

TITLE XIV

SAGINAW CHIPPEWA
TRIBAL ELDER PROTECTION
CODE

SAGINAW CHIPPEWA TRIBAL ELDER PROTECTION CODE

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TITLE XIV

SAGINAW CHIPPEWA TRIBAL ELDER PROTECTION CODE

Chapter 14.1

Title, Policy and Purpose

- 14.1.1 This code shall be known as the “Tribal Elder Protection Code.”
- 14.1.2 It is the policy of the Saginaw Chippewa Indian Tribe to protect Tribal Elders who are unable to properly care for themselves from abuse and exploitation.
- 14.1.3 This Code encourages community cooperation and the use of services and resources to reduce the risk of harm to Tribal Elders and shall be liberally construed to achieve this purpose.

Chapter 14.2

Definitions

- 14.2.1
1. Abandonment. Shall mean when one or more Caregivers who are legally responsible for providing care or resources to a Tribal Elder fail to provide such care or resources placing the Tribal Elder at risk of harm or death.
 2. Abuse.
 - a. Physical abuse. Shall mean the intentional or negligent infliction of bodily injury of the Tribal Elder.
 - b. Sexual abuse. Shall mean any physical contact of a sexual nature with a Tribal Elder that is intended for sexual gratification of the person making such contact and to which the Tribal Elder has not consented or is without capacity to consent or object.
 - c. Emotional abuse. Shall mean the harassment of a Tribal Elder for no legitimate purpose resulting in the substantial emotional distress of the Tribal Elder.
 - d. Financial Exploitation. Shall mean the unauthorized or improper use of funds, property, or other resources of a Tribal Elder for personal gain or profit of a person or persons, including the failure to use or appropriate Tribal Elder funds consistent with appropriate fiduciary responsibility.

3. ACFS. Shall mean the Saginaw Chippewa Indian Tribe of Michigan's Anishnaabeg Child and Family Services Department.
4. Basic Needs. Shall mean adequate food, shelter, clothing, hygiene and medical, psychological, optical and dental care.
5. Caregiver. Shall mean any person, institution or agency who either volunteers or is required by applicable state, federal or tribal law to provide services, care or resources to a Tribal Elder.
6. Coercion. Shall mean compelling an unwilling person, through force or threat of force, to engage in or abstain from conduct which the person has a right to abstain from or engage in.
7. Conservator. Shall mean any person, institution or bank appointed court of competent jurisdiction, and given the authority and responsibility to handle some or all of another's assets and financial affairs.
8. Emergency. Shall mean a situation in which a Tribal Elder is immediately at risk of death or life threatening injury and is unable to consent to services which would remove the risk or is unable to appreciate the risk of death or injury.
9. Endangerment. Shall mean the exposure of a Tribal Elder to physical harm.
10. Failure to Report. Shall mean when a person who is obligated to inform the ACFS of the Tribal Elder's condition or circumstances has a reasonable suspicion or actual knowledge of neglect or abuse and does not report it for any reason.
11. Fiduciary. Shall mean a person who is legally responsible for the management of a Tribal Elder's money, property or finances and who is thereby responsible for exercising a high standard of care in the management of such money, property or finances.
12. Guardian Ad Litem. Shall mean a special representative appointed by the Court to represent the best interest of a Tribal Elder.
13. Household Members. Shall mean those individuals who share a legal residence in common with the Tribal Elder.
14. Incapacity. Shall mean the current functional inability of a person to sufficiently understand, make, and communicate informed decisions as a result of mental illness, mental deficiency, physical illness or diagnosed disability, or chronic use of drugs or liquor and to understand the

consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

15. Isabella Indian Reservation. Shall mean the Indian Reservation established by Executive Order and Treaties of 1855 and 1864 and recognized by Order of the United States District Court, Eastern District of Michigan dated December 17, 2010 in the case of *Saginaw Chippewa Indian Tribe, et al, v. Granholm, et al.*, Case Number 05-10296-BC.
16. Least Restrictive Alternative. Shall mean an approach which allows a Tribal Elder the most independence and freedom from intrusion, consistent with the person's needs by requiring that the least drastic method of intervention be used to protect the person from harm.
17. Neglect. Shall mean the failure of a Caregiver to provide a reasonable standard of care to a Tribal Elder.
18. Substantiated Report. Shall mean a Report issued by ACFS finding that reasonable cause exists to believe neglect or abuse has occurred or is occurring to a Tribal Elder.
19. Tribal Elder. Shall mean any person 50 years of age or older who is also a Tribal Member as defined in this section.
20. Tribal Member. Shall mean a member of the Saginaw Chippewa Indian Tribe of Michigan
21. Undue Influence. Shall mean any action by a person in a fiduciary capacity or in a position of authority that causes someone else to act in a way contrary to what would have been done had the party been free of the influence. The essence of undue influence is mental coercion by one person over another.

