

Highlights of Proposed Mental Health Code Amendments

The Salt River Pima-Maricopa Indian Community Council has approved that proposed changes to the Mental Health Code to move into the public comment period. This document explains what these changes will accomplish and how they could benefit Community Members and families. Redline copies of the changes are available for review.

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- **Modernized Policy Statement:** Reframes behavioral health crises as medical emergencies; emphasizes trauma-informed, culturally responsive care, least-restrictive interventions, and protection of both public safety and individual rights.
 - **Updated Definitions:** Modernizes and clarifies key terms including danger to self, danger to others, grave disability, evaluation, and adds new definitions such as Behavioral Health Professional (BHP), Mobile Crisis Team (MCT), Crisis Stabilization Unit (CSU), Assisted Outpatient Treatment (AOT), least restrictive alternative, and imminent risk.
 - **Expanded Emergency Apprehension Authority:** Authorizes law enforcement, BHPs, and MCT clinicians to initiate emergency apprehensions; establishes clearer timelines and release procedures.
 - **Least Restrictive Treatment:** Requires evaluators to consider and implement less restrictive alternatives whenever safe, rather than defaulting to detention or inpatient commitment.
 - **Detention Standards:** Creates structured criteria for determining whether an individual should be held at the Salt River Department of Corrections or a medical/behavioral health facility, with a preference for clinically appropriate placement.
 - **Court-Ordered Evaluation:** Expands who may petition for evaluation, clarifies required petition contents, and requires appointment of a Guardian ad Litem in commitment proceedings.
 - **Enhanced Judicial Oversight:** Provides judges with detailed factors to consider when ordering temporary detention and requires detention orders for medical facilities to specify the basis and duration of detention.
 - **Treatment Options:** Adds Assisted Outpatient Treatment (AOT) as a formal alternative to inpatient commitment and authorizes courts to tailor outpatient treatment plans when community-based care can safely manage risk.
 - **Disposition & Review:** Clarifies treatment durations based on findings, requires periodic review hearings every 45 days, and expressly provides that noncompliance with treatment is addressed through civil—not criminal—processes.
 - **Post-Release Jurisdiction:** Creates a new process allowing the Court to retain limited jurisdiction after discharge to enforce post-release treatment plans for up to 180 days, helping reduce relapse and repeat crises.

Highlights of Proposed Competency Rule

The Salt River Pima-Maricopa Indian Community Council has approved that proposed changes to the Competency Process to move into the public comment period. This document explains what these changes will accomplish and how they could benefit Community Members and families. Redline copies of the changes are available for review.

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- **Establishes Comprehensive Competency Rule:** Creates a standalone rule governing competency from the filing of charges through restoration, trial, dismissal, or referral for civil commitment.
 - **Clarifies Legal Standard:** Defines mental illness, incompetence, and the legal effect of incompetence, making clear that mental illness alone does not render a defendant incompetent.
 - **Formal Competency Process:** Authorizes the defense, prosecution, or court to request a competency evaluation at any time before sentencing upon a showing of reasonable cause.
 - **Standardized Evaluations:** Requires evaluations by qualified mental health experts, establishes evaluator qualifications, sets report deadlines, and protects defendants' statements from use at trial.
 - **Judicial Competency Hearings:** Requires a hearing following the evaluation and establishes procedures, burden of proof, and findings available to the court.
 - **Clear Case Outcomes:** Provides three disposition options: (1) defendant competent and case proceeds; (2) incompetent but restorable and restoration is ordered; or (3) incompetent and not restorable, resulting in dismissal without prejudice and, when appropriate, referral for civil commitment.
 - **Guardian ad Litem:** Requires appointment of a Guardian ad Litem for incompetent defendants, with authority extending into related civil commitment proceedings.
 - **Competency Restoration Program:** Creates a structured restoration process, including individualized treatment plans, inpatient or outpatient treatment, transportation, treatment supervision, and periodic court review.
 - **Treatment Oversight:** Requires treatment progress reports every 45 days, review hearings every 60 days, and limits restoration to six months unless the defendant is making substantial progress.
 - **Final Restoration Determination:** Requires a restoration hearing to determine whether criminal proceedings resume, treatment is extended for up to three additional months, or charges are dismissed with consideration of civil commitment if necessary.

