

CHAPTER 66

STOCKBRIDGE-MUNSEE TRIBAL LAW ELDER PROTECTION CODE

Section 66.1 Authority.

(A) Article VII.1.f. of the Stockbridge-Munsee Community Constitution grants the Tribal Council the power to promulgate and enforce ordinances governing the conduct of members of the Community.

Section 66.2 Purpose.

(A) The purpose of this Code is to establish Tribal law to protect the Elders of the Stockbridge-Munsee Community from abuse, neglect, and exploitation. The Stockbridge-Munsee Community honors, respects, and protects its Elders. Our Elders possess unique and irreplaceable stores of knowledge, skill, and experience that enhance and enrich the lives of the entire Community. The interests of the Community, now and in the future, are advanced when our Elders remain confident they are protected from abuse, neglect, and exploitation and free to fully participate in the activities and proceedings of the Community.

(B) The Stockbridge-Munsee Tribal Council enacts this Code to provide for public peace and good order of the Stockbridge-Munsee Reservation and to minimize health and accident hazards within the exterior boundaries of the reservation.

(C) The Stockbridge-Munsee Tribal Council enacts this Code because it is necessary to protect the social, economic and political well being of the Stockbridge-Munsee Community and its members.

(D) The Stockbridge-Munsee Tribal Council further finds this Code crucial to protect the health, safety, and welfare of the members of the Tribe and to protect and preserve the familial obligations and duties to our Elders.

Section 66.3 Scope.

(A) This Code supplements and expands on those protections afforded to all Tribal members in the Community's *Domestic Abuse Ordinance* (Chapter 63) and *Family Violence Ordinance* (Chapter 64). The provisions of this Code shall control in event of conflicting or inconsistent policy or procedures of the Community's *Domestic Abuse Ordinance* and/or *Family Violence Ordinance*.

(B) This Code shall be liberally construed to affect the purpose and scope stated above and shall be interpreted to comply with the customs and traditions of the Stockbridge-Munsee Community.

Section 66.4 Declaration of Policy.

(A) The dignity and self-reliance of the Community's Elders shall be acknowledged and respected by family members, the Tribal community, and employees of the Community. The rights of each Elder shall be protected. See Section 66.18, *Rights of Elders, Their Families, Caretakers and Guardians* for specific rights and protections.

(B) The Community further recognizes that Elder abuse, as a family problem, is not a private matter when the well-being and safety of an Elder is endangered.

(C) The Community recognizes that many Elders suffer the infirmities of aging and may be in need of protective services. These services should, to the maximum degree feasible under programs, services, and resources available within federal, state, and Tribal funds limits, allow the Elder the same rights as all Tribal members, and at the same time protect the Elder from abuse, exploitation, and degrading treatment.

(D) The Community shall establish those services and assure their availability to all Elders when in need of them and to place the least possible restrictions on personal liberty and exercise of rights consistent with due process and protection from abuse, neglect, and exploitation.

(E) The Elderly Steering Committee ("ESC") shall be consulted during the development of implementing plans and programs and shall review and recommend amendments as required.

(F) Each Elder shall be encouraged to create a Living Will, designate a Durable Power of Attorney for healthcare, and/or designate a Durable Power of Attorney for finance and property to ensure the Elder's wishes and protection in the event of incapacitation.

(G) Specifically, this Code requires the following:

(1) There shall be prompt reporting to the Stockbridge-Munsee Department of Elderly Services ("DES") of abuse, neglect or self-neglect, or exploitation of an Elder.

(2) The DES shall take action upon receipt of a report of suspected cases of the abuse, neglect or self-neglect, or exploitation of an Elder by documenting any reported incident and notifying appropriate agencies.

(3) The DES shall work in conjunction with other appropriate agencies in the delivery of Elder protection services.

(4) The DES shall develop and establish appropriate procedures and/or MOA's with appropriate agencies to implement this Code.

Section 66.5 Definitions.

