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**TOHONO O'ODHAM LEGISLATIVE  
BRANCH**

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## **PUBLIC NOTICE**

**TO:** Nation's Members  
Nation's Districts  
Executive Branch  
Judicial Branch  
Members of the Public

**FROM:** Grace Manuel, Chairperson, [Grace.Manuel@tonation-nsn.gov](mailto:Grace.Manuel@tonation-nsn.gov)  
Domestic Affairs Committee

**CC:** Domestic Affairs Committee  
Tohono O'odham Legislative Council Representatives  
Attorney General Howard Shanker  
Department of Health and Human Services

**DATE:** November 14, 2022

**SUBJECT:** Notice of Two Public Hearings on Proposed Involuntary Commitment Law and  
Deadline for Public Comments

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The Domestic Affairs Committee is providing notice of two additional public hearings to present and discuss the proposed Involuntary Commitment law.

The public hearings dates are as follows:

- November 21, 2022 at 6:00 p.m. at the Tohono O'odham High School (in-person public hearing)
- December 12, 2022 at 6:00 p.m. (virtual public hearing)

Public health and safety measures will be strictly observed at the November 21, 2022 in person public hearing. The Committee encourages anyone with symptoms of illness such as a fever or persistent cough to instead participate virtually by attending the December 12, 2022 public hearing. Anyone presenting symptoms of illness will be asked to leave. During the public

hearing, the Committee will encourage participants to sit at least three feet apart between non-household members and will require that everyone participating wear a well-fitting mask over the nose and mouth during the indoor event. The Committee will also have hand sanitizers easily available. A take away meal will also be provided.

A copy of the proposed law is attached and is also available on the Legislative Branch website under the public notice section at <https://www.tolc-nsn.gov>. A GoToMeeting link for the December 12, 2022 virtual public hearing will be provided upon request to Committee Staffer Stella Luna ahead of the December 12, 2022 virtual public hearing.

Written comments can be provided to the Domestic Affairs Committee Staffer Stella Luna by email at [Stella.Luna@tonation-nsn.gov](mailto:Stella.Luna@tonation-nsn.gov) or by U.S. Mail, Attention Stella Luna, Committee Staffer, Tohono O'odham Legislative Branch, P.O. Box 837, Sells, Arizona 85634. **The deadline to submit public comments is December 16, 2022.**

Please contact Chairperson Grace Manuel by email at [Grace.Manuel@tonation-nsn.gov](mailto:Grace.Manuel@tonation-nsn.gov) or (520) 383-5260 if there are any questions. Thank you

Attachment

DRAFT – NOT FOR PUBLICATION

**TITLE 17 – HEALTH AND SAFETY**

**CHAPTER 6 – INVOLUNTARY COMMITMENT**

**ARTICLE I – ADMINISTRATIVE PROVISIONS**

*Legislative History: Title 17 Tohono O’odham Code Chapter 6, Involuntary Commitment, was enacted [DATE] by Resolution No. XX-XXX.*

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**TITLE 17 – HEALTH AND SAFETY**

**CHAPTER 6 – INVOLUNTARY COMMITMENT**

**ARTICLE I – ADMINISTRATIVE PROVISIONS**

**Section 6101 Purpose**

- (A) This Chapter of the Tohono O’odham Code, Involuntary Commitment, shall be interpreted and construed to carry out the following purposes:
- (1) To ensure the health and safety of all citizens within the jurisdiction of the Tohono O’odham Nation;
  - (2) To protect those individuals who are believed to be experiencing a mental illness or addiction that impairs their ability to reason to such an extent that they are deemed to be a danger to themselves or others;
  - (3) To provide for the care and protection of those who are believed to be experiencing mental illness or addiction that impairs their ability to reason to such an extent that they are deemed to be a danger to themselves or others;
  - (4) To give full and just consideration to the religious and traditional preferences and practices of parties appearing before the Tohono O’odham Nation Judicial Court;
  - (5) To ensure that a program of supervision, care, and rehabilitation is available to those individuals who appear before the Tohono O’odham Nation Judicial Court; and
  - (6) To provide judicial and other procedures through which the provisions of this Chapter are executed and enforced and by which the parties are assured a fair hearing and the recognition and enforcement of their legal rights.
- (B) The foregoing purposes shall be achieved in the least restrictive means whenever possible.

**Section 6102 Use of Tohono O’odham Customs and Traditions**

- (A) The Involuntary Commitment Chapter shall be liberally interpreted in accordance with the customs and traditions of the Tohono O’odham. Evidence may be offered by any party regarding the customs and traditions of the Tohono O’odham in any proceeding conducted pursuant to this Chapter.
- (B) Evidence of Tohono O’odham custom and tradition may be admitted by the Court, and such customs and traditions may be used as governing law for purposes of proceedings conducted pursuant to this Chapter.

**Section 6103            Liability**

- (A) Any Petitioner acting in good faith upon either actual knowledge or reliable information shall not be subject to civil or criminal penalties for filing a Petition for commitment under this Chapter.

**Section 6104            Suits against the Nation**

- (A) The sovereign immunity of the Tohono O’odham Nation and every Nation’s official, tribal judge, or attorney acting on behalf of the Nation with respect to any action taken in an official capacity or in the exercise of the official powers of any such office, in any court, federal, state, or tribal is hereby reserved; nothing in this Chapter shall constitute an express or implied waiver of the Nation’s sovereign immunity.
- (B) No enforcement action taken pursuant to this Chapter, including the filing of an action by the Nation or any agency or department of the Nation in Judicial Court, shall constitute a waiver of the Nation’s sovereign immunity.

**Section 6105            Immunity of Officers, Employees, and Participants**

- (A) Officers and employees of the Tohono O’odham Nation shall be immune from suit for liability arising from the performance of their official duties in administering and enforcing this Chapter.
- (B) Any person making a complaint or report alleging grounds for Involuntary Commitment under the provisions of the Chapter shall be immune from any civil or criminal liability for making the report, unless:
  - (1) Such person made the allegation or report while knowing it was false and/or for the purpose of harming another person.

**Section 6106            Computation of Time**

- (A) In computing any period of time prescribed or allowed by this Chapter, the day of the act, event, or default from which the designated period of time begins to run, as well as any intermediate Saturdays, Sundays, and holidays, shall not be included unless otherwise stated. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or holiday. Where specified as “calendar days,” the time period shall include Saturdays, Sundays, and holidays.

**Section 6107            Restriction**

- (A) Except as specifically ordered by the Tohono O’odham Nation Judicial Court, no person subject to confinement under this Chapter shall be confined in a jail or correctional institution.

