatment Facility shall file a written response to the petition within seven (7) calendar days of receipt of notice that the Respondent has petitioned for release.

e) If, after consideration of the petition and Treatment Facility's response, the Tribal Court finds substantial evidence that the Respondent no longer poses a Danger to Self or Others, the Tribal Court shall hold a hearing on the matter, following the procedures set forth in Section 5 of this Chapter.

f) The findings and order of the Tribal Court shall be filed with the Clerk of Court who shall serve certified copies upon the Respondent, Petitioner, and the Treatment Facility.

Section 8. Status Review Hearings.

a) The Tribal Court shall conduct a status review hearing, in an appropriate location, every ninety (90) days for all persons remaining under this Title.

b) The Tribal Court shall personally serve the notice of hearing on the Respondent . Counsel for the Respondent and any Guardian may be served by mail, facsimile, or email.

c) The Respondent shall have the right:
   a. to be present at that hearing by telephone, ITV, or in person;
   b. to be represented by counsel,
   c. to subpoena and cross-examine witnesses, and
   d. to petition the court for release.

d) The Respondent shall be present at the hearing either by telephone, ITV, or in person.

e) The Tribal Court shall require a report from the treatment facility, an examiner, and the Petitioner on the status of the Respondent and the need for continuing treatment.

Section 9. Contempt.

A person who violates an order from the Tribal Court may be found to be in contempt upon proof by clear and convincing evidence after a contested hearing that the Respondent knowingly or willfully did not comply with an order of the Tribal Court. Contempt may include a fine not to exceed $100.00 and/ or the suspension of Tribal Privileges. If suspension of Tribal Privileges is ordered, those privileges shall be reinstated upon curing the contempt.

Chapter 5

INVOLUNTARY COMMITMENT FOR CHEMICALLY DEPENDENT PERSONS

Section 1. Petition.

b) Proceedings for the involuntary treatment of an allegedly Chemically Dependent Person may be commenced by any Interested Person by filing a petition with the Tribal Court of the White Earth Band of Ojibwe. The petition shall contain:
   a. The name, address, and age of Petitioner;
   b. The name, address, age, marital status and occupation, if known, of the Respondent;
   c. The name, address, if known, of Respondent's nearest relatives; and
   d. The facts upon which the allegations are based, including a statement by the Petitioner alleging that the Respondent is a person who is a Danger to Self or Others or who is Gravely Disabled, a statement by medical personnel, law enforcement, or other persons having knowledge of Respondent's illness, and a statement, if known, of the nature of the mental illness.
   e. A statement addressing whether alternatives to commitment were explored and why such alternatives were rejected.
   f. A statement as to whether the Respondent or another person or unborn child is at risk of death or great bodily harm necessitating immediate apprehension and detention.
   g. Documentation in the form of medical reports, letters from persons with knowledge of the circumstances necessitating commitment, examiner's statements, affidavits, police reports, and/or other reliable documents supporting the allegations in the petition.

Section 2. Prepetition Screening Team.

e) Before a civil commitment is filed, a prepetition screening team, appointed by the Tribal Court, may examine the information and any documents provided in support of the petition. The court shall issue an order appointing the pre-petition screening team, authorizing the pre-petition screening team to interview the Respondent and witnesses, and authorizing disclosure of medical, psychiatric, chemical dependency, and other necessary records to the pre-petitions screening team and the tribal attorney.

f) The team shall make a recommendation to tribal court on the validity of the petition for civil commitment, including a recommendation for a dismissal of the petition if the team feels it is warranted. The report by the team to the Tribal Court must include the following:
   a. Interview of the subject of the petition, or an explanation as to why the interview was not performed;
   b. Identify and investigate the alleged behavior which is the basis for the petition.

c. Identify and explore alternatives to commitment and explain why these alternatives may or may not be appropriate.

g) In petitions requesting emergency detention where the Respondent is at risk of death or great bodily harm, the prepetition screening may be excused at the Tribal Court's discretion.

h) The Petitioner shall file the prepetition screening reports with the petition and supporting documents.