HOW TO PARTICIPATE IN PUBLIC COMMENT

Community Members are invited to read the proposed laws and submit comments or questions.

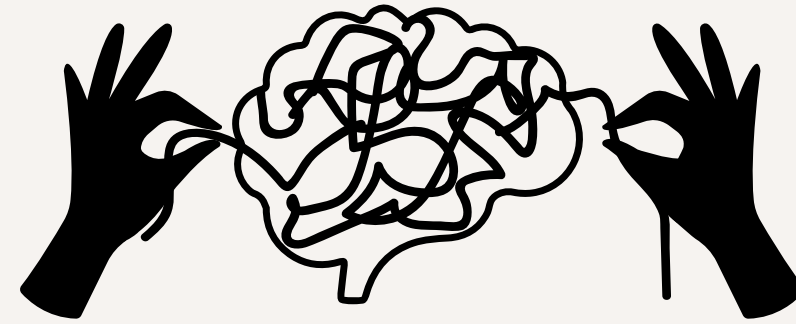
Public Comment Period ends August 23, 2026.

How to Comment:

You may access draft ordinance materials and make your Comments to the Office of the General Counsel at the following link: <https://srpmic-nsn.gov/government/ogc/proposed-ordinances/>.

Additionally, the ordinances will be presented at several Council district meetings, and comments can be provided in person.

Finally, you can email your comments to OrdPublicComment@SRPMIC-nsn.gov, or reach out directly to Chief Prosecutor Alane Breland at (480) 362-5414 or Alane.Breland@SRPMIC-nsn.gov.



MENTAL HEALTH

DRAFT CODE UPDATES

Agenda

- Intro
- Mental Health Code
- Competency
- Council Guidance





Intro

- Last year, Tribal Council approved a code change that will allow Emergency Apprehension detainees to be detained at the CSU once it opens, rather than at SRDOC.
- Tribal Council then gave concept approval to the Community Prosecutor to draft further updates.





Mental Health Code

Following discussions with Council and several partner departments regarding a recent code change, there is general consensus that the Mental Health Code as a whole should be reviewed for changes that could modernize the process, and make it more humane, trauma-informed, and treatment focused.





Opportunities for Change

Draft improvements include:

- ensuring clarity and consistency in language and processes throughout the Code,
- incorporating new supports and services into the process,
- utilizing resources both in the Community and throughout the Valley to obtain the best service for Community Members.



Competency in Criminal Cases

Currently, if a person is found incompetent to stand trial, his or her case must be dismissed with prejudice, which leaves no way for the offender to be held responsible.

Since 2012 when this Rule was first promulgated, the Community has amassed new resources, including the ability to detain at an appropriate mental health facility where restoration to competency could be possible.

Proposed Procedural Changes

- No changes with regard to who can request an evaluation.
- No change with regard to the process if a person is found competent.
- If found incompetent, there would be the option for the evaluator to determine whether the person can be restored to competency. If so, treatment and status updates are mandated.
- If the person is restored, the trial process continues as usual. If the person is not restored, there are options for dismissal without prejudice and civil commitment.





Council Guidance

The Community Prosecutor requests that Tribal Council consider opening the drafts for Public Comment, for a term at the discretion of Councilmembers.

ARTICLE VI.

COMMITMENT AND TREATMENT OF MENTALLY ILL PERSONS

SEC. 10-221. POLICY.

It is the policy of the Community to protect the health and welfare of its members and, to that end, to protect them from injurious actions of persons who suffer from mental disorders and who pose a danger to themselves or others; to respond to behavioral health crises first and foremost as medical emergencies; to employ trauma-informed, culturally responsive, and least-restrictive practices free of undue restraint or seclusion; and to protect both Community safety and individual liberty. Whenever safe and feasible, mobile crisis response, crisis stabilization, peer supports, and other less-restrictive alternatives shall be prioritized over custodial detention. It is further the policy of the Community to adhere to the strictest standards of due process under the law to ensure the rights of persons suffering from mental disorders where such persons are forcibly restrained, detained, or involuntarily committed to a mental health institution.

SEC. 10-222. DEFINITIONS.

For the purposes of this article and unless context indicates otherwise, the following terms shall have the meanings herein ascribed to them:

Assisted Outpatient Treatment (AOT) means a civil court order requiring adherence to an individualized outpatient treatment plan under court supervision.

