



**RESOLUTION OF THE  
GOVERNING BODY OF THE THREE AFFILIATED TRIBES  
OF THE FORT BERTHOLD INDIAN RESERVATION**

**A Resolution entitled, “*Adoption of the Protection of Elderly and Vulnerable Adults Code*”**

**WHEREAS,** This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act and having adopted a Constitution and By-laws pursuant to said Act; and

**WHEREAS,** The Constitution and By-laws of the Three Affiliated Tribes was adopted By the membership of the Tribes on May 15, 1936 pursuant to the Indian Reorganization Act of 1934 and duly approved by the Secretary of Interior, and

**WHEREAS,** Article III of the Constitution of the Three Affiliated Tribes provides that The Tribal Business Council is the governing body of the Tribes; and

**WHEREAS,** The Constitution of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

**WHEREAS,** Pursuant to the inherent sovereignty of the MHA Nation, the MHA Nation possesses the sovereign authority to establish practices on Tribal lands; and

**WHEREAS,** The Three Affiliated Tribes seeks to prevent the abuse of elderly and vulnerable persons; and

**WHEREAS,** The Tribal Business Council wishes to enact “The Protection of the Elderly and Vulnerable Persons Code.”

**NOW THEREFORE BE IT RESOLVED,** That the Tribal Business Council hereby approves the adoption and enactment of The Protection of Elderly and Vulnerable Persons Code.

*(SIGNATURE PAGE TO FOLLOW)*



### CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Indian Reservation hereby certify that the Tribal Business Council is composed of seven (7) members of whom five (5) constitute a quorum, 7 were present at a Regular Meeting thereof duly called, noticed, convened and held on the 11<sup>th</sup> day of January, 2018, that the foregoing Resolution was duly adopted at such meeting by the affirmative vote of 7 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said Resolution has not been rescinded or amended in any way.

Chairman  Voting.  Not Voting.

Dated this 11<sup>th</sup> day of January, 2018.

**ATTEST:**

Tribal Secretary, Fred W. Fox  
Tribal Business Council

Tribal Chairman, Mark N. Fox  
Tribal Business Council

# PROTECTION OF THE ELDERLY AND VULNERABLE PERSONS

## CHAPTER 1:

### POLICY AND DEFINITION

#### Policy

It is the policy of the Mandan, Hidatsa and Arikara Nation to protect elderly and disabled persons from abuse and neglect, both from their family members and from others, and to maintain their dignity, privacy, and right to self-determination. It is also the intent of the Tribe to create and support an Elderly Protection Team (EPT) that will have the administrative capability to investigate elder and disabled abuse and to bring legal action against it. The Tribe also supports the full prosecution of all those people who abuse or neglect the elderly.

#### Jurisdiction

Under this Title, the Tribal Court shall have jurisdiction over any elderly Indian persons residing on or found upon the Mandan, Hidatsa, and Arikara Nation, and over any tribal member who is temporarily located off the reservation or who has been placed off the reservation.

#### Definitions

1. **Abuse:** Any act done intentionally or willingly that results in physical injury or pain, mental injury or anguish, unreasonable confinement, malnutrition, financial exploitation, or deprivation of necessary services to maintain the physical health or mental health of the elder or vulnerable person. In the case of a caretaker, the Tribe need not demonstrate that the caretaker intended to harm the elderly, but only that he did not conform his/her behavior to what is expected of those who care for the elderly or vulnerable.
2. **Caretaker:** Any person or institution responsible for the care of an elderly or vulnerable person, as the result of a voluntary or contractual assumption of the responsibility or by court order. If the elderly or vulnerable person and a family member live in the same household there shall be a presumption that the family member is a caretaker. In the case of a prosecution under this Chapter or an investigation by the Tribal, the family member can rebut this presumption by demonstrating that the elder was not reliant

upon the family member for assistance and was totally independent. In other situations, the Tribal Court shall determine based upon the totality of the circumstances whether an individual is a caretaker.

