

TULALIP TRIBES  
ORIGINAL DOCUMENT

THE TULALIP TRIBES OF WASHINGTON  
RESOLUTION 2023- 513

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ORIGINAL DOCUMENT

**Competency, Involuntary Treatment, and Civil Commitment Ordinance**

**WHEREAS**, the Board of Directors is the governing body of the Tulalip Tribes under the Constitution and Bylaws of the Tribes approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 5123); and

**WHEREAS**, under the Tulalip Tribes Constitution Article VI, Sections 1(K) & (L), the Board of Directors has the authority to safeguard and promote the peace, safety, morals, and general welfare of the Tulalip Reservation by promulgating and enforcing ordinances providing for the maintenance of law and order and the administration of justice; and

**WHEREAS**, the Tulalip Board of Directors recognizes that the Tulalip Tribal Court and the state of Washington Office of Forensic Mental Health Services lawfully and productively cooperate to assess individuals in need of competency evaluations and when necessary and appropriate to restore such individuals and that such cooperation is the best interest of the Tulalip community; and

**WHEREAS**, the Tulalip Board of Directors determines that statutory guidance based on Washington state law and practice in the area of competency assessment and restoration would be beneficial to the Court, Tribes, and defendants;

**WHEREAS**, the Tulalip Board of Directors recognizes involuntary treatment and civil commitment options are necessary tools for Tulalip to safely and compassionately respond to mental health crises of persons both incarcerated and in the community;

**NOW THEREFORE BE IT ENACTED**, by the Board of Directors of the Tulalip Tribes:

*Section 1.* The attached Involuntary Treatment Act – Civil Commitment ordinance is enacted into law to be codified as Tulalip Tribal Code Chapter 4.35.

*Section 2.* The attached Competency Ordinance is enacted into law to be codified as Tulalip Tribal Code Chapter 2.27.

*Section 3.* This ordinance shall be in full force and effect upon its approval by the superintendent of the reservation or ten days following presentation to the superintendent of the reservation pursuant to the Tulalip Constitution Article VI, § 2.

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**ADOPTED** by the Board of Directors of the Tulalip Tribes of Washington at a regular board meeting assembled on the 3rd day of November, 2023 with a quorum present, by a vote of 6 For, 0 Against, and 0 Abstain.

THE TULALIP TRIBES OF WASHINGTON



Teri Gobin, Chair

ATTEST:



Debra Posey, Secretary



**Ordinance Summary**

## Involuntary Treatment &amp; Civil Commitment

## Brief Summary of Ordinance

- Adopts evaluation criteria, civil commitment time limits, legal standards, and court processes for civil commitment that track with Washington State law
- Establishes a Less Restrictive Alternative (LRA) to civil commitment whereby Tulalip and/or contract providers will provide services in the community.
- Establishes a Substance Abuse Treatment Intervention whereby Tulalip can compel substance abuse treatment, including inpatient substance abuse treatment, when the person has a substance abuse disorder and is either (a) unlikely to survive safely in the community without supervision, or (b) needs assistance to prevent a relapse that would be likely to result in death, grave disability, or a likelihood of serious harm.

**Background.** An Involuntary Treatment Act (ITA) provides the statutory framework for civil investigation, evaluation, detention, and commitment of individuals experiencing a mental disorder or a substance use disorder whose symptoms are so acute that the individual may need to be treated on an involuntary basis. The Washington state ITA governs the actions of Designated Crisis Responders (DCRs), law enforcement, health care providers, and the court process in terms of:

- Conducting investigations and evaluations to determine if an individual meets criterion for emergent or non-emergent involuntary detention and treatment;
- Writing petitions so that the court may order an involuntary commitment;
- Testifying in court proceedings;
- Monitoring compliance for individuals who have been released from commitment under a Less Restrictive Alternative order.

Tulalip currently utilizes the state ITA process, primarily through requests for assistance initiated by Behavioral Health, the Tulalip Police Department, and Tulalip Tribal Court.

An individual can be civilly committed under Washington law if they are gravely disabled or present a likelihood of serious harm. "Grave disability" means that due to the individual's mental disorder or substance use disorder, the individual is in danger of serious harm resulting from a failure to provide for their essential needs of health and safety; or demonstrates a severe deterioration in routine functioning evidenced by increasing loss of volitional control over their actions and is not currently receiving care that is essential for the individual's health and safety. "Likelihood of serious harm" means a substantial risk that physical harm will be self-inflicted, inflicted upon another, or inflicted upon the property of others. This includes threats or attempts to commit suicide or harm oneself, or behavior that causes harm or places another person of reasonable fear that they will be harmed, or behavior that caused substantial loss or damage to the property of others.



Instead of being committed, or after a short period of commitment, and individual who is gravely disabled or presents a likelihood of serious harm can be ordered by a court to comply with a Less Restrictive Alternative (LRA). An LRA is a plan of treatment and psychiatric supports supervised in a community setting for a limited period of time. A person who fails to comply with an LRA or whose condition deteriorates while on an LRA can be re-committed by the courts.

**Proposed ordinance – Chapter 4.35 Involuntary treatment and civil commitment.**

*Initial detention.* A Tulalip Tribal Designated Crisis Responder (TTDCR) can detain, cause to be detained with the assistance of the Tulalip Police Department, or request a court order to detain a person who they believe is suffering from a behavioral health and/or substance abuse disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled. This initial detention can last for up to 12 hours and is for the purpose of evaluation. If after evaluation the TTDCR believes the person meets criteria for civil commitment, the TTDCR may file a petition for 120 hours of detention with the Tribal Court. The Tulalip Tribal Court must then review the petition for probable cause, appoint an attorney to represent the detained person, and schedule a probable cause hearing within 120 hours.

*14-day detention/90-day LRA.* Within the 120 hours of initial detention, the TTDCR can file a petition for 14 days of civil commitment or a 90-day LRA. The Court must hold a hearing on the petition within the 120-hour period of initial detention. If the Tribal Court finds by a preponderance of the evidence that such person, as the result of a behavioral health and/or substance use disorder, presents a likelihood of serious harm, or is gravely disabled then the Court shall order the commitment or LRA.

*90-day detention.* At any time during a person's 14-day detention, the TTDCR can petition the Court for an additional 90-day period of treatment. Trial shall be held within 10 judicial days of the filing of the petition. If the Tribal Court finds by clear, cogent, and convincing evidence that the person, as the result of a behavioral health and/or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, the Tribal Court shall order 90 additional days of detention or 90 day of an LRA.

*Continued detention.* A person can be recommitted for additional 180-day periods or additional year-long LRAs so long as grave disability or likelihood of serious harm persists. Each recommitment requires a petition, trial, and finding by the Court.

*Early release.* A person must be released early from commitment if the person being involuntarily treated no longer presents a likelihood of serious harm nor is gravely disabled. the Tribal Behavioral Health Program must coordinate with the releasing facility to develop a discharge plan. The Court can order that such release be conditional; a person who violations their conditional release or whose condition substantially deteriorates can be returned to civil commitment in an expedited manner.

*Less Restrictive Alternative Treatment.* Less restrictive alternative treatment (LRA) is an individualized treatment programs in community setting that delivers certain minimum services and is supervised by a care coordinator. A person who violations their LRA or whose condition substantially deteriorates can be returned to civil commitment in an expedited manner.



**4.35.510 Substance Abuse Treatment Intervention.** This ordinance establishes a civil law basis for compelling a person to comply with substance abuse treatment.

*Requirements for Substance Abuse Treatment Intervention petition.* The person must:

- Have a substance abuse disorder
- Be likely to benefit from substance abuse treatment
- Either:
  - The person's condition has substantially deteriorated as a result of substance abuse and the person is unlikely to survive safely in the community without supervision; or
  - The person needs the assistance of a substance abuse treatment intervention to prevent a relapse or deterioration that would be likely to result in death, grave disability, or a likelihood of serious harm to the person or to others.
- The person has a history of lack of compliance with treatment for their disorder that:
  - At least twice within the thirty-six months prior to the filing of the petition been a significant factor in necessitating emergency medical care, hospitalization, or incarceration, or
  - Resulted in one or more violent acts, threats, or attempts to cause serious physical harm to the person or another within the forty-eight months prior to the filing of the petition
- Participation in a substance abuse treatment intervention program is the least restrictive available option to ensure the person's recovery and stability.