Behavioral Health Professional (BHP) means a licensed psychiatrist, psychologist, psychiatric and mental health nurse practitioner, or other clinician authorized by Community law to perform emergency evaluations, including via secure telehealth.

Crisis Stabilization Unit (CSU) means a licensed, medical facility providing observation and stabilization, including 24-hour observation and/or short-stay inpatient care.

Danger to others means the judgment of a person who has a mental disorder is so impaired that the person is unable to understand the person's need for treatment and as a result of the person's mental disorder the person's continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm to another. ~~means behavior which constitutes a danger of inflicting substantial bodily~~

~~harm upon another person based upon a history of inflicting or attempting to inflict substantial bodily harm upon another person within 12 months preceding the petition as follows:~~

- ~~1) If the person has existed under conditions of being restrained by physical or pharmacological means, or of being confined, or of being supervised, which have deterred or tended to deter him or her from carrying out acts of inflicting or attempting to inflict bodily harm upon another person, the time limit of within 12 months preceding the hearing may be extended to a time longer than 12 months as consideration of the evidence indicates; or~~
- ~~2) If the bodily harm inflicted upon or attempted to be inflicted upon another person was grievous or horrendous, the time limit of within 12 months preceding the hearing may be extended to a time longer than 12 months as consideration of the evidence indicates.~~

~~*Danger to self* means behavior that, as a result of a mental disorder constitutes a danger of inflicting serious physical harm on oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out; and without hospitalization will result in serious physical harm or serious illness to the person. Danger to self does not include behavior that establishes only the condition of having a grave disability. means behavior which constitutes a danger of inflicting substantial bodily harm upon oneself, including attempted suicide. Danger to self is not present if the hazards to self are restricted to those which may arise from conditions defined under grave disability.~~

~~*Detention* means the taking into custody, or the holding in custody, of a person.~~

~~*Evaluation* means a professional analysis that may include firsthand observations or remote observations by interactive audiovisual media, and that is based on data describing the person's identity, biography and medical, psychological, and social conditions, which is carried out of a person's medical and psychological conditions conducted by a licensed physician who is a qualified psychiatrist, or by two other individuals, one of whom is a licensed psychologist and the other is either a licensed clinical social worker familiar with mental health and human services or a psychiatric and mental health nurse practitioner or certified psychologist. Such evaluation may be assisted by a mental health or social worker familiar with mental health and human services.~~

~~*Gravely disabled* means a condition, as a result of mental disorder, in which a person is unable to provide for basic personal needs for food, clothing, shelter, or essential medical care, and in which serious harm or deterioration is likely without intervention~~
~~means a condition in which a person is unable to provide for his or her basic personal needs for foods, clothing and shelter as a result of a mental illness of a type which has developed:~~

- ~~1) Over a long period of time and has been of long duration;~~
- ~~2) As a manifestation of degenerative brain disease during old age; or~~
- ~~3) A manifestation of some other degenerative physical illness of long duration.~~

~~*Imminent* means likely to occur in the very near future absent emergency intervention.~~

~~*Least restrictive alternative (LRA)* means the treatment plan and setting that infringe in the least possible degree with the patient's right to liberty and that are consistent with providing needed treatment in a safe and humane manner, and includes crisis stabilization programs, crisis respite, peer-run services, outpatient treatment, Assisted Outpatient Treatment (AOT), and other settings short of inpatient hospitalization that can safely mitigate risk.~~

~~*Licensed physician* means any medical doctor or doctor of osteopathy who is licensed in the state of Arizona.~~

~~*Mental disorder*:-~~

~~1) The term "mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory which has led to or may lead to danger to self or others.~~

~~2) The term "mental disorder" does not mean:~~

- ~~a) Conditions which are primarily those of drug abuse, alcoholism or mental retardation, unless in addition to one or more of these conditions the person has a mental disorder.~~
- ~~b) The declining mental abilities that directly accompany impending death.~~
- ~~c) Character and personality disorders characterized by lifelong and deeply ingrained anti-social behavior patterns, including sexual behaviors which are abnormal and prohibited by law.~~

~~*Mobile Crisis Team (MCT)* means a field-deployed team staffed by behavioral health professionals or trained crisis specialists to provide onsite assessment and stabilization.~~

~~*Persistent or acute disability* means a severe mental disorder that meets all the following criteria:~~

- a) Significantly impairs judgment, reason, behavior or capacity to recognize reality.
- b) If not treated, has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm.
- c) Substantially impairs the person's capacity to make an informed decision regarding treatment, and this impairment causes the person to be incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.
- d) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

Psychiatric and mental health nurse practitioner means a registered nurse practitioner who has completed an adult or family psychiatric and mental health nurse practitioner program and who is certified as an adult or family psychiatric and mental health nurse practitioner by the state board of nursing.

