

The Yavapai-Apache Nation Mental Health Commitment Code¹

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Article I: Introduction

1.01 – Authority

A. The Yavapai-Apache Nation has inherent sovereignty to exercise civil authority and jurisdiction over the conduct of the Nation's Tribal Members and over all other Persons on the lands within the exterior boundaries of the Nation's Reservation lands as necessary to protect the public health, safety, welfare, political integrity, and economic security of the Nation as provided under Article I of the Constitution of the Yavapai-Apache Nation ("Constitution").

B. The legislative authority of the Yavapai-Apache Nation is vested in the Yavapai-Apache Tribal Council as provided under Article IV, Section 1 of the Constitution. The Yavapai-Apache Tribal Council is authorized to enact this Mental Health Commitment Code ("Code") as provided under the Constitution, Article V, Subsections (a) to protect the health and welfare of the Nation, (n) to regulate domestic relations of Persons within the jurisdiction of the Tribe, (u) to exercise civil jurisdiction over all Tribal Members and Non-Members to the fullest extent permitted by federal law, and (v) to enact ordinances necessary or incidental to the exercise of the Nation's legislative powers. The Yavapai-Apache Tribal Council enacts this Code pursuant to these authorities.

C. The judicial authority of the Yavapai-Apache Nation is vested in the Yavapai-Apache Tribal Court. Article V, Section 1 of the Constitution. The Tribal Court is authorized to exercise jurisdiction over all cases and controversies within the jurisdiction of the Nation that arise under the Constitution, the laws of the Nation, by virtue of the Nation's inherent sovereignty, or which are vested in the Tribal Courts by federal law as provided under Article V, Section 2 of the Constitution. The Tribal Court is authorized to interpret, construe, and apply this Code as provided under Article V, Section 3(a) of the Constitution.

1.02 – Findings

The Yavapai-Apache Tribal Council finds the following:

A. It is the policy of the Nation to promote the health, safety, culture, and general welfare of the Nation and its members; to recognize Mental Illness as a disease subject to a variety of treatment alternatives and choices; and to recognize that the Person who is suffering from Mental Illness is entitled to the opportunity to heal in the least restrictive and most culturally relevant environment.

B. It is in the best interests of the Nation to create laws to govern the Court-Ordered Commitment for mental health treatment of Tribal Members who are in Imminent Likelihood of Serious Harm or who are Gravely Disabled and who do not wish to seek voluntary treatment.

C. It is in the best interests of the Nation to provide for the exercise of the greatest possible tribal jurisdiction over the Court-Ordered Commitment of Tribal Members who are in Imminent

Likelihood of Serious Harm or are Gravely Disabled and who do not wish to seek voluntary treatment.

D. Establishing a tribal Court-Ordered Commitment process will affirm and enhance the Nation's ability to exercise its self-determination and sovereignty.

1.03 – Purpose

The purposes of this Code are the following:

A. To protect, enhance, and exercise the inherent sovereignty of the Nation;

B. To create and define the procedures governing the Court-Ordered Commitment of Tribal Members who are in Imminent Likelihood of Serious Harm or are Gravely Disabled and who do not wish to seek voluntary treatment;

C. To provide prompt evaluation and treatment of Tribal Members who are in Imminent Likelihood of Serious Harm or are Gravely Disabled and who do not wish to seek voluntary treatment;

D. To ensure that due process of law is accorded to Tribal Members coming under the provisions of this Code; and

E. To preserve the peace, harmony, and safety of the Nation and those who reside within the exterior boundaries of the Yavapai-Apache Reservation.

This Code's provisions shall be liberally construed to facilitate the accomplishment of these purposes.

1.04 – Scope

This Code applies to the Court-Ordered Commitment of Tribal Members who are in Imminent Likelihood of Serious Harm or are Gravely Disabled and who do not wish to seek voluntary treatment.

1.05 – Effective Date

This Code shall be effective on the date specified in the Tribal Council Resolution adopting the Code.

1.06 – Sovereign Immunity

Nothing in this Code shall be construed as, or is intended to be, a waiver or modification of the Nation's sovereign immunity, or a consent by the Nation to jurisdiction or suit against it or its elected officials, officers, employees, representatives, or agents.

1.07 – Severability

If any provision of this Code is found to be unconstitutional or invalid by a court of competent jurisdiction, such provision shall be severed from the Code, and the remainder of the Code shall remain in full force and effect.

1.08 – Repeal of Prior Law

To the extent that any prior motion, resolution, ordinance, code, act, or other tribal law conflicts with any provisions of this Code, the provisions of this Code shall control, and the conflicting provision(s) are hereby repealed.

Article II: Definitions

“Business Day” means any day in which the normal business operations of the Yavapai-Apache Nation are conducted. Weekend days, holidays observed by the Yavapai-Apache Nation, and periods of time when the Yavapai-Apache Nation is closed for business shall not be considered Business Days.

