

Tab #6

Protocol for the Processing and Enforcement of Tribal Court Involuntary Commitment Orders in the Superior Courts of Arizona

Problem Statement: Persons determined by tribal courts in Arizona to be in need of involuntarily commitment require immediate custodial care. The only secure facilities available on Arizona reservations are jails, which have very limited bed space and treatment services. Local secure mental health treatment facilities located outside of Indian country may lack understanding of tribal court jurisdiction and are sometimes reluctant to comply with tribal court involuntary commitment orders.

Arizona has established a mechanism for the filing and enforcement of tribal court involuntary commitment orders in A.R.S. 12-136 and through the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders. Involuntary commitments under tribal law will only be ordered in those cases where it is shown that the person who is the subject of the order is a threat to the health or safety of himself or others. Therefore, any delay in filing and enforcing the tribal court order is an obstacle to timely treatment in these emergent cases. The process for filing and enforcing tribal court involuntary commitment orders in the Arizona courts involves three points at which processing time is involved (A) filing the tribal court order and other required paperwork in superior court, which may be time consuming due to the need to travel significant distances to the superior court from reservation locations; (B) the five (5) day response period required by Rule 3 of the state rules; and (C) the time necessary for the certification required by Rule 5(a) or the enforcement order required by Rule 5(b).

This protocol is designed to streamline and decrease the time required to file and enforce tribal court involuntary commitment orders.

A. Decreasing the time it takes to file tribal court involuntary commitment order.

The proponent of the tribal court commitment order will:

1. File the tribal court order and supporting documents, including the telephone numbers of the parties, if available, by sending a facsimile transmission to the Superior Court of the State of Arizona, in a county in which the reservation is located to the attention of the Clerk of the Superior Court.
2. Submit the original tribal court documents by express delivery (United States Postal Service Express Mail, FedEx, or a similar form of express service designed to obtain next day delivery) to the Clerk of Court.
3. If the tribal court order indicates specifically that the patient is in need of admittance to the Arizona State Hospital, send a copy of the tribal court order by facsimile transmission to the Admissions/Legal Department, Arizona State Hospital. The fax number is (602) 220-6198. This step is not required if the commitment order is to a facility other than the Arizona State Hospital.

The Clerk of the Superior Court will:

1. Immediately upon receipt file stamp and file the tribal court order.
2. Immediately return a copy of the filed and stamped tribal court order by facsimile transmission to the proponent of the tribal court commitment order.

B. Decreasing the wait for the 5-day response period.

1. The judge of the tribal court should determine whether response to superior court enforcement of the tribal court involuntary commitment order is waived by the subject of the commitment order and incorporate this waiver in the tribal court findings and order.
2. The proponent of the tribal court commitment order will first make an effort to contact the Attorney General's office directly by telephone to inform the Attorney General's representative of the entry of the tribal court order, the facts supporting the entry of the order, and the need for expedited response by the Attorney General.
3. The proponent of the tribal court commitment order will send a copy of the tribal court order and supporting documents and an unsigned waiver of the 5-day response period (see attachment) to the Attorney General's Office by facsimile transmission to:

Attorney General's Office
Education and Health Section
Attention: Assistant Attorney General representing Arizona State Hospital or

Division of Behavioral Health Services
Catherine Plumb or Robert Sorce
FAX # 602-364-0700

Indicate on the fax form "URGENT: Response Requested Within 24 Hours of Receipt." The cover sheet will contain the name of the individual and contact information where the state's waiver should be sent by facsimile and certified U.S. Mail.

3. As soon as practicable, but by no later than 24 hours after receipt of the tribal court commitment order, the Assistant Attorney General will review the tribal court order and either complete a waiver of the five-day response period or file a response.
4. Provided the tribal court order contains the required information, the Assistant Attorney General will sign the waiver document and return the same by facsimile and mail to the fax number and address designated in the original facsimile.

C. Expediting the enforcement decision by the Superior Court.

1. The Clerk of the Superior Court will provide the tribal court order and supporting documents to the judge for review on the next workday following filing of the tribal court commitment order.
2. The proponent of the tribal court commitment order will schedule review of the tribal court order by the assigned judge of the Superior Court for a particular date and time by calling the Clerk of the Superior Court to identify the judge to whom the matter is assigned and by calling that judge's judicial assistant to facilitate consideration on the same day the matter is received in the judge's chambers if the judge is available, if all paperwork is in order, and if the matter is not contested or at the earliest opportunity.
3. The Superior Court judge will schedule a telephonic hearing involving the tribal judge and parties as needed to clarify any issues with the paperwork presented.