**Section 6108            Continuances**

- (A) Upon written motion of a party to the action, or upon its own motion, and for good cause, the Court may continue any hearing under this Chapter beyond the time limit within which the hearing is otherwise required to be held.
- (B) If no party objects, the Court may, upon a determination that good cause exists, grant the motion to continue. The Court’s Order shall reflect its reasons for granting the continuance.
- (C) If there is objection from a party to the motion to continue, the Court shall weigh the objection against the reasonableness of the requested continuance and shall grant the motion to continue if the Court deems it necessary and prudent, in the interest of justice, and in keeping with the purposes set forth in Section 6101.
- (D) Notwithstanding any other provision of law, if an individual has been placed on a 72 hour hold, no continuance shall be granted that would result in the disposition hearing conducted pursuant to Section 6411 of this Chapter being held more than 90 days after the hearing at which the individual was placed on the 72 hour hold unless the Court finds that there are exceptional circumstances requiring such a continuance. The Court’s written Order shall reflect its reasons for granting the continuance.

**ARTICLE II – DEFINITIONS**

**Section 6201            Interpretation**

- (A) The terms defined or used in this Chapter are to be interpreted broadly to exercise the jurisdiction of the Tohono O’odham Nation to the maximum extent permitted by law and to facilitate the authority of the Tohono O’odham Nation to protect the interests of the individuals before the Court.

**Section 6202            Definitions**

- (A) “Applicant” or “Petitioner” means the person filing the Petition to have a proposed patient committed.
- (B) “Apprehension” means the taking into custody of a person.



- (C) “Chemical Dependency” means the use of any chemical substance, legal or illegal, that creates behavioral or health problems, or both, resulting in operational impairment. The term includes alcoholism, drug dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety of an individual or the individual’s dependents. No person shall be involuntarily committed to a Mental Health Facility or detained for evaluation and treatment solely because of a Chemical Dependency, unless that condition causes them to be Seriously Mentally Ill within the meaning of the definition.
- (D) “Danger to Others” means a person who, as a result of Chemical Dependency or Mental Disorder, manifests behaviors that result in serious physical harm to others or the imminent threat thereof.
- (E) “Danger to Self” means:
- (1) Behavior that, as a result of a Chemical Dependency or Mental Disorder, constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in the light of the individual’s previous acts, it is substantially supportive of an expectation that the threat will be carried out; or
  - (2) Behavior that, as a result of a Mental Disorder or Chemical Dependency, will, without hospitalization, likely result in serious physical harm or serious illness to the person, except that this definition shall not include behavior that establishes only the condition of Gravely Disabled.
- (F) “Detention Facility” means a facility in which a person may be held pending treatment, evaluation, or court review, pursuant to the authority granted under this Chapter. The Detention Facility selected shall be the least restrictive alternative. The confinement or detention authorized under this Chapter shall not be considered a criminal detention, nor shall the detention be deemed a punishment, but rather, is an action authorized solely for the safety and well-being of the person and others.
- (G) “Emergency Apprehension” means the taking into custody of an individual who presents an imminent danger of death or serious bodily harm to another individual due to a Serious Mental Illness, or because the Seriously Mentally Ill person is themselves in imminent danger of serious harm due to their own actions.
- (H) “Emergency Situation” means a situation in which another person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be Seriously Mentally Ill, or the Seriously Mentally Ill person is themselves in imminent danger of serious harm due to their own actions.
- (I) “Evaluation” means the professional analysis described in this Chapter, as required for Involuntary Commitment hearings before the Judicial Court.

- (J) “Gravely Disabled” means a condition evidenced by behavior in which a person, as a result of a Mental Disorder, is likely to come to serious physical harm or serious illness because the person is unable to provide for their own basic physical needs.
- (K) “Immediate Family” includes mother, father, brothers, sisters, or grandparents. An aunt, uncle, cousin, or other extended family would be considered immediate family if the individual was raised in part or in whole by and with them.
- (L) “Initial Screening” means the mental health status examination described in this Section, which may be conducted to determine whether to commence Involuntary Commitment proceedings.
- (M) “Least Restrictive Alternative” means the treatment plan and setting that infringes in the least possible degree with the patient’s right to liberty and that are consistent with providing needed treatment in a safe and humane manner.
- (N) “Mental Disorder” means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
  - (1) Conditions that are primarily those of drug abuse, alcoholism or intellectual disability, unless, in addition to one or more of these conditions, the person has a mental disorder;
  - (2) The declining mental abilities that directly accompany impending death;
  - (3) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors that are abnormal and prohibited by statute unless the behavior results from a mental disorder.
  - (4) No person shall be involuntarily committed to a Mental Health Facility or detained for evaluation and treatment solely because of a Mental Disorder, unless that condition causes them to be Seriously Mentally Ill within the meaning of the definition.
- (O) “Mental Health Facility” means a public hospital or licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or addiction, or a community mental health center or any mental health clinic or treatment center. A correctional institution or facility or jail is a mental health facility in the meaning of this definition for emergency purposes only.
- (P) “Mental Health Provider” means any physician or qualified provider of mental health or social welfare services involved in caring for, treating, or rehabilitating a patient, or conducting an initial screening, or evaluation of a proposed patient. Authorized providers may include, but are not limited to Tohono O’odham Behavioral Health, Tohono

O’odham Behavioral Health contractors, Tohono O’odham Nation Health Care social workers, Crisis Mobile Teams, TONHC medical staff, San Lucy District Alcohol and Substance Abuse Program, and/or outside agencies with authorization to provide services.

- (Q) “Patient,” “Proposed Patient,” or “Respondent” means the person, whether adult or minor, who is subject to, or being considered for, the commitment proceedings set forth in this Chapter. If the person is a minor, the provisions of this Chapter shall be implemented and enforced under the jurisdiction of the Tohono O’odham Children’s Court.
- (R) “Reasonable Medical Certainty” means reasonable certainty as judged by the standards of a trained professional.
- (S) “Seriously Mentally Ill” means suffering from a Mental Disorder or Chemical Dependency, which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect their life or health. No person shall be involuntarily committed to a mental health facility or detained for evaluation and treatment because they are epileptic, mentally deficient, intellectually disabled, senile, or suffering from a mental disorder unless the condition causes them to be Seriously Mentally Ill within the meaning of the definition.

