

**SAC AND FOX NATION TRIBAL CODE
TITLE 32 ARTICLE 3**

**TITLE 32
ADULT AND ELDERLY PROTECTIVE SERVICES ACT**

**ARTICLE 3
PROCEDURE**

Section 301. Procedures for Prosecution

The Tribal Prosecutor shall follow the following procedures for the prosecution of Vulnerable Adult abuse, neglect, or exploitation to ensure the effective prosecution of such crimes and the protection and safety of victims.

(a) The Tribal Prosecutor will implement a policy which prohibits victims from withdrawing charges.

(b) The Tribal Prosecutor will not offer diversion, deferred sentencing, or any other agreements not to prosecute to alleged perpetrators charged with crimes of elder or Vulnerable Adult abuse, neglect, or exploitation.

(c) The Tribal Prosecutor does not have the authority to order the release of an alleged perpetrator prior to the procedures set forth in Section 114.

(d) The Tribal Prosecutor will not dismiss or reduce the charge in a Vulnerable Adult abuse, neglect, or exploitation case without prior consultation and review with the arresting officer and any case worker involved in the investigation despite the victim's desire to withdraw charges.

(e) The Tribal Prosecutor shall attempt to prepare the case so the victim is not required to act as the primary witness, except as a last resort. The Tribal Prosecutor shall enlist any and all evidentiary avenues, including, but not limited to photographs, other witnesses, excited utterances and other law enforcement testimony, medical records, and history of past abuse, in order to effectively prosecute the case.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §301]

Section 302. Show Cause Hearing

(a) Upon the Tribe taking action to protect a Vulnerable Adult under Section 207, the Court, shall within seventy-two (72) hours of notice of the action, excluding weekends and holidays, hold a show cause hearing as to why the Tribe took such action, if:

(1) The Vulnerable Adult consented to such services or placement at the time of the emergency action.

(2) The Vulnerable Adult consents to such action at the time of the show cause hearing; or

(3) There was probable cause to believe the Vulnerable Adult was at risk of Court shall find the Department or Law Enforcement had good cause for providing Emergency Involuntary Protection or Placement.

(b) If good cause is not found and:

(1) The Vulnerable Adult was removed under Section 207, the Vulnerable Adult shall be immediately returned to the place from which they were removed or at another appropriate location within the Vulnerable Adult's choosing.

(2) If action was taken under Section 207(d), the Court shall lift those restrictions imposed by law enforcement.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §302]

Section 303. Petition for Vulnerable Adult Protection Order

(a) If after an investigation, the Department determines a Vulnerable Adult is suffering from abuse, neglect, or exploitation and presents a risk of physical harm to the person or financial exploitation of the estate of that person and the Vulnerable Adult consents to the protection, or lacks mental capacity to consent to receive protective services and no consent can be obtained, the Department may submit an affidavit to the Tribal Prosecutor. The affidavit should detail the events or occurrences that show reasonable cause to believe that the Vulnerable Adult is suffering from abuse, neglect, or exploitation.

(b) The Tribal Prosecutor may petition the Court for a Vulnerable Adult Protection Order based either upon a report for law enforcement or an affidavit from the Department. The petition shall contain the following:

- (1) The name, address, location, and interest of the petitioner;
- (2) The name, address, location, and condition of the Vulnerable Adult;
- (3) The name, address, location, and interest of the family, guardian(s), caregiver, or other interested party;
- (4) The nature of the Vulnerable Adult's incapacity, if any;
- (5) The nature of the abuse, neglect, or exploitation the Vulnerable Adult suffers;
- (6) The attempts, if any, to secure the Vulnerable Adult's consent to services;
- (7) The proposed protective services, and/or placement;
- (8) Whether a temporary guardianship is sought; and
- (9) Any other facts the petitioner believes will assist the Court.

(c) If the petition requests that an Emergency Vulnerable Adult Protection Order be issued, in addition, it must state the nature of the emergency and whether substantial, immediate, or serious harm to the Vulnerable Adult or his/her estate is likely to occur if an immediate order is not issued.

(d) 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.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §303]

Section 304. Notice

Twenty-four (24) hour notice of the Vulnerable Adult Protection Order hearing and petition shall be given to the Vulnerable Adult, the Vulnerable Adult's family and/or caregiver (if within the Nation's jurisdiction). If the Vulnerable Adult's family or caregiver is not within the Nation's jurisdiction, notice shall be promptly sent, but shall not delay the hearing. The Court may waive notice to the family and/or caregiver if the Court finds that the Vulnerable Adult will suffer immediate and irreparable harm. Waiver of notice by the Vulnerable Adult shall not be effective unless he/she attends the hearing or such notice is waived by a guardian ad litem.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §304]

Section 305. Hearing

(a) Except as specifically noted in this Ordinance, hearings shall be held only after notice has been given to the Vulnerable Adult and good faith attempts to provide notice to other interested parties, including the Vulnerable Adult's family and/or caregiver. The Vulnerable Adult and all other interested parties shall have the right to be heard and present relative evidence. The Court shall issue a written statement of its findings.

