

WINNEBAGO TRIBAL CODE
TITLE 7 ARTICLE 1

TITLE 7
HEALTH, SAFETY, AND WELFARE

ARTICLE 1
MENTAL HEALTH COMMITMENT ACT
(As revised October 16, 2013)

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7-101 Definitions.

1. "Alcoholic" means an individual who has lost the power of self-control or exhibits cognitive deficiencies, general confused thinking, or other manifestations of disorientation, which show an inability to make judgments about areas of behavior that do not directly relate to his/her alcohol consumption.
2. "Drug addict" means an individual who has a physiological or psychological dependence on a drug or drugs which he/she used in a manner not prescribed by a physician.
3. "Mentally ill individual" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. This term is not intended to include an individual with intellectual disabilities and other developmental disabilities of significantly sub-average intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. Drug addiction and alcoholism do not per se constitute mental illness, although individuals suffering from these conditions may also be suffering from mental illness.
4. "Individual requiring treatment" means either:
 - a. An individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition, can reasonably be expected within the near future to intentionally or unintentionally cause serious physical harm to him/herself, others or property and who has engaged in an act or acts or has made significant threats that are substantially supportive of this expectation; or
 - b. An individual who is mentally ill, an alcoholic or a drug addict and who, as a result of such condition, is unable to attend to his/her basic-physical needs such as food, clothing, or shelter that must be attended to for him/her to avoid serious harm in the near future and who has demonstrated that inability by failing to meet those basic physical needs.
5. "Law enforcement officer" means a member of the Winnebago Police Department, a federal law enforcement officer or a state or county law enforcement officer duly cross-deputized by the Winnebago Tribe of Nebraska to assert law enforcement powers within the Winnebago reservation.
6. "Respondent" means the individual alleged to be mentally ill, an alcoholic or a drug addict in the proceedings. [TCR 93-96, 11-73, 14-08]

7-102 Petition.

1. The petition for commitment shall be filed with the Court by a Public Health Service/Indian Health Service physician, registered nurse, mental health official, social services official, substance abuse counselor, Tribal prosecutor or an interested person. Any such petitioner must

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- have reason to believe that the respondent is mentally ill, an alcoholic or a drug addict. The prosecutor shall represent the Tribe/petitioner or interested person.
2. The petition must be supplemented by a supporting statement or affidavit by at least one individual who has actual personal knowledge of the mental, alcohol or drug problem of the respondent. Such statement shall set forth the reason(s) for the proposed treatment and/or hospitalization.
 3. Temporary detention order and hearing.
 - a. Upon receipt and review of the petition and any statement or affidavit, should the Tribal Judge deem an emergency to exist, he/she shall order the detention or hospitalization of the respondent in an available facility in which the freedom of the respondent is least restricted and yet the respondent, other persons and/or property are adequately protected and the respondent may be properly evaluated.
 - b. An order of the Court ordering that the respondent be detained or hospitalized prior to hearing on the petition shall be accompanied by a "Care Provider Report and Recommendation" form, and this report form shall be provided to the care provider facility. The care provider facility shall prepare the "Care Provider Report and Recommendation" regarding the respondent within seventy-two (72) hours of the beginning of the detention or hospitalization. Upon receipt, the Court shall review the report as soon as practical.
 - c. Taking into consideration the entirety of the "Care Provider Report and Recommendation" and the allegations of the petition, the Court may order the release of the respondent if the "Care Provider Report and Recommendation" recommends release. If released, the respondent shall sign a promise to appear in Court within seven (7) days after release for an initial appearance on the petition.
 - d. If the "Care Provider Report and Recommendation" recommends that the respondent remain in detention or hospitalization, the Court may order that the respondent remain in detention or hospitalization. If the respondent is ordered to remain in detention, the Court shall order an initial appearance on the petition within seven (7) days of such order of continued detention.
 - e. A respondent detained under this Section 3 may request a hearing to review his/her ongoing detention at, or at any time after, the initial appearance on the petition. Such hearing shall be held no later than seventy two (72) hours after the request. If respondent desires, he/she may challenge his/her ongoing detention at the initial hearing on the petition.
 - f. If the respondent does not request a hearing, the Court shall order a hearing to review the ongoing detention not more than thirty (30) days after the commencement of the detention. The respondent shall be provided at least seventy two (72) hours notice of the hearing and shall have the right to attend the hearing.
 - g. At a hearing held pursuant to subsections (e) or (f), the Tribe shall have the burden of showing good cause as to why the respondent should remain in detention pending a hearing on the petition. The respondent shall have the right to counsel, to present evidence and cross-examine witnesses at a hearing held pursuant to subsections (e) or (f). If the Tribe fails to show good cause for continued detention, the respondent shall be released. The Court may place reasonable conditions upon such release to ensure respondent's attendance at the hearing on the petition and to protect the respondent and the public.
 - h. The Court shall entertain a motion by the Tribal Prosecutor requesting a revocation of the release based upon evidence that the respondent is not abiding by the conditions of the release.
 4. The respondent shall be served with a copy of the petition. The respondent may waive a hearing and proceed to treatment. [TCR 93-96, 11-73, 14-08]