Psychiatrist means a licensed 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.

Psychologist means a person who is licensed in the state of Arizona and who is experienced in the practice of clinical psychology.

Social worker means a person who has completed two years of graduate training in social work in a program approved by the council of social work education, and who has experience in mental health, and who is licensed in the practice of professional counseling by the board of behavioral health examiners.

SEC. 10-223. EMERGENCY APPREHENSION.

- a) ~~A police officer~~law enforcement officer, BHP, or MCT clinician may ~~detain~~apprehend, without a warrant or order, a person who he or she has reasonable cause to believe is gravely disabled, or who poses an immediate danger to self or to others due to a mental disorder, ~~and who is apparently in need of immediate care and treatment~~immediate intervention is necessary to prevent serious harm.
- b) All persons so apprehended shall be transported to an appropriate detention facility.
If the person is apprehended by a law enforcement officer, then the ~~The~~ Community

police department shall notify immediately the ~~Community mental health services director~~ Director and the Chief Behavioral Health Services Officer of the River People Health Center of the apprehension, who shall direct an evaluation of the person ~~by a licensed physician or licensed psychologist within 72 hours of apprehension.~~ If the person is apprehended by an MCT clinician, then such notification shall be accomplished by the apprehending clinician.

- c) Upon arrival at the appropriate detention facility, the person may be held for emergency evaluation for up to seventy-two (72) hours, solely to complete assessment and stabilization. Hold time begins at the time of detention.
- d) The evaluation shall be completed as soon as practicable. If criteria for emergency hold are no longer met, then the evaluator shall discuss and implement an LRA plan to ensure safety, if needed.
- e) If criteria for emergency hold are no longer met, and once an LRA plan is in place to secure safety, the evaluator shall communicate this information to the Community prosecutor. The Community prosecutor shall ensure that release from emergency hold is appropriate, and if so, shall community such to the appropriate detention facility. Such release should occur as soon as practicable.
- b)f) Further detention beyond seventy-two (72) hours is permitted only if the court grants a petition for court-ordered evaluation pursuant to Section 10-225.

e)g) _____ As used in this section, “appropriate detention facility” means either the Salt River Department of Corrections (SRDOC) or the crisis stabilization unit of a Community medical or behavioral health facility (CSU). The apprehending police officer shall consider the following when determining whether a person should be detained in SRDOC or the CSU:

- 1) Whether the person is being detained on emergency apprehension only, or is also being arrested for a valid warrant from any jurisdiction and/or new criminal charges;
- 2) The conduct and demeanor of the person;
- 3) Prior contacts with the person;
- 4) Whether the person appears to be under the influence of alcohol, prescription medication (with or without a valid prescription), narcotic or dangerous drugs, hallucinogens, or other substances;
- 5) The nature of the incident that lead to the emergency apprehension;
- 6) Other factors that affect the safety and welfare of the person and the Community.

SEC. 10-224. PETITION FOR COURT-ORDERED EVALUATION; ~~FILING TIME~~.

- a) Any licensed physician, ~~psychiatrist, certified~~ psychologist, ~~psychiatric and mental health nurse practitioner,~~ or ~~Community~~ social worker, or the Community prosecutor, either upon request by an interested party or upon their own volition, may petition for a court-ordered mental health evaluation ~~by a licensed physician or certified psychologist~~ of a person who is alleged to be, as a result of a mental disorder, a danger to self or to others or gravely disabled and who is incapable of or unwilling to undergo a voluntary evaluation.
- b) The petition for evaluation shall contain the following information:
 - 1) The name and address of the person making the petition and his or her interest in the case.
 - 2) The name of the person to be evaluated and, if known or readily discoverable, the address, age, ~~marital~~ status and occupation of the person, and the name and address of the person's nearest relative.
 - 3) The facts which called the person to be evaluated to the attention of the petitioner.
 - 4) The facts upon which the allegations are based, including statements by the petitioner of the specific nature of the danger or grave disability.
 - 5) Other information that the court by rule or order may require.
- c) Where the recommendation made pursuant to the emergency or court-ordered evaluation of the person with a mental disorder is for commitment, such evaluation shall be filed immediately with the clerk of the court, and within 72 hours of such filing the Community prosecutor shall file a petition for involuntary commitment of the mentally ill person.
- e)d) Upon the filing of a petition for court ordered mental health evaluation or a petition for involuntary commitment, the court shall appoint a guardian ad litem (GAL) to represent the best interests of the person, consistent with Article IV, Division 4 of this Chapter.

