

**TITLE 19
MENTAL HEALTH CODE
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TITLE 19
MENTAL HEALTH CODE

CHAPTER ONE
GENERAL PROVISIONS

Section 101. Short Title

This act shall be known as the Mental Health Act.

Section 102. Purpose

The purpose of the Mental Health Law is to provide for the humane care and treatment of persons who:

- (a) Are mentally ill; or
- (b) Require treatment for drug or alcohol abuse.

Section 103. Definitions

When used in this Title, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

(a) “Department” means the Wyandotte Nation Department of Mental Health and Substance Abuse Services;

(b) “Chair” means the chair of the Board of the Department;

(c) “Mental illness” means a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;

(d) “Board” means the “Board of the Department” as established by the Mental Health Law;

(e) “Commissioner” means the individual selected and appointed by the Board to serve as Commissioner of the Department;

(f) “Indigent person” means a person who has not sufficient assets or resources to support the person and to support members of the family of the person lawfully dependent on the person for support;

(g) “Facility” means any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of an individual with mental illness, or drug or alcohol dependency, gambling addiction, eating disorders, an opioid substitution treatment program, including, but not limited to, public or private hospitals, community mental health centers, clinics,

satellites or facilities; provided, that facility shall not mean a child guidance center operated by the State Department of Health;

(h) “Care and treatment” means medical care and behavioral health services, as well as food, clothing and maintenance, furnished to a person;

(i) “Licensed mental health professional” means:

- (1) a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,
- (2) a psychiatrist who is a diplomate of the American Osteopathic Board of Neurology and Psychiatry,
- (3) a physician licensed pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act,
- (4) a clinical psychologist who is duly licensed to practice by the Oklahoma Board of Examiners of Psychologists,
- (5) a professional counselor licensed pursuant to the Licensed Professional Counselors Act,
- (6) a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,
- (7) a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,
- (8) a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,
- (9) an advanced practice nurse as defined in the Oklahoma Nursing Practice Act,
- (10) a physician's assistant who is licensed in good standing in the State of Oklahoma, or
- (11) a licensed drug and alcohol counselor/mental health (“LADC/MH”) as defined in the Licensed Alcohol and Drug Counselors Act;

(j) “Mentally incompetent person” means any person who has been adjudicated mentally or legally incompetent by an appropriate district court

(k) “Petitioner” means a person who files a petition alleging that an individual is a person requiring treatment or an assisted outpatient;

(l) “Executive director” means the person in charge of a facility as defined in this section;

(m) “Private hospital or facility” means any general hospital maintaining a neuro-psychiatric unit or ward, or any private hospital or facility for care and treatment of a person having a mental illness, which is not supported by the state or federal government. The term “private hospital” or “facility” shall not include nursing homes or other facilities maintained primarily for the care of elderly and disabled persons;

(n) “Individualized treatment plan” means a proposal developed during the stay of an individual in a facility, under the provisions of this Title, which is specifically tailored to the treatment needs of the individual. Each plan shall clearly include the following:

- (1) a statement of treatment goals or objectives, based upon and related to a clinical evaluation, which can be reasonably achieved within a designated time interval,
- (2) treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to each of these goals and which include specific prognosis for achieving each of these goals,
- (3) identification of the types of professional personnel who will carry out the treatment procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law,
- (4) documentation of involvement by the individual receiving treatment and, if applicable, the accordence of the individual with the treatment plan, and
- (5) a statement attesting that the executive director of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the home community of the individual;

(o) “Telemedicine” means the practice of health care delivery, diagnosis, consultation, evaluation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine uses audio and video multimedia telecommunication equipment which permits two-way real-time communication between a health care practitioner and a patient who are not in the same physical location. Telemedicine shall not include consultation provided by telephone or facsimile machine;

(p) “Recovery and recovery support” means nonclinical services that assist individuals and families to recover from alcohol or drug problems. They include social support, linkage to and coordination among allied service providers, including but not limited to transportation to and from treatment or employment, employment services and job training, case management and individual services coordination, life skills education, relapse prevention, housing assistance, child care, and substance abuse education;

- (q) “Assisted outpatient” means a person who:
- (1) is eighteen (18) years of age or older,
 - (2) is either currently under the care of a facility certified by the Department, or is being discharged from a correctional facility where the person has been incarcerated under a sentence imposed by the Wyandotte Nation District Court,
 - (3) is suffering from a mental illness,
 - (4) is unlikely to survive safely in the community without supervision, based on a clinical determination,
 - (5) has a history of lack of compliance with treatment for mental illness that has:
 - (A) prior to the filing of a petition, at least twice within the last thirty-six (36) months been a significant factor in necessitating hospitalization or treatment in a hospital or residential facility, or receipt of services in a forensic or other mental health unit of a correctional facility, or
 - (B) prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last twenty-four (24) months,
 - (6) is, as a result of his or her mental illness, unlikely to voluntarily participate in outpatient treatment that would enable him or her to live safely in the community,
 - (7) in view of his or her treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration which would be likely to result in serious harm to the person or persons as defined in this section, and
 - (8) is likely to benefit from assisted outpatient treatment; and

(r) “Assisted outpatient treatment” means outpatient services which have been ordered by the court pursuant to a treatment plan approved by the court to treat an assisted outpatient’s mental illness and to assist the person in living and functioning in the community, or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide or the need for hospitalization.