Section 3. Procedures for Commitment.

g) Upon receiving a petition, the Tribal Court shall make a determination of probable cause regarding the allegation set forth in the petition under section 1 of this chapter. The Tribal Court shall find probable cause to exist if the following applies to the respondent:

a. Is a Person who is Chemically Dependent; and
b. poses an immediate Danger to Self or Others or is Gravely Disabled; and
c. needs immediate care and treatment.

h) If the Tribal Court determines that there is no probable cause, the Tribal Court shall dismiss the petition and, if the Respondent is in custody, order the release of the Respondent.

i) If the Tribal Court determines that probable cause exists; the Tribal Court may enter an ex-parte order for immediate apprehension and detention of the Respondent at a treatment facility; or in the alternative where there is no immediate risk of harm to the Respondent or others, the Court may order the Respondent to remain in the community and cooperate with services. The Tribal Court shall order a comprehensive mental examination to be conducted by an Examiner.

j) The law enforcement officer, or other designated tribal official, shall present the Respondent with a notice of the hearing, a copy of the petition and detention order and a written statement of the Respondent's right to an attorney and the standard upon which they may be committed. The law enforcement officer shall orally inform the respondent that they are being taken into custody as the result of a commitment petition.

k) Upon apprehension, the Respondent cannot be detained longer than forty-eight (48) hours without a hearing (excluding weekends and/or federal or tribal holidays).

l) If a commitment has been started because the Respondent was placed on a seventy two (72) hour hold, the Respondent shall be examined during the seventy two (72) hour hold period or within forty eight (48) hours of filing of the petition, whichever is later.

Section 4. Review by White Earth Substance Abuse.

b) Upon receiving a petition, the Tribal Court shall notify White Earth Substance Abuse for purposes of determining the proper treatment of the Respondent. The requirements of Section 1 above shall apply to all petitioners for the commitment and treatment of Chemically Dependent Persons.

Section 5. Examination of Respondent.

c) Upon receiving a petition and prior to the hearing, the Tribal Court shall order a psychological examination of the Respondent by an examiner and a Chemical Use Assessment by a licensed addiction counselor. If the Respondent is not subject to emergency detention under Section 2, the Tribal Court shall enter and personally serve upon Respondent an order and summons to appear for the examination and chemical use assessment. If the Respondent fails to appear for the examination and chemical use assessment, the Tribal Court may enter an order for immediate apprehension and detention.

Section 6. Hearings.

a) Upon receiving a petition, the Tribal Court shall schedule an initial hearing to review the petition:
    a. within forty-eight (48) hours of detention if the Respondent is being detained pursuant to Section 2 (excluding weekends or holidays); or
    b. within seventy-two (72) hours if the Respondent is not being detained (excluding weekends or holidays).

b) The initial hearing shall address the need for continued custody and order additional services and/or the release of records if necessary. The Respondent shall enter an admission or a denial to the petition.

c) If the Tribal Court continues to believe there is Probable Cause for the petition, the Tribal Court may continue to detain the Respondent, order Respondent to begin a treatment program, order Respondent to follow medical advice, or take any other necessary to protect the Respondent's well-being.

d) If Respondent denies the petition a contested hearing shall be scheduled within fourteen (14) days of the hearing required under clause (a) of this section, unless there is a finding of good cause to set a date beyond fourteen(14) days, or a waiver on the record by Respondent to set a date beyond fourteen(14) days.

e) The Tribal Court shall serve written notice of the date, time, and place of all hearings upon the Respondent, any person designated by the Respondent, and the spouse, parents, and/or guardians of the Respondent. The notice shall include the alleged grounds for confinement and the Respondent's rights to:

a. court appointed counsel including the name and contact information for the court appointed attorney;
b. be present at all hearings by telephone, ITV or in person, except contested hearings;
c. be present at all contested hearing in person or by ITV if authorized by the court;
d. testify, present documentary evidence, call witnesses and ask questions of all witnesses;
e. obtain an additional examination; provided, if detained for emergency treatment, this latter right may be exercised only after commitment.

f) The Respondent's counsel and any court appointed guardian may be served by mail, facsimile, or email with notices of hearings, motions, orders, and other documents.

g) Contested Hearings:
   a. The contested hearing shall be tried as a civil matter and conducted in an informal manner.
   b. The Petitioner must prove by clear and convincing evidence at the contested hearing that the Respondent is in need of civil commitment.
   c. The Judge shall not be bound by rules of procedure or evidence applicable in other civil proceedings. The Judge shall admit and consider all relevant evidence presented at the contested hearing and shall take judicial notice of the file.
   d. All efforts will be made to have the Respondent physically present at the final hearing.
   e. Hearings shall be closed to the general public, unless a public hearing is requested by the Respondent or their authorized representative and the Tribal Court so orders.
   f. If necessary, the hearing shall be held at a Treatment Facility.
   g. The Tribal Court shall have the power to issue subpoenas to compel the testimony of witnesses or the production of books, records, documents or any other physical evidence related to the determination of the case. In the absence of justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be cited and held in contempt.

