

TITLE 10. HEALTH, SAFETY, AND WELFARE

Chapter 10.7

INVOLUNTARY TREATMENT — CIVIL COMMITMENT

Sections:

- 10.7.1 Tribal Policy.
- 10.7.2 Jurisdiction.
- 10.7.3 Definitions.
- 10.7.4 Detention without Warrant.
- 10.7.5 Petition for Involuntary Treatment of Substance Abuse or Mental Disorder.
- 10.7.6 Involuntary Commitment Hearing.
- 10.7.7 Review Hearing.
- 10.7.8 Rights of Persons Subject to Involuntary Treatment; Waiver of Physician–Patient Privilege.
- 10.7.9 Confidentiality.
- 10.7.10 Release from Involuntary Treatment and Civil Commitment.

10.7.1. Tribal Policy. It is the policy of the Suquamish Tribe to encourage voluntary participation in behavioral health treatment programs to address mental health and substance abuse issues on an individual needs basis. Mental health and substance abuse outreach services should focus on prevention and early intervention treatment. Protective custody and involuntary treatment are intended to be the exception and to be utilized only in cases where an individual poses a danger to self, others, or property. (Enacted May 24, 2005)

10.7.2. Jurisdiction. (a) Subject Matter Jurisdiction. The Suquamish Family Court, as defined in §8.1.1, shall have jurisdiction over cases arising under this chapter.

(b) Territorial Jurisdiction. As set forth in §8.1.5, the territorial jurisdiction for actions under this chapter is limited only by the Constitution of the Suquamish Indian Tribe and by express action of the Suquamish Tribal Council.

(c) Personal Jurisdiction. Jurisdiction over persons is limited only by the Constitution of the Suquamish Indian Tribe and by express action of the Suquamish Tribal Council as expressed in chapter 3.2 et seq.

(d) Jurisdictional Questions. The Suquamish Family Court shall have the power to decide questions of jurisdiction which may be raised under this code. The Suquamish Tribe intends to vest the Suquamish Family Court with the fullest jurisdiction possible in order to protect members of the Suquamish Tribe and members of the local community residing within the exterior boundaries of the Port Madison Indian Reservation. (Enacted May 24, 2005)

10.7.3. Definitions. (a) “Gravely disabled” means a condition in which a person as a result of a mental disorder or chemical dependency is in danger of serious physical harm resulting from failure to provide for his or her essential human needs.

(b) “Mental disorder” means any organic, mental, or emotional impairment which has substantial adverse effects on an individual’s cognitive or volitional function and which is recognized as a mental disorder that meets the criteria to be diagnosed with the identified mental health disorder according to the American Psychiatric Association as outlined and defined in the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

(c) “Chemical dependency” means a lack of self-control as it pertains to the use of alcoholic beverages, drugs, or narcotic substances to the extent the person’s health, safety, or welfare is substantially impaired or endangered and that person meets at least three (3) out of the seven (7) DSM criteria diagnostic of substance dependency. Alternatively, chemical dependency means having two (2) or more failed chemical dependency treatment attempts within a period of one (1) year. A failed treatment attempt may include but is not limited to failure to complete an inpatient, intensive outpatient, or outpatient course of treatment recommended by a chemical dependency professional.

(d) “Likelihood of serious physical harm” means:

(1) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or by self-inflicted physical harm; or

(2) A substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or

(3) A substantial likelihood that a person constitutes a danger to him- or herself, to any other person, or to property, because, as the result of the use of alcohol, other drugs, or narcotics, his or her judgment is so impaired that he or she is incapable of realizing and making rational decisions about his or her need for treatment.

(e) “Tribal designated mental health professional” is a Suquamish Tribal Wellness Program (“wellness program”) employee who is appointed by the wellness program administrator to perform or assist with risk assessments and to make placement recommendations and who has the qualifications in (1) or (2) below:

(1) A master’s degree in counseling, social work, or a related field; a minimum of five (5) years of experience in crisis intervention and direct client care in the mental health field; and is

(A) Licensed by the State of Washington Department of Health as a mental health counselor (LMHC) or as an independent clinical social worker (LICSW) under chapter 18.225 RCW; or

(B) Registered as a counselor under chapter 18.19 RCW and supervised by a physician, LMHC, or LICSW.

