



**HO-CHUNK NATION CODE (HCC)**  
**TITLE 4 – CHILDREN, FAMILY, AND ELDER WELFARE CODE**  
**SECTION 1 – ELDER PROTECTION ACT OF 2001**

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**1. Authority.**

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive Branch to be administered by such Departments in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

g. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

h. Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers.

i. The Ho-Chunk Nation Tribal Aging Unit (TAU) Advisory Board Bylaws provides the TAU Board the power and duty to review and to make recommendations on proposals relating to matters affecting Elders prior to approval by the Ho-Chunk Nation Legislature.

**2. Purpose.** The purpose of this Act is to establish Tribal law to protect the Elders of the Ho-Chunk Nation from abuse, neglect, and exploitation. The Ho-Chunk Nation 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 Nation. The interests of the Nation, now and in the future, are advanced when our Elders can be

confident they are protected from abuse, neglect, and exploitation and are free to fully participate in the activities and proceedings of the Nation

**3. Scope.**

a. This Act supplements and expands on those protections afforded to all Tribal members in the Nation's *Domestic Abuse Act* (4 HCC § 5). The provisions of this Act shall control in event of conflicting or inconsistent policy or procedures of the Nation's *Domestic Abuse Act*.

b. This Act shall be liberally construed to effect the purpose and scope stated above and shall be interpreted to comport with the customs and traditions of the Ho-Chunk Nation.

**4. Declaration of Policy.**

a. The dignity and self-reliance of the Nation's Elders shall be acknowledged and respected by family members, the Tribal community, and employees of the Nation. The rights of each Elder shall be protected. See paragraph 19 for specific rights and protections.

b. The Nation 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 Nation recognizes that many Elders suffer the infirmities of aging and are 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 Nation 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 Tribal Aging Unit (TAU) Advisory Board shall be consulted during the development of implementing plans and programs and shall review and recommend amendments as required.

f. The Legislature shall appropriate and provide adequate funding to ensure the safety and welfare of the Nation's Elders and the implementation of the Elder Protection Plan.

g. Each Elder shall be encouraged to designate a power of attorney and to have a Living Will to provide for the Elder's wishes and protection in the event of incapacitation.

h. Specifically, this Act requires the following.

(1) There shall be prompt reporting to the Ho-Chunk Nation Department of Health and Social Services of abuse, neglect or self-neglect, or exploitation of an Elder.

(2) The Ho-Chunk Nation Department of Health and Social Services shall take action upon receipt of a report of suspected cases of the abuse, neglect or self-neglect, or exploitation of an Elder.

(3) The Department of Health and Social Services shall investigate all reported cases of the abuse, neglect or self-neglect, or exploitation of an Elder.

(4) The delivery of elder protection services.

(5) The Department of Health and Social Services shall develop and establish an Elder Protection Plan that will establish the criteria and procedures required to implement this Act and provide for reporting, investigation, and remedy of elder abuse, neglect or self-neglect, and exploitation.

**5. Definitions.** Terms used in this Act 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) The infliction of emotional or mental harm to an Elder denied or restrained from Grandparent Rights as recognized by Hocak custom.

(4) Attempting to cause or causing physical harm, bodily injury, or assault on an Elder or the Elder’s family or caretaker.

c. “Advocate” means an employee of the Nation 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 paragraph (3), above.

e. “Court” means the Ho-Chunk Nation Trial Court.

f. “Department” means the Ho-Chunk Nation Department of Health and Social Services.

g. “Elder” means any person subject to the jurisdiction of the Nation who is sixty (60) years of age or more.

h. “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.

i. “Exploitation” means any of the following.

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

(2) The improper use of an Elder by any person for personal gain or profit or otherwise.

(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.

j. “Family” means all of the customary family relationships recognized by the Nation, including extended family relationships.

k. “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.

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

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

n. “Grandparents’ Rights” means the inherent rights of a child’s Hocak grandparents to have an active role in determining a child’s welfare, care, and protection at all stages of

development according to custom.

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. “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.

q. “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.

r. “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.

s. “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.

t. “Power of Attorney” means a written document signed by an Elder and notarized giving another person the power to act in conducting the Elder’s business in the name of the Elder. There are two main types of powers of attorney.

