

TITLE 8

PROTECTIVE CUSTODY CODE

History and Amendments\*

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\* This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.

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provisions concerning  
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TITLE 8  
SOUTHERN UTE INDIAN TRIBAL CODE  
PROTECTIVE CUSTODY CODE

ARTICLE 1. GUARDIANSHIP

8-1-101. Jurisdiction.

(1) The tribal court shall have authority whenever it appears necessary or convenient to appoint guardians for the persons and/or the estates, or for the purpose of actual or contemplated court appearances (guardian ad litem) of any minors or persons incompetent by reason of physical or mental sickness or deficiency, advanced age, or for chronic use of drugs or alcohol.

(2) The tribal court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Southern Ute Indian Tribe or a child of a member of the Southern Ute Indian Tribe, whether or not he lives on the reservation.

(3) The tribal court may in its discretion refer matters concerning the guardianship of a minor to the Southern Ute Indian Juvenile Court for appointment of guardianship in connection with probating an estate:

(a) In the process of administering an estate for which there is a valid will containing the designation of a guardian for minor children orphaned by the deceased's death, the court may appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing;

(b) If the person so designated is unable or unwilling to serve or if such person's appointment is objected to by any child over twelve (12) years of age or by a relative or if the court deems such to be in the minor's best interest, a separate guardianship hearing shall be held as provided herein.

8-1-102. Petition.

(1) Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the minor or incompetent or by a minor himself over twelve (12) years of age. The court may initiate proceedings to appoint a guardian if such appointment appears necessary and no other person has initiated such a proceeding.

(2) The petition shall set forth:

(a) The name of the petitioner;

(b) The petitioner's relationship to the minor or incompetent;

(c) All known relatives of the minor or incompetent, their addresses, relationships and ages insofar as is known to the petitioner;

(d) A list of property of the minor or incompetent, real or personal, wherever situate, which is known to the petitioner;

(e) List in detail the present conditions and circumstances which warrant the appointment of a guardian; and

(f) Request that Letters of Guardianship be issued to himself or some suitable person to act as guardian of a minor or incompetent.

8-1-103. Notice.

(1) The petitioner, or the clerk of the court if the petitioner is a minor, or the court itself may initiate the guardianship proceedings, and shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five (5) days before a scheduled hearing. Such notice need not be given in the case of a minor whose parents appear and consent to waive such notice prior to the hearing or in the case of an adult where the spouse or adult children living on the reservation appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the court.

(2) At a hearing conducted to appoint a guardian for a minor, the court shall:

- (a) Examine the petition;
- (b) Determine the need to have a guardian appointed;
- (c) Examine the minor if over twelve (12) years of age, to determine whom he would prefer to have act as his guardian;
- (d) Determine which person is most suitable to act as guardian and that person's willingness to act as guardian; and
- (e) Make an order appointing the guardian setting forth the scope of the guardian's authority, whether or not security for his performance is required, and the duration of such appointment.

(3) Hearing for an incompetent shall be held according to the protective custody procedure. If the court finds that a guardian is needed, it will appoint a consenting person who is most suitable to act as guardian, and the court shall make an order appointing a guardian setting forth the authority of the guardian and whether or not security for his performance is required, and set the duration of such appointment.

8-1-104. Requirements.

Any person twenty-one (21) years of age or older subject to the jurisdiction of the Southern Ute Indian Tribal Court may serve as guardian. Preference shall be given to relatives of a minor or incompetent. Preference shall be given to the person preferred to act as his guardian by a minor or incompetent over twelve (12) years of age, but in all cases, the court shall ultimately determine the guardian on the basis of the best interests of the minor or incompetent.

8-1-105. Security for Faithful Performance of Duty.

The court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of a guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the tribal court for purposes of an action against such security.

8-1-106. Oath, Letters of Guardianship.

(1) The guardian appointed by the court shall be required to take an oath that he will faithfully perform his duties as a guardian. The form of the oath will be determined by the court.

(2) Upon taking the oath and filing with the court any required security, the guardian shall be issued Letters of Guardianship by the clerk under the seal of the court as evidence of his appointment. Any limitations of the guardianship authority shall be set forth in the letters so issued.

8-1-107. Inventory and Appraisal.

(1) Within ten (10) days after the appointment of a general guardian, or guardian of the property or estate of a minor or incompetent, the guardian shall prepare and submit to the court an inventory and appraisal of the estate.

(2) The appraisal shall be made by a disinterested person who shall certify under oath to their appraisal and may receive reasonable compensation for their services.

(3) No appraisal shall be required of items of obvious readily obtainable value where the value of the estate is reasonably believed by the guardian to be less than Three Thousand Dollars (\$3,000.00). If no appraisal is required, then the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

8-1-108. Annual Accounting.

(1) The guardian of every estate in value of over Two Thousand Dollars (\$2,000.00) shall submit an annual account of the estate to the court for approval on such notice as the court may direct in each year in which the value of an estate is or reasonably is believed to be in excess of Two Thousand Dollars (\$2,000.00).

(2) Such account shall be verified on the oath of a guardian and shall contain an accounting of all additions to and any withdrawals from the estate and shall be accompanied by supporting cancelled checks, vouchers, receipts, statements, etc.

8-1-109. Guardian's Compensation.

(1) No guardian shall receive any compensation for acting as such without prior approval of the court.

(2) The guardian of an estate in excess of Two Thousand Dollars (\$2,000.00) in value may receive annual compensation for acting as such in an amount not greater than five percent (5%) of the gross value of the estate.

(3) The guardian of an estate less than Two Thousand Dollars (\$2,000.00) in value shall receive no compensation unless specifically ordered by the court for extraordinary service to the estate.

(4) The right to receive compensation as guardian of an estate shall be deemed waived for any year in which such is not requested and received.

8-1-110. Powers and Responsibilities of Guardians.

(1) Except as otherwise specifically ordered or limited by the court:

(a) A guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of a minor or incompetent and shall be required to care for the health, safety and welfare of such minor or incompetent and provide for his education and medical care if needed or appropriate.

(b) The guardian in a legal action shall have power and authority to represent the best interests of a minor or incompetent in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature or proceeding under the juvenile code) and to employ counsel and settle or compromise suits or claims subject to the approval of the court.

(2) A guardian at any time may petition the court for authority to do any act, but if he is uncertain of his authority, and the court may grant such authority after notice and hearing if such appears to be consistent to the best interests of the minor or incompetent.

(3) A guardian of any kind shall:

(a) Stand in a fiduciary relationship to the minor or incompetent ward;

(b) Exercise a high degree of care in managing the estate of his ward;

(c) Derive no personal benefit of any kind from his management of the estate of his ward; and

(d) Be liable to said ward for any losses to the estate attributable to breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two (2) years after the appointment of a new guardian or the removal of the incompetency or arrival at the age of majority.

8-1-111. Discharge of Guardian.

(1) Every guardian appointed as provided herein shall serve until discharged by the court.

(2) The guardian of a minor not otherwise incompetent, or the minor himself, may petition the court on or after the date the minor reaches the age of majority [eighteen (18) unless not emancipated and then age of emancipation] to have the guardian discharged and the estate turned over to the minor. The court shall grant such discharge with or without notice and hearing upon receipt of sufficient competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incompetent in which case a hearing shall be held to determine such fact.

(3) A person other than a minor who has had a guardian appointed for reasons of incompetency or the guardian or relative of such incompetent may petition the court for a determination of his restoration to capacity and for the discharge of the guardian. The court shall hold a hearing after such notice to known interested persons as the court shall direct and receive evidence both of medical nature and otherwise of the ward's incompetency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and his guardianship and guardian discharged.

8-1-112. Guardianship Records.

The clerk shall keep a separate permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearing, etc. Any guardian duly appointed shall be entitled to receive without charge three (3) certified copies of Letters of Guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the court.

8-1-113. Guardianship of Trust Property.

