

Fort Peck Tribal Court
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Title 29 – Adult Protection

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Chapter 1. Purpose and Definitions

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Sec. 101. Purpose:

An ordinance to prohibit the abuse of adults, to require reporting of abuse of adults, to provide for services through the Adult Protection Team, and to provide a penalty for such abuse.

Sec. 102. Definitions.

Terms used in this Title, unless a different meaning is clearly indicated by context, mean:

(a) Abuse. Any negligent act which results in physical injury, sexual abuse, unreasonable confinement, malnutrition, or the reckless or negligent deprivation by a caretaker of goods and services necessary to maintain physical health or mental health.

(b) Adult. Any person over the age of 18, including an incapacitated person.

(c) Adult Protection Team (APT). A team appointed by the Tribal Executive Board (TEB) which shall have the responsibility to investigate reports of abuse of adults, provide for protective services to such persons, and where necessary, initiate actions in Tribal Court on behalf of the adult who lacks capacity to consent to protective services. The membership of the APT shall include, but need not be limited to, a member of the Fort Peck Tribes' HEW Committee, a representative from the Indian Health Service, a representative from BIA Social Services, and two adults appointed by the TEB.

(d) Caretaker. An individual or public institution who has assumed the responsibility for the care of a person either voluntarily, by contract, by receipt of payment for care, or by order of a court. If the adult and a family member live in the same household, there shall be the presumption that the family member is the caretaker. In the proceedings with the APT or Tribal Court, the family member may rebut this presumption through presentation of the facts. In all other situations, the APT and Tribal Court shall ascertain, through

consideration of relevant facts, whether a particular person is a caretaker.

(e) Emotional distress. Mental anguish, fear, agitation, confusion, severe depression, or other forms of serious emotional distress.

(f) Exploitation. Illegal or improper utilization of an adult or of the resources of an adult for monetary or personal benefit, profit or gain.

(g) Goods and services necessary to avoid physical harm or emotional distress. Includes but is not limited to provision of medical care for physical or mental health needs, assistance in personal hygiene, providing adequate shelter with heat and ventilation, protection from health and safety hazards, protection from malnutrition, proper supervision when appropriate, and transportation necessary to secure these needs.

(h) Incapacitated person. Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect for his need for protection, care or treatment.

(i) Least restrictive alternative. Adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty, and no more intrusive than necessary to achieve and ensure goods and services necessary to avoid physical harm and mental anguish of a vulnerable adult.

(j) Neglect. The caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult.

(k) Self-endangerment. An adult, whose behavior indicates that he is causing himself to be in imminent physical danger as evidenced by an inability to provide for some of (but not limited to) his basic needs, such as food, clothing, shelter, and health and safety.

Chapter 2. Report of Abuse

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Sec. 201. Obligation to Report.

Any person knowing or having reasonable cause to suspect that an adult is or has been abused shall report such abuse to the Adult Protection Team or to the appropriate law enforcement agency, the agency shall immediately notify the APT.

Sec. 202. Contents of Report

The report must be in writing and shall contain the name, age and address of the adult, the name and address of the alleged perpetrator, the nature and extent of the abuse, and any other pertinent information known to the person making the report.

Sec. 203. Immunities

Any person, other than a perpetrator, who in good faith makes any report pursuant to this Chapter or who testifies in any judicial proceedings arising from such report shall be immune from civil or criminal liability because of such report or testimony. Any person who intentionally fails to make a report required by this Chapter shall be subject to a civil fine not to exceed \$500.00.

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Sec. 301. APT Investigation

(a) Upon receiving a report of abuse of an adult, the APT shall make a prompt and thorough investigation to determine if such abuse exists and whether the adult is in need of protective services.

(b) In the absence of special circumstances, the investigation shall include an interview of the adult, his caretaker(s), and the alleged abuser if different from the caretaker, a visit to the residence, and consultation with persons who might have knowledge of the situation.

(c) If the report indicates that the adult may be in imminent danger of serious physical or mental harm, an initial investigation shall be completed within 24 hours. If not, it shall be completed within a reasonable time.

Sec. 302. Cooperation by Other Agencies

The BIA, IHS, and any other public and private agencies shall assist the APT, at its request, in making the investigation. If confidential information is needed from any such agency, the APT shall obtain the adult's authorization for release of the information.

Sec. 303. Provision of Protection Services

Upon completion of the investigation, if the APT determines, based on the investigation, that the adult has been abused and is in need of protective services, the APT shall develop a plan for provision of such services. Where the abuse was by a member of the adult's family, a primary purpose of the plan shall be to restore and promote family harmony, and the plan shall contain services designed to achieve this result.

Services provided to abused adults may include, but are not limited to:

(1) Assistance in obtaining needed counseling for the abused adult and/or the abuser.

(2) Mediation between the abused adult and the abuser.

(3) Assistance in locating and moving to alternative living quarters, on a temporary or permanent basis.

(4) Assistance in obtaining needed medical care, food, clothing and household goods.

