

GUIDE TO INVOLUNTARY CHRONIC ALCOHOLIC OR SUBSTANCE ABUSER COMMITMENT IN TRIBAL COURT

This page will explain what an involuntary alcoholic or substance abuser commitment is, how one is started, the process involved once started and what is involved in an emergency involuntary alcoholic or substance abuser commitment.

Having a family member or friend who habitually lacks self-control as to the use of alcoholic beverages or drugs and other substances, is incapacitated by the effects of alcohol or drugs and is a danger to self or others can be very stressful and can sometimes be difficult to get that person help. Most of the time an alcoholic or substance abuser will not seek help and will often resist attempts to get them the help they need.

There are two ways an alcoholic or substance abuser can be committed to an institution for treatment. An alcoholic or substance abuser may voluntarily commit themselves for treatment. The other way is through an involuntary commitment for treatment ordered by the Tribal Court after a court hearing where the alcoholic or substance abuser is afforded due process rights to a fair hearing. This can be done when the person refuses to seek treatment on their own. The court can order the person to be involuntarily committed for treatment if it is proven the person is an alcoholic or substance abuser who habitually lacks self-control as to the use of alcoholic beverages or drugs and other substances, is incapacitated by the effects of alcohol or drugs and is a danger to self or others.

This guide only addresses involuntary alcoholic or substance abuser commitments for treatment.

How is an Involuntary Chronic Alcohol and/or Substance Abuse Commitment Started

An involuntary alcoholic or substance abuser commitment can be started in one of two ways.

The first is when a peace officer takes a person into protective custody when the officer has probable cause to believe the person requires emergency custody because they are a danger to self or others. The officer is required to transport the person to an appropriate facility for evaluation by a licensed physician or certified chemical dependency counselor to determine if the person meets the criteria for commitment and treatment. The person may not be placed in jail unless it is the last resort and only for 24 hours (unless the person is being held on criminal charges).

And, of course, the second way is by someone filing a petition for emergency commitment. The petition must allege facts showing the person is an alcoholic or substance abuser who habitually lacks self-control as to the use of alcoholic beverages or drugs and other substances, is incapacitated by the effects of alcohol or drugs and is a danger to self or others and as a result is in need of immediate intervention because of they are in physical danger to themselves or others.

Filing a Petition for Emergency Commitment

Any person over the age of 18 can petition the court for emergency commitment by alleging facts that would give the court sufficient probable cause to believe that the person is a chronic alcoholic and/or substance abuser and as a result is in need of immediate intervention because of they are in physical danger to themselves or others. Normally the petitioner will be a close family member, friend, law enforcement personnel or medical providers. A petition for emergency mental health commitment can be found on the court's website.

File the petition for emergency commitment with the civil clerk of courts. The court may require payment of a filing fee unless waived. Check with the clerk to see if a filing fee is required. If you cannot afford the filing fee, use the **Motion to Waive Filing and Service Fees** form to ask the court to waive the filing fee or for a partial waiver of the fee.

The Tribal prosecutor will represent the petitioner in any involuntary commitment proceeding. More than likely, the petitioner will be called as a witness to testify to the facts alleged in the petition. .

What Happens after the Petition is Filed with the Court

After the petition for emergency commitment is filed it will reviewed by the judge. If the judge finds from the facts set out in the petition that no probable cause exists for emergency custody the petition will be dismissed. If the judge finds from the facts set out in the petition that probable cause exists for emergency custody the judge will issue an order for the apprehension and transport the person to appropriate facility for further evaluation by a qualified mental health professional, including a mental status evaluation and chemical dependency evaluation and if warranted be held until a hearing on the matter.

Tribal police will apprehend and transport the person to a facility for further evaluation as soon as possible. The person may not be placed in jail unless it is the last resort and only for 24 hours if no other proper facility is available (unless the person is being held on criminal charges).

Tribal police are required to immediately upon apprehension of the person advise such person both orally and in writing of their rights upon apprehension on an emergency alcohol or substance abuse order including the right to immediately contact a person of their choosing, the right to contact and be represented by a lay advocate or attorney, that they will be evaluated by a licensed physician or certified chemical dependency counselor within 24 hours of being taken into custody to determine if custody should continue and if so, the right to a second opinion before the probable cause to detain hearing is held within 48 hours of apprehension and the right to a hearing on the petition for emergency commitment within five (5) days excluding weekends and holidays of the initial apprehension.

