

JANUARY 2005 CROW TRIBAL LEGISLATURE

BILL NO. CLB06-02

**INTRODUCED BY CARL E. VENNE, CHAIRMAN
CROW TRIBAL EXECUTIVE BRANCH**

A BILL FOR AN ACT ENTITLED:

**“AN ACT TO AMEND THE CROW LAW AND ORDER CODE
TO PROVIDE FOR PROTECTION OF PERSONS UNABLE TO CARE FOR
THEMSELVES BECAUSE OF MENTAL ILLNESS”**

Section 1. The Crow Law and Order Code is amended to add a new Title 15: Health and Human Services, and to add a chapter on mental health as follows:

TITLE 15

HEALTH AND HUMAN SERVICES

CHAPTER ____

MENTAL HEALTH

Part 1

Statement of Policy, Purpose and Definitions

15.XX.101. Statement of Policy. It is the policy of the Crow Tribe to promote the health, safety, culture, and general welfare of the Tribal Community; to recognize mental illness as a disease subject to a variety of treatment alternatives and choices; and to recognize that the person who has a mental illness is entitled to the opportunity to heal in the least restrictive and most culturally relevant environment.

15.XX.102. Purpose. The purpose of this Chapter is to:

(1) secure each person who may be mentally ill, seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person and to insure that

such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal and cultural integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is seriously mentally ill as to require institutionalized care; and

(4) assure that due process of law is accorded any person coming under the provisions of this part.

15.XX.103. Definitions. For the purposes of this Chapter, the following definitions will apply:

(1) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be seriously mentally ill.

(2) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(3) "Mental health facility" or "facility" means a public hospital or licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the Crow Tribe. No correctional institution or facility or jail may be used as a mental health facility within the meaning of this part.

(4) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat thereof but which:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and is consistent with the least restrictive course of treatment as provided in this code, at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill, within the meaning of this section, or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(5) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his or her life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he or she is an epileptic, developmentally disabled, senile or suffering from a mental disorder, unless that condition causes the person to be seriously mentally ill.

(6) "Professional person" means a licensed medical doctor or a person who meets criteria established by the Indian Health Service or the Crow Tribe for certification as a Mental Health Professional in accordance with Tribally-approved Mental Health policies.

(7) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(8) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with the legal system who will be appointed by the Court after the filing of a petition for an involuntary commitment.

(9) "Extended Family member" means any person under Crow/Apsaalooke Tribal law, custom and tradition who would be an "Extended Family member" An "Extended Family member" has standing as a party to any action taken under this Chapter with the right to obtain any and all information, a right to intervene as a Party, a right to Notice of all action taken and a right to participate in all proceedings including all medical reports and documentation contemplated both in and out of Court in this Chapter. Parents of an adult mentally ill person have right as "Extended Family members" and a "Party" to obtain any all medical information concerning the mentally ill person. "Extended family members" are bound by confidentiality and privacy rules.

Part 2

Treatment and Procedures

15.XX.201. Voluntary Admission. Provisions of this Chapter may not be construed to limit the right of any person to make a voluntary application for admission at any time to any mental health facility. Required procedures for admission will include the following:

(1) An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and admission approved by the Indian Health Service or the Crow Tribe. The application must have further approval of a professional person.

(2) An application for voluntary admission shall give the facility the right to detain the applicant for no more than five (5) days, excluding weekends and holidays, past his or her written request for release.

(3) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

15.XX.202. Standards for Detention for Emergency Situation. The following standards shall apply for emergency detention situations:

(1) When an emergency situation exists, a Tribal officer may take any person, subject to the jurisdiction of the Tribal Court, who appears to be seriously mentally ill and as a result of serious mental illness to be a danger to himself or herself or others into custody only for sufficient time, but not to exceed the next regular business day, to contact a professional person for emergency evaluation. If practical, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person held in custody appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained until the next regular business day. At that time, the professional person shall release the detained person or file his or her findings with the Tribal Prosecutor, who, if he or she determines probable cause to exist, shall file the petition provided for in Section 15.XX.205 in the Tribal Court. In either case, the professional person shall file a report to the Court explaining his or her actions.

(3) The officer who detains a person under this section shall inform that person of the following: "You are being detained in a special facility to protect you from harming yourself or others. The Crow Police Department has authority to hold you until a professional person assesses your condition."

15.XX.203. Detention to be in Least Restrictive Environment.

A person detained pursuant to this Chapter shall be held in the least restrictive environment required to protect the life and physical safety of the person detained or to protect the life and physical safety of members of the public. Under no circumstances may a person be detained under this section be placed in a Tribal jail cell.