The court is hereby authorized to appoint a guardian of the trust estate of a minor or incompetent using the procedures and safeguards outlined herein for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such minor or incompetent if it appears that the price to be paid is reasonable and adequate and that such sale is in the best interests of the minor or incompetent. The court may enter an order authorizing such action. All actions taken by such guardian consenting to conveying trust property shall be subject to the approval of the Superintendent of the Bureau of Indian Affairs.

8-1-114. Temporary Guardianship and Custody.

The court shall have the power to entertain, grant or deny petitions for temporary guardianship and custody when it determines that it is in the best interests of the child involved.

ARTICLE 2. MENTAL HEALTH SERVICE

8-2-101. Voluntary Application for Mental Health Services.

(1) Nothing in this article shall limit the right of any person to make voluntary application at any time to public or private agencies for professional purposes for mental health services.

(2) Notwithstanding any other provision under the Southern Ute Indian Tribal Code, a minor, fifteen (15) years of age or older, may consent to receive mental health services to be rendered by a hospital or a person licensed to practice medicine. Parental consent is not required in this instance, however, the professional person rendering mental health services to any minor may advise the parent or legal guardian of the minor of the services given or needed without the consent or knowledge of the minor.

(3) When a parent or legal guardian of a minor makes voluntary application for mental health services on behalf of a minor, the minor's consent is not required.

(4) A person who is voluntarily hospitalized may be released at his request or the request of a parent or guardian unless release of such person represents a danger to the community or to himself.

8-2-102. Rights of Respondents.

Unless specifically stated in an order by the court, a respondent shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this article.

8-2-103. Emergency Procedure.

(1) When any person appears to be mentally ill, and as a result of such mental illness appears to be in imminent danger to others or to himself if he remains at liberty, a peace officer upon probable cause and with such assistance which may be required may take the person into protective custody or cause him to be placed in a facility designated or approved by the Social Services Director for seventy-two (72) hour treatment and evaluation.

(2) After taking such a person into custody, the sheriff or peace officer shall file in court a statement setting forth the circumstances under which the person was taken into custody. There shall be no fee for filing such statement.

(3) The court, as soon as possible after filing of the officer's report, shall make a written order:

(a) Discharging the person in custody; or

(b) Confining the person for observation, diagnosis or treatment pursuant to Section 5 of this article.

(4) The person to be evaluated, or his legal guardian, shall be provided with a copy of a written statement of the circumstances in which the emergency commitment arose and the exact length of his ordered detention. The facility conducting the treatment and evaluation shall also receive a copy of this factual information sheet.

(5) No person may be detained longer than seventy-two (72) hours under this section unless treatment is unavailable on Saturdays, Sundays or holidays, in which case the period may be extended for that amount of time only.

(6) Each person admitted under this section shall receive an evaluation and treatment as soon as possible after he is admitted. If a person no longer requires treatment within the seventy-two (72) hour time frame,

he shall be released as soon as treatment is no longer effective in his case.

8-2-104. Guardian for Legal Proceedings.

(1) Whenever any proceedings are instituted under this section, the court shall appoint an attorney at law or lay counsel who shall represent the respondent as his guardian ad litem in all proceedings thereunder.

(2) The guardian ad litem shall make a written report in the event a person is found to need commitment because of mental illness. The guardian ad litem shall include in his report an inventory of any real or personal property believed to be owned by such person; his social security number, if any, and whatever benefits to which he may be entitled; the names and addresses of the next of kin of the respondent, if known; and a recommendation as to whether or not a conservatory should be appointed.

(3) If in the opinion of the court the estate of the respondent is subject to waste or theft during involuntary hospitalization under this code, the court may assign the guardian ad litem the additional duty of preparing an inventory of all assets of the respondent and to secure such assets against waste and theft pending the final adjudication under this article.

8-2-105. Court Ordered Evaluation for Mentally Ill Persons.

(1) Any person alleged to be mentally ill and as a result thereof to be a danger to others or to himself, or to be unable to care for himself, may be given an evaluation of his condition under court order pursuant to this code.

(2) Any individual may petition the court for a court ordered evaluation of an alleged mentally ill person.

(3) The petition for court ordered evaluation shall contain the following:

(a) The name and address of the petitioner and his interest in the case;

(b) The name of the person for whom the evaluation is sought who shall be designated as the respondent and if known to the petitioner, the name, address, age, sex, mental status and the occupation of the respondent;

(c) Allegations of fact indicating that the respondent may be mentally ill and as a result may be of danger to others or to himself or unable to care for himself and a showing that reasonable grounds warrant such an evaluation;

(d) The name and address of every person known or believed by the petitioner to be legally responsible for the care, support and maintenance of the respondent if such information is available; and

(e) The name, address and telephone number of an attorney, if any, who has most recently represented the respondent. If there is no attorney, there shall be a statement as to whether or not the respondent meets the criteria established by the Legal Aid Agency operating on the Southern Ute Indian reservation.

(4) Upon receipt of a petition satisfying the above requirements, the court shall designate a facility approved by the Director of the Southern Ute Indian Social Services or a professional person to provide screening to determine whether there is probable cause to believe the allegations of the petition. The respondent shall be given written notice that a petition has been filed for an order for seventy-two (72) hour evaluation and the respondent's cooperation shall be solicited if possible.



(5) Following the initial screening, a facility or professional person designated by the court shall file his report with the court. The report shall include a recommendation as to whether there is probable cause to believe that the respondent is mentally ill and as a result of this mental illness is a danger to others or to himself or unable to care for himself and whether the respondent will voluntarily receive evaluation or treatment. The screening report shall be confidential and shall be furnished to respondent or his attorney or personal representative upon request.

(6) When it appears pursuant to the initial screening that probable cause exists to believe that respondent is mentally ill and as a result is a danger to others or to himself or is unable to care for himself, and that efforts have been made to secure the cooperation of the respondent who has refused or failed or been unable to accept evaluation voluntarily, the court shall issue an order for further evaluation and if necessary authorize a peace officer or court appointed professional person to take respondent into custody and place him in a facility designated by the Department of Social Services for an additional seventy-two (72) hour treatment and evaluation period. At the time of taking respondent into custody, a copy of the petition and the order for evaluation shall be given to respondent and his attorney or legal guardian if the same is known or to anyone else thereafter designated by the respondent.

(7) Respondent shall be evaluated as promptly as possible and shall not be detained longer than seventy-two (72) hours unless treatment is unavailable on Saturdays, Sundays or holidays in which case treatment shall be extended by those times only.

(8) If the respondent is taken into custody for evaluation treatment involuntarily, the person taking him into custody shall secure his property to the best of his ability.

8-2-106. Certification for Treatment.

(1) A person detained for seventy-two (72) hours under the provisions of this code who has been evaluated may be certified for not more than three months of treatment under the following conditions:

(a) The professional staff of the agency or facility providing the seventy-two (72) hour treatment and evaluation has analyzed the person's condition and has found the person mentally ill and as a result of the mental illness is of danger to himself or unable to care for himself;

(b) The person has been advised of the availability of voluntary treatment, but refuses to participate or reasonable grounds exist to believe that he will not remain in a voluntary treatment program;

(c) The facility which will provide short term treatment has been approved by the Social Services Director of the Southern Ute Indian Tribe.

(2) Notice of certification must be signed by a physician on the staff of the evaluating facility. The certification shall be filed with the court within five days of the date of certification.

(3) Copies of the certification shall be personally delivered to the respondent, mailed to his attorney and the Southern Ute Indian Department of Social Services. A copy shall be kept by the evaluation facility as part of the person's record. Upon request of the respondent, certification notice shall be given to any other person he shall so designate. In addition to the copy of the certification, the respondent shall be given a written notice that a hearing on certification may be held before the court or a jury upon written request directed to the court.

(4) Upon certification of the respondent, the facility designated for short term treatment shall have custody of the respondent.

(5) Whenever a certification is filed with the court, the court shall forthwith appoint an attorney or lay counsel to represent the respondent as guardian ad litem. The guardian ad litem may be one of respondent's choosing or if not, may be appointed on its own motion by the court. The guardian ad litem representing the respondent shall be provided with a copy of the certification immediately upon his appointment.