What Happens once the Person is Transported to a Facility

The person will be evaluated by a licensed physician or certified chemical dependency counselor who will perform a chemical dependency evaluation to determine if the person meets the criteria for involuntary commitment discussed in more detail below. Before the licensed physician or

certified chemical dependency counselor begins the evaluation, they are required to identify themselves, the purpose of the examinations including determining whether custody should continue and that the examination can be used as evidence in the involuntary commitment hearing. The licensed physician or certified chemical dependency counselor must immediately report their written findings to the court.

What Criteria must the Person Meet to be Held for an Involuntary Chronic Alcohol and/or Substance Abuse Commitment Hearing

The licensed physician or certified chemical dependency counselor will evaluate the person with a chemical dependency examination and then determine if the person meets the criteria for involuntary chemical dependency commitment.

In order to meet the criteria for a continued hold for a chemical dependency commitment hearing, the chemical dependency evaluation must find that the person suffers from chronic alcohol and/or substance abuse, due to the chronic alcohol and/or substance abuse, the person is a danger to self or others, the person needs immediate treatment to prevent serious bodily harm to self or others and the person is likely to receive therapeutic benefit from the treatment.

A person is a danger to self or others if they reasonably can be expected to intentionally or unintentionally seriously physically harm themselves or another person in very near future, or the person is engaged in an act or acts or has made significant threats that are substantially supportive of the expectation the threats will be carried out or the person is unable to meet their basic physical needs such as food, clothing, shelter or health in order to avoid serious harm to themselves in the very near future and having demonstrated the inability to meet those physical needs.

A person is likely to benefit from treatment if it is found to address their chronic alcohol and/or substance abuse and will help to get them back to caring for themselves or are no longer a danger to themselves or others. Additionally the treatment is the least restrictive alternative meaning that if the person will benefit from treatment in a facility.

The licensed physician or certified chemical dependency counselor who performed the evaluation will report their findings in a written report to the court called a certificate of examination.

If the person being held does not meet the criteria for involuntary chronic alcohol and/or substance abuse commitment they are to be released and the court is required to provide reasonable transportation for the person.

If the person being held meets the criteria for involuntary chronic alcohol and/or substance abuse commitment the court can order the person to be held until an involuntary chronic alcohol and/or substance abuse commitment hearing is held. The court is required to hold the involuntary chronic alcohol and/or substance abuse commitment hearing within 5 days after the person is taken into custody excluding weekends and holidays (don't count weekend and holidays).

Involuntary Chronic Alcohol and/or Substance Abuse Commitment Hearing

If the person is found to meet the criteria for commitment, the court will schedule a commitment hearing. The commitment hearing must be held within 5 days of the person being taken into custody for a chronic alcohol and/or substance abuse hold. A notice of hearing will be served on the person notifying them of place, date and time for the hearing and the right to be represented by legal counsel.

The person being held for hearing has rights under the adopted uniform mental health code. The court will appoint either an attorney or lay advocate to represent them. The person has the right appear at the hearing and testify. The person has the right to subpoena witnesses and to cross examine witnesses and to present a case. The federal rules of evidence apply to the hearing.

The burden of proving the criteria for the involuntary commitment is on the Tribe. The Tribal Prosecutor will call witnesses. A licensed physician or certified chemical dependency counselor will testify whether the person suffers from chronic alcohol and/or substance abuse and whether, due to the chronic alcohol and/or substance abuse, the person is a danger to self or others, whether the person needs immediate treatment to prevent serious bodily harm to self or others and whether the person is likely to receive therapeutic benefit from the treatment. The certificate of examination of the licensed physician or certified chemical dependency counselor who evaluated the person must be filed with the court prior to the mental health commitment hearing.

In addition the licensed physician or certified chemical dependency counselor is required to testify and assess for the court in their professional opinion the availability and appropriateness of treatment alternatives other than inpatient treatment and whether programs are available in the area where the person resides. The licensed physician or chemical dependency counselor testimony must include what alternatives are available, what alternatives were investigated and why any of those alternatives are not deemed appropriate.

