

**RESOLUTION OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

**(Enacting the White Mountain Apache
Involuntary Commitment Ordinance No. 221)**

WHEREAS, pursuant to Resolution No. 09-2003-238, the Secretary of the Tribal Council did post copies of the proposed Involuntary Commitment Ordinance No. 221 in each district for at least ten (10) days for the public as required by Article XV, Section 2 of the Constitution of the White Mountain Apache Tribe; and

WHEREAS, the Tribal Council has reviewed Ordinance No. 221 carefully and considered its recommendations and the implications thereof in great detail; and

WHEREAS, the proposed Ordinance was posted in 2003 and the Office of the Tribal Secretary does not have any records of comments that could be considered by the Tribal Council; and

WHEREAS, the Tribal Council finds the adoption of Ordinance No. 221 would be in the best interest of the White Mountain Apache Tribe in ensuring the health and welfare of its people.

THEREFORE, BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe that the proposed amendment to the Health & Safety Code in the form of Ordinance 221, as attached and incorporated by this reference, is hereby enacted, amending the Health and Safety Code, adding Chapter Seventeen, and directs that Ordinance No. 221 shall be a permanent part of the positive law of the Tribe.

The foregoing resolution was on SEPTEMBER 26, 2006 duly adopted by a vote of SEVEN for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (t), and (u) of the Constitution of the Tribe, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Chairman of the Tribal Council



Secretary of the Tribal Council

CHAPTER SEVENTEEN INVOLUNTARY COMMITMENT

SECTION 17.1 STATEMENT OF PURPOSE

As directed by its tradition, custom, and Constitution, the White Mountain Apache Tribe seeks to protect and promote the health and welfare of its people and community members, including those who may present a danger to themselves or others due to mental disorder or illness. Under Tribal custom, any act of violence to self or others, whether intentional or occasioned by mental illness, inflicts unacceptable harm to the individual and causes pain and loss to the family and community. To that end, the Tribe enacts this Involuntary Commitment Chapter to the Health and Safety Code to establish procedures to review and enforce mandatory treatment and confinement orders for those in need of behavioral health professional care, while upholding strict due process standards respecting rights of those persons subject to the provisions of this Code.

SECTION 17.2 DEFINITIONS

In this Chapter, unless the context requires another meaning:

A. “Danger to Others,” means that the judgment of a person who has a mental disorder is so impaired that the person is unable to understand his or her need for treatment and, as a result of a mental disorder, the person’s continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

B. “Danger to Self,” means:

(1) Behavior which, as a result of a mental disorder, constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual’s previous acts, it is substantially supportive of an expectation that the threat will be carried out.

(2) Behavior which, as a result of a mental disorder, will, without hospitalization, result in serious physical harm or serious illness to the person, except that this definition shall not include behavior which establishes only the condition of gravely disabled.

C. “Detention,” means the taking into custody of a person.

D. “Detention Facility,” means a facility in which a person may be held pending treatment, evaluation, or court review, pursuant to the authority granted under this Chapter. The Detention Facility selected shall be the least restrictive alternative, and may include, but shall not be limited to, a criminal detention facility if no other appropriate facility is available. Notwithstanding the foregoing, the confinement or detention authorized under this Chapter shall not be considered a criminal detention, nor shall the detention be deemed punishment, but rather, is an action authorized solely for the safety and well-being of the person and others.

E. "Evaluation," means the professional analysis described in Section 17.6, as required for an involuntary commitment hearing before the Tribal Court.

F. "Gravely Disabled," means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for his or her basic physical needs.

G. "Initial Screening," means the mental health status examination described in Section 17.4 which may be conducted to determine whether to commence Involuntary Commitment proceedings.

H. "Mental Disorder," means for purposes of this Chapter, a substantial disorder of the person's emotional processes, thought cognition, or memory. "Mental Disorder" is distinguished from:

(1) Conditions which are primarily those of drug abuse, alcoholism or mental retardation, unless in addition to one or more of these conditions the person has a mental disorder.

(2) The declining mental abilities that directly accompany impending death.