h) Order of Commitment: If the Tribal Court finds by clear and convincing evidence that the Respondent is a Chemically Dependent Person, the Respondent is a Danger to Self or Others or the Respondent is Gravely Disabled, the Respondent is in need of immediate care and treatment, and no less restrictive alternatives exist, The Tribal Court shall order:
   a. Commitment to an inpatient treatment program for up to a maximum of ninety (90) days of in-patient treatment for an alcohol dependent person; and up to a maximum of six (6) months for a drug dependent person. The order shall state that the Respondent meets the criteria for civil commitment under the laws of the White Earth Band of Ojibwe;
   b. Commitment to community placement with attendance at appropriate outpatient services and other court ordered requirements as recommended by the chemical use assessor for a period of up to one hundred eighty (180) days;

c. Commitment to a half way house or other supportive housing for up to ninety (90) days after the completion of an inpatient treatment program;
d. Aftercare outpatient services for a period of up to ninety (90) days following the completion of inpatient and/or half way house programming.
e. Monitoring and supportive services as recommended by White Earth Substance Abuse for up to one hundred eighty (180) days.
f. The Tribal Court order will include the recommendations of White Earth Substance Abuse and/or the treatment provider in making its determination for treatment and/or the length of time for the civil commitment under this section, if less than one hundred eighty (180) days.
g. Further assessment if necessary;
h. Authorization for the exchange of records between treatment providers and to the court and tribal attorney;
i. A review of the proceedings within ninety (90) days.

i) The Civil Commitment Case Manager shall furnish monthly reports to the Tribal Court, Tribal Attorney, and the Respondent's Attorney outlining the treatment being administered, the Respondent's progress, and the Treatment Facility's recommendations including the need for continued detention.

j) The Civil Commitment Case Manager shall provide a court report to the Tribal Court, Tribal Attorney, and Respondent's Attorney at least five (5) calendar days before each hearing addressing the progress the Respondent has made to date and the recommendations of the Civil Commitment Case Manager, White Earth Substance Abuse, and the Treatment Facility.

Section 7. Petition for Release.

g) The Respondent, or an authorized representative, may at any time petition the Tribal Court for release from the Treatment Facility.

h) The petition for release need not be in any particular form. The Respondent may orally petition the court for release during a hearing, or may file a written Petition with the Court.

i) Upon receipt of a written petition for release, the Tribal Court shall review the petition, and serve a copy upon the Petitioner, Respondent and Treatment Facility. Upon receipt of a written or oral petition for release, the Tribal Court shall allow the Petitioner seven (7) days to respond.

j) The Treatment Facility shall file a written response to the petition within seven (7) calendar days of receipt of notice that the Respondent has petitioned for release.

k) If, after consideration of the petition and Treatment Facility's response, the Tribal Court finds substantial evidence that the Respondent no longer poses a Danger to Self or

Others, the Tribal Court shall hold a hearing on the matter, following the procedures set forth in Section 5 of this Chapter.

l) The findings and order of the Tribal Court shall be filed with the Clerk of Court who shall serve certified copies upon the Respondent, Petitioner, and the Treatment Facility.

Section 8. Status Review Hearings.

f) The Tribal Court shall conduct a status review hearing, in an appropriate location, at least every ninety (90) days for all persons remaining under this Title.

g) The Respondent shall have the right:
   a. to be present at that hearing by telephone, ITV, or in person;
   b. to be represented by counsel,
   c. to subpoena and cross-examine witnesses, and
   d. to petition the court for release.

h) The Respondent shall appear at all hearings in person, by telephone or by ITV.

i) The Respondent shall appear at all contested hearings in person or if authorized by the court, by ITV.

j) The Tribal Court shall require a report from the treatment facility, an examiner, and the Petitioner on the status of the Respondent and the need for continuing treatment.

k) Civil Commitment proceedings shall be dismissed after 180 days unless a Petition for Re-Commitment is filed by the Petitioner.