- (s) “Treatment advocate” shall mean

- (1) the individual, who is a family member or other concerned individual, designated by an adult having a mental illness as defined in this Section who is under the care of a licensed mental health professional to serve as treatment advocate, who shall act in the best interests of the individual, or
 - (2) a person holding the powers vested in a guardianship of the person, a grant of general health care decision-making authority or designation of health care proxy contained in an advance directive for health care, or a durable power of attorney with health care decision-making authority
- (t) “Nation” shall mean the Wyandotte Nation.
 - (u) “District Court” shall mean the District Court of the Nation.
 - (v) “Tribal attorney” shall mean the attorney general of or the general counsel for the Nation or such designee as allowed by law.

CHAPTER TWO EMERGENCY DETENTION

Section 201. Definitions

An used in this Chapter:

(a) “Mental health evaluation” means the examination of a person, either in person or via telemedicine, who appears to have a mental illness or be alcohol- or drug-dependent by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomat of the American Board of Psychiatry and Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of:

- (1) determining if a petition requesting involuntary commitment or treatment is warranted, or
- (2) completing a mental health evaluation pursuant to Section 305 of this Title, or
- (3) both subparagraphs (1) and (2) of this paragraph.

(b) “Initial assessment (medical necessity review)” means the examination of a person, either in person or via telemedicine, who appears to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment, whose condition is such that it appears that emergency detention may be warranted by a licensed mental health professional at a facility approved by the Wyandotte Nation Department of Mental Health and Substance Abuse Services, or a designee, as appropriate for such examination to determine if emergency detention of the person is warranted.

(c) “Emergency detention” means the detention of a person who appears to be a person requiring treatment in a facility approved by the Department as appropriate for such detention after the completion of an emergency examination, either in person or via telemedicine, and a determination that emergency detention is warranted for a period not to exceed one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, except upon a court order authorizing detention beyond this period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by this act.

(d) “Protective custody” means the taking into protective custody and detention of a person pursuant to the provisions of Section 203 of this Title until such time as an emergency examination is completed and a determination is made as to whether or not emergency detention is warranted.

(e) “Prehearing detention” means the court-ordered detention of a person who is alleged to be mentally ill, alcohol-dependent, or drug-dependent in a facility approved by the

Department as appropriate for such detention, pending a hearing on a petition requesting involuntary commitment or treatment as provided by Section 306 of this Title.

(f) "Person requiring treatment"

- (1) means a person who because of his or her mental illness or drug or alcohol dependency:
 - (A) poses a substantial risk of immediate physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other significant self-inflicted bodily harm,
 - (B) poses a substantial risk of immediate physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons,
 - (C) has placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious and immediate threats,
 - (D) is in a condition of severe deterioration such that, without immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person, or
 - (E) poses a substantial risk of immediate serious physical injury to self or death as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs.
- (2) The mental health or substance abuse history of the person may be used as part of the evidence to determine whether the person is a person requiring treatment or an assisted outpatient. The mental health or substance abuse history of the person shall not be the sole basis for this determination.
- (3) Unless a person also meets the criteria established in subparagraph (1) or (2) of this paragraph, person requiring treatment shall not mean:
 - (A) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,
 - (B) a developmentally disabled person,
 - (C) a person with seizure disorder,
 - (D) a person with a traumatic brain injury, or
 - (E) a person who is homeless.

Section 202. Emergency Detention

(a) Any person who appears to be or states that such person is mentally ill, alcohol-dependent, or drug-dependent to a degree that immediate emergency action is necessary may be taken into protective custody and detained as provided pursuant to the provisions of this section. Nothing in this Section shall be construed as being in lieu of prosecution under state or local statutes or ordinances relating to public intoxication offenses.

(b) Any Nation peace officer who reasonably believes that a person is a person requiring treatment as defined in Section 201(g) of this Chapter shall take the person into protective custody. The officer shall make every reasonable effort to take the person into custody in the least conspicuous manner.

(c) Upon taking the person into protective custody, the officer may relinquish custody of the person believed to require treatment to a duly qualified reserve officer or deputy employed by the same agency to fulfill the officer's duties as required by this Title.

(d) The officer shall prepare a written affidavit indicating the basis for the officer's belief that the person is a person requiring treatment and the circumstances under which the officer took the person into protective custody. The officer shall give a copy of the statement to the person or the person's attorney upon the request of either. If the officer does not make the determination to take an individual into protective custody on the basis of the officer's personal observation, the officer shall not be required to prepare a written affidavit. However, the person stating to be mentally ill, alcohol-dependent, or drug-dependent or the person upon whose statement the officer relies shall sign a written statement indicating the basis for such person's belief that the person is a person requiring treatment. Any false statement given to the officer by the person upon whose statement the officer relies shall be a misdemeanor and subject to the sanctions of Title V Section 138 of the Wyandotte Nation Code of Laws.

(e) If the person is medically stable, the officer shall immediately transport the person to the nearest facility designated by the Department as an appropriate facility for an initial assessment. If, subsequent to an initial assessment, it is determined that emergency detention is warranted, the officer shall transport the person to the nearest facility, designated by the Department as appropriate for such detention, that has bed space available. If it is determined by the facility director or designee that the person is not medically stable, the officer shall transport the person to the nearest hospital or other appropriate treatment facility.

