



**RESOLUTION OF THE GOVERNING BODY
OF THE
THREE AFFILIATED TRIBES
OF THE
FORT BERTHOLD INDIAN RESERVATION**

A Resolution Entitled: “Adoption of the Mandan, Hidatsa and Arikara Nation Anti-Drug Code, Title III-A of the Three Affiliated Tribes Tribal Code.”

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and

WHEREAS, Article III of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council is the governing body of the Tribes; and

WHEREAS, The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article VI, Section 5 (1) of the Constitution of the Three Affiliated Tribes provides that the Tribal Business Council has the power to adopt resolutions regulating the procedure of the Tribal Business Council and other Tribal agencies and Tribal officials on the Reservation; and

WHEREAS, In 1977 the Tribal Business Council adopted a Tribal Drug Code which provides criminal statutes regulating illicit drugs and controlled substances and said code has not been revised or amended since that time; and

WHEREAS, In 2006 the Judicial Committee of the Tribal Business Council authorized the appointment of a Drug Code Committee to work on the development of a new Comprehensive Tribal Drug Code which included staff from the Justice Center, Circle of Life, SYDE, Law Enforcement, Traffic Safety, I.H.S, Social Services, Tribal Court, Domestic Violence and the Legal Department; and

WHEREAS, The Drug Code Team held various meetings and developed a revised Comprehensive Anti-Drug Code which includes criminal provisions as well as various civil provisions that are not included in the current Drug Code and also includes specific provisions relevant to the issue of methamphetamine abuse on the Reservation; and

**TITLE V
DOMESTIC RELATIONS**

CHAPTER 1

**INVOLUNTARY COMMITMENTS
OF INDIVIDUALS REQUIRING TREATMENT**

5-1-1 Purpose. The purpose of this Chapter is to provide a procedure whereby individuals suffering from chemical dependency or mental illness or both may be involuntarily committed by court order into an appropriate institution for the purpose of ensuring that the individual receives treatment for such chemical dependency or mental illness. This Chapter is specifically intended to provide procedures for:

- (a) Providing prompt evaluation and treatment of individuals who are chemically dependent or mentally ill and as result require treatment;
- (b) Safeguarding individual rights;
- (c) Protecting unborn children from the harms of prenatal alcohol or drug consumption;
- (d) Providing continuity of care for individuals who are chemically dependent or mentally ill;
- (e) Requiring family members to participate in the treatment and recovery process of family members;
- (f) Encouraging the full use of all existing agencies, professional personnel, and other resources to prevent duplication of services.

5-1-2 Construction. This chapter shall be construed to provide the least restrictive form of treatment available which is in the best interests of the respondent.

5-1-3. Definitions. The following definitions shall apply to this chapter:

- (a) “Chemically dependent individual” means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
- (b) “Mentally ill individual” means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. This term is not intended to include a mentally retarded or mentally deficient individual of significantly sub average general intellectual functioning who originates during the developmental period and is associated with impairment in adaptive behavior. Chemical Dependency does not per se constitute mental

illness, although individuals suffering from these conditions may also be suffering from mental illness.

- (c) “Imminent danger to others” means behavior due to substance intoxication or mental illness which supports a reasonable expectation that the person will inflict serious physical injury upon another person in the very near future. Such behavior shall be evidenced by recent acts which constitute a danger of serious physical injury to another person. Such acts may include a recently expressed threat if the threat is such that, if considered in light of its context or in light of the person’s recent previous acts, it is substantially supportive of an expectation that the threat will be carried out.
- (d) “Imminent danger to self” means:
 - (e) Behavior due to substance intoxication or mental illness which supports a reasonable expectation that the person will inflict serious physical injury upon himself in the very near future. Such behavior shall be evidenced by recent acts which constitute a danger of suicide or self inflicted serious injury. Such acts may include a recently expressed threat if the threat is such that, if considered in light of its context or in light of the person’s recent previous acts, it is substantially supportive of an expectation that the threat will be carried out.
 - (f) Recent behavior or related physical condition which show there is a danger of serious personal harm in the very near future as evidenced by inability to provide for some basic human needs such as food, clothing, shelter, physical health or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person’s chemical dependency or mental illness.
- (g) “Individual requiring emergency treatment” means an individual who is:
 - 1. Pregnant and abusing alcohol or drugs or who is pregnant and has tested positive for alcohol or drugs;
 - 2. Is chemically dependent and is an imminent danger to self or others as those terms are defined herein.
 - 3. Is mentally ill and is an imminent danger to self or others as those terms are defined herein.
- (h) “Individual requiring treatment” means an individual who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that

individual, others or property. “Serious risk of harm” means a substantial likelihood of:

1. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
2. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
3. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self control or judgment in providing one’s shelter, nutrition, or personal care; or
4. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the individual’s thoughts or actions or based upon acts, threats, or patterns in the individual’s treatment history, current condition, and other relevant factors, including the effect of the individual’s mental condition on the individual’s ability to consent.

