

TRIBAL CODE

CHAPTER 32

ADULT PROTECTION ACT

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HISTORY NOTE:

Current Ordinances:

Resolution No: 2008-127, adopted June 3, 2008, adopts Tribal Code Chapter 32: Adult Protection Act, effective June 3, 2008.

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CHAPTER 32:

ADULT PROTECTION ACT

SUBCHAPTER I: PREAMBLE

32.101 Authority.

Article VII, Section 1(g) of the Constitution grants the Board of Directors the power to promulgate and enforce ordinances governing the conduct of persons within the jurisdiction of the tribe.

32.102 Purpose.

The purpose of this Chapter is to establish Tribal law to protect adults of the Tribe from abuse, neglect, self-neglect and exploitation. The Tribe honors, respects, and protects its adult membership. They are the custodians of Tribal history, culture, and traditions which are vital to our Tribal culture and enhance and enrich the lives of the entire Tribe. The interests of the Tribe, now and in the future, are advanced when our adults can be confident that they are protected from abuse, neglect, self-neglect and exploitation. This Chapter shall be liberally construed and implemented in the least restrictive manner to affect the purposes stated herein.

32.103 Policy.

(1) Declaration of Policy. It shall be the policy of the Tribe that the dignity and self-reliance of the Tribe's adults shall be acknowledged and respected by family members, the Tribal community, and employees of the Tribe. The rights of each tribal adult shall be protected. The Tribe further recognizes that the abuse, neglect, self-neglect or exploitation of adults, as a family problem, is not a private matter when the well-being and safety of an adult is endangered. The Tribe recognizes that some adults may be vulnerable and 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 tribal adults all of their rights as Tribal members, and at the same time protect abused, neglected, self-neglected or exploited tribal adults. The Tribe shall establish those services and assure their availability to all tribal adults in need and place the least possible restrictions on personal liberty and exercise of rights consistent with due process and protection from abuse, neglect, self-neglect and exploitation.

(2) Statutory Requirements.

(a) Specifically, this Chapter requires the following:

(i) There shall be prompt reporting to Anishnabek Community and Family Services (“ACFS”) of abuse, neglect or self-neglect, or exploitation of an adult.

(ii) ACFS shall take action upon receipt of suspected cases of abuse, neglect or self-neglect, or exploitation of an adult.

(iii) ACFS shall deliver voluntary adult protective services.

(b) ACFS may accomplish any of its duties and obligations set forth in this Chapter via the Michigan Department of Human Services (“DHS”), pursuant to a written agreement between the State of Michigan and the Tribe.

32.104 Jurisdiction.

ACFS may investigate reports of suspected abuse, neglect, self-neglect or exploitation and deliver voluntary adult protective services to Indian adults who reside on Tribal lands or who are found on Tribal lands.

32.105 Definitions.

(1) “Abuse” means harm or threatened harm to an adult's health or welfare caused by another person. Abuse includes, but is not limited to, non-accidental physical or mental injury, sexual abuse, or maltreatment.

(2) “Adult in need of protective services” or “adult” means a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, self-neglected or exploited.

(3) “Exploitation” means an action that involves the misuse of an adult's funds, property, or personal dignity by another person.

(4) “Indian” means any person who is a member of a federally-recognized Indian tribe, or who is an Alaska Native and a member of a regional corporation as defined in Title 43 of the United States Code, Section 1606.

(5) “Neglect” means harm to an adult's health or welfare caused by the inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult's health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter, or medical care. A person shall not be considered to be abused, neglected, or in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone, and this Chapter shall not require any medical care or treatment in contravention of the stated or implied objection of that person.

(6) “Protective services” includes, but is not limited to, remedial, social, legal, health, mental health, and referral services provided in response to a report of alleged harm or threatened harm because of abuse, neglect, self-neglect or exploitation.

(7) “Self-neglect” means a significant threat to a vulnerable adult’s physical or mental health because the individual is responsible for his or her own care but is unable to provide adequate food, clothing, shelter, or medical care.

