

**TITLE 53
CIVIL COMMITMENT CODE**

**Chapter 53.01
PURPOSE**

53.0101 **Purpose.**

This Title shall be liberally construed and applied to carry out its purpose. The purpose of this Title is to:

- 1) Protect, enhance and exercise the inherent sovereignty of the Turtle Mountain Band of Chippewa Indians.
- 2) Create and define the policies and procedures governing the civil commitment of those that are subject to the Band's jurisdiction.
- 3) Provide prompt evaluation and treatment of persons with serious mental disorders or chemical dependency.
- 4) Ensure that due process of law is accorded to any person coming under the provisions of this chapter.

**Chapter 53.02
JURISDICTION**

53.0201 **Jurisdiction.**

- a) The Tribal Court shall have general jurisdiction over civil commitment matters as set forth under this Code.
- b) Personal Jurisdiction. Persons subject to the Band's civil commitment jurisdiction include:
 - 1) Enrolled members of the Turtle Mountain Band of Chippewa Indians;
 - 2) Turtle Mountain descendants who reside within the exterior boundaries of the Turtle Mountain Reservation;
 - 3) Indians enrolled in the federally recognized tribes who reside within the exterior boundaries of the Turtle Mountain Reservation; and
 - 4) All other persons other than those over whom jurisdiction is prohibited by Federal law.
- c) Territorial jurisdiction. For the purpose of enforcement of this Code, the Turtle Mountain Jurisdiction shall be deemed to include all territory within the boundaries of the Turtle Mountain Indian Reservation, including fee patented lands, roads, waters, bridges and lands used for Bureau of Indian Affairs purposes, and shall also include all Indian trust and restricted lands, specifically located within Townships 161N, 162N, 163N, and 164N and Ranges 70W, 71W, 72W, and 73W except lands located within incorporated cities of Rolette County, North Dakota.

**Chapter 53.03
DEFINITIONS**

53.0301 **Definitions.**

As used in this chapter, unless the context otherwise requires:

- a) "Advanced practice registered nurse" means an individual who is licensed as an advanced practice registered nurse in the state of North Dakota within the role of certified nurse practitioner or certified clinical nurse

specialist, who has completed the requirements for a minimum of a master's degree in psychiatric and mental health nursing from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing. This chapter does not expand the scope of practice of an advanced practice registered nurse beyond the scope of practice established by the North Dakota board of nursing.

- b) "Band" or "Tribe" means the Turtle Mountain Band of Chippewa Indians.
- c) "Chemically Dependent" means an illness or disorder characterized by the use of alcohol or drugs (legal or illegal) or a combination of thereof, that causes social, occupational, psychological or physical impairment. This term includes alcoholism, drug dependency, or any combination of the two that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety of an individual or that person's dependents.
- d) "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
- e) "Counseling and Rehabilitation Board" means the Band's Counseling and Rehabilitation board as defined by Title 17 of this Code.
- f) "Danger to themselves or others" means a person who is chemically dependent or mentally ill as defined by this code and who, as a result of that chemical dependency or mental illness, presents a clear danger to the safety of themselves or others as demonstrated by the fact that:
 - 1. the person has engaged in an overt act causing or attempting to cause serious physical harm to themselves or another; or
 - 2. there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on themselves or another.
- g) "Examiner" means a person who is knowledgeable, trained, and practicing in the diagnosis and assessment or in the treatment of the alleged impairment, and who is: a licensed physician; physician assistant; psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor appointed by the court to examine the Respondent and to provide an evaluation of whether the Respondent is a person requiring treatment.
- h) "Guardian" means a person appointed by the Tribal Court to care for the person and property of another. Any guardian referenced in this Title shall have all powers consistent with "guardianship" as specified in Chapter 9.06 of this Code.
- i) "Independent expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor, chosen at the request of the Respondent to provide an independent evaluation of whether the Respondent is a person requiring treatment.
- j) "Mental Health Professional" means:
 - 1. A psychiatrist;
 - 2. A psychologist with at least a master's degree who is licensed in North Dakota or is otherwise approved by the Counseling and Rehabilitation Board;
 - 3. A social worker with a master's degree in social work from an accredited program;
 - 4. An advanced practice registered nurse;
 - 5. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of an expert examiner;