(f) If the person is medically unstable, the person may be transported to an appropriate medical facility for medical treatment. A treating physician may authorize that the person be detained until the person becomes medically stable. When the person becomes medically stable, if in the opinion of the treating or discharging physician, the patient is still a person requiring treatment as defined in Section 201(g) of this Title, the physician shall authorize detention of the patient for transportation as provided in Subsection (e) of this Section by an appropriate law enforcement agency.

Section 203. Examination of Person in Protective Custody

(a) An individual in protective custody as provided by Section 202 of this Title shall be subject to an emergency examination at the appropriate facility by a licensed mental health professional within twelve (12) hours of being placed in protective custody for the purpose of determining whether emergency detention of the individual is warranted.

(1) If, upon examination, the licensed mental health professional determines that the individual is not a person requiring treatment or that the condition of the individual is such that emergency detention is not warranted, the individual shall be returned by an officer immediately to the point where the individual was taken into protective custody and released or the individual may be taken to the home or residence of that individual or to an alternative facility. If the home or residence of the individual is a nursing home or group home, such home shall not refuse the return of the individual to his or her residence.

(2) If, upon examination, the licensed mental health professional determines that the individual is a person requiring treatment to a degree that emergency detention is warranted, the licensed mental health professional shall immediately prepare a statement describing the findings of the examination and stating the basis for the determination, and the person shall be detained in emergency detention for a period not to exceed seventy-two (72) hours, excluding weekends and holidays, except upon a court order authorizing detention pending a hearing on a petition requesting involuntary commitment or treatment.

(b) During the emergency detention period:

(1) a full examination and evaluation of the person shall be conducted by two licensed mental health professionals and, if the person appears to have a mental illness or be alcohol- or drug-dependent and be a person requiring treatment, a certificate of evaluation as provided by Section 305 of this Title shall be completed, and

(2) reasonable efforts shall be made to determine whether the individual has a current and unrevoked advance directive.

(c) Whenever it appears that an individual detained as provided by this Section is no longer a person requiring treatment and will not require treatment beyond the period of detention, the individual shall be discharged and returned by an officer to the point where the individual was taken into protective custody, or if the individual had not been in protective custody, the individual may be taken to the home or residence of that individual or to an alternative facility. If the home or residence of the individual is a nursing home or group home, it shall not refuse the return of the individual to his or her residence.

(d) Whenever it appears that a person detained as provided by this Section will require treatment beyond the period of emergency detention and the person has refused to consent to

voluntary treatment, a licensed mental health professional conducting an evaluation of the person or the executive director of the facility in which the person is being detained, or the designee of the executive director, shall immediately file a petition or request the tribal attorney to file a petition with the district court as provided by Section 301 of this Title, and may request a court order directing prehearing detention when such detention is necessary for the protection of the person or others.

Section 204. Additional Period of Detention

(a) A person may be detained in emergency detention more than one hundred twenty (120) hours or five (5) days, excluding weekends and holidays, only if the facility in which the person being detained is presented with a copy of an order of the district court authorizing further detention. Such order may be entered by the court only after a petition has been filed seeking involuntary commitment or treatment pursuant to the provisions of Section 301 of this Title.

(b) If a copy of an order for further detention is not delivered to the facility by the end of the period of emergency detention, the person alleged to be a mentally ill person, an alcohol-dependent person, or a drug-dependent person and a person requiring treatment shall be discharged from the facility in which detained unless said person has applied for voluntary treatment.

(c) The person being held in protective custody or emergency detention shall be asked to designate any person whom such person wishes informed regarding the detention. If the person being held in protective custody is incapable of making such designation, the peace officer holding the person in protective custody shall notify within twenty-four (24) hours of taking the person into protective custody, other than the person initiating the request for protective custody, the attorney, parent, spouse, guardian, brother, sister, or child who is at least eighteen (18) years of age of the person. Failure of the peace officer to find such person shall within a reasonable time be reported to the administrator of the facility. Such fact shall be made a part of the records of the facility for the person being detained.

CHAPTER THREE INVOLUNTARY COMMITMENT

Section 301. Petition to the District Court

(a) The following persons may file or request the tribal attorney to file a petition with the district court, upon which is hereby conferred jurisdiction, to determine whether an individual is a person requiring treatment, and to order the least restrictive appropriate treatment for the person, where the individual alleged to be a person requiring treatment resides or may be found within the Nation's jurisdiction:

- (1) A treatment advocate as defined in Section 103 of this Title;
- (2) The father, mother, husband, wife, grandparent, brother, sister, guardian or child, over the age of eighteen (18) years, of an individual alleged to be a person requiring treatment;
- (3) A licensed mental health professional;
- (4) A peace officer of the Nation; or
- (5) The tribal attorney.

(b) The petition shall contain a statement of the facts upon which the allegation is based and, if known, the names and addresses of any witnesses to the alleged facts.

- (1) The petition shall be verified and made under penalty of perjury.
- (2) A request for the prehearing detention of the individual alleged to be a person requiring treatment may be attached to the petition.
- (3) If the individual alleged to be a person requiring treatment is being held in emergency detention, a copy of the mental health evaluation shall be attached to the petition.