SEC. 10-225. DETENTION FOR COURT-ORDERED EVALUATION; ~~HEARING~~.

- a) The court may order the apprehension, transportation and temporary custodial detention of a person for the purpose of a mental health valuation if from the petition for evaluation the court determines there is reasonable cause to believe that the person is likely to present a danger to self or others as a result of a mental disorder.
- b) A person detained under this section shall be informed of the reasons for his or her detention and that he or she must submit to a mental health evaluation.

c) The court may order the temporary custodial detention of a person until the date set for hearing on the petition for involuntary commitment of such person where a recommendation made pursuant to evaluation is for commitment.

d) The court may order the temporary custodial detention of a person either at the Salt River Department of Corrections or at an appropriate medical or inpatient behavioral health facility.

1) The judge presiding over the hearing shall consider the following when determining whether a person should be detained in SRDOC or in an appropriate medical or inpatient behavioral health facility:

i. Whether the person is being detained on emergency apprehension only, or is also being arrested for a valid warrant from any jurisdiction and/or new criminal charges;

ii. The conduct and demeanor of the person;

iii. Prior criminal or mental health history, including prior involuntary commitment proceedings;

iv. Whether the person, at the time of apprehension, appeared to be under the influence of alcohol, prescription medication (with or without a valid prescription), narcotic or dangerous drugs, hallucinogens, or other substances;

v. The nature of the incident that lead to the emergency apprehension or petition for evaluation;

vi. Input from the Community prosecutor at the time of filing of the petition for involuntary commitment;

vii. Input from the psychiatrist, psychologist, nurse practitioner, or social worker who performed the person's evaluation following an emergency apprehension;

viii. Other factors that affect the safety and welfare of the person and the Community.

2) If the court orders temporary custodial detention of a person at an appropriate medical or inpatient behavioral health facility, then the detention order shall include the following information:

i. The basis for which the detention is ordered;

ii. The length of the detention.

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SEC. 10-226. HEARING PROCEDURES.

- a) *Time of hearing.* A hearing on the petition for involuntary commitment shall be held within 72 hours of the filing of such petition.
- b) *Right to attend and testify.* All persons to whom notice has been given may attend the hearing and testify. The judge may exclude from the hearing any person not necessary for the conduct of the proceedings.
- c) *Witnesses.* The proposed patient and his or her counsel and the petitioner may present and cross examine witnesses. Opinions of examiners shall not be admitted into evidence unless the examiner is present to testify and is subject to cross examination. The judge may sequester any witness or witnesses.
- d) *Conduct of hearing.* The hearing shall be governed by the rules of court and the rules of evidence as set forth in this Community Code of Ordinances, or alternatively in the federal rules of evidence. The judge shall admit all relevant evidence at the hearing. The court shall take and preserve an accurate tape recording of the hearing, which shall be subject to the provisions on confidentiality as set forth in section 10-228.
- e) ~~*Standard of proof.*~~ If the judge finds by clear and convincing evidence that the person, as a result of a mental disorder, is a danger to self, is a danger to others, is persistently or acutely disabled or is gravely disabled and is in need of treatment, and is either unwilling or unable to accept voluntary treatment, the judge shall ~~order such person to undergo inpatient treatment~~ order COT. The judge shall consider reasonable alternatives to commitment including, but not limited to, dismissal of the petition, voluntary outpatient treatment care, assisted outpatient treatment (AOT), and ~~informal~~ voluntary admission to a treatment facility.

e) Disposition.