(6) Respondent for treatment under this section or his guardian ad litem may at any time file a written request that certification for treatment, or treatment, be reviewed by the court or that the treatment be on an out-patient basis. If review is requested the court shall hear the matter within ten (10) days after the request and the court shall give notice to the respondent and his attorney and the certifying and treating facility of the time and place thereof. The hearing shall be held in accordance with this section. At the conclusion of the hearing the court may enter or confirm the certification for three month treatment, discharge the respondent, or enter any other appropriate order.

(7) Records and papers in the proceedings shall be kept separately in the clerk's office and five (5) days after release of respondent shall be sealed, not to be opened except under court order for good cause shown.

#### 8-2-107. Hearing Procedure.

(1) Hearings before the court under this section shall be conducted in the same manner as other civil proceedings before such court. The burden of proof shall be upon the person or facility seeking to detain the respondent to show that there is probable cause that respondent is mentally ill and that as a result of such illness he is a danger to himself or to others or is incapable of caring for himself.

(2) Service of any notification, information or request for information, review or redetermination shall be accomplished by certified mail, return receipt requested, or in any manner provided by the Southern Ute Indian Tribe Rules of Civil Procedure and shall be sufficient for all purposes of this article.

(3) The court may appoint a professional person to examine the respondent for whom treatment is sought and to testify at the hearing before the court as to the results of his examination.

(4) Every respondent subject to an order for treatment shall be advised of his right to have an attorney represent him and a right to file a habeas corpus proceeding in the federal court.

(5) No person who has received evaluation or treatment under any provisions of this article shall be discriminated against because of such status.

(6) All contracts, agreements and credits with or to any insane person shall be absolutely void as against such person, his heirs, or personal representative, but persons making such contracts or agreements with any insane person shall be bound thereby at the election of his conservators. Any property acquired from an insane person, if the other party knows of his mental disability, shall be restored to such insane person, his conservators, heirs, executors or administrators.

#### 8-2-108. Extension of Term of Treatment.

If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary for treatment of the respondent, he shall file with the court an extended certification request. Respondent shall be entitled to a hearing on the extended certification request under the same conditions as in the original certification. The attorney initially representing the respondent shall continue to represent that person unless the court appoints another attorney. In no case shall extended treatment occur longer than six (6) months without judicial review.

8-2-109. Termination of Treatment.

Certification for treatment shall terminate as soon as the professional person in charge of treatment of the respondent determines that respondent has received sufficient benefits from such treatment for him to leave. Whenever a certification has been terminated, the professional person in care of the facility providing treatment shall notify the court in writing within five (5) days of such determination. Such professional person may also prescribe out-patient care or any other similar mode of treatment prior to termination.

8-2-110. Right to Treatment.

(1) Any person receiving evaluation or treatment under the provisions of this section is entitled to medical and psychiatric care and treatment. Records of the professional person in charge of treatment shall be made available to respondent or his attorney upon request.

(2) Approval of treatment facilities shall be subject to regulations adopted by the Southern Ute Indian Tribe Department of Social Services and shall conform to the highest standards promulgated by the state of Colorado and the United States Government.

8-2-111. Rights of Persons Receiving Evaluation, Care and Treatment.

(1) Each person receiving evaluation, care or treatment under any provision of this article has the following rights and shall be advised of such rights by the facility:

(a) To receive and send sealed correspondence.

(b) To have access to letter writing materials, including postage, and to have assistance of staff members in preparation of this correspondence.

(c) To have ready access to telephones both to make and receive calls in privacy.

(d) To have frequent and convenient opportunities to meet with visitors.

(e) To wear his own clothes and keep and use his own personal possessions as far as is safe and to keep and be allowed to spend a reasonable sum of his own money.

8-2-112. Charges for Patients.

(1) Liability. When any person is admitted, committed, or transferred to any public institution either voluntarily or under court commitment, such person, his spouse or his parents, if he is a minor, shall be liable for the costs of the care, support, maintenance and treatment of such person to the extent and in the manner provided in this article.

(2) Extent of Liability. There shall be assessed against the said patient, spouse or parents made liable under this section, or any of them, such part of the costs as they are respectively able to pay but they shall not be assessed against such persons in the aggregate more than the whole of the costs. Liability of each parent shall cease upon the patient's twenty-first (21st) birthday.

8-2-113. Cost Determination.

(1) Cost determination shall be determined by the institution rendering such care or treatment subject to review for reasonableness by the Department of Social Services.

(2) Ability to pay shall be determined as follows:

(a) All insurance and other benefits for the care, support, maintenance and treatment of a patient shall be considered available for payment of the cost determined under this section.

(b) The Southern Ute Indian Tribe Department of Social Services shall determine the ability of a patient or his spouse to pay the balance of such cost by consideration of the following factors:

- (i) Income reportable under federal law;
- (ii) Age of the parties;
- (iii) Number of dependents and their ages and mental and physical condition;
- (iv) Provision for retirement years;
- (v) Length of patient's care or treatment;
- (vi) Liability; and
- (vii) Assets.

(3) The determination of ability of the patient, spouse, or parent to pay shall remain in effect until a redetermination is made.

(4) Appeal from determination of ability of patient or relative to pay may be taken to the Southern Ute Indian Tribal Court if it has jurisdiction of the patient or his spouse or his parents. Such appeal shall be made within thirty (30) days after notification of said determination.

#### ARTICLE III. ALCOHOLISM AND INTOXICATION TREATMENT

##### 8-3-101. Policy.

It is the policy of the Southern Ute Indian Tribe that alcoholics and habitually intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages. It is the goal of the Tribe that they be reinnovated into tribal life and receive treatment so that they may lead normal, productive lives.

##### 8-3-102. Definitions.

(1) Alcoholic means a person who habitually uses alcoholic beverages to the extent that his health is substantially impaired or endangered or that his social or economic function is disrupted. Nothing in this section shall preclude the denomination of an alcoholic as intoxicated by alcohol or incapacitated by alcohol.

(2) Incapacitated by Alcohol means that a person, as a result of the use of alcohol, is unconscious or has judgment otherwise so impaired that he is incapable of realizing and making rational decisions with regard to his treatment or he is unable to take care of his basic personal needs or safety or lacks sufficient understanding or capacity to make or communicate rational decisions concerning his person.

(3) Incompetent Person means a person who has been adjudicated incompetent by the Southern Ute Indian Tribal Court or by a court of another jurisdiction.

(4) Intoxicated Person means a person whose mental or physical functioning is temporarily but substantially impaired as a result of the presence of alcohol in the body.

##### 8-3-103. Powers of the Southern Ute Indian Tribal Council.

To carry out the purposes of this Code, the Southern Ute Indian Tribal Council may on its own or in conjunction with any county or state:

(1) Plan, establish and maintain achievement programs if necessary or desirable.

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations and individuals, and to pay them for services rendered or furnished alcoholics or intoxicated persons.

(3) Administer and supervise the administration of the provisions relating to alcoholics and intoxicated persons.

(4) Coordinate its activities and cooperate with alcoholism programs within this reservation and on other reservations within any state or federal agency and make contracts under joint or cooperative arrangements with any other Indian tribe, state, local or private agency for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs and to appoint someone to keep records and to engage in researching and gathering of relevant statistics.

8-3-104. Duties of the Southern Ute Indian Tribal Council.

(1) It is the duty of the Southern Ute Indian Tribe to appoint an agency or agencies to do the following:

(a) Develop and encourage local and regional programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons and provide technical assistance and consultations for these purposes.

(b) To coordinate the efforts and enlist the assistance of all public and private agencies, organizations, or individuals interested in the prevention of alcoholism and treatment of alcoholics and intoxicated persons.

(c) To cooperate with any federal agencies, police departments or courts or other public or private agencies, organizations, and individuals in establishing programs for the prevention of alcoholism and treatment of alcoholics and intoxicated persons, and prepare curriculum material for use at all levels of school education.

(d) Prepare, publish, evaluate and disseminate educational materials dealing with the nature and effects of alcohol.