### **ARTICLE III – INVOLUNTARY COMMITMENT**

#### **Section 6301            Jurisdiction**

- (A) The Tohono O’odham Nation Judicial Court shall have exclusive jurisdiction over any Involuntary Commitment proceeding involving a member of the Tohono O’odham Nation who resides or is domiciled within the exterior boundaries of the Tohono O’odham Nation; or an individual who is a ward of this Court, notwithstanding the residence or domicile of the individual. The Tohono O’odham Nation Judicial Court shall also have concurrent jurisdiction with any other court of competent jurisdiction over an Involuntary Commitment proceeding concerning a Tohono O’odham Nation’s member who neither is domiciled within the exterior boundaries of the Tohono O’odham Nation nor is a ward of its Court. Relocation of an individual otherwise subject to the jurisdiction of this Court shall not be deemed to alter the individual’s domicile.
- (B) Individuals subject to the jurisdiction of the Tohono O’odham Nation Judicial Court include children under the age of majority who are otherwise under the jurisdiction of the Tohono O’odham Nation. Petitions for the commitment of children must be served upon the child’s legal guardian, and the child, if the child is twelve years of age or older.
  - (1) A minor 14 years of age or older who (1) objects to admission to a Mental Health Facility, or (2) is incapable of making an informed decision about treatment may be admitted to a willing Mental Health Facility upon the application and consent

of a parent or legal guardian for up to 120 hours. If the Mental Health Facility is not willing to admit the minor, an Involuntary Commitment Order must be sought and issued to detain the minor.

- (2) If the individual to be committed is a minor, the Court shall appoint a Guardian Ad Litem or other qualified individual to represent the best interest of the child during the proceedings.

**Section 6302            Transfer of Jurisdiction**

- (A) Upon Petition of the Nation through the Tohono O’odham Office of the Attorney General, or upon petition of the Patient, or Proposed Patient, of an Involuntary Commitment proceeding, the Tohono O’odham Nation Judicial Court may accept a transfer of jurisdiction from any court of competent jurisdiction involving a Tohono O’odham Nation member not domiciled or residing within the exterior boundaries of the Tohono O’odham Nation reservation; provided however, that the Tohono O’odham Nation Judicial Court may decline to accept jurisdiction over such proceedings when there is good cause to decline such jurisdiction. Likewise, the Tohono O’odham Nation Judicial Court may transfer such proceedings to another court of competent jurisdiction when in the best interest of the Patient, or Proposed Patient, subject to the acceptance of jurisdiction by that other court.
- (B) Such transfers under this Section may occur at any point in the proceedings.
- (C) Nothing in this Section shall limit this Court’s ability to accept jurisdiction from another court, even after declining jurisdiction prior.

**Section 6303            Comity**

- (A) Notwithstanding any other provision of law, the Tohono O’odham Nation Judicial Court shall give comity or full faith and credit to the public acts, records, and judicial decrees applicable to Involuntary Commitment proceedings of any court of competent jurisdiction to the same extent that such court gives reciprocal recognition to the public acts, records, and judicial decrees of the Tohono O’odham Nation Judicial Court.

**Section 6304            Closed Proceedings**

- (A) The Tohono O’odham Nation Judicial Court Involuntary Commitment proceedings shall be closed to the general public; however, the Patient’s Immediate Family shall be allowed to attend the hearing unless the Court determines that the attendance of an Immediate Family member would not be in the Patient’s best interest. Any requests for information shall be subject to the provisions of Article X of this Chapter.

**Section 6305            Severability**

- (A) If any clause, sentence, paragraph, section or part of this Chapter shall, for any reason, be

adjudicated by a proper court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

## **ARTICLE IV – INVOLUNTARY COMMITMENT PROCEEDINGS**

### **Section 6401 Commencement of Proceedings; Petition**

- (A) A proceeding in the Tohono O’odham Nation Judicial Court to declare a person to be in need of Involuntary Commitment is commenced by either:
- (1) The filing of a Petition in accordance with this Section; or
  - (2) The filing of a Notice of Emergency Apprehension in accordance with Article VI of this Chapter.
- (B) A Petition to commence proceedings for Involuntary Commitment shall be verified and shall contain all the following:
- (1) The basis for the Court’s jurisdiction;
  - (2) The name, date of birth, sex, and residence of the individual upon whom the Petition is being filed (“Respondent”);
  - (3) The name and address, if known, of the Respondent’s nearest relative;
  - (4) A plain and concise statement of the facts upon which the Petition is based, including a statement by the Petitioner alleging that the Respondent is a person who, as a result of a Serious Mental Illness, is a danger to self or others or who is Gravely Disabled, a statement by medical personnel, law enforcement, or other persons having knowledge of the Respondent’s illness, and a statement, if known, of the nature of the alleged illness;
  - (5) A statement addressing whether alternatives to Involuntary Commitment were explored and why such alternatives were rejected;
  - (6) A statement as to whether an Emergency Situation exists in which the Respondent or another individual is at risk of death or great bodily harm necessitating immediate apprehension and detention;
  - (7) Documentation, if available, in the form of medical reports, letters from persons with knowledge of circumstances necessitating Involuntary Commitment, Mental Health Provider’s statements, affidavits, police reports, and/or other reliable documents supporting the allegations in the Petition; and

- (8) A Certificate of Service stating the date and method of service of the Petition to all parties.

**Section 6402 Examination of Respondent**

- (A) Upon receiving a Petition and prior to a Disposition or Contested Hearing, the Court shall order a psychological evaluation of the Respondent by a qualified Mental Health Provider. If the Respondent is not subject to an Emergency Apprehension under Article VI, the Court shall enter an order upon Respondent to appear for the examination. If Respondent fails to appear for the examination, the Court may enter an order for immediate apprehension and detention.
- (B) The examination shall be performed by a person qualified as a Mental Health Provider under this Chapter. The examination shall provide the following information:
  - (1) Diagnostic impressions or diagnosis;
  - (2) Basis for diagnostic impressions;
  - (3) Recommendations as to whether commitment is necessary; and
  - (4) Recommendations for treatment.

**Section 6403 Notice of Proceedings**

- (A) Upon receipt of a verified Petition, which sets forth allegations to invoke the Court’s jurisdiction, the Tohono O’odham Nation Judicial Court shall issue an order setting the matter for a Probable Cause hearing.
- (B) Upon the filing of a Petition or Notice of Emergency Apprehension, the clerk of court shall:
  - (1) Set the matter for a Probable Cause hearing for the determination of whether there is probable cause either to continue the emergency detention, or to determine whether there is probable cause for Involuntary Commitment.
  - (2) The Probable Cause hearing must occur within 72 hours of emergency detention; or
  - (3) Within five days of the filing of a Petition if the Respondent is not under a 72 hour Emergency Detention.
- (C) The Notice of Probable Cause Hearing shall include an attached copy of the Petition, if filed. Tohono O’odham law enforcement, or another designated Nation’s official shall cause the same to be served upon the Respondent.