15.XX.204. Procedural Rights. The person who is subject to an action under this Chapter shall be guaranteed the following rights in addition to and in recognition of other rights guaranteed by applicable federal and tribal law:

- (1) The right to five (5) working days notice in advance of a hearing upon a commitment petition concerning the person, or other Court proceeding concerning the person.
- (2) The right to be present at any hearing, to offer evidence, and to present witnesses in any proceeding concerning the subject.
- (3) The right in any hearing, to cross-examine witnesses.
- (4) The right to be represented by a private attorney at their own expense. If the Person cannot afford an attorney, an attorney SHALL be provided at the Tribe's expense.
- (5) The right to have a "friend of respondent" appointed by the Court.
- (6) The right to remain silent.
- (7) The right to have the evidence presented against the person judicially reviewed on questions of sufficiency of the evidence.

(8) The right to view and copy all relevant documents on file with the Court concerning the pending case.

(9) The right to be examined by a professional person of the person's choice when such person is willing and reasonably available. Such exam will be paid by Tribal Health.

(10) The right to refuse any but lifesaving medication as determined by a professional person for up to twenty-four (24) hours prior to any hearing held pursuant to this act.

(11) The right to appeal final orders of the Court.

(12) The right to be informed of these rights by the Tribal Judge at the initial hearing.

15.XX.205. Petition for Commitment. A person subject to the jurisdiction of the Tribal Court may be committed to a mental health treatment facility for a period of no more than three (3) months upon an appropriate verified petition in the Tribal Court, establishing by evidence that the respondent is seriously mentally ill. In addition to such showing, the following must be set forth in the petition:

(1) The name and address of the person filing the petition, and the petitioner's interest in the case.

(2) The name of the respondent (person to be committed) and, if known, the address, age, gender, marital status, and occupation of the respondent.

(3) The name and address of respondent's nearest known relative.

(4) The name and address of any person known or believed to be legally responsible for the care, support, and maintenance of the respondent.

(5) Any facts supporting the allegation of serious mental illness.

(6) The name, address and telephone number of any known attorney or advocate who has represented the person in the past.

(7) A statement of the respondent's rights which shall be in conspicuous print and identified by a suitable heading.

15.XX.206. Who May File a Petition to Commit. A Tribal Court Prosecutor, upon the written request of any person having direct knowledge of facts, may file a petition in the Tribal Court if he or she believes probable cause exists based on medical evidence to commit an individual alleged to be seriously mentally ill.

15.XX.207. Court Proceedings. Upon filing the petition, the Tribal Court Judge shall examine the petition for probable cause which will be based on a medical assessment. Based upon the findings of the medical assessment contained in the petition:

(1) If the Judge does find probable cause, counsel shall be immediately appointed for the respondent and the respondent shall be brought forthwith before the court with his counsel for an initial hearing within twenty-four 24 hours of detention. The Judge shall appoint a friend of the respondent and a professional person, and shall fix a date for a hearing on the petition no later than five (5) days after this initial hearing, including weekends and holidays unless the fifth day falls upon a weekend or holiday. The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney. The Court shall provide notice to the Extended Family Members and shall indicate that they have a right to intervene as a Party in this case.

(2) A copy of the petition and of the notice of the hearing on the petition, including the date fixed by the Court, shall be personally served on the person whose commitment is sought (respondent). A copy of the petition and of the notice of the hearing, including the date fixed by the Court, shall be served either personally or by any other means allowed under the law on the respondent's next of kin, a parent or legal guardian if the respondent is a minor, the "friend of respondent" if one has been appointed, the respondent's attorney and any other person the Court believes advisable including Extended family Members, who have a legal right to intervene as a Party in this case

(3) The Court shall appoint a professional person to assess the respondent prior to the initial hearing. Such appointed professional person shall be present for the initial hearing and provide testimony before the Court.

15.XX.208. Detention of Respondent pending hearing or trial - jail prohibited. Detention by jail of a respondent is prohibited. If circumstances warrant detention of a respondent, the respondent shall be informed of his or her rights and the following prerequisites met:

(1) The Court may not order detention of a respondent pending the hearing unless requested by the Tribal Prosecutor and only on a showing of probable cause for the detention. Respondent may then request a detention hearing which must be held before transportation to a detention facility.

(2) In the event of detention, the respondent must be detained in the least restrictive setting necessary to assure his or her presence and assure his or her safety and the safety of others.

(3) If the respondent is detained, he or she has the right to be examined additionally by a professional person of his or her choice. Unless objection is made by the respondent, he or she must continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing on a petition for a commitment or trial to determine whether the respondent should be committed to a mental health facility.

15.XX.209. Request for Jury Trial. At any time prior to the date set for hearing, respondent may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in accordance with the Crow Law and Order Code process and a date set for trial by jury no later than seven (7) days from the request date, exclusive of Saturdays, Sundays, and holidays.

15.XX.210. Hearing on Petition for Commitment. A hearing on Petition for Commitment shall consist of:

(1) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(2) The professional person upon whose judgment the petition was based must be present for the hearing and subject to cross-examination. The hearing shall be governed by the Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but must be verified

by the professional person at the hearing before formal admission into evidence.

(3) The professional person may testify as to ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his or her life or health.

