

**Ordinance No. 51. – Resolution H-87-96 approves the Hopi Tribal Mental Health Ordinance.**

HOPI TRIBAL COUNCIL  
RESOLUTION  
H-87-96

WHEREAS, Pursuant to the Constitution and By-Laws of the Hopi Tribe, ARTICLE VI-  
POWERS OF THE TRIBAL COUNCIL, SECTION 1 (g) of the Constitution, the  
Hopi Tribal Council has the power to make ordinances to protect the peace and  
welfare of the Tribe; and

WHEREAS, The Tribal Council recognizes the needs to provide, by ordinance, for the  
involuntary civil commitment of persons, who, as a result of mental disorders, are  
a danger to themselves or to others, persistently and acutely disabled, or gravely  
disabled; and

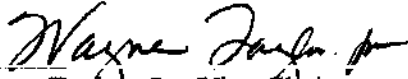
WHEREAS, A Hopi Tribal Mental Health Ordinance has been developed to provide for fair  
and objective proceedings through which the Tribal Court may issue involuntary  
civic commitment orders, enforceable in the courts of the State of Arizona.

NOW THEREFORE BE IT RESOLVED that the Hopi Tribal Council hereby enacts the Hopi  
Tribal Mental Health Ordinance.

HOPi TRIBAL COUNCIL  
RESOLUTION  
H-87-96

CERTIFICATION

The foregoing resolution was duly adopted by the Hopi Tribal Council on May 28, 1996, at a meeting at which a quorum was present with a vote of 9 in favor, 3 opposed, 3 abstaining (Vice Chairman presiding and not voting) pursuant to the authority vested in the Hopi Tribal Council by SECTION 1(a) and (g) of ARTICLE VI-POWERS OF THE TRIBAL COUNCIL, as amended on December 07, 1993, of the Hopi Tribal Constitution and By-Laws of the Hopi Tribe of Arizona, as ratified by the Tribe on October 24, 1936, and approved by the Secretary of Interior on December 19, 1936, pursuant to Section 16 of the Act of June 18, 1934. Said resolution is effective as of the date of adoption and does not require Secretarial approval.

  
Wayne Taylor, Jr., Vice Chairman  
Hopi Tribal Council

ATTEST:

  
Mary A. Felter, Tribal Secretary  
Hopi Tribal Council

**The Hopi Tribe  
Mental Health Ordinance 51**

**CHAPTER 1**

**General Provisions**

**SECTION 1.00      PURPOSE**

The purpose of this Ordinance is to provide for fair and objective civil commitment proceedings through which the Hopi Tribal Court may order mental health evaluations and treatment of persons who, as a result of mental disorders, are a danger to self or others, gravely disabled, or persistently and acutely disabled, and who are unwilling or unable to undergo such evaluations and treatment voluntarily.

**SECTION 1.01      AMENDMENTS**

This Ordinance may be amended by resolution of the Hopi Tribal Council.

**SECTION 1.02      CIVIL PROCEEDINGS**

The judicial proceedings authorized under this Ordinance shall be civil in nature and, except as provided otherwise in this Ordinance, shall be governed by the Hopi rules of civil procedure and evidence.

**SECTION 1.03      SHORT TITLE**

This Ordinance may be known and cited as the "Hopi Tribal Mental Health Ordinance."

**SECTION 1.04      EFFECTIVE DATE**

This Ordinance shall become effective upon its passage by the Hopi Tribal Council.

## **SECTION 1.05 REPEAL**

This Ordinance supersedes and replaces any previous enactments of the Hopi Tribal Council that are in conflict with its provisions.

## **SECTION 1.06 SEVERABILITY**

If any portion of this Ordinance shall be held invalid by a court of competent jurisdiction that portion shall cease to be operative, but the remainder of this ordinance shall continue in full force and effect.

## **SECTION 1.07 SOVEREIGN IMMUNITY**

Nothing in this Ordinance shall be construed as a waiver, in whole or in part, of the sovereign immunity of the Hopi Tribe.