Section 302. Rights of Person Alleged to be a Person Requiring Treatment

(a) An individual alleged to be a person requiring treatment shall have the following rights:

- (1) The right to notice, as provided by Section 303 of this Title;
- (2) The right to counsel, including court-appointed counsel, and if the person has no counsel, that the court shall appoint an attorney to represent the person at no cost if the person is an indigent person and cannot afford an attorney;

- (3) The right to a hearing and the right to a closed hearing, unless the person requests otherwise;
- (4) Upon request, the right to a jury trial. The jury shall be composed of six persons having the qualifications required of jurors in courts of record;
- (5) The right to be present at the hearing on the petition or jury trial. The person shall be present at the hearing or jury trial unless the court finds that the presence of the person alleged to be a person requiring treatment makes it impossible to conduct the hearing or trial in a reasonable manner or that the presence of the person would be injurious to the health or well-being of such person.
 - (A) The court shall not decide in advance of the hearing, solely on the basis of the mental health evaluation, that the person alleged to be a person requiring treatment should not be allowed nor required to appear.
 - (B) Prior to issuing an order excluding the person from the hearing or jury trial, the court shall find, based upon clear and convincing evidence, that alternatives to exclusion of the person were attempted;
- (6) The right to present and to cross-examine witnesses. The petitioner and witnesses identified in the petition shall offer testimony under oath at the hearing on the petition. When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.

(b) An individual alleged to be or found by a court to be a person requiring treatment shall be afforded such other rights as are guaranteed by federal law and the laws of the Nation.

(c) No statement, admission or confession made by the person alleged to be a person requiring treatment shall be used for any purpose except for proceedings under this act. No such statement, admission or confession may be used against such person in any criminal action whether pending at the time the hearing is held or filed against such person at any later time directly or in any manner or form.

(d) An attorney appointed by the court to represent a person alleged to be a person requiring treatment shall be a licensed and actively practicing attorney who shall represent the person until final disposition of the case. The court may appoint a public defender where available.

- (1) The attorney appointed by the court shall meet and consult with the person within one (1) day of notification of the appointment. The attorney shall immediately, upon meeting with the person alleged to be a person requiring treatment, present to such person a statement of the rights, including all

rights afforded to persons alleged to be a person requiring treatment by the Wyandotte Nation and the United States Constitutions.

- (2) The court-appointed attorney shall be replaced by another attorney if:
 - (A) the person alleged to be a person requiring treatment prefers the services of an attorney other than the one initially appointed for the person,
 - (B) the preferred attorney agrees to accept the responsibility, and
 - (C) the person alleged to be a person requiring treatment or the preferred attorney notifies the court of the preference and the attorney's acceptance of employment.

The preferred attorney shall meet and consult with the person within one (1) day of employment or appointment. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case, including cost.

- (3) The attorney fees for all services shall be paid by the person alleged to be a person requiring treatment. However, if the person alleged to be a person requiring treatment, or a person empowered pursuant to law to act on behalf of such person, submits an affidavit that such person is indigent and unable to pay attorney fees, the attorney fees shall be paid from the court fund, after a determination by the court that such person is indigent. The amount of such fee shall be set by the court.
- (4) The attorney representing the person alleged to be a person requiring treatment shall notify the court of any current and unrevoked advance directive that has been executed by such person and provide a written copy of the advance directive, if available, to the court and a representative of the tribal attorney's office.

Section 303. Notice of Hearing

(a) Notice of the date, time and place of the hearing on a petition alleging a person to be a person requiring treatment shall be delivered to such person at least one (1) day prior to the hearing. Notice shall be personally delivered to the person together with a copy of the petition and copies of the mental health evaluation and any order of the court directing prehearing detention.

- (b) The notice shall contain the following information:
 - (1) The definitions provided by Section 103 of this Title of a “mental illness” and a “person requiring treatment”;
 - (2) If applicable, that the court has ordered the mental health evaluation of the person by two licensed mental health professionals, at least one of whom is a psychiatrist who is a diplomate of the American Board of Psychiatry and

Neurology, a licensed clinical psychologist, or a licensed Doctor of Medicine or Doctor of Osteopathy who has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, for the purpose of conducting an evaluation of the person alleged to be a person requiring treatment stating their findings, and the time and place of the evaluation;

- (3) That, upon request, the hearing on the petition may be conducted as a jury trial and the jury shall be composed of six persons having the qualifications required of jurors in courts of record;
- (4) That the petitioner and witnesses identified in the petition may offer testimony under oath at the hearing on the petition;
- (5) If applicable, that the court has appointed an attorney for the person alleged to be a person requiring treatment who shall represent the person until final disposition of the case and that if the person is indigent, the court shall pay the attorney fees;
- (6) That, if the person is found at the hearing or at a jury trial to be a person requiring treatment under Sections 301 et seq. of this Title, the court will take evidence and make findings of fact concerning the person's competency to consent or to refuse the treatment that is ordered, including, but not limited to, the right of the person to refuse psychotropic medications; and
- (7) That the person alleged to be a person requiring treatment shall be afforded such other rights as are guaranteed by tribal and federal law.

(c) The person delivering the copy of the notice and petition to the person alleged to be a person requiring treatment shall, at the time of delivery, explain the content, purpose and effect of the notice and the legal right to judicial review by habeas corpus.