6. A licensed addiction counselor;
 7. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist; or
 8. A physician assistant.
- k. "Mentally ill person" or "person who is mentally ill" means an individual with a, mental or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly sub-average intellectual functioning that originates during the developmental period and is associated with an impairment in adaptive behavior, although an individual who is intellectually disabled may also be a person who is mentally ill. Chemical dependency does not per se constitute mental illness, although a person who is chemically dependent may also be a person who is mentally ill.
- l. "Person requiring treatment" means a person who is mentally ill and/ or a person who is chemically dependent who meets one or both of the standards set forth in Section 53.0402.
- m. "Physician assistant" means an individual licensed to practice as a physician assistant in the state of North Dakota as a physician assistant and who is authorized by the North Dakota Board of Medicine to practice in the field of psychiatry, holds a certification approved by the board, and is practicing under the supervision of a psychiatrist licensed to practice medicine in North Dakota.
- n. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.
- o. "Respondent" means an individual subject to a petition for involuntary treatment.
- p. "Substantial risk of harm" means a substantial likelihood of:
 1. Suicide as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
 2. Killing or inflicting serious bodily harm or another individual or inflicting significant property damage, as manifested by acts or threats; or
 3. Substantial deterioration in physical health or substantial injury, disease, or death based upon evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions or based upon acts, threats, or patterns in the individual's treatment history, current condition and other relevant factors, including the effect of the individual's ability to consent.
- q. "Treatment facility" or "facility" means any hospital or other facility designated by the Band or the Counseling and Rehabilitation Board to provide appropriate care, including emergency evaluation, treatment, outpatient care, and inpatient care, to individuals who are mentally ill or chemically dependent and require involuntary treatment.
- r. "Tribal Court" or "Court" means the Turtle Mountain Band of Chippewa Indian's Tribal Court.

- s. "Weekends or Holidays" means Saturday and Sunday during the normal week. Holiday shall include any federal, state, and tribal holidays recognized as a day that normal work is not scheduled.

Chapter 53.04

VOLUNTARY ADMISSION FOR TREATMENT; STANDARDS FOR INVOLUNTARY ADMISSION FOR TREATMENT; DUE PROCESS REQUIREMENTS; RESPONDENTS RIGHTS

53.0401 Voluntary admission for treatment.

Voluntary admission for treatment shall be governed by Chapter 17.04 of the Counseling and Rehabilitation Code.

53.0402 Standards for involuntary admission for treatment.

An individual may be involuntarily admitted under this Title to a Tribal treatment facility only if the Court determines that the individual meets at least one of the following standards:

- a) Danger to Self or Others. There exists either:
- i. A substantial risk that physical harm will be inflicted by the
 - ii. evidenced by recent actions, threats, and attempts to inflict physical harm on another.
- b) Gravely Disabled. A condition in which an individual, as a result of mental illness or chemical dependency, is in danger of inflicting serious physical harm upon the individual's own person, or the person of another because:
- i. He/she is not providing for his/her essential needs, or the essential needs of his/her dependents, such as food, clothing, shelter, vital medical care, or safety;
 - ii. He/she is in medical need of, but is not receiving, appropriate inpatient treatment for mental illness or chemical dependency; and
 - iii. He/she is incapable of understanding or accepting such treatment due to impaired judgment from mental illness or chemical dependency.

53.0403 Due process requirements:

- a) Respondent has the right to be represented by counsel at the Respondent's own expense.
- b) Respondent, their counsel and, any guardian shall receive notice of all proceedings under this Title. All notices shall be personally served upon the Respondent within a reasonable time prior to the hearing. Service of notice of hearings, motions, petitions, and orders upon the Respondent's counsel or any guardian may be made by mail, facsimile, or email.
- c) All hearings required under this title shall include for the Respondent the right to:
- a. a closed hearing; and
 - b. request an open hearing, and
 - c. present and cross-examine witnesses.