Chapter 14.3

Jurisdiction and Enforcement

- 14.3.1 Jurisdiction. The Saginaw Chippewa Tribal Court shall have jurisdiction over all causes of action under this Title.
1. A petition filed pursuant to this Title shall comply with procedures of the Saginaw Chippewa Civil Code.
 2. There shall be no private cause of action or other third-party action permitted under this Title. The Tribe has sole jurisdiction and discretion whether to bring proceedings under this Title.

3. This Title shall be effective upon the Isabella Indian Reservation, the Indian Reservation established by Executive Order and Treaties of 1855 and 1864 and recognized by Order of the United States District Court, Eastern District of Michigan dated December 17, 2010 in the case of *Saginaw Chippewa Indian Tribe, et al, v. Granholm, et al.*, Case Number 05-10296-BC.

Chapter 14.4

Duty To Report Abuse Or Neglect Of A Tribal Elder

- 14.4.1 Any person specified in this Chapter who has reasonable cause to know or suspect that a Tribal Elder has been subjected to abuse or neglect or who has observed the Tribal Elder being subjected to circumstances or conditions which would reasonably result in abuse or neglect as provided by this Title, shall immediately report or cause a report to be made of such fact to the ACFS or Tribal law enforcement agency.
- 14.4.2 The following shall be mandatory reporters under this Chapter:
 1. The Household Members, or Caregiver of a Tribal Elder.
 2. Tribal ACFS workers, Caregivers, medical, dental, mental health providers; Tribal Police, adult care facility personnel including independent contractors and volunteers; and medical examiners.
 3. Any person or agency or employee of such agency with a fiduciary duty to a Tribal Elder.
- 14.4.3 Immunity For Reporting. Any person who in good faith reports suspected abuse or neglect of a Tribal Elder is immune from any civil suit or criminal proceedings based on that person's report, even if the report does not result in any action under the code.
- 14.4.4 Confidentiality Of Reporters, Records, Hearings And Proceedings
 1. The name of any person ("Reporter") who reports actual or suspected abuse and neglect of a Tribal Elder as provided by this Code, shall be confidential and shall not be released to any third-party or to the public domain without the consent of the Reporter or by order of the Tribal Court. The Tribal Court may release the Reporter's name to protect the Tribal Elder and provided such release is only made to the extent determined necessary to protect the Tribal Elder.
 2. Records of investigations, case management, committee meetings or Tribal Court hearings pertaining to the abuse and neglect of a Tribal Elder

are closed and confidential. Such Tribal Court proceedings shall be held in the same manner as juvenile proceedings are held by the Court.

3. Tribal Court hearings commenced under this Title may be closed to the public by a Tribal Court Judge upon the motion of one of the parties.

Chapter 14.5

Investigation

- 14.5.1 ACFS will initiate an investigation no later than 48 hours after the receipt of a report of abuse or neglect involving a Tribal Elder. A written copy of the report will be forwarded by ACFS to the Tribal Police Department within 36 hours. Law enforcement and ACFS will cooperate in the investigation if necessary.
- 14.5.2 ACFS shall investigate and prepare a written investigation report of the investigation findings and conclusions within 30 days, after the receipt of a report of abuse or neglect.
- 14.5.3 The investigation report shall be filed at ACFS. If ACFS determines the report of neglect and abuse was made in bad faith, this conclusion shall be noted in the investigation report.
- 14.5.4 ACFS may initiate an Alternative Response in a neglect case which shall not require findings of fault or blame, and shall work towards improving a Tribal Elder's conditions through improved care giving skills, training and access to services. Abuse cases are not eligible for an Alternate Response. Such an Alternate Response may be abandoned and replaced with a petition of neglect and abuse at any time if the ACFS finds continuing it would be futile or hazardous to the Tribal Elder.