- 1) Inpatient COT. The Court may order inpatient treatment for the following time periods, renewable upon further hearing and findings:
 - i. 90 days for a person found to be a danger to self;
 - ii. 180 days for a person found to be a danger to others or a person found to be persistently or acutely disabled;
 - iii. 365 days for a person found to be gravely disabled.
- 2) AOT. If risk can be mitigated in the community, the Court may order AOT for up to one hundred eighty (180) days, renewable upon further hearing and findings, specifying services such as psychiatry, therapy, case management, medications, peer services, and care coordination.

f) Order.

- 1) The judge shall direct the entry of judgment.

- 2) The court order shall be filed with the clerk of the court. Where the Community court orders involuntary inpatient COT, the order shall be filed with the clerk of the Superior Court of the State of Arizona.
 - 3) Failure to comply with such an order shall not be punished criminally but may be grounds for modification of the treatment plan or petition for recommitment if criteria are again met.
- g) Review hearings. The court shall order review hearings to occur at least every forty-five (45) days to gauge compliance with and progress during COT or AOT.

~~The judge shall direct the entry of judgment, and may find the facts specifically. The order shall be filed with the clerk of the court. Where the Community's court orders involuntary commitment for treatment, the order shall be filed with the clerk of the superior court of the State of Arizona. The maximum periods of inpatient treatment which the court may order are as follows:~~

SEC. 10-227. EXTENDED JURISDICTION FOR POST-RELEASE COMPLIANCE.

- a) Upon discharge from inpatient treatment or expiration of a court-ordered treatment period, the Court may, upon petition of a Behavioral Health Professional or the Community Prosecutor and after notice and hearing, extend its jurisdiction for the limited purpose of ordering compliance with a post-release treatment plan developed by the treating Behavioral Health Professional.
- b) Such plan may include medication management, outpatient therapy, case management, peer support, and other clinically appropriate services.
- c) An order under this subsection shall not exceed one hundred eighty (180) days but may be renewed upon petition and continued findings that the person remains at risk of decompensation or harm without adherence.
- d) Failure to comply with such an order shall not be punished criminally but may be grounds for modification of the treatment plan or petition for recommitment if criteria are again met.
- e) Jurisdiction under this subsection is ancillary to the Court's civil commitment jurisdiction and terminates automatically at the expiration of the order or upon clinical discharge, whichever occurs first.
 - 1) 90 days for a person found to be a danger to self;
 - 2) 180 days for a person found to be a danger to others;
 - 3) 365 days for a person found to be gravely disabled.

SEC. 10-2287. PATIENT'S RIGHTS AT HEARINGS.

- a) At all hearings conducted pursuant to this article, a person shall have the right to an analysis of his or her psychological condition by an independent evaluator who is either a licensed physician or certified psychologist selected by the patient or his or her legal counsel.
- b) Information, admissions, or confessions given by a person to a physician or mental health practitioner during the course of treatment or evaluation as ordered by the court cannot be used against the person at a trial where he or she is a criminal defendant charged with violating a tribal law.
- c) At all hearings conducted pursuant to this article, a person shall have the right to counsel. Where such person is indigent or cannot afford counsel, the court shall appoint an attorney to represent him or her.
- d) For purposes of transportation of persons to and from hearings, detention, and commitment under this article, the Community court shall be the temporary guardian of the person while in transit.

SEC. 10-2298. CONFIDENTIAL RECORDS.

All information and records obtained in the course of evaluation, examination or treatment shall be kept confidential and not as public records, except as the requirements of a hearing pursuant to this article may necessitate a different procedure. Information and records 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 the person.
- 2) Individuals to whom the person has given consent to have information disclosed.
- 3) The judge to whom the case is assigned and the Community prosecutor.
- 4) Individuals legally representing the person.
- 5) Individuals authorized by a court order.

Secs. 10-23029—10-249. Reserved.

10.2 Competency to stand trial

(a) **Policy.** A person shall not be tried, convicted, sentenced, or punished for a violation of Community law while, because of a mental illness, defect, or disability, the person is unable to understand the proceedings against him or her or to assist in his or her own defense.

(b) Definitions.

(1) *Mental Illness, Defect, or Disability.* “Mental illness, defect, or disability” means a psychiatric or neurological disorder that is evidenced by behavioral or emotion symptoms, including congenital mental conditions, conditions resulting from injury or disease, and developmental disabilities.