*Substance Abuse Treatment Intervention order.*

A Substance Abuse Treatment Intervention order can require any services or conditions allowed in an LRA and must include:

- Assignment of a care coordinator;
- A substance abuse disorder assessment;
- Recommended treatment based on the results of a substance abuse disorder assessment;
- Steps to be taken if the client falls out of compliance with the individualized plan.

*Right to counsel.* The respondent has a right to counsel at the Tribes' expense in all substance abuse treatment intervention proceedings.

*Time limits.* If the court finds probable cause for the allegations in the petition then the respondent may be detained in an inpatient treatment facility and an aftercare setting for a total period not to exceed 90 days. If the Tribes prove the allegations of the petition by clear and convincing evidence at a bench trial, the Court shall impose a Substance Abuse Treatment Intervention order which may last for up to 24 months.

*Response to violations of a Substance Abuse Treatment Intervention order.* A TTDCR or the Tribal Prosecutor may move the Tulalip Tribal Court for an order that an individual subject to a substance abuse treatment intervention order be taken into custody and temporarily detained for

inpatient evaluation. The Court shall grant the motion if it finds probable cause that the person is out of compliance with the terms of their substance abuse intervention treatment order and reevaluation of their service needs and/or inpatient treatment is in their best interest. The Court shall hold a hearing within one hundred twenty hours of the persons' detention, excluding weekends and holidays. To continue detention after the one hundred twenty-hour period, the Tribal Court must find by clear and convincing evidence that (1) inpatient treatment is a clinically appropriate response to the person's behavior and (2) that if released without inpatient treatment, the person is unlikely to survive safely in the community or would likely relapse or deteriorate in condition in such a way as to likely result in death, grave disability, or serious harm to the person or to others.

*Termination of Substance Abuse Treatment Intervention.* A Tribal Court order for substance abuse treatment intervention must be terminated prior to the expiration of the order when

- the person is prepared to accept voluntary treatment, or
- the outpatient treatment ordered is no longer necessary to prevent a relapse, decompensation, or deterioration of condition likely result in death, grave disability, or serious harm to the person or to others



**Ordinance Summary**

## Competency of persons charged with a crime

## Brief Summary of Ordinance

- Defines when a person is not competent to stand trial
- Adopts a process for evaluating whether a criminal defendant is competent
- Allows the court to order restoration of an incompetent defendant charged with a felony or serious offense.
- Adopts a process for restoring the competency of a criminal defendant
- Allows the court to authorize involuntary medication of incompetent defendants in some circumstances

**Background.** A person who is unable to understand a criminal proceeding against them or meaningfully assist defense counsel in defending against a criminal prosecution is unable to be tried or convicted of a criminal offense. The source of this protection is constitutional Due Process, but the enforcement of this protection in most jurisdiction is provided for in statute. Tulalip lacks such a statute, but has ordered competency evaluations and from time-to-time restoration treatment. These orders for evaluation and restoration have been carried out by the State of Washington's Office of Forensic Mental Health Services (OFMHS).

OFMHS competency evaluation and restoration practices are governed by RCW 10.77 and WAC 246-341 sections 1154 to 1158.

When a person is suspected of being incompetent in Washington, OFMHS will conduct an evaluation, which can be done either in the jail or out of custody depending on whether the defendant is detained. Washington law directs OFMHS to make best efforts to perform evaluations with 14/21 days for in/out of custody defendants but recognizes it is not always possible to meet this timeframe and prevents a court from dismissing a case based on an untimely evaluation. Current practice is for OFMHS to treat a Tulalip Court referral the same as any state court referral; OFHMS attempts to achieve the 14/21 day timeframe for referrals from our Court.

A person will be deemed incompetent if they lack the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

If the charge is a felony or serious misdemeanor, the court may order competency restoration treatment. Competency restoration must be completed within certain timeframes based on the classification of offenses: for a felony charge the maximum allowable time for restoration is 180 days while for misdemeanors it is 29 days if the defendant is incarcerated and 90 days if they are out of custody.

If the court does not order restoration, the charge(s) will be dismissed and the defendant released. A released defendant may be detained for civil commitment evaluation.

**Mental incapacity.** This ordinance adopts the Washington definition of incompetency, which is the definition currently used by our court: a defendant is incompetent to stand trial if he or she lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

**Competency evaluation.** This ordinance adopts a competency evaluation process based on state law with two differences:

- (1) The Tulalip Tribal Court may refer a defendant for evaluation either by the state of Washington OFHMS or another professional person who may later be designated by Tulalip to perform competency evaluations.
- (2) It does not provide a timeframe within which an evaluation should be completed because we lack jurisdiction over Washington OFHMS and do not currently have an alternative evaluator.

**Competency restoration process.** This ordinance adopts a competency restoration process based on state law with two differences:

- (1) it allows our court to order restoration services through Washington OFHMS or any other provider which may at a later time be authorized by Tulalip.
- (2) It allows for our Court to order a longer restoration period than Washington state law if such longer period is reasonable based on the nature and classification of the offense, the defendant's history of the same or similar conduct, the risk posed to the community by the defendant, and the likelihood of restoration.

**Involuntary medication.** This ordinance allows the Court to order medication to be administered to a defendant against their wishes to restore and maintain competency if the charged offense is a felony or serious misdemeanor.

**Serious offense.**

This ordinance provides a Tulalip judge with discretion to determine if a particular charge is a serious offense based on a consideration of five factors:

- (i) Whether the charge includes an allegation that the defendant inflicted bodily or emotional harm on another person or that the defendant created a reasonable apprehension of bodily or emotional harm to another;
- (ii) The extent of the impact of the alleged offense on the basic human need for security of visitors to or member of the community;
- (iii) The number and nature of related charges pending against the defendant and in the defendant's history; and
- (iv) The number of potential and actual victims or persons impacted by the conduct charged.



## Chapter 2.27

### Competency

#### **2.27.010 Mental incapacity.**

(1) A defendant is incompetent to stand trial if he or she lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.

(2) No incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.

#### **2.27.020 Competency evaluation.**

(1) Whenever there is a doubt as to the competency of a criminal defendant, the Court on its own motion or on the motion of any party shall first review the allegations of incompetency. The Court shall make a determination of whether sufficient facts have been provided to form a genuine doubt as to competency based on information provided by counsel, judicial colloquy, or direct observation of the defendant. If a genuine doubt as to competency exists, the Court shall refer the defendant to a qualified expert or professional person designated by the State of Washington or the Tulalip Tribes to evaluate and report upon the mental condition of the defendant.

(2) The signed order of the Court shall serve as authority for the evaluator to be given access to all records held by any mental health, medical, long-term services or supports, educational, or correctional facility that relate to the present or past mental, emotional, or physical condition of the defendant.

(3) A defendant may refuse to answer any question if he or she believes his or her answers may incriminate him or her.

(4) For a competency evaluation of a defendant who is released from custody, if the evaluation cannot be completed within twenty-one days due to a lack of cooperation by the defendant, the evaluator shall notify the Court that he or she is unable to complete the evaluation because of such lack of cooperation.

(5) The expert conducting the evaluation shall provide his or her report and recommendation to the Court, prosecuting attorney, and defense attorney.

(6) If the evaluator concludes that the person should be evaluated by a designated crisis responder, the Court shall order such evaluation be conducted prior to release from confinement when the person is acquitted, or convicted and sentenced to confinement for twenty-four months or less, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

#### **2.27.030 Competency restoration process.**

(1) The court may order a defendant who has been charged with a felony or serious offense and found to be incompetent to undergo competency restoration treatment.

(2) An order for competency restoration treatment shall specify a reasonable competency restoration period. At the end of the competency restoration period or at any time a professional person determines competency has been, or is unlikely to be, restored, the defendant shall be returned to court for a hearing, except that if the opinion of the professional person is that the defendant remains incompetent and the hearing is held before the expiration of the current competency restoration period, the parties may agree to waive the defendant's presence, to remote participation by the defendant at a hearing, or to presentation of an agreed order in lieu of a hearing.

(3) The Court may order a further period of competency restoration treatment for a reasonable time if it finds that further treatment is likely to restore competency.

