

TITLE 21 8

PROVISIONS FOR ELDERS

Chapter 21.01

- 21.0101 Purpose and construction. Elders are very important and highly respected within our tribal structure. They are the caretakers of our rich culture and traditions. The Indian Child Welfare Act, in recognition, gives priority to grandparents when placing children who are in need. We also, as a people, wish to emphasize elders' rights and protections by making them a part of our laws. The Indian Child Welfare Act, defines "extended family" as the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, step-parent or any other person defined by law or custom of the Tribe.
- 21.0102 Visitation rights of grandparents. The court, in its discretion, may grant visitation rights with or without petition by the grandparents, if it is in the best interest of the grandchild.
- 21.0103 Petition for visitation rights by grandparents. The grandparents of a child may petition the Court for grandchild(ren) visitation rights in the following circumstances:
- (1) the parents of the child(ren) are divorced or legally separated; or
 - (2) an action for divorce or separate maintenance has been commenced by one of the parents of the child(ren); or
 - (3) the parent of the child(ren), who is the child of the grandparent, has died.
- 21.0104 The preceding provisions cited in 21.0101, 21.0102, and 21.0103, inclusive, do not apply if the child(ren) has/have been placed for adoption with a person other than the child(ren)'s step-parent or grandparent. Any grandparent visitation rights granted pursuant to 21.0101, 21.0102, and 21.0103, inclusive prior to placement for adoption of the child(ren) for adoption, except in those cases of "open adoption" as defined in Chapter 9.06.

21.0105 Elders abuse penalty. Any person or caretaker who is convicted for a violation of the following defined provisions in Section 21.0201 through 21.0206 shall be sentenced to imprisonment for a maximum of six (6) months in jail and to a fine of not more than three hundred sixty dollars (\$360.), plus Court costs. (Class 1 Misdemeanor).

21.0106 Penalty for failure to report elder abuse. Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elder shall report the abuse or suspected abuse to the Tribal Prosecutor, or in his/her stead, a Police Officer, or Social Worker, immediately. Any person or caretaker who, without good cause, fails to report abuse or suspected abuse of the elder shall be guilty of an offense and upon conviction thereof shall be sented to imprisonment for a minimum of ten (10) days and/or fine of not less than thirty-five dollars (\$35.), plus Court costs. (Class 2 Misdemeanor).

Chapter 21.02

DEFINITIONS

21.0201 Abuse. Means the willful infliction of physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, the willful deprivation by a caretaker of the basic necessities of life; such as, but not limited to, food, shelter, clothing and personal care which are necessary to prevent physical harm, mental anguish, or mental illness, or any other type of maltreatment. However, no person shall be deemed abused for the sole reason that they are being furnished traditional remedial treatment by spiritual means through prayer alone in accordance with their religious beliefs.

21.0202 Elder. Means any person having reached the age of fifty-five (55) years.

21.0203 Caretaker. Means an individual who has the responsibility for the care of an elder, either voluntarily, by contract, receipt of payment for care as a result of a family relationship, or by an order of a Court of competent jurisdiction.

21.0204 Exploitation. Means the act or process of using an elder or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement.

21.0205 Physical injury. Means bodily pain, harm, impairment caused by malnutrition.

21.0206 Mental anguish. Means to subject an elder to fear, agitation, confusion, severe depression, or other forms of serious emotional distress through threats, harassment, or other forms of intimidating behavior.

Chapter 21.03

REPORTS

21.0301 Report and investigation. Reports may be made to the Tribal Court Prosecutor, a Police Officer, or Social Worker. Anyone participating in good faith in the making of a report pursuant to the Elder Abuse provisions shall have immunity from any liability, civil and criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any Court proceeding resulting from such report. The Tribal Court Prosecutor, Police Officer, or Social Worker shall reduce to writing the following information from an informant:

- (1) name, age, and address of elder alleged to be abused;
- (2) name and address of person or caretaker in charge of elder who is subject of the report;
- (3) name and address of alleged perpetrator;
- (4) nature and extent of the abuse;
- (5) persons who might have been aware of the abuse;
- (6) date(s) and location(s) of when and where the alleged abuse occurred;
- (7) any other pertinent information known to the person making the report.

21.0302 Non-disclosure. The name of any person who reports suspected abuse of elders shall not be disclosed to any person unless the person who reports the abuse specifically requests such disclosure or a judicial proceeding results from such report.