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

(2) A Special Power of Attorney grants powers limited to specific matters, such

as selling a particular piece of real estate, handling specific bank accounts, etc.

u. “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.

v. “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 Act. Protective services include protective supervision, but does not include protective placement.

w. “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 Health and Social Services or designated agent provide supervision and assistance correcting the neglect or exploitation of the Elder.

x. “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.

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

z. “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.

aa. “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.

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

**6. Duty to Report Abuse, Neglect, Self-Neglect and Exploitation of an Elder.** 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 Ho-Chunk Nation Department of Health and Social Services (“Department”) unless they have a privileged relationship with their patient or client. These individuals must only anonymously disclose information about their client if there is an urgent need for hospitalization, guardianship, protective services or protective placement. The following individuals have a special duty in reporting abuse, neglect or exploitation.

a. The Elder’s family or caretaker.

b. Any employee or elected official of the Nation.

c. Any employee (medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, human services worker, Elder’s service provider, nursing home provider, or any other health and Elder, human, or social services provider or the employees of providers of health care and services), excluding employees prohibited from disclosure because of privilege, of a business owned by the Nation, whether or not managed by the Nation.

d. Any person or agency or employee of such agency with a fiduciary duty to the Elder such as an attorney, accountant, financial institution, or property manager.

**7. Anonymous Reports.** Except for those persons in paragraphs 6a-g, persons reporting elder abuse, neglect, or exploitation may remain anonymous.

**8. Immunity for Reporting.** Any person who in good faith reports suspected abuse, neglect or self-neglect, and exploitation of an Elder shall be immune from any legal action based on that person’s report.

**9. Civil Violation and Penalty For Failing to Report.**

a. Any person who is required by this Act to report suspected elder abuse, neglect or self-neglect, or exploitation and fails to do so is subject to civil penalty not to exceed \$2,000. The Ho-Chunk Nation Trial 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 Act. 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 by the Ho-Chunk Nation Courts that the person failing to report violated this Act.

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 Act.

**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 \$2,000. The Ho-Chunk Nation Trial Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person making the report knew that 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.

**11. Reports.** Reports of suspected elder abuse, neglect, or exploitation shall be made to the Department. The person in the Department taking an oral report shall immediately complete a written report. The written report should contain the name of the reporter and, if possible, the reporter should sign the report. Anonymous reports shall be investigated as required by this Act. The following information should be part of any report.

- a. The Elder's name, address or location, and telephone number.
- b. The name, address or location, and telephone number of the person(s) or agency suspected of abusing, neglecting, or exploiting the Elder.
- c. The nature and degree of the incapacitation of the Elder.
- d. The name, address or location, and telephone number of the Elder's caretaker.
- e. The name, address or location, and telephone number of witness(s).
- f. A description of the acts which are reported as abusive or neglectful.
- g. Any other information that the reporter believes might be helpful in establishing abuse, neglect, or exploitation.

**12. Investigations.**

a. The Department shall investigate each report within forty-eight (48) hours of receipt. The investigator shall conduct in-person interviews with the Elder, the Elder's family and caretaker, 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. The investigator shall also conduct observations and other fact finding as required. The existence of contents of medical records and other reports of abuse or neglect may be ascertained.

b. Written Investigation Report.

(1) A written report shall be prepared and filed with the Department. 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) 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 paragraph 10.

(3) An investigation report shall contain the information set forth in paragraph a, above and the results of the investigator's interview, observations and assessments, and other facts.

c. Subpoena of Medical and Financial Records. The Trial Court may issue subpoenas for the release of medical records and financial records upon motion for expedited consideration by the Department of Justice in order to facilitate investigations of reported elder abuse. Upon hearing evidence, the Court must find reasonable grounds to believe that elder abuse or exploitation is occurring or has occurred in order to issue a subpoena.

### **13. Interference with Investigation and Retaliation – Civil Penalty.**

a. No person shall interfere intentionally 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 paragraph a or b, above, shall be enjoined from such activity and shall be subject to a civil penalty of up to \$2,000 per occurrence. The Ho-Chunk Nation Trial Court shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that either interference or retaliation as set out in this section occurred. 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 Nation, appropriate disciplinary action shall be imposed consistent with the Nation's employment law.

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

**15. Provision of Services.** After an investigation of elder abuse, neglect or self-neglect, or exploitation is completed, the Department 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 Act.