Chapter 14.6

Protective Services And Placement

- 14.6.1 Protective services or protective placements are provided either on a voluntary or involuntary basis.
- 14.6.2 Protective services and placement shall be provided in a manner least restrictive of a Tribal Elder's rights, consistent with the person's welfare and needs.
- 14.6.3 A Tribal Elder may refuse to accept voluntary protective services or voluntary protective placement, provided that he/she has not been determined incompetent by a Court or is not the subject of a court ordered guardianship.
- 14.6.4 Tribal Elders shall only be placed outside their place of residence as a last resort.

Out of residence placement may only be considered if there are no other remedies available to cure the abuse or neglect.

Chapter 14.7

Voluntary Services

- 14.7.1 Voluntary services are provided subject to available appropriations and resources.
- 14.7.2 The Tribal Elder shall be informed of the right to refuse voluntary services or placement. If the Tribal Elder's consent to such services or placement is withdrawn the services or placement shall cease as soon as practicable.

Chapter 14.8

Involuntary Services

- 14.8.1 Involuntary services shall include removal without a court order on an emergency basis involving an immediate danger to the Tribal Elder, or upon an Order of the Tribal Court. When removed without a court order, the Tribal Elder shall be informed of the right to have a court determine the necessity of continuing involuntary protective services and placement.

1. Emergency Removal Without a Court Order

- a. Protective services or placement may be provided on an emergency basis prior to obtaining a Court Order if the investigator the ACFS has reasonable cause to believe that a Tribal Elder is at risk of immediate harm and is not competent to make his or her own decisions regarding such placement.
- b. ACFS will act immediately to secure the safety of the Tribal Elder by removing the alleged perpetrator(s) or removing the Tribal Elder from any place or from the presence of any alleged perpetrator(s) if there is reasonable cause to believe that the Tribal Elder is at risk of immediate harm. Tribal law enforcement shall assist ACFS as needed consistent with this subsection. This may be done prior to securing an order from the court provided that a petition for a protection order is filed by the next business day after the Tribal Elder has been protected.
- c. The Court may authorize forcible entry by law enforcement to enforce the protection order after it has been shown that attempts to gain voluntary access to the Tribal Elder have failed.
- d. If the Tribal Elder can be reasonably made safe by the removal of

the alleged perpetrator(s) or by the addition of protective services in the home of the Tribal Elder or in the care of family members, then the Tribal Elder shall not be removed.

- e. The individual or tribal department responsible for the removal of the Tribal Elder shall make all reasonable attempts to notify known family members, household members and Caregivers within one business day of the removal.
- f. A petition shall be filed with the Tribal Court by the individual or tribal department responsible for the removal of the Tribal Elder no later than the next business day following removal. A petition shall be filed by ACFS requesting a protection order or other appropriate relief.
- g. The Court shall hold a preliminary hearing not later than 72 hours from the time of emergency removal, and shall hold an adjudication hearing not more than 30 days from the filing of the petition. In event that the Court is not open for business at anytime during the 72 hours after a removal, the deadline to hold the hearing may be extended no later than an additional 24 hour period.

2. Removal With a Court Order

- a. The Court may issue an *ex parte* protective or investigative order upon showing of reasonable cause to believe that abuse or neglect, an emergency, or other need for involuntary protective services exists.
- b. Protection Order. The protection order shall:
 - i. set out the specific services to be provided to the Tribal Elder;
 - ii. allow protective placement only if the evidence shows that it is necessary;
 - iii. designate the agency or agencies required to implement the order;
 - iv. clearly identify the persons who are subject to the order;
 - v. specify the length of time the order is to be in effect;
 - vi. provide for any other services necessary to protect the

Tribal Elder.

- vii. ordering ACFS to prepare and deliver a plan for protective services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the Tribal Elder's needs.
3. An *ex parte* protective or investigative order may be set aside by the Court upon a petition of any interested party showing good cause.