(i) “Respondent” means the individual subject to the proceedings and alleged to be mentally ill or chemically dependent and therefore requiring treatment.

(j) “Qualified mental health professional” means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the individual is an individual requiring treatment. An evaluation of a respondent’s physical condition may only be made by a licensed physician or psychiatrist, an evaluation of a respondent’s mental status may only be made by a psychiatrist or psychologist trained in a clinical program, and an evaluation of a whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.

5-1-4. Application for Involuntary Commitment. Any individual eighteen years or older may file an application for the involuntary commitment of an individual alleged to be chemically dependent or mentally ill and therefore requiring treatment as that term is defined in Section 5-1 3 of this Chapter. The application shall be accompanied by separate supporting affidavits completed and executed by the applicant and at least one other individual. The affidavits must allege facts that would establish that the respondent meets the criteria for an individual requiring treatment and set forth the reason or reasons for the proposed treatment. The

individuals submitting affidavits must have actual personal knowledge of the respondent's mental illness or chemical dependency.

The individual filing the application for involuntary commitment shall agree through the execution of the application, to participate in the individual's treatment program if the petition for involuntary commitment is granted. The level of participation required by this provision shall be that required by the particular treatment program. The applicant shall post a \$ 25 filing fee with the application which shall be refunded to the applicant if the applicant complies with the treatment participation requirement.

The application for involuntary commitment shall be filed with the tribal prosecutor for review. The tribal prosecutor shall review the application and affidavits to determine whether they allege sufficient facts establishing that the individual meets the criteria of an individual requiring treatment. If the tribal prosecutor determines that the application and affidavits allege sufficient facts establishing that the individual meets the criteria for an individual requiring treatment, the prosecutor shall file the petition on behalf of the applicant and shall act as the petitioner in the proceedings. The prosecutor shall also determine whether the individual meets the criteria of an individual requiring emergency treatment. If the tribal prosecutor determines that the application and affidavit do not allege sufficient facts to establish that the individual meets the criteria for an individual requiring treatment, the prosecutor shall deny the application and so notify the applicant.

5-1-5. Petition for Involuntary Commitment. The petition for involuntary commitment shall be filed by the tribal prosecutor. The petition shall contain the following information:

- (a) The name, address and age of the applicant and the individual(s) who submitted affidavits;
- (b) The name, address, age, marital status and occupation, if known, of the respondent;
- (c) The name, address, when known, of the respondent's nearest relative or guardian or, if none, of a friend of the respondent;
- (d) Whether the petition is for emergency treatment; and
- (e) The facts upon which the petition for involuntary commitment are based.

The petition shall be filed with the tribal court along with the application and affidavits.

5-1-6. Transmittal to Tribal Judge for Review. Upon receipt of a petition, the clerk of courts shall immediately transmit the petition for review to the chief judge or an associate judge in the event the chief judge is unavailable. The petition shall be reviewed by the judge no later than 24 hours from the time it is filed. The judge shall determine whether the petition establishes probable cause to believe that the respondent meets the criteria of an individual requiring treatment. If the judge determines that probable cause exists, the judge shall issue and file an order setting the time and date for a hearing within seven days or within 72 hours in the case of an individual requiring emergency treatment. Notice of hearing shall also be issued to all interested persons within the time limit set out above.

5-1-7. Apprehension and Detention If the court determines that the respondent meets the criteria for an individual requiring emergency treatment, the court shall order the apprehension of the respondent by law enforcement and the detention of the respondent in an available facility in which the freedom of the respondent is least restricted but where the respondent or other persons are adequately protected from harm. If the respondent is detained under this provision the respondent shall be evaluated by a qualified mental health professional within 72 hours of the detention to determine whether the respondent is an individual requiring emergency treatment.

In the event that the respondent is detained or hospitalized a probable cause hearing shall be held within a period 72 hours from the time of the commencement of the detention for the purpose of determining whether probable cause exists to continue detention of the respondent until such time as a full hearing on the petition can be held. The presiding judge shall follow the recommendations of the qualified mental health professional. If the probable cause hearing is not held in the prescribed 72 hour period, the Respondent shall be forthwith released from detention.