53.0405 Respondent's rights:

- a) Respondent has the right to access his or her personal medical records. Respondent's attorney shall have the right to access Respondent's medical records upon written authorization by the Respondent. Respondent's right

to access medical records is subject to the limitations imposed by federal law.

- b) A Respondent has a right to be detained in an appropriate treatment facility, detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of no more than twenty-four hours and under close supervision.
- c) All persons admitted or committed to a treatment center shall be notified in writing of their rights regarding the hospitalization and other treatment. The individual shall receive this notification at the time he or she is served with the Court order as described in Section 53.0502(d). This notification must include:
 - 1. The right to counsel at the Respondent's own expense;
 - 2. The right to be present at the hearing either in person or via telephone;
 - 3. That the Petitioner bears the burden of proving by clear and convincing evidence that commitment of the Respondent is necessary;
 - 4. The right to provide testimony, present documentary evidence, call witnesses, and ask questions of all witnesses; and
 - 5. The right to obtain an additional examination, provided if detained for emergency treatment, this latter right may be exercised only after commitment.

Chapter 53.05

PETITION; PRELIMINARY COURT PROCEEDINGS; EXAMINATION OF RESPONDENT

53.0501

Petition.

- a) Proceedings for the involuntary treatment of an individual may be commenced by any person of eighteen years of age or over by filing a petition with the Tribal Court. The petition shall contain:
 - 1) The name, address, and age of the Petitioner;
 - 2) The name, address, age, marital status and occupation, if known, of the Respondent;
 - 3) The names and addresses of the Respondent's nearest relatives, if known;
 - 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) A clear statement by the Petitioner alleging that Respondent meets either the danger to self or others or the gravely disabled standard as described in Section 53.0402, or both, and requires involuntary treatment;
 - 6) The facts, in detail, that are the basis of the Petitioner's assertion, including, when available or appropriate:
 - a. Any statements by persons having knowledge of the Respondent's mental illness or the nature of the Respondent's mental illness or chemical dependency;
 - b. Documentation in the form of medical reports, letters from persons with knowledge of the circumstances necessitating commitment, examiner's statements, affidavits, police reports

and/or other reliable documents supporting the allegations of the petition; and

- c. A statement as to whether the Respondent or other person is at risk of death or great bodily harm due to Respondent's mental illness or chemical dependency necessitating immediate apprehension and detention;
 - 7) A statement that specifies whether the Petitioner seeks emergency civil commitment under 53.0502(c)(1) or non-emergency commitment under 53.0502(c)(2); and
 - 8) A statement as to whether alternatives to involuntary commitment or treatment were explored and why such alternatives were rejected.
- b) Petition shall be verified by sworn affidavit of the Petitioner that all allegations and facts are true to the best of Petitioner's knowledge.
 - c) At the Court's discretion, the Tribal Court may direct a mental health professional designated by the Tribal Counseling and Rehabilitation Board to investigate and evaluate the specific facts alleged by the Petitioner. The investigation must be completed as promptly as possible, but shall not be more than seventy-two (72) hours from the submission of the Petition, excluding weekends and holidays, and include observations of and conversation with the Respondent, unless the Respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to Tribal Court once investigation is complete. Copies of the report must be made available upon request to the Respondent, the Respondent's counsel, and any expert examiner conducting an examination under Section 53.0503.

53.0502

Preliminary court proceedings.