(4) Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. If the defendant is discharged to the custody of a correctional facility, the correctional facility must continue the medication regimen as proscribed by the facility providing inpatient services, when clinically appropriate, unless the defendant refuses to cooperate with medication and an involuntary medication order by the Court has not been entered.

(5) If the court finds that competency has not or cannot be restored in a reasonable time, the Court shall dismiss the proceedings without prejudice and may refer the defendant for evaluation by a designated crisis responder.

(6) The competency restoration periods allowed in RCW 10.77.086 and 10.77.088 are per se reasonable. In determining whether a period of competency restoration beyond those allowed by the State of Washington is reasonable, the Court must consider the nature and classification of the offense, the defendant's history of the same or similar conduct, the risk posed to the community by the defendant, and the likelihood of restoration.

#### **2.27.040 Involuntary medication.**

The court may authorize involuntary medication for the purpose of competency restoration and for maintaining the level of restoration in the jail following the restoration period if the pending charge is a felony offense or a serious offense.

#### **2.27.050 Serious offense.**

To determine if a particular charge is a serious offense, the Court must consider the following:

(i) Whether the charge includes an allegation that the defendant inflicted bodily or emotional harm on another person or that the defendant created a reasonable apprehension of bodily or emotional harm to another;

(ii) The extent of the impact of the alleged offense on the basic human need for security of visitors to or members of the community;

(iii) The number and nature of related charges pending against the defendant and in the defendant's history;

and



(v) The number of potential and actual victims or persons impacted by the conduct charged.

**2.27.060 Timeliness – Dismissal Disfavored.**

Dismissal of a criminal case is not the appropriate remedy for a violation of a timeline imposed by the Court for the evaluation or restoration of a defendant where facility staff or the Tribes has in good faith attempted to comply with the Court's order or there is evidence that the delay is caused by circumstances beyond the control of the Tribes or the facility charged with carrying out the Court's order.

## Chapter 4.35

### INVOLUNTARY TREATMENT ACT— CIVIL COMMITMENT

#### Article I – General Provisions

##### 4.35.010 Purpose and Policy

The purpose of this chapter is to provide procedures for the involuntary commitment and treatment of persons with a mental health or substance abuse disorder who are a danger to themselves or others, or who are gravely disabled, while protecting the rights of all persons and providing due process of law. Furthermore,

- (1) The Board of Directors intends to provide the least restrictive custody and treatment available which will serve the needs of involuntarily committed persons for recovery and rehabilitation while protecting the safety of the persons to be treated and members of the community.
- (2) When possible, all activities under this Chapter shall be carried out in a culturally appropriate manner and in recognition of the historical trauma and individual trauma unique to the Tulalip people, other Native Americans, and their families.

##### 4.35.020 Jurisdiction

The Tribal Court shall have jurisdiction over any proceeding arising under this chapter. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Tulalip Indian Reservation or by service in accordance with TTC Title 2.

##### 4.35.030 Severability

If any part or parts or the application of any part of this chapter is held invalid, such holding shall not affect the validity or the remaining parts of this chapter. The Tulalip Tribes Board of Directors hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or application or any part thereof would be declared invalid.

##### 4.35.040 Sovereign Immunity – Qualified Immunity

Nothing in this chapter shall be deemed to constitute a waiver by the Tulalip Tribes of its sovereign immunity for any reason whatsoever. Furthermore, any person making or filing a petition alleging that a person should be involuntarily detained, certified, committed, treated, or evaluated pursuant to this chapter shall not be rendered civilly or criminally liable where the making and filing of such application was in good faith.



#### 4.35.050 Funding and Cooperative Agreements

(1) Services or functions of the Tribes under this chapter shall be subject to the availability of funding and resources. Nothing in this chapter shall require the Tribes to expend additional funds or resources beyond those appropriated, or exercise provisions of this code if resources are not available.

(2) Subject to the approval of the Board of Directors, the Tribes may enter into cooperative agreements with the State, County, or other agencies or treatment facilities for funding or other services necessary to implement this chapter.

(3) Nothing in this chapter shall prevent the Tribes from utilizing the applicable Washington state involuntary commitment procedures in the Washington state courts.

(4) Nothing in this chapter shall be interpreted to remove the responsibility of the State of Washington to provide and pay for involuntary commitment, mental health, and related crisis services to tribal members or persons under tribal jurisdiction or be interpreted as a promise of payment by the Tribes.

#### 4.35.060 Standard of Proof

Unless stated otherwise in this chapter, the standard of proof in all involuntary commitment proceedings shall be by a preponderance of the evidence.

#### 4.35.070 Transfer of Jurisdiction

The Tribes may request the transfer of a case involving persons subject to the jurisdiction of the Tulalip Tribal Court involved in involuntary commitment proceedings in State Court.

#### 4.35.080 Definitions

(1) "Behavioral Health Program" means an entity approved by the Tulalip Tribes, the Tulalip Tribal Designated Crisis Responder, or behavioral health staff that provides mental health, substance use disorder, or co-occurring disorder services to persons with behavioral health disorders. This includes, but is not limited to: hospitals; evaluation and treatment facilities; community mental health service delivery systems or community behavioral health programs; licensed or certified behavioral health agencies; facilities conducting competency evaluations and restoration; substance use disorder treatment programs; secure withdrawal management and stabilization facilities; and correctional facilities.

(2) "Care Coordinator" means a clinical practitioner who coordinates the activities of less restrictive alternative treatment. The care coordinator coordinates activities with the Tulalip Tribal Designated Crisis Responder that are necessary for enforcement and continuation of less restrictive alternative orders and is responsible for coordinating service activities with other

agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

(3) "Designated crisis responder" means a person qualified under Washington state law and authorized under Washington state law to evaluate persons with a behavioral health disorder for initial detention and other responsibilities as set forth in law.

(4) "Evaluation and treatment facility" means any facility that can provide directly, or by arrangement with other entities, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is approved by the Tulalip Tribes, Tulalip Tribal Designated Crisis Responder, or behavioral health program. No correctional institution or jail shall be an evaluation and treatment facility within the meaning of this Chapter;

(5) "Gravely disabled" means a condition in which a person, as a result of a behavioral health disorder: (a) is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration from safe behavior evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(6) "History of one or more violent acts" means a violent act or acts committed in the ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, a long-term alcoholism or drug treatment facility, or in confinement as a result of a criminal conviction;

(7) "Likelihood of serious harm" means:

(a) A substantial risk that:

- (i) physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;
- (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or
- (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(8) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional function and which is recognized as a mental disorder that meets the criteria to be diagnosed with an identified mental health disorder according to the American Psychiatric Association in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).



(9) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as determined by the Tulalip Tribes;

(10) "Mobile Crisis Team" means those people called upon or contracted with to provide relief to or resolve a mental health crisis situation or experience. The team may consist of law enforcement, designated crisis responders, and behavioral health employees.

(11) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as determined by the Tulalip Tribes, or someone in charge of a hospital or facility providing involuntary treatment under the provisions of this Chapter;

(12) "Substance Abuse Disorder" means a lack of self-control as it pertains to the use of alcoholic beverages, drugs, or narcotic substances to the extent the person's health, safety, or welfare is substantially impaired or endangered and that person meets at least three out of the seven DSM criteria diagnostic of substance dependency. Alternatively, substance abuse disorder means having two or more failed substance abuse treatment attempts within a period of one year. A failed treatment attempt may include but is not limited to failure to complete an inpatient, intensive outpatient, or outpatient course of treatment recommended by a substance abuse disorder treatment professional.

(13) "Violent act" means intentional behavior or behavior that resulted from a mental disorder that resulted in homicide, attempted suicide, nonfatal injuries, or damage to property

#### 4.35.090 Timeliness – Dismissal Disfavored

Dismissal of a petition to detain is not the appropriate remedy for a violation of the timeliness requirements of this Chapter where the facility or Tribes has in good faith attempted to comply with the law and related court orders and there is evidence that the delay is caused by circumstances beyond the control of the Tribes.

#### 4.35.100 Firearm Restrictions

(1) Permanent firearm prohibition. A person who has been found by the Court to constitute a danger to self or others or who has been involuntarily committed under this chapter, may not have in his or her possession or control any firearm or ammunition unless his or her rights have been restored pursuant to Chapter 11.40 TTC.

