

Hannahville Indian Community

Mental Health Code

Title IV, Chapter 6

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**Hannahville Indian Community
Mental Health Code
Title IV, Chapter 6**

4.6.100 Title.

The Title of this Code shall be the Hannahville Indian Community (or HIC) Mental Health Code. It may also be referred to as the Mental Health Code.

4.6.101 Purpose.

HIC members, members of other federally recognized Tribes, and Indians, as that term is defined below, who are subject to the Tribal Court’s jurisdiction shall receive involuntary mental health treatment only pursuant to the specific involuntary provisions of this Code in conjunction with the Michigan Mental Health Code. The Code is designed to provide HIC Tribal Police, Health and Human Services and Tribal Court the authority and jurisdiction to facilitate mental health examinations and treatment options, while protecting the safety and well-being of the HIC community.

It is always preferable for someone to be hospitalized voluntarily, when possible. Anticipating crisis situations and developing a plan ahead of time may facilitate voluntary hospitalization.

4.6.102 Severability.

If any provision of this code is found to be unconstitutional or unlawful by a court of competent jurisdiction, such provision(s) shall be struck and the remainder of this code shall remain in full force and effect.

4.6.103 Definitions.

As used in this Code, except where otherwise indicated:

- (1) “Alternative treatment” means medical products and practices that are not part of what medical doctors, doctors of osteopathy, and allied health professionals, such as nurses and physical therapists, practice.
- (2) “Adult” means a person who is 18 years of age or older.
- (3) “Clinical Certificate” means the written conclusion and statements of a physician, psychiatrist, or a licensed psychologist that an individual is a “person requiring treatment,” as defined below, together with the information and opinions, in reasonable detail, that underlie the conclusion, on the form prescribed by the HIC Health and Human Services Department.
- (4) “Court” means the Hannahville Indian Community Tribal Court.
- (5) “Formal voluntary hospitalization” means hospitalization of an individual based on both of the following:

- (a) the execution of an application for voluntary hospitalization by the individual or by a guardian for the individual; and
 - (b) the determination that the individual is clinically suitable for voluntary hospitalization by a mental health professional.
- (6) “Functional impairment” means both of the following:
- (a) with regard to a serious emotional disturbance, substantial interference with or limitation of an individual’s achievement or maintenance of 1 or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills.
 - (b) with regard to serious mental illness, substantial interference or limitation of role functioning in 1 or more major life skill such as, but not limited to, maintaining a household, managing money, getting around the community, taking prescribed medication, and functioning in social, vocational, and educational contexts.
- (7) “Hospitalization” or “hospitalized” means placement of a person into an institution providing medical, mental health, surgical treatment and nursing care for individuals.
- (8) “Indian,” as that term is defined by applicable federal statute and case law, who is found within the jurisdiction of the Tribal Court.
- (9) “Individual eligible to file a petition/application” means a Hannahville Indian Community mental health professional, Hannahville Indian Community peace officer, or qualified Hannahville Indian Community employee who bases his/her assertions on reliable and trustworthy information. A mental health professional, peace officer, or qualified tribal employee may use hearsay in the petition/application if they can demonstrate the reliability and trustworthiness of the assertions.
- (10) “Individual plan of services” or “plan of services” means a written plan of service developed for a specific person and amended as needed by a mental health professional.
- (11) “Involuntary mental health treatment” means hospitalization, alternative treatment, or combined hospitalization and alternative treatment for an individual found to be a person requiring treatment.
- (12) “Mental health professional” means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is a 1) licensed physician / psychiatrist or; 2) licensed psychologist or; 3) registered or licensed professional nurse; 4) licensed master social worker or; 5) licensed professional counselor or; 6) licensed marriage and family therapist.

- (13) “Mental illness” means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (14) “Near future” means very soon, within 24 hours.
- (15) “Peace Officer” means an officer of HIC Tribal Police Department or Tribal Court or another law enforcement officer deputized by HIC Tribal Police Department.
- (16) “Person requiring treatment”
 - (a) A “person requiring treatment” means an Indian subject to the jurisdiction of HIC Tribal Court and any one of the following:
 - (i) An individual who has mental illness, and who as a result of that mental illness can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another individual, and who has engaged in an act or acts or made significant threats that would cause a reasonably prudent person to expect that the threats will be carried out.
 - (ii) An individual who has mental illness, and who as a result of that mental illness is unable to attend to those of his or her basic physical needs such as food, clothing, or shelter that must be attended to in order for the individual to avoid serious harm in the near future, and who has demonstrated that inability by failing to attend to those basic physical needs.
 - (iii) An individual who has mental illness, whose judgment is so impaired that he or she is unable to understand his or her need for treatment and whose continued behavior as the result of this mental illness can reasonably be expected to result in significant physical harm to himself/herself, or others.
 - (iv) An individual who has mental illness, whose understanding of the need for treatment is impaired to the point that he or she is unlikely to participate in treatment voluntarily, who is currently noncompliant with treatment that has been recommended by a mental health professional and that has been determined to be necessary to prevent a relapse or harmful deterioration of his or her condition and whose noncompliance with treatment has been a factor in the individual’s placement in a psychiatric hospital, prison, or jail at least 2 times within the last 48 months or whose noncompliance with treatment has been a factor in the individual’s committing 1 or more acts, attempts, or threats serious harm or danger to himself or to others within the last 48 months.
- (17) “Petition for Hospitalization” means a statement asserting that the person is a person requiring treatment as defined in this code, the facts that are the basis for the assertion, the names and addresses of any witnesses to the asserted facts, the name and address of the nearest relative, guardian, or friend of the person.