3. **Elderly Person:** A person sixty (60) years of age or older.  
**Vulnerable Adult:** A vulnerable adult is any person older than age 18, or emancipated by marriage that has a substantial mental or functional impairment.
4. **Exploitation:** Illegal or improper use of the financial resources of an elderly or vulnerable person without then person's consent or in circumstance where the consent could not be obtained because of the incapacity of person. The Tribe is authorized in cases of alleged exploitation to request that the elder or vulnerable person submit to a mental health capacity evaluation. In the case of a representative payee appointed by the Social Security Administration or other federal agency, this may include the failure to expend those benefits of the elderly or vulnerable person.
5. **Guardian:** An adult or institution appointed to take care of a person or property of another. The guardian is subject to standards of care for the elderly or vulnerable person and is subject to regulation by the Court including the posting of an appropriate bond if deemed necessary.
6. **Guardian ad litem:** An adult appointed by the Court to represent the legal interests of an elderly or vulnerable person in a court proceeding. This person shall not exercise the legal right of a guardian and his/her rights to speak on behalf of the elderly or vulnerable and may be discontinued after court proceedings.
7. **Mental Injury or Anguish:** Fear, agitation confusion, apprehension of harm, or any other mental state or condition caused by the actions or omission of another person that creates in a reasonable person the concern for that person's physical or financial security.
8. **Neglect:** An action taken or the failure to act when a reasonable person would act, that results in the unnecessary infliction of the physical pain, mental injury or anguish, financial exploitation, or other injury to an elderly or vulnerable person. This section shall not include medical neglect if the elderly person is receiving treatment solely by spiritual means that the elderly person consents to. The Court may intervene to order other medical services when necessary.

9. **Protective Services:** Services that are necessary to protect an elderly person from further harm and to alleviate the impact of prior abuse.
10. **Reckless:** Conduct that a reasonable person under the totality of circumstances would or would not engage in that represents a gross deviation from the standard of care expected of a guardian, caretaker or other person.
11. **“Lack of Capacity”:** Shall mean that the person is unable to appreciate the nature of the services being offered or, because of the abuse or neglect the person is suffering, lacks the free will to consent to such services.
12. **Conservator:** A person or entity that is appointed by the Tribal Court to protect the financial and other resources of an elder or vulnerable person and to expend those resources on that persons behalf.
13. **Elderly Discrimination:** Any action taken to deny to an elderly person the right to partake of any legal right or benefit offered to other Tribal members, solely due to the age of the person.

## **Chapter 2:**

### REPORTS OF ABUSE

#### **Obligations to Report**

Any person having reasonable cause or belief that an elderly person is being abused or had recently been abused shall immediately report such abuse to a law enforcement officer. Any law enforcement officer who receives such a report shall immediately inform the Tribal entities that provide services to elders or vulnerable persons.

Reports shall be in writing. Failure to report shall be punished according to Chapter 7 of this Title. In those cases where the failure to report results in the financial loss of the elderly person, the Court must also order restitution upon conviction.

#### **Contents of Report**

An initial report may be made orally, but must be followed upon in writing to comply with this subsection and shall contain as much of the following information the name, address,

date, time and age of the elderly or vulnerable, the nature and extend to the abuse/neglect, and any other pertinent information. A medical report shall suffice as a report as shall a police report.

### **Immunity**

Any person, who in good faith, makes a report pursuant to this Chapter or who testifies in any judicial proceeding arising from the report, shall be immune from any civil or criminal liability related to that report. No elected official, Tribal Staff, or member of the EPT shall be subject to a suit for money damages for actions taken in the course of his official duties in carrying out this Chapter, or in the reasonable belief that such actions were within the scope of their duties under this Chapter.

### **Failure to Report**

Any person failing to make a report as required by this Chapter shall be punished in accordance with Chapter 7. In those cases where the failure to report results in the financial loss to the elderly, then Court must also order restitution upon conviction.