## **SECTION 1.08 DEFINITIONS**

As used in this Ordinance, unless the context otherwise requires:

- A. "Court" means the Hopi Trial Court of the Hopi Tribe.
- B. "Danger to others" means that, as a result of a mental disorder, a person's continued behavior can reasonably be expected to result in serious physical harm to others.
- C. "Danger to self" means that, as a result of a mental disorder, a person's continued behavior can reasonably be expected to result in serious physical harm to that person, including attempted suicide or the serious threat thereof. It does not include behavior which establishes only the condition of "gravely disabled."
- D. "Gravely disabled" means that, as a result of a mental disorder, a person is unable to provide for his or her basic physical needs and, without treatment, will likely come to serious physical harm or serious physical illness.
- E. "Least restrictive treatment alternative" means the appropriate and available program or plan for treating a patient's mental disorder that will infringe in the least possible degree with the patient's right to liberty.
- F. "Mental disorder" means a substantial derangement of a person's thought, cognition or memory, as distinguished from:
  - 1. Conditions which are primarily those of drug abuse, alcoholism or mental

- retardation;
  - 2. The declining mental abilities that directly accompany impending death; and
  - 3. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by law.
- G. "Persistently and acutely disabled" means a severe mental disorder that:
- 1. Causes a person to suffer, or, if not treated, has a substantial probability of causing a person to suffer, severe and abnormal mental, emotional or physical harm resulting in significant impairment of the person's judgement, reason, or capacity to recognize reality;
  - 2. Substantially impairs the person's capacity to make informed decisions regarding treatment; and
  - 3. Has a reasonable probability of being treatable by outpatient, inpatient, or combined outpatient/inpatient treatment.
- H. "Physician" means a medical doctor or doctor of osteopathy who is either:
- 1. Licensed in the state of Arizona; or
  - 2. Licensed in a state other than Arizona and serving on the staff of a hospital located in Arizona that is operated or licensed by the United States government.
- I. "Psychiatrist" means a physician who has completed three years of graduate training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association.

## **SECTION 1.09**

### **DUTY OF THE TRIBAL PROSECUTOR**

The Tribal Prosecutor may represent the individual filing a petition for evaluation and treatment pursuant to this Ordinance in any judicial proceedings concerning the petition. The Tribal Prosecutor shall represent such an individual if that individual is acting in her or his official capacity as an employee of the Hopi Tribe, the Indian Health Service, or the Bureau of Indian Affairs.

## CHAPTER 2

### Court-Ordered Mental Health Evaluations

#### Section 2.01

#### PETITION FOR EVALUATION AND TREATMENT

- A. Any competent adult individual may file a petition with the Court requesting an order for a mental health evaluation and possible treatment of a person who is alleged to be, as a result of a mental disorder, a danger to self, a danger to others, gravely disabled or persistently and acutely disabled, and who is unwilling or unable to undergo a voluntary evaluation and/or treatment.
- B. The petition for evaluation and treatment shall contain:
1. The name and address of the individual filing the petition, his or her official title, and his or her interest in the case;
  2. The name of the proposed patient, his or her age, address or location, marital status, occupation, Hopi village affiliation (if any) and the names and addresses of his or her nearest relatives and/or guardian;
  3. A description of the facts and circumstances which called the proposed patient to the attention of the petitioner;
  4. An allegation that the proposed patient requires a mental health evaluation and subsequent treatment because he or she is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled;
  5. An allegation that the proposed patient is unwilling to accept or unable to undergo a mental health evaluation and subsequent treatment voluntarily;
  6. A summary of the facts upon which these allegations are based, including a statement by the petitioner describing the specific nature of the danger or disability;
  7. A request that the Court issue an order requiring the proposed patient to undergo a mental health evaluation and, possibly, a period of treatment; and
  8. Such other information as the Court, by rule or order, may require.

- C. A copy of the petition shall be served on the proposed patient in the same manner as a civil complaint under the Hopi rules of civil procedure.

**SECTION 2.02**

**APPOINTMENT OF A GUARDIAN AD LITEM**

- A. Upon the filing of the Petition for Evaluation and Treatment, the Court shall appoint a guardian ad litem to represent the proposed patient in any proceedings authorized under this Ordinance.
- B. The guardian ad litem's representation shall cease when the Court receives notice, pursuant to Section 2.03 of this Ordinance, that the Village of which the proposed patient is a member has appointed a guardian to represent that person, or when an attorney appears in any proceeding authorized under this Ordinance on behalf of the proposed patient.

