

Title 7 – Domestic Relations
Chapter 12 – Elder Protection

Sec.

7-12.010	Title
7-12.020	Authority
7-12.030	Policy
7-12.040	Purpose and Scope
7-12.050	Civil Nature of Code
7-12.060	Definitions
 <i>Subchapter I – Reporting and Investigation of Suspected Abuse, Exploitation or Neglect</i>	
7-12.070	Duty to Report Abuse, Exploitation or Neglect
7-12.080	Consequences of Reporting
7-12.090	Investigation and Written Report
7-12.100	Voluntary Protective Services
7-12.110	Rights of Elders, Their Families and Caregivers During an Investigation
7-12.120	Retaliation and Interference with Investigation Prohibited
 <i>Subchapter II – Elder Protection Team and Mediation Conferences Before the Elder Protection Team</i>	
7-12.130	Composition of the Elder Protection Team and Decision Making
7-12.140	Procedure for the Elder Protection Team Mediation Conference
7-12.150	Referral to Tribal Court
 <i>Subchapter III – Elder Protection Orders</i>	
7-12.160	Voluntary Elder Protection Orders
7-12.170	Emergency Elder Protection Orders
7-12.180	Elder Protection Orders
7-12.190	Rights of Elders, their Families and Caregivers During a Hearing
 <i>Subchapter IV – Elder Protection Plan and Protective Services</i>	
7-12.200	Elder Protection Plan
7-12.210	Services for the Family or Caregiver
7-12.220	Payment for Services
 <i>Subchapter V – Miscellaneous</i>	
7-12.230	Confidentiality Requirements
7-12.240	Criminal Prosecution
7-12.250	Repealer
7-12.260	Severability
7-12.270	Effective Date

Legislative History

Enacted:

Regulating Elder Protection, Ord. 203 (12/18/03), BIA (12/30/03).

7-12.010 Title.

This Chapter shall be known and cited as the “Elder Protection Code.”

[History] Ord. 203 (12/18/03).

7-12.020 Authority.

This Chapter is enacted pursuant to Article VI, Section 1(k), (l), (o) and (p) of the Swinomish Constitution.

[History] Ord. 203 (12/18/03).

7-12.030 Policy.

Elders of the Swinomish Indian Tribal Community are valuable custodians of the Tribe’s history, traditions, and culture. It is the Tribe’s policy to respect and protect its elders as such valued resources and family members. It is also the policy of this Code to promote harmony within families and caregiving relationships. In accordance with these policies, this Code shall be carried out in the least restrictive manner that gives effect to its purpose, and it shall be liberally interpreted to do so.

[History] Ord. 203 (12/18/03).

7-12.040 Purpose and Scope.

There are elders in the Swinomish Indian Tribal Community who are at risk of exploitation, abuse, or neglect. The purpose of this Code is to protect these elders through a system of:

- (A) Reporting exploitation, abuse, or neglect;
- (B) Investigating reports of exploitation, abuse, or neglect; and
- (C) Providing services for elders in need of protection against exploitation, abuse, or neglect.

[History] Ord. 203 (12/18/03).

7-12.050 Civil Nature of Code.

This Code is civil in nature, providing protection orders and civil remedies. Criminal proceedings may run concurrently with any action under this Chapter for any violation of the Criminal Code, STC Title 4, which occurs in the course of elder abuse, neglect or exploitation.

[History] Ord. 203 (12/18/03).

7-12.060 Definitions.