(2) Temporary firearm prohibition. A person who has been detained under this chapter at a facility for a period of not more than one hundred twenty hours for the purpose of evaluation and treatment, but who has not been subsequently committed for involuntary treatment under this chapter, may not have in his or her possession or control any firearm for a period of six months after the date that the person is detained.

- (a) Before the discharge, the Tulalip Tribal Designated Crisis Responder shall inform the person orally and in writing that:
  - (i) They are prohibited from possessing or controlling any firearm for a period of six months; and
  - (ii) They must immediately surrender, for the six-month period, any concealed pistol license and any firearms that they possess or control to tribal law enforcement
- (b) The Tulalip Tribal Designated Crisis Responder shall notify the Tulalip Tribal Police Department and Tribal Court of the six-month suspension.
- (c) Any firearm surrendered pursuant to this section that remains unclaimed by the lawful owner shall be disposed of in accordance with Tribal law enforcement policies and procedures for the disposal of abandoned property in police custody.

#### 4.35.110 Investigation and Evaluation

- (1) When conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:
  - (a) Prior recommendations for evaluation of the need for civil commitments;
  - (b) Historical behavior, including history of one or more violent acts;
  - (c) Prior determinations of incompetency or insanity;
  - (d) Prior commitments; and
  - (e) Where a person is or has been confined on criminal charges, all judicially required or administratively ordered antipsychotic medication while in confinement
- (2) Credible witnesses may include family members, landlords, neighbors, teachers, school personnel, or others with significant contact and history of involvement with the person.
- (3) Symptoms and behavior of the respondent which standing alone would not justify civil commitment may support a finding of grave disability, likelihood of serious harm, or that the person needs substance abuse treatment intervention, when:
  - (a) Such symptoms or behavior are closely associated with symptoms or behavior that preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;
  - (b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and
  - (c) Without treatment, the continued deterioration of the respondent is probable.
- (4) Interview. The evaluator shall personally interview the person unless the person refuses an interview. An interview may be performed by video call if a mental health professional employee who can assist with obtaining any necessary information is physically present with the person at the time of the interview.



#### 4.35.120 Duties of Tribal Prosecutor

The Tribal Prosecutor shall represent the Tribes in proceedings under this chapter.

#### 4.35.130 Court Files and Records

The files and records of court proceedings under this Title shall be closed but shall be accessible to the Tulalip Tribes' behavioral health programs, hospitals or facilities approved by or entered into agreement with for the detention of persons under this chapter, any person who is the subject of a petition, the attorney or guardian, and service providers.

#### 4.35.140 Tulalip Tribal Designated Crisis Responder

The Tribe may appoint one or more persons who satisfy the requirements of this section as a Tulalip Tribal Designated Crisis Responder to perform or assist with risk assessments, make placement recommendations, and carry out the duties and responsibilities in this code.

(1) To qualify as a Tulalip Tribal Designated Crisis Responder, a person must have received substance abuse disorder training as determined by Tulalip Behavioral Health and satisfy one or more of the following:

- (a) Be a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or social worker;
- (b) Be licensed by the State of Washington Department of Health as a mental health counselor or mental health counselor associate, or marriage and family therapist or marriage and family therapist associate;
- (c) Possess a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university and who have, in addition, at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, such experience gained under the direction of a mental health professional;
- (d) Have training specific to the duties of a designated crisis responder, including diagnosis of substance abuse and dependence and assessment of risk associated with substance use equivalent to those set forth in RCW 71.05.760.

(2) In addition to the authority and duties established under this chapter, a Tulalip Tribal Designated Crisis Responder may perform the duties of a Tribal designated crisis responder pursuant to Washington State law.

#### 4.35.150 Report to Court

When no bed is available for a person who meets detention criteria:

(1) A Tulalip Tribal Designated Crisis Responder shall make a report to the Tulalip Tribes behavioral health program when he or she determines a person meets detention criteria under this chapter and there are not any beds available at an evaluation and treatment facility, the person has not been provisionally accepted for admission by a facility, and the person cannot be served on a single bed certification or less restrictive alternative. Starting at the time when the designated crisis responder determines a person meets detention criteria and the investigation has been completed, the designated crisis responder has twenty-four hours to submit a completed report to the Tulalip Tribes behavioral health program.

(2) The report required under subsection (1) of this section must contain at a minimum: (a) The date and time that the investigation was completed; (b) The identity of the responsible behavioral health administrative services organization and managed care organization, if applicable; (c) A list of facilities which refused to admit the person; and (d) Identifying information for the person, including age or date of birth.

(3) The reports provided according to this section may not display "protected health information" as that term is used in the Federal Health Insurance Portability and Accountability act of 1996, nor information contained in "mental health treatment records" and must otherwise be compliant with applicable federal, tribal, and state privacy laws.

(4) For purposes of this section, the term "single bed certification" means a situation in which an adult on a one hundred twenty-hour detention, fourteen-day commitment, ninety-day commitment, or one hundred eighty-day commitment is detained to a facility that is: (a) Not licensed or certified as an inpatient evaluation and treatment facility; or (b) A licensed or certified inpatient evaluation and treatment facility that is already at capacity.

#### 4.35.160 Involuntary detention of incompetent persons

If a person has been determined by a court to be incompetent, then the professional person in charge of the treatment facility or his or her professional designee or the Tulalip Tribal Designated Crisis Responder may directly file a petition for ninety day or one hundred eighty-day treatment under this chapter. No petition for initial detention or fourteen-day detention is required before such a petition may be filed.

#### 4.35.170 Evaluation of Person Previously Subject to Competency Restoration in Criminal Proceedings

(1) If the Tribal Court has determined or the parties agree that the defendant is unlikely to regain competency in a criminal proceeding and the court has dismissed the charges without prejudice without ordering the defendant to undergo restoration treatment, the court shall order that the defendant be referred for evaluation for civil commitment in the manner provided in this Chapter.



(2) If the defendant was on conditional release at the time of dismissal, the Tribal Court shall order the Tulalip Tribal Designated Crisis Responder to evaluate the defendant pursuant to this chapter.

(3) If the defendant was in custody at the time of dismissal, the defendant may be detained and sent to an evaluation and treatment facility for up to one-hundred and twenty hours, excluding Saturdays, Sundays, and holidays, for evaluation for purposes of filing a petition under this Title. The one-hundred-and-twenty-hour period shall commence upon the next nonholiday weekday following the court order and shall run to the end of the last nonholiday weekday within the one-hundred-and-twenty-hour period.

#### 4.35.180 Involuntary Commitment Hearing Continuance

(1) In any proceeding for involuntary commitment under this Title, the Tribal Court may continue or postpone such proceeding for a reasonable time on motion of the respondent for good cause, or on motion of the Tribal Prosecutor if:

- (a) The respondent expressly consents to a continuance or delay; or
- (b) Such continuance is required in the proper administration of justice and the respondent will not be substantially prejudiced in the presentation of the respondent's case.

(2) The Tribal Court shall state in any order of continuance or postponement the grounds for the continuance or postponement and whether detention will be extended.

#### 4.35.190 Court Continuances Based on Hospital Transfers

When an evaluation and treatment center, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization transfers such person to an appropriate hospital for evaluation or admission for treatment, and provides notice to the Tribal Court, the Tribal Court shall order such continuance in proceedings under this code as may be necessary, but in no event may this continuance be more than fourteen days.

### **Article II – Initial Detention for Evaluation and Treatment**

#### 4.35.200 Emergency detention of persons with behavioral health & substance abuse disorders (120-Hour Detention)

(1) When a Tulalip Tribal Designated Crisis Responder receives information alleging that a person, as the result of a behavioral health and/or substance abuse disorder, presents an imminent likelihood of serious harm or is in imminent danger due to being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and

credibility of any person providing information, the Tulalip Tribal Designated Crisis Responder shall take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or substance use disorder treatment program.