(8) “Tribal lands” means:

(a) all lands within the limits of the Tribe’s reservation, including trust land, fee patented land and rights of way running through the reservation;

(b) all land outside the boundaries of the Tribe’s reservation held in trust by the United States for individual members of the Tribe or for the Tribe; and

(c) all other land considered “Indian country” as defined by 18 U.S.C. § 1151 that is associated with the Tribe.

(9) “Vulnerable” means a condition in which an adult is unable to protect himself or herself from abuse, neglect, self-neglect or exploitation because of a mental or physical impairment or because of advanced age.

SUBCHAPTER II: REPORTING ABUSE, NEGLECT, OR EXPLOITATION

32.201 Duty to Report.

(1) Any person who has reasonable cause to suspect that an adult is an adult in need of protective services shall immediately report the abuse, neglect, self-neglect, or exploitation to ACFS or to Sault Tribe Law Enforcement or other designated agency.

(2) The following individuals have a mandated duty to report abuse, neglect, self-neglect, or exploitation to ACFS or to Sault Tribe Law Enforcement or other designated agency:

(a) any persons employed, licensed, registered or certified to provide health care, educational, social welfare, mental health, or other human services;

(b) any employee of an agency licensed to provide health care, educational, social welfare, mental health, or other human services;

(c) law enforcement officials including probation officers; and

(d) employees of the office of the county medical examiner.

32.202 Making Reports.

(1) Anonymous. Except those persons listed in Section 32.201(2)(a)-(g) above, persons reporting adult abuse, neglect, self-neglect or exploitation may remain anonymous. Anonymous reports shall be investigated as required by this Chapter.

(2) Confidentiality. The identity of a person making a report under this Chapter shall be 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 adult 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 as necessary to protect the adult.

(3) Presumed Good Faith. Reports of suspected adult abuse, neglect, self-neglect, or exploitation are presumed to be made in good faith.

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

32.203 Failure to Report.

(1) Civil Penalty. Any person who is defined as a mandated reporter by this Chapter and fails to report suspected abuse, neglect, self-neglect, or exploitation of a tribal adult is subject to civil penalty not to exceed \$5,000. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person had a mandated duty to report, and failed to do so, as required by this Chapter. Further, the person failing to report is subject to any civil suit brought by or on behalf of the Adult for damages suffered as a result of the failure to report, notwithstanding any determination by the Court that the person failing to report violated this Chapter.

(2) Privileged Communication. No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report or for testifying as required by this Chapter.

32.204 Bad Faith Report.

Any person who makes a report of suspected abuse, neglect, self-neglect, or exploitation knowing it to be false is subject to a civil penalty not to exceed \$5,000. The Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination 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.

32.205 Content of Reports.

(1) A report made under this Chapter shall contain the name of the adult and a description of the abuse, neglect, self-neglect or exploitation. The report shall also contain other information available to the reporting person that may establish the cause of the abuse, neglect, self-neglect, or exploitation and the manner in which the abuse, neglect, self-neglect or exploitation occurred or is occurring.

(2) If possible, the report shall contain the adult's age and the names and addresses of the adult's guardian or next of kin, and of the persons with whom the adult resides, including their relationship to the adult.

(3) ACFS or Sault Tribe Law Enforcement or other designated agency receiving the report shall reduce to writing the information provided in an oral report received pursuant to this Chapter.

32.206 Law Enforcement.

(1) ACFS shall report to Sault Tribe Law Enforcement any criminal activity that it believes to be occurring, upon receipt of the oral report.

(2) This Chapter shall not be construed as limiting the responsibilities of Sault Tribe Law Enforcement or any other appropriate police agency to enforce applicable laws or as precluding the police agency from reporting and investigating, as appropriate, alleged criminal conduct.

SUBCHAPTER III: INVESTIGATION AND SERVICES

32.301 Investigation.

(1) Within twenty-four (24) hours of receipt of a report made or information obtained pursuant to this Chapter, ACFS shall take appropriate action to determine whether the person suspected of being or believed to be abused, neglected, self-neglected or exploited is an adult in need of protective services.