(e) Organize, foster and participate in training programs for all persons engaged in the treatment of alcoholics and intoxicated persons.

(f) Encourage all appropriate health facilities to admit without discrimination alcoholics and intoxicated persons and provide them with adequate and appropriate treatment.

(g) Encourage all health and disability insurance programs to include alcoholism as a covered illness.

(h) To require annual reports covering the activities of all personnel in this area.

(2) The Southern Ute Indian Tribal Council, pursuant to this Code, shall establish comprehensive and coordinated programs for the treatment of alcoholics and intoxicated persons. Insofar as funds are available to the Southern Ute Indian Tribe, the program of the Tribe shall include all of the following:

- (a) Emergency treatment
- (b) Inpatient treatment
- (c) Intermediate treatment
- (d) Outpatient and followup treatment

(3) Treatment may not be provided at a correctional institution except for inmates.

(4) The Tribal Council may contract for the use of any facility as an approved public treatment facility if the Southern Ute Indian Tribe or its agents or agencies of its policies consider this to be an effective and economical course to follow.

8-3-105. Standards for Public and Private Treatment Facilities, Enforcement Procedures and Penalties.

(1) The Southern Ute Indian Tribal Council or its agent shall establish standards for approving treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and set the fees to be charged for private inspections. This may concern only the fees to be charged for required inspections and this may concern only the health standards to be met and the standards of treatment to be afforded the patients.

(2) The Southern Ute Indian Tribal Council or its agent periodically shall inspect and approve the public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The Southern Ute Indian Tribe shall maintain a list of approved public and private facilities.

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

8-3-106. Acceptance of Treatment - Rules.

An agency of the Southern Ute Indian Tribe shall adopt and may amend and repeal rules for acceptance of persons to enter the treatment program considering available treatment, resources and facilities for the purpose of early and effective treatment of alcoholics and intoxicated persons. Establishing the rules, the agency shall be guided by the following standards:

(1) If possible, the patient shall be treated on a voluntary rather than an involuntary basis.

(2) The patient shall be initially assigned and transferred to outpatient or intermediate treatment unless he obviously requires inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

8-3-107. Voluntary Treatment of Alcoholics.

(1) An alcoholic may apply for voluntary treatment directly to an approved treatment facility if the proposed patient is a minor or incompetent person. He or a parent or a legal guardian or other legal representative may make the application.

(2) Subject to rules adopted by the administrator in charge of the public treatment facility, the facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, he shall, if possible, be referred to another approved public treatment facility.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or intermediate treatment if it appears to the administrator in charge of the facility that the patient is an alcoholic who requires help. The agency in charge shall arrange for assistance in obtaining supportive services in a residential facility.

8-3-108. Treatment and Services for Intoxicated Persons and Persons Incapacitated by Alcohol.

(1) An intoxicated person or person incapacitated by alcohol, including a minor, may voluntarily admit himself to an approved treatment facility for emergency treatment.

(2) A person who comes voluntarily to a treatment facility shall be evaluated or examined by the facility administrator or his authorized designee immediately and if found to be in need of treatment shall then be admitted or referred to another facility. If a person is not found to be in need of treatment, he shall be released or referred to another appropriate facility.

(3) Except as otherwise provided, a voluntary admittee shall be released immediately upon his request.

(4) A person who is not admitted to an approved treatment facility and who is not referred to another facility and who has no funds may be taken to his home and if he has no home, the approved treatment facility may assist him in obtaining shelter.

(5) If a person is admitted to an approved treatment facility, his family or next of kin shall be notified as promptly as possible and in no case later than forty-eight (48) hours after admission. If an adult person requests that there be no notification, his request shall be respected.

(6) If the administrator in charge of the facility or his authorized designee determines that it is for the person's benefit, the person shall be encouraged to agree to further diagnosis and appropriate treatment.

(7) Nothing in this article shall preclude the approved facility administrator or his authorized designee from seeking emergency commitment or involuntary commitment as provided in this Code regardless of whether such person has been voluntarily admitted under this article.

8-3-109. Emergency Commitment.

(1) When any person is intoxicated or incapacitated by alcohol and could be dangerous to the health and safety of himself or others, such person shall be taken into protective custody by law enforcement authorities acting with probable cause and placed in an approved treatment facility. If no such approved treatment facility is available, he may be detained in an emergency medical facility or jail but only so long as may be necessary to prevent injury to himself or others or to prevent a breach of the peace. A law enforcement officer who acts in compliance with this section is acting in the course of his official duties and is not criminally or civilly liable therefor. Nothing in this subsection shall preclude an intoxicated or incapacitated person who is not dangerous to the health and safety of himself or others from being assisted to his home or like location by the law enforcement officer or emergency law enforcement officer.

(2) A law enforcement officer, physician, spouse, guardian or relative of the person to be committed or any other responsible person may make a written application for emergency commitment under this section directed to the administrator of the approved treatment facility. The application shall state the circumstances requiring emergency commitment, including the applicant's personal observation and the specific statements of others, if any, upon which he relies in making application. A copy of this

application shall be furnished to the person to be committed or to his guardian or personal representative.

(3) If the approved facility administrator or his authorized designee approves the application, the person shall be committed, evaluated, and treated for a period not to exceed five (5) days. The person shall be brought to the facility by a peace officer or any interested person. If necessary, the court may be contacted to issue an order to the police or sheriff's department to transport the person to the facility.

(4) If the approved treatment facility administrator or his authorized designee determines that the application fails to sustain the grounds for emergency commitment as set forth in this code, that commitment shall be refused and the person detained released immediately and the person shall be encouraged to seek voluntary treatment, if appropriate.

(5) When the administrator determines that grounds for commitment no longer exist, he shall release the person committed under this section. No person committed under this section shall be detained in any treatment facility for more than five (5) days except that a person may be detained for longer than five (5) days in an approved facility if in that period of time a petition for involuntary commitment has been filed pursuant to this code. A person may not be detained longer than ten (10) days after the date of filing the petition for involuntary commitment.

(6) Whenever a person is involuntarily detained pursuant to this section, he shall immediately be advised by the facility administrator or his authorized designee, both orally and in writing, of his right to challenge such detention by application to the court for a writ of habeas corpus, to be represented by counsel at every stage of the proceeding relating to his commitment, and to have counsel and/or a guardian ad litem appointed by the court if he wants assistance of counsel.

#### 8-3-110. Involuntary Commitment.

(1) A person may be committed to the custody of the alcoholic treatment facility upon a petition by his spouse or guardian, relative or physician or the administrator in charge of the approved treatment facility or any other responsible person. The petition shall allege that the person is an alcoholic and that he has threatened or attempted to inflict or has inflicted physical harm upon himself or another or that he is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence or lack of judgment as to need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within two days before admission of the petition unless the person whose commitment is sought has refused to submit to a medical examination in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition.

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

(3) At the hearing the court shall hear all relevant testimony including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall be present unless the court believes that his presence is likely to be injurious to him. In this event, the court shall appoint a guardian ad litem to represent him throughout the proceedings. If the person has



Amendment  
to Sec. 8-3-110  
(4) re typographical error  
(Immediately following Title

refused to be examined by a licensed physician, he shall be given an opportunity to be examined by a court appointed, licensed physician. If he refuses and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may commit the person to a licensed hospital for a period of not more than five (5) days for diagnostic examination. In such event, the court shall schedule a further hearing for final determination of commitment in no event later than five (5) days after the first hearing.

8)--(4) If after hearing all relevant evidence including the results of any diagnostic examination by the licensed hospital, the court finds that grounds for voluntary commitment have been established by clear and convincing proof, it shall make an order of commitment to an approved treatment facility. The facility shall have the right to delegate physical custody of the person to any other approved treatment facility. The court may not order commitment of a person unless it determines that the approved treatment facility is able to provide adequate appropriate treatment for him and that the treatment is likely to be beneficial.