- (D) At every stage of the proceedings, the Court shall serve written notice of the date, time, and place of the hearing upon the Respondent, any person designated by the Respondent, and the spouse, parents, and/or guardians of the Respondent.
- (E) The Notice of Hearing shall include:
  - (1) The name and address of the person to whom the Notice is directed;
  - (2) The date, time, and place of the hearing to be held;
  - (3) A citation to the section and subsection of this Chapter under which the proceedings have been initiated;
  - (4) A statement that the Respondent is entitled to have an attorney present at the hearing on their Petition;
  - (5) A statement that the Respondent may testify, present documentary evidence, call witnesses, and ask questions of all witnesses;
  - (6) A statement that the potential consequences of a failure to appear at the Probable Cause or Initial hearing without good cause shown may include a finding by the Court that there is a need for immediate apprehension and detention; and that such proceedings may go forward in the absence of the Respondent.

**Section 6404            Personal Service; Service by Mail; Waiver of Service**

- (A) The filing party shall cause the notice and copy of the Petition to be served on all persons required to receive such notice and copy of the Petition either personally or by Certified First Class mail at least four days prior to the time set for the Probable Cause hearing, and at least ten days prior to the time set for the Initial hearing.
- (B) Any person may waive service of notice by a voluntary appearance entered in the minutes of the Court or by a written waiver of service filed with the clerk of court at or prior to the hearing.

**Section 6405            Notice by Publication**

- (A) If a Respondent to be served notice cannot be found, or an address cannot be determined after a diligent effort to search for the party, upon written motion, the Court may order service of notice by publication. An affidavit of due diligence search shall be on file with the Court. Service of notice by publication is not sufficient if the address or the whereabouts of a party required to receive notice is known or brought to the attention of the Court. Publishing the summons and a statement on how to obtain a copy of the pleading shall constitute service of notice by publication.

- (B) The notice shall be published at least once a week for four successive weeks in a newspaper published in the county of the last known residence of the person to whom the notice is directed.
- (C) Service is complete 60 days after the first publication.
- (D) In addition to service of notice as provided in (A) and (B) of this Section, the publishing party shall:
  - (1) Cause the Notice to be posted once in the following locations:
    - (a) The post office, community store, law enforcement office, district office for the person sought, or other commonly used public place in the community, or in the community where the person to whom notice is required to be given resides or is last known to have resided; and
    - (b) In any other place ordered by the Court where such posting is reasonably likely to give notice to the person to whom notice is required to be given. Such posting shall be posted not less than five days prior to the day of hearing on the Petition.

**Section 6406 Subpoenas**

- (A) Upon request of the Petitioner; the respondent; or on the Court’s own motion, the Court or the clerk of the Court shall issue subpoenas, to be served by the requesting party, requiring attendance and testimony of witnesses and production of papers at any hearing.

**Section 6407 Admissibility of Evidence**

- (A) Except as provided by this Chapter, the admissibility of evidence shall be governed by the Tohono O’odham Rules of Court, and in all circumstances shall be construed to provide for the rights of parties, secure fairness, eliminate unjustifiable expense and delay, to discover the truth, and to allow the issues to be justly decided.
- (B) Prior to any hearing in an Involuntary Commitment proceeding, the Court may review any reports, prepared by a qualified Mental Health Provider, Tohono O’odham Police Officer, and/or school personnel, and shall admit the reports into evidence if the person who prepared the report is available at the hearing for cross-examination, or on a showing of good cause if the witness is unavailable, and the report was disclosed to the parties no later than:
  - (1) The day of the Probable Cause hearing; or
  - (2) Three calendar days prior to the Initial hearing; or
  - (3) Five calendar days prior to any other hearing; or



- (4) On declaration of the preparer attesting to the authenticity of the report, or document, and the circumstances surrounding its preparation.

**Section 6408 Probable Cause Hearing**

- (A) At the Probable Cause hearing for Involuntary Commitment, the Tohono O’odham Nation Judicial Court shall make a determination of probable cause regarding the allegation set forth in the Petition under this Article. The Court shall find probable cause to exist if any of the following applies to the Respondent:
  - (1) Respondent is a person who is Seriously Mentally Ill; and
  - (2) Poses an immediate danger to self or others, or is Gravely Disabled; or
  - (3) Needs immediate care and treatment.
- (B) If the Court determines that there is no probable cause, the Court shall dismiss the Petition and, if the Respondent is in custody, order the release of the Respondent.
- (C) If the Court determines that probable cause exists, the Court may enter an ex-parte order for immediate apprehension and detention of the Respondent in an appropriate Mental Health Facility; or in the alternative, where an immediate safety concern as a result of an Emergency Situation does not exist, may order the Respondent to remain in the community and cooperate with services.
- (D) If the Court issues an order for apprehension and detention, a law enforcement officer, or other designated Tohono O’odham Nation official, shall serve the Respondent with a notice of the Probable Cause hearing, a copy of the Petition and detention order, and a written statement of the Respondent’s right to an attorney and the standard upon which they may be committed. The law enforcement officer or Nation official shall orally inform the Respondent that they are being taken into custody as the result of an Involuntary Commitment Petition.
- (E) Upon apprehension, the Respondent shall be examined within 72 hours to determine appropriate services.

**Section 6409 Initial Hearing**

- (A) The Initial Hearing shall address the need for continued custody and order additional testing, if necessary.
- (B) The Respondent shall have the opportunity to enter either an Admission or Denial to the allegation(s) in the Petition.
- (C) If the Respondent denies the allegation(s) in the Petition, the Court shall schedule a

Contested Hearing within 14 days of the Initial Hearing, unless there is a finding of good cause to set a date beyond the 14 days, or a waiver on the record by the Respondent to set a date beyond 14 days.

- (D) The Tohono O’odham Nation Court shall evaluate whether probable cause continues to exist for the Petition. If the Court continues to find that probable cause exists, the Court may continue to detain the Respondent, order the Respondent to begin a treatment program, order Respondent to follow medical advice, or take any other necessary action to protect the Respondent’s well-being, or the well-being of others.
- (E) If the Respondent admits the allegation(s) in the Petition, the Court shall schedule a Disposition Hearing within 14 days of the Initial Hearing, unless there is a finding of good cause to set a date beyond the 14 days, or a waiver on the record by the Respondent to set a date beyond 14 days.

**Section 6410                      Contested Hearing**

- (A) If the Respondent denies the allegation(s) in the Petition, the Court shall schedule a Contested Hearing within 14 days of the Initial Hearing, unless there is a finding of good cause to set a date beyond the 14 days, or a waiver on the record by the Respondent to set a date beyond 14 days.
- (B) The Contested Hearing shall be tried as a civil matter and conducted in an informal manner.
- (C) The Petitioner must prove by clear and convincing evidence at the Contested Hearing that the Respondent is in need of Involuntary Commitment.
- (D) The Judge shall not be bound by the rules of procedure or evidence applicable in other civil proceedings. Instead, the Judge shall admit and consider all relevant evidence presented at the Contested Hearing and shall take judicial notice of the totality of the file.
- (E) The Respondent must be present in person, unless authorized by the Court to appear by other means. All efforts will be made to have the Respondent physically present at the Contested Hearing.
- (F) Hearings shall be closed to the general public, unless a public hearing is requested by the Respondent or their authorized representative and the Court so orders.
- (G) If necessary, the Contested Hearing may be held at a Mental Health Facility or medical facility.
- (H) The Court shall have the authority to issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents, or any other physical evidence related to the determination of the case. In the absence of justification satisfactory to the Court, a person who fails to obey a subpoena may be cited and held in contempt.