**SECTION 2.03**

**NOTICE TO VILLAGE**

- A. Within 24 hours after the filing of a Petition for evaluation pursuant Section 2.01 of this Ordinance, the Court shall notify the leader of the Village of which the proposed patient is a member, if any, that:
  - 1. A petition has been filed with the Court requesting a mental health evaluation and possible treatment of the Village member;
  - 2. The Court has appointed [Name and address of a the guardian ad litem appointed pursuant to Section 2.02] as a guardian ad litem to represent the Village member;
  - 2. Pursuant to Article III, Section 2, Paragraph (a) of the Constitution of the Hopi Tribe, the Village has the power to appoint a guardian for the Village member;
  - 3. If the Village has appointed a different person as a guardian for the member, or if the Village wishes to appoint a guardian other than the guardian ad litem to represent the member in any proceedings authorized under the Hopi Tribal Mental Health Ordinance, it should inform the court of that guardian's name and address within 24 hours from the receipt of this notice; and
  - 4. If the Court is not notified by the Village within 24 hours of the

receipt of this notice of the name and address of a guardian appointed by the Village, then the guardian ad litem appointed by the Court will continue to represent the Village member in any proceedings authorized under the Hopi Tribal Mental Health Ordinance.

- B. The notices required by subsection A of this Section will be proper if made:
1. Orally, in person or by telephone, by a person authorized by the Court or Village to provide such notice and attested to in writing by that person; or
  2. In writing and personally delivered to the Village leader or clerk of the Court by a person authorized by the Village or Court to deliver such notice.

#### **SECTION 2.04**

#### **DETENTION FOR PURPOSE OF EVALUATION**

- A. The Court may order the apprehension, transportation and custodial detention of a proposed patient by a law enforcement agency having jurisdiction within the Hopi Reservation for the purpose of a mental health evaluation if, from the face of the petition, the court finds that there is reasonable cause to believe that the proposed patient is likely to present a danger to self or others as a result of a mental disorder.
- B. A proposed patient detained pursuant to this section shall be informed of the reasons for his or her detention, that he or she must submit to a mental health evaluation, and that he or she may, within 24 hours, request a hearing before the Court.
- C. A proposed patient detained pursuant to this section shall have a right to a hearing before the Court to determine whether he or she should be detained further for a mental health evaluation or whether he or she will voluntarily submit to a mental health evaluation as ordered by the Court. The hearing shall be held upon request of the proposed patient, his or her legal counsel, or his or her guardian ad litem. The hearing shall be held within 48 hours from the time the request for the hearing is received by the Court. The right to a hearing will be waived unless a request for a hearing is made within 24 hours from the time at which the proposed patient is taken into custody.

#### **SECTION 2.05**

#### **ORDER FOR EVALUATION**

The Court shall order the proposed patient to submit to a mental health evaluation by one psychiatrist and one physician, or by two physicians if a psychiatrist is not available, if, from review of the Petition for Evaluation, there is reasonable cause to believe that the proposed patient is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled. The order of the Court shall designate the time and place for the evaluation, which shall begin no later than 24 hours from the hour at which the order is issued. If the Court has not ordered the detention of the proposed patient, or if he or she is not otherwise in custody, and he or she refuses to submit to the evaluation, then the Court may order the detention of the proposed patient pursuant to Section 2.04 of this Ordinance.

#### **SECTION 2.06      EVALUATION**

The persons specified in the court's order shall evaluate the mental and physical health of the proposed patient to determine whether or not the proposed patient is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled. During the time when a proposed patient is in custodial detention for purposes of an evaluation, he or she shall receive such care and treatment as is required by his or her condition.

#### **SECTION 2.07      POSSIBLE DISPOSITIONS UPON EVALUATION**

- A. At the conclusion of an evaluation conducted pursuant to Section 2.06 of this Ordinance, each attending physician shall provide a written report to the Court, the petitioner and his or her legal counsel (if any), the proposed patient and his or her legal counsel or guardian ad litem, stating his or her conclusion as to whether or not the proposed patient is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled, and summarizing the reasons for this conclusion.
- B. If, upon review of the reports submitted by the attending physicians, the Court finds that both attending physicians concluded that the proposed patient is not, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled, then the Court shall immediately order the release of the proposed patient, if he or she was in custodial detention, and order the dismissal of the petition for evaluation and treatment.
- C. If, upon review of the reports submitted by the attending physicians, the Court finds that one or both of the attending physicians concluded that the proposed patient is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled, then Court shall proceed on the Petition for Evaluation and Treatment according to the terms of Chapter 3 of

this Ordinance.