(2) *Incompetence.* “Incompetence” means a defendant is unable to understand the nature and objective of the proceedings or to assist in his or her defense because of mental illness, defect, or disability. The presence of a mental illness, defect, or disability alone is not grounds for finding a defendant incompetent to stand trial.

(3) *Effect of Incompetence.* A defendant may not be tried, convicted, or sentenced while the defendant is incompetent. This does not bar a court from proceeding under Chapter 10, Article VI.

(c) Motion and Order for Examination.

(1) *Timing.* At any time after a complaint is filed but prior to sentencing, the court on motion, or its own motion, order an examination of the defendant to determine whether a defendant is competent to understand the proceedings against the defendant.

(2) *Parties Authorized to Move for Competence Determination.* The defense, prosecution, or the court on its own motion, may move for competency evaluation.

(3) *Motion to Determine Competence.* The motion shall state the grounds upon which the mental examination is sought. If the court determines that reasonable cause exists to warrant an examination to determine defendant's competency, the court shall order that the defendant undergo a mental health evaluation by a mental health professional to determine the defendant's competency to stand trial.

(4) *Guilty Except Insane.* On the motion of the defendant or with the defendant's consent, the court may order a screening examination for a guilty except insane plea to be conducted by a mental health professional.

(d) Competency Evaluation.

(1) *Generally.* Upon finding reasonable cause, the court shall order a competency evaluation by a qualified mental health expert.

(2) *Mental Health Expert.* “Mental health expert” means a license physician in good standing or a licensed psychologist in good standing. A mental health expert has the following duties and qualifications:

(A) conduct interviews and testing.

(B) review relevant records submitted including criminal records and medical history submitted to the evaluator by the parties.

(C) be familiar with the Community's standards and code for competency and criminal and involuntary commitment codes.

(D) be familiar with treatment, training, and restoration programs available.

(3) *Competency Report.* The mental health expert shall provide a written competency report to the court within thirty (30) days of the court order authorizing the competency evaluation. The report shall include following information:

(A) the defendant's current mental status including a mental health diagnosis.

(B) the results of any mental examinations, scientific tests, experiments or comparisons conducted on the defendant.

(C) express an opinion on the defendant's competency including whether the defendant is incompetent, but restorable within six (6) months of entering treatment.

(4) *Custody During Evaluation.* A defendant may be evaluated in-custody or out-of-custody. Detainment shall be determined consistent SR-RCP Rule 8.

(5) *Distribution of Report.* Upon receipt of the report, the court will copy and distribute the mental health expert's report to defendant's counsel. The defendant's counsel shall have five (5) business days to redact any statements of the defendant or summary of the defendant's statements pertaining to the charged offense from the written report and submit a copy of the report, with any redactions, to the court for distribution to the prosecution. In any event, statements of the defendant obtained under these provisions regarding the charged offense(s) or other crimes shall not be admissible at or at any subsequent proceeding to determine guilt or innocence, without the defendant's consent.

(e) Competency Hearing

(1) *Hearing Requirements.* Within thirty (30) days after the mental health professional's report has been submitted to the court, the court shall hold a competency hearing to determine the defendant's competency.

(2) *Evidence.* The defendant and the Community may introduce other evidence about the defendant's mental condition.

(3) *Burden of Proof.* The party asserting incompetence bears the burden of preponderance of evidence.

(4) *Judicial Findings.* After the hearing, if the court:

(A) finds by preponderance of evidence that the defendant is competent, the court must direct that proceeding continue without undue delay.

(B) finds by preponderance of evidence that the defendant is incompetent but restorable within six (6) months of finding, the court shall order competency restoration treatment as defined in SR-RCP Rule 10.2(f).

(C) finds by preponderance of evidence that the defendant is incompetent and not restorable, the court must dismiss the charges without prejudice. The court shall decide if there is reasonable cause to believe the defendant poses an immediate danger to self or to others, the defendant is severely disabled, due to a mental disorder, or defendant is incompetent to refuse treatment. If the court finds that there is reasonable cause to believe the defendant poses an immediate danger to self or to others, the defendant is severely disabled, due to a mental disorder, or defendant is incompetent to refuse treatment, the court shall order the emergency apprehension of the defendant, consistent with SRO § 10-233, and refer the matter to the Office of the Community Prosecutor to pursue action in accordance with Chapter 10, Title VI.