(d) A copy of the notice, the petition, and the attachments to the petition

- (1) shall also be delivered at least one (1) day prior to the hearing to:
 - (A) the individual initiating the request for protective custody, emergency detention, involuntary commitment or prehearing detention,
 - (B) the attorney or court-appointed counsel of the person, to the tribal attorney, and to the public defender, if any,
 - (C) the facility, if any, in which the person is detained in emergency detention,

- (D) if any exist and if one is known, the treatment advocate as defined pursuant to Section 103 of this Title, a person having a valid power of attorney with health care decision-making authority, a person having a valid guardianship with health care decision-making authority, a person having an advance health care directive, or a person having an attorney-in-fact as designated in a valid mental health advance directive, unless specifically indicated otherwise by the instrument or court order. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder, and
- (E) if the designations or orders listed in subparagraph D of this paragraph do not exist or are not known, then a parent, spouse, guardian, brother, sister or child who is at least eighteen (18) years of age of the person alleged to be a person requiring treatment and who is not the individual initiating the petition or a request for protective custody, emergency detention, involuntary commitment or prehearing detention. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder. Notice shall also be delivered to any other person as may be ordered by the court.

- (2) may be served personally or by certified mail. When notice is served personally, the person making such service shall make affidavit of the same and file such notice, with proof of service, with the district court. This notice may be served in any part of the state when so ordered by the court.

(e) Notice of orders of a court directing a mental health evaluation or prehearing detention of a person alleged to be a person requiring treatment shall be delivered in substantially the same manner as provided by Subsection A of this Section. Notice of a court order directing a mental health evaluation of the person shall be delivered at least one (1) day before the evaluation, and as many additional days as are requested by the person alleged to be a person requiring treatment or the attorney of such person as are reasonable without prejudice to the person. Any request for additional days shall be subject to the discretion of the court, considering the facts and circumstances of each particular case.

Section 304. Request for Prehearing Detention Order

(a) When a request for an order of prehearing detention is attached to a petition alleging a person to have a mental illness and to be a person requiring treatment, the district court shall determine whether there is probable cause to detain the person who is the subject of the petition prior to a hearing on the petition.

- (1) If the court issues an order for detention, it shall immediately set a date, time, and place for a hearing on the petition, and shall issue notice to each individual required to receive notice pursuant to Section 303 of this Title.

- (2) The period of prehearing detention shall not exceed seventy-two (72) hours, excluding the weekends and holidays, except upon a court order authorizing detention beyond a seventy-two-hour period or pending the hearing on a petition requesting involuntary commitment or treatment. Prehearing detention may be extended to coincide with any order of continuance entered by the court.

(b) If the court finds that probable cause to detain the person alleged to have a mental illness and to be a person requiring treatment does not exist, the court shall dismiss the request and, if the person is being held in protective custody or emergency detention, order the person released and returned to the point where such person was taken into protective custody.

(c) If the court finds that probable cause to detain the person alleged to have a mental illness and to be a person requiring treatment does exist:

- (1) An order may be entered authorizing any peace officer to take that person into custody and to detain such person in a suitable facility prior to the hearing on the petition; or
- (2) If the person is being held in emergency detention, the court may issue an order authorizing the facility to detain the person prior to a hearing on the petition.

A certified copy of an order of prehearing detention shall constitute authority for a facility to detain or to continue to detain the person who is the subject of the order.

Section 305. Mental Health Evaluation - Report

(a) If a mental health evaluation is not attached to a petition alleging a person to be a person requiring treatment at the time the petition is filed, the court shall order the person who is the subject of the petition to undergo a mental health evaluation by two licensed mental health professionals, and a mental health evaluation to be completed and filed with the court prior to the hearing.

- (1) The mental health evaluation shall be conducted on an outpatient basis unless the court has issued an order for prehearing detention.
- (2) A copy of all petitions, orders, affidavits, powers of attorney, advance health care directives, treatment advocate designations, mental health advance directives, guardianships, police reports and other relevant documents shall accompany the person to the place where the mental health evaluation is to be conducted.
- (3) Upon completion of the mental health evaluation, the facility shall transmit a copy of the evaluation prepared by the licensed mental health professionals to the court and to the attorney of record for the person evaluated.

(b) The report of the licensed mental health professionals conducting the mental health evaluation pursuant to this Section shall include written findings as to whether:

- (1) The person being evaluated appears to be a person requiring treatment as defined in this Title, and is reasonably likely to benefit from mental health or substance abuse treatment; and
- (2) Based on the following, inpatient treatment is the least restrictive alternative that meets the needs of the person:
 - (A) reasonable efforts have been made to provide for the mental health or substance abuse treatment needs of the person through the provision of less restrictive alternatives and the alternatives have failed to meet the treatment needs of the person, or
 - (B) after a thorough consideration of less restrictive alternatives to inpatient treatment, the condition of the person is such that less restrictive alternatives are unlikely to meet the treatment needs of the person.

Section 306. Hearing - Records

(a) Upon receiving a petition alleging a person to be a person requiring treatment, the court shall set a day and time for the hearing.

- (1) If the person alleged to be a person requiring treatment does not have an attorney, the court shall immediately appoint an attorney for the person.
- (2) If a copy of a mental health evaluation is not attached to the petition at the time it is filed, the court shall immediately order a mental health evaluation of the person as provided by Section 305 of this Title.

(b) If the court deems it necessary, or if the person alleged to be a person requiring treatment demands, the court shall schedule the hearing on the petition as a jury trial to be held within one hundred twenty (120) hours or five (5) days of the demand, excluding weekends and holidays, or within as much additional time as is requested by the attorney of such person upon good cause shown.