- (A) **“Abuse”** means intentional or negligent infliction of bodily harm, unreasonable confinement, cruel punishment, unreasonable restriction on activities, intimidation, humiliation, threats, or harsh language that results in physical harm or unreasonable emotional or psychological distress. Sexual abuse includes any type of contact with an elder for sexual gratification without the elder’s freely given consent.
- (B) **“Caregiver”** means:
 - (1) Any person who is required by tribal law or custom, or state law, if applicable, to provide services or resources to an elder;
 - (2) Any person who volunteers to provide services or resources to an elder; or
 - (3) An institution or agency and any employee of an institution or agency who is required by tribal law or custom, state law, if applicable, or federal law, or who is required under any other agreement to provide services or resources to an elder.
- (C) **“Consent”** means agreement given without intimidation or coercion by an elder with the capacity to make the agreement.
- (D) An **“elder”** is a person subject to the jurisdiction of the Tribe who is fifty-five (55) years of age or older.
- (E) **“Elder Protection Team”** or **“EPT”** is a group of tribal employees, elders, and other tribal members, as set forth by the Tribe, responsible for administering the provisions of this Chapter.
- (F) **“Emergency”** is a situation in which an elder is in imminent danger of serious harm.
- (G) **“Essential requirements for physical health or safety”** means the health care, food, shelter, clothing, personal hygiene, and protection without which serious physical injury or illness is more likely than not to occur.

- (H) **“Exploitation”** means the unauthorized or improper use of an elder’s person or resources, or the failure to use an elder’s resources for the elder’s benefit or according to the elder’s wishes. Exploitation includes but is not limited to:
- (1) Any unauthorized use or occupation of the elder’s residence, property, utility services, food, or money;
 - (2) Any use of an elder’s resources that exceeds the authorization he or she has given; and
 - (3) Unreasonable imposition on the elder’s time or resources, such as leaving children with an elder for extended periods without the elder’s consent or when the elder cannot adequately care for both the children and him or herself at the same time.
- (I) **“Family,”** for purposes of this Chapter, means any member of the elder’s nuclear family that lives within Skagit County.
- (J) **“Family services representative”** or **“Family services program”** are employees of the Tribe provided for in Chapter 8-03 and the family services program shall not be employed as, or perform the duties of, tribal attorney, presenting officer, or law enforcement officer;
- (K) **“Guardian,”** for purposes of this Chapter, means an individual whose rights, powers, and duties over an incapacitated person have been specifically enumerated by court order pursuant to Chapter 7-10;
- (L) **“Incapacitated person”** means a person whose ability to receive and evaluate information or to communicate decisions is impaired for reasons other than minority to the extent that the person lacks the ability to provide the essential requirements for the person's physical health or safety without court-ordered assistance.
- (M) **“Least restrictive manner”** means the approach to providing services or resources that allows an elder the maximum independence and freedom from intrusion consistent with the elder’s needs by requiring that the least drastic method of intervention be used when intervention is necessary and that only those services or resources that are reasonably necessary to protect the elder are provided.
- (N) **“Neglect”** is the failure of a caregiver to provide for the basic needs of an elder by not supplying adequate resources, services, or supervision necessary to maintain the elder’s physical and mental health or by interfering with the delivery of such resources or services. Such resources and services include but are not limited to shelter, food, clothing, medication, medical services, and personal care such as

assistance with hygiene and dressing. Neglect includes an elder's own inability to provide for his or her own basic needs.

- (O) **“Protective services”** shall include services such as:
- (1) Assistance in obtaining food, clothing, shelter, medical care, or personal care;
 - (2) Mediation for the elder and the elder's family or caregiver;
 - (3) Counseling or training for management of personal affairs;
 - (4) Assistance with obtaining civil remedies, such as obtaining restraining orders or restitution; and
 - (5) Arrangements for alternative living quarters, either temporary or permanent.
- (P) **“Retaliation”** is intimidating or threatening a reporter of elder abuse or a reporter's family in any way; physically harming a reporter or a reporter's family; causing a reporter a member of a reporter's family to be terminated, suspended, or reprimanded by an employer; or damaging the real or personal property of a reporter or a reporter's family.
- (Q) **“Tribe”** means the Swinomish Indian Tribal Community.

[History] Ord. 203 (12/18/03).

Subchapter I – Reporting and Investigation of Suspected Abuse, Exploitation or Neglect

7-12.070 Duty to Report Abuse, Neglect or Exploitation.