(5) *Guardian Ad Litem Appointment.* If the court finds the defendant incompetent, the court shall appoint a guardian ad litem, through the Legal Services Office, to represent the defendant's best interests including exploring the need of a guardian, a conservator, or any other protective measures. The guardian ad litem's appointment extends to Salt River Pima-Maricopa Indian Community Ordinances Chapter 10, Title VI proceedings.

(f) Competency Restoration

(1) *Restoration Treatment Availability.* Competency restoration treatment shall only be ordered when a defendant has any pending class A charge(s). If a defendant is found incompetent and defendant only has class B charges pending with no class A charge(s), the charges shall be dismissed without prejudice.

(2) *Treatment Goals and Plan.* The court shall determine whether the defendant shall be subjected to treatment without consent. A treatment plan shall be ordered to be completed by Salt River Pima-Maricopa Indian Community Behavioral Health or their designee within ten (10) days of the court's finding that the defendant is incompetent but restorable. The treatment plan shall cover the following:

- (A) a proposed place where the treatment will occur.
- (B) whether the treatment recommendation is inpatient or outpatient.
- (C) the proposed means of transportation to and from the treatment site.
- (D) the length of treatment recommendation.
- (E) who is the assigned treatment supervisor.

(3) *Treatment Order.* A treatment order may be based on the treatment plan but shall specify:

- (A) the place where the treatment will occur.
- (B) whether the treatment will be inpatient or outpatient.

(C) the means of transportation to and from the treatment site.

(D) that the court is to be notified if the defendant regains competence before the expiration of the treatment order.

(E) that the treatment supervisor shall submit a review report every forty-five (45) days updating the court concerning the status of the treatment consistent with SR-RCP Rule 10.2(f)(5).

(F) the date and time of the review hearing.

(4) *Review Hearings.* The court shall conduct review hearings every sixty (60) days during the restoration period to review the defendant's treatment progress. If during the restoration period the treatment supervisor reports the defendant is competent, the court shall set further proceedings consistent with SR-RCP Rule 10.2(g).

(5) *Treatment Report.*

(A) Generally. The court shall order the treatment supervisor to submit a report to the court and provide copies of the report the defense counsel. Defense counsel shall have five (5) days to redact any statements of the defendant or summary of the defendant's statements pertaining to the charged offense from the written report and submit a copy of the report, with any redactions, to the court for distribution to the prosecution.

(B) When to Report. The treatment supervisor shall submit a report to the court every forty-five (45) days during the restoration period.

(C) Content of Report. The report must include at least the following:

(i) A description of the nature, content, extent, and results of the supervisor's examination of the defendant and any tests the supervisor conducted.

(ii) the facts on which the treatment supervisor findings are based.

(iii) the treatment supervisor's opinion regarding the defendant's competence to understand the court proceedings against the defendant and to assist in his or her defense.

(iv) if the treatment supervisor's opinion is that the defendant remains incompetent, the prognosis regarding the defendant's restoration to competence and an estimate of how long it will take to restore the defendant's competence.

(6) *Treatment Duration.* Competency restoration cannot exceed six (6) months unless civil commitment proceedings are initiated pursuant to Salt River Pima-Maricopa Indian Community Code of Ordinances Chapter 10, Title VI or the court finds by preponderance of evidence that the defendant is substantially progressing towards competence. Speedy trial rights are waived pursuant to SR-RCP Rule 7.2.

(g) Restoration Hearing

(1) *Grounds.* The court shall set a Restoration Hearing upon receiving a Treatment Report that the defendant has become competent to stand trial or at the expiration of the treatment duration.

(2) *Competency Finding.*

(A) If the court finds that the defendant is competent to stand trial, regular court proceedings shall timely resume.

(B) If the court finds that the defendant remains incompetent but determines that there is substantial progress and probability that the defendant will regain competence in the next three (3) months, the court shall modify the treatment order to increase the treatment duration an additional three (3) months.

(C) If the court finds that after the treatment duration has expired and there is no substantial progress and probability that the defendant will regain competency within any foreseeable treatment duration, the charges shall be dismissed. The defendant shall be released from custody unless the court finds that the defendant's mental condition warrants civil commitment under Salt River Pima-Maricopa Indian Community Code of Ordinances Chapter 10, Title VI and further detainment under Sec. 10-225.