(5) A person committed as provided in this section shall remain in the custody of the treatment facility for a period of thirty (30) days unless sooner discharged. At the end of the thirty (30) day period, he shall be discharged automatically unless the approved treatment facility, before expiration of the period, obtains a court order for his recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety (90) days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if, after examination, it is determined that the likelihood still exists.

(6) A person recommitted as provided in subsection (5) of this section who has not been discharged by the treatment facility before the end of the ninety (90) day period shall be discharged at the expiration of that period unless the facility, before expiration of the period, obtains a court order on the grounds set forth in this code for a further period not to exceed ninety (90) days.

(7) Upon the filing of a petition for recommitment under subsections (5) and (6) of this section, the court shall fix a date for hearing no later than ten (10) days after the date the petition is filed. A copy of the petition and the notice of hearing shall be served or mailed as required by this section of the Southern Ute Indian Tribal Code. At the hearing the court shall proceed as provided in this code.

(8) A person committed to the custody of a treatment facility shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

(a) In case of an alcoholic committed on grounds he is likely to inflict physical harm upon another, that he no longer has an alcoholic condition which requires treatment; or

(b) In the case of an alcoholic committed on the grounds of need of treatment of incapacity that the incapacity no longer exists and further treatment will not be likely to bring about significant improvement and the person's condition or treatment is no longer appropriate.

(9) The person whose commitment and/or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. In addition, the person shall also be informed that he has a right to counsel of his own choosing.

#### 8-3-111. Records of an Alcoholic or Intoxicated Person.

The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

8-3-112. Visitation and Communication of Patients.

(1) Patients in any approved treatment facility shall be granted opportunity of continuing visitation and communication with their families and friends consistent with an effective treatment program. Patients will be permitted to consult with counsel at any time.

(2) Neither mail nor the communications to or from patient in any approved treatment facility shall be intercepted, read or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

8-3-113. Payment for Treatment, Financial Ability of Patients.

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

(2) A patient in an approved treatment facility or the estate of the patient or person obligated to provide for the cost of treatment and having sufficient financial ability is liable to the facility for the cost, maintenance and treatment of the patient therein in accordance with the rates established.

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

8-3-114. Criminal Laws - Limitations.

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

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

(3) The fact that a person is intoxicated or incapacitated by alcohol shall not prevent his being arrested or prosecuted for the commission of any criminal act or conduct not enumerated in subsection (1) of this section.

(4) Nothing in this code shall be construed as a limitation upon the right of a police officer to make an otherwise legal arrest, notwithstanding the fact that the arrested person may be intoxicated or incapacitated by alcohol.

## ARTICLE 4. ELDER AND AT-RISK ADULT PROTECTION

8-4-101. Policy. It is the cultural policy of the Southern Ute Indian Tribe to hold elders in high esteem. The elders of our community are the custodians of Tribal history, culture and traditions which are vital to tribal culture. It is also the cultural policy of the Southern Ute Indian Tribe to protect those at-risk adults who exceed the age of 18 and cannot protect themselves because of mental or physical impairments.

8-4-102. Purpose. The purpose of this Article is to protect the elders and at-risk adults within the jurisdiction of the Southern Ute Indian Tribe from abuse, financial exploitation and neglect, including self-neglect. These provisions shall be liberally construed to achieve this purpose and provide for:

- (1) Reporting abuse, financial exploitation and neglect, including self-neglect, to the proper agency; and
- (2) Receiving and investigating reports of abuse, financial exploitation and neglect, including self-neglect; and
- (3) Providing protective services for elders and at-risk adults.

8-4-103. Definitions. Unless the context otherwise requires:

(1) "Abuse" means an intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse or cruel punishment of an elder or at-risk adult which results in physical pain or mental anguish, including sexual abuse and exploitation.

(2) "At-risk adult" means a person 18 years of age or older who is susceptible to abuse, financial exploitation, or neglect. This includes persons who are unable to perform or obtain services necessary for their health, safety, or welfare because of mental illness or deficiency, physical disability or illness, age or chronic substance abuse.

(3) "Caretaker" means any of the following:

(a) A person who is required by applicable law, including Tribal custom, to provide services or resources to an elder or at-risk adult;

(b) A person who volunteers to provide services or resources to an elder or at-risk adult; or

(c) An institution or agency and its employees required by applicable law, including Tribal custom, or through any agreement to provide services or resources to an elder or at-risk adult.

(4) "Elder" means a person who is 55 years of age or older.

(5) "Financial exploitation" means unauthorized or wrongful use of an elder or at-risk adult's funds, property or other resources for another person's profit or advantage.

(6) "Guardian" means a person at least 21 years of age appointed by a parent or a court who has the right to take or provide for the custody of an incompetent elder or at-risk adult, and who is required to care for the incompetent elder or at-risk adult's health, safety and welfare and provide for his/her education and medical care, if needed or appropriate.

(7) "Least restrictive alternative" means acquiring or providing services, including protective services, for the shortest duration and to the minimum extent necessary to remedy or prevent situations of abuse, neglect or self-neglect. The least restrictive alternative is that environment which is the most like the elder or at-risk adult's home setting and which is most capable of supporting the elder or at-risk adult's physical and mental health and emotional well-being.

(8) "Neglect" means a failure to provide for the basic needs of an elder or at-risk adult, including but not limited to:

(a) Failing to supply resources, care or supervision required to provide for basic needs;

(b) Interfering with delivery of necessary resources and services;

(c) Failing to report abuse of an elder or at-risk adult; or

(d) Failing to provide services or resources to aid in the elder or at-risk adult's practice of religion, tradition or custom.

(9) "Protective placement" means the placement of an elder or at-risk adult in a hospital, nursing home, residential care facility or other suitable placement, or transfer from one facility to another with consent of that person or with legal authority.

(10) "Protective services" means services provided to an elder or at-risk adult in order to prevent abuse, financial exploitation or neglect, including self-neglect. Such services include, but are not limited to: Receiving and investigating reports of abuse, financial exploitation, or neglect, including self-neglect; the provision of casework and counseling services; arranging for, coordinating, delivering where appropriate, and monitoring services, including medical care for physical or mental health needs; protection from mistreatment; assistance with application for public benefits; referral to community service providers; initiation of guardianship proceedings; and initiation or participation in guardianship or conservatorship proceedings in other jurisdictions, where appropriate.

(11) "Self-neglect" means an act or failure to act whereby an elder or at-risk adult substantially endangers his/her health, safety, welfare, or life by not seeking or obtaining services necessary to meet the individual's basic human needs. Choice of lifestyle or living arrangements, or the informed choice to forego potentially beneficial or life-saving medical treatment shall not, by itself, be evidence of self-neglect.

(12) "Tribe" means the Southern Ute Indian Tribe.

8-4-104. Duty to Report.

(1) An immediate report of abuse, financial exploitation or neglect shall be made within 24 hours to Tribal Social Services or the Southern Ute Police Department by any person specified in this subsection who has reasonable cause to know or suspect that an elder or at-risk adult has been subjected to abuse, financial exploitation or neglect or who has observed the elder or at-risk adult being subjected to circumstances or conditions which could reasonably result in abuse, financial exploitation or neglect.

(2) The following persons shall make or cause to be made an initial report within 24 hours:

(a) Physicians, naturopaths, chiropractors, optometrists, physicians' assistants and osteopaths, including those in training;

(b) Medical examiners and coroners;

(c) Registered nurses and licensed practical nurses;

(d) Hospital, clinic and nursing home personnel engaged in the admission, care or treatment of patients;

(e) Psychologists and other mental health professionals;

(f) Social workers, religious practitioners and Tribal employees whose primary duties involve providing services to Tribal elders or at-risk adults;

(g) Tribal Finance Department personnel;

(h) Dentists and dental hygienists;

(i) Law enforcement personnel;

(j) Court-appointed guardians and conservators;

(k) Fire protection personnel, emergency medical technicians and paramedics;

- (l) Pharmacists;
- (m) Victim advocates;
- (n) Senior Center staff;
- (o) Southern Ute Indian Housing Authority staff;
- (p) Any person or agency, including employees, with fiduciary duties to elders or at-risk adults such as attorneys, accountants, property managers or financial institutions;
- (q) Any caretaker, staff member, employee, volunteer or consultant for any licensed or tribal care facility, agency, home or governing board.