BOARDS

21.0401

Special board. The Chief Judge shall--with advice and consent of the existing elderly groups and if circumstances warrant--appoint a special board who shall evaluate circumstances and make remedial recommendations. The Board shall have at least one (1) elder and shall consist of not less than three (3) nor more than five (5) members, in an ad hoc capacity. The Board's primary responsibilities shall consist of evaluating what services need to be mobilized on the elders' behalf and shall include, but not be limited to, arrangement for appropriate living quarters, obtaining financial benefits to which the person is entitled, securing medical services and supplies, and in cases where exploitation, prevention of injury, protection of the person and their property is at issue, seeking alternative living quarters. The Board shall request and have at its disposal all those services from agencies serving the people of the Flandreau Santee Sioux Tribe to carry out its objectives.

~~CHAPTER 40~~
Flandreau-Santee Sioux Tribe
ADULT PROTECTION ORDINANCE

1987

BE IT ENACTED BY THE FLANDREAU Santee SIOUX TRIBE, to prohibit abuse and neglect of disabled adults, to require reporting of all cases of suspected abuse or neglect of disabled adults, to provide for adult protective services through the Bureau of Indian Affairs - Social Services, and to provide a penalty for substantiated cases of abuse or neglect.

Section 1. Definitions of Terms:

- A. "Disabled Adult," is any person who is incapacitated due to a physical or mental disability (including alcoholism); who is found to be in a situation or condition whereby (s)he is unable to protect his/her own interest; in which his/her basic health is at risk; where (s)he experiences abuse or neglect, or attempts to cause abuse or neglect; or in which the individual is exploited by others.
- B. "Abuse," is any willful or negligent act by a caretaker, by a family member, by a non-related person, by the disabled person himself/herself, or by a public or private institution, which results in physical injury or pain, jeopardizes basic health, and/or causes mental anguish or mental injury; it includes sexual abuse, unreasonable confinement, malnutrition, and deprivation of the goods and services necessary to avoid physical harm or mental anguish, to maintain basic health, or to prevent other maltreatment or exploitation.
- C. "Mental anguish or injury," is willfully subjecting a disabled adult to fear, agitation, confusion, severe depression, or to other forms of serious emotional distress, by perpetrating threat harassment, or other forms of intimidating or manipulative behavior.

- D. "Neglect," is failure by the caretaker or responsible family member(s) to provide adequate shelter, food, clothing, or medical services to a disabled adult; it includes the disabled adult's own failure to care for himself/herself.
- E. "Caretaker," is an individual, or public or private institution, which has assumed responsibility for the care of the disabled adult, either voluntarily, by contract, by receipt of payment for care, as the result of family relationship, or by order of a Court.
- F. "Exploitation," is illegal or improper utilization of a disabled adult or their resources for monetary or personal benefit, profit, or gain.
- G. "Goods and services necessary to avoid physical harm or mental anguish," includes (but is not limited to) the provision of medical care to meet physical and mental health needs; assistance personal hygiene; providing adequate clothing; providing adequate shelter with heat, a sanitary environment, and ventilation; protection from health and safety hazards; protection from malnutrition; maintaining medical treatment regimens; and the transportation necessary to secure these needs.

Section 2. Spiritual Treatment Does Not In Itself Constitute Neglect or Abuse:

Notwithstanding any other provision of this ordinance, no caretaker or family member who in good faith is providing treatment to a person solely by spiritual means in accordance with the tenets and practices of an established belief in a Higher Power, through a duly recognized practitioner or healer, shall for that reason alone be considered to have abused or neglected the disabled adult.

Section 3. All Providers Required By Law To Report Suspected Cases of Abuse or Neglect of Disabled Adults:

Any physician, dentist, pharmacist, chiropractor, optometrist, nurse, nursing assistant, community health nurse, health outreach worker, home health aide, homemaker aide, hospital intern or resident, mental health professional, psychologist, counselor, social worker, spiritual healing practitioner, podiatrist, nutritionist, audiologist, nursing home or hospital administrator, parole or probation officer, court prosecutor, law enforcement officer, program manager, veterans service officer, provider of transportation to disabled adults, Elderly Advisory Board member, Human Services Board member, Alcoholism Treatment Board member, clergyman or spiritual leader, or coroner, knowing or having reasonable cause to suspect that a disabled adult is or has been abused or neglected, other than by accidental means, shall report such abuse or neglect to the Bureau of Indian Affairs - Social Services, or to the appropriate law enforcement agency. If the report is made to a law enforcement agency, that agency shall immediately notify the Bureau. The report may be oral or in writing and shall contain the name, age, and address of the disabled adult (if known), the name and address of the caretaker(s) of the disabled adult, the nature and extent of the abuse or neglect, and any other pertinent information known to the person making the report. Any person who intentionally fails to make a report required by this section is guilty of a Class 1 misdemeanor. Any other person who knows, suspects, or has reason to believe that a disabled adult is or has been abused or neglected, other than by accidental means, may make a report as provided by law.