“Chemically Dependent” means an illness or disorder characterized by the use of alcohol, drugs, or a combination thereof that causes social, occupational, psychological, or physical impairment. The term includes alcoholism, drug dependency, or any combination thereof that endanger the health, interpersonal relationships, or economic functions of the Person or the public health, welfare, or safety of another Person or Persons.

“Counsel” means an attorney licensed in the State of Arizona who is appointment by the Tribal Court to represent the Respondent in matters related to this Code.

“Court-Ordered Psychological Evaluation” means an evaluation ordered by the Yavapai-Apache Nation Tribal Court or other court of competent jurisdiction and conducted by a Qualified Examiner. The evaluation shall include an assessment of the Respondent’s physical condition and mental status to determine whether Respondent meets the criteria for Court-Ordered Commitment. A Court-Ordered Psychological Evaluation shall also include a report containing an assessment and recommendation of whether Respondent requires Court-Ordered Commitment, with a clear explanation of how that recommendation was derived from the evaluation.

“Court-Ordered Commitment” means the court-ordered detention of a Person in a Mental Health Treatment Facility for the purpose of providing inpatient care to Persons suffering from Mental Illness that causes them to either be in Imminent Likelihood of Serious Harm or be Gravely Disabled.

“Guardian” means a Person who is designated by a court of competent jurisdiction to be legally responsible for the care and custody of a Ward.

“Gravely Disabled” means a condition in which a Person, as a result of Mental Illness: (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; and/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 (c) is not receiving such care as is essential for his or her health or safety.

“Imminent Likelihood of Serious Harm” means a substantial risk that one of the following will occur due to a Person’s Mental Illness:

1. Physical harm will be inflicted by a Person upon themselves, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; or
2. Physical harm will be inflicted by a Person upon another, as evidenced by behavior that has caused harm, substantial pain, or which places another Person or Persons in reasonable fear of harm to themselves or others; or
3. The Person has threatened the physical safety of another and has a history of one or more violent acts.

“Independent Psychological Evaluation” means an evaluation paid for by Respondent and conducted by a Qualified Examiner, as defined under this Code, that includes an evaluation of the Respondent’s physical condition and mental status to determine whether Respondent meets the criteria for Court-Ordered Commitment. An Independent Psychological Evaluation shall include a Qualified Examiner’s Report that contains an assessment and a recommendation of whether Respondent requires Court-Ordered Commitment, with a clear explanation of how that recommendation was derived from the evaluation.

“Initial Screening” means a screening conducted by a Mental Health Professional pursuant to Section 7.02 of this Code.

“Mental Health Professional” means a psychiatrist, psychologist, or a physician assistant with a minimum of two years of psychiatric clinical experience under the supervision of a psychiatrist, psychiatric nurse practitioner, or psychiatric nurse.

“Mental Health Treatment Facility” means a facility, such as the Arizona State Hospital, that can provide directly, or by arrangement with other entities, timely and appropriate inpatient care to persons suffering from Mental Illness. No correctional institution or jail shall be a Mental Health Treatment Facility within the meaning of this Code.

“Mental Illness” means a mental, behavioral, or emotional disorder 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). Being Chemically Dependent alone does not constitute Mental Illness, although a Person who is Chemically Dependent may also be a Person who has Mental Illness.

“Office of the Attorney General” or “OAG” means the Office of the Attorney General of the Yavapai-Apache Nation, which is inclusive of the Yavapai-Apache Nation Prosecutor’s Office.

“Person” means a human being.

“Qualified Examiner” means a licensed physician who is knowledgeable, trained, and practiced in the diagnosis and assessment of whether a Person is in Imminent Likelihood of Serious Harm or is Gravely Disabled.

“Qualified Examiner’s Report” means a written report prepared by a Qualified Examiner as part of a Court-Ordered Psychological Evaluation or Independent Psychological Evaluation that contains an assessment and recommendation of whether Respondent requires Court-Ordered Commitment, with a clear explanation of how that recommendation was derived from the evaluation.

“Petition for Court-Ordered Evaluation” means a petition submitted by the OAG that meets the criteria set forth in Section 7.04 of this Code.

“Reservation” means all land held in trust by the United States for the benefit of the Nation.

“Respondent” means a Person subject to a Petition for Court-Ordered Evaluation under this Code.

“Tribal Council” means the Yavapai-Apache Tribal Council, the legislative branch of the Yavapai-Apache Nation as described under Article IV of the Nation’s Constitution.

“Tribal Court” means the Yavapai-Apache Nation Tribal Court, the judicial branch of the Yavapai-Apache Nation as described under Article VI of the Nation’s Constitution.

“Tribal Member” means a Person who is an enrolled member of the Yavapai-Apache Nation.

“Ward” means a Person who has been found in need of Guardianship by order of the Tribal Court as set forth in the Yavapai-Apache Nation Adult Guardianship Code or by order of another court of competent jurisdiction.

“Yavapai-Apache Nation” or “Nation” means the federally recognized Indian Tribe known as the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Camp Verde, Arizona.