(c) The court, at the hearing on the petition, shall determine by clear and convincing evidence whether the person is a person requiring treatment.

- (1) The court shall take evidence and make findings of fact concerning the person's competency to consent to or refuse the treatment that may be ordered, including, but not limited to, the consumer's right to refuse medication.

- (2) If a jury trial is not demanded, the court may receive as evidence and act upon the affidavits of the licensed mental health professionals who evaluated the person and the mental health evaluation.
- (3) When the hearing is conducted as a jury trial, the petitioner and any witness in behalf of the petitioner shall be subject to cross-examination by the attorney for the person alleged to be a person requiring treatment. The person alleged to be a person requiring treatment may also be called as a witness and cross-examined.

(d) After the hearing, when the court determines that the person is not a person requiring treatment, the court shall dismiss the petition and, if the person is being detained, order the person to be discharged from detention.

(e) After the hearing, when the court determines the person to be a person requiring treatment, the court shall order the person to receive the least restrictive treatment consistent with the treatment needs of the person and the safety of the person and others.

- (1) The court shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization and may direct the submission of evidence as to the least restrictive treatment alternative or may order a mental health examination.
- (2) If the court finds that a program other than hospitalization is appropriate to meet the treatment needs of the individual and is sufficient to prevent injury to the individual or to others, the court may order the individual to receive whatever treatment other than hospitalization that is appropriate for a period set by the court, during which time the court shall continue its jurisdiction over the individual as a person requiring treatment.
- (3) If the court orders the person to be committed for involuntary inpatient treatment, the court shall commit the person to the custody of the the Wyandotte Nation Department of Mental Health and Substance Abuse Services for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.
- (4) The person shall be delivered to the custody of the Department for a placement that is suitable to the person's needs or to a private facility willing to accept the person for treatment.
- (5) If the person is placed in the custody of the Department, the Department may designate two or more facilities to provide treatment and if the person to be treated or a parent, spouse, guardian, brother, sister or child, who is at least eighteen (18) years of age, of the person, expresses a preference for one such facility, the Department shall attempt, if administratively possible, to comply with the preference.

- (6) The person shall be discharged from inpatient treatment at such time as the person no longer requires treatment as determined by the executive director of the facility or the designee of the executive director, or as otherwise required by law.
- (f) The court shall make and keep records of all cases brought before it.
 - (1) Except as provided by law, no records of proceedings pursuant to this Section shall be open to public inspection except by order of the court or to employees of the Department, the person's attorney of record, the person's treatment advocate, if any, a person having a valid power of attorney with health care decision-making authority, a person having valid guardianship with health care decision-making authority, a person having an advance health care directive, a person having an attorney-in-fact as designated in a valid mental health advance directive or persons having a legitimate treatment interest, unless specifically indicated otherwise by the instrument or court order. The documents shall not identify the alleged person requiring treatment directly or indirectly as a person with a substance abuse disorder.
 - (2) Bonded abstractors may be deemed to be persons having a legitimate interest for the purpose of having access to records regarding determinations of persons requiring treatment under this section.

Section 307. Alternatives to Hospitalization

(a) The court, in considering a commitment petition filed under Section 301 of this Title, shall not order hospitalization without a thorough consideration of available treatment alternatives to hospitalization, or without addressing the competency of the consumer to consent to or refuse the treatment that is ordered including, but not limited to, the rights of the consumer:

- (1) To be heard concerning the treatment of the consumer; and
- (2) To refuse medications.

(b) In assessing alternatives to hospitalization, the tribal court may order testimony by a community resource and/or cultural liaison or supporting person who shall assess and interpret the availability and appropriates of alternative treatment.

(c) If the court, in considering a commitment petition filed under Section 301 of this Title, finds that a program other than hospitalization, including an assisted outpatient treatment program, is adequate to meet the treatment needs of the individual and is sufficient to prevent injury to the individual or to others,

- (1) the court may order the individual to receive whatever treatment other than hospitalization is appropriate for a period set by the court; provided, the court may only order assisted outpatient treatment if the individual meets the criteria set forth in Section 103 of this Title and in Subsection (g) of this section. During this time the court:

- (A) shall have continuing jurisdiction over the individual as a person requiring treatment or an assisted outpatient, and
 - (B) shall periodically, no less often than annually, review the treatment needs of the individual and determine whether or not to continue, discontinue, or modify the treatment.
- (2) If at any time it comes to the attention of the court from a person competent to file or request the filing of a petition, pursuant to Subsection (a) of Section 301 of this Title, that the individual ordered to undergo a program of alternative treatment to hospitalization is not complying with the order or that the alternative treatment program has not been sufficient to prevent harm or injury which the individual may be inflicting upon himself or others, the court may order the person to show cause why the court should not:
- (A) implement other alternatives to hospitalization, modify or rescind the original order or direct the individual to undergo another program of alternative treatment, if necessary and appropriate, based on written findings of the court, or
 - (B) enter an order of admission pursuant to the provisions of this Title, directing that the person be committed to inpatient treatment and, if the individual refuses to comply with this order of inpatient treatment, the court may direct a peace officer to take the individual into protective custody and transport the person to a public or private facility designated by the court.
- (3) The court shall give notice to the person ordered to show cause and hold the hearing within seventy-two (72) hours of the notice. The person ordered to undergo a program of alternative treatment shall not be detained in emergency detention pending the show cause hearing unless, prior to the emergency detention, the person has undergone an initial examination and a determination is made that emergency detention is warranted.
- (4) If an order of alternative treatment will expire without further review by the court and it is believed that the individual continues to require treatment, a person competent to file or request the filing of a petition, pursuant to Subsection (a) of Section 301 of this Title, may file or request the tribal attorney file either an application for an extension of the court's previous order or an entirely new petition for a determination that the individual is a person requiring treatment or an assisted outpatient.
- (5) A hearing on the application or petition filed pursuant to paragraph 4 of this Subsection shall be held within ten (10) days after the application or petition is filed, unless the court extends the time for good cause. In setting the matter for hearing, the court shall consider whether or not the prior orders

of the court will expire during the pendency of the hearing and shall make appropriate orders to protect the interests of the individual who is the subject of the hearing.