(5) Appointment of a guardian by order of the court.

To assist the APT in the provision of such services, the APT shall develop a bank of information concerning agencies and individuals willing to provide medical care, food and clothing, temporary housing and other services. These services shall be provided using the least restrictive alternative available, while still meeting the needs of the adult.

Sec. 304. Central Registry

The APT shall establish a central registry for reports of and convictions of abuse of an adult. The information in the central registry shall be confidential and may be released only to the APT.

Sec. 305. Consent to Protective Services

The APT shall not provide protective services to an abused adult unless that person consents, except as provided in Chapter 5 of this Title.

Sec. 306. Reports to the Tribal Prosecutor

Whenever the APT makes a positive determination under Section 301, the APT shall inform the Tribal prosecutor, and pursuant to Section 602 of this Chapter, shall furnish information as requested by the prosecutor.

Chapter 4. Self-endangerment

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Sec. 401. Self-endangerment

If any individual is found, upon investigation by the APT, to have self-inflicted his own abuse, and is in imminent danger of causing serious physical harm to himself and such person refuses assistance, the APT may submit a petition to the Tribal Court to determine the capacity of the adult pursuant to Chapter 5 of this Title.

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Sec. 501. Petition to Court for Determination of Capacity.

(a) If the APT determines that an adult is being abused and/or is in imminent danger of substantial physical or mental injury, and lacks capacity to consent to protective services, it may petition the Tribal Court for an order authorizing APT services. The petition must allege specific facts to show that the adult is in need of protective services and lacks the capacity to consent to such services.

(b) Upon receiving a petition, the Tribal Court shall immediately schedule a hearing to determine the capacity of the adult.

Sec. 502. Definition of Lack of Capacity.

For purposes of this chapter, lack of capacity to consent to services shall mean that the person does not understand the nature of the services being offered or the reasons for which the APT is offering the services.

Sec. 503. Rights to the Adult.

The adult shall be immediately notified in writing that a petition has been filed in Tribal Court, the reasons for the petition, and the date and time of the hearing. The adult shall have the right to be present at the hearing, to be represented by counsel at his expense, and to present testimony on his behalf.

Sec. 504. Hearing-Determination by the Court.

At the hearing, the APT shall present evidence that the adult is in need of protective services and lacks capacity to consent. If the Court determines by clear and convincing evidence that the adult is

in imminent danger of substantial physical or mental injury and lacks the capacity to consent to protective services, it may enter an order authorizing the provision of protective services.

Sec. 505. Adult Protection Order.

An order for adult protective services may include, but is not limited to, the following:

- (1) Removing the person from the place where the abuse or neglect has taken or is taking place;
- (2) Removing the person who has abused or neglected the adult from the adult's home;
- (3) Restraining the person who has abused or neglected the adult from continuing such acts;
- (4) Requiring the adult's family or caretaker or any other person with a fiduciary duty to the adult to account for the adult's funds and property;
- (5) Requiring any person who has abused or neglected the adult to pay restitution to the adult for damages resulting from the person's wrongdoing;
- (6) Appointing a guardian ad litem for the adult;
- (7) Recommending that a representative payee be named; or
- (8) Ordering the appropriate human services agency to prepare a plan for the delivery of adult protective services which provide the least restrictive alternative for services, care, treatment, or placement consistent with the adult's needs.

Sec. 506. Duration of the Adult Protection Order.

An adult protection order shall be issued for a period not to exceed sixty (60) days. The Tribal Court shall review the order every sixty (60) days to determine whether the need for services still exists, and shall have the discretion to close the case at any time if it finds the situation has been resolved.

Chapter 6. Record keeping and Access to Records

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Sec. 601. APT Records.

The APT shall keep a separate case file for each report or abuse it receives. The file shall include a complete record of the complaint itself, the result of the investigation, any services provided, a summary of any court proceedings, and any other pertinent information.

Sec. 602. Confidentiality.

The APT records shall be confidential, except that the adult who is the subject of the report shall have access to his or her file at any time, and shall be informed of such access during the initial investigation, and the Tribal Court shall have access to the case file as needed for criminal proceedings against the abuser or for proceedings under Title 7 of this Code or Chapter 7 of this Title.

Chapter 7. Penalties for Abuse

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Sec. 701. Prosecution Under Title 7.

Any person who is reported to the APT as a probable abuser as defined in Chapter 1, Section 102(a) of this Title, or any other person as to whom the Tribal prosecutor finds probable cause of such abuse, may be prosecuted and punished under any applicable section of Title 7 of this Code.

(AMENDED AS PER RESOLUTION NO. 1709-2005-4, DATED APRIL 25, 2005)

Sec. 702. Prosecution under Title 29.

In the discretion of the Tribal Prosecutor, the alleged abuser shall be prosecuted for the crime of elderly abuse. The crime of elderly abuse is a Class A misdemeanor for the first offense, and a felony for each subsequent offense.

(AMENDED AS PER RESOLUTION NO. 1455-2010-12, DATED 12/13/2010.)