- (A) Any person who knows or has reason to suspect that an elder is being or has been abused, neglected or exploited has a duty to report the abuse, neglect or exploitation to the family services program and/or the tribal police department. Failure of the following people to report suspected elder abuse, neglect or exploitation may result in a civil penalty of up to \$100:
- (1) A caregiver;
 - (2) An elected official of the Tribe;
 - (3) Any medical doctor or physical therapist, including but not limited to a physician, osteopath, chiropractor, podiatrist, coroner, acupuncturist, naturopathic doctor, or medical examiner;

- (4) A nurse, physician's assistant or health aide;
- (5) A dentist or dental hygienist;
- (6) A family services representative, social worker or elder services provider;
- (7) Any mental health practitioner or counselor;
- (8) A law enforcement officer; and
- (9) Any person with a fiduciary duty to the elder, including but not limited to an accountant, guardian, or property manager.

The Tribal Court will assess a penalty only after petition, notice, opportunity to be heard, and a determination that the person had at least reason to suspect elder abuse, neglect or exploitation and failed to report it as required by this Chapter.

- (B) No evidentiary privilege except attorney-client privilege may be raised as a defense or reason for failing to report suspected abuse, neglect or exploitation.
- (C) **Confidentiality.** The identity of a person who in good faith reports suspected elder abuse, neglect, or exploitation is confidential and shall not be released unless the reporter consents or the Tribal Court orders the release because it finds, after notice to the reporter and a closed hearing, that the need to protect the elder outweighs the reporter's interest in confidentiality.

[History] Ord. 203 (12/18/03).

7-12.080 Consequences of Reporting.

- (A) **Good Faith.** Any person, except a perpetrator, who in good faith reports suspected elder abuse, neglect or exploitation, is immune from any civil suit or criminal charges based on the report.
- (B) **Bad Faith.** Any person who makes a report of elder abuse, neglect or exploitation knowing the report is false or unfounded is subject to a civil penalty of up to \$100, up to twenty-five (25) hours of community service, or both. The Tribal Court will assess the penalty only after petition, notice, opportunity to be heard, and a determination that the person made the report knowing it was false or unfounded. A person who gives a bad faith report is also subject to (1) a civil suit brought by or on behalf of the person(s) named as suspected abusers for damages suffered as a result of the report and (2) to any criminal penalties set forth in the Criminal Code.

[History] Ord. 203 (12/18/03).

7-12.090 Investigation and Written Report.

(A) **Investigation.** The family services representative shall promptly and thoroughly investigate a report of suspected abuse, neglect or exploitation to determine whether the elder needs protective services. If the initial report to the family services program or the tribal police department indicates that the elder may be in imminent danger of serious harm, an initial investigation shall be completed within twenty-four (24) hours by the tribal police department with a follow up report to be written by the family services department. If the initial report to the family services program or the tribal police department indicates that the elder is not in imminent danger of serious harm, the initial investigation shall be completed within fifteen (15) days. The investigation shall include information such as:

- (1) Personal interviews with the elder, the elder's caregiver, the elder's immediate family, people living in the elder's residence, people suspected of committing the acts reported, employees of agencies with knowledge of the elder's circumstances, and/or any other person who may have relevant information;
- (2) Medical records, to the extent possible, and any other evidence of abuse, neglect, or exploitation;
- (3) Assessment of the elder's living conditions, using the Tribe's general housing standards; and
- (4) Any other observations or documents that may help in the completion of an accurate report.

(B) **Written Report.** The family services representative shall prepare a written report of any investigation and keep it on file for five (5) years, even if the family services representative determines that abuse, neglect or exploitation has not occurred in the reported instance. The report shall contain the results of interviews, observations, and all other information obtained in Subsection (A), and:

- (1) The elder's name, address or location, and telephone number;
- (2) The name, address or location, and telephone number of the person(s) suspected of abusing, neglecting, or exploiting the elder;
- (3) The current condition of the elder, including the suspected nature and degree of incapacity of the elder, if any;
- (4) The name, address or location, and telephone number of any witness(es);