Terms used in this Code have the following meaning:

(A) “Abandonment” means the failure of the family, caretaker, or guardian to provide reasonable support and to maintain regular contact with an Elder.

(B) “Abuse” means 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 the Elder, e.g., a spouse, child, or other relative, or a caretaker.

(2) The infliction of physical, emotional, or mental injury on an Elder, or sexual abuse or exploitation of an Elder.

(3) Attempting to cause or causing physical harm, bodily injury, or assault on an Elder or the Elder’s family, household or caretaker. This includes, but is not limited to, beating, choking or burning, inappropriate medication or tying or locking a person up. This also includes sexual abuse, which occurs when a person has been forced, tricked, threatened, or otherwise coerced into sexual contact against one’s will.

(4) Material Abuse, sometimes called financial exploitation, or the misuse of an Elder’s money or property.

(C) “Advocate” means manager of DES designated to provide oversight of Elder abuse prevention and intervention programs and to ensure Elders have access to and the benefit of protective services.

(D) “Caretaker” means any of the following:

(1) A person who is required by Tribal law or custom or state law to provide services or resources to an Elder.

(2) A person who voluntarily undertakes to provide care, services, or resources to an Elder.

(3) An institution or agency which voluntarily or is required by Tribal law or custom, state or federal law, or contract to provide services or resources to an Elder.

(4) An employee of any institution or agency specified in Section 66.3.

(E) “Court” means the Stockbridge-Munsee Community Tribal Court.

(F) “Community” means the Stockbridge-Munsee Community.

(G) “DES” means the Stockbridge-Munsee Community Department of Elderly Services.

(H) “Elder” means any person subject to the jurisdiction of the Community who is fifty-five (55) years of age or more.

(I) “Emergency” means any situation in which an Elder is immediately at risk of death or injury and is unable to consent to services that would remove that risk.

(J) “Exploitation” means any of the following:

(1) The improper use or attempted misuse of funds, property, or other resources of an Elder.

(2) The improper use or attempted misuse of an Elder by any person for personal gain or profit or otherwise. This includes, but is not limited to, deception, diverting income, mismanagement of funds.

(3) The failure or refusal to use the funds, property, or other resources of an Elder either for the Elder’s benefit or according to the Elder’s desires.

(4) Any similar act, whether criminal or civil in nature, that is in violation of the norms and values of a reasonably prudent person

(K) “Family” means all of the customary family relationships recognized by the Community, including extended family relationships.

(L) “Guardian ad Litem” means the person appointed by the Court to take legal action on behalf of an Elder (a ward of the court) and to make decisions for the Elder including consent to or refusal of medical treatment.

(M) “Guardian of Property” means the person appointed by the Court to manage the property of an Elder.

(N) “Good Faith” means an honest belief or purpose and the lack of intent to defraud.

(O) “Incapacity” means the current inability of a person to sufficiently understand, make, and communicate responsible decisions about him or herself and to understand the consequences of any such decision as a result of physical illness or disability, mental illness, deficiency or disability, or chronic use of drugs or alcohol. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

(P) “Investigator” means a person who may or may not be a member of law enforcement who has the authority to initiate and complete an investigation regarding elder abuse.

(Q) “Infirmities of Aging” means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody.

(R) “Least Restrictive Alternative” means an approach which allows an Elder independence and freedom from intrusion consistent with the Elder’s needs by requiring that the least disruptive method of intervention be used when intervention is necessary to protect the Elder from harm.

(S) “Living Will” means the written instructions that tell medical physicians and family members what life-sustaining treatment one does or does not want if one becomes unable to make decisions at some future time.

(T) “Neglect” means any of the following:

(1) The failure of an Elder’s family, guardian, or caretaker to provide for the basic needs of an Elder by not supplying resources, services, or supervision necessary to maintain an Elder’s physical and/or mental health and includes the inability of an Elder to supply such basic needs for him or herself.

(2) The interference with the delivery of necessary services or resources.

(3) The failure to report abuse, neglect, or exploitation of an Elder.

