



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85247

ORDINANCE GR-04-08

THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY ENACTS THE FOLLOWING AS AN ORDINANCE AUTHORIZING AND ENACTING AN AMENDMENT TO TITLE 17, CHAPTER 4, MENTAL HEALTH ORDINANCE, OF THE GILA RIVER INDIAN COMMUNITY LAW AND ORDER CODE

WHEREAS, the Gila River Indian Community Council (the "Community Council") is the governing body of the Gila River Indian Community (the "Community"); and

WHEREAS, the Community Council is empowered by Article XV Section 1 (a) (9), of the Constitution and Bylaws of the Gila River Indian Community (approved March 17, 1960), to promote and protect the health, peace, moral, education, and general welfare of the Community and its members; and

WHEREAS, it is the policy of the Community to protect the health and welfare of its members and to protect them from further injurious actions of persons who suffer from mental disorders and who pose a danger to themselves or others; and

WHEREAS, the Community enacted GR-119-96 and adopted Chapter 4 of Title 17 of the Gila River Indian Community Law and Order Code establishing a Mental Health Ordinance that would expire March 31, 2001 unless re-authorized; and

WHEREAS, the Community re-authorized the Mental Health Ordinance, GR-03-01; and

WHEREAS, since the 2001 reauthorization, definitions of the ordinance have substantially changed and the need for further clarification of procedure in the ordinance have become apparent; and

WHEREAS, this amendment provides for changes in definitions and for clarification in procedure; and

WHEREAS, the Mental Health Ordinance has complied with pre-adoption notification procedures pursuant to Title Five (5), Chapter Seven (7), Section 5.703 of the Gila River Indian Community Law and Order Code.

NOW, THEREFORE, BE IT ENACTED, that the Gila River Indian Community Council hereby amends the Gila River Indian Community Law and Order Code by rescinding Ordinance GR-03-01 effective April 14, 2008, and enacts and codifies the new Title 17, Chapter 4, Mental Health Ordinance, which is attached to this Ordinance.

BE IT FURTHER ENACTED, that the new Title 17, Chapter 4, Mental Health Ordinance, shall be effective April 14, 2008.

BE IT FINALLY ENACTED, that the Governor, or in the Governor's absence the Lieutenant Governor, is authorized to execute all documents as may be necessary to carry out the intent of this Ordinance.

Pursuant to authority contained in Article XV, Section 1, (a) (7), (8), (9), (18), (19), (b) (1), (8), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing Resolution was adopted on the 19th of March 2008, at a Regular Community Council Meeting held in District 3, Sacaton, Arizona at which a quorum of 13 Members were present by a vote of: 13 FOR; 0 OPPOSE; 0 ABSTAIN; 4 ABSENT; 0 VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



Kristina A. Maraga
COMMUNITY COUNCIL SECRETARY
03-25-08

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Title 17
Chapter 4

Mental Health Ordinance
Enacted by Ordinance GR-04-08

17.401 Authority; Purpose; Policy

- A. **Authority.** The Community reauthorizes the Mental Health Ordinance under its inherent civil, legislative, and regulatory authority. The Gila River Indian Community Constitution and Bylaws (March 17, 1960) were adopted for the common welfare of the Community and provide structure for the Community to enact ordinances governing conduct within the exterior boundaries of the Reservation.
- B. **Purpose.** The purpose and intent of this ordinance is to provide for the involuntary commitment and treatment of persons who are seriously mentally ill.
- C. **Policy.** It is the policy of the Gila River Indian Community to protect the health and welfare of its members and, to that end, to protect them from injurious actions of persons who suffer from mental disorders and who pose a danger to themselves or others. It is further the policy of the Community to adhere to the standards of due process under the law to ensure the rights of persons suffering from mental disorders where such persons are forcibly restrained, detained, or involuntarily committed to a mental health institution.
- D. **Effective Date.** This Ordinance shall be effective April 14, 2008.

17.402 Definitions

- A. **“Behavioral Health Worker”** means a person employed by the Gila River Health Care Corporation who provides services or other supportive assistance to person(s) with mental disorders.
- B. **“Court”** means the Gila River Indian Community Court.
- C. **“Counsel for the Community”** means an attorney or prosecutor employed by the Gila River Indian Community Law Office.
- D. **“Danger to Others”** means behavior which constitutes a danger of inflicting bodily harm upon another person based upon a history of inflicting or attempting to inflict bodily harm upon another person within twelve months preceding the petition.
 - (i) If the person has existed under conditions of being restrained by physical or pharmacological means, or of being confined, or of being supervised, which have deterred or intended to deter him or her from carrying out acts of inflicting or attempting to inflict bodily harm upon another person, then the time limit of within twelve (12) months preceding the hearing may be extended to a time longer than twelve (12) months as consideration of the evidence indicates; or
 - (ii) If the bodily harm inflicted upon or attempted to be inflicted upon another person was grievous or horrendous, the time limits of within twelve (12) months preceding the hearing may be extended to a time longer than twelve (12) months as consideration of the evidence indicates.