Section 4. Immunity From Civil or Criminal Liability and Protection From Harassment For Reporting or Testifying:

Any person who in good faith makes any report pursuant to this ordinance, or who testifies in any administrative or judicial proceeding arising from such report, shall be immune from any civil or criminal liability and shall be saved from harassment because of such report or testimony.

Section 5. Investigations And Other Services Conducted By The Bureau of Indian Affairs - Social Services:

Upon receiving a report that a disabled adult is abused or neglected, the Bureau of Indian Affairs - Social Services shall make a prompt and thorough investigation to determine if such abuse or neglect exists and whether the disabled adult is in need of protective services. Services provided by the Bureau of Indian Affairs - Social Services shall include:

- A. Identification of the disabled adult and determination that (s)he is eligible for services from the Bureau of Indian Affairs - Social Services;
- B. Assessment of the disabled adult's physical and mental status and needs;
- C. Filing a petition for all cases of substantiated abuse or neglect of a disabled adult in the Tribal Court;
- D. Assistance in arranging for necessary protective services of abused or neglected adults by:
 - 1) Recommending that the Tribal Court declare them to be Disabled Adults In Need of Supervision and that the Court place them in protective custody;

Section 5. D. (Continued):

- 2) Establishing a system for and then licensing adult foster care and group homes for providing adult protective services;
- 3) Assistance in identifying, preparing, and arranging for placement of a Disabled Adult In Need of Supervision, according to the placement priority schedule stated in the next subsection, E.2.;

E. Provision of social casework and counseling shall include, but not be limited to:

- 1) Every effort shall be made to respect, stabilize, support, and sustain the disabled adult within the context of his/her family and community. In order to effect this, the Bureau of Indian Affairs - Social Services shall:
 - a) Provide a written statement of requirements and expectations to the caretaker(s) who are providing care to the Disabled Adult In Need of Supervision;
 - b) Monitor care provided to the Disabled Adult In Need of Supervision and communicate to the caretaker(s) immediately and, subsequently, in writing on all deficiencies observed and of steps which must be taken to correct the problem by modifying behavior(s) in the family, changing the living environment, or otherwise adjusting the household to better address the needs of the disabled adult; and,
 - c) Exhaust all remedies before removing the Disabled Adult In Need of Supervision from his/her family;

Section 5. E. (Continued):

- 2) Assistance, when necessary, in locating and arranging for placement in an approved or licensed care facility, in accordance with the following placement priority schedule:
 - a) Approved home of a relative who resides on the Reservation;
 - b) Approved home of a relative who resides off the Reservation but maintains close social and economic ties;
 - c) Licensed adult foster care home of a non-relative who resides on the Reservation;
 - d) Licensed or accredited group care, supervised living care, intermediate care, or skilled care facilities located on or near the Reservation;
 - e) Licensed home of a relative who resides off the Reservation but does not maintain close social and economic ties with the Reservation;
 - f) Licensed or accredited group care, supervised living care, intermediate care, or skilled care facilities located off the Reservation;
 - 3) Assistance in arranging for a protective payee or limited financial guardianship; and,
- F. Coordination and collaboration with other involved agencies to provide for the needs of the disabled adult.

Section 6. Temporary or Emergency Protective Custody of Disabled Adults:

The Tribal Court shall assume, in behalf of the Flandreau Santee Sioux Tribe, immediate, temporary protective custody of all disabled adults, based upon the filed petition of the Bureau of Indian Affairs Social Services and evidence that the disabled person is in a life-threatening situation. This temporary custody shall endure until the Tribal Court holds a hearing or hearings to determine appropriate measures which must be taken to assure the safety, health, and well-being of the disabled adult.

Section 7. Due Process of Law for Hearing Cases Involving Abuse or Neglect of Disabled Adults:

A. The Tribal Court shall hear testimony from the following persons to determine whether it is necessary for the Flandreau Santee Sioux Tribe to take the disabled adult into permanent and legal protective custody and care:

- 1) Filer of the petition and/or Bureau of Indian Affairs' Social Worker's testimony and recommendations;
- 2) Family members of the disabled adult shall testify on matters including, but not limited, to:
 - a) The nature, quality, or extent of the care they are providing;
 - b) Whether the family wants to provide care;
 - c) Whether the family has the capabilities to take care of the disabled adult; and,
 - d) Any other considerations relevant to the treatment, neglect, or abuse of the disabled adult;

Section 7. (Continued):