(3) In addition to those persons required by this subsection to report, any other person may report such known or suspected abuse, financial exploitation or neglect and circumstances or conditions which might reasonably result in abuse, financial exploitation or neglect of an elder or at-risk adult to Tribal Social Services or the Southern Ute Police Department.

8-4-105. Reporting Self-Neglect. Any person who has observed the self-neglect of an elder or at-risk adult or who has reasonable cause to suspect that an elder or at-risk adult is self-neglected should make an immediate report to Tribal Social Services or the Southern Ute Police Department.

8-4-106. Notification of Other Agencies.

(1) Upon receipt of a report of abuse, financial exploitation, or neglect, including self-neglect, of an elder or at-risk adult, the Southern Ute Police Department shall immediately notify the appropriate social services agency.

(2) Upon the receipt of a report, if Tribal Social Services reasonably believes that abuse, financial exploitation or neglect has occurred with regard to an elder or at-risk adult, it shall immediately notify the law enforcement agency responsible for investigation.

8-4-107. Failure to Report. Any person required to report who fails to report suspected or actual abuse, financial exploitation, or neglect, as required by this Code, shall be subject to a civil penalty of up to \$5,000, after notice and an opportunity for a hearing in Tribal Court.

8-4-108. Immunity for Reporting. Any person, except a perpetrator or person acting with the perpetrator, who makes a report of abuse, financial exploitation, or neglect shall be immune from any civil or criminal liability on account of such report or

participation in making such report, so long as such action was taken in good faith and not in reckless disregard of the truth.

8-4-109. Bad Faith Report. Any person who makes a report of suspected abuse, financial exploitation or neglect, including self-neglect, as defined by this Code, knowing it to be false shall be subject to a civil penalty of up to \$5,000, after notice and an opportunity for a hearing in Tribal Court.

8-4-110. Offer of Services. Upon receipt of a report, if Tribal Social Services reasonably believes that an incident of abuse, financial exploitation or neglect, including self-neglect, involving an elder or at-risk adult has occurred, it shall immediately offer services to the elder or at-risk adult.

8-4-111. Rights of Elders, At-Risk Adults, Their Families and Caretakers.

(1) An Elder or at-risk adult:

(a) Has the right to be made aware of the services offered.

(b) Has the right to counsel.

(2) Families and caretakers may refuse services for themselves but cannot refuse services for the elder or at-risk adult.

(3) The elder or at-risk adult and the family and caretaker(s):

(a) Have the right to attend all Tribal Court proceedings pertaining to the elder or at-risk adult.

(b) Have the right to independent medical, psychological or psychiatric evaluations at their own expense.

8-4-112. Confidentiality of Reporter, Records, Hearings, Penalties for Noncompliance.

(1) The identity of the reporter of abuse, financial exploitation or neglect, including self-neglect, is confidential and shall not be released unless the reporter consents or the Tribal Court determines that the need of the elder or at-risk adult exceeds the reporter's right to privacy and mandates disclosure. The reporter has the opportunity to petition and be heard at a closed evidentiary hearing with regard to any such proposed disclosure. The identity of the reporter may be released only to the extent necessary to protect the elder or at-risk adult.

(2) Records of investigations concerning abuse, financial exploitation or neglect, including self-neglect, are confidential. Social services, law enforcement, court

officials, attorneys, coroners, medical staff and any other person whom the Tribal Court determines has reasonable cause to have access may view the record(s).

(3) Anyone who violates this section shall be subject to a civil penalty of up to \$5,000. Those accused of violating this section are entitled to notice and an opportunity for a hearing in Tribal Court.

8-4-113. Privileged Communication. A claim of privileged communication between persons required to report and their clients or patients and between husband and wife shall not be grounds for excluding evidence in any judicial proceeding resulting from a report.

8-4-114. Investigation.

(1) A Tribal Social Services worker shall investigate the report of abuse, financial exploitation or neglect, including self-neglect, within 72 hours and prepare a written report within 10 days based upon the following:

- (a) Personal interviews of the elder or at-risk adult, the immediate family and caretaker(s), suspected perpetrator(s), employees of involved agencies and any other persons who may have pertinent information;
- (b) Medical records and other evidence of abuse or neglect;
- (c) Financial records;
- (d) Assessments of the elder or at-risk adult's living conditions; and
- (e) Any other observations, assessments, documents or photographs that may aid in completing an accurate report.

(2) If admission to the elder or at-risk adult's residence or access to the elder or at-risk adult cannot be obtained, the Tribal Court, upon good cause shown and without notice, may order the responsible person(s) to allow interviews, examinations, photography and/or investigation. Should the responsible person(s) refuse to allow interviews, examinations, photography and/or investigation, the Tribal Court shall hold an immediate hearing to show cause why the responsible person(s) should not be held in contempt of court.

8-4-115. Report. The written report prepared by Tribal Social Services shall contain the following:

- (1) The elder or at-risk adult's name, address or location and telephone number;



- (2) The name, address or location and telephone number(s) of the person(s) or agency suspected of abuse, financial exploitation or neglect;
- (3) The condition of the elder or at-risk adult;
- (4) The names of witnesses and sufficient information to issue subpoenas;
- (5) The name, address or location and telephone number of caretaker(s);
- (6) A description of the act(s) which are suspected of being abusive or neglectful; and
- (7) Any other information helpful in establishing abuse, financial exploitation or neglect, including self-neglect.

8-4-116. Coordination of Investigation.

(1) Tribal Social Services shall be the agency responsible for the coordination of investigations of all reports of known or suspected incidents of elder or at-risk adult abuse, financial exploitation or neglect, including self-neglect. Tribal Social Services shall be available at all times to respond to such reports.

(2) Tribal Social Services shall arrange for such investigations to be conducted by persons trained to conduct either the complete investigation or such parts thereof as may be assigned.

(3) Tribal Social Services shall conduct investigations in conjunction with the Southern Ute Police Department and other agencies to the extent joint investigations are possible and deemed appropriate.

8-4-117. Emergency Removal.

(1) If there is probable cause to believe that an emergency exists and an elder or at-risk adult is at risk of immediate bodily injury or death, a law enforcement officer may immediately protect the elder or at-risk adult, including transporting him or her to adequate facilities or removing the perpetrator.

(2) After the elder or at-risk adult is protected, the law enforcement officer involved shall notify Tribal Social Services within 24 hours.

8-4-118. Petition for an Emergency Adult Protection Order. If Tribal Social Services determines that the elder or at-risk adult is in need of protective services, Tribal Social Services shall file a petition for an Emergency Adult Protection Order within 72 hours of an emergency removal. The Petition shall include the following:

- (1) The basis for the Tribal Court's jurisdiction;
- (2) The name, date of birth, tribal affiliation, census number and address or location of the elder or at-risk adult, if known;
- (3) The name, address and telephone number of any person having responsibility for the care of the elder or the at-risk adult, if known;
- (4) A plain and concise statement of the facts upon which the petition is based;
- (5) A summary of the attempts to secure consent from the elder or at-risk adult or anyone with legal authority to give consent for the elder or at-risk adult;
- (6) The proposed protective services for the elder or at-risk adult; and
- (7) A notarized affidavit that affirms that the facts stated are true and correct.

8-4-119. Emergency Adult Protection Order.

- (1) The Tribal Court may issue an Emergency Adult Protection Order, including an ex parte order, authorizing protective services, including protective placement, upon proof by a preponderance of the evidence that an elder or at-risk adult:
  - (a) Is at risk of immediate bodily injury or death; and
  - (b) The elder or at-risk adult is incapacitated or incompetent and cannot consent to services.
- (2) The Emergency Adult Protection Order shall:
  - (a) Set forth findings with regard to the evidence;
  - (b) Allow protective placement only if the evidence indicates that it is the least restrictive alternative appropriate under the circumstances;
  - (c) Order Tribal Social Services to investigate the situation and arrange for appropriate services to be provided;
  - (d) Include such other provisions as are deemed necessary to protect the elder or at-risk adult.