- E. **“Danger to Self”** means behavior which constitutes a danger of inflicting substantial bodily harm upon oneself, including attempted suicide. Danger to Self is not present if the hazards to self are restricted to those which may arise from conditions defined under grave disability.
- F. **“Detention”** means the taking into custody of a person.
- G. **“Evaluation”** means a professional analysis of a person’s medical and psychological conditions conducted by a licensed physician or certified psychologist. Such evaluation may be assisted by a mental health or social worker familiar with mental health and human services.
- H. **“Gravely Disabled”** means a condition in which a person is unable to provide for his basic personal needs for food, clothing and shelter as a result of a mental illness of a type which has:
 - (i) Developed over a long period of time and has been of long duration; or
 - (ii) Developed as a manifestation of degenerative brain disease during old age; or
 - (iii) Developed a manifestation of some other degenerative physical illness of long duration.
- I. **“Judge”** means Judge of the Gila River Indian Community Court.
- J. **“Mental Disorder”** means for purposes of this ordinance, a substantial disorder of the person’s emotional processes, thought condition or memory. “Mental disorder” is distinguished from:
 - (i) Conditions which are primarily those of drug abuse, alcoholism or mental retardation, unless in addition to one or more of these conditions the person has a mental disorder.
 - (ii) The declining mental abilities that directly accompany impending death.
 - (iii) Character and personality disorders characterized by lifelong and deeply ingrained anti-social behavior patterns, including sexual behaviors which are abnormal and prohibited by law.
- K. **“Persistently or Acutely Disabled”** means a severe mental disorder that meets all the following criteria:
 - (i) If not treated has a substantial probability of causing the person to suffer or continuing to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality;
 - (ii) Substantially impairs the person’s capacity to make an informed decision regarding treatment and this impairment causes the person to be incapable of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages or alternative are explained to that person; and
 - (iii) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.
- L. **“Person”** means a person who is eighteen (18) years of age or older and who is a member of an Indian tribe or is eligible for membership in an Indian tribe, band, group, pueblo or community recognized by the Secretary of the Interior or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act.

- M. **“Petitioner”** means the party who files the petition in the Gila River Indian Community Court.
- N. **“Respondent”** means the party against whom the petition is filed.

17.403 Emergency Apprehension

- A. A police officer may apprehend and take into custodial detention, without a warrant or order, a person whom the police officer has reasonable cause to believe poses an immediate danger to self or to others due to an apparent mental disability, who is incapable or unwilling to accept mental health treatment voluntarily, and who appears in need of immediate mental health care and treatment.
- B. The Court may order custodial detention of a person detained under this section, pending an Emergency Hearing.
- C. The Court shall hold an Emergency Hearing within seventy-two (72) hours, excluding weekends and holidays, of the apprehension of a person by law enforcement. At this hearing:
 - 1. The person detained shall be informed by the Court of the reason why the person is being held, that a pre-petition screening and triage may be requested and ordered, that the screening and triage may indicate a need for filing a *Petition for Involuntary Mental Health Evaluation*, and where a *Petition for Involuntary Mental Health Evaluation* is filed that he/she shall submit to a complete mental health evaluation.
 - 2. The Court shall promptly notify the Law Office, a Behavioral Health worker, and a representative from Four Rivers Indian Legal Services or such other legal service organization as shall exist and is authorized to represent persons in civil proceedings, to appear at the Emergency Hearing.
 - 3. Emergency Hearings shall be confidential and conducted in an informal and non-adversarial manner.
 - 4. The purpose of a pre-petition screening and triage is to determine whether the person is as a result of a mental disorder a Danger to Self, Danger to Others, Persistently or Acutely Disabled, or Gravely Disabled and in need of immediate mental health treatment. When indicated as appropriate by the screening and triage, a *Petition for Involuntary Mental Health Evaluation* shall be filed by Counsel for the Community.
- E. In no event may a person be detained under section 17.403 beyond the time necessary for a pre-petition screening and triage and filing of a *Petition for Involuntary Mental Health Evaluation*.