- (5) The name, address or location, and telephone number of the elder's caregiver;
 - (6) A description of the acts thought to be abuse, neglect or exploitation; and
 - (7) Any other information the reporter believes might be helpful in determining abuse, neglect or exploitation.
- (C) **In imminent danger of serious harm.** If the initial investigation indicates that the elder has been the victim of abuse, neglect or exploitation and that the elder may be in imminent danger of serious harm, the written report shall be filed immediately with the tribal attorney and a copy shall be provided to the EPT. Upon receipt of the written report, the tribal attorney shall file for an elder protection order pursuant to Section 7-12.170 or Section 7-12.180.
- (D) **Not in imminent danger of serious harm.** If the investigation leads the family services representative to believe that the elder has been the victim of abuse, neglect or exploitation but that the elder is not in imminent danger of serious harm, the family services representative shall file a written report with the EPT and a copy shall be provided to the tribal attorney.
- (E) **Elder retains choice.** If the elder made the initial report or if the elder requests protective services, the elder retains the right to choose whether the family service report is filed with the EPT or if a petition is initiated with the Tribal Court under Section 7-12.160. The EPT, the family services department and the tribal attorney shall maintain their powers and responsibilities under this Chapter regardless of whether an elder decides that he or she does not wish to pursue a hearing with the EPT or file a petition with the Tribal Court.
- (F) **Confidentiality.** Records of investigation are confidential and may be viewed only by the employees of the family services program, the EPT, law enforcement officers, the tribal attorney, parties to the particular hearing before the Tribal Court, employees of the state adult protect services agency, and those people the Tribal Court determines have reasonable cause to view them.
- (G) **Police.** If an initial report of harm is filed during hours the family services program is not available and if it appears that the elder may be in imminent danger of serious harm, the police shall perform the duties of the family services department to the extent possible and necessary.

[History] Ord. 203 (12/18/03).

7-12.100 Voluntary Protective Services.

Protective services will be provided through the family services program and/or the EPT on a voluntary basis (1) when requested by an elder who the family services program determines to be in need or (2) when consented to by a non-incapacitated elder who the family services program determines to be in need.

[History] Ord. 203 (12/18/03).

7-12.110 Rights of Elders, Their Families and Caregivers During an Investigation.

- (A) The elder, the elder’s family and the elder’s caregiver shall be informed of an investigation before it begins unless it is an emergency. In an emergency, they shall be given notice by any means reasonably calculated to give actual notice no later than forty-eight (48) hours after the start of emergency procedures.
- (B) Absent a warrant, the elder or the elder’s family or caregiver may refuse to allow a family services representative into their home and must be told of their right to do so, as well as the right of an investigator to seek a warrant for entry.

[History] Ord. 203 (12/18/03).

7-12.120 Retaliation and Interference with Investigation Prohibited.

No person shall retaliate against a reporter or anyone who cooperates with an investigation, and no person shall otherwise intentionally interfere with an investigation of suspected elder abuse, neglect or exploitation. Any person who retaliates or interferes with an investigation is subject to an injunction and a civil penalty of up to \$100 per occurrence. The Tribal Court will assess a penalty only after petition, notice, opportunity to be heard, and a determination that acts of retaliation or intentional interference have been committed.

[History] Ord. 203 (12/18/03).

***Subchapter II – Elder Protection Team and Mediation
Conferences Before the Elder Protection Team***

7-12.130 The Elder Protection Team and Decision Making.

- (A) **Composition.** The EPT shall be composed of at least six (6) members, who shall be appointed by the Chair of the Senate with the advice and consent of the Senate. The EPT shall, at a minimum, consist of: one (1) member of the Senate; one (1) employee of the caregiver program or senior center; one (1) employee of mental health services or the medical clinic; one (1) employee of the social services department; one (1) employee of the police department; and one (1) elder, not

otherwise employed by the Tribe, to serve at the pleasure of the Senate, upon such terms and conditions as the Senate shall direct. The appointed member of the Senate shall be the Chair of the EPT, and the EPT shall select a Vice-Chair from within its membership.

