

Citizen Potawatomi Nation



Ordinance #18-01-HHS-T18

AN ORDINANCE AMENDING TITLE 18, MENTAL HEALTH ADJUDICATION AND TREATMENT, OF THE TRIBAL CODE OF THE CITIZEN POTAWATOMI NATION.

WHEREAS, the Citizen Potawatomi Nation has a responsibility to promote the health, safety and sanctity of its people and lands within its territory and the protection of elders and vulnerable adults will do so.

NOW, **THEREFORE BE IT ORDAINED BY THE LEGISLATURE OF THE CITIZEN POTAWATOMI NATION** that said Title 18 of the Tribal Code of the Citizen Potawatomi Nation be amended to read as follows:

Section 18-1-1. Policy, Purpose, and Enforcement

- A. **Policy:** It is the traditional way of The Citizen Potawatomi Nation to honor and respect Tribal Elders. The Elders of The Citizen Potawatomi Nation are valuable resources as they are our custodians of Tribal history, culture and tradition. Thus, it is in the best interest of and serves the welfare of The Citizen Potawatomi Nation to protect Tribal Elders, Elders from other Indian Tribes and Non-Indian Elders. It is also in the best interest of the Tribe to protect vulnerable adult Tribal Members, vulnerable adults from other Tribes and vulnerable adult Non-Indians that are within the Jurisdiction of the District Court of the Citizen Potawatomi Nation.
- B. **Purpose:** The purpose of this Code is to protect Elders and vulnerable adults within the jurisdiction of The Citizen Potawatomi Nation and for Tribal Members and Indians that reside in the original treaty boundaries of the Citizen Potawatomi Nation from abuse as defined in this Code. This Code shall be liberally interpreted in order to achieve its purpose. This Code provides for:
1. Reporting abuse or neglect to the Tribal Court;
 2. Receiving reports of and investigating suspected abuse or neglect;
 3. Delivering Elder protection services and protection services to any other vulnerable adult.

- C. **Enforcement:** The Citizen Potawatomi Nation District Court shall be the primary enforcer of this Code, and provided that the Citizen Potawatomi Nation District Court may enter into agreements with State agencies and other courts of competent jurisdiction for enforcement when circumstances warrant such cooperation.
- D. **Jurisdiction:** Citizen Potawatomi Nation Adult Protective Services may investigate reports of suspected abuse, neglect, self-neglect or exploitation of elders or vulnerable adults who are "Indian" or Non-Indian that reside on Tribal lands and for Tribal Members and Indians that reside within the original treaty boundaries of the Citizen Potawatomi Nation.

Section 18-1-2. Application of this Code

This Code is civil in nature. This Code applies to Tribal Elders, Elders; both Indian and non-Indian, vulnerable adults and to any Adult Tribal member of the Citizen Potawatomi Nation should circumstances as defined by this Code warrant. Any section or portion thereof containing the word "Elder" shall be liberally construed to include and mean or other "vulnerable adult" as defined by Section 3 of this Code.

Section 18-1-3. Definitions

In this Code the following words shall have these meanings:

"Abuse" is intentional or negligent infliction of bodily injury, sexual or emotional abuse, unauthorized and/or improper use of funds, property or other resources of an Elder, neglect, unreasonable confinement, intimidation or cruel punishment of an Elder resulting in physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the Elder such as a spouse, a child, or other relative recognized by the Tribal Council as a caretaker. Abuse is also interfering with delivery of necessary services and resources, failing to report abuse or neglect of an Elder by any person, and failing to provide services or resources essential to the Elder's practice of his customs, traditions, or religion.

"Adult in need of protective services" or **"Adult"** means a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, self-neglected or exploited.

"Elder" Is a senior citizen of the Citizen Potawatomi Nation or a senior citizen of another Indian Tribe or a senior citizen who is Non-Indian and who is a valued and respected member of the community.

"Exploitation" means an action that involves the misuse of an adult's funds, property, or personal dignity by another person.

"Guardian" or "Caretaker" means someone lawfully appointed by the District Court of the Citizen Potawatomi Nation and invested with the power, and charged with the duty, of taking care of the

person and managing the property and rights of another person, who, for defect of age, understanding, or self-control, is considered incapable of administering his or her own affairs. A guardian is appointed by the Court with a filing of a Petition for Guardianship.

“Incapacity” is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself or herself as a result of mental illness, mental deficiency, physical illness or 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.

“Indian” means any person who is a member of a federally-recognized Indian tribe, or who is an Alaska Native and a member of a regional corporation as defined in Title 43 of the United States Code, Section 1606.

“Investigator” or “Adult Protective Services Investigator” means someone that has been assigned by the Citizen Potawatomi Nation or The District Court of the Citizen Potawatomi Nation to make an examination and recommendation that an elder or vulnerable adult is abused, neglected, self-neglected or exploited.

“Neglect” means harm to an adult’s health or welfare caused by inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult’s health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter or medical care. A person shall not be considered to be abused, neglected or, in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone, and this Section shall not require any medical care or treatment in contravention of the stated or implied objection of that person.

“Protective Placement” is the placement of an Elder in a hospital, nursing home, residential care facility, with a different Native family or person in the Community, or transfer of the Elder from one such institution to another with the Elder’s consent or appropriate legal authority.

“Protective Services” are services provided to an Elder with the Elder’s consent or with appropriate legal authority and include, but are not limited to, social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other services consistent with this Code. It does not include protective placement.