(3) The duration of the Emergency Adult Protection Order shall not exceed five (5) calendar days unless a hearing is held at which the parties, including the elder or at-risk adult, have the opportunity to contest the Order.

(4) The Tribal Court shall provide copies of the Emergency Adult Protection Order to all interested parties, including the elder or at-risk adult.

8-4-120. Emergency Adult Protection Order Hearing.

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

(2) The hearing on the Emergency Adult Protection Order shall be held within five(5) calendar days, after an ex parte Emergency Adult Protection Order is issued.

(3) All parties are entitled to a copy of the petition, notice of the hearing date and an opportunity to be heard.

(4) The Tribal Court shall determine an elder or at-risk adult's capacity, degree of incapacity and whether abuse, financial exploitation or neglect has occurred based on a preponderance of the evidence standard at the hearing.

8-4-121. Long-Term Adult Protection Order Procedures.

(1) If Tribal Social Services determines that the elder or at-risk adult is in need of long-term protective services, Tribal Social Services shall file a petition for long-term protection , which shall include the following:

(a) The basis for the Tribal Court's jurisdiction;

(b) The name, date of birth, tribal affiliation, census number and address or location of the elder or at-risk adult, if known;

(c) The name, address and telephone number of any person having responsibility for the care of the elder or the at-risk adult, if known;

(d) A plain and concise statement of the facts upon which the petition is based;

(e) A summary of the attempts to secure consent from the elder or at-risk adult or anyone with legal authority to give consent for the elder or at-risk adult;

(f) The proposed protective services for the elder or at-risk adult; and

(g) A notarized affidavit that affirms that the facts stated are true and correct.

(2) All parties, including the elder or at-risk adult, caretaker(s) and family, shall be served notice of the proceedings and the hearing date.

(3) The Tribal Court shall hold a hearing on the petition to determine whether the facts support a finding by clear and convincing evidence that the elder or at-risk adult is in need of long-term protection. The parties shall be afforded an opportunity to examine written reports, cross-examine individuals whose testimony is presented, and present evidence.

8-4-122. Long- Term Adult Protection Order.

(1) If the Tribal Court determines that there is incapacity or evidence of abuse, financial exploitation or neglect, including self-neglect of an elder or at-risk adult, the Tribal Court shall issue a written order which may include:

(a) Ordering evaluation, assessment or other orders to protect the elder or at-risk adult;

(b) Ordering Tribal Social Services to prepare a plan to deliver protective services which provides the least restrictive alternative to satisfy the elder or at-risk adult's needs;

(c) Restraining any perpetrator from contact with the elder or at-risk adult and from committing further abusive acts;

(d) Requiring any person with knowledge to account for the elder or at-risk adult's funds and/or property;

(e) Requiring restitution to be paid by a perpetrator to the elder or at-risk adult for damages resulting from the perpetrator's wrongful act(s);

(f) Appointing a guardian for the elder or at-risk adult; and

(g) Removal from the place where abuse, financial exploitation or neglect, including self-neglect, has occurred.

(2) If the allegations of the petition are not sustained, the Tribal Court shall dismiss the matter.

(3) Review of the need for continued protection orders shall occur every 6 months or upon motion of an interested party.

8-4-123. Elder and At-risk Adult Protection Team.

(1) Every report of elder or at-risk adult abuse, financial exploitation or neglect, including self-neglect, investigated by Tribal Social Services shall be presented to the Elder and At-risk Adult Protection Team.

(2) The Elder and At-risk Adult Protection Team shall be a multidisciplinary group and shall be advisory in nature. It is not intended to undermine the authority and responsibility of individual agencies, but it is designed to promote cooperation, communication and consistency among agencies.

(3) The purposes of the Elder and At-risk Adult Protection Team are to review all cases of alleged elder or at-risk adult abuse, financial exploitation or neglect, including self-neglect, reported to Tribal Social Services; to evaluate and determine if they are founded or unfounded; and to assess the timeliness and appropriateness of Tribal Social Services' intervention.

(4) In founded cases, the Elder and At-risk Adult Protection Team will also make recommendations for appropriate services and treatment to promote the well being of elders and at-risk adults and to reduce elder and at-risk adult abuse, financial exploitation and neglect, including self-neglect, on the Reservation.

8-4-124. Membership.

(1) The Elder and At-risk Adult Protection Team shall consist of not less than ten members, which shall include the following:

- (a) A representative from the Committee of Elders;
- (b) A representative from Tribal Health Services;
- (c) A social worker;
- (d) A representative from Indian Health Service; and
- (e) A Southern Ute Police Department officer.

(2) The remaining members shall be appointed from the following:

- (a) Attorney for Tribal Social Services;
- (b) La Plata County Social Services;
- (c) A medical doctor;
- (d) Southern Ute Indian Housing Authority;

- (e) Southern Ute Victim Services;
- (f) San Juan Basin Health;
- (g) Peaceful Spirit;
- (h) Tribal Credit;
- (i) Senior Center staff;
- (j) A traditional spiritual community member;
- (k) A member of Tribal Council; or
- (l) Any category in subsection (1) above.

8-4-125. Coordinator. The Division Head for Tribal Social Services shall serve as the coordinator of the Elder and At-risk Adult Protection Team.

8-4-126. Duties. The duties of the Elder and At-risk Adult Protection Team include the following:

- (1) Reviewing all abuse, financial exploitation and neglect, including self-neglect, cases which have been referred, including the investigatory reports and the services being offered to the elder or at-risk adult and family in connection with the reported abuse, and determining whether reports are founded;
- (2) Making recommendations to Tribal Social Services with suggestions for further action or a statement that the team has no recommendations or suggestions;
- (3) Making recommendations related to the filing of guardianship petitions, when appropriate;
- (4) Monitoring cases of elder and at-risk adult abuse, financial exploitation and neglect, including self-neglect, to insure that adequate preventive, protective and corrective services are provided;
- (5) Reviewing Tribal Social Services' responses to reports of elder and at-risk adult abuse, financial exploitation and neglect, including self-neglect, and determining if such responses were timely and adequate;
- (6) Maintaining confidentiality of information;
- (7) Providing assistance to Tribal Social Services in the assessment process within the areas of expertise of the individual team members;

(8) Providing support to Tribal Social Services and other community agencies involved in the protection of elders and at-risk adults; and

(9) Educating the community about elder and at-risk adult abuse, financial exploitation and neglect, including self-neglect.

8-4-127. Confidentiality. Strict confidentiality shall be maintained by all Elder and At-risk Adult Protection Team members. A violation of confidentiality shall constitute cause for termination of membership on the Elder and At-risk Adult Protection Team.

8-4-128. Criminal Prosecutions.

(1) Any person who commits abuse, financial exploitation or neglect of an elder or at-risk adult may be prosecuted for criminal offenses under applicable law.

(2) Criminal prosecutions are independent and separate from civil proceedings arising from the same events.

RECEIVED

RESOLUTION NO. 2004-53

FEB 25 2004

COMMUNITY SERVICES  
SOUTHERN UTE INDIAN TRIBE

**RESOLUTION  
OF THE  
SOUTHERN UTE INDIAN TRIBAL COUNCIL  
February 24, 2004**

**WHEREAS**, authority is vested in the Southern Ute Indian Tribal Council (Tribal Council) by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amended October 1, 1975, and August 27, 1991, to act for the Southern Ute Indian Tribe; and

**WHEREAS**, pursuant to Article VII, Section 1(e), of the Constitution, the Southern Ute Indian Tribal Council (Tribal Council) is empowered to enact ordinances and codes to protect the peace, safety, property, health and general welfare of the members of the Southern Ute Indian Tribe and to govern the administration of justice through the tribal courts; and

**WHEREAS**, the Southern Ute Indian Tribe desires to revise the existing Protective Custody Code, which does not include adequate protections for elderly and at-risk persons, including persons with disabilities; and

**WHEREAS**, a committee consisting of all of the Tribal Court judges, the tribal prosecutor, the Director of Tribal Services, Victim Services Division Head, the Tribal Social Services Division Head, a Tribal Social Services adult protection worker, two Community Health Representatives, a La Plata County adult protection services worker, and an attorney from the Tribal Attorney's office drafted these amendments and has recommended adoption of the attached Article 4 of Title 8, Elder and At-Risk Adult Protection provisions, as serving the interests of the Tribe; and

**WHEREAS**, the draft provisions were submitted to the Committee of Elders for review and the Committee of Elders' suggested revisions have been incorporated; and

**WHEREAS**, the Tribal Council has reviewed, discussed and evaluated the proposed code provisions, which will amend Title 8 of the Southern Ute Indian Tribal Code (Tribal Code) by inserting the proposed Elder and At-Risk Adult Protection provisions as Article 4.

