

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

Section 3.18 **Pre-Petition Screening, Court-Ordered Evaluation, and Court-Ordered Treatment**

- 3.18.1** **Introduction**
- 3.18.2** **References**
- 3.18.3** **Scope**
- 3.18.4** **Did you know...?**
- 3.18.5** **Definitions**
- 3.18.6** **Objectives**
- 3.18.7** **Procedures**
- 3.18.7-A.** **Licensing Requirements**
- 3.18.7-B.** **Pre-Petition Screening**
- 3.18.7-C.** **Court-Ordered Evaluation**
- 3.18.7-D.** **Court-Ordered Treatment following Civil Proceedings under A.R.S. Title 36**
- 3.18.7-E.** **Court-Ordered Treatment for persons charged with, or convicted of, a crime**
- 3.18.7-F.** **Court-Ordered Treatment for American Indian Tribal Members in Arizona**

3.18.1 Introduction

This policy is applicable to behavioral health providers under contract with a Regional Behavioral Health Authority (RBHA) and/or a Tribal Regional Behavioral Health Authority (TRBHA).

At times, it may be necessary to initiate civil commitment proceedings to ensure the safety of a person, or the safety of other persons, due to a person's mental disorder when that person is unable or unwilling to participate in treatment. In Arizona, state law permits any responsible person to submit an application for pre-petition screening when another person may be, as a result of a mental disorder:

- A danger to self (DTS);
- A danger to others (DTO);
- Persistently or acutely disabled (PAD); or
- Gravely disabled (GD).

If the person who is the subject of a court ordered commitment proceeding is subject to the jurisdiction of an Indian tribe rather than the state, the laws of that tribe, rather than state law, will govern the commitment process. Information about the tribal court process and the procedures under state law for recognizing and enforcing a tribal court order are found in subsection [3.18.7-F](#).

Pre-petition screening includes an examination of the person's mental status and/or other relevant circumstances by a designated screening agency. Upon review of the application, examination of the person and review of other pertinent information, a licensed screening agency's medical director or designee will determine if the person meets criteria for DTS, DTO, PAD, or GD as a result of a mental disorder.

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

If the pre-petition screening indicates that the person may be DTS, DTO, PAD, or GD, the screening agency will file an application for a court-ordered evaluation. Based on the immediate safety of the person or others, an emergency admission for evaluation may be necessary. Otherwise, an evaluation will be arranged for the person by a designated evaluation agency within timeframes specified by state law.

Based on the court-ordered evaluation, the evaluating agency may petition for court-ordered treatment on behalf of the person. A hearing, with the person and his/her legal representative and the physician(s) treating the person, will be conducted to determine whether the person will be released and/or whether the agency will petition the court for court-ordered treatment. For the court to order ongoing treatment, the person must be determined, as a result of the evaluation, to be DTS, DTO, PAD, or GD. Court-ordered treatment may include a combination of inpatient and outpatient treatment. Inpatient treatment days are limited contingent on the person's designation as DTS, DTO, PAD, or GD. Persons identified as:

- DTS may be ordered up to 90 inpatient days per year;
- DTO and PAD may be ordered up to 180 inpatient days per year; and
- GD may be ordered up to 365 inpatient days per year.

If the court orders a combination of inpatient and outpatient treatment, a mental health agency may be identified by the court to supervise the person's outpatient treatment. In some cases, the mental health agency may be a RBHA; however, before the court can order a mental health agency to supervise the person's outpatient treatment, the agency medical director must agree and accept responsibility by submitting a written treatment plan to the court.

At every stage of the pre-petition screening, court-ordered evaluation, and court-ordered treatment process, a person will be provided an opportunity to change his/her status to voluntary. Under voluntary status, the person is no longer considered to be at risk for DTS/DTO and agrees in writing to receive a voluntary evaluation.