(4) The failure to provide services or resources essential to the Elder’s practice of his or her customs, traditions, or religion.

(5) The abandonment of an Elder by his or her family.

(U) “Power of Attorney” means a written document signed by an Elder and notarized granting someone authority to act as agent or attorney-in-fact regarding the Elder’s business in the name of the Elder. At all times, the Elder may exercise their judgment and have influence in all decisions. There powers may include:

(1) “General Power of Attorney” comprises all of the Elder’s business activities, including signing papers, title documents, contracts, bank accounts, etc.

(2) “Durable Power of Attorney” grants powers limited to specific matters, such as selling a particular piece of real estate, handling specific bank accounts, etc. “

(a) “Special Power of Attorney for Health Care” means the appointment by an Elder of someone else to make the Elder’s health care decisions in the event of incapacitation.

(b) “Special Power of Attorney for Finances and Property” means the appointment by an Elder of someone else to make the Elder’s financial and property related decision in the event of incapacitation.

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

(W) “Protective Services” means those services provided to an Elder with the Elder’s consent or with appropriate legal authority and include, but are not limited to, social case work, psychiatric and health evaluations, home care, day care, legal assistance, social services, health care, case

management, guardianship, and other services consistent with this Code. Protective services include protective supervision, but does not include protective placement.

(X) “Protective Supervision” means a legal status created by the Court following adjudication on the grounds of neglect or exploitation permitting the Elder to remain in the home, providing that the Department of Elderly Services or designated agent provide supervision and assistance correcting the neglect or exploitation of the Elder.

(Y) “Representative Payee” means a person who is appointed by a Tribal or other governmental entity to receive, on behalf of an Elder who is unable to manage funds by reason of physical or mental incapacity, any funds owed to such Elder by the appointing entity.

(Z) “Retaliation” means taking any of the following actions against any person(s), or the person’s family, reporting Elder abuse, neglect, or exploitation:

- (1) Threatening or intimidating the person(s).
- (2) Causing bodily harm.
- (3) Causing termination, suspension, or reprimand by the employer.
- (4) Damaging real or personal property.

(AA) “Self-neglect” means a significant danger to an Elder’s physical or mental health because the Elder person is responsible for her or his own care but is unable to provide adequate food, shelter, clothing, or medical/dental care.

(BB) “Will” means the legal document used to divide assets and property after one’s death.

Section 66.6 Duty to Report Abuse, Neglect, Self-Neglect and Exploitation of an Elder.

(A) Any person who has reasonable cause to suspect that an Elder has been abused, neglected or self-neglected, or exploited shall immediately report the abuse, neglect or self-neglect, or exploitation to the manager or designee of the Stockbridge-Munsee Community Department of Elderly Services (“DES”) unless they have a privileged relationship with their patient or client. Individuals bound by a privileged relationship duty, may only anonymously disclose information about their client/patient if there is an urgent need for hospitalization, guardianship, protective services or protective placement.

(B) The following individuals have a special duty to report abuse, neglect or exploitation

- (1) The Elder’s family or caretaker.
- (2) Any Elder/Youth License holder and elected official of the Community.
- (3) Any person or agency or employee of such agency with a fiduciary duty to the Elder.

Section 66.7 Anonymous Reports.

Except for those persons in Section 66.6, persons reporting Elder abuse, neglect, or exploitation may remain anonymous.

Section 66.8 Immunity for Reporting.

Any person who in good faith reports suspected abuse, neglect or self-neglect, or exploitation of an Elder shall be immune from any legal action based on that person's report.

Section 66.9 Civil Violation and Penalty for Failing to Report.

(A) Any person who is required by this Code to report suspected Elder abuse, neglect or self-neglect, or exploitation and fails to do so is subject to civil penalty in Tribal Court not to exceed \$5,000. The Tribal Prosecutor has the authority to prosecute under this section. Further, the person failing to report is subject to any civil suit brought by or on behalf of the Elder for damages suffered as a result of the failure to report, notwithstanding any determination through clear and convincing evidence by the Stockbridge-Munsee Community Tribal Courts that the person failing to report violated this Code.