- a) Upon receiving the Petition, and, when applicable, the supporting investigatory report under Section 53.0501(c), the Tribal Court Judge shall examine the petition to determine whether it complies with the requirements of Section 53.0501(a) and whether it establishes probable cause to believe that Respondent is a person requiring treatment. Probable cause shall exist if, based on the Petition and, if applicable, the supporting investigatory report, the Court determines the Respondent meets the standards described in Chapter 53.04.
- b) If probable cause has not been so established, the petition must be dismissed, unless an amendment would cure the defect.
- c) If probable cause has been established, the Tribal Court may:
 - 1) Enter an emergency ex-parte order for immediate apprehension and detention of the Respondent in a Treatment Facility, if the Court determines the Respondent presents an immediate safety concern to himself or others; or
 - 2) Enter an ex parte order for the Respondent to remain in the community and co-operate with all procedures and services related to the matter.
- d) If the court issues an emergency order for apprehension and detention of the Respondent under Section 53.0502(c)(1), a law enforcement officer, or

other designated tribal official, shall personally serve the Respondent with:

1. a copy of the petition and supporting documentation;
2. a copy of the detention order;
3. a notice of the Respondent's right to a preliminary and a treatment hearing;
4. the right to be present at the hearings; a written statement of the Respondent's right to an attorney at any hearings or court ordered examination;
5. the right to an independent evaluation; and
6. a copy of the notification of Respondent's rights as described in Section 53.0405(c).

The law enforcement officer shall orally inform the Respondent that they are being taken into custody as a result of the petition. The Court shall also cause for a copy to be served upon the Respondent's counsel, any guardian, the Respondent's closest relative, and any person designated by the Respondent to receive notice.

e) If the court issues an order for the Respondent to remain in the community and co-operate with all procedures and services, a law enforcement officer, or other designated tribal official, shall personally serve the Respondent with:

1. a copy of the petition and supporting documentation;
2. a notice informing the Respondent of all procedures required by this chapter;
3. a notice of the Respondent's right to a preliminary and treatment hearing;
4. the right to be present at the hearings and any court ordered examination;
5. a written statement of the Respondent's right to an attorney at any hearings or court ordered examination;
6. the right to an independent evaluation; and
7. a copy of the notification of Respondent's rights as described in Section 53.0405(c).

The Court shall also cause for a copy to be served upon the Respondent's counsel, any guardian, the Respondent's closest relative, and any person designated by the Respondent to receive notice.

53.0503

Examination of respondent.

a) All Tribal Court Orders issued pursuant to Section 53.0402 shall order the Respondent receive a comprehensive mental examination conducted by an appropriate Examiner, as defined by Section 53.0602(h), to be completed prior to the preliminary hearing.

- i. If the Respondent has been apprehended and detained, the Respondent shall be examined within forty-eight (48) hours of detainment.
- ii. If the Respondent has not been apprehended and detained, the Tribal Court shall enter and personally serve upon the Respondent and order and summons to appear for psychological examination. The order and summons shall clearly state the date, time and location of the

examination, and shall contain a statement informing the Respondent that if he/she fails to appear for the examination he or she may be involuntarily detained. The date and time of the psychological examination shall be at the earliest time practicable. If the Respondent fails to appear for the examination, the Tribal Court may enter an order for immediate apprehension and detention.

- b) Any expert examiner conducting an examination under this section may consult with or request participation in the examination by another mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
 - i. Evaluations of the Respondent's physical condition and mental status;
 - ii. A recommendation as to whether commitment is necessary, with a clear explanation of how that conclusion was derived from the evaluation; and
 - iii. Recommendations for treatment, including, if any, those that may serve as an alternative to involuntary hospitalization.
- c) If the expert examiner concludes the Respondent is not a person requiring treatment, the court may terminate the proceedings and dismiss the petition without taking any action.
- d) If the expert examiner concludes the Respondent is a person requiring treatment, or makes no conclusion whether the Respondent is a person requiring treatment, the court shall set a date for the Preliminary Hearing and shall personally serve the Respondent with:
 - i. A written notice of the date, time and place of the Preliminary Hearing
 - ii. A statement that clearly and conspicuously states the Respondent's rights to:
 - a. be present at the Preliminary Hearing;
 - b. to have counsel present at his or her own expense; testify, present documentary evidence, call witnesses and ask questions of all witnesses;
 - c. obtain an additional examination
- e) If the Respondent is detained under Section 53.0502(d), the Preliminary Hearing must take place within forty-eight (48) hours of the submission of the expert report, exclusive of weekends and holidays.