## CHAPTER 3

### Court-Ordered Treatment

#### SECTION 3.03

#### HEARING ON COURT-ORDERED TREATMENT

- A. If, pursuant to Section 2.07 (C) of this Ordinance, the Court is required to proceed on the Petition for Evaluation and Treatment, then the Court shall hold a hearing to determine whether or not:
1. the proposed patient is in need of treatment because he or she is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled;
  2. the proposed patient is unwilling or unable to accept treatment voluntarily; and
  3. the Court should issue an order requiring the patient to undergo a period of treatment.
- B. The hearing shall be held at a specified time at the courtroom or other place within the Hopi Reservation which the Court may designate to insure the comfort and safety of the proposed patient and others who will be in attendance. The hearing shall be held no later than seven days after the receipt by the Court of the notice from the attending physicians, unless the proposed patient, or his or her legal counsel or guardian ad litem, requests a continuance, which the court may, in the best interest of the proposed patient, grant for a maximum of seven days.
- C. At least seventy-two hours before the Court conducts the hearing on court-ordered treatment, notice of the hearing shall be personally served upon the petitioner or his or her legal counsel (if any) and the proposed patient and his or her legal counsel or guardian ad litem. The notice shall inform the proposed patient of the purpose of the hearing and of the proposed patient's right to be represented by legal counsel at his or her own expense.
- D. The proposed patient and his or her attorney or guardian ad litem shall be present at the hearing unless the court finds by clear and convincing evidence

that, for medical reasons, the proposed patient is unable to be present at the hearing and the hearing cannot be conducted where the proposed patient is being treated or confined.

- E. The evidence presented at the hearing shall, at a minimum, include:
  - 1. testimony from two or more witnesses acquainted with the proposed patient at the time when the proposed patient was allegedly suffering from a mental disorder; and
  - 2. testimony from the two physicians (or the physicians and psychiatrist) who performed the evaluation of the proposed patient pursuant to Chapter 2 of this Ordinance; and
  - 3. testimony from qualified expert witnesses concerning the treatment alternatives that are appropriate and available for the care and treatment of the proposed patient.
- F. Each physician or psychiatrist testifying at the hearing shall testify, based upon his or her personal examination of the proposed patient, as to:
  - 1. whether the proposed patient is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled;
  - 2. the specific nature and extent of any such danger or disability; and
  - 3. whether or not the proposed patient requires further treatment.
- G. The clinical record of the proposed patient shall be available at the hearing and may be presented as evidence, in full or in part, at the request of the Court, the proposed patient or the petitioner.

**Section 3.04**

**ORDER FOR TREATMENT**

- A. If, following a hearing on court-ordered treatment, the Court finds by clear and convincing evidence that the proposed patient is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled, and in need of treatment which he or she is unwilling or unable to accept voluntarily, then the Court shall order him or her to undergo one of the following:
  - 1. Treatment in an outpatient program;

2. Treatment in a combined outpatient/inpatient program; or
  3. Inpatient treatment in the State Hospital or in another appropriate and secure facility, upon consent of such facility.
- B. The Court shall consider all available and appropriate alternatives for the care and treatment of the patient and shall order the least restrictive treatment alternative.
- C. The Court may order treatment in an outpatient or combined outpatient/inpatient program pursuant to Subsection A, paragraphs 1 and 2 of this Section if the Court determines that:
1. The patient does not require continuous inpatient hospitalization;
  2. The patient will be more appropriately treated in either an outpatient program or in a combined outpatient/inpatient program;
  3. The patient will likely follow a prescribed outpatient treatment plan if so ordered; and
  4. The patient will not likely become dangerous or suffer serious physical harm, serious illness or further deterioration if he or she follows a prescribed outpatient treatment plan.
- D. An order issued pursuant to this section requiring the patient to undergo treatment in either an outpatient program or in a combined outpatient/inpatient program shall not exceed three hundred and sixty-five days.
- E. An order issued pursuant to this section requiring the patient to undergo inpatient treatment shall not exceed:
1. Ninety days for a person found to be a danger to self;
  2. One hundred and eighty days for a person found to be a danger to others;
  3. One hundred and eighty days for a person found to be persistently and acutely disabled; or
  4. Three hundred and sixty-five days for a person found to be gravely disabled.

