

SAC AND FOX NATION TRIBAL CODE
TITLE 32 ARTICLE 2
TITLE 32
ADULT AND ELDERLY PROTECTIVE SERVICES ACT
ARTICLE 2
VULNERABLE ADULT PROTECTIVE SERVICES

Section 201. Department Overseeing Vulnerable Adult Services.

The Tribal Department of Social Services is hereby designated as the Tribal government department or entity that will oversee Vulnerable Adult Protective Services. The Department may, where necessary contract with other agencies or third-party services, pursuant to Section 206 to carry out this duty.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §201]

Section 202. Provision of Services

After an investigation of Vulnerable Adult abuse, neglect, or exploitation is completed, the Department shall determine if the Vulnerable Adult is in need of services under this Act.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §202]

Section 203. Individual Vulnerable Adult Protective Service Plans

The Department is responsible for developing and recommending Individual Protective Service Plans to the Court for each Vulnerable Adult pursuant to Section 306(a).

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §203]

Section 204. Voluntary Protective Services and Placements

(a) Protective services or placement may be provided on a voluntary basis by the Department when requested or accepted by a Vulnerable Adult that is abused, neglected, or exploited and the Vulnerable Adult is found by the Department to be in need of services or placement.

(b) Voluntary protective services or protective placement will cease if the Department deems that such services are no longer needed by the Vulnerable Adult or the Vulnerable Adult consents that such services be withdrawn, unless the Vulnerable Adult is found to be incapacitated.

(c) Voluntary protective services or placement shall be provided for a period of not more than twenty-one (21) days at a time. At the end of each 21-day period, the Department shall reassess the Vulnerable Adult's needs before continuing to provide services and placement.

(d) Petitions for Voluntary Vulnerable Adult Protective Services:

(1) When a caregiver or family member of a Vulnerable Adult who consents to the receipt of protective services refuses to allow the provision of such services to the person, the Department shall notify the Tribal Prosecutor of the caregiver's interferences.

(2) The Tribal prosecutor may petition to the Court for a decree enjoining the caregiver or family member from interfering with the provision of protective services to the person.

(3) The Complaint must allege specific facts sufficient to show that the person is a Vulnerable Adult in need of protective services, consents to the receipt of protective services, and that the caregiver or family member refuses to allow the provision of such services.

(4) If the Court finds that the person is a Vulnerable Adult in need of protective services, consents to the receipt of protective services, and that the caregiver or family member refuses to allow the provisions of such services, the Court may enter a decree:

(A) enjoining the caregiver or family member from interfering with the provision of protective services to the Vulnerable Adult,

(B) freezing the assets of the Vulnerable Adult if it has been determined by preponderance of the evidence that the Vulnerable Adult is being exploited and it is necessary to protect such assets, and

(C) issuing a Temporary Restraining Order freezing the assets of the caregiver or family member if upon oath or affirmation it appears immediate and irreparable injury, loss, or damage will result to the Vulnerable Adult before the adverse party or his attorney can be heard in opposition and that the Court finds the Temporary Restraining Order necessary to protect its ability to remedy the Vulnerable Adult's alleged exploitation during the pendency of a full hearing on the exploitation.

(e) If a Vulnerable Adult does not consent to the receipt of protective services or withdraws consent to the receipt of such services, the services shall be terminated, unless the Department believes that the person lacks capacity to consent, in which case the Department may seek Court authorization to provide such services pursuant to Section 205.

(f) Voluntary Placement shall not be continued after sixty (60) days without a Court order permitting continued voluntary placement.

(g) Voluntary protective services or placements will be provided contingent upon funding and resources available.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §204]

Section 205. Involuntary Services or Placement

(a) Except as provided for in Section 207, protective services or placements shall be provided on an involuntary basis by the Department only as the Court determines they are necessary upon petition of the Department, through the Tribal Prosecutor, or upon the Court's own initiative if the Vulnerable Adult is properly before the Court an another matter. When the Court orders protective services or placement upon its own initiative, the Court shall promptly

notify the Department of its actions and the Department shall thereafter assume the advocacy role as if it had initiated the action.