(d) Prior to ordering the inpatient treatment of an individual, the court shall inquire into the adequacy of treatment to be provided to the individual by the facility, and inpatient treatment shall not be ordered unless the facility in which the individual is to be treated can provide such person with treatment which is adequate and appropriate to such person's condition.

(e) Nothing in this Section shall prohibit the Wyandotte Nation Department of Mental Health and Substance Abuse Services or the facility or program providing the alternative treatment from discharging a person admitted pursuant to this section, at a time prior to the expiration of the period of alternative treatment, or any extension thereof. The facility or program providing the alternative treatment shall file a report with the court outlining the disposition of each person admitted pursuant to this Section within forty-eight (48) hours after discharge.

(f) Notice of any proceedings pursuant to this Section shall be given to the person, the person's guardian, the person's attorney, and the person filing the petition or application.

(g) If the petition alleges the person to be an assisted outpatient, the court shall not order assisted outpatient treatment unless the petitioning licensed mental health professional develops and provides to the court a proposed written treatment plan. All service providers included in the treatment plan shall be notified regarding their inclusion in the written treatment plan. Where deemed advisable, the court may make a finding that a person is an assisted outpatient and delay the treatment order until such time as the treatment plan is provided to the court. Such plan shall be provided to the court no later than the date set by the court pursuant to Subsection (k) of this Section.

(h) The licensed mental health professional who develops the written treatment plan shall provide the following persons with an opportunity to actively participate in the development of such plan:

- (1) The assisted outpatient;
- (2) The treating physician, if any;
- (3) The treatment advocate, if any; and
- (4) An individual significant to the assisted outpatient, including any relative, close friend or individual otherwise concerned with the welfare of the assisted outpatient, upon the request of the assisted outpatient.

(i) The licensed mental health professional shall make a reasonable effort to gather relevant information for the development of the treatment plan from a member of the assisted outpatient's family or significant other. If the assisted outpatient has executed an advance directive for mental health treatment, the physician shall consider any directions included in such advance directive for mental health treatment in developing the written treatment plan.

(j) The court shall not order assisted outpatient treatment unless the petitioner testifies to explain the proposed written treatment plan; provided, the parties may stipulate upon mutual consent that the petitioner need not testify. The petitioner shall state facts which establish that such treatment is the least restrictive alternative. If the assisted outpatient has executed an advance directive for mental health treatment, the licensed mental health professional shall state the consideration given to any directions included in such advance directive for mental health treatment in developing the written treatment plan. Such testimony shall be given on the date set by the court pursuant to Subsection (k) of this section.

(k) If the court has yet to be provided with a written treatment plan at the time of the hearing in which the court finds a person to be an assisted outpatient, the court shall order such treatment plan and testimony no later than the third day, excluding Saturdays, Sundays and holidays, immediately following the date of such hearing and order; provided, the parties may stipulate upon mutual consent that such testimony need not be provided. Upon receiving such plan and any required testimony, the court may order assisted outpatient treatment as provided in this section.

(l) A court may order the patient to self-administer psychotropic drugs or accept the administration of such drugs by authorized personnel as part of an assisted outpatient treatment program. Such order may specify the type and dosage range of such psychotropic drugs and such order shall be effective for the duration of such assisted outpatient treatment.

(m) A copy of any court order for assisted outpatient treatment shall be served personally, or by mail, facsimile or electronic means, upon the assisted outpatient, the assisted outpatient treatment program and all others entitled to notice under the provisions of Subsection (d) of Section 303 of this Title.

(n) The initial order for assisted outpatient treatment shall be for a period of one (1) year. Within thirty (30) days prior to the expiration of the order, a licensed mental health professional employed by the Department may file a petition to extend the order of outpatient treatment. Notice shall be given in accordance with Section 303 of this Title. The court shall hear the petition, review the treatment plan and determine if the assisted outpatient continues to meet the criteria for assisted outpatient treatment and such treatment is the least restrictive alternative. If the court finds the assisted outpatient treatment should continue, it will make such an order extending the assisted treatment an additional year and order the treatment plan updated as necessary. Subsequent extensions of the order may be obtained in the same manner. If the court's disposition of the motion does not occur prior to the expiration date of the current order, the current order shall remain in effect for up to thirty (30) additional days until such disposition.

(o) In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the assisted outpatient or anyone acting on the assisted outpatient's behalf may petition the court on notice to every facility providing treatment pursuant to the assisted outpatient treatment order to stay, vacate or modify the order.

