

SAC AND FOX NATION TRIBAL CODE
TITLE 32 ARTICLE 1
TITLE 32
ADULT AND ELDERLY PROTECTIVE SERVICES ACT
ARTICLE 1
GENERAL PROVISIONS

Section 101. Citation.

This Article Shall be known and may be cited as the Adult and Elderly Protective Services Act (“Act”).

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §101]

Section 102. Legislative Intent.

This Act establishes protections from abuse, neglect, and exploitation from the Vulnerable Adults of the Sac and Fox Nation. The Nation recognizes that the Elders of the Nation possess irreplaceable stores of knowledge, skill, and experience that enhance and enrich the lives of the entire Nation. Unfortunately, Elders are among the most vulnerable to abuse by those who interact with them. Along with Elders, adults that suffer from physical or mental disability, incapacity, other disability, or are substantially impaired whether from age, disease, alcohol, substance abuse, or psychological problems all deserve to lead a life of safety and respect.

The dignity, self-reliance, and rights of the Nations Elders and Vulnerable Adults must be respected by family members, the Tribal community, employees of the Nation. Through this Act, the Sac and Fox Nation recognizes that abuse against Vulnerable Adults is not a private matter. The Nation establishes these services and assures their availability to all members of the Sac and Fox Nation when in need of them and will take prompt action upon receipt of a report of suspected cases of abuse, neglect, or self-neglect, or exploitation of a Vulnerable Adult. It is also the Nation’s intent to authorize the least restrictive means possible on the exercise of personal and civil rights consistent with the Vulnerable Adult’s need for services.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §102]

Section 103. Jurisdiction

The Court has jurisdiction to hear a cause of action for Vulnerable Adult Protection and issue orders as necessary if either the Vulnerable Adult resides within the jurisdiction of the Court or the source of the alleged abuse, such as finances, property, or persons, are within the jurisdiction of the Sac and Fox Nation.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §103]

Section 104. Definitions

For the purposes of the Adult and Elderly Protective Services Act, the definitions found below shall be used.

- (a) “Abuse” shall mean one or more of the following:
- (1) The intentional or negligent infliction of bodily harm, unreasonable confinement, or intimidation causing mental anguish by any person, including a person having a special relationship with a Vulnerable Adult, e.g., a spouse, child, or other relative, or caregiver.
 - (2) The intentional or negligent infliction of emotional or mental anguish or injury on a Vulnerable Adult, or sexual abuse or exploitation of a Vulnerable Adult.
 - (3) Attempting to cause or causing physical bodily harm, bodily injury, or assault on the Vulnerable Adult’s family or caregiver because of the Vulnerable Adult.
 - (4) The deprivation of a caregiver or other person providing services to a Vulnerable Adult of nutrition, clothing, shelter, health care, or other care or services without which physical or mental injury is likely to occur to a Vulnerable Adult.
 - (5) Verbal abuse through the use of words, sounds, or other communication including but not limited to gestures, actions, or behaviors by a caregiver or other person providing services to a Vulnerable Adult that are likely to cause a reasonable person in a like condition to the Vulnerable Adult to experience humiliation, intimidation, fear, shame, or degradation.
- (b) “Adult protective services” shall mean those services provided by the Department of Family Services for the prevention, correction, or discontinuance of abuse, neglect, or exploitation. Such services shall be those necessary and appropriate under the circumstances to protect an abuse, neglected, or exploited Vulnerable Adult, ensure that the least restrictive alternative is provided, prevent further abuse, neglect, or exploitation, and promote self-care and independent living. Such services shall include, but are not limited to: (1) receiving and investigating reports of alleged abuse, neglect, or exploitation; (2) developing social service plans; (3) arranging for the provision of services such as medical care, mental health care, legal services, fiscal management, housing, or home health care; (4) arranging for the provision of items such as food, clothing, or shelter; and (5) arranging or coordinating services for caregivers.
- (c) “Caregiver” shall mean any person or entity which has assumed the responsibility for the care of a Vulnerable Adult voluntarily, by express or implied by contract, or by order of a court of competent jurisdiction.
- (d) “Department” shall mean Sac and Fox Nation Department or Agency responsible for Vulnerable Adult services.
- (e) “Elderly Adult” shall mean any person fifty-five (55) years of age or older.
- (f) “Emergency” means any situation in which a Vulnerable Adult is immediately at risk of injury or death.
- (g) “Essential Services” shall mean those services necessary to safeguard the person or property of a Vulnerable Adult. Such services shall include, but are not limited to, sufficient

and appropriate food and clothing, temperate and sanitary shelter, treatment for physical needs, and proper supervision.