**Section 6411                    Disposition Hearing**

- (A) Following an Adjudication or Admission of the allegation(s), the Court shall schedule within 14 days a Disposition Hearing to hear evidence on the question of the proper disposition and case plan to be made for the Respondent.
- (B) Before determining the appropriate disposition, the Court shall receive as a part of the record the disposition report prepared by a Mental Health Provider. The Disposition report shall include the Respondent’s case/treatment plan.

**Section 6412                    Status Review Hearings**

- (A) The Court shall conduct a Status Review hearing, in an appropriate location, at least every 45 days from the date of Disposition.
- (B) In any proceeding brought under this Chapter, the Court may order a Mental Health Provider and/or Tohono O’odham Child Welfare to assign an appropriate person to, *inter alia*, oversee the design and maintenance of a treatment plan (“Involuntary Commitment Case Manager”). This Involuntary Commitment Case Manager shall, in part, provide monthly reports to the Court, Attorney General, and the Respondent’s Attorney outlining the treatment being administered, the Respondent’s progress, and the Mental Health Facility’s recommendations including the need for continued detention. The Involuntary Commitment Case Manager shall provide the report to all persons named in this subsection within five calendar days of each review hearing addressing the progress the Respondent has made to date and the recommendations of the Case Manager and the Mental Health Facility.

**Section 6413                    Orders for Involuntary Commitment**

- (A) The Tohono O’odham Nation Court shall have the authority to issue all orders necessary to ensure the safety of individuals within the jurisdiction of the Nation, including the issuance of subpoenas, orders of restriction, warrants for protective custody, and such other orders as may be appropriate. All actions brought under this Chapter shall be decided by the Court in accordance with the Nation’s laws, customs, and traditions.
- (B) If the Court finds by clear and convincing evidence that the Respondent is in need of Involuntary Commitment due to Serious Mental Illness or Chemical Dependency, because the Respondent is a danger to self or others; or the Respondent is Gravely Disabled; or the Respondent is in need of immediate care and treatment; and no less restrictive alternative exists; the Court may order:
  - (1) Commitment to an inpatient treatment program. The order shall state that the Respondent meets the criteria for Involuntary Commitment under the laws of the Tohono O’odham Nation;
  - (2) Commitment to a community placement with attendance at appropriate outpatient

services and other court ordered requirements as recommended by the Mental Health Provider for a period of up to 180 days;

- (3) Commitment to a halfway house or other supportive housing for up to 90 days after the completion of an inpatient treatment program;
  - (4) Monitoring and supportive services as recommended by the Mental Health Provider for a period up to 180 days;
  - (5) Further assessment, if necessary;
  - (6) Authorization for the exchange of records between treatment providers, the Court, and Attorney General;
  - (7) A review of the proceedings within 45 days.
- (C) The Order for Commitment shall include the recommendations of the Tohono O’odham Behavioral Health and/or Mental Health Provider used in making its determination for treatment, and/or the length of time for the Involuntary Commitment.
- (D) Orders for Involuntary Commitment shall be filed with the Clerk of the Superior Court of Arizona, or a court of another state or tribe, as appropriate, if needed to direct placement within a facility outside the jurisdiction of the Tohono O’odham Nation. The Nation’s Judicial Court judge, or other appropriate Nation’s official, is authorized to submit other documentation and verification concerning the Nation’s Judicial Court proceedings and concerning the identity and address of the proposed patient, as may be needed for recognition of the Judicial Court order by another court. The Order may identify the agency responsible for transportation of the patient, direct that the patient be held in an appropriate detention facility pending transfer to the Mental Health Facility, and provide for follow-up coordination with the Mental Health Facility. In addition, the Court’s order shall include the following:
- (1) The legal and factual basis for the Court’s jurisdiction;
  - (2) Confirmation that the patient was provided notice of the proceedings and the opportunity to be heard;
  - (3) Confirmation that the ruling is based upon the diagnosis of a qualified Mental Health Provider; and
  - (4) Confirmation that the treatment order is the least restrictive alternative and the patient is unwilling or unable to receive treatment voluntarily.
- (E) The maximum periods of in-patient treatment which the Court may order are as follows:
- (1) 90 days for a person found to be a danger to self;

- (2) 180 days for a person found to be a danger to others;
  - (3) 365 days for a person found to be Gravely Disabled.
- (F) Orders for Involuntary Commitment shall be filed with the State of Arizona, or other state or tribe, in accordance with the laws and regulations pertaining to domestication in that jurisdiction. If the Judicial Court Order indicates specifically that the patient is in need of admittance to the Arizona State Hospital, the Petitioner shall send a copy of the Judicial Court Order to the Admissions/Legal Department, Arizona Hospital. This step is not required if the commitment order is to a facility other than the Arizona State Hospital.

**Section 6414                      Petition for Extension of Commitment**

- (A) On or before 180 days have passed since the entry of an order for commitment, order for stay of commitment, or order to continue proceedings for dismissal, but no earlier than 30 days before the end of the commitment proceedings, the Petitioner may Petition for Extension of the Commitment for a period of time not to exceed 180 days.
- (B) The Petition shall include the following:
- (1) The Petition requirements described in Article IV of this Chapter; and
  - (2) The facts upon which the allegations that the Commitment Order, Order for Stay of Commitment, or Order to Continue Proceedings for Dismissal are based; and
  - (3) A statement addressing whether alternatives to Extension of Commitment were considered and why such alternatives were rejected.
- (C) The Petition for Extension of Commitment shall allow the same procedural process and protections described in this Chapter.

**Section 6415                      Petition for Release**

- (A) The Respondent, or their authorized representative, may at any time Petition the Court for release from the Mental Health Facility.
- (B) The Petition for release need not be in any particular form. The Respondent may orally Petition the Court for release during a hearing, or may file a written Petition with the Court.
- (C) Upon receipt of a written Petition for release, the Court shall review the Petition and serve a copy upon the Petitioner, Respondent, and Mental Health Facility. Upon receipt of a written or oral Petition for release, the Court shall allow the Petitioner seven calendar days to respond.

- (D) The Mental Health Facility and/or Mental Health Provider may file a written response to the Petition within seven calendar days of receipt of notice that Respondent has filed for release.
- (E) If, after consideration of the Petition and responses, the Court finds substantial evidence that the Respondent no longer poses a danger to self or others, the Court shall hold a hearing on the matter, following the procedures set forth in this Chapter.
- (F) The findings and order of the Court shall be filed with the Clerk of Court who shall serve certified copies upon the Respondent, Petitioner, and Mental Health Facility.