**16. Elder Protection Plan.** The Department of Health and Social Services shall develop a comprehensive and detailed Elder Protection Plan. The Plan shall be submitted to the

Legislature for approval not later than 120 days following the enactment of this Act. The Plan shall be reviewed and updated annually and shall include the funding requirements necessary to meet the goals and objectives of the Plan. The Plan shall provide for the following.

- a. An Elder Advocate to provide referral and outreach services for Elders and to develop and coordinate programs for the prevention of elder abuse, neglect or self-neglect, and exploitation.
- b. Establish criteria and standards for elder abuse, neglect or self-neglect, and exploitation intervention.
- c. The process, procedures, and points of contact for reporting and investigating reports of suspected abuse, neglect or self-neglect, or exploitation.
- d. A process for conducting comprehensive physical, mental, and social assessments of an Elder when a petition for protection order has been filed.
- e. The process and procedures for petitioning the Court for involuntary and emergency protective services or placement.
- f. The delivery of elder protective services or protective placement services.
- g. An education and training program for Elder Advocates to ensure they have the knowledge and skills they require to provide quality service to the Nation's Elders.

**17. Protective Services and Protective Placement.**

a. Protective services or placement may be provided on a voluntary or involuntary basis.

(1) Voluntary Services or Placement.

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

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

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

(d) Voluntary placement shall not be continued after ninety (90) days without a Court order permitting continued voluntary placement.

(e) Voluntary protective services or protective placement will be provided consistent with the level of funding and resources.

(2) Involuntary Services or Placement.

(a) Protective services or protective placement shall be provided on an involuntary basis by the Department only as the Court determines they are necessary.

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

(c) Such services or placement may be provided on an emergency basis and shall be provided in a manner least restrictive of the Elder's liberty and rights consistent with the Elder's welfare and needs. See paragraph 19.

(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 Department shall use to develop individual plans for the delivery of elder protection services.

b. Services as determined necessary by the Department may be delivered to the Elder's family or caretaker in order to protect the Elder.

c. The Elder, and where appropriate, the Elder's family and caretaker shall be informed by the Department of their rights as allowed under this Act 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 where appropriate, the Elder's family and caretaker, if able to do so, shall pay for all or part of the costs of services or placement provided to the Elder.

**18. 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 Department investigator and a law enforcement officer believe the Elder will be irreparably harmed during the time it takes to secure an emergency protection order, the investigator 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 Department, through the Department of Justice, 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.

(2) The Elder is incapacitated and cannot consent to protective services.

(3) There is no one authorized, or the person possessing power of attorney for the Elder is unavailable, by law or court order to give consent on an emergency basis.

(4) 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 Department to implement the order.

(5) Be issued for a maximum of ten (10) 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 order shall be issued only after notice. The notice and a copy of the petition, shall be given to the Elder, the Elder's family, and caretaker at least forty-eight (48) hours before a hearing on the petition is scheduled and the Court has had the opportunity to hear all parties and the evidence. The Court may waive the waiting period if the emergency is such that the Elder will suffer immediate and irreparable harm or if reasonable attempts have been made to notify the parties.

g. The Court shall hold a hearing on a petition to provide protective services or placement to an Elder within twenty-four (24) hours after an emergency protection order is issued.

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

i. 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.

#### **19. Rights of Elders, Their Families, and Caretakers.**

a. An Elder, the Elder's family, and the Elder's caretaker 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 possible, but not later than twenty-four (24) hours after the investigation begins.

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.

c. The Elder's family and caretaker may refuse for themselves, but not for the Elder, those elder protective services offered pursuant to this Act.

d. An Elder and the Elder's family or caretaker may refuse to allow an investigator into their home and the investigator shall so inform the Elder, the Elder's family, and the caretaker 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. The investigator shall inform the Elder's family and caretaker of their rights as allowed by the Indian Civil Rights Act, whenever it appears that the investigation may lead to criminal charges being filed under Wis. Stat. § 968.07(d), i.e., that a law enforcement officer may arrest a person when there are reasonable grounds to believe that the person is committing or has committed a crime.

f. Service of Process. The Elder, Elder's family, and caretaker shall be served personally with the petition files pursuant to this Act.

g. The Elder, Elder's family, and caretaker 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.

h. The Elder, Elder's family, and caretaker have the right to be represented by counsel at all proceedings.