County agencies and RBHA contracted agencies responsible for pre-petition screening and court-ordered evaluations must use the following forms prescribed in [9 A.A.C. 21, Article 5](#) for persons determined to have a Serious Mental Illness:

- [ADHS/DBHS Form MH-100, Application for Involuntary Evaluation](#);
- [ADHS/DBHS Form MH-103, Application for Voluntary Evaluation](#);
- [ADHS/DBHS Form MH-104, Application for Emergency Admission for Evaluation](#);
- [ADHS/DBHS Form MH-105, Petition for Court-Ordered Evaluation](#);
- [ADHS/DBHS Form MH-110, Petition for Court-Ordered Treatment](#); and
- [ADHS/DBHS Form MH-112, Affidavit, Addendum No. 1 and Addendum No. 2](#).

Agencies may also use these forms for all other populations.

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

In addition to court ordered treatment as a result of civil action, an individual may be ordered by a court for evaluation and/or treatment upon: 1) conviction of a domestic violence offense; or 2) upon being charged with a crime when it is determined that the individual is court ordered to treatment, or programs, as a result of being charged with a crime and appears to be an “alcoholic.” RBHAs and RBHA providers responsibilities for the provision and coverage of those services, is described in subsection [3.18.7-E](#).

The intent of this section is to provide a broad overview of the pre-petition screening, court-ordered evaluation, and court-ordered treatment process. Depending on a behavioral health provider’s designation as a screening, evaluation, or court-ordered treatment agency, the extent of involvement with persons receiving pre-petition screening, court-ordered evaluation, and court-ordered treatment services will vary. RBHAs will provide explicit expectations for behavioral health providers regarding this content area within subsection [3.18.7](#).

3.18.2 References

The following citations can serve as additional resources for this content area:

[A.R.S. § 12-136](#)

[A.R.S. § 13-3601.01](#)

[A.R.S. Title 14, Chapter 5](#)

[A.R.S. Title 36, Chapter 5](#)

[A.R.S. § 36-2005](#)

[A.R.S. § 36-2027](#)

[A.A.C. R9-20-802](#)

[A.A.C. R9-20-803](#)

[9 A.A.C. 21, Article 5](#)

[AHCCCS Contractor Operations Manual, Policy 423](#)

[ADHS/RBHA Contracts](#)

[Section 3.4, Co-payments](#)

[Section 3.9, Assessment and Service Planning](#)

[Section 3.10, SMI Eligibility Determination](#)

[Section 3.11, General and Informed Consent to Treatment](#)

[Section 3.17, Transition of Persons](#)

[Section 3.21, Service Package For Non-Title XIX/XXI Persons Determined to Have a Serious Mental Illness \(SMI\)](#)

[Section 4.2, Behavioral Health Medical Record Standards](#)

[TAD 5, Information Sharing with Family Members of Adult Behavioral Health Recipients](#)

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

[ADHS/DBHS Tribal Court Procedures for Involuntary Commitment webpage](#)

3.18.3 Scope

To whom does this apply?

All persons who are unwilling or unable to seek behavioral health treatment, who may be DTS, DTO, PAD, or GD due to a mental disorder, and who may require pre-petition screening, court-ordered evaluation, and/or court-ordered treatment.

3.18.4 Did you know...?

- Arizona Counties are responsible for managing, providing, and paying for pre-petition screening and court-ordered evaluations and are required to coordinate provision of behavioral health services with the Arizona Department of Health Services/Division of Behavioral Health Services (ADHS/DBHS) system. Some counties contract with RBHAs to process pre-petition screenings and petitions for court-ordered evaluations.
- Arizona law provides for the recognition and enforcement or “domestication” of tribal court orders for involuntary commitment to treatment, including admission to the Arizona State Hospital (AZSH) for American Indians residing on tribal reservations. The Arizona statute (see [A.R.S. § 12-136](#)) is necessary, as Tribal governments are sovereign and have sole jurisdiction over Tribal members on reservations. Legal, jurisdictional, and continuity of care issues exist related to the coordination of tribal and state courts ordering treatment for American Indians.
- American Indians living off of or experiencing a crisis off of the Tribal reservation are subject to county jurisdiction and can be court ordered under state law (see [A.R.S. Title 36, Chapter 5](#)).
- Arizona Health Care Cost Containment System/ Arizona Long Term Care Services (AHCCCS/ALTCS) Program Contractors are responsible for providing and funding services under court-ordered treatment of elderly and physically disabled (EPD) ALTCS-enrolled persons.
 - Upon determination that a person is gravely disabled, the person must be recommended for appointment of a guardian and/or conservator if one is not already assigned to the person.
- A person found to be gravely disabled and who is undergoing court-ordered treatment receives an annual examination and review to determine whether the continuation of court-ordered treatment is appropriate.
- A person found to be persistently or acutely disabled and who is undergoing court-ordered treatment shall have an annual examination and review to determine whether the continuation of court-ordered treatment is appropriate.
- The medical director shall review the condition of a patient on conditional outpatient treatment at least once every thirty days and enter the findings in writing in the patient’s medical record.