Section 9. Contempt

A person who violates an order from the Tribal Court may be found to be in contempt upon proof by clear and convincing evidence after a contested hearing that the Respondent knowingly or willfully did not comply with an order of the Tribal Court. Contempt may include a fine not to exceed $100.00 and/ or the suspension of tribal privileges. If suspension of tribal privileges is ordered, those privileges shall be reinstated upon curing the contempt.

Section 10. Substance Abuse by Pregnant Women.

a) Medical evidence suggests that prenatal drug and/or alcohol exposure places the child at high risk of having medical, psychological and social problems after birth known as Fetal Alcohol Syndrome. Such affected infants are often born prematurely, have low birth weights and other significant medical problems. The White Earth Band of Ojibwe recognizes the need to protect its future generations, and therefore, specifically provides for the protection of the unborn child.

b) If the Tribal Court receives a credible report alleging abuse of alcohol or drugs by a White Earth Tribal member who is pregnant, or any other Indian who may be pregnant and they reside within the exterior boundaries of the White Earth Reservation, the Tribal Court shall arrange an appropriate assessment with White Earth Substance Abuse. All notices sent by the Tribal Court or by White Earth Substance Abuse shall be personally served upon the Respondent.

c) In lieu of court-ordered treatment, the Respondent and White Earth Substance Abuse may voluntarily enter into a written agreement providing for appropriate treatment including, but not limited to, a referral for a chemical dependency assessment, chemical dependency treatment, or classes on parental care. All settlement agreements must be approved by the Tribal Court.

d) If Respondent fails to meet with White Earth Substance Abuse, denies the allegations, or fails to comply with the treatment plan, White Earth Substance Abuse shall file a petition with the Tribal Court in accordance with Section 1 of this Chapter. Upon receipt of such petition, the Tribal Court may issue an ex-parte order to detain the Respondent pending final disposition. The Tribal Court may not detain the Respondent at any Treatment Facility that is unable to monitor the welfare of the unborn child while providing appropriate treatment for the mother.

e) The due process requirements as enumerated in Chapter 3, section 4 of this Title shall be strictly adhered to in order to protect the rights of the Respondent.

Chapter 6
STAYED AND CONTINUED PROCEEDINGS

Section 1. General.

This Chapter applies to civil commitments filed under Chapter 4 and/or Chapter 5 of this Title.

Section 2. Stayed orders of Commitment.

a) The Tribal Court may upon the agreement of the Respondent and the Petitioner stay the civil commitment of the Respondent conditioned on the Respondent's successful completion of terms agreed upon by the Respondent and Petitioner. The terms under which the commitment shall be stayed must be clearly articulated on the record at the time of the hearing. The Court shall issue an order staying the commitment of the Respondent and ordering the terms as agreed upon by the Respondent and Petitioner.

b) Stayed orders of Commitment shall be reviewed at least every ninety (90) days.

c) The Civil Commitment Case Manager shall furnish monthly reports to the Tribal Court outlining the treatment being administered, the Respondent's progress, and the Treatment Facility's recommendation as to the need for continued detention.

d) The Respondent retains all the rights provided in Chapter 1-5 of this Title.

e) If the Respondent does not successfully complete the terms agreed upon and ordered by the Court, the Court may grant the following relief upon motion of the Petitioner:

a. Where the Petitioner has demonstrated probable cause that the noncompliance with the terms of the stayed commitment has created an immediate danger to the Respondent or others, the Court may order the apprehension and detention of the Respondent pursuant to Chapter 4, Section 3 and Chapter 5, Section 3 of this title.

b. The procedural protections described in Chapters 1-5 of this Title shall apply.

c. The Court may lift the stay of commitment upon clear and convincing evidence presented at a contested hearing, that the Respondent is a danger to themselves or others because of the non-compliance.

Section 2. Proceedings Continued for Dismissal.

a) The Tribal Court may upon the agreement of the Respondent and the Petitioner continue the civil commitment proceedings for dismissal conditioned on Respondent's successful completion of services as agreed upon by the Respondent and the Petitioner. The terms under which the proceedings may be continued must be clearly articulated on the record at the time of the hearing. The Court shall issue an order continuing the stay of proceedings and ordering the terms as agreed upon by the Respondent and Petitioner.

b) Continued proceedings may only be used where the examiner, or a health officer has recommended outpatient treatment.

c) Proceedings continued for dismissal shall be reviewed at least every ninety (90) days.

d) The Civil Commitment Case Manager shall furnish monthly reports to the Tribal Court outlining the treatment being administered, the Respondent's progress, and the Treatment Facility's recommendations.