(2) A Tulalip Police Officer may take or cause a person to be taken into custody and immediately delivered to a hospital, treatment facility, secure withdrawal management and stabilization facility, or substance use disorder treatment program:

(a) Pursuant to subsection (1) of this section; or

(b) When the officer has reasonable cause to believe that such person is suffering from a behavioral health and/or substance abuse disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) A person detained on an emergency basis pursuant to this section may be held for up to twelve hours after being medically cleared by the facility where they were delivered to by the Tulalip Tribal Designated Crisis Responder or police officer. During this period, the Tulalip Tribal Designated Crisis Responder must determine whether the person meets detention criteria. If satisfied that the person presents an imminent likelihood of serious harm or is in imminent danger due to being gravely disabled, the person shall be detained for not more than one hundred twenty hours, excluding Saturdays, Sundays, and holidays. If the person is not detained, the Tulalip Tribal Designated Crisis Responder shall promptly inform the Tulalip Police Department.

(4) When a person is involuntarily placed in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or substance use disorder treatment program pursuant to this section, on the next judicial day following the emergency detention, the Tulalip Tribal Designated Crisis Responder shall file a petition for initial detention with the Tribal Court.

(5) The Tulalip Court judge, upon receipt of a petition for initial detention filed by the Tulalip Tribal Designated Crisis Responder, shall review the petition for probable cause. If the judge determines that probable cause does not exist to support the petition for detention, the Court shall dismiss the petition and order the person released. Otherwise, the Court shall:

(a) Appoint counsel to represent the detained person

(b) Schedule a probable cause hearing to be held within one hundred twenty hours excluding Saturdays, Sundays, and holidays of the Tulalip Tribal Designated Crisis Responder's detention determination

(c) Notify the Tulalip Tribal Designated Crisis Responder, the detained person, the detained person's attorney, guardian or conservator, the evaluation and treatment facility, secure withdrawal management and stabilization facility, or substance use disorder treatment program at which the person is detained, and the Tribal Prosecutor of the date and time of a probable cause hearing.



4.35.210 Initial detention by court order of persons with behavioral health & substance abuse disorders – Non-Emergency (120-Hour Detention)

(1) When a Tulalip Tribal Designated Crisis Responder receives information alleging that a person, as the result of a behavioral health and/or substance abuse disorder, presents a likelihood of serious harm or is gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, the Tulalip Tribal Designated Crisis Responder may file a petition for initial detention with the Court.

(2) Tribal Court Order to Detain.

(a) Ex Parte review. The Tulalip Tribal Court judge, upon receipt of a petition for initial detention filed by the Tulalip Tribal Designated Crisis Responder, shall issue an order to detain a person to an evaluation and treatment facility, a secure withdrawal management and stabilization facility, or a substance use disorder treatment program if the petition establishes to the satisfaction of the judge that:

- (i) There is probable cause to support the petition for detention, and
- (ii) The person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) Time Limit for Detention. The warrant or order to detain shall be for a period of not more than one hundred twenty hours excluding Saturdays, Sundays, and holidays.

(c) Counsel. The order shall assign counsel and include the name, business address, and telephone number of the attorney appointed to represent the person.

(d) Dismissal of Petition to Detain. If the Court does not issue an order to detain a person pursuant to subsection (2), the court shall issue an order to dismiss the initial petition.

(3) Service and return of order to detain.

(a) The Tulalip Tribal Designated Crisis Responder shall promptly serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to detain together with a notice of rights, and the petition for initial detention.

(b) The Tulalip Tribal Designated Crisis Responder may notify a law enforcement officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program.

(c) After such person has been detained, a return of service shall be promptly filed with the Court.

(4) Notice of Probable Cause Hearing. The Court will schedule the probable cause hearing and notify the Tulalip Tribal Designated Crisis Responder, the detained person; the detained person's attorney; the detained person's guardian or conservator, if any; the evaluation and treatment facility, secure withdrawal management and stabilization facility, or substance use

disorder treatment program at which the person is detained; and the Tribal Prosecutor of the date and time of a probable cause hearing, which must be no later than one hundred twenty hours, excluding Saturdays, Sundays, and holidays, following the date and time of admission to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program.

(5) Probable cause hearing. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

#### 4.35.220 Petition for Initial Detention

(1) A petition for detention filed by a Tulalip Tribal Designated Crisis Responder or other authorized person must state the following:

- (a) The circumstances under which the person's condition was made known;
- (b) The Tulalip Tribal Designated Crisis Responder's belief, as a result of his or her personal observation or investigation, that the behavior of the person presents a likelihood of serious harm, or that the person is gravely disabled; and
- (c) The specific facts known to the Tulalip Tribal Designated Crisis Responder as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained; and
- (d) The evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program at which the person is detained.

(2) The petition shall be signed under penalty of perjury or sworn telephonic testimony.

#### 4.35.230 Emergency Room Staff Opinions and Observations.

If the individual is located in an emergency room, the Tulalip Tribal Designated Crisis Responder shall document the examining emergency room physician, advanced registered nurse practitioner, or physician assistant's opinion or written observation regarding whether detaining the individual is appropriate.

#### 4.35.240 Probable cause hearing.

The detained person shall be permitted to be accompanied by one or more of his or her relatives, friends, his or her attorney, a personal physician, or other professional or religious advisor to the place of evaluation. Any individual accompanying the detained person may be present during the



admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

### **Article III - Involuntary Commitment beyond Initial Detention**

#### 4.35.300 Petition for Involuntary Treatment

- (1) A person detained for one hundred twenty-hour evaluation and treatment may be committed for not more than fourteen additional days of involuntary intensive treatment or, if sought and applicable, ninety additional days of a less restrictive alternative treatment. A petition may only be filed if the following conditions are met:
  - (a) The professional staff of the facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by a behavioral health or substance use disorder and results in a likelihood of serious harm or the person being gravely disabled. The professional staff must be prepared to testify that those conditions are met; and
  - (b) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that the person has not in good faith volunteered.
- (2) Behavioral Health treatment petition. The petition must be signed by two of the following:
  - (a) One physician, physician assistant, or psychiatric advanced registered nurse practitioner; and
  - (b) One physician, physician assistant, psychiatric advanced registered nurse practitioner, or mental health professional.
- (3) Substance use disorder treatment petition. If the petition is for substance use disorder treatment, the petition may be signed by a substance use disorder professional instead of a mental health professional and by an advanced registered nurse practitioner instead of a psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person.
- (4) The petition shall state facts that support the finding that such person, as a result of a behavioral health and/or substance use disorder, presents a likelihood of serious harm, or is gravely disabled. If a less restrictive alternative is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.
- (5) When a petition for involuntary treatment is filed with the Court:
  - (a) A copy of the petition must be served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and
  - (b) The Tribal Court, at the time the petition is filed, must appoint counsel to represent such person if the person does not already have counsel.

(6) If the petition alleges a person is a danger to self or others, or seeks to commit the individual involuntary mental health treatment, the Tribes must provide notice to the person, in the petition or a separate filing, that the person will lose his or her firearm rights if involuntarily committed for mental health treatment.

#### 4.35.310 Probable Cause Hearing

- (1) If a petition is filed for fourteen-day involuntary intensive treatment or ninety days of less restrictive alternative treatment, the Tribal Court shall hold a probable cause hearing within one hundred twenty hours of the initial detention of such person.
- (2) If the petition is for mental health treatment, the Tribal Court shall inform the person both orally and in writing that the person will lose his or her firearm rights if the person is subsequently detained for involuntary treatment.
- (3) If the person or his or her attorney alleges, prior to the commencement of the hearing, that the person has in good faith volunteered for treatment, the petitioner must show that the person has not in good faith volunteered for appropriate treatment. In order to qualify as a good faith volunteer, the person must abide by procedures and a treatment plan as prescribed by a treatment facility and professional staff.
- (4) Tribal Court Findings
  - (a) At the conclusion of the probable cause hearing, if the Tribal Court finds by a preponderance of the evidence that such person, as the result of a behavioral health and/or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, and if sought and applicable, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, then the Tribal Court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility licensed or certified approved by the Tulalip Tribes or Washington State.
  - (b) At the conclusion of the probable cause hearing, if the Tribal Court finds by a preponderance of the evidence that such person, as the result of a behavioral health and/or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the Tribal Court shall order an appropriate less restrictive alternative course of treatment for up to ninety days.
- (5) Tribal Court Order
  - (a) If sought and applicable, an order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with this chapter and must include a requirement that the person cooperate with the treatment recommendations of the behavioral health service provider.