(B) **Powers and Responsibilities of the Elder Protection Team.**

(1) **General.** The EPT shall have the power and responsibility to:

- (a) Promote respect for and protection of elders within the community;
- (b) Monitor and assess the treatment of elders;
- (c) Obtain mediation training for each member of the EPT;
- (d) Evaluate existing available tribal, state and federal services for the benefit of elders; and
- (e) Identify needed services that are not currently available and provide appropriate recommendations to the Senate for their creation.

(2) **Elder protection team mediation conference.** Upon receipt of a written report from the family services representative under Section 7-12.090(D), the EPT shall have the power and responsibility to review and discuss the written report at its next monthly meeting. The EPT shall determine an appropriate course of action and, if appropriate, conduct a mediation conference with the elder, the elder's family, the elder's caregiver, and any other individual the EPT deems appropriate to attend the mediation conference.

(C) **Quorum and required number of participants.** For purposes of Section 7-12.120(B)(1), four (4) members of the EPT shall constitute a quorum and EPT shall take action by majority vote. For purposes of Section 7-12.130(B)(2), at least three (3) members of the EPT shall serve on elder protection team mediation conference panel. The Chair of the EPT shall have the power and responsibility to select the members of the EPT for each mediation conference.

(D) **Meetings.** For purposes of Section 7-12.130(B)(1), the EPT shall meet at least once a month. For purposes of Section 7-12.130(B)(2), the EPT shall conduct a mediation conference within fifteen (15) working days of the discussion of a written report at its monthly meeting.

[History] Ord. 203 (12/18/03).

7-12.140 Procedure for the Elder Protection Team Mediation Conference.

- (A) **Notice.** The EPT shall provide notice of the date and time of the mediation conference to the elder, the elder's family, the elder's caregiver, and any other individual the EPT deems appropriate to attend the mediation conference.
- (B) **Subpoena.** The Tribal Court shall issue subpoenas on behalf of the EPT. The EPT may require any person in relation to an investigation and mediation conference, to appear before it at a time and place specified in a notice and to produce all articles or documents in the possession or custody or under the control of any such person that may be necessary in connection with the investigation; provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced. The EPT shall provide copies of all such notices to the tribal court clerk for issuance by the Tribal Court. Subpoenas shall be delivered to the witness or party by a tribal law enforcement officer or by a person of eighteen (18) or more years who has no stake in the case. The subpoena must be delivered by giving it to the witness or party directly.
- (C) **Mediation Conference.** The mediation conference shall be informal and conducted by the elder protection team within fifteen (15) working days of the discussion of a written report at its monthly meeting under Section 7-12.090(D). The EPT shall ensure that during each mediation conference all relevant facts are presented and all parties are given an opportunity to be heard.
- (D) **Voluntary agreement and/or protection plan.** The EPT shall encourage the parties involved in the mediation conference to reach a voluntary agreement and/or protection plan that is acceptable to all, including the elder protection team.
 - (1) If a voluntary agreement or an agreed upon protection plan is created, it shall be set forth in writing, including any conditions or requirements to be performed, and cover a fixed period. The elder, the elder's family and the elder's caregiver shall sign the voluntary agreement and/or protection plan. In addition, the EPT shall schedule a review hearing within a reasonable time.
 - (2) Should no agreement be reached during the elder protection team mediation conference, the parties fail to appear at the scheduled mediation conference, or the parties fail to comply with a voluntary agreement and/or protection plan, a petition to initiate an

elder protection order hearing may be filed by the prosecuting attorney or the elder.

- (E) **Inadmissibility.** No substantive information obtained at the mediation conference may be admitted into evidence at a court hearing or any other court proceeding unless all parties agree otherwise; provided that the terms of an agreed upon protection plan and/or voluntary agreement are admissible as evidence at any subsequent proceeding for an elder protection order.
- (F) **Confidentiality.** All proceedings under this Subchapter shall be confidential and closed to the public. The elder, the elder's family, the elder's caregiver, the suspected perpetrator(s), the EPT, employees of the family social services program, and the parties' attorneys may attend. Other people may attend only to testify.