### **Filing of False Report**

Any person that files a written report knowing the same to be false and without any basis in fact and with the malicious intent to harm another shall be guilty of a Class B misdemeanor subject to the penalty of a maximum of 30 days in the tribal jail and a fine of \$100. In those cases where the filing of a false report results in the financial loss to the person, the Court must also order restitution upon conviction; the Defendant shall also reimburse the Tribe for its costs in investigating the false report.

## **Chapter 3.**

### **INVESTIGATION AND PROVISION OF PROTECTIVE**

### **SERVICES**

### **Investigations**

Upon the receipt of a report of abuse or neglect of any elderly or vulnerable person, the Tribe or Tribal entity shall make a prompt and thorough investigation to determine whether there is or has been abuse or neglect and whether the elderly person is in need of protective services. In the absence of special circumstances, the investigation shall include, at a minimum, an interview of the alleged victim, his or her caretaker, a visit to the residence of the elderly person, and interviewing those persons who may have knowledge of the accusations. If the report indicates that the person is in imminent harm, this investigation must be conducted

within (7) days if possible. The Tribe or Tribal entities are authorized to conduct an investigation off-reservation, if related to abuse and neglect off the reservation.

### **Cooperation by Other Agencies**

The Bureau of Indian Affairs, Indian Health Services, and any other public and private agencies shall assist the Tribe, at its request, in making the investigation. If confidential information is needed from such agency, the Tribe shall obtain the consent of the elderly person or his guardian before a release of such records. If the guardian is the alleged suspect, or the elderly or vulnerable person is unable to consent to a release, the Tribe may seek a legal order directing the release of such information.

### **Provision of Protective Services**

- a) Upon completion of the investigation, if the Tribe determines that the elderly or vulnerable person has been abused or neglected and is in need of protective services, the Tribe shall develop a plan for the provision of such services. If the abuse or neglect was the result of the actions of a family member, a primary purpose of the plan shall be to restore and promote family harmony and the plan shall be designed to achieve the result. Services to be provided shall include, but not limited to the following:
- 1) Assistance in obtaining needed counseling services for the abused elderly or vulnerable person and/or the abuser, if appropriate.
  - 2) Mediation between the abuser and the abused person if appropriate (Resorting to mediation, however, does not bar a criminal prosecution for elder abuse if justified);
  - 3) Assistance in locating and making arrangements for alternative living arrangements on a temporary basis or removing the abuser from the home;
  - 4) Assistance in obtaining medical care, food, clothing, and household goods.

To assist in the provision of such services the Tribe shall develop a list of local agencies that may provide such services.

- b) Where the Tribe determines that the elderly or vulnerable person is a victim of financial exploitation the Tribe may work with the appropriate agencies and institutions to implement appropriate safeguards to prevent future abuses including contacting the funding agency such as the Social Security Administration and the Veteran's Administration to notify these agencies of the results of the investigation.

### **Consent to Protective Services**

The Tribe shall not provide protective services to an elderly or vulnerable person unless that person consents in writing, except as provided in Chapter 4 of this title. If the elder or vulnerable person withdraws his/her consent to services that withdrawal shall not be effective if the matter has been filed in any Court.

### **Interference with Provision of Services**

No person shall interfere in the investigation of alleged abuse or neglect or in the provision of services to those persons needing them who have consented to the delivery of those services, or prevent those services by intimidation, threat, or coercion. No person shall attempt to intimidate or influence any person officially involved in the investigation to drop an investigation or to make a finding of no abuse or neglect. If such interference does occur the person shall be prosecuted and punished in accordance with Chapter 7 of this title. In those cases where the interference results in the financial loss to the elderly or vulnerable person, the Court must also order restitution upon conviction.

### **Reports to the Tribal Prosecutor**

Whenever an investigation finds probable cause to believe that the abuse or neglect has occurred under this Chapter, it shall inform the Tribal Prosecutor who shall then have access to the records upon which the findings were made. The Tribal Prosecutor/Tribal Court must notify the Tribe in writing within fourteen (14) days of receiving a report if it has declined to prosecute in a case.