e) The Respondent retains all the rights provided in Chapter 1-5 of this Title.

f) If the Respondent does not successfully complete the terms agreed upon and ordered by the Court, the Court may grant the following relief upon motion of the Petitioner:

a. Where the Petitioner has demonstrated probable cause that the noncompliance with the terms has created an immediate danger to the Respondent or others, the Court may order the apprehension and detention of the Respondent pursuant to Chapter 4, Section 3 and Chapter 5, Section 3 of this title. The procedural protections described in Chapters 1-5 of this Title shall apply.

b. Upon motion of the Petitioner requesting Commitment of the Respondent, the Court may schedule a trial where the Petitioner shall bear the burden of proving by clear and convincing evidence the allegations in the Petition and that the Respondent has not been compliant with the terms of the continued proceedings.

Chapter 7
EMERGENCY HOLD

Section 1. Emergency Hold.

a) Any person may be admitted or held for emergency care and treatment in a treatment facility with the consent of the head of the treatment facility upon a written statement by an examiner that:
   a. The examiner has examined the person not more than 15 days prior to admission;
   b. The examiner is of the opinion, for stated reasons, that the person is mentally ill, developmentally disabled or chemically dependent, and is in danger of causing injury to self or other if not immediately detained; and
   c. An order from the tribal court cannot be obtained in time to prevent the anticipated injury.

Section 2. Tribal Law Enforcement Officer.

a) A tribal law enforcement officer may lawfully detain, take into custody and transport a person to a licensed physician or treatment facility if the officer has reason to believe, either through direct observation or upon reliable information of the person's recent behavior and knowledge of the person's past behavior or medical treatment.
b) A tribal law enforcement officer may take a person who the officer reasonably believes to be chemically dependent or intoxicated in public and a danger to themselves or to others and transport them to a treatment facility.
c) A tribal law enforcement officer may take into custody any person who the officer reasonably believes to be intoxicated in public and reasonably believes that the person is a danger to themselves or to others and transport them to a treatment facility.

Section 3. Notice of Emergency Hold.

a) Any person held under this section must be informed in writing at the time of admission of the right to leave the treatment facility after 72 hours, not including week-ends and legal holidays, provided that the medical examination allows for a change to voluntary status and there are no pending tribal court orders relating to the emergency hold.
b) Any person held under this section has a right to leave the medical facility 48 hours, not including week-ends and legal holidays, after a proper medical examination has been completed, provided that the medical examination allows for a change to voluntary status and there are no pending tribal court orders relating to the emergency hold.
c) The treatment facility shall assist the person, held under this section, in exercising the rights enumerated in this section. Nothing in the section shall impair the procedures set

forth in Chapter 4, Mental Illness or in Chapter 5, Chemical Dependency. The specific procedures in Chapter 4 and Chapter 5 take precedence over the procedures set forth under this section relating to an emergency hold.

Section 4. Duration of Emergency Hold.

a) Any person held under this section may be held up to 72 hours, exclusive of Saturday, Sundays, and legal holidays after admission. If a petition for the commitment of the person is filed in Tribal Court, the Court may issue a judicial hold order pursuant to Chapter 4 or Chapter 5 of this code.

b) During the 72-hour emergency hold period under this chapter no court may release any person held under this section without a written petition for release and a summary hearing on that petition. The petition must be consistent with the petition standards set forth in Chapter 4 and Chapter 5 of this code. The summary hearing must be held as soon as practicable and not inconsistent with the procedures set forth in this code. The summary hearing may be conducted via telephone conference or other means available as long as the parties can hear and communicate with each other. If the court orders the release of the person, it shall issue an order to the effect along with written findings supporting the release. A court ordered release may not be delayed pending the order being issued. The court, upon ordering a release of a person held under this section, shall notify all relevant parties of the release. For purposes of this section all relevant parties are:
    a. Any specific individuals identified in the petition or in the record presented at the summary hearing who might be endangered if the person held is released; and
    b. The examiner whose information is used as the basis for the hold; and
    c. Tribal Law enforcement; and
    d. White Earth Substance Abuse or Behavioral Services depending on the nature of the emergency hold; and
    e. The treatment facility where the person is being held.

Section 5. Emergency Hold for Public Intoxication.

a) Any person held under this section under the basis for public intoxication and the purpose for the hold is for detoxification, a treatment facility may release the person after 24 hours without providing notice, once the treatment facility is able to determine the person is no longer a danger to themselves or to others. The treatment facility must notify tribal law enforcement that the person is being released form the facility and the grounds for doing so.