Chapter 53.06

PRELIMINARY HEARING; MEDICATION PENDING TREATMENT ORDER; TREATMENT HEARING; MEDICATION PENDING TREATMENT ORDER; INVOLUTARY MEDICATION; STATUS REVIEW HEARING

53.0601 Preliminary hearing.

- a) Upon receiving a Section 53.0501 Petition, the Tribal Court shall schedule a Preliminary Hearing. The Preliminary Hearing shall address the allegations of the Petition and Examiner's report and shall determine the Respondent's need for detainment, additional psychological examination, or involuntary psychological or other treatment services. A Preliminary

Hearing must be scheduled either:

1. Within four days of being detained or forty-eight (48) hours, excluding weekends and holidays, of receiving the Expert report specified in Section 53.0503(e), whichever is sooner, if the Respondent is detained under Section 53.0502(d); or
2. Within seven (7) days of receiving the expert report specified in Section 53.0503(e), excluding weekends and holidays, if the Respondent is not detained.

b) During the Preliminary Hearing:

1. The Petitioner and the Respondent must be afforded an opportunity to testify;
2. The Petitioner and Respondent must be afforded the opportunity to present and cross-examine witnesses; and
3. The Tribal Court may receive the testimony of any other interested person.

c) If, at the conclusion of the Preliminary Hearing, the Tribal Court does not find probable cause to believe that the individual is a person requiring treatment, the petition must be dismissed and, if the individual has been detained, the individual must be ordered discharged.

d) If, at the conclusion of the Preliminary Hearing, the court finds probable cause continues to exist for the Petition, the court may:

1. Order the Respondent detained for up to fourteen days in an involuntary treatment facility; or
2. Order the Respondent undergo up to fourteen days in a less restrictive treatment alternative (e.g. follow medical advice, begin a treatment program, etc.).

The Court shall order the least restrictive treatment necessary to ensure the continued well-being of the Respondent and others who are likely to be affected by the Respondent's condition.

e) The court shall specifically state to the Respondent and give written notice that if involuntary treatment beyond fourteen (14) days is to be sought, the Respondent will have the right to a Treatment Hearing as described Section 53.0602 below.

f) If a qualified mental health professional at the facility at which the Respondent is receiving treatment determines that the Respondent no longer requires commitment to the facility before the end of the ordered period, he or she must notify the Court and request review of the Respondent's case.

53.0602

Treatment hearing.

a) The Treatment Hearing, unless waived by the Respondent or the Respondent has been released as a person not requiring further treatment, must be held within fourteen (14) days, excluding weekends and holidays, of the Preliminary Hearing.

c) The Tribal Court shall personally serve written notice of the date, time,

and place of all hearings upon the Respondent. The notice shall include the alleged grounds for confinement, the standard of proof, and the Respondent's right to:

1. Chose to hire an attorney of their choice, at their own expense;
 2. Be present at the hearings in person;
 3. Testify, present documentary evidence, call witnesses and ask questions of all witnesses; and
 4. Obtain additional examinations.
- d) The Respondent's counsel, any guardian, the Respondent's closest relative, and any person designated by the Respondent to receive notice may be served by mail, facsimile, or email with notice of hearings, motions, orders and other documents.
- d) Treatment Hearing:
1. A Treatment hearing shall be tried as a civil matter and conducted in an informal manner;
 2. The Petitioner must prove by clear and convincing evidence that the Respondent is in need of further involuntary treatment;
 3. The Judge shall not be bound by rules of procedure or evidence applicable in other civil proceedings. The judge shall admit and consider all relevant evidence presented at the contested hearing and shall take judicial notice of the file;
 4. All efforts must be made by the Court and other involved parties to have the Respondent be physically present in the Courtroom;
 5. Petitioner and the Respondent must be afforded an opportunity to testify and to present and cross-examine witnesses;
 6. The court may receive the testimony of any other interested person;
 7. All individuals not necessary for the conduct of the proceeding must be excluded, except that the court may admit individuals having a legitimate interest in the proceeding;
 8. The Tribal Court shall have the power to issue subpoenas to compel the testimony of witnesses or the production of books, records, documents, or any other physical evidence related to the determination of the case. In the absence of justification satisfactory to the Tribal Court, a person who fails to obey a subpoena may be cited and held in contempt; and
 9. There is a presumption in favor of the Respondent, and the burden of proof in support of the petition is upon the Petitioner.
- e) If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, the court shall deny the petition, terminate the proceeding, and order that the Respondent be discharged if the Respondent is currently detained in a treatment facility.
- f) If, upon completion of the treatment hearing, the Tribal Court finds by clear and convincing evidence that the Respondent continues to meet either the danger to self or others or the gravely disabled standard, or both, as described Section 53.0402 of this Title, and no less restrictive alternative exist, the Tribal Court may order:
1. Commitment to an inpatient treatment program as directed by the

Court. The Order shall state that the Respondent meets the criteria for civil commitment under the laws of the Turtle Mountain Band of Chippewa Indians;

2. Commitment to community placement with attendance at appropriate outpatient services and other court ordered requirements as recommended by the Examiner and the Turtle Mountain Rehabilitation and Counseling Board;
 3. Monitoring and supportive services as recommended by the Turtle Mountain Rehabilitation and Counseling Board;
 4. Further assessment, if necessary;
 5. Authorize the exchange of records between treatment providers and to the Court and Tribal attorney.
- g) An order for involuntary inpatient treatment may not exceed ninety (90) days and an order for involuntary outpatient treatment may not exceed one hundred and eighty (180) days. The Order must detail the basis for the Court's treatment decision. The Order must clearly state that the case will be reviewed at the end of the ninety or one hundred eighty-day treatment period.
- h) If a qualified mental health professional at the facility at which the Respondent is committed determines that the Respondent no longer requires commitment to the facility before the end of the ordered period, he or she must notify the Court and request review of the Respondent's case.

53.0603

Medication pending treatment order.

- a. Respondent has the right to refuse medication and other forms of treatment before the Treatment Hearing. However, a physician, a physician assistant, or an advanced practice registered nurse may prescribe medication or a less restrictive alternative if it is necessary to prevent bodily harm to the Respondent or others or to prevent imminent deterioration of the Respondent's physical or mental condition. The patient has the right to be free of the effects of medication at the Preliminary Treatment, or Status Review Hearing by discontinuance of medication no later than twenty-four hours prior, except as provided in Section 53.0604(b) below.
- b. The Respondent may be required to remain on medication if the Respondent's treating physician submits a written statement to the court that, in his or her professional medical opinion, medication is necessary for either the continued well-being of the Respondent or others, or discontinuation would hamper the Respondent's preparation for and participation in the proceedings and provides supporting medical and/or other documentation at least forty-eight (48) hours prior to the hearing. The Court has discretion to either accept or reject the treating physician's statement. If the Court rejects the treating physician's statement, the Respondent must be free of the effects of medication by discontinuance of medication no later than twenty-four hours prior to the Treatment or Preliminary hearing.

53.0604

Involuntary medication.

- a) Upon prior notice to the Court, Respondent, and, when applicable, Respondent's guardian, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may request authorization from the Court to involuntarily treat the Respondent with

prescribed medication. A request for treatment with prescribed medication may be made at the Treatment Hearing, a Status Review Hearing, or at a separate hearing after motion and notice.

- b) As a part of the request, a psychiatrist or a final year psychiatric resident physician not involved in the current diagnosis or treatment of the patient shall certify:
 - 1. That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;
 - 2. That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
 - 3. That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
 - 4. That benefits of treatment substantially outweigh the known risks to the patient.