Article III: Administrative Provisions

3.01 – Record Keeping

A. Except as otherwise provided by Tribal Court order, the files, records and court proceedings brought under this Code shall be sealed and not available to the public.

B. The Tribal Court, for good cause shown, may authorize the release of case records and case information associated with a Tribal Court proceeding brought under this Code.

C. Notwithstanding Section 3.01(A) and (B), records and information contained in records may be disclosed only as authorized by tribal or federal law, including the Health Insurance Portability and Accountability Act privacy standards (45 Code of Federal Regulations part 160 and part 164, subpart E), or as follows to:

1. The Respondent;
2. Physicians and providers of health, mental health or social and welfare services, including the Yavapai-Apache Nation Behavioral Health Department, involved in caring for, treating or rehabilitating the Respondent;
3. A court-ordered Guardian of a Respondent;
4. The Respondent's Counsel;
5. Persons authorized by a court order;
6. Persons authorized by the Respondent or the Respondent's Guardian;
7. Governmental or law enforcement agencies if necessary to:
 - i. Secure the return of a Respondent who is on an unauthorized absence from any facility where the Respondent was undergoing evaluation and treatment.
 - ii. Avert a serious and imminent threat to the public health, welfare, or safety of another Person or Persons.
8. A tribal, federal, or state agency that licenses health professionals that requires these records in the course of investigating complaints of professional negligence, incompetence or lack of clinical judgment.

D. In the event that the Respondent has been involved in proceedings in another court of competent jurisdiction and those proceedings may be relevant to the determination of whether

the Respondent is in need of Court-Ordered Commitment, the Tribal Court shall request those records, reports, or other evidence from that court.

3.02 – Access to Records

A. Respondent shall have the right to access the name of all witnesses expected to testify in a hearing to determine Court-Ordered Commitment under this Code; all documents pertaining to the Respondent's Court-Ordered Commitment case, including reports of law enforcement agencies and health professionals; and access to records of any health facility, physician, or other health professional that has at any time treated Respondent for a mental illness, alcoholism, or drug dependency, which are relevant to the issues of whether the Respondent is in need of Court-Ordered Commitment under this Code.

B. The OAG shall have the same rights of access as provided to Respondent in Section 3.02(A).

3.03 – Retention

The Tribal Court shall keep a master file for each Respondent of all documents filed with the Tribal Court as part of Court-Ordered Commitment cases brought under this Code. Physical files shall be retained by the Tribal Court for a minimum of ten years.

Article IV: Jurisdiction

4.01 – Jurisdiction of Tribal Court

A. Actions brought under this Code shall be heard in the Nation's Tribal Court.

B. The Tribal Court shall have jurisdiction over the Court-Ordered Commitment of Tribal Members.

C. The Tribal Court shall have all authority necessary to take evidence and determine the validity of any evidence presented or any other matter necessary and relevant to determining whether a Person is in Imminent Likelihood of Serious Harm or is Gravely Disabled and may require Court-Ordered Commitment.

D. The Tribal Court shall have the broadest possible authority to execute its duties and responsibilities under this Code.

E. Unless specifically provided to the contrary in this Code, the Tribal Court shall apply the Yavapai-Apache Nation Rules of Civil Procedure, as amended by the Tribal Court and or the Tribal Council from time to time, to all civil actions administered under this Code.

4.02 – Cooperative Agreements

A. Subject to the approval of Tribal Council, the Nation may enter into cooperative agreements with the State of Arizona, counties, or other agencies or treatment facilities for the services necessary to implement this Code.

B. Nothing in this Code shall prevent the Nation or its members from utilizing the applicable Arizona state involuntary commitment procedures in Arizona state courts, including in cases where emergency admission for evaluation or treatment is merited.

Article V: Standards and Burdens of Proof

5.01 – Standards of Proof

A. The standard of proof to order a Court-Ordered Psychological Evaluation and release records is probable cause that the Respondent requires Court-Ordered Commitment.

B. The standard of proof to order the Court-Ordered Commitment of a Respondent is clear and convincing evidence that the Respondent requires Court-Ordered Commitment.

5.02 – Burden of Proof

A. The OAG has the burden of providing evidence to show that there is probable cause to believe Respondent requires a Court-Ordered Psychological Evaluation.

B. The OAG has the burden of providing clear and convincing evidence that the Respondent requires Court-Ordered Commitment.

5.03 – Criteria for Respondent Requiring Court-Ordered Commitment

A Person may be subject to Court-Ordered Commitment under this Code only if the Tribal Court determines that the Person meets at least one of the following standards due to Mental Illness:

1. The Person is in Imminent Likelihood of Serious Harm; or
2. The Person is Gravely Disabled.

Article VI: Due Process Rights and Other Rights

6.01 – Right to Counsel

A. Respondent has the right to be represented by Counsel.

B. The Tribal Court shall appoint Counsel to represent the Respondent,

C. The Respondent may hire a different Counsel at the Respondent's expense.

D. The Respondent shall have the right to request and receive an Independent Psychological Evaluation at their own expense.