**Section 6416 Substance Abuse by Pregnant Women**

- (A) Medical evidence suggests that prenatal drug and/or alcohol exposure places the child at high risk of having medical, psychological, and social problems after birth. Such affected infants are often born prematurely, have low birth weights, and other significant medical problems. The Tohono O’odham Nation recognizes the need to protect its future generations, and therefore, specifically provides for the protection of the unborn child.
- (B) The Court and the Mental Health Provider recognize that time is of the essence in providing treatment to pregnant women under this provision and will act accordingly. If the Court receives a Petition for Involuntary Commitment or other credible report alleging abuse of alcohol or drugs by a Tohono O’odham Nation member who is pregnant, or any other person who is pregnant who resides within the exterior boundaries of the Tohono O’odham Nation, the Court shall arrange, on an expedited basis, an appropriate assessment with the Mental Health Provider. All notices sent by the Court or by the Mental Health Provider shall be personally served upon the Respondent.
- (C) In lieu of court-ordered treatment, the Respondent and the Mental Health Provider, including its contracted providers, may voluntarily enter into a written agreement/treatment plan for appropriate treatment, including, but not limited to, a referral for chemical dependency assessment, regular drug/alcohol testing, chemical dependency treatment, and/or classes on prenatal care. The Mental Health Provider will provide the Court with monthly reports that outline Respondent’s compliance with the treatment plan (or lack thereof) and which may include recommendations and/or an explanation of revisions to the treatment plan. If the Mental Health Provider determines that services/intervention for purposes of this Chapter are no longer necessary it will so advise the Court. The Court will maintain jurisdiction over such matters until such time as services under this Chapter are no longer required.
- (D) If the Respondent fails to meet with the Mental Health Provider, denies the allegation(s), or fails to comply with the treatment plan, the Mental Health Provider shall advise the Court on an expedited basis and may file a Petition with the Court in accordance with Article IV of this Chapter.
- (E) The due process requirements as enumerated in Article IV of this Chapter shall be strictly

adhered to in order to protect the rights of the Respondent.

**Section 6417 Contempt**

- (A) A person who violates an order from the Tohono O’odham Nation Court may be found to be in contempt upon proof by clear and convincing evidence after a contested show cause hearing that the Respondent knowingly and willfully did not comply with an order of the Court. Contempt may include a fine not to exceed 100 dollars and/or other penalty as determined appropriate by the Court and consistent with the Indian Civil Rights Act.

**ARTICLE V – EXAMINATION AND EVALUATIONS**

**Section 6501 Examination of Respondent**

- (A) If the Petition is not accompanied by a written supportive statement of a psychiatrist, physician, clinical psychologist, or other qualified Mental Health Provider then the Court shall order the Respondent to be examined by a qualified Mental Health Provider chosen by the Respondent or one appointed by the Court.
- (B) An Evaluation pursuant to this Chapter shall be a professional analysis of the Proposed Patient’s psychological condition and shall serve as a key evidentiary basis for the Court’s hearing. The evaluation shall assess a broad range of relevant information about the Patient’s background, identity, mental status, and condition. The evaluation shall be conducted by a qualified Mental Health Provider, but the input of and evaluation by other mental health providers is encouraged to promote a balanced and professional multi-disciplinary analysis. The evaluation results may be issued in either a joint report or separate reports, as agreed upon by the Mental Health Providers.
- (C) Upon request by the Respondent, the Court shall permit the Proposed Patient to obtain a separate and independent evaluation to introduce into the Court proceedings, provided that a copy of the evaluation report is made available to the Court and to the Petitioner within a reasonable time period prior to the hearing, as established by the Court.

**ARTICLE VI – EMERGENCY APPREHENSION**

**Section 6601 Emergency Apprehension**

- (A) In an Emergency Situation as defined in Article II, Section 6202 of this Chapter, a physician may treat a patient against their will to prevent harm to the life and limb of the patient or others.
- (B) Child Welfare shall be immediately notified if the person detained is a minor.
- (C) If an Emergency Situation occurs during normal working hours, a Petition will be filed

with the Court. If the Court finds that an Emergency Situation exists, a court order committing the patient to an appropriate Mental Health Facility for evaluation and treatment until the emergency no longer exists as determined by the Mental Health Provider or other appropriate party, but not to exceed 72 hours, will be issued.

If an Emergency Situation arises outside of normal working hours, the Patient may be admitted by a physician or other qualified Mental Health Provider to an appropriate Mental Health Facility for evaluation and treatment. On the next working day, the Court shall be provided with written documentation of the Emergency Situation. A Petition for Involuntary Commitment must also be filed with the Court on the next working day. If the Court finds on the basis of the documentation provided that probable cause exists, a court order committing the Patient to an appropriate Mental Health Facility for evaluation and treatment for a period not to exceed 72 hours will be issued.

- (D) Any person held under this Article must be released from the facility in which they are being held upon the expiration of the 72 hours unless the Court orders the person to be held longer. No person may be held for longer than 72 hours pursuant to this Article without having a Probable Cause Hearing before a Judicial Court judge. If no hearing is held within 72 hours of the placement of the emergency detention, excluding Saturdays, Sundays, and legal holidays, the Mental Health Facility must release the person.

**Section 6602                    Authorization for Apprehension and Transportation**

- (A) In an Emergency Situation as defined in Article II, Section 6202 of this Chapter, Tohono O’odham law enforcement is authorized to apprehend and take into custodial detention without a warrant an individual whom the officer has reasonable cause to believe poses an immediate danger to self or to others due to an apparent mental disorder or chemical dependency, and who appears in need of immediate mental health care and treatment.
- (B) Tohono O’odham law enforcement is authorized to apprehend and take into custodial detention any individual named under a valid Emergency Detention Order.
- (C) Tohono O’odham law enforcement is authorized to transport the detained individual to an appropriate Mental Health Facility.

**Section 6603                    Requirements Following Emergency Apprehension**

- (A) Immediately following the emergency apprehension of an individual under this Chapter, Tohono O’odham law enforcement must notify the Tohono O’odham Attorney General’s Office.
- (B) Upon receipt of notice from Tohono O’odham law enforcement of the emergency apprehension of an individual under this Chapter, the Tohono O’odham Attorney General’s Office shall submit to the Tohono O’odham Nation Judicial Court a Notice of Emergency Apprehension.