Chapter 14.9

Petition

14.9.1 ACFS or the Tribal Prosecutor may petition the Tribal Court for a protection order upon reasonable cause to believe that abuse, neglect, an emergency, or any other need for involuntary protective services or placement exists. In the event of an emergency, ACFS shall take reasonable steps necessary to protect the Tribal Elder prior to filing a petition. The prosecuting attorney shall represent ACFS in any actions under this Title. The contents of the petition shall include the following information, if known:

1. the name, address or other information sufficient to identify and locate the Tribal Elder subject to the emergency situation;
2. the name, address, and interest of the petitioner;
3. names and addresses of the Tribal Elder's Caregiver, legally responsible person or agency, and family members who reside with the Tribal Elder;
4. identification of the alleged perpetrator, if any and known;
5. a description of the facts that constitute clear and convincing evidence of the abuse or neglect, and when these acts occurred;
6. the nature of the Tribal Elder's incapacity;
7. the current condition of the Tribal Elder;
8. the relief being requested;
9. any other relevant information which shows the reason for the petition;
10. the basis for the court's jurisdiction, including tribal Affiliation and the Tribal Elder's residence.

Chapter 14.10

Preliminary Hearing

- 14.10.1 Unless waived, the court shall advise the Tribal Elder and any interested parties, including alleged perpetrators, of their right to be heard fully and present evidence, of their right to legal representation at all stages of the proceeding, and of their right to remain silent. The Court shall provide them with the opportunity to deny or admit the allegations of the petition.
- 14.10.2 Upon a finding of reasonable cause to believe that abuse or neglect of a Tribal Elder has occurred or is occurring, the Court shall enter such orders as are necessary to protect the Tribal Elder.
- 14.10.3 If reasonable cause is not found to believe that the protected person is abused or neglected, or that the person is in immediate danger of harm and unable to make his/ her own decisions, the petition shall be dismissed.
- 14.10.4 The Court may appoint a Guardian-Ad-Litem for the Tribal Elder, at the Tribal Elder's expense, at the preliminary hearing if it finds the appointment of a Guardian-Ad-Litem would benefit the Tribal Elder.

Chapter 14.11

Adjudication Hearing

- 14.11.1 The adjudication shall begin as soon as possible but, except for good cause, not later than 30 days after the petition is filed with the Court.
- 14.11.2 The allegations of the petition must be sustained by a clear and convincing evidence.
1. If the allegations of the petition are sustained by clear and convincing evidence, the Court shall enter such orders as are reasonably necessary, in the best interest of the protected person, to provide for the Tribal Elder health, safety, and mental and spiritual well-being.
 2. If the allegations of the petition are not sustained, the petition shall be dismissed.

Chapter 14.12

Review Hearings.

- 14.12.1 Review of the need for continued protective orders, including placement orders pursuant to this Code, shall occur every 180 days or at earlier intervals at the

written request of a party or other interested person. Provided, however, that in cases where the circumstances giving rise to the case have continued for a year or more and are not reasonably likely to improve, as determined by the Courts, the Court may review the case at 12 month intervals.

Chapter 14.13

Competency Determinations

- 14.13.1 Competency determinations shall be made pursuant to Chapter 3.12 of Title III of the Tribal Code. If the Court determines a need to appoint a guardian over the individual may exist, the Tribal Court may direct the Tribal Prosecutor to begin proceedings under Title VI.

Chapter 14.14

Violations

- 14.14.1 A violation of this Title shall constitute a civil infraction subject to a civil remedial money penalty, civil forfeiture of property, or both as set forth in this Title.
1. A violation of this Title shall be remedied by the imposition of a civil penalty of not more than five thousand dollars (\$5,000.00).
 2. The remedies in this section are not intended to be exclusive, but shall be in addition to and independent of:
 - a. any applicable contractual remedy;
 - b. any disciplinary action taken against a violator as an employee;
 - c. wage garnishment and set-off against any funds owed by the Tribe to any Tribal member;
 - d. prosecution or other enforcement action under federal or State law or under the provisions of any other applicable Tribal law.
 - e. Injunctive relief as may be determined by the Tribal Court.

Chapter 14.15

Sovereignty

- 14.15.1 Nothing in this Code shall be construed as a waiver of the Saginaw Chippewa Indian Tribe's sovereign immunity.

Chapter 14.16

Severability

- 14.16.1 This Code is enacted for immediate effect. If any provision, clause or section of this Code shall be held to be invalid, the remainder shall remain in full force and effect.

LEGISLATIVE HISTORY

Title XIV. Tribal Elders Protection Code. Enacted by Resolution 13-007 approved on October 17, 2012