(b) The Tribal Court shall notify the person orally and in writing that if involuntary treatment is sought beyond the fourteen-day inpatient or ninety-day less restrictive period, such person has the right to a full hearing under this chapter. If the commitment is for mental health treatment, the court shall also notify the person orally and in writing that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under tribal code.

(6) If the Tribal Court does not issue an order to detain a person under this section, the court shall issue an order to dismiss the petition.

#### 4.35.320 Use of Historical Behavior

(1) When determining whether a person is gravely disabled, presents a likelihood of serious harm, or needs substance abuse treatment intervention, the Tribal Court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior that alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm, or a finding that the person needs substance abuse treatment intervention, when:

(a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration as defined in this chapter, or one or more violent acts;

(b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and

(c) Without treatment, the continued deterioration of the respondent is probable.

(3) When determining whether there is a likelihood of serious harm in a hearing conducted under this chapter, the Tribal Court shall give great weight to any evidence before the Tribal Court regarding whether the person has:

(a) A recent history of one or more violent acts; or

(b) A recent history of one or more commitments under this Title or its equivalent provisions under the laws of another Tribe or state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this Title or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this subsection "recent" refers to the five years prior to the current hearing.

#### 4.35.330 Grounds for Additional Commitment

The professional staff of the agency or facility, the Tulalip Tribal Designated Crisis Responder or other authorized person may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment if such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted:

- (1) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another;
- (2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present a likelihood of serious harm;
- (3) Such person has been determined to be incompetent and criminal charges have been dismissed by a prosecuting jurisdiction, and as a result of a behavioral health disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime; or
- (4) Such person is gravely disabled.

#### 4.35.340 Factors for Determining Additional Commitment

In determining whether inpatient treatment, or if sought, a less restrictive alternative commitment is appropriate, great weight shall be given to evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in:

- (1) repeated hospitalizations; or
- (2) repeated peace officer interventions resulting in criminal charges, diversion programs, or jail admissions.

Such evidence may be used to provide a factual basis for concluding that, if released, the individual would not receive such care as is essential for the health or safety of the individual or the community.

#### 4.35.350 Petition for Additional Commitment

- (1) At any time during a person's fourteen-day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the Tulalip Tribal Designated Crisis Responder may petition the Tribal Court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in TTC 4.35.330.
- (2) The petition shall summarize the facts which support the need for further commitment and shall be supported by affidavits based on an examination of the patient and signed by two of the following:



- (a) One physician, physician assistant, or psychiatric advanced registered nurse practitioner; and
- (b) One physician, physician assistant, psychiatric advanced registered nurse practitioner, or mental health professional.

(3) If the petition is for substance use disorder treatment, the petition may be signed by a substance use disorder professional instead of a mental health professional and by an advanced registered nurse practitioner instead of a psychiatric advanced registered nurse practitioner.

(4) The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments as alternatives to detention, if sought and applicable, are available to such person and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter. If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

#### 4.35.360 Ninety-Day Treatment

(1) Filing Petition. The petition for ninety-day treatment shall be filed with the clerk of the Tribal Court at least three days before the expiration of the fourteen-day period of intensive treatment. The Tribal clerk shall set a trial date within 10 judicial days of the date of filing the petition and notify the Tulalip Tribal Designated Crisis Responder and Tribal Prosecutor. The Tulalip Tribal Designated Crisis Responder shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, and provide a copy of the petition to such persons as soon as possible.

#### (2) Appointment of Professional Persons

(a) The Tribal Court shall, if requested, appoint a reasonably available licensed physician, physician assistant, psychiatric advanced registered nurse practitioner, psychologist, psychiatrist, or other professional person, designated by the detained person to examine and testify on behalf of the detained person.

(b) The Tribal Court may, if requested by the petitioner or Tribal Prosecutor, also appoint a Professional Person as defined in this chapter to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a person with a developmental disability who has been determined to be incompetent, the appointed Professional Person under this section shall be a developmental disability professional.

(3) Advisement of Rights. The attorney for the detained person shall advise him or her of his or her right to be represented by an attorney, his or her right to a jury trial, and, if the petition is for commitment for mental health treatment, his or her loss of firearm rights if involuntarily committed.

(4) Jury trial. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. Trial shall be before a jury of six persons. The person has the right to be present at such proceeding, which shall in all respects accord with the constitutional guarantees

of due process of law and the rules of evidence. At the conclusion of the hearing, if the Tribal Court finds that such person, as the result of a behavioral health and/or substance use disorder, presents a likelihood of serious harm, or is gravely disabled, the Tribal Court shall order that such person be:

- (a) detained for involuntary treatment not to exceed 90 days in a facility licensed, certified, or approved by the Tulalip Tribes or Washington State, or
  - (b) remanded for a period of less restrictive treatment not to exceed 90 days from the date of judgment. An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive under this chapter, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.
- (5) The person named in the petition shall continue to be treated until released by order of the Tribal Court or discharged by the behavioral health service provider. If the trial has not commenced within thirty days after the filing of the petition, not including extensions of time ordered under this chapter, the detained person shall be released unless good cause is shown by the petitioner.

#### 4.35.370 Remand for Additional Treatment

(1) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under TTC 4.35.360 unless the Professional Person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the Tulalip Tribal Designated Crisis Responder or other authorized person, files a new petition for involuntary treatment because the committed person:

- (a) During the current period of court-ordered treatment:
  - (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and
  - (ii) as a result of a behavioral health disorder or developmental disability presents a likelihood of serious harm; or
- (b) Was taken into custody as a result of conduct in which he or she attempted to or inflicted serious physical harm upon the person of another, and continues to present, as a result of a behavioral health disorder or developmental disability, a likelihood of serious harm; or
- (c) Was found incompetent to stand trial for a felony or serious misdemeanor crime and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety; or
- (d) Continues to be gravely disabled.



(2) The trial shall be held as provided in TTC 4.35.360 and if the Tribal Court finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment, except as provided in subsection (4) of this section. If applicable, an order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive under this Chapter and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(3) At the end of the one hundred eighty-day period of commitment, the committed person shall be released unless a petition for an additional one hundred eighty-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty-day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty-day commitment.

(4) If sought and applicable, an order for less restrictive treatment entered under subsection (5) of this section may be for up to one year.

(5) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length except as provided in subsection (4) of this section.

#### **Article IV- Early Release**

##### 4.35.400 Petition for Early Release

(1) A Professional Person in charge of the hospital or facility in which the person is being involuntarily treated may release him or her before the expiration of the commitment period when, in the opinion of the superintendent or Professional Person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm nor is gravely disabled.

(2) Before a person committed under grounds set forth in this Chapter is released under this section, the Professional Person in charge shall telephonically or in writing notify the Tribal Prosecutor. Notice shall be provided at least fifteen days before the release date.

(3) Within five days after receiving notice under subsection (3) of this Chapter, the Tribal Prosecutor may petition the court for a hearing to determine whether the person is to be released. The Tribal Prosecutor shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The Tribal Court shall conduct a hearing on the petition within five days of filing the petition. The committed person shall have the same rights concerning notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to a jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to themselves or other persons, or substantial likelihood of



committing criminal acts jeopardizing public safety or security. If the Tribal Court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the Court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this code.

#### 4.35.410 Conditional Release from Involuntary Treatment

(1) When, in the opinion of the Professional Person providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the facility or agency designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, patient counsel, guardian or conservator of the committed person, the Tulalip Tribal Designated Crisis Responder and to the Tribal Court.

(2) Before a person committed under grounds set forth in this chapter is conditionally released under (1) of this section, the Professional Person in providing involuntary treatment shall telephonically or in writing notify the Tribal Prosecutor of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least fifteen days before the person is released from inpatient care. Within five days after receiving notice, the Tribal Prosecutor may petition the Tribal Court to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The Tribal Prosecutor shall provide a copy of the petition to the professional person providing involuntary treatment, the attorney, if any, the guardian or conservator of the committed person, and the Tribal Court. The Tribal Court shall conduct a hearing on the petition within five days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to themselves or other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the Tribal Court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the Tribal Court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(3) The facility or agency designated to provide outpatient care may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions. Enforcement



or revocation proceedings related to a conditional release order may occur as provided under this chapter.