(2) A doctor of medicine degree from an American Medical Association approved medical school and licensed as a physician and surgeon under chapter 18.71 RCW. This person must have a minimum of five (5) years of experience in crisis intervention and direct client care in the mental health field as a psychiatrist.

(f) “Designated mental health professional” is an employee of the Peninsula Regional Support Network and Kitsap Mental Health Services who performs risk assessments to determine the need for involuntary treatment (ITA) as per RCW chapter 70.96A–C. This person is licensed as a mental health professional or an independent clinical social worker under chapter 18.225 RCW.

(g) “Tribal designated chemical dependency professional” is a wellness program employee who is appointed by the wellness program administrator to perform or assist with current needs assessments and to make placement recommendations for detoxification or involuntary treatment. This appointee must have a bachelor’s degree in counseling, social work, or a related field and must be certified as a chemical dependency professional under chapter 18.205 RCW. This person must have a minimum of three (3) years of experience in crisis intervention and direct client care in the chemical dependency field. (Enacted May 24, 2005)

10.7.4. Detention without Warrant. (a) When a Suquamish Police Department officer (“officer”) has a reasonable suspicion that a person is suffering from chemical dependency or a mental disorder and is presenting an immediate likelihood of serious harm to him- or herself or others, or is gravely disabled and in danger of imminent physical harm, the officer shall place such a person in protective custody for a period not to exceed eight (8) hours. Persons placed in protective custody shall be kept separate from persons incarcerated for criminal offenses and reasonable care shall be taken to ensure their health and safety while in protective custody.

(b) When an officer obtains information that leads him or her to believe that a person may be subject to protective custody pursuant to this chapter, the officer shall notify the wellness program at the earliest practicable time. When a person is taken into protective custody, the officer shall immediately notify the wellness program which shall ensure that a mental health risk assessment or chemical dependency current needs assessment is performed at the earliest practicable time. These assessments shall be conducted by either a tribal designated mental health professional or a tribal designated chemical dependency professional as appropriate.

(1) If the risk assessment or the current needs assessment determines that the person is suffering from chemical dependency or a mental health disorder and, if released, he or she will present an immediate likelihood of serious harm to him- or herself or others, or is gravely disabled and in danger of imminent physical harm, he or she shall be detained pending a preliminary hearing.

(2) If the risk assessment or current needs assessment fails to determine that the person's condition warrants further detention for a preliminary hearing or referral, he or she shall be released from protective custody and referred to the wellness program for any necessary voluntary service offered at the outpatient clinic.

(c) A person detained pursuant to §10.7.4(b)(1) shall receive a preliminary hearing before a judge of the Suquamish Tribal Court within seventy-two (72) hours (excluding weekends and holidays) of the detention. At the hearing, the judge shall determine whether probable cause exists that the person in protective custody is suffering from chemical dependency or a mental disorder and presents a likelihood of serious physical harm to him- or herself or others, or is gravely disabled. If the Court finds that probable cause so exists, it shall order an evaluation by a physician or other mental health professional and may order the person to remain in protective custody for a period of fourteen (14) days for evaluation, medication stabilization, and other appropriate treatment. If the Court finds no probable cause exists, it shall order the person released from protective custody. (Enacted May 24, 2005)

10.7.5. Petition for Involuntary Treatment of Substance Abuse or Mental Disorder. (a) Person in Protective Custody. When the Court has ordered an evaluation and involuntary treatment pursuant to §10.7.4(c), the presenting officer shall file with the Court within fourteen (14) days of the preliminary hearing a petition alleging the specific facts giving rise to the claim that the person suffers from chemical dependency or a mental disorder and presents a likelihood of serious harm, or is gravely disabled. The petition shall further request that the Court order appropriate treatment, as recommended by the wellness program. Unless otherwise ordered by the Court, the individual shall remain in protective custody pending an adjudicative hearing, which shall be held not more than twenty-one (21) days after the preliminary hearing, unless such time limit is waived.