### **Records**

Except as provided for under tribal law, the records shall be kept confidential and not subject to disclosure to any agency without appropriate court process. Upon the death of an elderly or vulnerable person, the records regarding any investigation of the abuse of that person shall be filed with the Tribal Court and kept sealed by the court.

## **Chapter 4:**

### **Lack of Capacity and Consent to Protective Services**

#### **Petitions to Court to Determine Capacity**

If the Tribe or Tribal entity determines that an elderly person is being abused or neglected, and is in imminent danger of substantial physical, mental, or financial injury,



and who lacks the capacity to consent to protective services, the Tribe may petition the Tribal Court for an order authorizing the delivery of services and for the appointment of a guardian or conservator. The petition must allege specific facts to show that the person is in need of protective services and is unable to consent to the same. The Tribe is also authorized to file with the Tribal Court an application for a temporary and permanent restraining/protection order to prevent the abuse or neglect of the elderly.

### **Definition of Lack of Capacity**

For purposes of this Chapter, “lack of capacity” shall mean that the person is unable to appreciate the nature of the services being offered or, because of the abuse or neglect the person is suffering, lacks the free will to consent to such services.

### **Rights of the Elderly Person**

The elderly or vulnerable person shall be immediately notified that a petition has been filed in the Tribal Court, the reasons for the petition, and the date and time of the hearing. The elderly or vulnerable person shall be entitled to appropriate service of process and shall also be explained the petition by the court or other person if necessary. The person shall have the right to be present at the hearing, to be represented by a guardian ad litem if requested, by an attorney of his/her own choosing, and to present testimony on his/her own behalf. The court may order the guardian of the elderly or vulnerable person to produce that person in court for a hearing under the subsection.

### **Temporary Order for Protection or Guardianship**

If the Tribe determines that the person is in immediate need of protective services, the Tribe may petition the Tribal Court for a temporary order of guardianship to permit either the Tribe or another person to immediately render assistance to the person. The petition in support must show specific facts to bring the person under this Chapter and jurisdiction of the court and is in need of emergency protective services and is either unable to consent or is not free to consent because of threats or coercion. The temporary order shall remain in effect for no longer than fourteen (14) working days, at which time the Court shall hold a hearing after due and effective notice. If no hearing is held within those fourteen (14) days the temporary order shall expire unless this period is waived or the court grants a continuance because of emergency circumstances. For purposes of determining jurisdiction, it is irrelevant that an elderly person has been temporarily placed off the reservation. An elderly person who is placed off reservation for care, either in a hospital or nursing home, remains a resident of the Three Affiliated Tribes for purposes under this code. In no case may the court appoint

the Tribe as the guardian over an elder unless Tribe has requested such appointment or has been made a party to the case and consents to the appointment.

**Hearing: Determination by the Court**

- a) At the hearing the Tribe or other petitioning party shall present evidence that the elderly person is in need of protective services and lacks capacity to consent or is not free to consent because of threats or coercion. If the court determines by clear and convincing evidence that the elderly person is in danger of mental or physical harm, or is being financially exploited, it may enter an order authorizing the delivery of services. The order may include the appointment of a guardian ad litem, who shall have the authority to consent to necessary care or to refuse services on behalf of the abused person. The guardian ad litem may also be authorized to gather information about the financial resources of the elderly or vulnerable person and to correspond with other agencies.
- b) The court may appoint a conservator to oversee the financial matters of the elderly or vulnerable person. The financial guardian shall be required to file monthly financial reports with the court showing receipts and expenditures of funds. Copies of such reports shall also be made available to the Tribe as requested by appropriate staff.
- c) In any case where the Tribe is the guardian, the Tribe shall review the order every sixty (60) days to determine whether the need for services still exists and shall have the discretion to request the court to close the case or amend the order. Upon closing of the case the records of the Tribe shall be deemed sealed, unless otherwise, directed by the court and upon death of the elderly or vulnerable person, as required under CHAPTER 7. If a guardian is not exercising due care for the elderly person, Tribal court can terminate the guardianship.