#### 4.35.420 Individualized Discharge Plans

When a person has been involuntarily committed for treatment to a hospital for a period of ninety or one hundred eighty days, and is subsequently discharged, the Tribal Behavioral Health Program must coordinate, to the extent possible, with the hospital to develop an individualized discharge plan and arrange for a transition to the community according to the person's individualized discharge plan within fourteen days of the determination. The Tribal Behavioral Health Program may enter into an MOU, MOA, or agreement with another entity to perform this service.

### **Article V - Alternatives to Involuntary Commitment**

#### 4.35.500 Less Restrictive Alternative Treatment

- (1) Less restrictive alternative treatment is an individualized treatment program in a less restrictive setting than inpatient treatment that includes, at a minimum, the following services either provided by the Tulalip Tribes, through contract with another provider, or other jurisdiction.
  - (a) Assignment of a care coordinator;
  - (b) An intake evaluation with the provider of the less restrictive alternative treatment;
  - (c) A psychiatric evaluation;
  - (d) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;
  - (e) A transition plan addressing access to continued services at the expiration of the order;
  - (f) An individual crisis plan; and
  - (g) Notification to the care coordinator assigned in (a) of this subsection if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered conditions.
- (2) Less restrictive alternative treatment may additionally include requirements to participate in the following services:
  - (a) Traditional healing and cultural activities;
  - (b) Medication management;
  - (c) Psychotherapy;
  - (d) Nursing;
  - (e) Substance abuse counseling;

- (f) Residential treatment; and
  - (g) Support for housing, benefits, education, and employment.
- (3) If the person was provided with involuntary medication under this chapter or pursuant to a Tribal Court order during the involuntary commitment period, the less restrictive alternative treatment order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if:
- (a) The provider has attempted and failed to obtain the informed consent of the person; and
  - (b) There is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.
- (4) Less restrictive alternative treatment must be administered by a provider that is approved by the Tulalip Tribes to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.
- (5) The care coordinator assigned to a person ordered to less restrictive alternative treatment must submit an individualized plan for the person's treatment services to the Tribal Court. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.
- (6) The court shall not consider less restrictive alternative treatment unless the Tulalip Tribal Designated Crisis Responder or Tribal Prosecutor petitions or provides the Tribal Court with a recommendation for less restrictive alternative treatment.

#### 4.35.510 Substance Abuse Treatment Intervention

- (1) The Tribes may file a petition for a substance abuse treatment intervention for a person detained pursuant to this chapter.
- (2) A petition for substance abuse treatment intervention must allege that:
- a. The person has a substance abuse disorder; the person may also but need not have one or more co-occurring behavioral health disorder(s).
  - b. The person is likely to benefit from substance abuse treatment.
  - c. Based on a clinical determination and in view of the person's treatment history and behavior, at least one of the following is true:
    - i. The person's condition has substantially deteriorated as a result of substance abuse and the person is unlikely to survive safely in the community without supervision;



- ii. The person needs the assistance of a substance abuse treatment intervention to prevent a relapse or deterioration that would be likely to result in death, grave disability, or a likelihood of serious harm to the person or to others.
  - d. The person has a history of lack of compliance with treatment for their disorder(s) that has:
    - i. At least twice within the thirty-six months prior to the filing of the petition been a significant factor in necessitating emergency medical care or hospitalization of the person, or incarceration, provided that the thirty-six-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred within the thirty-six-month period; or
    - ii. Resulted in one or more violent acts, threats, or attempts to cause serious physical harm to the person or another within the forty-eight months prior to the filing of the petition, provided that the forty-eight-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred during the forty-eight-month period; and
  - e. Participation in a substance abuse treatment intervention program is the least restrictive available option to ensure the person's recovery and stability.
- (3) A petition for substance abuse treatment intervention may request the court to require any services or conditions allowed in a less restrictive alternative treatment program and shall at a minimum request that the court impose an individualized treatment plan that includes the following services either provided by the Tulalip Tribes, through contract with another provider, or other jurisdiction:
- a. Assignment of a care coordinator;
  - b. A substance abuse disorder assessment;
  - c. Recommended treatment based on the results of a substance abuse disorder assessment;
  - d. Steps to be taken if the client falls out of compliance with the individualized plan.
- (4) The Tribal Court, at the time a petition is filed and before the probable cause hearing, must appoint counsel to represent the respondent. The respondent has a right to counsel at the Tribes' expense in all substance abuse treatment intervention proceedings.
- (5) The court shall hold a probable cause hearing within two judicial days following filing of the petition. If the court finds probable cause for the allegations in the petition then the respondent may be detained in an inpatient treatment facility until graduation from that facility and thereafter in an aftercare setting for a total period not to exceed 90 days.
- (6) Bench trial. The court shall schedule a bench trial within 90 days of the filing of the petition at a time when the responded is expected to have graduated from inpatient treatment. If the Tribes prove the allegations of the petition by clear and convincing evidence, the Court shall

impose the requested services or conditions and/or any other such services and conditions reasonably calculated to assist the respondent in recovery from their disorder(s).

- (7) Time limit. A court order for substance abuse treatment intervention may be effective for up to 24 months.

#### 4.35.520 Changes to Less Restrictive Alternative, Substance Abuse Treatment Intervention, or Conditional Release Orders

(1) A Tulalip Tribal Designated Crisis Responder or other designated crisis responder may take action to enforce, modify, or revoke a less restrictive alternative, substance abuse treatment intervention, or conditional release order. The designated crisis responder must determine that:

- (a) The person is failing to adhere to the terms and conditions of the Tribal Court order;
- (b) Substantial deterioration in the person's functioning has occurred;
- (c) There is evidence of substantial decompensation with a reasonable probability the decompensation can be reversed by further evaluation, intervention, or treatment; or
- (d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

- (a) To counsel or advise the person as to their rights and responsibilities under the Tribal Court order, and to offer appropriate incentives to motivate compliance;
- (b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;
- (c) To request a Tribal Court hearing for review and modification of the Tribal Court order. The request must be made to the Tribal Court and specify the circumstances that give rise to the request and what modification is being sought. The Tribal Prosecutor shall assist the agency or facility or Tulalip Tribal Designated Crisis Responder in requesting this hearing and issuing an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when Tribal Court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;
- (d) To cause the person to be transported by a Tulalip law enforcement officer, Tulalip Tribal Designated Crisis Responder, designated crisis responder, or other means to the agency or facility monitoring or providing services under the Tribal Court order, or to a triage facility, crisis stabilization unit, emergency department, evaluation and treatment facility, secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program. The person may be detained at the facility for



up to twelve hours for an evaluation to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement. This subsection does not limit the ability or obligation to pursue revocation procedures under subsection (4) of this section in appropriate circumstances; and

- (e) To initiate revocation procedures under subsection (4) of this section or, if the current commitment is solely based on substance abuse treatment intervention, initial inpatient detention procedures under subsection (6) of this section.

(3) The facility or agency designated to provide outpatient treatment shall notify the Tulalip Tribal Designated Crisis Responder when a person fails to adhere to terms and conditions of court-ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(4) Custody and detainment procedures for conditional releases and less restricted alternatives.

(a) A Tulalip Tribal Designated Crisis Responder can move the Tribal Court for an order to apprehend and/or temporarily detain a person subject to a conditional release or less restrictive alternative in an evaluation and treatment facility, in a secure withdrawal management and stabilization facility, or in an approved substance use disorder treatment program. If the Court finds that there is probable cause that the person has not complied with the conditions of his or her conditional release or less restrictive alternative, the Court shall order the person to be apprehended and detained. A revocation and detention petition may be filed under subsection (c) without a prior Court apprehension and detention order.

(b) A person detained under this subsection must be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been released. If the person is not detained, the hearing must be scheduled within five days of service on the person.

(c) The designated crisis responder may file a revocation petition and order of detention with the Tribal Court. The designated crisis responder shall serve the person and their attorney, guardian, and conservator, if any.

(d) Trial. A Bench trial shall be held within ten judicial days of the filing of the petition. The issues for the Tribal Court to determine are whether:

- (i) the person adhered to the terms and conditions of the Tribal Court order;
- (ii) substantial deterioration in the person's functioning has occurred;
- (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment;
- (iv) there is a likelihood of serious harm, and,
- (v) if any of the above conditions apply, whether the Tribal Court should reinstate or modify the person's less restrictive alternative or conditional release order or order the person's detention for inpatient treatment. The person may waive

the Tribal Court hearing and allow the Court to enter a stipulated order upon the agreement of all parties.

