

TITLE 8. FAMILY CODE

Chapter 8.7

ELDERS' ABUSE

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GENERAL PROVISIONS

8.7.1. Purpose. There are elders and other vulnerable adults within the jurisdiction of the Suquamish Tribe who are at risk of abuse, neglect, and exploitation and may need the protection of the Tribal Court. The Suquamish Tribe intends to prevent and remedy the abuse, neglect, or exploitation of elders and other vulnerable adults by providing a procedure for identifying these persons and providing the services necessary for their well-being.

The Tribe further finds that many of these elders and other vulnerable adults may be homebound or otherwise unable to represent themselves in court or to retain legal counsel in order to obtain the relief available to them under this chapter.

In addition, elders and other vulnerable adults may need the assistance of a guardian or protective payee, or both, to conduct personal business or to obtain the services necessary for their well-being. This code provides two ways to accomplish this: at the Tribe's request (§8.7.23) or at the elder's or other interested person's request using the adult guardianship provisions. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.2. Definitions. When the words listed in this section appear in this chapter, they shall have the following meaning unless a different meaning is clearly intended.

(a) "Abuse" means physical, verbal, or mental mistreatment, intimidation, or injury which harms or threatens a person's well-being.

(b) "Consent" means written consent granted after the person has been fully informed of the nature of the services to be offered and understands that receiving services is voluntary.

(c) "Exploitation" means the illegal or improper use of a vulnerable adult or of that adult's resources for another person's profit or advantage. Exploitation includes but is not limited to:

(1) Any unauthorized use or occupation of the vulnerable adult's property, food, telephone, utility services, residence, land assignment, vehicles, money, or other resources or the gaining of funds, property, or other resources of an elder by threat, humiliation, intimidation, or other coercion.

(2) Use of a vulnerable adult's possessions or utilities which exceeds the authorization he or she has given.

(3) Unreasonable imposition on the vulnerable adult's time or resources, such as leaving children in the care of the vulnerable adult for extended periods or under circumstances in which the adult cannot adequately care for the children.

(d) "Neglect" means any action or inaction which leaves the vulnerable adult without the means or ability to obtain food, clothing, shelter, or health care, and to be able to maintain minimum physical and mental health. Neglect also includes but is not limited to any interference with the provision of social and health services to maintain the vulnerable adult's physical and mental health.

(e) "Protective payee" means a person appointed by the Court to receive and disburse funds on behalf of another to protect that person's financial resources.

(f) "Vulnerable adult" means elders over the age of fifty-five (55) and persons eighteen (18) years of age or older who do not have the functional, mental, emotional, or physical ability to protect and care for themselves. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.3. Reporting Abuse — Neglect and Exploitation of Adults. (a) The care of elders and vulnerable adults is a family and a tribal responsibility. Any member of the Suquamish Tribe and persons residing within the jurisdiction of the Tribe who have reason to believe that a vulnerable adult has suffered abuse, neglect, or exploitation or is otherwise in need of protective services may report such information to the presenting officer or the tribal police department.

(b) Reporting under this section is mandatory for tribal employees and contractors with the Tribe who perform services to the community in the areas of education, health and human services, and law enforcement, and members of the clergy. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.4. Contents of Report. Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. The reports made under this chapter shall contain the following information, if known:

(a) The name and address of the vulnerable adult;

(b) The nature and extent of the suspected abuse, neglect, or exploitation, including the date, time, and location of the events;

(c) Evidence of previous abuse, neglect, or exploitation;

(d) The name and address of the person making the report; and

(e) Any other helpful information. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.5. Immunity. All persons who report or testify about the abuse, neglect, or exploitation of a vulnerable adult are immune from civil liability and criminal prosecution. Conduct complying with the reporting and testifying provisions shall not be deemed a violation of any confidential communication privilege. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.6. Sanctions. Any person who is required to report abuse or neglect under §8.7.3 and who knowingly fails to report the abuse, neglect, or exploitation of a vulnerable adult is subject to a civil fine not to exceed five thousand dollars (\$5,000). (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.7. Open Communications Policy. The policy of the Suquamish Tribe toward investigation of the abuse, neglect, or exploitation of a vulnerable adult is one of open communication between agencies and departments for the protection of vulnerable adults while respecting the confidentiality of statements by victims, their families, and reporters of abuse, neglect, and exploitation. Where there is a conflict between confidentiality and the need for communication, protection of the vulnerable adult shall be the overriding consideration. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.8. Role of the Presenting Officer. The Tribal Council, with the compliance of the Elders' Council, shall designate a presenting officer who shall be authorized to carry out activities specified under this chapter. The duties of the presenting officer include but are not limited to the following:

(a) Receive reports of abuse, neglect, or exploitation of vulnerable adults.