**Chapter 5:**

Long-term Guardianships and Commitments

**Lack of capacity to consent to Long-Term Care**

- a) Where an elderly or vulnerable person lacks the capacity to consent to admission into a long-term care facility, a relative or the Tribe, may be appointed as guardian before ordering the removal of an elderly or vulnerable person from the home and placement in a long-term care facility. Such guardianship shall be of a limited nature and the Tribe, if appointed as guardian shall not be liable for medical and other expenses incurred by the ward.

- b) The court shall grant a request for guardian appointment if the court determines that the person lacks the capacity to consent to such care, or is not free to consent because of threats or coercion, and upon a finding that the commitment to such a facility is in the elderly or vulnerable person's best interests. The court shall be required to inquire of the person his/her wishes regarding the placement.
- c) The Tribe shall be notified by the court of all appointments of this type and shall immediately bring to the court's attention any information it may have pertinent to the suitability of the guardian or the placement.
- d) All guardianships under this chapter shall be reviewed initially sixty (60) days after appointment and thereafter on an annual basis. The Tribe shall receive copies from the court of the hearing dates and shall be permitted to participate in said hearing.
- e) Any guardianship appointment made under this chapter or prior to its enactment shall automatically be terminated upon the death of an elder person and the right to manage the affairs of the deceased elderly person shall be governed by that person's will or probate proceedings.
- f) In all cases possible, the elder or vulnerable person shall be placed in a long-term residential care facility on or near the reservation if possible.
- g) A guardianship appointment under the chapter shall not include, unless specifically authorized by the Tribal court, the right of the guardian to make decisions to withdraw life-sustaining medical care from an elder.

### **Guardian Appointments**

The Tribe shall be provided a list of all elderly or vulnerable person guardianships with the name of the guardian by the Tribal Court upon the request of the Director and copies to all monthly accountings required under this Chapter. The Tribe shall have the authority to bring an action before the Tribal court to terminate any pre-existing guardianship if it is demonstrated by the Tribe that the guardian is not exercising due care for the elderly or vulnerable person or the person's financial affairs.

### **Loan Applications**

Any person who has been appointed as a guardian, who seeks to make a long or short-term loan utilizing the income or future income of an elderly or vulnerable person, or who purports to use that person as a co-signer, shall be reported to the Tribe in order to ensure that the elderly or vulnerable person is not exploited and the funds being requested actually will benefit the elderly or vulnerable person. The Tribe shall make a recommendation to disapprove any loan that would not benefit the elderly or vulnerable person if that elderly or vulnerable person is a client of the Tribe. Any person that seeks to use the funds of an elderly person improperly may be prosecuted in this Chapter of Elder Abuse and punished accordingly.

### **Protective Payee Program**

In any case where the Tribe has been appointed the guardian over the person or finances of an elderly or vulnerable person, the Tribe shall obtain a sufficient bond or surety to handle the financial affairs of the elderly or vulnerable person. The Tribe is authorized to designate certain persons as qualified to be payees for the elderly or vulnerable on the reservation and may provide appropriate training for those persons. The Tribe shall make quarterly reports on the number of persons who have been qualified as payee and shall also report such information to the Social Security Administration and other federal agencies as appropriate.

### **Investigation**

In any case where a person has petitioned the court for a guardianship over an elderly or vulnerable person, the court may direct the Tribe to conduct an investigation to determine the suitability of that person to serve as a guardian. Such an investigation shall include a review of any existing reports on prior incidents of abuse or neglect by the person seeking appointment as a guardian, the suitability of the placement being sought for the elderly or vulnerable person, and any other circumstances that may be relevant to the person's suitability. Upon completing the report it shall be filed with the Court and kept confidential and not released except by the order of the Court. The Tribe shall not be subject to suit for the filing of the report and the assertions made therein.

