

TITLE 36
ELDER ABUSE CODE
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TITLE 37
ELDER ABUSE CODE

Chapter 36.01
Purpose

36.0101 Purpose
This Code shall be cited as the "TURTLE MOUNTAIN ELDER ABUSE CODE".

36.0102 Definitions
As used in this Code, unless the context clearly indicates otherwise, the following definitions apply:

1. **"ABUSE"** means the willful infliction of physical injury or pain, oral assaults, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, the willful deprivation by a caregiver of the basic necessities of life - such as but not limited to food, shelter, clothing, and medical and personal care - which are necessary to avoid physical harm, mental anguish, or mental illness. However, no person shall be deemed to be abused for the sole reason they are being furnished non-medical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment against the elders free will;
2. **"ELDER PERSON" or "ELDERLY"** means any person who is at least fifty-five (55) years of age.
3. **"CAREGIVER"** means an individual who has the responsibility for the care of an elder by a relationship either voluntarily, by contract, receipt of payment for care as a result of a family relationship, or by an order of a court of legal competent jurisdiction.
4. **"EXPLOITATION"** means the act or process of using an elder person or their resources for another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement to do so.

5. **"LONG TERM CARE FACILITY"** means a facility or part thereof which provides skilled nursing care or intermediate nursing care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage.
6. **"SKILLED NURSING CARE"** means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.
7. **"RESIDENT"** means any elderly person who lives within the jurisdiction of the Turtle Mountain Band of Chippewa.
8. **"PERSONAL CARE"** means the provision of services and care that does not require nursing skills to residents needing some assistance in performing the activities of daily living.
9. **"MENTAL ANGUISH" or "MENTAL INJURY"** means an identifiable and substantial impairment of an elder person's intellectual or psychological functioning or well-being by willfully or unwillfully subjecting an elder person to fear, grief, anguish, humiliation, fury, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.
10. **"PHYSICAL INJURY"** means bodily pain, harm, impairment;
11. **"NEGLECT"** means the willful or unwillful failure of a guardian, legally or voluntarily responsible employee of a public or private residential institution, home, or agency, or any other person legally responsible in a residential setting for an elder person's welfare to provide food, shelter, clothing, or services necessary to maintain the physical or mental well being of the elder person.
12. **"ELDER PROTECTION TEAM"** (EPT) shall mean a resource group created by this Code whose objective is to ensure service to the elderly population within the jurisdiction of the Turtle Mountain Indian Reservation are protected.

36.0103 Elder Protection Team

The Turtle Mountain Tribal Council shall initiate a Turtle Mountain Elder Protection Team upon the Turtle Mountain Indian Reservation, which shall serve the entire Turtle Mountain Indian Reservation. The Elder Protection Team shall consist of the following:

1. Two (2) Social Service Representatives;
2. A worker from the Victims of Crime;
3. Five (5) Elders who are enrolled members from the Turtle Mountain Band of Chippewa;
4. An Elder Advocate.

36.0104 Reports

1. Any person or who has reasonable cause to suspect or who witnesses abuse of an elder, and shall report the abuse or suspected abuse to any Law Enforcement Official immediately.
2. Professionals and any other persons who know or have reasonable cause to suspect that an elder person known to them in their professional or official capacities has been subject to abuse, exploitation, or neglect shall be required to report that matter as set forth in this Section. Those professionals and other persons required to make a report shall include, but not be limited to:
 - a. a physician, resident, intern professionals and persons, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care or treatment of person;
 - b. an ambulance attendant;
 - c. a social worker or other employees of the tribal, state, county, or federal agency;
 - d. a person who maintains or is employed by a rooming house, retirement home, nursing home, group home, or adult foster care home;
 - e. an attorney, unless he acquire knowledge of the facts required to be reported from a client and the attorney-client privilege applies;
 - f. religious pastors;

3. All Persons required to report the abuse, neglect or exploitation of an elder person under this Section shall make their report within three (3) working days of their observation of an incident of abuse, neglect or exploitation of an elder, unless the elder's immediate well-being is threatened, in which case the report shall be made at the earliest time possible, but no later than twenty-four (24) hours after the incident.

36.0105 Content of Report

1. The report required by Section 4 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.
2. The report referred to under this Section shall contain:
 - a. Name, age and address of the elder person,
 - b. Name and address of the person with legal responsibility for the elder that is the subject of the report if it is other than the said elder;
 - c. Name and address, if available, of the person who is alleged to have abused, neglected, or exploited the older person;
 - d. Nature and extent of the abuse, neglect, or exploitation, including any evidence of previous injuries sustained by the older person; and
 - e. Date(s) and location(s) of when and where the alleged abuse occurred;
 - f. The name and address of the person making the report; and
 - g. Any other pertinent information known to the person making the report.

36.0106 Confidentiality

1. The case records of the filed reports and the Court concerning actions taken under this part and all reports made pursuant to Sections 4 and 5 above, shall be kept confidential except as provided by this Section.