(B) Privileged Communication. No evidentiary privilege except for the doctor-patient, attorney-client or priest-penitent privilege may be raised as a justifiable defense or reason for failing to report suspected Elder abuse or neglect or for testifying as required by this Code.

Section 66.10 Civil Violation and Penalty for a Report Made in Bad Faith.

Any person who makes a report of suspected abuse, neglect or self-neglect, or exploitation knowing it to be false is subject to a civil penalty not to exceed \$5,000. The Stockbridge-Munsee Community Tribal Court shall assess the penalty only after petition by Tribal Prosecutor, notice, an opportunity for hearing, and a determination by clear and convincing evidence that the person making the report knew the report to be false. Any person making a false report is subject to any civil suit for damages brought by or on behalf of the person(s) named as suspected abusers in the false report.

Section 66.11 Reports.

(A) Reports of suspected Elder abuse, neglect, or exploitation shall be made to the DES manager or designee. DES shall forward the information to Shawano County under the terms of an applicable MOU for investigation of the complaint. Anonymous reports shall be investigated as required by this Code.

(B) The information gathered by DES will include:

- (1) The Elder's name, address or location, and telephone number.

- (2) The name, address or location, and telephone number of the person(s) or agency suspected of abusing, neglecting, or exploiting the Elder.
- (3) The nature and degree of the incapacitation of the Elder.
- (4) The name, address or location, and telephone number of the Elder's caretaker, if applicable.
- (5) If not anonymous, the name, address or location, and telephone number of witness(s).
- (6) A description of the acts which are reported as abusive or neglectful or exploitive.
- (7) Any other information that the reporter believes might be helpful in establishing abuse, neglect, or exploitation.

Section 66.12 Investigations.

(A) Shawano County shall initiate an investigation. DES and/or appropriate State and County agencies shall conduct in-person interviews with the Elder, the Elder's family, caretaker, guardian, and the person(s) suspected of having committed the acts reported, employees of agencies or institutions with knowledge of the Elder's circumstances, and any other person the investigator believes has pertinent information. DES and/or appropriate State and County agencies shall also conduct observations and other fact finding as required. The existence and contents of medical records and other reports of abuse or neglect may be ascertained.

(B) Written Investigation Referral Report.

- (1) A written referral by DES and the results of the investigation shall be filed with the DES. The report will remain on file for a period of five (5) years, even if it is determined that there is insufficient evidence to pursue any legal action.
- (2) In addition to criminal penalties available under state law, when a report of abuse has been substantiated, the report shall be filed with the Tribal Prosecutor, or other appropriate agencies.
- (3) 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 investigation or proceeding pursuant to Section 66.10.
- (4) An investigation report shall contain the information set forth in Section 66.11 and the results of the investigator's interview, observations, assessments, and other facts.

(C) Subpoena of Medical and Financial Records. The Tribal Court may issue subpoenas for the release of medical records and financial records upon motion in order to facilitate investigations of reported Elder abuse. The Tribal Court must find reasonable grounds to believe that Elder abuse or exploitation is occurring or has occurred in order to issue a subpoena.

Section 66.13 Interference with Investigation and Retaliation–Civil Penalty.

(A) No person shall intentionally interfere, intentionally obstruct, or knowingly provide false information with a lawful investigation of suspected Elder abuse.

(B) No person shall retaliate by any means against any person who has made a good faith report of suspected Elder abuse or who cooperates with an investigation of suspected Elder abuse.

(C) Any person who violates the provisions of Section 66.13 (A) or (B) above shall be enjoined from such activity and shall be subject to a civil penalty of up to \$5,000 per occurrence. The Tribal Prosecutor has authority to initiate and prosecute the action in Tribal Court. Further, notice of such determination shall be provided to the person’s employer and appropriate licensing agencies. If the person violating the above provisions is an employee of the Community, appropriate disciplinary action shall be imposed consistent with the Community’s employment law.