6.02 – Notice

A. Respondent shall receive notice of all proceedings under this Code.

B. All notices of hearings shall be served upon the Respondent in person prior to the hearing. Service of motions, orders, and other documents shall be served by one of the following methods: in person, by mail, by facsimile, or by email to the Respondent.

6.03 – Hearings

For all hearings held under this Code, Respondent shall have the right to the following:

1. A closed hearing; or
2. An open hearing, if requested; and
3. At all evidentiary hearings, to provide testimony, present documentary evidence, call witnesses, and cross-examine all witnesses.

6.04 – Right to Remain Silent

Throughout any proceedings held under this Code, Respondent shall have the right to remain silent as to any allegations that might serve as a basis for Court-Ordered commitment. Regardless of whether Respondent exercises their right to remain silent, no proceedings under this Code nor any statement made at these proceedings shall be used as evidence against Respondent in a criminal case.

6.05 – Right to Appeal

Respondent shall have the right to appeal final orders issued by the Tribal Court under this Code. Appeals shall be made in accordance with the Yavapai-Apache Rules of Civil Procedure and Rules of the Appellate Court.

6.06 – Right to Supplemental Spiritual Treatment

Nothing in this Code shall be construed to preclude supplementary treatment by spiritual means, at the Respondent's expense, for any Respondent who desires such treatment.

Article VII: Petition for Court-Ordered Psychological Evaluation

7.01 – Request to File a Petition for Court-Ordered Psychological Evaluation

A. The following Persons may submit a Request to File a Petition for Court-Ordered Psychological Evaluation with the OAG:

1. Any Mental Health Professional employed by, contracted with, or under an agreement with the Nation to provide mental health treatment services to Tribal Members;
2. The Director of the Yavapai-Apache Nation Department of Social Services or the Director's designee;
3. The Chief of the Yavapai-Apache Nation Police Department or the Chief's designee; and
4. The Guardian of the Person subject to the Petition.

B. The OAG may directly file a Petition for Court-Ordered Psychological Evaluation without receiving a request pursuant to Section 7.01(A).

C. A Request to File a Petition for Court-Ordered Psychological Evaluation shall be submitted to the OAG on a form provided by the OAG to the Persons listed in Section 7.01 (A).

7.02 – Initial Screening Prior to the Filing of a Petition

A. No later than three (3) Business Days after receiving a request to file a Petition for Court-Ordered Psychological Evaluation, the OAG shall provide a copy of the request to a Mental Health Professional who is contracted with or employed by the Nation or Indian Health Services to conduct Initial Screenings.

B. The Mental Health Professional shall conduct an Initial Screening of Respondent no later than three (3) Business Days following Mental Health Professional's receipt of the request, unless the Respondent cannot be found or refuses to meet with the Mental Health Professional. The Initial Screening must include observations and conversations with Respondent. If necessary, the Initial Screening may be conducted via tele-health.

C. A written report detailing the findings of the Initial Screening must be delivered to the OAG within three (3) Business Days of the completion of the Initial Screening. The written report shall be governed by the disclosure requirements set forth in Section 3.01.

7.03 – Filing the Petition for Court-Ordered Psychological Evaluation

A. The OAG shall utilize the information contained in the Request to File a Petition for Court-Ordered Psychological Evaluation and the results of the Initial Screening to determine whether to file a Petition for Court-Ordered Psychological Evaluation.

B. The Tribal Court shall only accept a Petition for Court-Ordered Psychological Evaluation if it is filed by the OAG.

7.04 – Contents of a Petition for Court-Ordered Psychological Evaluation

A. Petition for Court-Ordered Psychological Evaluation shall contain the following information:

1. The OAG employee submitting the Petition;
2. The name, address, age, and enrollment number of Respondent;
3. The name and address of any Person known to be legally responsible for the care, support, and maintenance of Respondent, if applicable;
4. A statement by the OAG alleging the reasons that Respondent meets the standards described in Section 5.03 and requires Court-Ordered Psychological Evaluation for Court-Ordered Commitment;
5. The facts, in detail, that are the basis of the OAG's statement including the following, if available:
 - i. Any statements by Persons having knowledge of whether Respondent is Gravely Disabled or is in Imminent Likelihood of Serious Harm;
 - ii. Documentation in the form of medical reports, letters from Persons with knowledge of any circumstances relevant to Court-Ordered Commitment, affidavits; police reports; and any other documents supporting the allegations of the Petition;
 - iii. A statement as to whether the OAG believes Respondent is in Imminent Likelihood of Serious Harm or is Gravely Disabled due to Respondent's Mental Illness or if there are other circumstances necessitating immediate, emergency detention and treatment.
6. A statement as to whether alternatives to Court-Ordered Commitment were explored or attempted, what alternatives were considered, and why such alternatives are insufficient to address Respondent's Mental Illness.

B. The Petition for Court-Ordered Psychological Evaluation shall be signed by the OAG and include a statement that all of the allegations and facts contained in the Petition for Court-Ordered Psychological Evaluation are true to the best of the OAG's knowledge.