- 3) Representative(s) of the agency or organization furnishing income to the disabled adult shall testify as to:
 - a) What the income of the disabled adult is;
 - b) Whether the representative(s) are aware of how this income is expended or used by the disabled adult; and,
 - c) What the recommendations of the agency or organization are regarding the disabled adult;
 - 4) Medical witnesses (including physicians, medical social workers, community health nurses, and other practitioners) shall provide testimony on the medical condition of the disabled adult and shall make recommendations to the Tribal Court regarding the levels of care needed by the disabled adult;
 - 5) The Court shall also hear testimony and recommendations from involved or concerned service providers, clergypersons, or other witnesses with information relative to the status of the disabled adult;
- B. The Tribal Court may exercise one or more of the following actions after the initial hearing:
- 1) Order further investigation on the status of the Disabled Adult In Need of Supervision and, for this period, extend the temporary protective custody until such time that final determination is made by the Court;
 - 2) Order the release of the Disabled Adult In Need of Supervision to the care and custody of his/her family for a specified

Section 7. B. (Continued):

fied period of time; and, during this period, order the Bureau of Indian Affairs - Social Services or other appropriate agency to monitor the status of the disabled adult in the context of the family, to provide social casework and counseling as stated in Section 5. E., and to provide a written report to the Court when the hearing is held;

- 3) Order primary alcoholism or chemical dependency treatment in lieu of protective custody and care; require the participation of the disabled adult's family members in the treatment process (in accordance with the recommendations of the primary treatment agency); and hold a hearing 45 days after treatment is completed, so as to make a final determination; and/or,
- 4) Arrange for alternative care and supervision until a final hearing can be held to issue a determination on the Disabled Adult In Need of Supervision's status;

C. After due consideration to all testimony and evidence furnished in the final hearing, the Tribal Court shall render the decision whether to:

- 1) Drop the case and order the disabled adult's return to Society, without any conditions attached;
- 2) Declare the individual to be a Disabled Adult In Need of Supervision and:
 - a) Order and award unconditional custody of the disabled adult to his/her family member(s);
 - b) Order and award custody of the disabled adult to his/her family under the supervision of the Bureau of Indian Affairs - Social Services, in

Section 7. C. (Continued):

- accordance with Section 5. E.(1) of this ordinance;
- c) Assume custody in behalf of the Flandreau Santee Sioux Tribe and order the Bureau of Indian Affairs - Social Services to find and supervise placement, in accordance with Section 5. E.(2) of this ordinance; or,
 - d) Order and award custody and care directly to the administrator of a licensed or accredited supervised living care, intermediate care, or skilled care facility.

Section 8. Establish Central Registry for Reports and Convictions of Abuse and Neglect of Disabled Adults:

The Bureau of Indian Affairs - Social Services shall establish a central registry for reports of and convictions of abuse or neglect of disabled persons. The information in the central registry shall be confidential and may be released only to the Tribal Prosecutor, a law enforcement agency investigating a report of abuse or neglect of a disabled adult, a court, a protective service worker of another agency who is investigating a reported incident of abuse or neglect of a disabled adult, public officials who require the information in the discharge of their official duties, or to an agency having the legal responsibility to care for, treat, or supervise a person who is subject of a report. The information in the central registry may also be released to a state registry, or to a regional or national registry of abuse and neglect of disabled adults.

Section 9. Confidentiality of Records:

All records, files and information concerning disabled adult abuse and neglect reports are confidential; and no disclosure or release of such information shall be made, except to those agencies with the need to know, as authorized by Section 8. of this ordinance. Any person who knowingly violates the confidential nature of such records, files, and information shall be guilty of a Class 1 misdemeanor.

Section 10. Consent To Accept Services or Arrangement for Limited Guardianship:

The Bureau of Indian Affairs - Social Services shall provide no services to an abused or neglected disabled adult without that individual's consent. If the abused or neglected disabled adult is incapable of giving consent, due to his/her disability or incompetency, and the caretaker of the disabled adult refuses to provide the necessary service or to allow the Bureau to provide the service, the Bureau of Indian Affairs - Social Services may petition the Tribal Court for a limited guardianship under the terms and conditions of Chapter _____, the same as if the disabled adult were incapacitated as defined therein.

Section 11. Confidential Relations Privilege Not Permitted:

The confidential relations privilege between client and provider may not be claimed in any judicial or administrative proceeding involving abuse or neglect of a disabled adult, or resulting from the giving of any report concerning abuse or neglect of a disabled adult

Section 12. Procedure For Licensure of Homes To Be Established And Followed:

Pursuant to this ordinance, the Bureau of Indian Affairs - Social Services shall establish and follow a procedure for the licensure of adult foster care and group care homes, including standards for licensure and fair and equitable rates to care providers.