17.404 Mental Health Evaluations for Incarcerated Criminal Defendants

- A. The Court, a Behavioral Health Worker, or Counsel for the Community may motion for an Emergency Hearing of an incarcerated criminal defendant who is alleged as a result of a mental disorder to be a Danger to Self, Danger to Others, Persistently or Acutely Disabled, or Gravely Disabled, who is in need of immediate mental health treatment, and who is incapable or unwilling to accept mental health treatment voluntarily.
- B. An Emergency Hearing shall be held within seventy-two (72) hours, excluding weekends and holidays, of the motion.

1. The individual shall be informed by the Court of the pre-petition screening and triage, and the possibility that the pre-petition screening and triage may indicate the need for filing a *Petition for Involuntary Mental Health Evaluation*, and where a *Petition for Involuntary Mental Health Evaluation* is filed that he/she shall submit to a complete mental health evaluation.
 2. The Court shall promptly notify the Law Office, a Behavioral Health Worker, and a representative from Four Rivers Indian Legal Services or such other legal service organization as shall exist and is authorized to represent persons in civil proceedings, to appear at the Emergency Hearing.
 3. Emergency Hearings under this subsection shall be confidential and conducted in an informal and non-adversarial manner.
- C. The Court shall order the Gila River Indian Community Department of Rehabilitation and Supervision transport the incarcerated criminal defendant to the pre-petition screening.
- D. The purpose of a pre-petition screening and triage is to determine whether the person is as a result of a mental disorder a Danger to Self, Danger to Others, Persistently or Acutely Disabled, or Gravely Disabled and in need of immediate mental health treatment. When indicated as appropriate by the screening and triage, a *Petition for Involuntary Mental Health Evaluation* shall be filed by Counsel for the Community.
- E. A mental health evaluation, or the results thereof, shall not be used to determine competency of an individual.

17.405 Petitions for Involuntary Mental Health Evaluations

- A. Any licensed physician or Behavioral Health Worker, in conjunction with Counsel for the Community, may petition the Court for a mental health evaluation by a licensed physician or clinical psychologist of a person who is alleged to be as a result of a mental disorder:
1. a Danger to Self; or
 2. a Danger to Others; or
 3. Persistently or Acutely Disabled; or
 4. Gravely Disabled; and
 5. who is incapable of or unwilling to undergo a voluntary evaluation.
- B. There shall be no filing fees for petitions or motions filed under this Title.
- C. Counsel for the Community shall file the *Petition for Involuntary Mental Health Evaluation* with the Tribal Court Clerk.
- D. A *Petition for Involuntary Mental Health Evaluation* shall contain the following information:
1. The name and address of the person making the petition (“Petitioner”).
 2. The name of the person to be evaluated (“Respondent”) and, if known or readily discoverable, the address, age, marital status and occupation of the person, and the name and address of the person’s nearest relative.
 3. The facts which caused the Respondent to be evaluated, and brought to the attention of the Petitioner, including a summary of facts which support the allegations that the Respondent is a Danger to Self, Danger to Others, Persistently or Acutely Disabled, or Gravely Disabled, and is unwilling or unable to undergo voluntary evaluation.

4. Other information that the Court by rule or order may require.
- F. If upon the filing of a *Petition for Involuntary Mental Health Evaluation* the person is not in detention, and the Court determines there is reasonable cause to believe that the person is likely to present a danger to self or others as a result of a mental disorder, the Court shall order the immediate apprehension and detention of the person pending the Court Ordered Evaluation.
- G. If upon the filing of a *Petition for Involuntary Mental Health Evaluation* the person is in detention, the Court shall order the continued detention of the person pending the Court Ordered Evaluation.