(b) Persons Not in Protective Custody. When the wellness program makes a determination that a person suffers from chemical dependency or a mental disorder and presents a likelihood of serious physical harm to him- or herself or other, or is gravely disabled, it shall investigate the condition of the person and the specific facts alleged, including the reliability or credibility of the person(s) providing such information. If it is determined probable cause exists, the wellness program shall report the results of the investigation and treatment recommendations to the presenting officer. The officer shall file a petition with the Court seeking a custody warrant and/or order requiring that the identified person submit to an evaluation by a physician or other appropriate mental

health and/or chemical dependency professional. If a warrant is issued and the person is placed in protective custody, a preliminary hearing shall be held as provided in §10.7.4(c). (Enacted May 24, 2005)

10.7.6. Involuntary Commitment Hearing. (a) After a petition is filed, the Court shall hold a hearing on the petition. The Court may order involuntary treatment, including but not limited to confinement for treatment in a secure facility for a period of up to ninety (90) days, if the Court finds by clear, cogent, and convincing evidence that:

(1) The person as the result of chemical dependency or a mental disorder will continue to present the likelihood of serious harm to him- or herself or others;
or

(2) The person is gravely disabled.

(b) The involuntary commitment hearing shall be to the Court without a jury.
(Enacted May 24, 2005)

10.7.7. Review Hearing. (a) At the conclusion of the initial treatment period established at the involuntary commitment hearing or any subsequent treatment period established after a review hearing, the person who has been subjected to an involuntary treatment order shall be released from the Court's supervision and, if detained, shall be released from custody, unless at least seven (7) days prior to the end of the treatment period, the presenting officer has filed a petition for additional treatment. Such a petition shall set forth facts establishing that the person continues to be gravely disabled or to present the likelihood of serious harm to him- or herself or others as the result of chemical dependency or a mental disorder.

(b) If a petition for additional treatment is filed, the Court shall schedule a hearing prior to the end of the treatment period and may order continued involuntary treatment, including confinement for up to an additional one hundred eighty (180) days if the Court finds by clear, cogent, and convincing evidence that:

(1) The person as the result of chemical dependency or a mental disorder will continue to present the likelihood of serious harm to him- or herself or others;
or

(2) The person is gravely disabled. (Enacted May 24, 2005)

10.7.8. Rights of Persons Subject to Involuntary Treatment; Waiver of Physician-Patient Privilege. (a) At the preliminary hearing and all subsequent hearings, an individual shall have the following rights.

(1) To be represented by counsel at his or her own expense. If the Court finds the individual cannot afford legal counsel, then counsel shall be appointed at tribal expense.

- (2) To present evidence on his or her behalf.
- (3) To cross-examine witnesses who testified against him or her.
- (4) To remain silent.
- (5) To review and copy all petitions and reports in the court file.

(b) The physician–patient privilege and confidentiality laws, such as 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records) and 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act Privacy Rule) shall be deemed waived in proceedings under this chapter, when the Court, in its discretion, determines that it is unreasonable for the presenting officer to obtain a sufficient evaluation of the person by a physician or other appropriate mental health and/or chemical dependency professional and such waiver is necessary to protect either the person or the public from imminent physical harm. (Enacted May 24, 2005)

10.7.9. Confidentiality. All hearings shall be private and closed to the public. The Court shall allow the following persons to be present at a hearing:

- (a) Witnesses (to be called in as necessary to testify);
- (b) Identified person;
- (c) Legal counsel;
- (d) Authorized court personnel; and
- (e) Family members, if all parties agree. (Enacted May 24, 2005)

10.7.10. Release from Involuntary Treatment and Civil Commitment. (a) Involuntary treatment ordered at the time of the preliminary hearing shall be for no longer than fourteen (14) days as provided in §10.7.4(c), except as provided in §10.7.5(a).

(b) Involuntary treatment ordered after an involuntary commitment hearing shall be for no more than ninety (90) days following the first such hearing under §10.7.6 and no more than one hundred eighty (180) days following any review hearing under §10.7.7.

(c) Involuntary treatment and civil commitment shall terminate before the maximum times in §10.7.10(a) and §10.7.10(b) when the health care professional and the facility providing the recommended treatment determine that the identified person:

- (1) No longer constitutes a likelihood of serious harm to him- or herself or others; or

(2) No longer is gravely disabled; or

(3) Stipulates to voluntary treatment as recommended by the physician or other mental health and/or chemical dependency professional attending the current case. (Enacted May 24, 2005)