7.05 – Order for Psychological Evaluation

A. Within three (3) Business Days of receiving a Petition for Court-Ordered Psychological Evaluation, the Tribal Court shall examine the Petition for Court-Ordered Psychological Evaluation to determine whether it complies with the requirements of Section 7.04 and whether or not it establishes probable cause that Respondent is a Person requiring Court-Ordered Commitment.

B. The Tribal Court shall dismiss the Petition for Court-Ordered Psychological Evaluation if the Petition for Court-Ordered Psychological Evaluation does not establish probable cause that Respondent is a Person requiring Court-Ordered Commitment

C. If the Tribal Court finds that the Petition for Court-Ordered Psychological Evaluation establishes probable cause that Respondent is a Person requiring Court-Ordered Commitment, the Tribal Court shall do the following: order that Respondent undergo a Court-Ordered Psychological Evaluation; appoint Counsel to represent Respondent; provide the Petition for Court-Ordered Psychological Evaluation to Respondent's Counsel; and schedule a Hearing for Court-Ordered Commitment.

D. The Tribal Court order issued pursuant to Section 7.05(C) shall order the Respondent receive a Court-Ordered Psychological Evaluation conducted by a Qualified Examiner, as defined in Article II of this Code, prior to the date of the Hearing for Court-Ordered Commitment.

E. The Tribal Court shall serve upon the Respondent an Order and Summons to appear for the Court-Ordered Psychological Evaluation. The Order and Summons shall state the date, time, and location of the Court-Ordered Psychological Evaluation and shall contain a statement informing the Respondent that failure to appear for the Court-Ordered Psychological Evaluation may result in the Tribal Court issuing a warrant for the involuntary detention of the Respondent in a detention center. The date and time of the Court-Ordered Psychological Evaluation shall be at the earliest time possible and no later than ten (10) days following the date that the Tribal Court issues its Order.

F. The Tribal Court Order issued pursuant to Section 7.05(C) shall order Respondent to surrender any firearms and ammunition in Respondent's possession to YAPD within twenty-four hours of the issuance of the Order. The Tribal Court's Order shall prohibit Respondent from using or possessing any firearm or ammunition unless the Tribal Court dismisses the Petition under Section 8.01(E) or dismisses the case under Section 9.04 (A).

G. If Respondent does not surrender firearms and ammunition in Respondent's possession to YAPD within twenty-four hours of the Tribal Court's Order, YAPD shall seek a warrant from Tribal Court authorizing YAPD to seize Respondent's firearms and ammunition and store them in a secure place pending resolution of the case. The warrant shall be restricted to the sole purpose of seizing Respondent's firearms and ammunitions and no charges shall be brought based on other items found during the search or based on Persons present during the search.

H. Notwithstanding any other prohibitions on the possession of firearm and ammunition, if Respondent is not found to be in need of Court-Ordered Commitment due to the Tribal Court dismissing the Petition under Section 8.01(E) or the Tribal Court dismissing the case under Section 9.04 (A), Respondent's firearms and ammunition must be returned to them within one (1) Business Day of the Tribal Court Order issuing the dismissal.

Article VIII: Evaluation of Respondent

8.01 – Qualified Examiner's Report

A. During the Court-Ordered Psychological Evaluation, the Qualified Examiner shall evaluate whether Respondent meets either of the criteria set forth in Section 5.03 that indicates Respondent requires Court-Ordered Commitment.

B. A Qualified Examiner conducting a Court-Ordered Psychological Evaluation under this Section may consult with or request that another Mental Health Professional participate in the Court-Ordered Psychological Evaluation. In that event, the Qualified Examiner shall include any of that Mental Health Professional's findings and that Mental Health Professional's identity and qualifications in the Qualified Examiner's Report.

C. After completion of the Court-Ordered Psychological Evaluation, the Qualified Examiner shall file the Qualified Examiner's Report with the Tribal Court no later than seven (7) Business Days after completing the Court-Ordered Psychological Evaluation. The Qualified Examiner's Report must contain the following:

1. A description and assessment of the Respondent's physical condition and mental status.
2. A recommendation of whether Court-Ordered Commitment is necessary, with a clear explanation of how that conclusion was derived from the Court-Ordered Psychological Evaluation.
3. Recommendations for treatment including, if any, alternatives to Court-Ordered Commitment.

D. The Tribal Court shall provide a copy of the Qualified Examiner's Report to Respondent's Counsel and to the OAG within three (3) Business Days of its receipt of the Qualified Examiner's Report.

E. If the Qualified Examiner's Report concludes that Respondent is not a Person requiring Court-Ordered Commitment based on the standards set forth in Section 5.03, the Tribal Court shall terminate the proceedings and dismiss the Petition without holding a Final Hearing.