- a. Law Enforcement officials or Tribal Prosecutors who require the information in connection with an investigation of a violation of this Code; and/or
 - b. A court of legal jurisdiction which has determined that public disclosure of the report, data, information or records is necessary for the prosecution of an abuse report; to prevent further elder abuse or to convict those convicted of elderly abuse.
2. If the person who is reported to have abused, neglected, or exploited an older person is the holder of a license, permit, or certificate issued by any agency of federal, tribal or state government, the records and reports may be submitted to the agency that issued the license, permit or certificate. If convicted of elder abuse, a report and disposition shall be reported to an agency of federal, tribal, or state government regarding possible termination of license, permit, or certification.

36.0107 Immunity

A person, not a party to the abuse, participating in good faith in making of a report pursuant to this ordinance shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any court proceedings resulting from such report.

36.0108 Penalty

1. A person who purposely or knowingly fails to make a report required by Sections 4 and 5 discloses or fails to disclose the contents of a case record or report in violation of Sections 4 and 5 may be fined an amount not to exceed less than one hundred dollars (\$100.00) but not to exceed two hundred and fifty dollars (\$250.00), plus court costs.
2. A person who purposely or knowingly abuses, neglects or exploits an elder person is in violation of this Code. Upon a first conviction a person may be fined an amount not to exceed less than one hundred dollars (\$100.00) but not to exceed three hundred dollars (\$300.00) or be incarcerated for a term not

to exceed six (6) months. For a second offense, a person may be fined an amount not to exceed less than one hundred dollars (\$100.00) but not to exceed five hundred dollars (\$500.00) or both. Provided further, that an individual convicted of the above offense or offenses may be ordered to seek appropriate and necessary counseling or treatment, or both.

3. A person who aids, abets or otherwise assists, physically or passively by non disclosure, an individual who purposely or knowingly abuses, neglect or exploits an elder person shall be treated as if said individual committed the offenses himself or herself.
4. In addition to the penalties set forth in Paragraphs B and C of this Section, an individual who is guilty of a violation of this Code may be ordered to pay restitution and or other damages.
5. In addition to the offenses set forth in Paragraph B of this section, additional criminal charges which are included in the Turtle Mountain Tribal Code may be filed against an individual alleged to have committed any criminal offense against an elder person.
6. If alcohol or drugs play a part in the abuse, a chemical dependency evaluation shall be ordered. Based upon the results of the evaluation, all recommendations will be ordered.
7. The offender shall be ordered to participate in the appropriate domestic violence program and must:
 - a. Attend a minimum of fifteen (15) hours for domestic violence class and shall provide proof of enrollment within fourteen (14) calendar days of sentencing.
 - b. The offender shall submit a record of attendance to the Clerk of Court and probation officer. The Clerk of Court and probation officer shall maintain a record of attendance.

8. In cases of failure to comply, the offender may be found in contempt of court and given a jail sentence. Failure to attend counseling, violation of an order for protection, or commission of a crime of violence during the order for protection period, after a proper written notification and/or motion, will result in immediate review of the case by the court.

36.0109 Arrest Provision

1. A Law Enforcement Official shall arrest and take into custody person(s) whom the officer has probable cause to believe assaulted or neglected an elderly person with
 - a. whom he/she is residing or has formerly resided. No warrant is required to make an arrest under this provision.
 - b. NOTE: Probable cause is defined as follows: Based on the Law Enforcement Official's observations and statements made by the parties involved and witnesses (if any) the officer using reasonable judgment believes an assault did occur and the person to be arrested committed the assault. This arrest provision means that the victim need not sign a complaint for an arrest to occur. Further, under the provisions of (a) above, a Law Enforcement Official shall arrest under probable cause even though it may be against the expressed wishes of the victim.
2. A Law Enforcement Official and shall take into custody a person whom the Law Enforcement Official has probable cause to believe has violated an order for protection restraining the person or excluding the person from the residence if the existence of the order can be verified by the Law Enforcement Official.
 - a. NOTE: Regardless of whether or not the person violating the order was invited back into the home, an arrest shall be made. Thus, when the court issues such an order it shall inform the excluded party that the party must make a motion for the court to formally change the order in order for him/her to return to the residence.

3. A Law Enforcement Official shall arrest if there was a threat with a dangerous weapon, including a gun, knife or other object used as a weapon.
4. A Law Enforcement Official may arrest when responding to a call if the Law Enforcement Official has probable cause to believe that the alleged assailant has within the past twenty-four hours placed the alleged victim in imminent fear of bodily harm.
5. Whenever a Law Enforcement Official investigates an allegation of an incident described in (A), (B), (C) or (D) above, whether or not an arrest is made, the officer shall make a written report of the alleged incident and submit that report to the Tribal Prosecutor. The Tribal Prosecutor shall forward copies of all written reports to the Elder Protection Team within two (2) regular working days with receipt of elderly abuse reports.