- (18) “Petition for Examination” means a statement asserting that a Petition for Hospitalization has been executed by the petitioner, that the petitioner has been unable to have the individual examined, describing the efforts a petitioner has made to have an individual examined, and asking the Court to order an examination of the individual.
- (19) “Preadmission screening unit” or “PSU” means a service component of a community mental health service program established under Michigan Compiled Laws 330.1409, which has signed (or will sign) a Memorandum of Understanding with HIC in conformance with this Code.
- (20) “Presenting Officer” means the Prosecuting Attorney for the HIC or other person assigned the duties of the presenting officer for proceedings under this code through a resolution of the Tribal Council.
- (21) “Protective custody” means the temporary custody of an individual by an HIC peace officer with or without the individual’s consent for the purpose of protecting that individual’s health and safety, or the health and safety of the public, and for the purpose of transporting the individual if the individual appears, in the judgment of the peace officer, to be a person requiring treatment or is a person requiring treatment. Protective Custody is civil in nature and is not an arrest.
- (22) “Qualified tribal employee” means: 1) Any Michigan licensed physician serving the HIC community through the HIC Health Care facility or; 2) the HIC Health and Human Services Director or; 3) the HIC Social Services Manager or; 4) the HIC Behavioral Health Manager.
- (23) “Release” means the transfer of an individual who is subject to an order of combined hospitalization and alternative treatment from a current treatment program to another in accordance with his or her individual plan of services.
- (24) “Serious harm or danger to himself or to others” means that there is substantial risk that physical harm will be caused to by the alleged person requiring care upon himself or herself, or upon a third party, as evidenced by the alleged person requiring care’s recent actions, threats, and attempts to cause physical harm.
- (25) “Qualifying emergency” means that unless the Court grants the relief requested some irreparable harm will come the person requiring treatment, other persons, or the HIC community; or that the notice necessary to seek relief through other means will cause the harm that the petitioner seeks to prevent.
- (26) “Services” or “Treatment” means case management to provide care coordination. Service may include one or more of the following: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; vocational, educational, or self-help training or activities; assertive community treatment team services;

alcohol or substance use disorder treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for an individual with a history of alcohol abuse or substance use disorder; supervision of living arrangements; and any other services within an individual plan of services developed under the code that are prescribed to treat the individual's mental illness and to assist the individual in living and functioning in the community or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide, the need for hospitalization, or serious violent behavior.

- (27) “Substance abuse” means the taking of alcohol or other drugs at dosages that place an individual’s social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof.
- (28) “Substance use disorder” means a chronic disorder in which repeated use of alcohol, drugs, or both, results in significant and adverse consequences. Substance use disorder includes substance abuse.

4.6.104 Jurisdiction.

- (1) Jurisdictional statement. The jurisdiction of the HIC Tribal Court shall extend, except as limited by federal statutory or HIC Tribal law, to:
 - (a) all Indians who are persons requiring treatment (PRT) who are permitted to be within the jurisdiction of the HIC Tribal Court by law or statute; and to
 - (b) all subject matters which are permitted to be within the jurisdiction of the HIC Tribal Court; and to
 - (c) all matters having to do with rights in or encumbrances to lands which are permitted to be within the jurisdiction of the HIC Tribal Court.
- (2) Tribal immunity. The HIC, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers and employees, in the performance of their duties shall be immune from suit; except where the immunity of the Tribe or its officers and employees is expressly, specifically, and unequivocally waived by, and in an HIC or federal statute, a duly executed written contract approved by the Tribal Council, or a duly enacted law or resolution of the HIC Tribal Council.