(h) “Exploitation” shall mean the taking of property of a Vulnerable Adult, including, but not limited to the theft of money, property, or medications by any person by means of undue influence, breach of a fiduciary relationship, deception, extortion, or any other unlawful means.

(i) “Family” shall mean all the customary relationships recognized by the Nation, including extending family relationships.

(j) “Incapacity” or “Incapable” shall mean

(1) The inability of a person to sufficiently understand, make, or communicate responsible decisions about him/herself and to understand the consequences of any such decision as a result of physical illness, disability, mental illness, deficiency, or disability, or chronic use of drugs or alcohol; or

(2) That such person lacks the capacity to manage his/her financial resources or to meet essential requirements for his/her mental or physical health or safety without assistance from others;

(k) “Law enforcement agency” shall mean any police officer of the Sac and Fox Nation, the United States, or the state, authorized to enforce laws within the boundaries of the Sac and Fox Nation Reservation.

(l) “Least restrictive alternative” means 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 essential services.

(m) “Living independently” shall include, but is not limited to, using the telephone, shopping, preparing food, housekeeping, and administering medications.

(n) “Neglect” shall mean any knowing or intentional act or omission on part of a caregiver to provide essential services or the failure of a Vulnerable Adult, due to physical or mental impairments, to perform self-care to obtain essential services to such an extent that there is actual physical injury to a Vulnerable Adult or imminent danger of the Vulnerable Adult suffering physical injury or death. Neglect shall include, but is not limited to the following:

(1) Squandering or negligently managing the money, property, or financial accounts;

(2) Refusing to pay for necessities or utilities in a timely manner; or

(3) Providing substandard care to a Vulnerable Adult, despite the availability of adequate financial resources.

(o) “Permit” shall mean to allow a Vulnerable Adult over whom one has a proximate or direct degree of control to perform an act or acts or be in a situation which the controlling person could have prevented by the reasonable exercise of such control.

(p) “Physical injury” shall mean damage to bodily tissue caused by non-therapeutic conduct including, but not limited to, fractures, bruises, lacerations, internal injuries, or dislocations, physical pain, illness, or impairment of physical function.

(q) “Proper supervision” shall mean care and control of a Vulnerable Adult which a reasonable and prudent person would exercise under similar facts and circumstances.

(r) “Protective placement” means the placement of a Vulnerable Adult in a hospital, nursing home, residential care facility, hospice, or the transfer of the Vulnerable Adult from one such institution to another with the Vulnerable Adult’s consent or appropriate legal authority.

(s) “Protective Services” means those services provided to a Vulnerable Adult which are necessary to aid the Vulnerable Adult in meeting the essential requirements for mental or physical health and safety that the Vulnerable Adult is unable to provide or obtain without assistance. Such services may include, but are limited to, psychiatric and health evaluations, home care, legal assistance, social services, health care, case management, and other services consistent with this Act. Protective services include protective supervision, but does not include protective placement.

(t) “Protective Supervision” means a legal status created by the Court following adjudication on the grounds of abuse, neglect, or exploitation permitting the Vulnerable Adult to remain in the home, providing that the Department provides supervision and assistance correcting the abuse, neglect, or exploitation.

(u) “Self-care” shall include, but not be limited to, personal hygiene, eating, dressing, and obtaining adequate medical and dental care.

(v) “Sexual abuse” shall mean sexual contact and sexual penetration as described in the Sac and Fox Nation Criminal Code.

(w) “Unreasonable confinement” shall mean confinement that intentionally causes physical injury to a Vulnerable Adult.

(x) “Vulnerable Adult” shall mean any person eighteen years of age or older, including an Elder, who due to advanced age, physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care of him/herself, or is unable to manage his/her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect him/herself from abuse, neglect, or exploitation without assistance from others.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §104]

Section 105. Duty to Report Abuse, Neglect, or Exploitation

(a) When any caregiver or employee of a caregiver; physician; psychologist; physician assistant; nurse; nursing assistant; other medical, developmental disability, or mental health professional; law enforcement personnel; operator or employee of a program or center for Vulnerable Adults; an employee or elected official of the Tribe; or any other person has reasonable cause to believe that a Vulnerable Adult has been subjected to abuse, neglect, or exploitation, or observes such adult being subject to conditions or circumstances which reasonably would result in abuse, neglect, or exploitation, he/she shall report the incident to the appropriate law enforcement agency, or the Department, in the manner designated under subsection (e) below.