Draft Statewide Protocol. DM 10.9.07

**Recognition and Enforcement of Tribal Court Involuntary
Commitment Orders
in the Arizona Superior Courts**

APPLICABLE STATUTE AND RULES:

A.R.S. §12-136. Indian tribal courts; involuntary commitment orders; recognition

A. Notwithstanding any law to the contrary, an involuntary commitment order of an Arizona tribal court filed with the clerk of the superior court shall be recognized and is enforceable by any court of record in this state, subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the court. The Arizona Supreme Court may adopt rules regarding recognition of tribal court involuntary commitment orders. The state, through the attorney general, shall be given notice of the filing at the time the commitment order is filed and shall have five days from receipt of the written notice of the filing of the order to appear as a party and respond. A patient committed to a state mental health treatment facility under this section shall be subject to the jurisdiction of the state.

B. Decisions regarding discharge or release of a patient committed pursuant to subsection A shall be made by the facility providing involuntary treatment. Ten days prior to discharge or release, the state mental health treatment facility shall notify the tribal court which issued the involuntary commitment order of the facility's intention to discharge or release a patient. Any necessary outpatient follow-up and transportation of the patient to the jurisdiction of the tribal court, within the time set forth in the notice, shall be provided by the proponent of the tribal court commitment order.

Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders

Rule 1. Applicability

These rules govern the procedure for recognition and enforcement by the superior court of an involuntary commitment order of the court of any federally recognized Indian tribe within the State of Arizona¹ as authorized by ARS. §12-136. Determinations regarding recognition of the tribal court commitment order pursuant to these rules have no effect upon the independent authority of the tribal court order. Whenever reference is made to the proposed patient in these rules, it means the person who is the subject of the tribal court commitment order.

Rule 2. Filing Procedure and Fees

(a) Documents to be filed. A copy of the tribal court order, authenticated in accordance with the procedures of the tribal court, may be filed in the office of the clerk of the superior court in a county in which the tribal court has jurisdiction within 30 days of its entry in the tribal court. The order shall be accompanied by a signed and notarized statement from the appropriate tribal court officer stating that no subsequent orders vacating, modifying or reversing the order filed have been entered by the tribal court and that the order has not been stayed pending appeal. The clerk shall treat the tribal court order in the same manner as an order of involuntary commitment issued by the superior court of this state.

(b) Notice of Filing. The person filing the order shall promptly serve a notice of filing substantially similar to Form I of these rules and a copy of the tribal court commitment order on the proposed patient or the patient's guardian or representative and the Attorney General of the State of Arizona. Proof of service shall be filed with the clerk of the superior court.

Rule 3. Responses

Any responses to the enforcement of the tribal court order shall be filed within 5 days of receipt of the notice of filing the order. If a response is filed within this time period, the enforcement proceeding under this rule shall have the same priority as a civil commitment proceeding originating in the superior court. The superior court may, in its discretion, set a time period for replies and/or set the matter for hearing.

Rule 4. Appointment of Counsel

If a response is filed, the court may, in its discretion or at the request of the proposed patient, appoint counsel to represent the proposed patient at any enforcement proceedings.

Rule 5. Enforcement of Tribal Court Commitment Order

(a) Certification by the Clerk of Court. If no responses are timely filed, the next court day after the expiration of the time period to respond the clerk shall, on a form substantially similar to Form II of these rules, issue a certification that no responses were timely filed, and the tribal court order shall be enforceable in the same manner as if issued by the superior court.

(b) Standard of Review Following Response. The superior court shall not assess the validity of the tribal court order, but shall only assess its consistency with A.R.S. §12-136 and these rules. A tribal court commitment order which contains all of the findings indicated in these rules shall be enforced subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the superior court. The superior court judge shall attempt to resolve any issues raised regarding a tribal court order by contacting the tribal court judge who issued the order. If enforcement of an order is denied due to incomplete findings or unresolved issues regarding those findings, the superior court judge shall specifically state the reasons for the denial.