[History] Ord. 203 (12/18/03).

7-12.150 Referral to Tribal Court.

If the elder protection team determines that the facts before it during a mediation conference would be more appropriately handled by the Tribal Court, it may refer the case to the tribal attorney for filing with the Tribal Court under Section 7-12.160, Section 7-12.170, or Section 7-12.180.

[History] Ord. 203 (12/18/03).

Subchapter III – Elder Protection Orders

7-12.160 Voluntary Elder Protection Orders.

- (A) **Who may petition?** Any elder may seek relief for themselves under this Chapter by filing a petition with the Tribal Court.
- (B) **Petition.** The petition shall include the name and the address or location of the elder; a description of the elder's situation; the proposed protective services; and any other facts that will assist the Tribal Court in determining whether an emergency exists.
- (C) **Required Findings.**
 - (1) **Emergency.** The Tribal Court shall issue an ex parte, emergency voluntary elder protection order if:
 - (a) The petition establishes by a preponderance of the evidence that the elder is in imminent danger of serious harm and the elder has been a victim of abuse, exploitation or neglect; or

- (b) The petitioner establishes, at an ex parte hearing before the Tribal Court, by a preponderance of the evidence that the elder is in imminent danger of serious harm and the elder has been a victim of abuse, exploitation or neglect.
 - (2) **Non-emergency.** Upon notice and after hearing, the Tribal Court shall issue a voluntary elder protection order authorizing protective services upon a finding by a preponderance of the evidence that the elder has been abused, neglected or exploited.
- (D) **Relief.** The Tribal Court may order the following relief:
- (1) The court shall require the family services program to develop and administer an elder protection plan;
 - (2) The court may remove the elder from the location where the elder has been harmed to a location where the elder can be protected;
 - (3) The court may remove the person(s) who have harmed the elder from the elder's home;
 - (4) The court may issue a restraining order against the person(s) who have harmed the elder;
 - (5) The court may require any person with a fiduciary duty to the elder to account for the elder's funds or property;
 - (6) The court may order any person who has abused, neglected or exploited an elder to pay restitution for damages resulting from the abuse, neglect or exploitation; and
 - (7) The court may order other relief as it deems necessary for the protection of the elder, including orders or directives to the police department.
- (E) **Full hearing.** A full hearing, as provided in Section 7-12.160(C)(2), shall be set for not later than fourteen (14) days from the issuance of an emergency order under this Section.
- (F) **Denial.** If the court declines to issue an ex parte, emergency protection order, the court shall state the particular reasons for the court's denial. The court shall schedule a full hearing, as provided in Section 7-12.160(C)(2) no later than twenty (20) days from the issuance of the denial.

[History] Ord. 203 (12/18/03).

7-12.170 Emergency Involuntary Elder Protection Orders.

- (A) **Who may petition?** The tribal attorney, in his or her discretion, may seek the relief provided in this Section on behalf of any potentially incapacitated person after the completion of an investigation and a written report in accordance with Section 7-12.090.
- (B) **Petition.** The petition shall include the name and interest of the petitioner; the name and address or location of the elder believed to be in an emergency situation; a description of the elder's situation; the proposed protective services; attempts to get the elder's consent for protection; and any other facts that will assist the Tribal Court in determining whether an emergency exists.
- (C) **Required procedure and findings.** The Tribal Court shall hold a hearing on the petition within twenty-four (24) to forty-eight (48) hours of its receipt. The elder shall receive notice of the hearing and be given the opportunity to be heard. The Tribal Court shall issue an emergency involuntary protection order if the petitioner establishes by a preponderance of the evidence that the elder (1) is incapacitated and (2) is in imminent danger of serious harm.
- (D) **Relief.** The Tribal Court may order the following relief:
 - (1) **Services.** The emergency protection order shall set forth the services to be provided through the EPT or the family services department. Emergency services shall include only those services necessary to remove the risk of immediate harm.
 - (2) **Access to and removal of elder.** The Tribal Court may issue a warrant for forcible entry to gain access to an elder if attempts to gain voluntary access have failed. If a family services representative or law enforcement officer has good cause to believe that an elder is at risk of immediate or irreparable harm upon personal observation, the family services representative or law enforcement officer may immediately protect the elder, including by transporting the elder to a different location. As soon as the investigator or officer has acted to protect the elder, standard emergency protection order procedures must be followed.
 - (3) **Removal of perpetrator.** If the alleged perpetrator of abuse, neglect or exploitation is known and he or she resides in the home of the elder, such perpetrator may be ordered removed from the home.
 - (4) **Other relief.** The Tribal Court may order other relief as it deems necessary for the protection of the elder, including orders or directives to the police department.