(b) Investigate reports of abuse, neglect, or exploitation of vulnerable adults. The presenting officer shall coordinate closely with tribal law enforcement to ensure that any matters which may be criminal in nature are promptly referred to tribal law enforcement for investigation.

(c) Assist law enforcement in cases they are investigating, upon request; work with tribal law enforcement to ensure that appropriate protective services are provided to the vulnerable adult.

(d) Assist referrals from law enforcement in cases where law enforcement believes there is insufficient evidence to refer the case for criminal prosecution and in cases where law enforcement and the presenting officer believe a civil remedy will be more effective to protect the vulnerable adult.

(e) Take the lead role in finding services for the protection and well-being of vulnerable adults.

(f) Develop a plan to assist vulnerable adults and their families to prevent future abuse, neglect, or exploitation. This plan may be in the form of a contract between the parties or a recommendation to the Court for a court-ordered plan.

(g) Prepare reports and appear in court as required under this code and as required by the Court.

(h) Coordinate and communicate with all agencies and departments involved in the protection of vulnerable adults. (Res. 2001-082 (part), passed Aug. 28, 2001; renumbered for consistency Jun. 7, 2007)

8.7.9. Access to Investigate — Court Order. (a) If access is denied to the presenting officer when investigating an allegation of abuse, neglect, or exploitation of a vulnerable adult by an individual, the presenting officer may seek an order from the Court to prevent interference with the investigation.

(b) Access to investigate criminal matters by law enforcement shall be governed by the criminal laws and procedures of the Suquamish Tribe. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.10. Appointment of Guardian *ad Litem*. The Court may appoint a guardian *ad litem* to represent the interests of an adult in vulnerable adult protection proceedings or guardianship proceedings, whenever the Court deems necessary. (Res. 2001-082 (part), passed Aug. 28, 2001)

EMERGENCY ORDERS

8.7.11. Emergency Orders for the Protection of Vulnerable Adults — Petition. The presenting officer, law enforcement, or the vulnerable adult may file a petition for an emergency order of protection of a vulnerable adult. The Suquamish Tribe may also file a petition for an order of protection on behalf of any vulnerable adult within the jurisdiction of the Suquamish Tribe. The petition shall include the name and address of the petitioner; the specific facts and circumstances warranting protection under this code; the name, address, and age of the person known by the petitioner to be in need of protection; and the name, address, and age of the person from whom the vulnerable adult needs protection and his or her relationship to the vulnerable adult. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.12. Emergency Orders for the Protection of Vulnerable Adults — Probable Cause. The Court may issue an emergency order of protection of a vulnerable adult, without a prior hearing, upon filing a petition with a statement of facts showing probable cause to believe that:

(a) The adult who is the subject of the petition is an elder over the age of fifty-five (55) or is a person eighteen (18) years of age or older who does not have the functional, mental, emotional, or physical ability to protect and care for himself or herself; and

(b) The vulnerable adult has suffered abuse, neglect, or exploitation or is otherwise in need of protective services and that his or her health, safety, and welfare will be seriously endangered if the petition is not granted. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.13. Emergency Orders for the Protection of Vulnerable Adults — Contents. (a) The emergency order of protection of a vulnerable adult shall be signed by the judge or judicial officer and may:

(1) Restrain any person from committing acts of abuse, neglect, or exploitation with respect to the vulnerable adult;

(2) Exclude any person from a vulnerable adult's residence for a specified period;

(3) Prohibit contact with the vulnerable adult by any person for a specified period;

(4) Require an accounting of the disposition of the vulnerable adult's income or other resources; and

(5) Restrain the transfer of property for a specified period.

(b) Relief granted by an order of protection of a vulnerable adult shall be for a period fixed by the Court. A full hearing on the order shall be provided in the fact-finding hearing and may be revoked or modified in the vulnerable adult protection order.

(c) An emergency order of protection of a vulnerable adult may be transmitted by the judge via computer or fax, if the judge cannot be present on the reservation. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.14. Emergency Orders for the Protection of Vulnerable Adults — Service and Duration. All persons restrained or otherwise subject to the emergency order for the protection of a vulnerable adult shall be personally served with a copy of the order by law enforcement. If law enforcement cannot locate the person within five (5) days, the Court, the presenting officer, and the vulnerable adult shall be notified. The order may be served by law enforcement up to two (2) years after the date it was signed by the judge. (Res. 2001-082 (part), passed Aug. 28, 2001)

FACT-FINDING HEARINGS

8.7.15. Fact-finding Hearings — Purpose. The Court shall conduct a fact-finding hearing to determine whether an adult is a vulnerable adult. Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.16. Fact-finding Hearings — Petition Contents and Filing. A petition for a fact-finding hearing shall be filed by the presenting officer, law enforcement, or other person authorized by the Tribe to file the petition and shall include:

(a) The name, date of birth, and permanent address of the adult;

(b) The facts establishing the Court's jurisdiction; and

(c) A detailed statement of the facts and reasons which support the allegation that the adult is a vulnerable adult. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.17. Fact-finding Hearings — Time and Notice. The Court shall set the date for the hearing to take place within thirty-five (35) days of the date the petition is filed. The court clerk shall provide notices of hearing to all parties at least five (5) working days before the hearing. The notice shall include the date, time, and place of the hearing along with a copy of the petition. The presenting officer and law enforcement are responsible for letting the court clerk know as early as possible who the parties are so timely notice of the hearing can be given. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.18. Fact-finding Hearings — Evidence and Burden of Proof. Rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Suquamish Tribal Court. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.19. Fact-finding Hearings — Agreed Order. (a) The parties to a fact-finding hearing may agree to a proposed order which resolves some or all of the issues of the case. One or more guardians or a protective payee may be appointed in an agreed order. A family meeting or other informal mediation process may be used to help reach an agreement. Before deciding whether to approve the agreed order, the judge may hold an in-chamber, ex parte discussion with the vulnerable adult or any person who will be subject to the order to:

(1) Explain the proposed agreed order in detail;

(2) Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;

(3) Explain the person's right to a spokesperson/counsel at his or her own expense;

(4) Explain that the Tribe has the burden of proving the allegations in the petition and that the person does not have to agree to the proposed order; and

(5) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

(b) The in-chambers conversation need not be recorded. If the person wants a friend, family member, or other people to be present, the judge shall allow it after first speaking alone with him or her. If the Court finds that any consent was the result of fraud or duress, the agreed order may be vacated. (Res. 2001-082 (part), passed Aug. 28, 2001)

VULNERABLE ADULT PROTECTION PLAN

8.7.20. Suggested Vulnerable Adult Protection Plan. The presenting officer shall prepare a written plan describing all reasonable and appropriate alternatives for protecting the vulnerable adult and assisting his or her family. The plan shall explain why it is necessary and its benefits to the vulnerable adult and to the family. It shall fully explain any recommendations for removal from the home of any person found to have abused, neglected, or exploited the vulnerable adult. It may recommend the appointment of one or more guardians or protective payees to assist the vulnerable adult to conduct personal business or to obtain the services necessary for his or her well-being. The professional opinions of all persons consulted shall be included. The presenting officer shall file the report with the Court and provide copies to all parties at least five (5) days before any hearing on the plan. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.21. Vulnerable Adult Protection Plan — Other Recommendations and Plans. Any person who is involved in the case may prepare his or her recommendations to the Court in the form of a vulnerable adult protection plan. Copies shall be provided to all parties to the case prior to any hearing on the plan. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.22. Vulnerable Adult Protection Plan — Hearing. (a) A hearing shall be held to decide what plan will best meet the needs of the vulnerable adult and assist the family. This hearing may take place right at the end of the fact-finding hearing or may take place up to thirty-five (35) days from the date of the fact-finding hearing. The Court shall determine the scheduling and shall cause notices of hearing to be served on all parties.

(b) The Court shall hear testimony and consider all vulnerable adult protection plans submitted. All parties shall be given a chance to contest the facts and conclusions presented in each plan. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.23. Vulnerable Adult Protection Plan — Court-ordered Plan — Disposition. (a) The Court shall order a plan for the protection and well-being of a vulnerable adult. The plan may restrain or exclude from the vulnerable adult's home any person found to have abused, neglected, or exploited the vulnerable adult. The Court may make the return to the home conditional on compliance with its orders.

(b) The Court shall make any other orders necessary for the protection and well-being of the vulnerable adult and his or her family. Such orders may include but are not limited to restraining orders; evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; and other services or activities for the benefit of the vulnerable adult and his or her family.

(c) The Court may also appoint one or more guardians or a protective payee for the benefit of the vulnerable adult if the Court finds it necessary to assist the vulnerable adult to conduct personal business or to obtain the services necessary for his or her well-being. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.24. Vulnerable Adult Protection Plan — Review Hearings. The Court shall conduct a hearing to review its plan six (6) months from the date of the order, or earlier upon motion of any party, and shall set a schedule for future periodic reviews. The Court shall review whether the parties are complying with the order and shall consider whether modification is necessary to protect the vulnerable adult. (Res. 2001-082 (part), passed Aug. 28, 2001)

8.7.25. Vulnerable Adult Protection Plan — Proceedings to Be Supplemental. Any proceeding under this code may be used in conjunction with any other civil or criminal code. (Res. 2001-082 (part), passed Aug. 28, 2001)