F. In the event Respondent requests and receives an Independent Psychological Evaluation, the deadlines set forth in Section 8.01 (C) and (D) shall apply to the completion of the Independent Psychological Evaluation and submission of the Qualified Examiner's Report to the Tribal Court unless Respondent requests an extension, and the Tribal Court so orders.

8.02 – Failure to Appear

If the Respondent fails to appear for a Court-Ordered Psychological Evaluation ordered pursuant to Section 7.05(C), the Tribal Court, at its discretion, may issue a warrant for immediate apprehension and detention of Respondent at a detention center. If the Tribal Court issues such a warrant, it shall also make a conditional appointment of Counsel for the Respondent to become effective when and if the Respondent is taken into custody.

Article IX: Hearing to Determine Court-Ordered Commitment

9.01 – Court-Ordered Commitment Hearing Procedure

A. The Court-Ordered Commitment Hearing shall be held within ten (10) Business Days of the Tribal Court's receipt of the Qualified Examiner's Report, unless Respondent requests a postponement and the Court so orders.

B. The Tribal Court shall notify the Respondent of the time and place of the Court-Ordered Commitment Hearing in any manner permitted under Section 6.02. The Tribal Court shall provide notice of the Respondent's due process rights as detailed in Article VI of this Code.

C. The Court-Ordered Commitment Hearing shall only be held after the Court-Ordered Evaluation has been completed and the Qualified Examiner's Report has been submitted to Tribal Court. The Court-Ordered Commitment Hearing shall address the allegations of the Petition for Court-Ordered Evaluation and the Qualified Examiner's Report and shall determine the Respondent's need for Court-Ordered Commitment based on the criteria set forth in Section 5.03.

D. The OAG shall present the case to the Tribal Court. The Respondent has the right to attend the hearing and cannot be excluded, except for disruptive behavior.

E. At the commencement of the Court-Ordered Commitment Hearing, the Tribal Court shall inquire whether the Respondent has received a copy of the Petition for Court-Ordered Evaluation and the list of rights accorded to the Respondent and whether the Respondent has read and understood these documents. If the Respondent has not, the Tribal Court shall provide and explain the Petition for Court-Ordered Evaluation and list of rights to the Respondent.

F. The Court-Ordered Commitment Hearing shall be closed to the general public, unless a public hearing is requested by the Respondent and the Tribal Court orders the hearing to be open.

G. The Court shall require the presence of the Qualified Examiner at the hearing, either in person or by video call or by phone call if necessary, to testify about the facts and circumstances concerning whether Respondent meets the criteria for Court-Ordered Commitment set forth in Section 5.03.

H. The Respondent and OAG may summon or produce additional witnesses or evidence. The Tribal Court shall issue subpoenas as necessary to compel the testimony of Respondent or OAG's witnesses or the production of records or other physical evidence related to the determination of the case. The Respondent and OAG may cross-examine any witness who testifies in the case.

9.02 – Use of Mental Health Examinations Due to Mental Illness in Criminal Proceedings

If Respondent has been the subject of a mental health examination under Rule 11 of the Yavapai-Apache Nation Rules of Criminal Procedure that resulted in an experts' report, as described in Yavapai-Apache Nation Rules of Criminal Procedure Rule 11.3(E), within six (6) months of the date of a Court-Ordered Commitment Hearing, the Tribal Court may consider the expert's report when making its determination about whether Respondent requires Court-Ordered Commitment. The Tribal Court may utilize the expert's report as a supplement to, not a substitute for, the Court-Ordered Psychological Examination.

9.03 – Use of Mental Health Examinations Received in a Mental Health Treatment Facility.

A. In the event that Respondent received an mental health examination in a Mental Health Treatment Facility that meets or exceeds the criteria set forth in Section 8.01 for a Court-Ordered Psychological Evaluation and that mental health examination occurred within seven (7) days of the OAG Filing the Petition for Court-Ordered Psychological Evaluation, the Tribal Court may, in its discretion, utilize the mental health examination conducted in the Mental Health Treatment Facility in lieu of a new Court-Ordered Psychological Evaluation.

B. Respondents governed by Section 9.03 (A) shall have the right to request and receive an Independent Psychological Evaluation that the Tribal Court shall consider in making its determination of whether Respondent is in need of Court-Ordered Commitment.

C. If Respondent requests an Independent Psychological Evaluation pursuant to Section 9.03(B), the Tribal Court shall consider the Independent Psychological Evaluation when making its determination about whether Respondent requires Court-Ordered Commitment. The Tribal Court shall utilize the Independent Psychological Examination as a supplement to, not a substitute for, the mental health examination conducted in the Mental Health Treatment Facility provided that the mental health examination conducted in the Mental Health Treatment Facility meets or exceeds the criteria set forth in Section 8.01 for a Court-Ordered Psychological Evaluation.

D. Sections 9.03 (A)-(C) shall only apply if the Mental Health Treatment Facility provides the Tribal Court with an official copy of the mental health examination conducted in the Mental Health Treatment Facility.