Section 6. Release from Emergency Hold.

b) Any person held under this section must be released from the medical facility upon the expiration of the 72 hours unless a tribal court orders the person to be held. No person may be held for longer than 72 hours under this code without having a summary hearing before a tribal court judge. If no hearing is held within 72 hours of the placement of the

emergency hold, excluding Saturdays, Sundays and legal holidays, the treatment facility must release the person.

Chapter 8
ADMINISTRATION OF NEUROLEPTIC MEDICATION

Section 1. General.

a) Neuroleptic medications may be administered to persons subject to civil commitment as defined as mentally ill, chemically dependent and/or dangerous to the public only as provided in this section.

Section 2. Emergency Administration.

a) A treating physician may administer neuroleptic medication to a patient who does not have capacity to make a decision regarding administration of the medication if the patient is in an emergency situation. Medication may be administered for so long as the emergency continues to exist, up to 14 days, if the treating physician determined that the medication is necessary to prevent serious, immediate physical harm to the patient or to others.

b) If a request for authorization to administer medication is made to the Tribal Court in conjunction with a petition for commitment and the Tribal Court determines there is sufficient cause to continue the physician's order until the hearing, the treating physician may continue the medication until that hearing, if the emergency continues to exist.

c) The treatment facility, hospital or other place of care shall document the emergency in the patient's medical record in specific behavioral terms.

Section 3. Persons with capacity to make informed decision.

a) A person who has the capacity to make an informed decision regarding the administration of the neuroleptic medication may consent or refuse to the administration of the medication. The informed consent of a patient must be in writing.

Section 4. Determination of capacity.

a) The Respondent is presumed to have capacity to make decisions regarding administration of neuroleptic medication. Petitioner has the burden of proving incapacity by a preponderance of the evidence.

b) In determining the Respondent's capacity to make decisions regarding the administration of neuroleptic medication, the Tribal Court shall consider:

a. Whether The Respondent demonstrates an awareness of the nature of his/her situation, including the reasons for the hospitalization, and the possible consequences of refusing treatment with neuroleptic medications;
b. Whether The Respondent demonstrates an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives;
c. Whether The Respondent communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one, even if it may not be in the person's best interests.

Section 5. Persons without capacity to make informed decision; Substitute decision maker.

a) Upon request of any interested person and upon a showing that administration of neuroleptic medications may be recommended and that the Respondent lacks capacity to make decisions regarding the administration of a neuroleptic medication, the Tribal Court shall appoint a substitute decision maker with authority to consent to the administration of neuroleptic medication as provided in this section.

b) A hearing is not required for an appointment under this paragraph. The substitute decision maker must be an individual, community member, or institutional multidisciplinary panel by the local mental health authority. In appointing a substitute decision maker, the Tribal Court shall give preference to a guardian or conservator, proxy or health care agent with authority to make health care decisions for the Respondent.

c) If the Respondent's treating physician recommends treatment with neuroleptic medication, the substitute decision maker may give or withhold consent to the administration of the medications based on the standards in Section 4 of this Chapter. If the substitute decision maker withholds or withdraws consent or the Respondent refuses the medication, a neuroleptic medication may not be administrated to the Respondent except by a Tribal Court order or in an emergency where the treating physician reasonably believes death or imminent harm will result..

d) A substitute decision maker appointed under this section has access to the relevant sections of the Respondent's health records on the past or present administration of medication. The substitute decision maker shall also have the ability to speak without additional written consent with the treating physician regarding the need for or recommendations of administrating the neuroleptic medication.

e) If the Tribal Court order for civil commitment did not provide for the appointment of a substitute decision-maker or for the administration of neuroleptic medication, the treatment facility may later request the appointment of a substitute decision-maker upon a showing that administration of neuroleptic medications is recommended and that The Respondent lacks capacity to make decisions regarding the administration of neuroleptic medications.

f) The substitute decision maker's authority to consent to the neuroleptic medication lasts for the duration of the Tribal Court's order of appointment or until modified by the Tribal Court.