(3) Character and personality disorders characterized by lifelong and deeply ingrained anti-social behavior patterns, including sexual behaviors which are abnormal and prohibited by law.

I. "Mental Health Provider," means any physician or provider of mental health or social welfare services involved in caring for, treating, or rehabilitating a patient, or conducting an initial screening, or an evaluation of a proposed patient.

J. "Patient," "Person," or "Proposed Patient," means the person, whether adult or minor, who is subject to, or being considered for, the commitment proceedings set forth in this Chapter. If the person is a minor, the provisions of this Chapter shall be implemented and enforced under the jurisdiction of the Tribal Juvenile Court.

K. "Persistently or Acutely Disabled," means a severe mental disorder that meets all the following criteria:

(1) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

(2) Substantially impairs the person's capacity to make an informed decision regarding treatment and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an

understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

(3) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

SECTION 17.3 PETITION FOR EVALUATION, DETENTION

A. **Grounds for Petition.** A licensed physician, mental health provider, police officer, the Tribal Prosecutor or the Tribal Attorney, either upon request by an interested party or upon his or her own volition, may petition for a court-ordered evaluation of a person who is alleged to be suffering from a mental disorder, persistently or acutely disabled, or who is gravely disabled and who is incapable of or unwilling to undergo a voluntary evaluation.

B. The Petition shall contain the following information:

(1) The name and address of the person making the petition and his or her interest in the case.

(2) The name of the person to be evaluated and, if known or readily discoverable, the address, age, marital status and occupation of the person, and the name and address of the person's nearest relative.

(3) The facts which called the person to be evaluated to the attention of the petitioner.

(4) The facts upon which the allegations are based, including statements by the petitioner of the specific nature of the danger or grave disability.

(5) Other information that the court by rule or order may require.

C. The Petition shall be filed with the Tribal Court in accordance with rules that the Court may establish.

D. **Detention.** In addition to a petition for an evaluation, as set forth in Subsection A, a petition may request the involuntary detention of the proposed patient on the grounds that the proposed patient is suffering from a mental disorder and is a danger to self or to others. The Court may order the apprehension, transportation and custodial detention by Tribal Police or other appropriate agency of a person for the purpose of a mental health evaluation if from the petition for evaluation the Court determines there is reasonable cause to believe that the person is likely to present a danger to self or others as a result of a mental disorder. Any detention of a person under the authority of this Chapter shall be conducted pursuant to accepted medical standards, as may be directed by a licensed physician, to provide for the humane care and appropriate mental health needs and safety of the patient. The patient shall be informed of the reasons for the detention and that he or she must submit to a mental health evaluation. The period of detention shall not extend

beyond the conclusion of the court proceedings, and as needed for the subsequent transfer to a treatment facility.

SECTION 17.4 EMERGENCY APPREHENSION AND INITIAL SCREENING

A. Notwithstanding any other provision of this Chapter, a police officer may apprehend, without a warrant or order, a person who the officer has reasonable cause to believe poses an immediate danger to self or to others due to a mental disorder and is in need of immediate care and treatment.

B. All persons so apprehended shall be transported to the Whiteriver Service Unit Emergency Room for an initial screening. The initial screening shall be conducted by a licensed physician and licensed psychologist, or other mental health provider licensed to conduct a mental status examination. In the event the person cannot be immediately subjected to an initial screening because of intoxication or other impairment from drugs, the person may be held in a detention facility for a reasonable period of time until his or her condition will allow an initial screening.

C. In the event the initial screening indicates the person suffers from a mental disorder and is a danger to others or a danger to self, a licensed physician may direct that the person be immediately detained in a detention facility, provided that a petition for involuntary confinement and treatment for court review, pursuant to the provision of Section 17.3, is filed no later than the succeeding court day. Child Protective Services shall be immediately notified if the person detained is a minor.