E. In the event Respondent requests an Independent Psychological Evaluation pursuant to Section 9.03 (B) and the Tribal Court so orders, the Independent Psychological Evaluation shall take place within ten (10) Business Days of the Tribal Court's Order. The report summarizing the findings of the Independent Psychological Evaluation shall be delivered to Tribal Court within seven (7) Business Days of the completion of the report unless Respondent requests an extension, and the Tribal Court so orders.

9.04 – Order of Commitment

A. If the Tribal Court finds, after the Court-Ordered Commitment Hearing, that there is clear and convincing evidence that the Respondent meets the standards set forth in Section 5.03, and that Court-Ordered Commitment is the only appropriate treatment that will prevent harm to the Respondent or other Persons, the Tribal Court shall enter an order directing the Court-Ordered Commitment of Respondent. Otherwise, the case shall be dismissed.

B. The Tribal Court Order of Commitment shall contain the following:

1. The legal and factual basis of the Tribal Court jurisdiction over the Court-Ordered Commitment proceedings and over the Respondent.
2. A description of how Respondent received notice of the Court-Ordered Commitment proceeding, the allegations regarding Respondent's mental condition, and how Respondent had the opportunity to be heard with the assistance of Counsel.
3. A statement that the Respondent meets the criteria for Court-Ordered Commitment under the laws of the Yavapai-Apache Nation.
4. A statement that the treatment ordered is the least restrictive treatment which meets the needs of the Respondent and the Respondent is unable or unwilling to receive this treatment voluntarily.

5. A specific time period during which Respondent shall be held at the Mental Health Treatment Facility. An order for Court-Ordered Commitment shall not exceed the time periods set forth in Section 9.05.
6. If available, the location of the preferred Mental Health Treatment Facility and the name of the supervising Mental Health Professional who will be overseeing Respondent's care.
7. The names and addresses of any Counsel, or guardians with legal standing to represent the Respondent and a brief statement of their relationship to Respondent.
8. If applicable, the Persons with authority to transport Respondent to the Mental Health Treatment Facility.
9. The OAG employee authorized to receive service for matters related to the case and the address at which service may be made.

9.05 – Duration of Court-Ordered Commitment

The maximum periods of inpatient treatment in a Mental Health Treatment Facility that the Tribal Court may order under this Code are as follows:

1. Ninety days for a Person who is in Imminent Likelihood of Serious Harm to themselves.
2. One hundred eighty days for a Person who is in Imminent Likelihood of Serious Harm to others.
3. Three hundred sixty-five days for a Person found to be Gravely Disabled.

Article X: Filing of Tribal Court Order

10.01 – Timing

A. The OAG shall file any Order for Court-Ordered Commitment issued under this Code with the Clerk of the Superior Court of Arizona within three (3) Business Days of the order being entered.

B. Notwithstanding Section 10.01 (A), if a Respondent has been admitted to a Mental Health Treatment Facility for Court-Ordered Commitment pending the filing of the Tribal Court's Order for Court-Ordered Commitment, the OAG shall file the Order for Court-Ordered Commitment as soon as possible and no later than the close of business on the next day that the Superior Court of Arizona is open following the admission of the Respondent to the Mental Health Treatment Facility, unless that day is a Tribal holiday, in which case the Tribal Court Order must be filed with the Clerk of the Superior Court by the close of business on the following day.

C. An Order for Court-Ordered Commitment of the Yavapai-Apache Nation Tribal Court filed with the Clerk of the Superior Court of Arizona shall be recognized and is enforceable by any court of record in the state of Arizona, subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the state court.

Article XI: Status Review and Release

11.01 – Status Review and Reports

A. From the date Respondent is admitted to the Mental Health Treatment Facility until six months following Respondent's release from the Mental Health Treatment Facility, the Tribal Court shall conduct a Status Review Hearing of the Respondent's case at least every sixty (60) days

B. The Tribal Court shall serve notice of the Status Review Hearing on Respondent at least seven (7) days prior to the Status Review Hearing.

C. Respondent may request that the Tribal Court conduct more frequent or expedited Status Review Hearings.

D. The Respondent shall have the right to be present at the Status Review Hearing, by telephone, and have the right for their Counsel and, if applicable, their Guardian to attend the Status Hearing.

E. The Tribal Court shall request a report from the Mental Health Treatment Facility or, if applicable, outpatient care facility on the status of Respondent and the need for continued treatment at each Status Review Hearing.

11.02 – Release

If the Mental Health Treatment Facility determines that Respondent no longer requires commitment before the end of the court-ordered period, the Mental Health Treatment Facility must notify the Tribal Court no later than ten (10) days prior to Respondent's release.

Article XII: Respondent's Rights Following Court-Ordered Commitment

12.01 – Firearm Restrictions

A. A Respondent who has been Ordered to undergo Court-Ordered Commitment pursuant to this Code may not have in their possession or control any firearm or ammunition unless their rights have been restored pursuant to Section 12.02.