(b) The Court shall hold a hearing on the petition to provide protective services or placement to a Vulnerable Adult within ten (10) days of filing a Protection Order or after an Emergency Vulnerable Adult Protection Order is issued.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §305]

Section 306. Protection Orders

(a) If the Court determines that a Vulnerable Adult is incapacitated and/or abused, neglected, or exploited, the Court shall issue a Vulnerable Adult Protection Order, an Emergency Temporary Vulnerable Adult Protection Order, or a Temporary Guardianship, which provides appropriate protection for the Vulnerable Adult. Such order shall set the Individual Services Plan that specifies services to be provided and may include, but is not limited to the following:

(1) Authorizing protective service, protective placement, and/or appointing a temporary guardian of the Vulnerable Adult and/or the estate.

(2) Removing the Vulnerable Adult from the place where the abuse, neglect, or exploitation has taken or is taking place.

(3) Placing the Vulnerable Adult under Protective Supervision, wherein the Vulnerable Adult is permitted to remain in his/her home with the Department providing supervision and assistance to correct the neglect or exploitation of the Vulnerable Adult, and if necessary, immediately removing the person causing the abuse, neglect, or exploitation from the Vulnerable Adult's home.

(4) Restraining the person causing the abuse, neglect, exploitation of the Vulnerable Adult from continuing such acts.

(5) Restricting who may visit the Vulnerable Adult.

(6) Freezing the assets of the Vulnerable Adult, if the Vulnerable Adult is being exploited, and directing a full accounting and investigation of the person, or person alleged to be, improperly managing the estate of the Vulnerable Adult.

(7) Recommending that a representative payee be named to receive, on behalf of the Vulnerable Adult, so that funds of the Vulnerable Adult may be distributed to pay the daily living expenses of the Vulnerable Adult and manage the Vulnerable Adult's accounts.

(8) Ordering the Department to prepare a plan for and to deliver protective services which provide the least restrictive alternatives for services, treatment, or placement, consistent with the Vulnerable Adult's needs.

(9) Designating the appropriate tribal agency or department responsible for implementing the Order.

(b) In addition to the services listed in subsection (a), the Vulnerable Adult Protection Order:

(1) Shall be issued after a Court hearing with notice;

(2) May suspend or revoke the powers of attorney granted by durable power of attorney, or revoke an irrevocable trust, or terminate a guardianship or conservatorship established by applicable law.

(3) Require any person who has abused, neglected, or exploited a Vulnerable Adult to pay restitution to the Vulnerable Adult for damages resulting from that person's wrongdoing.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §306]

Section 307. Emergency Vulnerable Adult Protection Order.

In addition to the services listed above in Section 306(a), an Emergency Vulnerable Adult Protection Order:

(a) Shall be issued for a maximum of ten (10) days;

(b) May be issued ex parte, without notice;

(c) Can be set aside by the Court upon petition of any party showing good cause;

(d) Shall set a date for hearing the Vulnerable Adult Protective Petition.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §307]

Section 308. Determining Capacity

The Court shall determine whether a Vulnerable Adult is incapacitated based on clear and convincing evidence of incapacitation and the nature and degree of incapacity.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §308]

Section 309. Burden of Proof

The Court shall issue a Vulnerable Adult Protection Order upon showing by a preponderance of the evidence that:

(a) The Vulnerable Adult is at substantial risk of death, serious physical harm, or financial exploitation;

(b) The Vulnerable Adult consents, or is incapacitated and cannot consent to protective services; and

(c) There is no one authorized by law, or the person possessing such authority for the Vulnerable Adult is unavailable or is unwilling to consent without good cause.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §309]

Section 310. Warrants to Enforce Protection Orders

The Court may authorize a search warrant by law enforcement to enforce the Emergency Protection Order if the Court finds attempts to gain voluntary access to the Vulnerable Adult have failed. Warrants may also be issued for property of the Vulnerable Adult upon a showing that such property is at risk of loss, destruction, or theft without such warrant.

[History: L. 2020, July 16; R-36-20:
PUBLIC LAW # T 32 §310]