

GUIDE TO INVOLUNTARY MENTAL HEALTH COMMITMENT IN TRIBAL COURT

This page will explain what an involuntary mental health commitment is, how one is started, the process involved once started and what is involved in an emergency involuntary mental health commitment.

Having a family member or friend who has a severe mental illness can be very stressful and can sometimes be difficult to get that person help. Most of the time person suffering mental illness will not seek help and will often resist attempts to get them the help they need.

The Tribal Court has adopted the Unified Mental Health Code which addresses the procedures to be used to involuntarily commit a person for mental health issues. It also provides for a dual diagnosis when a severely mentally ill person also suffers from mental retardation, acquired traumatic brain injury, other developmental disabilities and chronic alcohol and/or substance abuse.

There are two ways a mentally ill person can be committed to an institution for treatment. A severely mentally ill person 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 mentally ill person is afforded due process rights to a fair hearing. This is done when the mentally ill person refuses to seek help for their condition. The court can order the person to be involuntarily committed for treatment if it is proven the person suffers from a severe mental illness, is either danger to themselves or others and the course of treatment proposed (commitment to a facility for treatment) is the least restrictive alternative.

This guide only addresses involuntary commitments for treatment.

How is an Involuntary Mental Health Commitment Started

An involuntary mental health 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 qualified mental health professional 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 suffers from a severe mental illness 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 18 can petition the court for emergency commitment by alleging facts that would give the court sufficient probable cause to believe that the person suffers from a severe mental illness 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 mental health 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 qualified mental health professional 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 qualified mental health professional who will perform a mental health status examination and chemical dependency evaluation to determine if the person meets the criteria for involuntary commitment discussed in more detail below. Before the qualified mental health professional 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 qualified mental health professional must immediately report their written findings to the court.

A qualified mental health professional includes licensed physicians, psychologists, chemical dependency counselors with concurrence from a licensed physician or psychologist, licensed practical nurses with a masters from an accredited educational program with concurrence from a licensed physician or psychologist, licensed clinical social worker with a masters from an accredited training program with concurrence from a licensed physician or psychologist, or licensed independent nurse practitioners certified in mental health with concurrence from a licensed physician or psychologist.

What Criteria must the Person Meet to be Held for an Involuntary Mental Health Commitment Hearing

The qualified mental health professional will evaluate the person with a mental health status examination and then determine if the person meets the criteria for involuntary mental health commitment.

In order to meet the criteria for a continued hold for a mental health commitment hearing, the mental health evaluation must find that the person suffers from a severe mental illness, due to the severe mental illness 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.

The person will be found to suffer from a severe mental illness if the qualified mental health professional finds that the person meets a specific diagnosis and criteria for a mental illness found in the latest edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

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 mental illness 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 qualified mental health professional will report their findings in a written report by filing with the court a certificate of examination of the qualified mental health professional.

If the person being held does not meet the criteria for involuntary mental health 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 mental health commitment the court can order the person to be held until an involuntary mental health commitment hearing is held. The court is required to hold the involuntary mental health commitment hearing within 5 days after the person is taken into custody excluding weekends and holidays (don't count weekend and holidays).

Involuntary Mental Health 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 mental health 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 certain 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 to 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 to prove their case. A qualified mental health professional will testify whether the person suffers from a severe mental illness, whether due to the severe mental illness 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 qualified mental health professional who evaluated the person must be filed with the court prior to the mental health commitment hearing.

In addition the qualified mental health professional 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 qualified mental health professional 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 a severe mental illness and due to the severe mental

illness the person is a danger to self or others, and the person needs immediate treatment to prevent serious bodily harm to self or others and that the commitment is the least restrictive treatment alternative, 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 a severe mental illness or that due to the severe mental illness the person is not a danger to self or others, 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 particular psychological needs. The person will be released from the commitment once they are deemed no longer a danger to themselves or others (which of course means their mental illness is being controlled with medication).

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 a severe mental illness, that due to the severe mental illness 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 qualified mental health professional.

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 INVOLUNTARY MENTAL HEALTH COMMITMENT FORM

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when you are seeking an emergency mental health commitment of another person. Filing a petition for emergency commitment will start the commitment process. The petition must allege facts showing the person suffers from a severe mental illness 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 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 suffers from a severe mental illness and as a result is in need of immediate intervention because 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. A petition for emergency mental health commitment can be found on the court's website or on request from the civil court clerk.

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 Mental Health Commitment process please read the **Guide to Emergency Involuntary Mental Health**.

FORMS INVOLVED. The form is a **Petition for Emergency Involuntary Mental Health Commitment**. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate 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 mental health commitment for treatment of a severe mental illness.

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 mental health 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 mental health commitment.
- (5) on this line insert the name of the person you believe to need emergency involuntary mental health commitment.
- (6) in detail recite facts and occurrences that would warrant an emergency mental health commitment. Include dates, places of incidents and prior mental health episodes and hospitalizations and names of witnesses. Please refer to the Guide to Involuntary Mental Health Commitment in Tribal Court. Attach extra pages if necessary and attach copies of any relevant documents.
- (7) place an X next to this choice if the person has been evaluated by a qualified mental health professional.
- (8) place an X next to this choice if the person has not been evaluated by a qualified mental health professional.
- (9) explain why the person has not been evaluated by a qualified mental health professional. For example, the person resists any attempt to be evaluated.
- (10) on this line insert the name of the person you believe to need emergency involuntary mental health commitment.
- (11) state the age of the person you believe to need emergency involuntary mental health commitment if known.
- (12) state what reservation community the person you believe to need emergency involuntary mental health commitment resides in.
- (13) insert the mailing address of the person you believe to need emergency involuntary mental health commitment.
- (14) if you believe the alleged mentally ill person also suffers from mental retardation, acquired traumatic brain injury, other developmental disability or chronic alcohol and/or substance addiction please state which condition. Leave this blank if you do not believe the person suffers from any of these conditions.
- (15) state why you believe the alleged mentally ill person also suffers from mental retardation, acquired traumatic brain injury, other developmental disability or chronic alcohol and/or substance addiction. If you do not believe the person suffers from any of these conditions leave this blank.
- (16) on this line insert the date you sign the petition.
- (17) on this line insert your name by signing.
- (18) on this line print your name.
- (19) on this line insert the date you sign the petition.
- (20) 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.

WHEREFORE, Petitioner asks that the Court issue an order for the apprehension and transport of the alleged mentally ill 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.

Dated: (16) _____

(17) _____

Petitioner

VERIFICATION OF PETITION

I, (18) _____, 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: (19) _____

(20) _____

Petitioner