- (C) The Tohono O’odham Nation Judicial Court may order the continued custodial detention of a person detained under this Chapter, pending a Probable Cause Hearing.
- (D) The Tohono O’odham Nation Judicial Court must hold a Probable Cause Hearing within 72 hours of the apprehension of the individual by Tohono O’odham law enforcement.
- (E) The individual apprehended must be informed by the Court of the reason(s) why the individual is being held to determine whether a formal Petition for Involuntary Commitment is warranted. If the individual is under the age of majority, their parent or other legal guardian must be notified.

**Section 6604                      Duration of Emergency Hold**

- (A) Any person held under this Article may be held up to 72 hours, exclusive of Saturdays, Sundays, and legal holidays after admission. If a Petition for the commitment of the person is filed in the Tohono O’odham Nation Judicial Court, the Court may issue a judicial hold order pursuant to Article IV of this Chapter.
- (B) During the 72 hour hold period under this Article no court may release any person held under this Article without a written Petition for release and a hearing on that Petition. The Petition must be consistent with the Petition standards set forth in Article IV of this Chapter. The hearing must be held as soon as practicable and not inconsistent with the procedures set forth in this Chapter. The hearing may be conducted via telephonic conference or other means available as long as the parties can hear and communicate with each other. If the Court orders the release of the person, it shall issue an order to the effect along with written findings supporting the release. A court ordered release may not be delayed pending the order being issued. The Court, upon ordering a release of a person held under this Article, shall notify all relevant parties of the release. For purposes of this Section, all relevant parties includes:
  - (1) Any specific individuals identified in the Petition or in the record presented at the summary hearing who might be endangered if the person held is released; and
  - (2) The Mental Health Provider whose information is used as the basis for the hold; and
  - (3) Tohono O’odham Nation Police Department; and
  - (4) Tohono O’odham Behavioral Health; and
  - (5) The Mental Health Facility where the Respondent is being held; and
  - (6) Petitioner.

## ARTICLE VII – STAYED AND CONTINUED PROCEEDINGS

### Section 6701            **General**

- (A) This Article applies to Involuntary Commitments filed under Article IV of this Chapter.

### Section 6702            **Stayed Orders of Commitment**

- (A) The Tohono O’odham Nation Judicial Court may, upon the agreement of the Respondent and the Petitioner, stay the Involuntary Commitment conditioned on the Respondent’s successful completion of terms agreed upon by the Respondent and Petitioner. The terms under which the commitment shall be stayed must be clearly articulated on the record at the time of the hearing. The Court shall issue an order staying the commitment of the Respondent and ordering the terms as agreed upon by the Respondent and Petitioner.
- (B) Stayed orders of Commitment shall be reviewed at least every 45 days.
- (C) The Involuntary Commitment Case Manager shall furnish monthly reports to the Court outlining the treatment being administered, the Respondent’ progress, and the Mental Health Facility’s recommendation as to the need for continued services.
- (D) The Respondent retains all the rights provided in this Chapter.
- (E) If the Respondent does not successfully complete the terms agreed upon and ordered by the Court, the Court may grant the following relief upon Motion of the Petitioner:
- (1) Where the Petitioner has demonstrated probable cause that the noncompliance with the terms of the stayed commitment has created an immediate danger to the Respondent or others, the Court may order the apprehension and detention of the Respondent pursuant to Section 6602 of this Chapter.
  - (2) The procedural protections described in this Chapter shall apply.
  - (3) The Court may lift the stay of commitment upon clear and convincing evidence presented at a contested hearing, that the Respondent is a danger to themselves or others because of the non-compliance.

### Section 6703            **Proceedings Continued for Dismissal**

- (A) The Tohono O’odham Nation Judicial Court may, upon agreement of the Respondent and Petitioner, continue the Involuntary Commitment proceedings for dismissal conditioned on Respondent’s successful completion of services as agreed upon by the Respondent and the Petitioner. The terms under which the proceedings may be continued must be clearly articulated on the record at the time of the hearing. The Court may issue an order continuing the proceedings and ordering the terms as agreed upon by the Respondent and

Petitioner, and any other terms as the Court deems appropriate.

- (B) Continued proceedings may only be used where the Mental Health Provider has recommended outpatient treatment.
- (C) Proceedings continued for dismissal shall be reviewed at least every 45 days.
- (D) The Involuntary Commitment Case Manager shall furnish monthly reports to the Court outlining the treatment being administered, the Respondent’s progress, and the Mental Health Facility’s recommendations.
- (E) The Respondent retains all the rights provided in this Chapter.
- (F) If the Respondent does not successfully complete the terms agreed upon and ordered by the Court, the Court may grant the following relief upon motion of the Petitioner:
  - (1) Where the Petitioner has demonstrated probable cause that the noncompliance with the terms of the Stayed or Continued Commitment has created an immediate danger to the Respondent or others, the Court may order the apprehension and detention of the Respondent pursuant to Article VI of this Chapter.
  - (2) The procedural protections described in this Chapter shall apply.
  - (3) The Court may lift the Stay of Commitment upon clear and convincing evidence presented at a Contested Hearing, that the Respondent is a danger to themselves or others because of the non-compliance.

**Section 6704                      Petition for Recommitment**

- (A) Involuntary Commitment Petitions filed within 365 days of dismissal of previous commitment proceedings shall be titled “Petition for Recommitment.”

**Section 6705                      Contents of Petition**

- (A) Petitions for Recommitment shall contain all of the information in Article IV of this Chapter, and shall contain the following:
  - (1) History of previous commitments;
  - (2) Services provided to date;
  - (3) Progress by Respondent;
  - (4) Evidence that the Respondent continues to be a danger to themselves or others or continues to be Gravely Ill;

- (5) A Mental Health Provider’s statement made after a full examination of the Respondent made within 15 days of the filing of the Petition supporting recommitment;
- (6) Explanation of the current needs of the Respondent; and
- (7) Recommendations for services.

**Section 6706 Procedure**

- (A) The Petitioner shall file the Petition and supporting documents with the Court and shall personally serve a copy on the Respondent. The Respondent’s attorney may be served by mail, facsimile, or email.
- (B) Upon receipt of the Petition, the Court shall follow the procedures for commitment as described in this Chapter.
- (C) The Respondent shall retain all rights in proceedings for recommitment as afforded during the Involuntary Commitment process under this Chapter.

**ARTICLE VIII – BURDEN OF PROOF**

**Section 6801 Burden of Proof**

- (A) The standard of proof to order evaluation, release records, and/or apprehend and detain a Respondent is Probable Cause that the Respondent is in need of Involuntary Commitment.
- (B) The standard of proof to order the Involuntary Commitment of a Respondent is Clear and Convincing Evidence that the Respondent is in need of Involuntary Commitment.
- (C) The burden of proving by clear and convincing evidence that the Respondent is in need of Involuntary Commitment rests with the Petitioner.
- (D) The burden of proving there is probable cause to release records, order evaluation, and/or apprehend and detain a Respondent is on the party moving the Court for such an order.