(5) Detention for Conducting an Inpatient Evaluation - Substance abuse treatment intervention orders.

(a) A Tulalip Tribal Designated Crisis Responder or other authorized person may initiate inpatient detention procedures under this chapter, when appropriate, for individuals subject to a substance abuse treatment intervention order. Proceedings under this subsection may be initiated without ordering the apprehension and detention of the person.

(b) A Tulalip Tribal Designated Crisis Responder or the Tribal Prosecutor may move the Tulalip Tribal Court for an order that an individual subject to a substance abuse treatment intervention order be taken into custody and temporarily detained for inpatient evaluation in an evaluation and treatment facility, in a secure withdrawal management and stabilization facility, or in an approved substance use disorder treatment program. The Court shall grant the motion if it finds probable cause that the person is out of compliance with the terms of their substance abuse intervention treatment order and reevaluation of their service needs and/or inpatient treatment is in their best interest.

(c) A person detained under this subsection may be held for evaluation for up to one hundred twenty hours, excluding weekends and holidays, pending a court hearing.

(d) The Court shall hold a hearing within one hundred twenty hours of the persons' detention, excluding weekends and holidays. Counsel shall be provided to the detained person at the Tribes' expense if they are not already represented. The issues for the Tribal Court to determine are whether to continue the detention of the person for inpatient treatment or whether the court should reinstate or modify the person's substance abuse treatment intervention order. To continue detention after the one hundred twenty-hour period, the Tribal Court must find that inpatient treatment is a clinically appropriate response to the person's behavior and that if released without inpatient treatment, the person is unlikely to survive safely in the community or would likely relapse or deteriorate in condition in such a way as to likely result in death, grave disability, or serious harm to the person or to others. The burden of proof is on the Tribes and shall be by clear and convincing evidence.

#### 4.35.530 Termination of Substance Abuse Treatment Intervention

A Tribal Court order for substance abuse treatment intervention must be terminated prior to the expiration of the order when, in the opinion of the Professional Person in charge of the treatment provider,

- (1) the person is prepared to accept voluntary treatment, or



(2) the outpatient treatment ordered is no longer necessary to prevent a relapse, decompensation, or deterioration of condition likely result in death, grave disability, or serious harm to the person or to others

## **Article VI- Rights**

### 4.35.600 Protection of Rights

The Tulalip Tribes may assign appropriate staff from time to time as may be necessary to examine records, inspect Tribal facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to patient's rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this code.

### 4.35.610 Right to Refuse Antipsychotic Medicine

(1) Informed Consent. Efforts must be made to administer antipsychotic medicine voluntarily in consultation with the patient's medical provider.

(2) Right to Refuse. If a person is found to be gravely disabled or to present a likelihood of serious harm as a result of a behavioral health disorder, that person has a right to refuse antipsychotic medication unless subsection 3 applies.

(3) Involuntary Administration of Antipsychotic Medication. A person's right to refuse antipsychotic medication may be denied when the following conditions are met, as determined by a medical opinion issued by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority:

(a) Required Determinations:

(i) The person has been found to be gravely disabled or to present a likelihood of serious harm as a result of a behavioral health disorder; and

(ii) Failure to medicate may result in either of the following:

1. likelihood of serious harm or substantial deterioration; or
2. substantially prolong the length of involuntary commitment

(iii) There is no less intrusive course of treatment than medication in the best interest of that person.

(b) Concurring medical opinion.

(i) Requirements: An additional concurring medical opinion approving medication must be obtained that:

1. Is made by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority; and
2. Provides an opinion that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment.

(ii) Emergency Exception: Antipsychotic medication may be administered prior to obtaining a second medical opinion under the following circumstances:

1. The person presents an imminent likelihood of serious harm;
2. Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and
3. It is the opinion of the physician, physician assistant, or psychiatric advanced registered nurse practitioner that the person's condition constitutes an emergency requiring treatment be instituted prior to obtaining a second medical opinion.

(c) Documentation. Documentation in the medical record must be made of the attempt by the physician, physician assistant, or psychiatric advanced registered nurse practitioner to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent.

(4) Periodic Review. For continued treatment beyond thirty days through the hearing on any petition filed under this chapter, there shall be a right to periodic review of the decision to medicate by the medical director or designee.

#### 4.35.620 Right to Counsel

- (1) The respondent in an action for involuntary treatment has a right to counsel provided at the Tribes' expense at probable cause hearings and, if the person is indigent, at all stages.
- (2) A respondent who is not indigent may retain counsel at his or her own expense, pay the Tribes for appointed counsel, or petition the Court to represent themselves.

#### 4.35.630 General Rights

Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and



evaluation, or subject to a substance abuse treatment intervention order pursuant to this chapter shall have the following rights:

- (1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;
- (2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;
- (3) To have access to individual storage space for his or her private use;
- (4) To have visitors at reasonable times;
- (5) To have reasonable access to a telephone, both to make and receive confidential calls;
- (6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mail;
- (7) To have the right to individualized care and adequate treatment;
- (8) To discuss treatment plans and decisions with professional persons;
- (9) To not be denied access to treatment by spiritual means;
- (10) To dispose of property and sign contracts unless such person has been adjudicated as incompetent in a court proceeding directed to that particular issue;
- (11) Not to have psychosurgery performed on him or her under any circumstances.

#### 4.35.640 Notification of Rights at Probable Cause Hearing

Whenever any person is detained under this chapter, the person must be advised that unless the person is released or voluntarily admits himself or herself for treatment within one hundred twenty hours of the initial detention, a judicial hearing must be held in Tulalip Tribal Court within one hundred twenty hours to determine whether there is probable cause to detain the person for up to an additional fourteen days based on an allegation that because of a behavioral health disorder the person presents a likelihood of serious harm or is gravely disabled, and that at the probable cause hearing the person has the following rights:

- (1) To communicate immediately with an attorney; to have an attorney appointed; and to be told the name and address of the attorney that has been designated;
- (2) To remain silent, and to know that any statement the person makes may be used against him or her;
- (3) To present evidence on the person's behalf;
- (4) To cross-examine witnesses who testify against him or her;
- (5) To be proceeded against by the rules of evidence;
- (6) To have the court appoint a reasonably available independent professional person to examine the person and testify in the hearing, at public expense unless the person is able to bear the cost;
- (7) To view and copy all petitions and reports in the court file; and
- (8) To refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.
- (9) Right to a jury trial at a hearing for a 90 or 180 day commitment.



Tulalip Tribes Office Of The  
**Reservation  
Attorney**

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**2023**

**LEGAL REVIEW FORM**

Complete Submittal Received by ORA: 10/24/23 10-Day Business Review End: 11/2/, 2023

Title of Submittal: Resolution 23-XXXX Competency & ITA

Document Type: Resolution

Contract Amount: \$ 0

Funding Source: \*\*Choose Funding Source\*\*

Submitted By: Brian Kilgore/Lead Prosecutor/Office of the Reservation Attorney  
(Name/Title/Department)

Return Submittal To: Brian Kilgore/Lead Prosecutor/Office of the Reservation Attorney  
(Name/Title/Department)

- Submittal is **APPROVED**
- Submittal Requires **ADDITIONAL INFORMATION**
- Submittal is **DISAPPROVED**
- Submittal is Approved With the (Following/Attached) Revisions:

Notes/Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reviewed By: 10/30/23  
Date Signed

[Signature]  
Reservation Attorney Signature

**Notice/Disclaimer:**

Program or enterprise is responsible for keeping records of Contract and this Legal Review – the Reservation Attorney Office only keeps copies of the Legal Review Cover Sheet for its own records. **Please read: This review is of the contract as a legal binding document only and does not evaluate the advisability of entering into the contract as a business or governmental decision.**

(Please note that if this review sheet is faxed or emailed to you, the originals will be returned via interoffice mail)

**Legal Review Returned By:**  Email  Interoffice Mail  In-Person  Fax

To: \_\_\_\_\_ on \_\_\_\_\_, 2023 by \_\_\_\_\_  
Name of Recipient Month/Date Initials