4.6.105 Statement of Rights.

- (1) A PRT has the right to be present at all proceedings either in person or via telephone or video conference.
- (2) A PRT choice of medical providers will be honored when possible; however, the PRT remains responsible for the costs associated with the transportation to and from the provider and for the care he or she received from the provider. A PRT’s ability to choose his or her medical provider may be limited by reasonable factors,

such as: the PRT's insurance restrictions, availability, cost, distance, or other factors that the court determines detrimental to successful treatment of the PRT.

- (3) A PRT has the right to have his or her medical information kept confidential and all proceedings under this chapter shall be closed to the general public. The Court has the discretion to allow additional people to attend hearings under this chapter consistent with the PRT's best interests.

4.6.106 Notice of Hearing.

For all hearings under this chapter, the Court will direct notice of the date, time, and location of the hearing to the following people:

- (1) the PRT;
- (2) the petitioner;
- (3) the attorneys for all parties; and
- (4) any other party the Court may direct to be notified.

4.6.107 Petition for Mental Health Treatment, Examination, or Hospitalization.

- (1) A petition for mental health treatment, examination or hospitalization (petition) under this chapter must be made by an individual eligible to file a petition.
- (2) A petition shall be made by sworn affidavit or on the record in open court.
- (3) A petition for mental health treatment shall contain the following information:
 - (a) Statement(s) that the PRT is a person within the jurisdiction of the HIC Tribal Court;
 - (b) Statement(s) of the reasons for alleging that the PRT is indeed a person requiring treatment within the meaning of this Code;
 - (c) Statement(s) explaining the results of a mental health examination, or if no examinations have been performed, explaining the steps that have been taken to get an examination for the PRT prior to seeking a court order;
 - (d) The name(s) of any interested persons; and
 - (e) Recommendation concerning the need for examination and/or mental health treatment, to include hospitalization.

4.6.108 Ex Parte Orders for Mental Health Treatment, Examination, or Hospitalization.

- (1) The Court must immediately issue an order directing that a PRT be placed into protective custody and be ordered to participate in mental health examinations by a mental health professional if the petition establishes probable cause to believe that:
 - (a) The PRT is a person within the jurisdiction of the HIC Tribal Court;
 - (b) The PRT is indeed a person requiring treatment within the meaning of this Code;

- (c) That reasonable attempts were made to secure an examination of the PRT;
 - (d) That the PRT refuses to participate in a mental health examination;
 - (e) An emergency exists in which the PRT poses an immediate and serious harm or danger to himself or to others; and
 - (f) The PRT is in need of an examination to determine the need for further mental health treatment at a hospital.
- (2) The Court must immediately issue an order directing that a PRT be hospitalized if the petition establishes probable cause to believe that:
- (a) The PRT is a person within the jurisdiction of the HIC Tribal Court;
 - (b) The PRT is indeed a person requiring treatment within the meaning of this Code;
 - (c) The PRT has been examined by a physician, a licensed psychologist, a licensed psychiatrist and the conclusion of the clinical certificate supports protective custody, or the PRT has been examined by a mental health professional and his or her sworn testimony in tribal court supports protective custody and hospitalization;
 - (d) An emergency exists in which the PRT poses serious harm or danger to himself or to others; and
 - (e) The PRT is in immediate need of protective custody and/or an examination for further mental health treatment at a hospital.
- (3) An ex parte order issued under this section shall direct the Tribal Police to take the PRT into protective custody and transport him or her to a hospital for further mental health examination and/or appropriate treatment. If the PRT cannot be immediately examined, the Court may place the PRT into protective custody, in the least restrictive setting possible, pending an evaluation.
- (4) If the Court receives a report from a mental health professional that a clinical certificate is not warranted, the Court may, in its sole discretion, dismiss the petition without a hearing or issue a sua sponte order that the PRT participate in further examination conducted by a psychiatrist, or if a psychiatrist is not available, by a physician or licensed psychologist. If the further examination states that a clinical certificate is not warranted, the Court must dismiss the petition without a hearing and order that the PRT be released.

4.6.109 Hearing on Petition for Mental Health Treatment, Examination, Hospitalization.

- (1) If a PRT is being held in protective custody, examination, or hospitalization pursuant to an ex parte order, the Court must conduct a hearing on a petition no later than 72 hours following the PRT's placement into protective custody, examination, or hospitalization.
- (a) If reasonable efforts were made to examine the PRT, but due to non-compliance by the PRT or other unforeseeable circumstances, the examinations could not be completed before the hearing, the Court may adjourn the hearing on the petition for up to seven days following proof of

service upon the PRT; however, the Court must hold a preliminary hearing to determine whether or not it is necessary for the PRT to remain in protective custody during the adjournment.