**ARTICLE IX – RESPONDENT’S RIGHTS**

**Section 6901 General Rights**

- (A) Respondent has the right to access personal medical records. Every person subject to a proceeding or receiving services pursuant to this Chapter and the Patient’s attorney shall have complete access to all medical records relevant to the person’s commitment. A

Mental Health Provider may require an attorney to provide proof of representation of the Patient or authorization signed by the Patient.

- (B) All persons admitted or committed to a Mental Health Facility shall be notified in writing of their rights regarding hospitalization and other treatment at the time of admission. This notification must include:
- (1) The right to counsel including the name and contact information for the Respondent’s court appointed counsel, pursuant to Section 6902 of this Chapter;
  - (2) The right to be present at the hearing either in person or via telephone;
  - (3) That the Petitioner bears the burden of providing by clear and convincing evidence that the commitment of the Respondent is necessary;
  - (4) The right to provide testimony, present documentary evidence, call witnesses, and ask questions of all witnesses;
  - (5) The right to obtain an additional examination; provided that, if detained for emergency treatment, this latter right may be exercised only after commitment.

**Section 6902                      Court Appointed Advocates**

- (A) In any proceeding pursuant to this Chapter, the Tohono O’odham Nation Judicial Court may, in its discretion, appoint an advocate or attorney to represent the individual who is subject to the Involuntary Commitment, subject to the availability of such advocate or attorney to undertake such representation. If the individual is a minor, the court shall appoint a Guardian Ad Litem or other qualified individual pursuant to Article III § 6301 (B)(2).

**Section 6903                      Treatment by Traditional Means**

- (A) Nothing in this Chapter shall be construed to preclude the supplementary treatment by traditional means for any person who desires such treatment or to a minor if their parent, guardian, or conservator desires such treatment; so long as such treatment is not detrimental to the Patient’s condition, based on application of generally accepted psychological and/or medical standards.

**ARTICLE X – DISCLOSURE/CONFIDENTIALITY**

**Section 61001                      Purpose**

- (A) The provisions of this Article ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the Respondent.

**Section 61002           Records; Method of Preservation; Contents**

- (A)    A record of all hearings under this Chapter shall be made and preserved by stenographic, mechanical, or electronic recording.
- (B)    The official court record of the proceedings under this Chapter shall include complaints, Petitions, motions, memoranda, briefs, reports, findings of the Court, court orders, and other reports and papers filed with the Court.
- (C)    Official court records shall not be destroyed until a ten year period has passed from the Disposition of the Patient.

**Section 61003           Confidentiality of Records**

- (A)    Court records under this Chapter are sealed. All records of commitment proceedings before the Tohono O’odham Nation Court shall be sealed and are available only to the following persons:
  - (1)    The Respondent;
  - (2)    The Petitioner;
  - (3)    The Tohono O’odham Office of the Attorney General;
  - (4)    Court Personnel;
  - (5)    Mental Health Providers while they are providing court ordered services through the Involuntary Commitment proceedings;
  - (6)    The Tohono O’odham Prosecutor’s Office;
  - (7)    Other persons or agencies by order of the Tohono O’odham Nation Judicial Court who have demonstrated a compelling interest in knowledge of the Involuntary Commitment records.

**Section 61004           Records of Tohono O’odham Nation Behavioral Health**

- (A)    Records of Tohono O’odham Behavioral Health are considered private protected records which cannot be released except under the following circumstances:
  - (1)    Records of Tohono O’odham Behavioral Health may be released to the Tohono O’odham Office of the Attorney General, the Court, the Respondent, the Petitioner, and the Respondent’s Attorney.
  - (2)    Records of Tohono O’odham Behavioral Health pertaining to the mental health

and chemical use of the Respondent may be released to Mental Health Providers currently providing treatment or evaluating whether they are able to provide treatment upon order of the Tohono O’odham Nation Court for the purpose of determining appropriate treatment and services for the Respondent.

- (3) Records of Tohono O’odham Behavioral Health may be released to a County Health and Social Services Agency for the purpose of supporting or opposing a Petition for Involuntary Commitment upon order of the Tohono O’odham Nation Court.

**Section 61005            Records of Other Health Care Providers**

- (A) Records of other health care providers shall include physician, hospital, emergency room, psychiatric, and chemical dependency records.
- (B) Records of other health care providers may be released to Tohono O’odham Behavioral Health, the Tohono O’odham Office of the Attorney General, and the Tohono O’odham Nation Judicial Court upon order of the Tohono O’odham Nation Court.
- (C) Records of other health care providers in the possession of the Office of the Attorney General or Tohono O’odham Behavioral Health may be released to current treatment providers by order of the Tohono O’odham Nation Court upon a showing that the records are necessary to determine or effect appropriate treatment for the Respondent.
- (D) Records of other health care providers in the possession of the Office of the Attorney General or Tohono O’odham Behavioral Health may be released to a County social service agency or its attorney by order of the Tohono O’odham Nation Court upon a showing that the records are necessary for the County to file Involuntary Commitment proceedings and that such proceedings cannot be filed in the Tohono O’odham Nation Court.

**ARTICLE XI – RIGHT TO APPEAL**

**Section 61101            Appeals**

- (A) The Respondent shall have the right to appeal any final adjudicatory decision or order issued by the Tohono O’odham Nation Judicial Court to the Tohono O’odham Nation Judicial Court of Appeals.
- (B) The Tohono O’odham Nation Judicial Court of Appeals shall have exclusive jurisdiction over any appeals made under this Chapter.
- (C) Appeals from the lower Court’s decisions or orders shall be made to the Tohono O’odham Nation Judicial Court of Appeals pursuant to the Rules of Appellate Procedure articulated in Title 6, Chapter 3, Section 11 of the Tohono O’odham Rules of Court.

- (D) The Respondent shall have the right to an expedited hearing. The appeal shall be limited to a review of the proceedings of the lower Court for Abuse of Discretion, and shall not be a de novo hearing.

## **ARTICLE XII – COMPETENCY FOR PURPOSES OF CRIMINAL PROCEEDINGS**

### **Section 61201            Competency**

- (A) Nothing in this Chapter shall be construed to determine whether an individual has competency to testify or stand trial in criminal proceedings.

## **ARTICLE XIII – TRAINING**

### **Section 61301            Generally**

- (A) To promote coordination among all involved agencies and departments, and to provide a broader understanding of the unique challenges and needs presented by those persons who pose a risk to self or others because of Serious Mental Illness or Chemical Dependency, the Tohono O’odham Behavioral Health Department, including its contracted providers, shall provide for comprehensive training sessions not less than once per year for all social service, law enforcement, and mental health personnel and others who provide services for the individuals subject to the provisions of this Chapter.