(b) Such report may be made by telephone, anonymously, or with the caller giving his or her name and address, and if requested by the Department, shall be followed by a written report within forty-eight (48) hours. To the extent available, the report shall contain; (1) the

name, address, and age of the Vulnerable Adult; (2) the address of the caregiver(s) of the Vulnerable Adult; (3) the nature and extent of the alleged abuse or the conditions and circumstances which would reasonably be expected to result in such abuse; (4) any evidence of previous abuse including the nature and extent of the abuse; and (5) any other information which in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse and the identity of the perpetrator(s).

(c) Any law enforcement agency receiving a report of abuse shall notify the Department no later than the next working day by telephone, email, or in person.

(d) A report of abuse, neglect, or exploitation made to the Department which was not previously made to or by a law enforcement agency shall be communicated to the appropriate law enforcement agency by the Department no later than the next working day by telephone, email or in person.

(e) The Department shall designate and publish a telephone number to be used by any person any hour of the day or night, on any day of the week to make reports of abuse, neglect, or exploitation of a Vulnerable Adult.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §105]

Section 106. Incident Reports

Reports of suspected Vulnerable Adult abuse, neglect, or exploitation shall be made to the Department. The person in the Department taking an oral report shall immediately complete a written incident report. Unless anonymously made, the incident report should contain the name of the reporter, and if possible, the reporter should sign the report. The following information should, if possible, be included in the incident report:

- (a) The Vulnerable Adult's name, address and/or location, and telephone number;
- (b) The name, address or location, and telephone number of the person(s) or agency suspected of abusing, neglecting, or exploiting the Vulnerable Adult.
- (c) The name(s), address, or location and telephone number of the Vulnerable Adult's family or caregiver;
- (d) The name, address or location, and telephone number of the witness(es);
- (e) The nature and current conditions of the Vulnerable Adult;
- (f) A description of the acts which may constitute abuse, neglect, or exploitation; and
- (g) Any other information that the reporter believes might be helpful in establishing abuse, neglect, or exploitation.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §106]

Section 107. Immunity from Liability

Any person participating in an investigation or the making of a report pursuant to this Act, or participating in a judicial proceeding resulting therefrom shall be immune from liability except,

(1) as otherwise provided in this Act; or (2) for malfeasance in office or willful or wanton neglect of duty; or (3) for false statements of fact made with malicious intent.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §107]

Section 108. Investigations

(a) The Department shall begin investigation of each report within forty-eight (48) hours of receipt. The Investigator shall conduct in-person interviews with the Vulnerable Adult, the Vulnerable Adult's family and caregiver, the person(s) suspected of having committed the acts reported, employees of agencies or institutions with knowledge of the Vulnerable Adult's circumstances, and any other person the investigator believes has pertinent information.

(b) If, after beginning their investigation, the Department believes criminal abuse, neglect, or exploitation may have occurred, the Department shall notify the Tribal Police Department. Upon the request of law enforcement, the Department shall submit copies of any records regarding the Vulnerable Adult, to the extent not prohibited by Federal Law.

(c) Investigation Report. A written report shall be prepared and filed with the Department. The investigation report shall contain the information set forth in subsection (a) above and the results of the investigator's interview, observations, and assessments, including when possible:

(1) Results or records of an examination on the Vulnerable Adult who is alleged to have been abused, neglected, or exploited and any other clinical notes, x-rays, photographs, or previous or current records relevant to the case.

(2) Reasonable efforts made to locate and notify the caregiver, legal guardian and family of the Vulnerable Adult who may be in need of protective services pursuant to this Act.

(3) Any diagnostic evaluation(s) to determine whether the Vulnerable Adult needs protective services;

(4) Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the Vulnerable Adult;

(5) A statement of the least restrictive services needed;

(6) Whether services are available from the Department or in the community and how the services can be provided;

(7) Whether the Vulnerable Adult would be capable of obtaining services for their self and could bear the cost or would be eligible for services from the Department;

(8) Whether the caregiver would be willing to provide services or would agree to their provision;

(9) Whether the person desires the services;

(10) A statement of any follow-up investigation or monitoring of the services that may be needed; and

(11) Such other facts as deemed appropriate by the investigator.

(d) When an incident reports is received pertaining to a Vulnerable Adult who has a legal guardian, a copy of the investigative report of the Department shall be filed with the Court to which the guardian is accountable.

(e) Any findings of abuse, neglect, or exploitation of a Vulnerable Adult shall also be sent to any agency with concurrent jurisdiction over persons or issues identified in the investigation.