- (2) If the PRT is not in protective custody, the Court must hold a hearing on the petition within seven business days following proof of service upon the PRT.
- (3) During the hearing on a petition, the presenting officer must:
 - (a) show by clear and convincing evidence, to include at least one clinical certificate and testimony from at least one mental health professional, that the PRT is indeed a person requiring treatment within the meaning in this Code; and
 - (b) present an individual plan of services developed for the PRT.

4.6.110 Order Following a Hearing.

- (1) Upon finding that a PRT is indeed a person in need of treatment within the meaning of this Code, the Court may initially:
 - (a) order a PRT to be hospitalized for a period not to exceed 60 days;
 - (b) order a PRT to comply with an individual plan of services, for a period not to exceed 180 days; or
 - (c) order a PRT to comply with a combination of hospitalization, not to exceed 60 days, and compliance with an individual plan of services, not to exceed 180 days.

4.6.111 Discharge from Hospitalization.

- (1) A hospital may discharge a PRT if the hospital's mental health professional considers the PRT suitable for discharge.
- (2) A hospital must discharge a PRT when the PRT no longer meets the criteria of a person requiring treatment within the meaning of this Code.
- (3) A hospital must provide the Court with notice that the PRT is being discharged 24 hours before the discharge.

4.6.112 Termination from Treatment.

- (1) A person providing treatment may terminate that treatment if the PRT is clinically suitable for termination of treatment.
- (2) A person providing treatment may terminate that treatment if the PRT no longer meets the criteria of a person requiring treatment within the meaning of this Code.
- (3) A person providing treatment must provide the Court with notice that the PRT is being terminated from treatment 24 hours prior to the termination from treatment.

4.6.113 Review and Continuation of Mental Health Treatment, Hospitalization, or Examination.

- (1) If a PRT has not been discharged from hospitalization or has not been terminated from treatment, the Court must review the need for continuing court jurisdiction at least 14 days prior to the expiration of its last order.
 - (a) The court will evaluate the following factors to determine if continued jurisdiction is necessary:
 - (i) does the PRT still meet the definition of a person requiring treatment within the meaning of this Code;
 - (ii) the PRT's progress on his or her individual plan of services;
 - (iii) the PRT's compliance with taking prescribed medication, if any;
 - (iv) the treatment facility's capacity to meet the PRT's current needs;
 - (v) the treating provider's recommendations; and
 - (vi) availability of less restrictive alternatives.
- (2) A second order for involuntary hospitalization shall not exceed 90 days.
- (3) Any orders for hospitalization consecutive to the second order for involuntary hospitalization shall not exceed 1 year.
- (4) If a PRT has been ordered to comply with an individual plan of services continuously and without interruption for less than two years, the Court must review the case at least once every 180 days to determine whether or not it is necessary for the Court to continue jurisdiction.
- (5) If a PRT has been ordered to comply with an individual plan of services continuously and without interruption for two years or more, the Court must review the case at least once every 365 days to determine whether or not it is necessary for the Court to continue jurisdiction.

4.6.114 Return of patient to hospital; conditions; notification of peace officers; protective custody; notice of opportunity to appeal.

- (1) A PRT is subject to being returned to a hospital if both of the following circumstances exist:
 - (a) The PRT was admitted to the hospital by Court order.
 - (b) The PRT has left the hospital without authorization, or has refused a lawful request to return to the hospital while on an authorized leave or other authorized absence from the hospital.
- (2) An authorized agent of the hospital with a copy of the Court Order may notify peace officers that a PRT is subject to being returned to the hospital. Upon being presented with a copy of the Court Order by the hospital director, a peace officer shall take the PRT into protective custody and return the individual to the hospital unless directions have been given by the hospital director to transport the PRT to an alternate facility.

- (3) An opportunity for appeal, and notice of that opportunity, shall be provided to a PRT who objects to being returned from any authorized leave in excess of 10 days.

4.6.115 Protective custody to be in Least Restrictive Environment.

- (1) A PRT shall be housed in the least restrictive environment to protect life and physical safety of the PRT or members of the public; in this respect, prevention of significant injury to property may be considered.
- (2) A PRT or proposed PRT may be housed in a jail only if no mental health facility is available or if the available mental health facilities are inadequate to protect the PRT and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the PRT and the public, then the PRT shall be transferred from the jail to the mental health facility by an HIC peace officer as soon as possible.
- (3) A PRT placed in protective custody prior to involuntary mental health treatment may apply to the Court for immediate relief with respect to the need for protective custody or the adequacy of the facility being utilized for his or her protective custody.

4.6.116 Writ of Habeas Corpus.

Any person who believes he or she is being unlawfully held under this code may petition the Court to test the legality of his or her detention. This section is not meant to place any limitation on a PRT's ability to seek other means of available relief.