(c) If, upon hearing or trial, it is determined that the respondent is not seriously mentally ill with the meaning of this part, he or she shall be discharged and the petition dismissed.

(d) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall:

(i) order outpatient therapy; or

(ii) order the respondent be placed in the care and custody of his or her relative or guardian or some other appropriate place other than an institution;

(iii) commit the respondent to a facility for a period of not more than three (3) months; or

(iv) make some other appropriate order for treatment.

(e) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(f) If it is determined that the respondent is not seriously mentally ill but is mentally ill within the meaning of this part, the Court shall:

(i) order outpatient therapy not to exceed thirty (30) days; or

(ii) order the respondent be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution not to exceed thirty (30) days; or

(iii) make some other appropriate order for treatment other than commitment.

15.XX.211. Appeal Procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the Crow Appellate Court in the same manner as other civil cases, except that the appeal may be taken at any time within ninety (90) days of the actual service of the commitment order, or within ninety (90) days after discharge, whichever is later.

15.XX.212. Diversion of Certain Mentally Ill Persons from Jail. If a tribal jail inmate is determined by a professional person to be seriously mentally ill after referral from the Crow Police Department, Indian Health Service or the Crow Tribe shall arrange for appropriate mental health treatment which may include:

(1) a request for services from a crisis intervention program;

(2) referral to the nearest community health center; or

(3) transfer to a private mental health facility or hospital equipped to provide treatment and care of persons who are seriously mentally ill.

15.XX.213. Establishment of Patient Treatment Plan - Patient's Treatment Plan - Patient's Rights. An individualized treatment plan shall be developed for all persons ordered to treatment.

(1) A person ordered to treatment under Section 15.XX.210 shall have an individualized treatment plan developed by Indian Health Service or the Crow Tribe. This plan shall be developed by appropriate professional persons, which shall include a psychiatrist, and shall be implemented no later than ten (10) days after a person's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions and criteria for discharge; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(2) An after care plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility with an emphasis on reservation based services.

(3) Indian Health Service or the Crow Tribe shall be responsible for supervising implementation of this treatment plan, integrating various aspects of the treatment program, and recording the patient's progress and coordinating with other programs providing mental health treatment.

(4) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patients capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(5) In the case of a patient who lacks the capacity to exercise the right to consent to treatment, the right must be exercised on behalf of the patient by a guardian appointed by the Court.

15.XX.214. Examination Following Commitment. No later than thirty (30) days after a patient is committed to a mental health facility, the professional person in charge of the facility or his or her appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether he or she continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he or she must be released immediately unless he or she agrees to continue with treatment on a voluntary basis.

15.XX.215. Crisis Intervention. The Indian Health Service or the Crow Tribe shall establish a crisis intervention program to provide twenty-four (24) hour emergency intervention by a professional person for alleged seriously mentally ill persons, mentally ill persons and persons with mental disorders. Such intervention shall include assessment, forwarding reports to the Prosecutor's office for a Petition to Commit, admission arrangements to a mental health treatment facility, and direct services.

15.XX.216. Confidentiality of Records. All communications, oral or written, of any individual shall be confidential and privileged information.

(1) All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter and shall remain confidential and privileged after the individual is discharged from the facility. Except as otherwise provided by Tribal or Federal law, information and records may be disclosed only:

(a) in communication between qualified professionals in the provision of services or appropriate referrals;

(b) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychiatrist, psychologist, social worker, nurse, attorney, or other professional person, to reveal information which has been given to him or her in confidence by members of a patient's family;

(c) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(d) for research if the Indian Health Service or appropriate Crow agency has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirements that all researchers must sign an oath of confidentiality;

(e) to the courts as necessary to the administration of justice; and

(f) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the records or information pursuant to the rules of civil procedure.

(g) to "Extended Family Members" who have status as a party to all the actions contemplated in this Chapter.

15.XX.217. Care and Treatment Following Release. The Indian Health Service or appropriate Crow agency and their agents have an affirmative duty to provide adequate transitional treatment

and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities includes but are not limited to psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a half-way house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

CERTIFICATION

I hereby certify that this **bill for an act entitled: "An act to amend the Crow Law and Order Code to provide for protection of persons unable to care for themselves because of Mental Illness,** was duly approved by the Crow Tribal Legislature with a vote of 16 in favor, 0 opposed, and 0 abstained, and that a quorum was present on this 19TH day of April, 2006.


Speaker of the House
Crow Tribal Legislature

ATTEST:


Secretary, Crow Tribal Legislature



EXECUTIVE ACTION

I hereby

approve,

veto,

This **bill for an act entitled: "An act to amend the Crow Law and Order Code to provide for protection of persons unable to care for themselves because of Mental Illness,** pursuant to the authority vested in the Chairman of the Crow Tribe by Article V, Section 8 and Article IV, Section 3(f) and 3(k) of the Constitution and Bylaws of the Crow Tribe of Indians on this 19 day of May, 2006.


Carl E. Venne, Chairman
Crow Executive Branch