- (E) **Full hearing.** A full hearing, as provided in Section 7-12.180, shall be set for not later than fourteen (14) days from the issuance of the emergency order.
- (F) **Set aside.** Emergency involuntary elder protection orders may be set aside by the Tribal Court upon petition of any party showing good cause.
- (G) **Denial.** If the court declines to issue an ex parte, emergency involuntary elder protection order, the court shall state the particular reasons for the court's denial. The court shall schedule a full hearing, as provided in Section 7-12.180 no later than twenty (20) days from the issuance of the denial.

[History] Ord. 203 (12/18/03).

7-12.180 Involuntary Elder Protection Orders.

- (A) **Who may petition?** Any person may petition the Tribal Court on behalf of an elder for an involuntary elder protection order. The tribal attorney may seek the relief provided in this Section on behalf of any potentially incapacitated person after the completion of an investigation and a written report in accordance with Section 7-12.090.
- (B) **Petition.** The petition shall include the name and interest of the petitioner; the name and address or location of the elder; a description of the elder's situation; the proposed protective services; attempts to get the elder's consent for protection; and any other facts that will assist the Tribal Court.
- (C) **Required findings.** Upon notice and after hearing, the Tribal Court shall issue an involuntary elder protection order authorizing involuntary services upon a finding (1) by clear and convincing evidence that the elder is incapacitated and (2) by a preponderance of the evidence that the elder has been abused, neglected or exploited. Any finding or incapacity and the corresponding appointment of a guardian under this Section shall comport with the requirements of Chapter 7-10.
- (D) **Relief.**
 - (1) The court shall require the family services program to develop and administer an elder protection plan;
 - (2) The court shall appoint a guardian for the elder, either full or partial as necessary, in accordance with Chapter 7-10;
 - (3) The court may remove the elder from the location where the elder has been harmed to a location where the elder can be protected;
 - (4) The court may remove the person(s) who have harmed the elder from the elder's home;

- (5) The court may issue a restraining order against the person(s) who have harmed the elder;
 - (6) The court may require any person with a fiduciary duty to the elder to account for the elder's funds or property;
 - (7) The court may order any person who has abused, neglected or exploited an elder to pay restitution for damages resulting from the abuse, neglect or exploitation;
 - (8) The court may appoint a representative payee; and
 - (9) The court may order other relief as it deems necessary for the protection of the elder, including orders or directives to the police department.
- (F) **Denial.** If the court declines to issue an involuntary elder protection order, the court shall state the particular reasons for the court's denial.
- (G) **Referral to the elder protection team mediation conference.** If the Tribal Court determines that the facts before it would be more appropriately handled by the elder protection team, it may refer the case to mediation conference under Section 7-12.140
- (H) **Modification or set aside.** An involuntary elder protection order may be modified or set aside by the court upon petition of any party showing a substantial and continuing change of circumstances that warrants a modification of the order and after a hearing.
- (I) **Fixed Time.** The protection order shall remain in effect for six (6) months, after which it may be extended as many times as necessary to protect the elder. It shall be extended upon petition, notice, opportunity to be heard, and a determination based on a preponderance of the evidence that an extension is necessary to protect the elder.