(c) Findings Required in the Tribal Court Order. The tribal court order shall be enforceable if it contains the following findings:

1. The legal and factual basis of the tribal court jurisdiction over the civil commitment proceedings and over the proposed patient.
2. The proposed patient received notice of the civil commitment proceeding and the allegations regarding the patient's mental condition and had the opportunity to be heard with the assistance of a person recognized by the tribal court as competent to represent the proposed patient.
3. Based upon the diagnosis by a licensed physician, the proposed patient suffers from a mental disorder as defined by Arizona law which renders the proposed

patient a danger to self, a danger to others, persistently or acutely disabled and/or gravely disabled.

4. The treatment ordered is the least restrictive treatment which meets the needs of the proposed patient, and the proposed patient is unable or unwilling voluntarily to receive this treatment.

(d) Other Information Required in the Tribal Court Order. To aid in enforcement and sending required notices, the tribal court order shall include the following information:

1. The title, address and county of the tribal court entering the order of involuntary commitment.
2. The date the tribal court order was entered.
3. The name, address and location of the proposed patient.
4. The names and addresses of any attorneys, guardians or other persons with legal standing to represent the proposed patient and a brief statement of their authority and relationship.
5. The tribal official authorized to receive service under these rules and the address at which service may be made.

(e) Commitment Period. The period of commitment shall not be enforceable for a longer period of time or in a manner different than permitted by Arizona law and shall commence on the date the tribal court order was entered.

Rule 6. Rehearing and Review

(a) Rehearing. In the event enforcement of a tribal court order is denied, any affected person may move for a rehearing within 20 days after the denial. Any supplemental or revised tribal court orders shall be attached to the motion. A copy of such motion shall be served upon all parties to the original proceeding. A response to the motion may be filed within 5 days of receipt of notice of the motion for rehearing.

(b) Review and Administration Following Commitment All proceedings following the commitment of the proposed patient shall be governed by Arizona law. Any documents filed with the court regarding the proposed patient shall be served upon the tribal official designated for receipt of service in the tribal court order.

Form II. Certification

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

_____ COUNTY

In re: Involuntary Commitment of (Patients Name))No.
)
) CERTIFICATION RE:
) ENFORCEMENT OF
) TRIBAL COURT
) INVOLUNTARY
) COMMITMENT ORDER

Pursuant to A.R.S. §12-136 and the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders, I hereby certify that the statements contained herein are an accurate representation of the contents of the record of the above captioned matter.

An Order of Involuntary Commitment was issued by the _____ Tribal Court on _____ 20____, under which (patient's name) was ordered to undergo treatment. The Order was filed herein on _____, 20_____.

_____ The record reflects that the Notice of Filing was personally served on (patients name) on _____, 20____, and at least 5 court days have since elapsed.

OR

_____ The record reflects that the Notice of Filing was sent by certified mail to (patient's name) on _____, 20____. It was received on and at least 5 court days have elapsed since its receipt.

AND

_____ The record reflects that the Notice of Filing was personally served on the Attorney General for the State of Arizona on _____, 20____, and at least 5 court days have since elapsed.

OR

_____ The record reflects that the Notice of Filing was sent by certified mail to the Attorney General for the State of Arizona on _____, 20____. It was received on _____ 20____, and at least 5 days have elapsed since its receipt.

No responses have been filed.

Given under my hand and the Seal of the Court on this date, _____, 20_____.

Clerk of the Superior Court

By:

TERRY GODDARD
Attorney General
Firm bar no. 14000

_____ (SB# _____)
Assistant Attorney General
1275 West Washington Street
Phoenix, Arizona 85007-2926
Telephone: (602) 542-8321
Attorneys for Division of Behavioral Health Services

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF _____

In re: Involuntary Commitment of (Patient's Name)) No.
)
) ATTORNEY GENERAL' S
) WAIVER OF FIVE-DAY NOTICE

In lieu of the notice set forth in A.R.S. §12-136(A) and to prevent unnecessary delay in this matter, a copy of the tribal court order in this matter has been transmitted by facsimile to the Attorney General's Office in advance of this proceeding and reviewed by that office as to form. The Attorney General, through the Assistant Attorney General designated below, having reviewed the tribal court order as to form and compliance Rule 5(c) and (d) of the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders hereby waives any additional notice of filing pursuant to Rule 2(b) of the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders and stipulates that tribal court order shall be enforceable by this Court in the same manner as if originally issued by the superior court. This waiver applies solely to the five day notice provision and does not constitute a waiver of any subsequent right as set forth in Rule 5 of the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders to participate in procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the superior court.

DATED this ____ day of _____, 20____.

TERRY GODDARD
Attorney General

Assistant Attorney General
Attorney for Division of Behavioral Health Services