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

## **20. Petition and Hearing.**

a. Jurisdiction. The Court has jurisdiction to hear a cause of action for protection and issue such an order if either the petitioner or the respondent resides within the territorial jurisdiction of the Court as defined in Section 2 of Article I and Section 5 of Article VII of the Constitution of the Ho-Chunk Nation.

b. The Ho-Chunk Nation Department of Justice shall file petitions and present facts on behalf of the petitioner or the Nation for legal proceedings authorized or required by this Act.

c. A hearing on a petition authorized or required by this Act 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. All rights, as set out specifically in this Act and in the Indian Civil Rights Act shall be enforced strictly during all proceedings. No hearing shall be held unless notice has been given to the Elder and other interested parties, including the Elder's family and caretaker. 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 written statement of its findings in support of any order allowed by this Act.

**21. 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.

**22. Determining Abuse, Neglect or Exploitation of an Incapacitated Elder.** The Court shall also determine, when necessary, whether abuse, neglect or exploitation has occurred. The determination shall be made only after petition, notice, hearing and proof that shows clear and convincing evidence of incapacitation, abuse, neglect or exploitation.

**23. Determining Abuse, Neglect or Exploitation of an Elder.** The Court shall determine whether an Elder has been a victim of abuse, neglect or exploitation as defined in this Act. An Elder may wish to Petition the matter before the Ho-Chunk Nation Trial Court under the Elder Protection Act because

- a. The Elder wishes to be assisted by and through Child and Family Services and the Department of Justice, or
- b. Wishes the matter to be civil in nature.

No incapacitation need be proved. The Petitioner must provide one or more of the reasons listed as justification to bring the matter before the Ho-Chunk Nation Trial Court. The determination shall be made only after petition, notice, hearing and proof that shows clear and convincing evidence of incapacitation, abuse, neglect or exploitation.

**24. Confidentiality and Penalty.**

a. Name of Reporter. The name of the person who reports abuse or neglect as required by this Act 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 Executive Director of the Ho-Chunk Nation Department of Health and Social Services, law enforcement officers, Court officials, coroner or medical examiner, 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 Act will be closed and confidential. Persons who may attend are the Elder, the Elder's family and caretaker, representatives of the Department, necessary Court officials, and attorneys for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal information about the proceeding unless ordered to do so pursuant to a Court order.

d. Penalty. Any person who violates any provision of this section shall be subject to civil penalty of up to \$100.00 per occurrence. The Court shall assess the penalty after petition, notice, opportunity for hearing, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Nation, the

person shall be subject to appropriate disciplinary action as allowed in the Nation's employment laws.

**25. Elder Protection Order and Time Limits.**

a. If the Court determines that an Elder is incapacitated and abused, neglected, or exploited, 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 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 Department 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 to 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 Department 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. No protection order shall be issued until three (3) days after the petition has been served on all parties, except for an emergency protection order.

c. An initial non-emergency elder protection order shall be issued for a period not to exceed sixty (60) days.

d. The non-emergency protection order may be extended as many times as necessary to protect the Elder. An extension of a protection order can only be issued after a petition is filed by a party seeking an extension, notice, opportunity for hearing, and a determination based on proof beyond a reasonable doubt that such an extension is

necessary for the protection of the Elder. Each extension order shall be for a period not to exceed thirty (30) days.

**26. Violation of Protection Orders.** Violation of Court ordered protection orders by a respondent may be punished by confinement in jail for as long as ninety (90) days or shall be fined not more than \$1,000 or both.

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

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Legislative History:

6/19/00	Draft Elder Protection Act reviewed by Tribal Aging Unit (TAU) Advisory Board.
7/12/00	Draft Elder Protection Act reviewed by Administration Committee.
7/19/00	Draft Elder Protection Act reviewed/approved by TAU Advisory Board.
9/13/00	Draft Act reviewed by Administration Committee and forwarded to full Legislature.
9/19/00	Legislature posts for 45-day Public Review period.
11/14/00	Final review and comments by TAU Advisory Board.
1/9/01	Enacted by Legislative Resolution 01/09/01B.
3/3/04	Draft of Amended Act sent out for 45-day Public Review.
5/4/04	Amended and Restated by Legislative Resolution 5/4/04E regarding the issuance of subpoenas by the Trial Court.