(b) The Court's determination of the degree of incapacity, if any, as well as whether Vulnerable Adult abuse, neglect, or exploitation has occurred shall be the basis for developing individual Vulnerable Adult protection services plans or placements.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §205]

Section 206. Third-Party Services

(a) Services may be delivered to the Vulnerable Adult's family or caregiver if the Department determines the services are necessary to protect the Vulnerable Adult.

(b) The Vulnerable Adult, and where appropriate, the Vulnerable Adult's family or caregiver, if able, shall pay for all or part of the costs of services or placement provided to the Vulnerable Adult.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §206]

Section 207. Emergency Involuntary Protection or Placement

(a) The Tribal Court may issue and ex parte order authorizing the provision of Emergency Involuntary Vulnerable Adult Protective Services or temporary placement for a Vulnerable Adult for a period of time not to exceed seventy-two (72) hours, excluding weekends and holidays, pending the hearing for a need for continuing services after a finding that:

1. The person is a Vulnerable Adult;
2. An emergency exists; and
3. There are compelling reasons for ordering emergency protective services

or temporary placement.

(b) An ex parte order shall only be issued if other protective custody services or other services provide insufficient protection.

(c) The Department shall contact the Tribal Prosecutor to file an application for Emergency Involuntary Adult Protective Services or Temporary Placement if an investigation indicates probable cause to believe that an emergency exists for a Vulnerable Adult. The Department shall not be given legal custody nor be made guardian of such Vulnerable Adult. A Vulnerable Adult shall be responsible for the costs of services provided either through his or her own income or other programs for which he/she may be eligible.

(d) Law enforcement may immediately take action to protect the Vulnerable Adult from individuals that may be the cause or source of the harm, abuse, or exploitation. Such actions may include the following:

(1) Forcibly entering the premises without a Court order if there is probable cause to believe that the delay of such entry would cause the Vulnerable Adult to be in imminent danger of life-threatening physical injury or the neglect of essential services.

(2) Ordering the individuals whom the officer believes are a threat to the Vulnerable Adult to leave the premises or residence within the tribal jurisdiction where the Vulnerable Adult is residing, works, or is threatened;

(3) Excluding non-members from the tribal jurisdiction;

(4) Taking into custody without a warrant any person law enforcement has probable cause to believe is violating the Sac and Fox Nation Criminal Code and hold that person without bail; or

(5) Such other actions as the officer reasonably believes necessary to temporarily protect the Vulnerable Adult from immediate harm.

(e) In addition to the remedies available under subsection (a), if the Vulnerable Adult is incapacitated, the Law Enforcement Officer or Department may immediately transport the Vulnerable Adult for medical treatment or to an appropriate protective placement.

(f) The Department or officer shall immediately contact the Court, which may be in-person or via telephone, digital, electronic, or other means of communication to request Emergency Vulnerable Adult Protective Order. Within twenty-four (24) hours after the Vulnerable Adult is protected, the Department or law enforcement officer shall file notice of the incident with the Court. The Court shall, upon receiving an incident notice, set a show cause hearing or Emergency Vulnerable Adult Protective Order hearing, as outlined in Section 301 et. seq.

(g) When action is taken under this Section, a show cause hearing shall be held within seventy-two (72) hours of the signing of the Emergency Order, pursuant to Section 302. Unless the Vulnerable Adult has his/her own counsel, the Court shall appoint an attorney to represent the Vulnerable Adult in the proceeding. Such appointed counsel shall have the powers of a guardian ad litem.

(h) A judgement authorizing continuance of Emergency Vulnerable Adult Protective Services shall prescribe those specific adult protective services which are to be provided, the duration of the services which shall not exceed sixty (60) days and the person(s) who are ordered or authorized to provide those services.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §207]