36.0110 Role of the Court in Regard to Arrest Provision

1. A person arrested under this ordinance shall be held until arraignment.
2. Prior to the release of the defendant, a community volunteer will talk with him/her and discuss the availability of domestic violence groups.
3. The defendant is arraigned.
4. A person enters a plea other than guilty, an advocate for the victim will assist the person in the preparation of an order for protection temporarily excluding the other from the home and restraining the defendant from any contact with the victim. If the person pleads guilty, a pre-sentence investigation is ordered and the victim, either personally or through the Adult Services Worker, communicates his/her concerns to the court.

36.0111 Order for Protection

There will exist an order for protection in cases of elder abuse.

1. A petition for protection under this section may be made by any family or household member or other interested party on behalf of himself/herself or on behalf of minor family or household members.

2. A petition for protection shall allege the existence of elder abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances for which protection relief is sought.
3. A petition for protection may be made regardless of whether or not there is a pending lawsuit, complaint, petition or other action between the parties.
4. The court shall provide simplified forms.
5. A petitioner of the right to file a motion and affidavit and to pursue without cost.

36.0112 Hearing on Application; Notice

1. Upon receipt of the petition, the court shall order a hearing, which shall be held no later than 14 days from the date of the order. Personal services or certified mail service shall be made upon the respondent no less than five (5) days prior to the hearing. In the event that personal services cannot be completed in time to give the respondent the minimum notice required under this paragraph, the court may extend a new hearing date.
2. Notwithstanding the provisions of paragraph (A) above, service may be made by two weeks, published notice provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a law enforcement official was unsuccessful and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's last known residence or that the residence is not known to the petitioner. Service under this paragraph is complete fourteen (14) days after publication. The court shall set a new hearing date if necessary to allow the respondent the five (5) day minimum notice required under paragraph (A) above.

36.0113 Relief by the Court

Upon notice and hearing, the court may provide protection as follows:

1. Restrain the abusing party from committing acts of elder abuse.
2. Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner.
3. Award temporary use and possession of property and restrain both parties from transferring, encumbering, concealing, or disposing of property except in the usual course of business or for the necessities of life, and to account to the court for all such transfers, encumbrances, dispositions, and expenditures made after the order is served or communicated to the party restrained in open court.
4. Order other lawful relief as the Court deems necessary for the protection of the victim of elder abuse, including orders or directives to Law Enforcement Officials or other appropriate departments and programs.
5. A person's right to apply for protection shall not be affected by his/her leaving the residence or household to avoid abuse.
6. Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.
7. An order for protection granted pursuant to the ordinance shall be forwarded by the clerk of court within 24 hours to the tribal police or law enforcement with jurisdiction over the residence of the applicant.

36.0114 Reimbursement

Any person who is convicted of financial exploitation of an elder shall be ordered by the Turtle Mountain Tribal Court to reimburse the elder in full as a consequence of any plea bargain, guilty plea, finding of guilty by a judge or jury or Nolo Contendere = "I do not wish to contend" plea. If the person has exploited resources other than money from the elder, then the court shall order the offender to return the resources immediately or to sign the necessary documents returning the resources to the elder or to reimburse monetary value of the resources exploited.

36.0115 Order for Protection

1. Where an application under this section alleges an immediate and present danger of Elder abuse, the court may grant an order for protection, pending a full hearing, and granting protection as the court deems proper, including an order:
 - a. Restraining the abusing party from committing acts of Elder abuse;
 - b. Excluding any party from the dwelling they share or from the residence of the other, and from any contact with the alleged victim except by further order of the court.
2. A temporary order for protection shall be effective for a period not to exceed fourteen (14) days, except for good cause as provided under paragraph (C) below. A full hearing, as provided by this section, shall be set for no later than fourteen (14) days from the issuance of the temporary protection order. The respondent shall be served forthwith a copy of the temporary order along with a copy of the petition and notice of the date set for the hearing.
3. When service is made by published notice, as provided under Section 10(B) above, the petitioner may apply for an extension of the period of an order at the same time the petitioner files the affidavit required under that section. The court may extend the temporary protection order for an additional period not to exceed fourteen (14) days. The respondent shall be served forthwith a copy of the modified temporary order along with a copy of the notice of the new date set for the hearing.

36.0116 Service for Order for Protection

Orders are to be served personally upon the respondent by a Law Enforcement Official. If the respondent cannot be located the order for protection will be mailed by certified mail to the respondent's last known address.

36.0117 Assistance of Public Safety in Service or Execution
When an order for protection is used, upon request of the petitioner, the court shall order a Law Enforcement Official to accompany the petitioner and to assist in placing the petitioner in possession of the dwelling or residence, or otherwise assist in execution or service of the order for protection.

36.0118 Violation of an Order for Protection
1. Violation of an order by a respondent who has had notice of the order for protection is a crime.
2. A Law Enforcement Official shall arrest without a warrant and take into custody a person whom the Law Enforcement Official has probable cause to believe an order for protection has been violated when the existence of the order can be verified by the Law Enforcement Official.
3. A violation of an order for protection shall also constitute contempt of court and be subject to penalties.
4. In the event of violation of a protection order the arrest provision above applies.

36.0119 Severability
If any of the provision of this Code are found to be unconstitutional or illegal, the remaining provisions of this Code shall be proper and applicable and continue to have full legal effect.