D. An initial screening may be conducted at a location other than the Emergency Room when circumstances so warrant.

SECTION 17.5 COURT REVIEW

A. Court Review/Scheduling. Upon receipt of a petition filed with the Court pursuant to Section 17.3, the Court shall immediately, after verifying that the petition complies with the requirements of this Chapter, schedule a hearing to be held not later than 96 hours after receipt of the petition. The Court may, for good cause, extend the period for the hearing date up to 14 days if the proposed patient is not in detention. In the event that the proposed patient cannot be located in time to comply with the schedule set forth in this Section, the Court hearing shall occur 48 hours following the evaluation when completed. Prior to scheduling a hearing as set forth in this subsection, upon request, or its own action, the Court may direct that an initial screening pursuant to Section 17.4 be first conducted and that the report be submitted to the Court.

B. Appointment of Legal Counsel. The Court shall appoint legal counsel for the proposed patient, unless it determines that the proposed patient has legal counsel or is otherwise able to obtain and pay for the services of such counsel. The Court shall provide notice of the appointment and hearing to the proposed patient and legal counsel not less than 72 hours prior to the hearing. The Court may, when circumstances warrant, appoint a guardian to act on behalf of the interests of the proposed patient.

C. Order for Evaluation. The Court shall order an evaluation of the proposed patient, as provided in Section 17.6. The evaluation results shall be made available to the petitioner, the Court, the proposed patient, and the proposed patient's legal counsel not less than 24 hours prior to the hearing.

D. Order for Detention. The Court may also order the detention of the proposed patient prior to the hearing if the circumstances warrant such detention.

E. Independent Evaluation. Upon request, the Court shall permit the proposed patient to obtain a separate and independent evaluation to introduce into the Court hearing, provided that a copy of the evaluation report is made available to the Court and to the petitioner within a reasonable time period prior to the hearing, as established by the Court.

F. Calculation of Time. All calculations of time pursuant to this Section, whether by days or hours, shall not include weekends and court holidays.

SECTION 17.6 COURT ORDERED EVALUATION

The evaluation ordered pursuant to Section 17.5 C shall be a professional analysis of the proposed patient's psychological condition and shall serve as a key evidentiary base for the Court hearing. The evaluation shall assess a broad range of relevant information about the patient's background, identity, mental status, and condition. The evaluation shall be conducted by a licensed physician and licensed psychologist, but the input of and evaluation by other mental health providers is encouraged to promote a balanced and professional multi-disciplinary analysis. The evaluation results may be issued in either a joint report or separate report, as agreed by the examiners.

SECTION 17.7 HEARING PROCEDURES

A. Witnesses. The proposed patient and the petitioner, or the Tribal Prosecutor or Tribal Attorney on behalf of the petitioner, may present and cross-examine witnesses. The testimony of examiners shall not be admitted into evidence unless, 1) the examiner is present and is subject to cross-examination, or, 2) in the event that the examiner, for good cause, is unable to attend, testifies through live interactive tele-video access which permits continuous two-way audio-visual connection adequate for cross-examination. The judge may sequester any witness or witnesses.

B. Conduct of Hearing. The hearing shall be governed by the established rules of Tribal Court and the rules of evidence, subject to the provisions on confidentiality, as set forth in section 17.9 of this Chapter.

C. Standard of Proof. If the Court finds by clear and convincing evidence that the person, as a result of a mental disorder, is a danger to self, is a danger to others, or is gravely disabled and is in need of treatment, and is either unwilling or unable to accept voluntary treatment, the judge shall order such person to undergo inpatient treatment. The judge shall consider reasonable alternatives to commitment including, but not limited to,

dismissal of the petition, voluntary outpatient care, and voluntary admission to a treatment facility.

D. Court Power/Jurisdiction. The Court shall consider all available and appropriate alternatives for the treatment and care of the patient. The court shall order the least restrictive treatment alternative available, including outpatient as well as combined inpatient and outpatient treatment where appropriate. Placement into an inpatient setting pursuant to this Chapter shall not be deemed to change the legal residence of the patient, nor to remove the Court's jurisdiction over the patient or proceedings arising under this Chapter.