**NOW, THEREFORE BE IT RESOLVED** that the Tribal Council hereby approves and adopts the above-referenced amendment to the Tribal Code, a copy of which is attached hereto as an exhibit and is incorporated herein by reference.

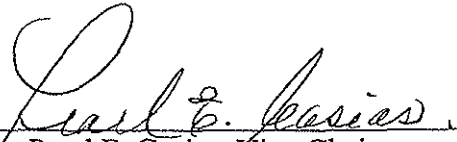
**BE IT FURTHER RESOLVED** that the Chairman of the Southern Ute Indian Tribal Council is hereby authorized to sign the documents necessary to carry out the purpose of this Resolution.

**BE IT FURTHER RESOLVED** that the Tribal Council shall cause copies of the revised Protective Custody Code, together with copies of this Resolution, to be delivered to the Superintendent, Bureau of Indian Affairs, Southern Ute Agency, Ignacio, Colorado for approval.



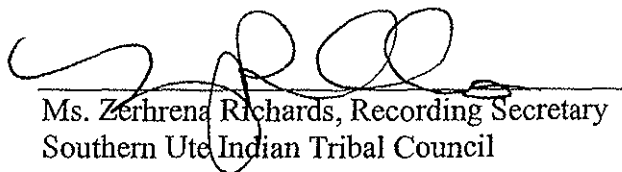
RESOLUTION NO. 2004-53  
PAGE 2  
FEBRUARY 24, 2004

This Resolution was duly adopted on the 24th day of February, 2004.

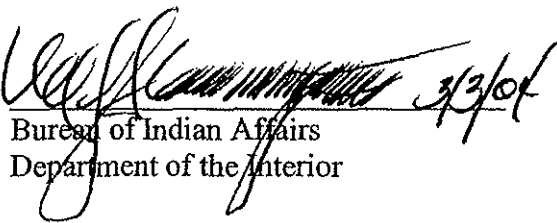
  
Ms. Pearl E. Casias, Vice-Chairperson  
Southern Ute Indian Tribal Council

**CERTIFICATION**

This is to certify that there were ( 6 ) regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which ( 4 ) voted for, ( 0 ) against, and ( 1 ) abstained, (JN) it being a quorum and the above resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

  
Ms. Zerhrena Richards, Recording Secretary  
Southern Ute Indian Tribal Council

APPROVED:

  
Bureau of Indian Affairs  
Department of the Interior

## ATTACHMENT 1

### Criminal Procedure Code - Title 4

4-1-101 Peace Officer. A peace officer is any commissioned member of any law enforcement department or division of the Southern Ute Indian Tribe and any certified law enforcement officer employed by a federal, tribal, state, county or municipal law enforcement agency; however, this definition does not alter any jurisdictional provisions or restrictions that exist as a matter of law, nor does it constitute or confer deputization or Southern Ute commission authority.

Police Commission. A police commission is a delegation of police authority to enforce tribal law on the Southern Ute Indian Reservation and may be issued or revoked by the Southern Ute Indian Tribal police chief with the concurrence of the Southern Ute Indian Tribal Council chairman upon the administration of an Oath of Office by the Southern Ute Indian Tribal Court.

### Traffic Code - Title 14

14-1-103(7)(f) It is unlawful for any person to drive a motor vehicle upon a highway with a driver's license that is canceled, revoked, suspended, fictitious or fraudulently altered.

### Protective Custody Code - Title 8

8-3-110(4) If after hearing all relevant evidence including the results of any diagnostic examination by the licensed hospital, the court finds that grounds for involuntary commitment ..... (Bold/ underline corrects typographical error from voluntary to involuntary)

### Criminal Code - Title 5

5-1-106(3)(c) Illegal Possession or Consumption of an Alcoholic Beverage by an Underage Person. Any person under twenty-one (21) years of age who possesses or consumes an Alcoholic Beverage commits illegal possession or consumption of an Alcoholic Beverage by an underage person, and upon conviction thereof, the offender shall be sentenced to a term of imprisonment not to exceed sixty (60) days and a fine not to exceed Two Hundred Fifty Dollars (\$250.00).

5-1-106(3)(c)(i) Possession of an Alcoholic Beverage means that a person has or holds any amount of an Alcoholic Beverage anywhere on his person, or that a person owns or has custody of an Alcoholic Beverage, or has an Alcoholic Beverage within his immediate presence and control.

Misc.

RESOLUTION NO. 98-115

RESOLUTION  
OF THE  
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE

August 4, 1998

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe, and approved November 4, 1936, and amended October 1, 1975, to act for the Southern Ute Indian Tribe, and:

WHEREAS, pursuant to said constitutional authority, Article VII, Section 1(e), the Southern Ute Indian Tribal Council is empowered to enact ordinances and codes to protect the peace, safety, property, health and general welfare of the members of the Southern Ute Indian Tribe and to govern the administration of justice through the tribal courts, and:

WHEREAS, the Southern Ute Indian Tribe desires to amend certain Tribal Codes which govern those activities, and:

WHEREAS, the Southern Ute Tribal Prosecutor, the Acting Director of the Southern Ute Department of Justice and Regulatory and the Tribal Attorney have recommended the following amendments as being of an immediate need:

1. Criminal Procedure Code - Title 4  
4-1-101 Definitions be amended to revise the definition of "Peace Officer" and to include a definition of "Police Commission" as reflected in attachment 1.
2. Wildlife Conservation Code - Title 13  
13-1-103 Definitions be amended deleting the definition of "Officer."
3. Traffic Code - Title 14  
14-1-102 Definitions be amended deleting the definition of "Police Officer."
4. 14-1-103 License for Drivers be amended to include a subsection making it unlawful to drive a motor vehicle on a highway with a driver's license that is canceled, revoked, suspended, fictitious or fraudulently altered as reflected in attachment 1.
5. Protective Custody Code - Title 8  
8-3-110(4) Correct typographical error as reflected in attachment 1.

6. Criminal Code - Title 5


5-1-106(3) Liquor violation be amended to include a subsection pertaining to "Illegal Possession or Consumption of Alcoholic Beverage by an Underage person" as reflected in attachment 1.

NOW, THEREFORE, BE IT RESOLVED that the Southern Ute Indian Tribal Council hereby approves and adopts the amendments to the Tribal Codes, a copy of which is attached hereto and incorporated herein by reference.

BE IT FURTHER RESOLVED that the Chairman of the Southern Ute Indian Tribal Council is hereby authorized to sign this resolution and take actions deemed necessary to carry out the intent of this resolution.

BE IT FURTHER RESOLVED that the Resolution and attachments be forwarded to the Bureau of Indian Affairs for review and approval.


This resolution was duly adopted on the 4th day of August, 1998.

  
\_\_\_\_\_  
Clement J. Frost, Chairman  
Southern Ute Indian Tribal Council

CERTIFICATION

This is to certify that there were 5 of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which 4 voted for, 0 voted against and 1 abstained, it being a quorum and the above resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

  
\_\_\_\_\_  
Maria A. Boughey, Recording Secretary

APPROVED:   
\_\_\_\_\_  
Bureau of Indian Affairs  
Department of Interior