Section 66.14 Criminal Investigation.

Any investigation and any other procedure allowed under this Code may continue even if an investigation for the purpose of filing criminal charges is undertaken.

Section 66.15 Provision of Services.

After an investigation of Elder abuse, neglect or self-neglect, or exploitation is completed, the DES shall determine if the Elder or any other individual involved in the alleged abuse, neglect or self-neglect, or exploitation is in need of services under this Code.

Section 66.16 Services and Protective Placement.

(A) Services may be provided.

(1) Voluntary Services.

(a) Services may be provided on a voluntary basis by the DES, or other agency when requested by an abused, neglected or self-neglected, or exploited Elder and the Elder is found by the DES to be in need of such services.

(b) Voluntary services will cease if the Elder’s consent to such services is withdrawn unless the Elder has been properly deemed incapacitated.

(c) Such services shall be provided for a period of not more than fourteen (14) calendar days at a time. At the end of each 14-day period, the DES shall reassess the Elder’s needs before continuing to provide services and placement.

(d) Voluntary services will be provided consistent with the level of funding and resources.

(2) Involuntary Services or Protective Placement.

(a) Involuntarily services or protective placement shall be provided on an involuntary basis by the DES or other agency only as the Tribal Court determines they are necessary.

(b) Involuntary services or protective placement shall be provided to any Elder who is incapacitated and, then only, upon a Tribal Court order as required by this Code.

(c) Such services or placement may be provided in a manner least restrictive of the Elder's liberty and rights consistent with the Elder's welfare and needs consistent with Section 66.18.

(d) The Court's determination of the degree of incapacity, if any, as well as whether Elder abuse, neglect, or exploitation has occurred is the standard the DES or other state agency shall use to develop individual plans for the delivery of Elder protection services.

(B) Services as determined necessary by the DES or other agency that are consistent with Section 66.18 may be delivered to the Elder or Elder's family, caretaker, and/or guardian in order to protect the Elder.

(C) The Elder, and where appropriate, the Elder's family, caretaker, and or guardian shall be informed by the DES or other agency of their rights as allowed under this Code and other Tribal law. This includes the right to refuse voluntary services and placement and the right to have the Court determine the necessity of involuntary services and placement.

(D) The Elder and/or guardian if able to do so, shall pay for all or part of the costs of services or placement provided to the Elder unless there are other resources available.

Section 66.17 Emergency Services or Placement.

(A) Immediate Protection or Placement. If there is good cause to believe that an emergency exists where an Elder is at risk of immediate and irreparable physical harm based on personal observation and if the DES and/or appropriate State or County agency and a Law Enforcement Officer believe the Elder will be irreparably harmed during the time it takes to secure an emergency protection order, the DES and/or State or County agency and the law enforcement officer shall immediately protect the Elder. This includes, where necessary, transporting the Elder for medical treatment or to an appropriate facility. Immediately after the Elder is protected, a petition for an emergency protection order shall be filed and the procedures set out in this Section followed.

(B) The DES, through the Tribal Prosecutor, or other agency via its counsel shall petition and the Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon the petition is supported by clear and convincing evidence that:

- (1) The Elder is at risk of immediate physical harm, or,
- (2) The Elder is incapacitated and cannot consent to protective services or the person possessing power of attorney for the Elder is unavailable, to give consent, and, .
- (3) An emergency clearly exists.

(C) The emergency protection order shall:

- (1) Set out the specific emergency services to be provided to the Elder to remove the conditions creating the emergency.
- (2) Provide only those services which will remove the emergency.
- (3) Allow protective placement only if the evidence shows that it is necessary.
- (4) Designate the DES or other agency to implement the order.
- (5) Be issued for a maximum of ten (10) calendar days.

(D) The Court may authorize forcible entry by law enforcement to enforce the emergency protection order after is has been shown that attempts to gain voluntary access to the Elder have failed.

(E) The petition for an emergency protection order shall contain the following.