E. Court Order. The Court shall direct the entry of judgment, and may find the facts specifically. The order shall be filed with the Clerk of the Court. Where the Tribal court orders involuntary commitment for treatment, an authenticated copy of the order may be filed with the Clerk of the Superior Court of Arizona, or a court of another state or Indian tribe, as appropriate, if needed to direct placement within a facility outside the jurisdiction of the Tribe. The Tribal Court judge, or other appropriate Tribal official, is authorized to submit other documentation and verification concerning the Tribal Court proceedings and concerning the identity and address of the proposed patient, as may be needed for recognition of the Tribal Court order by another court. The Order may identify the agency responsible for transportation of the patient, direct that the patient be held in an appropriate detention facility pending transfer to the treatment facility, and provide for follow-up coordination with the treatment facility. In addition, the Court's order shall include the following:

- (1) The legal and factual basis for the Court's jurisdiction;
- (2) Confirmation that the patient was provided notice of the proceedings and the opportunity to be heard;
- (3) Confirmation that the ruling is based upon the diagnosis of a licensed physician; and
- (4) Confirmation that the treatment order is the least restrictive alternative, and the patient is unwilling or unable to receive the treatment voluntarily.

F. The maximum periods of inpatient treatment which the court may order are as follows:

- (1) Ninety (90) days for a person found to be a danger to self.
- (2) One-hundred eighty (180) days for a person found to be a danger to others.
- (3) One-hundred eighty (180) days for a person found to be persistently and acutely disabled.

- (4) Three-hundred sixty-five (365) days for a person found to be gravely disabled.

SECTION 17.8 **PATIENT'S RIGHTS AT HEARINGS**

- A. At all hearings conducted pursuant to this Chapter, a person shall have the right to an evaluation of his or her psychological condition by an independent evaluator who is either a licensed physician or certified psychologist selected by the patient or the patient's legal counsel.
- B. Information, admissions, or confessions given by a person to a mental health provider during the course of initial screening, evaluation, or treatment as ordered by the Court cannot be used against the person at a trial where he or she is a criminal defendant charged with violating a Tribal law.
- C. For purposes of transportation of persons to and from hearings, detention, and commitment under this Chapter, the Tribal Court shall be the temporary guardian of the person while in transit.

SECTION 17.9 **CONFIDENTIAL RECORDS**

All information and records obtained in the course of evaluation, examination or treatment shall be kept confidential and not as public records, except as the hearing requirements of this Chapter may necessitate a different procedure. Information and records may only be disclosed to:

- A. The proposed patient and individuals legally representing the proposed patient.
- B. Mental health providers involved in assessing, caring for, treating, or rehabilitating the person.
- C. Individuals to whom the person has given consent to have information disclosed.
- D. The judge to whom the case is assigned, the Tribal Prosecutor or Tribal Attorney, and/or the petitioner.
- E. Individuals authorized by court order.

SECTION 17.10 **VOLUNTARY ADMISSION**

In order to assist individuals in obtaining the treatment options identified in this Chapter, any person, eighteen years of age or older, who manifests the capacity to give and gives informed consent may be hospitalized for evaluation, care and treatment by voluntarily making written application. In the event such consent is given, any Tribal Court proceedings which may have been pending concerning the person's involuntary commitment shall be stayed during the time that the voluntary commitment and prescribed treatment are occurring. In the event the patient revokes the voluntary consent, or otherwise fails to comply with the prescribed treatment or commitment, the

Court proceedings will immediately resume. No Court proceeding will otherwise commence upon the submission of a voluntary application for evaluation and treatment.

SECTION 17.11 **TRAINING**

To promote coordination among all involved agencies and departments, and to provide a broader understanding of the unique challenges and needs presented by those persons who pose a risk to self or others because of mental illness, the Tribal Social Service and Behavioral Health programs shall conduct comprehensive training sessions not less than once per year for all social service, law enforcement, and mental health personnel and others who provide services for the individuals subject to the provisions of this Chapter.

SECTION 17.12 **LIMITATION ON LIABILITY**

There shall be no liability for any mental health provider, physician, officer, attorney, Tribal official or representative, or any other person for actions and conduct authorized pursuant to this Chapter. This Section shall not apply to criminal conduct or conduct found to be grossly or willfully negligent.

SECTION 17.13 **SEVERABILITY**

If any provision of this Chapter, or the application thereof, is held invalid, the remainder of this Chapter, or other application of such provisions, shall not be affected.