The person through legal counsel can cross-examine the tribal prosecutor's witnesses and call their own witnesses to present a case against commitment.

If the court finds that alternatives to inpatient treatment are appropriate, commitment to an inpatient facility will not be ordered and the court will commit the person to the least restrictive treatment alternative.

If the court finds that the person suffers from chronic alcohol and/or substance abuse and due to the chronic alcohol and/or substance abuse the person is a danger to self or others, the person needs immediate treatment to prevent serious bodily harm to self or others, that the commitment is the least restrictive treatment alternative and the person is likely to receive therapeutic benefit from the treatment, it will commit the person to treatment in an appropriate inpatient facility for an initial 90 day period.

If the court finds that the person does not suffer from chronic alcohol and/or substance abuse and due to the chronic alcohol and/or substance abuse the person is a danger to self or others, that the

person needs immediate treatment to prevent serious bodily harm to self or others and the person is likely to receive therapeutic benefit from the treatment, it will dismiss the petition.

How Long can an Involuntary Commitment for Treatment Last

The court can order the commitment for treatment for 90 days. During the initial 90 day commitment order the person will be treated to address their substance abuse issues. The person will be released from the commitment once they are deemed no longer a danger to themselves or others.

If during the 90 day court ordered involuntary commitment, it is apparent to the facility and the qualified mental health professional that the person still meets the criteria for involuntary commitment the court will hold a review hearing. A review hearing is like the initial involuntary commitment hearing in that the person will be represented by legal counsel, present a case and cross examine witnesses. The Tribal prosecutor will be required to prove the person meets the criteria for commitment for treatment: that the person suffers from chronic alcohol and/or substance abuse, due to chronic alcohol and/or substance abuse the person is a danger to self or others, the person needs immediate treatment to prevent serious bodily harm to self or others and that commitment is the least restrictive treatment alternative through the testimony of a licensed physician or certified chemical dependency counselor.

If continued involuntary commitment is ordered by the court, a review will be held every 6 months thereafter that will be conducted in the same manner as the initial review hearing.

PETITION FOR EMERGENCY INVOLUNTARY CHRONIC ALCOHOL AND/OR SUBSTANCE ABUSE COMMITMENT FORM

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when you are seeking an emergency alcoholic or substance abuser commitment of another person. Filing a petition for emergency commitment will start the commitment process. The petition must allege facts showing the person is an alcoholic or substance abuser who habitually lacks self-control as to the use of alcoholic beverages or drugs and other substances, is incapacitated by the effects of alcohol or drugs and is a danger to self or others and as a result is in need of immediate intervention because of they are in physical danger to themselves or others.

Any person over the age 18 can petition the court for emergency commitment by alleging facts that would give the court sufficient probable cause to believe that the person is a chronic alcoholic and/or substance abuser and as a result is in need of immediate intervention because of they are in physical danger to themselves or others. Normally the person will be a close family member, friend, law enforcement personnel or medical providers.

The Tribal prosecutor will represent the petitioner in any involuntary commitment proceeding. More than likely, the petitioner will be called as a witness to testify to the facts alleged in the petition.

For more information on the Emergency Chronic Alcohol and/or Substance Abuse Commitment process please read the **Guide to Emergency Involuntary Chronic Alcohol and/or Substance Abuse Commitment**.

FORMS INVOLVED. The form is a **Petition for Emergency Involuntary Chronic Alcohol and/or Substance Abuse Commitment**. You will need to fill in the necessary information with help from the instructions below and then file the form with the court.

FILE THE PETITION WITH THE CLERK OF THE COURTS OF THE TRIBAL COURT.

How to file a petition. A petition is filed when you take it to the courthouse and file it along with the filing fee with the clerk of courts. When you file your petition with the clerk, make sure you have dated and signed by you.

Filing and service fees. The court may require payment of a filing fee unless waived. Check with the clerk to see if a filing fee is required. If you cannot afford the filing fee, use the **Motion to Waive Filing and Service Fees** form to ask the court to waive the filing fee or for a partial waiver of the fee.