(p) Facilities providing treatment pursuant to the assisted outpatient treatment order shall petition the court for approval before instituting a proposed material change in the assisted outpatient treatment plan, unless such change is authorized by the order of the court. Such petition

shall be filed on notice to the assisted outpatient, any treatment advocate designated by the assisted outpatient pursuant to this Title, any attorney representing the assisted outpatient, and any guardian appointed by the court to represent the assisted outpatient. Not later than five (5) days after receiving such petition, excluding Saturdays, Sundays and holidays, the court shall hold a hearing on the petition; provided, that if the assisted outpatient informs the court that he or she agrees to the proposed material change, the court may approve such change without a hearing. Nonmaterial changes may be instituted to the assisted outpatient treatment plan without court approval. For the purposes of this subsection, a material change is an addition or deletion of a category of services to or from a current assisted outpatient treatment plan or any deviation, without the assisted outpatient's consent, from the terms of a current order relating to the administration of psychotropic drugs.

- (q) Where, in the clinical judgment of a licensed mental health professional:
 - (1) The assisted outpatient has failed or refused to comply with the assisted outpatient treatment;
 - (2) Efforts were made to solicit compliance; and
 - (3) Such assisted outpatient appears to be a person requiring treatment,

the licensed mental health professional may cause the assisted outpatient to be taken into protective custody pursuant to the provisions of Chapter 2 of this Title or may refer or initiate proceedings pursuant to Sections 301 through 306 of this Title for involuntary commitment to a hospital, or may return the assisted outpatient to a facility providing treatment pursuant to the assisted outpatient treatment plan to determine if the assisted outpatient will comply with the treatment plan.

Failure or refusal to comply with assisted outpatient treatment shall include, but not be limited to, a substantial failure to take medication, to submit to blood testing or urinalysis where such is part of the treatment plan, failure of such tests or failure to receive treatment for alcohol or substance abuse if such is part of the treatment plan.

(r) Failure to comply with an order of assisted outpatient treatment shall not be grounds for involuntary civil commitment or a finding of contempt of court.

Section 308. Recommitment Examination - Matters Included

A recommitment examination ordered by the court shall include, but is not limited to:

- (a) A physical evaluation;
- (b) A mental evaluation;
- (c) A social history;
- (d) A study of the individual's family and community situation;

(e) A list of available forms of care and treatment which may serve as an alternative to admission to a hospital;

(f) Powers of attorney or advance health care directives, if any; and

(g) A recommendation as to the least restrictive placement suitable to the person's needs, as identified by this section, should the individual be ordered to undergo treatment by the court.

Programs other than hospitalization to be considered shall include, but not be limited to, outpatient clinics, assisted outpatient treatment where available, extended care facilities, nursing homes, sheltered care arrangements, home care and homemaker services, and other treatment programs or suitable arrangements.

Section 309. Precommitment Screening Examination - Copy of Order to be Provided

(a) In addition to the notice requirements contained in this Title, each person ordered to undergo a precommitment screening examination shall receive:

(1) A copy of the order requiring the person to undergo the examination; and

(2) A written statement explaining what the examination will cover.

If the individual is unable to read or understand the written materials, every effort will be made to explain them in a language such person understands, and a copy of the examination findings shall be provided to the court, to the person's attorney of record, if known, and the person's treatment advocate, if any, upon completion.

Section 310. Modification of Order - Notice - Contents of Notice

(a) The court may modify an order for involuntary inpatient commitment and order alternative treatment pursuant to the provisions of this Section upon request of the person committed or the administrator of a facility to which a person has been involuntarily committed for inpatient treatment. The court shall give notice to the person affected thereby and to each individual required to receive notice pursuant to Section 303 of this Title, to appear within five (5) regular court days, or as many other days as the court may grant, and show cause why the modification shall not be made. The notice shall contain the following information:

(1) The individual ordered to undergo a program of alternative treatment to hospitalization is not complying with the previous order, or that the alternative treatment program has not been sufficient to prevent harm or injury to the person or others, or the person committed for inpatient care and treatment is eligible for discharge and that an evaluation conducted prior to discharge determined that an order for alternative treatment is necessary in order to prevent impairment or injury to the person;

(2) A statement of the facts upon which the alleged change of condition is based and a copy of any written findings entered by the court;

- (3) Notice of the time and place of the show cause hearing;
- (4) Notice of the types of modifications that the court can make pursuant to this hearing;
- (5) The witnesses who shall testify or offer evidence for the modification which are known to the court;
- (6) That the individual has the right to an attorney, and that if the individual cannot afford an attorney, one will be provided; and
- (7) That the individual has the right to cross-examine witnesses, and to call witnesses in such person's own defense.

(b) The court may only order assisted outpatient treatment if the person meets the conditions for assisted outpatient treatment provided by this Title.

Section 311. Review of Status of Persons Involuntarily Detained

(a) Persons involuntarily committed for treatment by a court shall receive review of their involuntary status at least once every three (3) months, and appropriate action shall be taken based upon this review.

(b) Any person receiving involuntary inpatient treatment, or such person's attorney, may at any time file a written request that the treatment order be reviewed by the committing court. If a review is requested, the court shall hear the matter within thirty (30) days after the request, and the court shall give notice to the person and such person's attorney and the person in charge of the facility of the time and place of the hearing. The hearing shall be to determine if the person can be treated on a less restrictive basis. At the conclusion of the hearing, the court may confirm the order of treatment, modify the order of treatment, discharge the respondent, or enter any appropriate order.