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

- The medical director of the agency providing court-ordered treatment must inform persons of their right to judicial review and their right to consult with counsel at least once each sixty days while undergoing court-ordered treatment. This notification must be recorded in the clinical record of the person by the individual who gave the notice.
- If the medical director rescinds an order for conditional outpatient treatment and the patient is returned to a mental health treatment agency for inpatient treatment, the patient shall be informed of the patient's right to judicial review and right to consult with counsel.

3.18.5 Definitions

[American Indian Tribal Member](#)

[Court-Ordered Evaluation](#)

[Danger to Self \(DTS\)](#)

[Danger to Others \(DTO\)](#)

[Domestication or Recognition of Tribal Court Order](#)

[Gravely Disabled \(GD\)](#)

[Mental Disorder](#)

[Persistently or Acutely Disabled \(PAD\)](#)

[Pre-petition Screening](#)

[Tribal sovereignty in the United States](#)

3.18.6 Objectives

To inform behavioral health providers of the pre-petitioning screening, court-ordered evaluation, and court-ordered treatment process for persons who are unable or unwilling to seek behavioral health treatment and, due to a mental disorder, may be DTS, DTO, PAD, or GD.

3.18.7 Procedures

3.18.7-A. Licensing Requirements

Behavioral health providers who are licensed by the Arizona Department of Health Services/Division of Assurance and Licensing Services/Office of Behavioral Health Licensing (OBHL) as a court-ordered evaluation or court-ordered treatment agency must adhere to OBHL requirements.

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

3.18.7-B. Pre-Petition Screening

Procedures for pre-petition screening are outlined below.

The pre-petition screening includes an examination of the person's mental status and/or other relevant circumstances by a designated screening agency. The designated screening agency must follow these procedures:

- The pre-petition screening agency must offer assistance, if needed, to the applicant in the preparation of the application for court-ordered evaluation (see [ADHS/DBHS Form MH-100, Application for Involuntary Evaluation](#)).
- Any behavioral health provider that receives an application for court-ordered evaluation (see [ADHS/DBHS Form MH-100, Application for Involuntary Evaluation](#)) must immediately refer the applicant for pre-petition screening and petitioning for court-ordered evaluation to the RBHA designated pre-petition screening agency or county facility.

3.18.7-E. Court-Ordered Treatment for persons charged with, or convicted of, a crime

T/RBHAs or T/RBHA providers may be responsible for providing evaluation and/or treatment services when an individual has been ordered by a court due to: 1) conviction of a domestic violence offense; or 2) upon being charged with a crime when it is determined that the individual is court ordered to treatment, or programs, as a result of being charged with a crime and appears to be an "alcoholic."

Domestic Violence Offender Treatment

Domestic violence offender treatment may be ordered by a court when an individual is convicted of a misdemeanor domestic violence offense. Although the order may indicate that the domestic violence (DV) offender treatment is the financial responsibility of the offender under [A.R.S. § 13-3601.01](#), the T/RBHA will cover DV services with Title XIX/XXI funds when the person is Title XIX/XXI eligible, the service is medically necessary, required prior authorization is obtained if necessary, and/or the service is provided by an in-network provider. For Non-TXIX/XXI eligible persons court ordered for DV treatment, the individual can be billed for the DV services.