(2) A reasonable belief on the part of ACFS that the person is an adult in need of protective services is a sufficient basis to begin an investigation.

(3) Upon a request by ACFS, local law enforcement officers shall cooperate with ACFS in an investigation of suspected abuse, neglect, self-neglect or exploitation. However, the investigation required by this Section shall not be in place of an investigation by the appropriate police agency regarding suspected criminal conduct arising from the suspected abuse, neglect, self-neglect or exploitation.

(4) The investigation shall include:

(a) a determination of the nature, extent, and cause of the abuse, neglect, self-neglect or exploitation;

(b) examination of evidence;

(c) identification, if possible, of the person responsible for the abuse, neglect, or exploitation

(d) the names and conditions of other adults in the place of residence;

(e) an evaluation of the persons responsible for the care of the adult, if appropriate;

(f) the environment of the residence;

(g) the relationship of the adult to the person responsible for the adult's care;

(h) an evaluation as to whether or not the adult would consent to receiving protective services;

(i) an interview with the adult;

(i) ACFS shall conduct the interview by means of a personal visit with the adult in the adult's dwelling or in the office of ACFS, by telephone conversation, or by any other means that may be available to ACFS.

(ii) In attempting to conduct a personal visit with the adult in the adult's dwelling, if admission to the dwelling is denied, ACFS may seek the assistance of law enforcement to obtain a search warrant pursuant to § 70.109.

(j) and any other pertinent data.

(5) The investigation may include a medical, psychological, social, vocational, and educational evaluation and review.

(6) In the course of an investigation, ACFS shall determine if the adult is or was abused, neglected, self-neglected or exploited. ACFS shall make available to the adult the appropriate and least restrictive protective services, directly or through the referral of services from other agencies and professions, and shall take necessary action to safeguard and enhance the welfare of the adult, if possible. ACFS also shall collaborate with law enforcement officers, courts of competent jurisdiction, and appropriate tribal, state, and local agencies providing

human services, which services are provided in relation to preventing, identifying and treating adult abuse, neglect, self-neglect or exploitation. If the abuse, neglect, self-neglect or exploitation involves substance abuse, ACFS shall collaborate with the tribal substance abuse services agency for a referral for substance abuse services. ACFS may petition for the appointment of a guardian or temporary guardian pursuant to Tribal Code, Chapter 33 or sections 700.443 and 700.453 of the Michigan Compiled Laws, and may petition for the appointment of a conservator pursuant to section 700.461 of the Michigan Compiled Laws, for a vulnerable adult.

(7) Upon completion of an investigation, ACFS shall prepare a written report of the investigation and its findings.

32.302 Releasing Records.

Records of investigation are confidential and may be viewed only by authorized representatives of ACFS and/or DHS, law enforcement personnel, the prosecuting attorney for the jurisdiction in which the adult suspected of being or believed to be abused, neglected, self-neglected or exploited resides or is found, parties to the matter before the Court, and those people the Court determines have a reasonable cause to view them.

32.303 Penalty for Breach of Confidentiality.

Any person who violates any provision regarding confidentiality in this Chapter, including Sections 32.202(2) and 32.302 shall be subject to a civil penalty of up to \$100 per occurrence. The Court shall assess the penalty after petition, notice, opportunity to be heard, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Tribe, the person shall be subject to appropriate disciplinary action as allowed in the Tribe's employment policies and procedures.

32.304 Criminal Prosecutions.

(1) Any person who commits abuse, neglect, or exploitation of an adult may be criminally prosecuted under applicable provisions of the Tribal Code.

(2) Criminal prosecutions may run concurrently with civil proceedings under this Chapter. Dismissal or deferral of criminal prosecutions in no way affects the applicability of this Chapter.

32.305 Immunities.

The following persons are immune from civil or criminal liability for actions or inactions in the performance of their duties under this Chapter:

- (1) Anishnabek Community and Family Services or designated agency,
- (2) Sault Tribe Law Enforcement,
- (3) Tribal Judges and Tribal Court staff,
- (4) Others acting on the Tribe's behalf under this Chapter.