B. In the event that Respondent has not already surrendered firearms and ammunition pursuant to Section 7.05(F), the Tribal Court Order of Commitment shall order Respondent to surrender any firearms and ammunition in Respondent's possession to YAPD within twenty-four hours of the issuance of the Order.

C. In the event that Respondent does not voluntarily surrender firearms and ammunition in Respondent's possession to YAPD within twenty-four hours of the Tribal Court's Order issued under Section 12.01(B), YAPD shall seek a warrant from Tribal Court authorizing YAPD to seize Respondent's firearms and ammunition and store them in a secure place. The warrant shall be restricted to the sole purpose of seizing Respondent's firearms and ammunitions and no charges shall be brought based on other items found during the search or based on Persons present during the search.

12.02 – Restoration of Rights

A. A Respondent who has been prohibited from possessing firearms and ammunition under Section 12.01 may submit a Petition for the Restoration of Rights to Bear Firearms to the Tribal Court to restore their right to possess a firearm no sooner than one year following the date of the Respondent's release from a Mental Health Treatment Facility. The Tribal Court shall provide a copy of the Petition for the Restoration of Rights to Bear Firearms to the OAG.

B. The Petition for the Restoration of Rights to Bear Firearms shall contain the following information:

1. The circumstances that resulted in the Respondent receiving an Order for Court-Ordered Commitment, including the date and duration of treatment and name of the treatment facility.
2. The Respondent's mental health record, current mental health treatment protocol, and criminal history record, if any.
3. Any details about changes in the Respondent's condition or circumstances that is relevant to the relief sought.

C. In addition to the information set forth in Section 12.02(B), the Petition may include a letter from the Mental Health Professional currently treating the Respondent that details if the Respondent is Gravely Disabled or is in Imminent Likelihood of Serious Harm and whether the circumstances that led to the original Order have changed.

D. Upon the filing of a Petition for the Restoration of Rights to Bear Firearms, the Tribal Court shall set a Hearing within thirty (30) Business Days. The Respondent may, at their own expense, choose to be represented by Counsel.

E. At the Hearing, the Respondent shall present evidence in support of the Petition for the Restoration of Rights to Bear Firearms. The OAG shall provide the Tribal Court with the Respondent's criminal history records if applicable. The OAG may participate in the Hearing to oppose the Respondent's Petition for the Restoration of Rights to Bear Firearms

F. The Respondent submitting the Petition for the Restoration of Rights to Bear Firearms bears the burden of proving, by clear and convincing evidence, both of the following:

1. The Respondent is not likely to act in a manner that is dangerous to public safety.
2. Restoring the Respondent's right to bear firearms is not contrary to the interests of the Nation.

G. At the conclusion of the hearing, the Tribal Court shall either grant or deny the Petition for the Restoration of Rights to Bear Firearms. A denial of a Petition shall not be appealable due to Respondent's right to refile pursuant to Section 12.02(I).

H. The granting of the Petition for the Restoration of Rights to Bear Firearms shall only restore the Respondent's right to possess a firearm and ammunition and has no effect on any other rights or benefits of the Respondent.

I. The Respondent may refile a Petition for the Restoration of Rights to Bear Firearms only after three hundred and sixty-five days have lapsed since the Tribal Court's Order denying the Petition unless the Tribal Court's Order specifies that the Respondent may refile in shorter timeline.

J. Respondents who have been adjudicated as incompetent under Rule 11 of the Yavapai-Apache Nation Rules of Criminal Procedure or under Rule 11 of the Rules of Criminal Procedure of another court of competent jurisdiction and who have not subsequently been found to be competent are ineligible to submit a Petition for the Restoration of Rights to Bear Firearms under Section 12.02.

12.03 – Per Capita Distributions

A. While a Tribal Member is undergoing treatment in Mental Health Treatment Facility pursuant to an Order issued under this Code, their per capita distribution check, as well as any other Nation assistance check, shall be held until the Tribal Member is released from the facility. Any checks issued by the Nation during the time the Tribal Member was in the Mental Health Treatment Facility shall be provided to the Tribal Member at their request following their release from the Mental Health Treatment Facility.

B. The per capita distributions of Tribal Members declared incompetent who are subject to Court-Ordered Commitment shall be governed by the provisions set forth in the Yavapai-Apache Nation Revenue Allocation Plan.

C. If a per capita distribution check or other form of Nation assistance payment check is scheduled to be issued during the time a Tribal Member will be receiving treatment in a Mental Health Treatment Facility, the Tribal Court shall notify the Yavapai-Apache Nation Finance Department that the Tribal Member's check should be held. The Tribal Court's notification to the Yavapai-Apache Nation Finance Department shall provide the time period during which the check should be held but shall not provide or disclose any of the Tribal Member's confidential medical information.

D. If a Guardian is authorized to receive the Tribal Member's Nation assistance check, the right to receive that check shall not be affected by Section 12.03(A).

Article XIII: Appeals

Appeals from final Orders of the Tribal Court issued under this Code shall be made in accordance with the Yavapai-Apache Rules of Civil Procedure and Rules of the Appellate Court.