Court ordered substance abuse evaluation and treatment

Substance abuse evaluation and/or treatment (i.e., DUI services) ordered by a court under [A.R.S. § 36-2027](#) is the financial responsibility of the county, city, town or charter city whose court issued the order for evaluation and/or treatment. Accordingly, if ADHS/DBHS or a T/RBHA receives a claim for such services, the claim will be denied with instructions to the provider to bill the responsible county, city or town.

3.18.7-F. Court-Ordered Treatment for American Indian Tribal Members in Arizona

Arizona tribes are sovereign nations, and tribal courts have jurisdiction over their members residing on reservation. Tribal court jurisdiction, however, does not extend to tribal members residing off the reservation or to state court ordered evaluation or treatment ordered because of a behavioral health crisis occurring off reservation.

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

Although some Arizona tribes have adopted procedures in their tribal codes, which are similar to Arizona law for court ordered evaluation and treatment, each tribe has its own laws which must be followed for the tribal court process. Tribal court ordered treatment for American Indian tribal members in Arizona is initiated by tribal behavioral health staff, the tribal prosecutor or other person authorized under tribal laws. In accordance with tribal codes, tribal members who may be a danger to themselves or others and in need of treatment due to a mental health disorder are evaluated and recommendations are provided to the tribal judge for a determination of whether court ordered treatment is necessary. Tribal court orders specify the type of treatment needed.

Additional information on the history of the tribal court process, legal documents and forms as well as contact information for the tribes, T/RBHA liaisons, and tribal court representatives can be found on the ADHS/DBHS web page titled, [Tribal Court Procedures for Involuntary Commitment - Information Center](#).

Since many tribes do not have treatment facilities on reservation to provide the treatment ordered by the tribal court, tribes may need to secure treatment off reservation for tribal members. To secure court ordered treatment off reservation, the court order must be “recognized” or transferred to the jurisdiction of the state.

The process for establishing a tribal court order for treatment under the jurisdiction of the state is a process of recognition, or “domestication” of the tribal court order (see [A.R.S. § 12-136](#)). Once this process occurs, the state recognized tribal court order is enforceable off reservation. The state recognition process is not a rehearing of the facts or findings of the tribal court. Treatment facilities, including the Arizona State Hospital, must provide treatment, as identified by the tribe and recognized by the state. [Attachment 3.18.1, A.R.S. § 12-136 Domestication or Recognition of Tribal Court Order](#) is a flow chart demonstrating the communication between tribal and state entities.

Regional Behavioral Health Authorities and RBHA providers must comply with state recognized tribal court orders for Title XIX/XXI and Non-Title XIX SMI persons. When tribal providers are also involved in the care and treatment of court ordered tribal members, RBHAs and RBHA providers must involve tribal providers to ensure the coordination and continuity of care of the members for the duration of court ordered treatment and when members are transitioned to services on the reservation, as applicable. RBHAs are encouraged to enter into agreements with tribes to address behavioral health needs and improve the coordination of care for tribal members.

This process must run concurrently with the tribal staff’s initiation of the tribal court ordered process in an effort to communicate and ensure clinical coordination with the appropriate RBHA. This clinical communication and coordination with the RBHA is necessary to assure continuity of care and to avoid delays in admission to an appropriate facility for treatment upon state/county court recognition of the tribal court order. The Arizona State Hospital should be the last placement alternative considered and used in this process

**Arizona Department of Health Services
Division of Behavioral Health Services
PROVIDER MANUAL
White Mountain Apache Behavioral Health Services Version**

[A.R.S. § 36-540\(B\)](#) states, “The Court shall consider all available and appropriate alternatives for the treatment and care of the patient. The Court shall order the least restrictive treatment alternative available.” RBHAs are expected to partner with American Indian tribes and tribal courts in their geographic service areas to collaborate in finding appropriate treatment settings for American Indians in need of behavioral health services.

Due to the options American Indians have regarding their health care, including behavioral health services, payment of behavioral health services for AHCCCS eligible American Indians may be covered through a TRBHA, RBHA or IHS/638 provider (see [Behavioral Health Services Payment Responsibilities](#) on the [ADHS/DBHS Tribal Court Procedures for Involuntary Commitment web page](#) for a diagram of these different payment structures).