Section 6 When a person lacks capacity to make decisions about medication

a) When the Respondent lacks capacity to make decisions regarding the administration of neuroleptic medication, the substitute decision-maker or the Tribal Court shall use the standards in this Section in making a decision regarding administration of the medication.

b) If the Respondent clearly stated what the Respondent would choose to do in this situation when the Respondent had the capacity to make a reasoned decision, the Respondent's wishes must be followed. Evidence of the Respondent 's wishes may include written instruments, including a durable power of attorney for health care

c) If evidence of the Respondent 's wishes regarding the administration of neuroleptic medications is conflicting or lacking, the decision must be based on what a reasonable person would do, taking into consideration:
   a. The Respondent 's family, community, cultural, moral, religious, and social values;
   b. the medical risks, benefits, and alternatives to the proposed treatment;
   c. past efficacy and any extenuating circumstances of past use of neuroleptic medications;
   d. any other relevant factors.

Section 7 Procedure when person refuses medication.

a) If the substitute decision maker or the Respondent refuses to consent to treatment with neuroleptic medications, absent an emergency as set out above, neuroleptic medications may not be administered without a Tribal Court order.

b) Upon receiving written request for a hearing, the Tribal Court shall schedule the hearing within 14 days of the request. The matter may be heard as part of any other proceeding under this Chapter. By agreement of the parties or for good cause shown, the Tribal Court may extend the time of the hearing an additional 30 days.

c) The Tribal Court may base its decision on relevant evidence, including testimony of a treating physician or other qualified physician, a member of the Respondent's treatment tem, a court-appointed examiner, witness testimony, or the Respondent's own medical record.

d) If the Tribal Court finds the Respondent has the capacity to decide whether to take neuroleptic medication or that the Respondent lacks capacity to decide and the standards for make a decision to administer the medications under Section 5 are not met, the treating facility may not administer medication without the Respondent's informed and

written consent or without the declaration of an emergency, or until further review by the Tribal Court.

e) If the Tribal Court finds that the Respondent lacks capacity to decide whether to take neuroleptic medication, the Tribal Court may authorize the treating facility and any other community or treatment facility to which the Respondent may be transferred or provisionally discharged, to involuntarily administer the medication to the Respondent. A copy of the Tribal Court order must be given to the Respondent, the Respondent 's attorney, the Tribal Attorney, and the treatment facility. The treatment facility may not begin administration of the neuroleptic medication until it notifies the Respondent of the Tribal Court's order authorizing the treatment.

f) The Tribal Court may authorize the administration of neuroleptic medication until the termination of a determinate commitment. If the patient is committed for an indeterminate period, the Tribal Court may authorize treatment of neuroleptic medication for not more than two years, subject to the Respondent 's right to petition the Tribal Court for review of the order. The treatment facility must submit annual reports to the Tribal Court, which shall provide copies to the Respondent and the respective attorneys.

g) If physical force is required to administer the neuroleptic medication, force may only take place in a treatment facility or therapeutic setting where the Respondent 's condition can be reassessed and appropriate medical staff are available.

Section 8 Review.

a) The Respondent or other person may petition the Tribal Court for review of any determination under this section or for a decision regarding the administration of neuroleptic medications, appointment of a substitute decision-maker, or the Respondent's capacity to make decisions regarding administration of neuroleptic medications.

Chapter 9
LENGTH OF COMMITMENTS

Section 1. General.

This Chapter applies to civil commitments filed under Chapter 4 and/or Chapter 5 of this Title.

Section 2. Length of Commitment.

A Civil Commitment petitioned under Chapter 4 of this Title shall be open for no more than one hundred eighty (180) days from the entry of the Civil Commitment Order, Order for Stay of Commitment, or Order to Continue Proceedings for Dismissal, unless a Petition for Extension of Commitment is filed before the expiration of the one hundred eighty (180) day period.

Section 3. Petition for Extension of Commitment.

a) On or before one hundred eighty (180) days have passed since the entry of an Order for Commitment, Order for Stay of Commitment, or Order to Continue Proceedings for Dismissal, but no earlier than thirty (30) days before end of the commitment proceedings, the Petitioner may Petition for Extension of the Commitment for a period of time not to exceed one hundred eighty (180) days.

b) The Petition shall contain the following:
    a. The petition requirements described in Chapter 4, Section 1 or Chapter 5, Section 1; and
    b. The facts upon which the allegations that the Commitment Order, Order for Stay of Commitment, or Order to Continue Proceedings for Dismissal are based; and
    c. A statement addressing whether alternatives to Extension of Commitment were considered and why such alternatives were rejected.
c) The Petition for Extension of Commitment shall allow the same procedural process and protections described in Chapters 1-5 of this Title.