7-103 Counsel. The respondent shall have the right to an attorney at his/her own expense or, if indigent, counsel will be appointed to the extent that such is available. [TCR 93-96, 11-73]

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7-104 Hearing On The Petition.

1. Unless waived by the parties, a hearing on the petition shall be held within sixty (60) days of the day on which the petition was filed.
2. Final adjudication on a petition must be held within one hundred twenty (120) days of the petition being served upon the respondent.
3. The judge who presides over the hearing shall:
 - a. Hold the hearing in the presence of the respondent or respondent's attorney;
 - b. Ensure that a complete record of the hearing is made and placed in the Court file;
 - c. Admit as evidence into record any statements or reports of physicians, psychiatrists, clinical psychologists or other medical, mental health and substance abuse practitioners and oral testimony introduced by interested parties either in support of or in opposition to the proposed treatment and/or hospitalization; and
 - d. In support of any Court-ordered disposition involving commitment to a facility for the purpose of inpatient treatment and/or hospitalization, ensure that the quantum of proof admitted and supportive of any such disposition is constituted by clear and convincing evidence that the respondent is an individual requiring treatment, as defined in Section 7-101 herein. [TCR 93-96, 11-73, 14-08]

7-105 Disposition.

1. Upon completion of the hearing on the petition, the Court may order any one or any combination of the following dispositions based upon the evidence admitted into the record:
 - a. Dismissal of the petition if the Court determines that the respondent is not an individual requiring treatment.
 - b. Commitment of the respondent to a facility, located within or outside of the exterior boundaries of the Winnebago Indian reservation, for the purpose of securing appropriate inpatient treatment and/or hospitalization.
 - c. Participation by the respondent in a periodic outpatient alcohol or drug treatment program, with the extent and term of such participation to be determined by the alcohol or drug treatment center.
 - d. When the Court orders inpatient treatment, hospitalization or outpatient alcohol or drug treatment meetings, the Court order shall be enforced by reservation law enforcement, with such enforcement to include arrest should the respondent fail to comply with such order. [TCR 93-96, 11-73, 14-08]

7-106 Emergency Protective Custody.

1. A law enforcement officer may take a person into emergency protective custody if the law enforcement officer has probable cause to believe that a person is an individual requiring treatment within the meaning of Section 7-101(4)(a) of this Article and that the person might cause physical harm to himself, another or another's property before a petition can be filed and reviewed by the Tribal Court as provided for in Section 7-102(3) of this Article.
2. A person taken into emergency protective custody shall be placed in a secure mental health facility if possible. If placement in a secure mental health facility is not possible, the person shall be held in a detention facility, provided that such person shall be observed by a sworn officer or detention staff to ensure that he/she does not harm him/herself or others, or others do not harm him/her.
3. The law enforcement officer who placed the person in emergency protective custody shall file a request with the Tribal prosecutor to file a petition for commitment in regard to the person pursuant to Section 7-102(1) of this Article. This request shall be filed no later than the next

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business day following commencement of the emergency protective custody action. The request shall set forth the facts upon which the law enforcement officer reached his/her determination of probable cause for the emergency protective custody.

4. If the Tribal prosecutor deems the person to not be an individual requiring treatment within the meaning of Section 7-101(4)(a), the Tribal prosecutor shall decline to file a petition and that person shall be released immediately. If the Tribal prosecutor deems the person to be an individual requiring treatment within the meaning of Section 7-101(4)(a), he/she shall file a petition pursuant to Section 7-102(1) of this Article.

An order of the Court that is issued based upon a petition filed pursuant to this Section 7-106 shall be subject to the same requirements set forth in Section 7-102(3).

[TCR 93-96, 11-73, 14-08]