17.406 Court Ordered Evaluation

- A. Upon acceptance of the Respondent for evaluation at a hospital or facility, the Gila River Indian Community Department of Rehabilitation and Supervision, or if unable to do so then with the assistance of the Gila River Indian Community Police Department, shall transport the Respondent to the evaluating hospital or evaluating facility without delay, as ordered by the Court.
- B. A psychiatric evaluation and/or sworn affidavit by two licensed physicians or clinical psychologists shall be completed and forwarded to the Law Office within seventy-two (72) hours, excluding weekends and holidays, of placement at the evaluating hospital or evaluating facility.
- C. Where the evaluation indicates that further evaluation or treatment is not appropriate, the Respondent shall be immediately transported back to the Community by the Gila River Indian Community Department of Rehabilitation and Supervision or the Gila River Indian Community Police Department, and Counsel for the Community shall immediately file a Motion to Vacate the *Order for Mental Health Evaluation* and to Dismiss the *Petition for Involuntary Mental Health Evaluation*.
 1. Where the Respondent was originally detained as a criminal defendant, the Respondent shall be returned to the Department of Rehabilitation and Supervision.
 2. Where the Respondent was detained under Emergency Apprehension of this Title, and no charges are pending under Title 2 (Criminal Code), the Respondent shall be returned to the Department of Rehabilitation and Supervision and shall be immediately released.
 3. Where the Respondent was detained under Emergency Apprehension of this Title and charges are pending under Title 2 (Criminal Code), the Respondent shall be returned to the Department of Rehabilitation and Supervision.

17.407 Court Ordered Treatment

- A. Where Court Ordered Treatment is recommended from the Court Ordered Evaluation, Counsel for the Community shall file a *Petition for Involuntary Mental Health Treatment* within seventy-two (72) hours, excluding weekends and holidays, of receiving the evaluations and/or affidavits from the evaluating hospital or evaluating facility. A Witness List shall be filed by Counsel for the Community at the same time the *Petition for Involuntary Mental Health Treatment* is filed.

- B. A hearing on the *Petition for Involuntary Mental Health Treatment* shall be held within seventy-two (72) hours, excluding weekends and holidays, of the filing of the *Petition for Involuntary Mental Health Treatment*.
1. An Order setting hearing shall be signed by the Judge of the Community Court and shall include an order to transport the Respondent named in the Petition to the hearing by the Gila River Indian Community Department of Rehabilitation and Supervision and/or the Gila River Indian Community Police Department.
 2. The Order setting hearing shall appoint Respondent legal counsel pursuant to 17.408 (C) of this Ordinance, and shall order legal counsel to contact the Respondent within twenty-four (24) hours. The Court shall immediately serve upon Respondent's legal counsel notice of the hearing along with copies of the *Petition for Involuntary Mental Health Evaluation; Petition for Involuntary Mental Health Treatment*, along with any attachments, evaluations, or reports; and the Community's Witness List.
 3. The Order setting hearing shall be served upon the Respondent, Respondent's legal counsel, Counsel for the Community, and all persons listed in the Community's Witness List.
- C. When advising the Respondent of the hearing, the Court shall also advise the Respondent that he/she has a right to an independent evaluation by an independent physician or psychologist selected by the patient or his/her legal counsel.
- D. Hearing on *Petition for Involuntary Mental Health Treatment*:
1. The Respondent shall be treated with fairness, respect and dignity throughout the proceeding.
 2. The Judge may exclude from the hearing any person not necessary for the conduct of the proceeding.
 4. Any persons unable to attend may testify in the proceedings by telephone and may be administered an oath over the telephone.
 5. The Respondent and his/her counsel and the Petitioner may cross-examine witnesses presented by the Community and may present witnesses on his or her behalf.
 6. Psychiatric evaluations and sworn affidavits by the licensed physicians or certified psychologist shall not be admitted into evidence unless either stipulated to their admission by both the Respondent and his/her counsel and Counsel for the Community, or unless the physician or psychologist testifies and is subject to cross-examination.
 7. The Judge may sequester any witness or witnesses, either on the Court's motion or upon motion of any party.
 8. The hearing shall be governed by rules governing civil court proceedings contained in Title 1 of the Community Law and Order Code, or where additional guidance is needed, the Court may apply the Federal Rules of Evidence or the Federal Rules of Civil Procedure; however, the Court shall not be bound by technical requirements in the admission of evidence.
 9. The Judge shall admit all relevant evidence at the hearing.