[History] Ord. 203 (12/18/03).

7-12.190 Rights of Elders, Their Families and Caregivers During a Hearing.

- (A) The elder, the elder's family, the elder's caregiver, and other involved parties shall receive personal service of notice and a copy of the petition when a petition is filed under this Chapter.
- (B) The elder, the elder's family, and the elder's caregiver may attend any proceedings pertaining to the incapacity of the elder.

- (C) The elder has the right to be represented by counsel at all proceedings at the elder's expense.
- (D) The elder, the elder's family, or the elder's caregiver has the right to seek independent medical or psychological evaluations at their own expense, present any other evidence, cross-examine witnesses, and remain silent.
- (E) **Confidentiality.** All court proceedings under this Chapter shall be confidential and closed to the public. The elder, the elder's family, the elder's caregiver, the suspected perpetrator(s), Tribal Court officials, employees of the family services department, and the parties' attorneys may attend. Other people may attend only to testify.

[History] Ord. 203 (12/18/03).

Subchapter IV – Elder Protection Plan and Protective Services.

7-12.200 Elder Protection Plan.

- (A) **Pursuant to an order of the Tribal Court.** If the Tribal Court determines that an elder needs protective services, the family social services program shall write a plan for provision of those services necessary to provide for the elder's basic needs in the least restrictive manner available. A family social services representative shall serve the plan on all interested parties and file the plan with the Tribal Court for adoption. The plan shall remain in effect for a fixed time.
- (B) **Pursuant to voluntary agreement before an elder protection team mediation conference.** If an agreed upon protection plan is created pursuant to an elder protection team mediation conference, it shall be set forth in writing, including any conditions or requirements to be performed, and cover a fixed period. The elder, the elder's family and the elder's caregiver shall sign the voluntary agreement and/or protection plan.

[History] Ord. 203 (12/18/03).

7-12.210 Services for the Family or Caregiver.

The elder protection plan shall include services for the elder's family or caregiver as necessary to protect the elder. Necessity shall be determined by the family services program in cases of voluntary services, by the Tribal Court in cases of a protection order, or by the elder protection team as a result of mediation conferences held before it.

[History] Ord. 203 (12/18/03).

7-12.220 Payment for Services.

The Tribal Court may order a perpetrator of abuse, neglect or exploitation to pay the cost of services, or an elder or the elder's family may seek restitution from a perpetrator through a civil suit.

[History] Ord. 203 (12/18/03).

Subchapter V – Miscellaneous

7-12.230 Confidentiality Requirements.

Any person who violates the confidentiality requirements of this Chapter is subject to a civil penalty of up to \$100 per occurrence, or community service, or both. The Tribal Court will assess the penalty only after petition, notice, opportunity to be heard, and a determination that a violation occurred.

[History] Ord. 203 (12/18/03).

7-12.240 Criminal Prosecution.

Any person who commits elder abuse, neglect or exploitation may be prosecuted under applicable provisions of the Criminal Code. However, the Tribal Court may defer criminal prosecution provided that:

- (A) The crime is not of a serious nature involving intentional bodily injury or intentional property damage;
- (B) The perpetrator does not have a prior record of abuse, neglect, or exploitation relating to elders, adults, children, or otherwise;
- (C) Possible future prosecution would not be hindered by foreseeable unavailability of witnesses; and
- (D) The elder, the elder's family, the elder's caregiver, and the perpetrator of the abuse, neglect or exploitation all agree to resolve the situation through the elder protection team mediation conference; or
- (E) All parties involved abide by a court ordered elder protection plan.

[History] Ord. 203 (12/18/03).

7-12.250 Repealer.

[Reserved]

7-12.260 Severability.

The invalidity of any Section, clause, sentence, or provision of this Chapter shall not affect the validity of part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 203 (12/18/03).

7-12.270 Effective Date.

This Chapter shall be effective sixty (60) days after it is approved by the Secretary of the Interior or his or her designee.

[History] Ord. 203 (12/18/03).