- (1) The name, address, location, and interest of the petitioner.
- (2) The name, address, location, and condition of the Elder.
- (3) The nature of the emergency.
- (4) The nature of the Elder's incapacity.
- (5) The proposed protective services, and where applicable, protective placement.
- (6) The attempt(s), if any, to secure the Elder's consent to services.
- (7) Any other facts the petitioner believes will assist the Court.

(F) The emergency protection petition and notice of hearing shall be served on the Elder, the Elder's family, caretaker, and/or guardian at least forty-eight (48) hours before a hearing on the petition is scheduled.

(G) The Court can set an emergency protection order aside upon a petition of any party showing good cause.

(H) Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on the person's actions.

Section 66.18 Rights of Elders, Their Families, Caretakers and Guardians.

(A) An Elder, the Elder's family, the Elder's caretaker, and/or the guardian shall be informed about an Elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as reasonably possible.

(B) An Elder may refuse to accept Elder protective services (even if there is good cause to believe that the Elder has been or is being abused, neglected, or exploited) provided that the Elder is able to care for himself/herself and/or has the capacity to understand the nature of the services offered unless court ordered.

(C) The Elder's family, caretaker, and/or guardian may refuse for themselves, but not for the Elder, those Elder protective services offered pursuant to this Code.

(D) An Elder and the Elder's family, caretaker, and/or guardian may refuse to allow an investigator into their home and the investigator shall so inform the Elder, the Elder's family, caretaker, and/or guardian of this right before seeking entry. The investigator shall also inform them of the right of the investigator to seek a warrant to gain access.

(E) Service of Process. The Elder, Elder's family, caretaker, and/or guardian shall be served personally. No hearing shall be held unless proper service has occurred.

(F) The Elder, Elder's family, caretaker, and/or guardian have the right to attend any proceeding pertaining to the determination of the Elder's capacity and the Elder shall be present at all proceedings unless the Court determines the Elder's health would be at risk at such proceedings.

(G) The Elder, Elder's family, caretaker, and/or guardian have the right to be represented by counsel at their expense at all proceedings.

(H) The Elder, Elder's family, caretaker, and/or guardian have their right to seek independent medical, psychological, or psychiatric evaluation of the Elder at the Elder or family's expense.

Section 66.19 Petition and Hearing.

(A) Jurisdiction. The Court has jurisdiction to hear a cause of action for protection and issue such an order consistent with Section 1.2 of the Stockbridge-Munsee Tribal Court Code.

(B) The Stockbridge-Munsee Community's Tribal Prosecutor shall file petitions and present facts on behalf of the petitioner or the Tribe for legal proceedings authorized or required by this Code.

(C) A Guardian ad Litem, at the Court's expense shall be appointed by the Stockbridge-Munsee Community Tribal Court to represent the legal interests of the Elder.

(D) A hearing on a petition authorized or required by this Code shall be conducted with the purpose of protecting the Elder only when necessary and only to the extent shown by the facts and using the least restrictive alternatives. The Elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The Court shall issue a timely written statement of its findings in support of any order allowed by this Code.

Section 66.20 Determining Incapacity.

The Court shall determine, when necessary, whether an Elder is incapacitated and the degree of incapacity. A finding of incapacity shall be based on clear and convincing evidence of incapacitation and on a medical doctor's evaluation and report as to degree of incapacitation. A guardian may be appointed pursuant to Chapter 9, *Guardianship*.

Section 66.21 Determining Abuse, Neglect or Exploitation of an Incapacitated Elder.

The Court shall also determine by clear and convincing evidence, when necessary, whether abuse, neglect, exploitation or incapacitation has occurred.

Section 66.22 Determining Abuse, Neglect or Exploitation of an Elder.

(A) The Court shall determine whether by clear and convincing evidence that an Elder has been a victim of abuse, neglect or exploitation as defined in this Code.