Chapter 10
RELEASE OF RECORDS

Section 1. Court Records Sealed.

a) All records of civil commitment proceedings before the White Earth Tribal Court shall be sealed and are available only to the following persons:
    a. The Respondent;
    b. The Petitioner;
    c. Court Personell;
    d. Treatment providers while they are providing services court ordered through the civil commitment proceedings;
    e. Other persons or agencies by order of the White Earth Tribal Court who have demonstrated a compelling interest in knowledge of the civil commitment records.

Section 2. Records of White Earth Behavioral Health.

a) Records of White Earth Behavioral Health are considered private protected records which cannot be released except under the following circumstances:
    a. Records of White Earth Behavioral Health may be released to the White Earth Tribal Attorney, the Court, the Respondent, the Petitioner, and the Respondent's attorney upon order of the White Earth Tribal Court for the purpose of supporting or defending a petition for civil commitment.

b. Records of White Earth Behavioral Health pertaining to the mental health and chemical use of the Respondent may be released to treatment providers currently providing treatment or evaluating whether they are able to provide treatment upon order of the White Earth Tribal Court for the purpose of determining appropriate treatment and services for the Respondent.
c. Records of White Earth Behavioral Health may be released to a County Health and Social Services Agency and the County attorney for the purpose of supporting a petition for civil commitment upon order of the White Earth Tribal Court.

Section 3. Records of other health care providers.

a) Records of other health care providers including physician, hospital, emergency room, psychiatric, and chemical dependency records may be released to White Earth Behavioral Health, the White Earth Tribal Attorney, and the White Earth Tribal Court upon order of the White Earth Tribal Court.

b) Records of other health care providers including physicians, hospitals, emergency room, psychiatric, and chemical dependency records in the possession of the White Earth Tribal Attorney or White Earth Behavioral Health, may be released by the White Earth Tribal Attorney or White Earth Behavioral Health to current treatment providers by order of the White Earth Tribal Court upon a showing that the records are necessary to determine or effect appropriate treatment for the Respondent.

c) Records of other health care providers including physician, hospital, emergency room, psychiatric, and chemical dependency records in the possession of the White Earth Tribal Attorney or White Earth Behavioral Health may be released by the White Earth Tribal Attorney or White Earth Behavioral Health to county social service agency or county attorney by order of the White Earth Tribal Court upon a showing that the records are necessary for the County to file civil commitment proceedings and that such proceedings can not be filed in White Earth Tribal Court.

Chapter 11

PETITION FOR RECOMMITMENT

Section 1. Filing for Recommitment.

a) Civil Commitment Petitions filed within 365 days of the dismissal of previous civil commitment proceedings shall be titled "Petition for Recommitment".

Section 2. Contents of Petition.

a) A Petition for Recommitment shall contain all of the information is Chapter 4, Section 1 or Chapter 5, Section 1 of this code, and shall also contain the following:
    a. History of previous commitments;
    b. Services provided to date;
    c. Progress by the Respondent;
    d. Continued evidence that the Respondent continues to be a danger to themselves or others or continues to be gravely ill;
    e. An examiner's statement made after an full examination of the Respondent made within 15 days of the filing of the petition supporting the recommitment;
    f. Explanation of the current needs of the Respondent, and
    g. Recommendations for services.

Section 3. Procedure.

a) The Tribal Attorney shall file the petition and supporting documents with the court and shall personally serve a copy on the Respondent. The Respondent's attorney may be served by mail, facsimile or email.
b) Upon the receipt of the petition, the Court shall follow the Procedures for Commitment as described in Chapters 3 thru 5 of this title.
c) The Respondent shall retain all rights in proceedings for recommitment as afforded during the civil commitment process under this code.

Chapter 12

APPEALS

Section 1. Appeals.

a) The Respondent shall have a right to appeal any decision or order issued by the White Earth Tribal Court to the White Earth Appellate Court.
b) The White Earth Appellate Court shall have exclusive jurisdiction over any appeals made under this title.
c) Appeals from the Tribal Court's decisions or orders shall be made to the White Earth Appellate Court pursuant to the White Earth Tribal Appellate Court Rules of Civil Procedure.
d) The Respondent shall have the right to an expedited hearing. The appeal shall be limited to a review of the proceedings of the Tribal Court and shall not be a de novo hearing.