## **CHAPTER 6:**

### **Record Keeping and Access to Records**

#### **Records**

The Tribe shall keep a separate file for each report of abuse and each guardianship report it compiles. The files shall include the original complaint or court order regarding the guardianship, all records regarding the investigation of the report or guardian report, any services provided, and the report to the court on the same.

#### **Confidentiality of Records**

The Tribe's records shall be kept confidential and may not be disclosed to any person without appropriate judicial process. The elderly or vulnerable person who is the subject of a report shall have access to his file for review purposes only upon the execution of an appropriate written request. The tribal court may have access to the file for an appropriate prosecution under Chapters 4 and 7 of this Ordinance.

## **CHAPTER 7:**

## Penalties for Abuse

### **Prosecution under Title IV of the Code**

Any person, who commits an act of abuse or neglect of an elderly or vulnerable person, as those terms are defined herein, may be criminally prosecuted for the crime of “elder abuse” under this Chapter and Chapter IV of the code. The Crime of “elder abuse” shall be a Class A Misdemeanor punishable by up to 180 days in the tribal jail and a \$500 fine plus costs and any restitution to the elderly or vulnerable person. If the crime involves the physical abuse of an elderly person, the penalty imposed by the court shall include a mandatory minimum jail sentence of at least ten (10) days and a minimum fine of \$200 for a first offense, thirty (30) days and a \$500 fine for the second offense and sixty (60) days and a \$500 fine for any subsequent offense. The court shall also impose a special assessment of \$25 payable to the Tribe in any case where an Tribe’s investigation was conducted. The court may also impose a protection order upon any person convicted of elder abuse to prevent that person from contacting or intimidating the elderly or vulnerable person. The court may also require the defendant to perform community service. The Tribe shall not be liable should a defendant be injured while performing community service.

### **Mandatory Arrest**

Any law enforcement officer shall arrest any person at any place, with or without a warrant, if that officer has probable cause to believe that:

1. Abuse of an elderly or vulnerable person has occurred; even if that abuse did not result in the infliction of bodily harm to that person.
2. It is readily apparent to the officer upon observation or reports from others that the elderly and vulnerable person is being neglected or financially exploited.
3. The officer may make an arrest even if the abuses or neglect did not occur in his/her presence.
4. In making such an arrest, the officer shall assure that the elderly or vulnerable person is cared for after the arrest and may make arrangements to remove the elderly or vulnerable person and place him/her in another home for his/her safety.
5. A police officer shall file a criminal complaint for elder abuse in any case when he makes an arrest under this subsection.
6. The Tribe shall receive any and all copies of complaints, and police reports in support of complaints, for elder abuse filed under this Chapter and Chapter IV.

## **CHAPTER 8:**

### Elderly Discrimination Prohibited

### **Discrimination prohibited**

No tribal program or entity shall discriminate against the elderly in the provision of tribal services or programs. Any allegations of such discrimination may be investigated by the Tribe and the Tribe shall have the authority to confer with the Tribal program to attempt to resolve the complaints of discrimination and to assure that any practice of a tribal program resulting in discrimination can be eliminated. All reports of discrimination by any Tribal program or entity shall be reported to the Chairman by the Tribe for appropriate action.

## **Chapter 9:**

### Severability, Repeal and Adoption

#### **Severability**

If any section or provision of this code is held to be invalid, the remaining sections or provisions of this code shall remain in full force and effect

#### **Repeal of Inconsistent Ordinances**

All prior inconsistent ordinances or codes or portions thereof relating to the protection of the elderly or vulnerable persons, specifically sections of Title XXI are hereby repealed when this code is code approved and adopted by the Tribal Council.

#### **Adoption**

The Elderly and Vulnerable Persons Protection Code shall be adopted when approved by resolution by the Three Affiliated Tribes Tribal Business Council. The approval resolution shall be attached hereto.