Jurisdiction. The court would have jurisdiction over any Indian found on the reservation who is in immediate need of emergency alcohol and/or substance abuse commitment for treatment.

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form.

Instructions for filling out the Petition:

- (1) on this line insert the name of the person you believe to need emergency involuntary chronic alcohol and/or substance abuse commitment.
- (2) on this line insert your name.
- (3) on this line insert how you are interested in this case as a (for example family member, police officer, Doctor, counselor, witness, etc)
- (4) on this line insert the name of the person you believe to need emergency involuntary chronic alcohol and/or substance abuse commitment.
- (5) in detail recite facts and occurrences that would warrant an emergency chronic alcohol and/or substance abuse commitment. Include dates, places of incidents and prior mental health episodes and hospitalizations and names of witnesses. Please refer to the Guide to Alcohol and/or Substance Abuse Commitment in Tribal Court. Attach extra pages if necessary and attach copies of any relevant documents.
- (6) place an X next to this choice if the person has been evaluated by a licensed physician or a certified chemical dependency counselor.
- (7) place an X next to this choice if the person has not been evaluated by a licensed physician or a certified chemical dependency counselor.
- (8) explain why the person has not been has not been evaluated by a licensed physician or a certified chemical dependency counselor. For example, the person resists any attempt to be evaluated.
- (9) state the age of the person you believe to need emergency involuntary chronic alcohol and/or substance abuse commitment if known.
- (10) state what reservation community the person you believe to need emergency involuntary chronic alcohol and/or substance abuse commitment resides in.
- (11) insert the mailing address of the person you believe to need emergency involuntary chronic alcohol and/or substance abuse commitment.
- (12) on this line insert the date you sign the petition.
- (13) on this line insert your name by signing.
- (14) on this line print your name.
- (15) on this line insert the date you sign the petition.
- (16) on this line insert your name by signing. By signing you are swearing under the penalty of perjury that the allegations set forth in this petition are true to the best of my knowledge, information and belief, and the petition is made in good faith and that if any of the statements made herein is willfully false, you may be subject to the penalty and punishment of perjury.

ROSEBUD SIOUX TRIBAL COURT)
ROSEBUD INDIAN RESERVATION)SS
ROSEBUD, SOUTH DAKOTA)

IN CIVIL COURT

<p>IN THE MATTER OF THE COMMITMENT OF:</p> <p>(1) _____ _____,</p> <p>ALLEGED ALCOHOLIC OR SUBSTANCE ABUSER</p>	<p>PETITION FOR EMERGENCY COMMITMENT</p>
-------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------

I, (2) _____, as Petitioner depose and state under the penalty of perjury as follows:

1. I am eighteen years of age or older.
2. I am interested in this case as a (for example family member, police officer, Doctor, counselor, witness, etc) (3) _____.
3. I believe (4) _____ (the alleged alcoholic or substance abuser) is an alcoholic or drug abuser who habitually lacks self-control as to the use of alcoholic beverages or drugs and other substances.
4. That the above-named alleged alcoholic or substance abuser is in a condition that immediate intervention is necessary for their protection from physical harm to themselves or others.
5. That the above-named alleged alcoholic or substance abuser is incapacitated by the effects of alcohol or drugs.
6. That the above-named alleged alcoholic or substance abuser is in need of immediate protective -custody for their own safety and the safety of others until a hearing on this petition can be held.
7. The facts and circumstances which form the basis of my belief are as follows:
(5) _____

WHEREFORE, Petitioner asks that the Court issue an order for the apprehension and transport of the alleged alcoholic or substance abuser to an appropriate facility for further evaluation by a licensed physician or certified chemical dependency counselor and if warranted be held in protective custody until a hearing on the matter and the alleged alcoholic or substance abuser be committed for treatment for alcoholism and/or drug/substance abuse.

Dated:(12) _____

(13) _____
Petitioner

VERIFICATION OF PETITION

I, (14) _____, Petitioner swears under the penalty of perjury that the allegations set forth in this petition are true to the best of my knowledge, information and belief, and the petition is made in good faith. I understand that if any of the statements made herein is willfully false, I am subject to the penalty and punishment of perjury.

Dated:(15) _____

(16) _____
Petitioner