10. The Court shall take and preserve an accurate audio recording of the hearing, which shall be subject to the provisions of confidentiality as set forth in this Ordinance.
- E. Judgment on *Petition for Involuntary Mental Health Treatment*:
1. If following a hearing on a *Petition for Involuntary Mental Health Treatment* the Judge finds by clear and convincing evidence that the person, as a result of a mental disorder, is a Danger to Self, is a Danger to Others, is Persistently or Acutely Disabled or is Gravely Disabled and is in need of treatment, and is either unwilling or unable to accept voluntary treatment, the Judge shall order such person to undergo one or more of the following:
 - (a) Treatment in an outpatient treatment program, including following an outpatient treatment plan;
 - (b) Treatment in an inpatient treatment program;
 - (c) Treatment consisting of combined inpatient and outpatient treatment;
 2. The maximum periods of inpatient and/or outpatient treatment, which may be combined, that a Judge may order are:
 - (a) Ninety (90) days for a person found to be a Danger to Self;
 - (b) One-hundred eighty (180) days for a person found to be a Danger to Others;
 - (c) One-hundred eighty (180) days for a person found to be Persistently or Acutely Disabled;
 - (d) Three-hundred sixty-five (365) days for a person found to be Gravely Disabled.
 3. Inpatient and outpatient treatment, whether ordered combined or ordered individually, shall not exceed the maximum periods specified in 17.407 (E)(2) of this Ordinance.
 4. The time of treatment shall run from the entry of the Tribal Court *Order for Involuntary Mental Health Treatment*.
 5. The Judge shall consider reasonable alternatives to commitment including, but not limited to, voluntary outpatient care and informal admission to a treatment facility.
 6. The Judge shall order the least restrictive treatment alternative available.
 7. The Judge shall direct the entry of judgment, and may find the facts specifically.
 8. The *Order for Involuntary Mental Health Treatment* shall be filed with the Tribal Clerk of the Court.
 9. Where the Judge orders involuntary inpatient treatment, the Tribal Clerk of the Court shall immediately issue an original *Order for Involuntary Mental Health Treatment* with the court seal to the Department of Rehabilitation and Supervision. The *Order for Involuntary Mental Health Treatment* with the court seal shall be transported with the Respondent after the hearing and be provided to the treating hospital or facility.
 11. Where the Judge orders involuntary inpatient treatment, Counsel for the Community shall file the Tribal Court *Order for Involuntary Mental Health Treatment* with the Clerk of the Superior Court of Arizona in an appropriate

county, in accordance with the Rules of Procedure for Enforcement of Tribal Court Involuntary Commitment Orders.

17.408 Respondent's Rights at Hearings

- A. At all hearings conducted pursuant to this Ordinance, the Respondent shall have the opportunity to secure an analysis of his/her psychological condition by an independent evaluator who is either a licensed physician or clinical psychologist selected by the patient or his/her legal counsel.
- B. Information, admissions, or confessions given by the Respondent to a physician or Behavioral Health Worker during the course of treatment or evaluation as ordered by the Court cannot be used against the person at a trial where he or she is a criminal defendant charged with violating a tribal or federal law.
- C. At all hearings conducted pursuant to this Ordinance, a person shall have the right to counsel. Where such person is indigent or cannot afford counsel, the court shall refer the person to Four Rivers Indian Legal Services, or such other legal service organization as shall exist and is authorized to represent persons in civil proceedings.

17.409 Confidentiality

- A. All Court filings, information and records obtained in the course of evaluation, examination or treatment shall be kept confidential and not as public records, except as the requirements of a hearing pursuant to this ordinance may necessitate a different procedure and for which said procedure shall be issued by written Order of the Court.
- B. Information and records may only be disclosed to:
 - 1. Physicians, health practitioners and providers of health, mental health or social and welfare services involved in evaluating, treating or rehabilitating the Respondent;
 - 2. Individual(s) to whom the Respondent has given written consent to have information disclosed;
 - 3. The Judge to whom the case is assigned, necessary tribal court employees, Counsel for the Community, and Counsel representing the Respondent;
 - 4. The Department of Rehabilitation and Supervision when the Respondent is confined to the Department of Rehabilitation and Supervision;
 - 5. Individuals authorized by a court order.
- C. All persons attending hearings pursuant to this Title shall maintain the confidentiality of the proceedings under penalty of contempt of court.
- D. All filings and records obtained or produced pursuant to this Title shall be maintained in a secure and confidential manner so that only those person authorized have access to the filings and records.

17.410 Expedited Right of Appeal

- A. The Respondent and/or his or her counsel on behalf of the Respondent have a right to an expedited appeal of the *Order for Involuntary Mental Health Treatment*.
- B. Any expedited appeal shall be filed within seventy-two (72) hours from the hearing on the *Petition for Involuntary Mental Health Treatment*. If an appeal is not filed within seventy-two (72) hours of hearing, the appeal shall follow the procedure and

timelines as set forth in the appellate procedure of the Gila River Indian Community Law and Order Code.

- C. A hearing on the expedited appeal shall be held within seventy-two (72) hours, excluding weekends and holidays, of filing of the expedited appeal.
- D. An appeal decision shall be published within forty-eight (48) hours, excluding weekends and holidays, of the expedited appeal hearing.