- A. An order for treatment issued pursuant to Section 3.04 of this Ordinance shall contain the following findings:
1. That the Court had subject-matter jurisdiction over the Petition for Evaluation and Treatment and personal jurisdiction over the proposed patient (specifying the legal and factual bases for the Court's jurisdiction);
  2. That the proposed patient received notice of the Petition for Evaluation and Treatment and the allegations regarding his or her mental condition and had the opportunity to be heard with the assistance of a person recognized by the Court as competent to represent the proposed patient;
  3. That, based upon an evaluation of the proposed patient by two physicians (or by a psychiatrist and a physician), the proposed patient is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled; and
  4. That the treatment ordered is the least restrictive treatment that is available and appropriate to the needs of the proposed patient, and the proposed patient is unwilling or unable to receive this treatment voluntarily.
- B. The order for treatment shall also contain the following information:
1. The address and county of the Hopi Tribal Court;
  2. The date the order for treatment was entered;
  3. The name, address and location of the proposed patient;
  4. The names and addresses of any attorneys, guardians ad litem or other persons with legal standing to represent the proposed patient and a brief statement of their authority and relationship; and
  5. The name of the Tribal Prosecutor and the business address at which he or she can receive service of notices or other documents relating to the order for treatment.

## Chapter 4

### Rights of Proposed Patients

#### SECTION 4.01 CIVIL RIGHTS OF A PROPOSED PATIENT

- A. Every person undergoing evaluation and treatment pursuant to this Ordinance shall not be denied any civil right, including, but not limited to:
1. the right to dispose of property;
  2. the right to sue and be sued;
  3. the right to enter into contractual relationships; and
  4. the right to vote.
- B. Court-ordered evaluation and treatment pursuant to this Ordinance is not a determination of legal incompetency.

#### SECTION 4.02 DISCRIMINATION PROHIBITED

- A. A person who is being or has been evaluated or treated for a mental disorder pursuant to this Ordinance shall not be discriminated against in any manner, including, but not limited to:
1. Seeking employment;
  2. Resuming or continuing a professional practice or a previous occupation;
  3. Obtaining or retaining housing; and
  4. Obtaining or retaining licenses or permits including, but not limited to, professional, business or occupational licenses and grazing permits.
- B. "Discrimination," for purposes of this Section means denial of rights or privileges based on a person's evaluation and/or treatment and unrelated to a person's capacity to meet standards applicable to all persons. Applications for positions, licenses, permits and housing shall not contain requests for information which encourage such discrimination.

**SECTION 4.03 PROPOSED PATIENT'S RIGHTS AT ALL HEARINGS**

- A. At all hearings conducted pursuant to this Ordinance, the proposed patient shall have the right to analysis of his or her mental condition by an independent evaluator who is either a licensed physician or a certified psychologist and who is selected by the proposed patient or his or her legal counsel or guardian ad litem.
- B. Information, admissions or confessions given by a proposed patient to a physician or a mental health practitioner during the course of evaluation or treatment ordered by the Court pursuant to this Ordinance cannot be used against the proposed patient at a trial where he or she is a criminal defendant charged with violating Tribal law.

**SECTION 4.04 CONFIDENTIALITY OF INFORMATION AND RECORDS**

- A. All information and records obtained in the course of evaluation and treatment ordered pursuant to this Ordinance shall be kept confidential and not as public records, except as the Court's requirements for hearings held pursuant to this Ordinance may necessitate a different procedure.
- B. Information and records obtained in the course of evaluation and treatment ordered pursuant to this Ordinance may only be disclosed to:
  - 1. Physicians, health practitioners and providers of health, mental health or social and welfare services involved in caring for, treating or rehabilitating a proposed patient;
  - 2. Individuals to whom the proposed patient has given consent to have information disclosed;
  - 3. Persons authorized by a court order;
  - 4. An attorney or guardian ad litem representing a party in proceedings authorized under this Ordinance; and
  - 5. Officials representing governmental or law enforcement agencies when necessary to secure the return of a proposed patient who is absent without authorization from an agency or institution where the proposed patient was undergoing evaluation or treatment.

**SECTION 4.05 LIMITATION OF PETITIONER'S LIABILITY**

Any person acting in good faith upon either actual knowledge or reliable information who

files a Petition for Evaluation and Treatment of another person pursuant to this Ordinance shall not be subject to civil or criminal liability for that act.

**SECTION 4.06 PENALTY FOR FILING A FALSE PETITION**

Any person who knowingly files a Petition for Evaluation and Treatment of another person pursuant to this Ordinance without reasonable cause to believe, based on either actual knowledge or reliable information, that the other person is, as a result of a mental disorder, a danger to self or others, gravely disabled, or persistently and acutely disabled, is guilty of a criminal offense punishable by imprisonment for a term not to exceed six months or a fine not to exceed five hundred dollars (\$500.00), or both.