(f) The report will remain on file with the Department for a period of five (5) years, even if no further legal or Department action is taken;

(g) When a report of abuse is found to have been made in bad faith, the investigation report shall be held and maintained as an inactive file for possible use in a civil violation or proceeding pursuant to Section 403.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §108]

Section 109. Search Warrants for Investigations

Search warrants may be issued by the Court during the Department's investigation if the Department is denied entrance to the home or other place or residence of a person believed to be a Vulnerable Adult or if the Department is denied a private interview with the Vulnerable Adult. If documentation, or access to records, or other information relating to an investigation regarding a Vulnerable Adult is denied, the Department may petition the Court for an order allowing entry or access.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §109]

Section 110. Subpoena of Medical and Financial Records.

The Court may issue subpoenas for the release of medical records and financial records upon request of the Prosecutor's Office in order to facilitate investigations of reported abuse, neglect, or exploitation. Motions for subpoenas may be upon affidavit and ex parte. Upon a showing of reasonable grounds to believe that the Vulnerable Adult abuse or exploitation is occurring or has occurred, the Court shall issue a subpoena. A subpoena issued under this section shall expire within ten (10) days unless renewed by the Court or good cause.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §110]

Section 111. Access to Reports; Release of Information; Exceptions.

(a) No person, official, or agency shall have access to the records relating to abuse, neglect, or exploitation except as follows:

(1) A law enforcement agency investigating a report of known or suspected abuse;

(2) A Tribal Prosecutor;

(3) A physician treating the Vulnerable Adult in question;

- (4) An agency having the legal responsibility or authorization to care for, treat, or supervise an abused Vulnerable Adult;
- (5) Defense counsel in preparation for the defense of a person charged with the alleged abuse;
- (6) Legal Counsel for the Sac and Fox Nation; and
- (7) The designated protection and advocacy system authorized pursuant to the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. 6000, as amended, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. 10801, as amended, acting upon a complaint received from or on behalf of a person with developmental disabilities or mental illness.

(b) The Department or law enforcement agency shall provide requested information to any person legally authorized by this section to have access to records relating to abuse, neglect, or exploitation, when ordered by the Tribal Court, or upon compliance by such person with identification requirements established by the rules and regulations of such law enforcement agency. The name and other identifying data of any person requesting or receiving information from the law enforcement agency and dates and circumstances under which requests are made or information is released shall be entered into the records of the Department or law enforcement agency.

(c) The name of the person who reports abuse, neglect, or exploitation of a Vulnerable Adult as required by this Act is confidential and shall not be released to any person unless the reporter consents to the release or unless the release is ordered by the Court. The Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the Vulnerable Adult is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent necessary to protect the Vulnerable Adult.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §111]

Section 112. Evidence Exclusions Void.

(a) No rule of evidence or other provision of law concerning confidential communications shall apply to prevent reports made pursuant to this Act unless otherwise specifically mentioned in this Act.

(b) Evidence shall not be excluded from any judicial proceeding resulting from a report made pursuant to this Act on the grounds that it is confidential communication protected by the privilege granted to husband and wife, patient and physician, or client and professional counselor.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §112]

Section 113. No Abuse, Neglect, or Exploitation Solely for Reliance Upon Spiritual Healing.

No person shall be considered to be abused, neglected, or exploited for the sole reason that such person relies upon spiritual means alone for treatment in accordance with tenets and practices of a recognized church, religious denomination, or traditional Native American spiritual practices in lieu of medical treatment.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §113]

Section 114. Conditions of Release.

(a) In making a decision concerning pretrial release of a person who is arrested for or charged with Vulnerable Adult abuse, neglect, or exploitation, the Tribal Court shall review the defendant's previous records of convictions for elder abuse, neglect, or exploitation and the facts of the arrest and detention of the person, in order to determine whether the person:

- (1) Is a threat to the alleged victim;
- (2) Is a threat to the public safety; and
- (3) Is reasonably likely to appear in Court.

(b) Before releasing a person arrested for or charged, the Tribal Court shall make findings on the record if possible concerning the determination made in accordance with subsection (a) and may impose conditions of release or bail on the person to protect the alleged victim and to ensure the appearance of the person at a subsequent court proceeding.

(c) Notwithstanding any other provisions in this Code, all persons arrested for Vulnerable Adult abuse, neglect, or exploitation shall not be held for more than one hundred twenty (120) hours, including weekends and holidays, without hearing.

(d) As a condition of release, the Court may impose conditions and restrictions on the person alleged to have committed the abuse, neglect, or exploitation of the Vulnerable Adult that may include limitations on contact with the alleged Vulnerable Adult.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §114]

Section 115. Severability.

If any party or parts, or application of any part of this Act is held invalid, such holding shall not affect the validity of the remaining parts of this Act.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §115]