(B) An Elder may wish to Petition the matter before the Stockbridge-Munsee Community Tribal Court under the Elder Protection Code because:

(1) The Elder wishes to be assisted by and through the Department of Elderly Services and the Tribal Prosecutor and/or;

(2) The Elder wishes the matter to be civil in nature. The Petitioner must provide one or more of the grounds pursuant to this Code as justification to bring the matter before the Stockbridge-Munsee Community Tribal Court.

Section 66.23 Elder Protection Order and Time Limits.

(A) If the Court determines that an Elder is abused, neglected, exploited, or incapacitated, the Court shall issue an Elder protection order which provides appropriate protection for the Elder. Such protection may include, but is not limited to the following:

- (1) Removing the Elder from the place where the abuse, neglect, or exploitation has taken or is taking place.
- (2) Removing the person who abused, neglected, or exploited an Elder from the Elder's home immediately.
- (3) Restraining the person who has abused, neglected, or exploited the Elder from continuing such acts.
- (4) Placing the Elder under protective supervision, wherein the Elder is permitted to remain in the home providing the DES or a designated agent provides supervision and assistance to correct the neglect or exploitation of the Elder.
- (5) Requiring an Elder's family or caretaker or any other person with a fiduciary duty to the Elder account for the Elder's funds and property.
- (6) Requiring any person who has abused, neglected, or exploited an Elder to pay restitution to the Elder for damages resulting from that person's wrongdoing.
- (7) Appointing a representative or a Guardian ad Litem for the Elder.
- (8) Recommending that a representative payee be named.
- (9) Ordering the DES or other agency to prepare a plan for and deliver protective services which provide the least restrictive alternatives for services, treatment, or placement consistent with the Elder's needs.

(B) A non-emergency Elder protection order shall be subject to review every ninety (90) calendar days unless otherwise determined by the Tribal Court. The non-emergency protection order may be extended as many times as necessary to protect the Elder.

Section 66.24 Confidentiality and Penalty.

(A) Name of Reporter. As required by this Code, the name of the person who reports abuse or neglect is confidential and shall not be released to any person unless the reporter consents to the release or 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 Elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent as determined necessary to protect the Elder.

(B) Investigation and Hearing Records. Records of an investigation of Elder abuse or of a Court hearing regarding Elder abuse are confidential. Such records shall be open only to the Elder and the Elder's family and caretaker, unless the family or caretaker is the suspected abuser. If the DES, Tribal Prosecutor, Tribal Law Enforcement Officers, Court officials, coroner or medical

examiner, appropriate State or County agencies or any other person has reason to believe that an Elder died as the result of abuse or neglect, the Court shall determine who has reasonable cause to have access to such records.

(C) Court Proceedings. A proceeding held pursuant to this Code will be closed and confidential. Persons who may attend are the Elder, the Elder's family and caretaker, representatives of the DES, or other agency, necessary Court officials, and attorneys for the parties. Other persons may appear only to testify. Persons who attend or testify at such a proceeding shall only reveal information about the proceeding for the purposes related to the continued care of the elder, or pursuant to a Court order.

(D) Penalty. Any person who violates any provision of this section shall be subject to Tribal Court Contempt Power pursuant to §14 of the Tribal Court Rules of Procedure. In addition, if the violation is committed by an employee of the Community, the person shall be subject to appropriate disciplinary action.

Section 66.25 Violation of Protection Orders.

Violation of Court ordered protection orders by a respondent may be punished by fine of not more than \$5,000 per occurrence. Additionally, the respondent in violation of Court ordered protection orders may be subject to criminal penalties.

Section 66.26 Severability.

In the event that any provision of this ordinance is ruled illegal by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain unaffected.

Legislative History:

1. Submitted to Tribal Council for approval August 15, 2007 and posted for comments. Reposted with revisions on November 7, 2007.
2. Tribal Council discussed and approved by motion on November 20, 2007. Tribal Council adopted Chapter 66, by Resolution 07-08, on December 4, 2007. Approved by the Bureau of Indian Affairs on May 9, 2012, except for Section 66.27. Section 66.27, regarding the need for BIA approval of future amendments, was deleted.