5-1-8. Notice to Respondent. Certified copies of the Petition and Notice of Hearing shall be personally served upon the respondent by law enforcement at least seventy-two (72) hours prior to the hearing or immediately after issuance by the court in the case of a person requiring emergency treatment. The notice of hearing shall include the following:

- (a) Notice of the time, date and place of hearing and directing the Respondent to there appear in person and notifying the respondent that failure to appear may result in the issuance of a warrant directing law enforcement to secure the protective custody and to cause his personal appearance and attendance at the hearing;
- (b) Notice to the respondent of the right to be represented by an attorney at the expense of the respondent;

- (c) Notice (except in the case of a order for emergency treatment) that the respondent must be examined by a qualified mental health professional or physician designated by the court, either voluntarily appearing for the examination within twenty-four hours after service of the notice, or by being apprehended by law enforcement and detained for examination upon order of the court after failure to appear voluntarily;
- (d) Notice of the right of the respondent to obtain additional examination at respondent's expense.

The respondent has the right to waive, in writing, the seventy-two (72)-hour service and notice requirement provided that such waiver is made knowingly and only by the respondent himself or herself.

5-1-9. Hearing. A full hearing on the petition shall be held no later than five (5) days from the date of the emergency commitment of the respondent or no later than ten (10) days from the date the notice of hearing is issued in all other cases. The judge who presides over the hearing shall:

- (a) Hold the hearing in the presence of the respondent himself or herself;
- (b) Ensure that a complete record of the hearing, including a transcript, is made and placed in the court file,
- (c) Admit as evidence into the record the qualified mental health professional's evaluation and any verbal testimony introduced by interested parties either in support of or in opposition to the involuntary commitment; and
- (d) In support of any court ordered disposition requiring involuntary commitment to a treatment facility, ensure that the determination is supported by clear and convincing evidence that the respondent meets the criteria of an individual requiring treatment.

5-1-10. Disposition. Upon completion of the full hearing, the court, based upon the evidence admitted into the record, may order any one or combination of the following dispositions:

- (a) Dismissal of the petition.
- (b) Commitment of the respondent to a facility, located outside of the exterior boundaries of the Fort Berthold Reservation, for the purpose of securing the appropriate inpatient treatment or hospitalization.
- (c) Commitment of the respondent to a treatment facility, located within the exterior boundaries of the Fort Berthold Reservation, for the purpose of securing appropriate level of care as determined by the treatment program team.

Failure by a respondent to comply with the terms of a disposition entered pursuant to this code shall subject the respondent to the court's contempt authority.

This Amended Chapter was adopted by the Three Affiliated Tribes Tribal Business Council on June 14th, 2007 pursuant to Resolution #07-110VJB.



WHEREAS, On January 23rd, 2007 the Judicial, Alcohol and Drug Committee reviewed and approved said Comprehensive Anti-Drug Code, Title III-A with three changes that have been incorporated into a final draft; and

WHEREAS, The Tribal Business Council finds that it is in the best interests of the Tribes and its members that the Mandan, Hidatsa and Arikara Nation Anti-Drug Code, Title III-A of the Tribal Code be adopted by the Tribal Council.

NOW THEREFORE BE IT RESOLVED, that the Tribal Business Council of the Three Affiliated Tribes hereby adopts the attached Comprehensive Anti-Drug Code, as Title III-A of the Three Affiliated Tribes Tribal Code of Laws; and

BE IT FURTHER RESOLVED, that all prior inconsistent ordinances, statutes, acts, or laws, including the 1977 Drug Code of the Three Affiliated Tribes Code, governing the same or similar subject matter or that conflict in any manner with Title III-A are hereby repealed and of no further force or effect.


CERTIFICATION

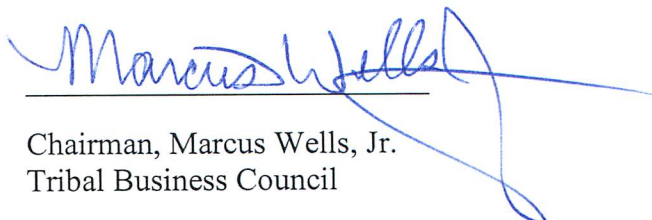
I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, 6 were present at a Regular Meeting thereof duly called, noticed, convened, and held on the 14 day of June 2007; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of 6 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman voting. [] not voting.

Dated this 14 day of June 2007.

ATTEST:


Secretary, V. Judy Brugh
Tribal Business Council


Chairman, Marcus Wells, Jr.
Tribal Business Council