- c) The Respondent, or the Respondent's guardian, has a right to request an examination by an independent expert on the issue of involuntary treatment with prescribed medication and submit the independent expert's report at the Hearing and/or call the independent expert as a witness in the hearing.

- e) The Court, in ruling on the requested authorization for involuntary treatment with prescribed medication, shall consider all relevant evidence presented at a hearing, including:
 - 1. The danger the patient presents to self or others;
 - 2. The patient's current condition;
 - 3. The patient's treatment history;
 - 4. The results of previous medication trials;
 - 5. The efficacy of current or past treatment modalities concerning the patient;
 - 6. The patient's prognosis;
 - 7. The effect of the patient's mental condition on the patient's capacity to consent.; and
 - 8. If the patient has a legal guardian, the patient's legal guardian's opinion on involuntary medication.

- The Court may not authorize involuntary treatment with prescribed medication solely for the convenience of facility staff or for the purpose of punishment.

- f) If the factors certified under subsection b) have been demonstrated by clear and convincing evidence, the court may include a provision in its Treatment Order, or separate Order after notice and hearing, authorizing the treating physician, physician assistant, psychiatrist, or advanced practice registered nurse to involuntarily treat the patient with prescribed medication on such terms and conditions as are deemed appropriate by the Respondent's individual circumstances.

- g) Any order for involuntary treatment with prescribed medication may not be in effect longer than ninety (90) days.

Status review hearings.

- a) The Tribal Court shall conduct a Status Review Hearing of the Respondent's case at least every ninety (90) days.
- b) The Tribal Court shall cause the notice of hearing to be served personally on the Respondent at least fourteen (14) days prior to the Status Review Hearing. Counsel for the Respondent and any guardian may be served by mail, facsimile, or email.
- c) The Respondent shall have the right:
 - 1. To be present at any hearing;
 - 2. To be represented by counsel;
 - 3. To call and cross-examine witnesses;
 - 4. To petition the court for release;
 - 5. To request an independent evaluation.
- d) The Respondent shall be present at the Status Review Hearing by either telephone, or in person.
- e) The Tribal Court shall require a report from the treatment facility, as well as an Examiner on the status of the Respondent and the need for continuing treatment.
- f) If, at the conclusion of the Status Review Hearing, the Court does not find that there is probable cause to believe that the Respondent is an individual requiring treatment, the Respondent must be immediately discharged.
- g) If, at the conclusion of the Status Review Hearing, the Court finds that there is probable cause to believe that the Respondent is an individual requiring treatment, the Court may order additional treatment for up to ninety (90) days. The Court must order the least restrictive treatment available to ensure the continued well-being of the Respondent and others placed at risk by the Respondent's condition.
- h) If a qualified mental health professional at the facility at which the Respondent is committed determines that the Respondent no longer requires commitment to the facility before the end of the ordered period, he or she must notify the Court and request review of the Respondent's case.

Chapter 53.07**RECORDS AND PROCEEDINGS; APPEAL PROCEDURE**Records and proceedings.

- a) A record must be made of all court hearings conducted under this chapter and a copy must be provided to the Respondent upon request for purposes of appellate review of the proceedings.
- b) All Court records and proceedings under this Title shall be confidential and privileged information. The captions and text of documents files with the Court pursuant to this chapter shall refer to the Respondent patient by abbreviations of his or her full name.

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- d) All information and records prepared in the course of providing any services under this Title to individuals under any provision of this Title 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:
1. in communication between qualified professionals in the provision of services or appropriate referrals;
 2. 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 court-appointed guardian or conservator designates in writing persons to whom records or information may be disclosed, such delegation 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;
 3. to the extent necessary to make claims on behalf of the recipient of aid, insurance, or medical assistance to which he may be entitled;
 4. to the courts as necessary to the administration of justice; and
 5. to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record of information pertains and the custodian of the records of information pursuant to Title 2 of the Tribal Code, Judicial Procedure, Civil.

53.0702

Appeal procedure.

Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the Tribal 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.