“Reporter” is someone who notifies either an investigator or the District Court of a suspected abuse of an Elder or vulnerable adult.

“Retaliation” is threatening a reporter of Elder abuse or the reporter’s family in any way, causing bodily harm to the reporter or the reporter’s family, causing the reporter or any of the reporter’s family to be reprimanded by an employer, terminated from a job, suspended from general assistance, or damaging the reporter’s or the reporter’s family’s real or personal property in any

way.

“Self Neglect” is a significant threat to an elder or vulnerable adult’s physical or mental health because the individual is responsible for his or her own care but is unable to provide adequate food, clothing, shelter or medical care.

“Tribal Lands” means all lands within the Citizen Potawatomi Nation’s original Treaty boundaries including Citizen Potawatomi Nation’s Trust land, Fee Land, rights of way and any Dependent Indian Communities within original Tribal boundaries of the Citizen Potawatomi Nation.

“Vulnerable” means a condition in which an elder or an adult is unable to protect himself or herself from abuse, neglect, self-neglect or exploitation because of a mental or physical impairment or because of advanced age.

Section 18-1-4. Duty to Report

Any person who has reasonable cause to suspect that an Elder or vulnerable adult is in need of protective services shall immediately report the abuse, neglect, self-neglect or exploitation to the Citizen Potawatomi Nation Adult Protective Service Investigators or to Citizen Potawatomi Nation Law Enforcement or other Law Enforcement or State Agencies.

The following people are required to report cases of suspected abuse or neglect of an Elder or vulnerable adult to the Citizen Potawatomi Nation Adult Protective Services Investigators or Citizen Potawatomi Nation Law Enforcement or other Law Enforcement or State Agencies or they may petition directly to the District Court of the Citizen Potawatomi Nation:

1. The Elder’s or vulnerable adult’s family, Guardian or Caretaker;
2. Any person employed, licensed, registered or certified to provide health care, educational, social welfare, mental health or other human services;
3. Any employee of an agency licensed to provide health care, educational, social welfare, mental health or other human services;
4. Any law enforcement officers including probation officers;
5. Any person who has good reason to suspect that an Elder or vulnerable adult had been or is being abused or neglected.

Section 18-1-5. Immunity for Reporting and Confidentiality

A person who in good faith reports suspected abuse or neglect of an Elder is immune from any civil or criminal suit based on that person’s report. The name of a reporter who reports abuse as required by this Code is confidential and shall not be released to any person unless the reporter consents to the release because it would be necessary to protect the Elder or vulnerable adult.

No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable

defense or reason for failing to report suspected Elder abuse or abuse of a vulnerable adult or for testifying as required by this Code.

Reports of suspected Elder or vulnerable adult abuse, neglect, self-neglect or exploitation are presumed to be made in good faith.

Section 18-1-6. Investigation Procedure

- A. **Investigation:** Investigators, who are assigned by the Citizen Potawatomi Nation or The District Court of the Citizen Potawatomi Nation shall gather information and file a report with the Court containing the following information:
1. The Elder's name, address or location, telephone number.
 2. The name, address or location, telephone number of the person(s) who is suspected of abusing the Elder.
 3. The nature and degree of incapacity of the Elder.
 4. The name, address or location, telephone number of witnesses.
 5. The name, address or location, telephone number of the Elder's caretaker.
 6. A description of the acts which are complained of as abusive.
 7. Any other information that the investigators believe might be helpful in establishing abuse.
- B. **Driver review referral:** Investigators may also make Requests for Driver Reviews to the State Department of Public Safety or other Agencies based on the observations of the investigator of the Elder or Vulnerable Adult.
- C. **Reporting of criminal activity:** Citizen Potawatomi Nation Adult Protective Services Investigators shall report to Citizen Potawatomi Nation Law Enforcement any criminal activity it believes to be occurring, upon receipt of a report of abuse or that they may uncover during the course of their investigation.
- D. **Law Enforcement:** This Code shall not be construed as limiting the responsibilities of Citizen Potawatomi Nation Law Enforcement or other Law Enforcement agencies to enforce applicable laws or to preclude a Law Enforcement Agency from reporting and investigating, as appropriate, alleged criminal conduct

Section 18-1-7. Procedures for Petition, Notice and Hearing

A determination that abuse of an Elder or vulnerable adult shall be made only after petition of suspected abuse is filed, an investigation takes place, Notice of a hearing is given to all Parties, a Citizen Potawatomi Nation District Court hearing is held, and the Court finds proof that is beyond a preponderance of the evidence. However, the Court may act in emergency situations to protect the Elder without a petition, investigation, Notice, and hearing when it receives

enough probable cause evidence that an Elder is in immediate danger either in writing or orally.

- A. **Petition:** The District Court of the Citizen Potawatomi Nation shall receive reports of Elder abuse by the filing of a petition and shall assign investigators to work with the reporter within a reasonable time. Investigators, Family Members, Guardians, or Caretakers shall file a petition to the Citizen Potawatomi Nation District Court containing the following information:
1. The name of the Investigator, Family Member, Guardian or Caretaker;
 2. The name and location of the Elder;
 3. The suspected conditions of abuse or vulnerability;
 4. Any other facts the petitioner believes will assist the Court.
- B. **Notice and Hearing:** Notice and hearing procedures shall be the same for suspected Elder abuse cases as they are for other Citizen Potawatomi Nation District Court Cases.

Section 18-1-8. Elder Protective Services and Placements

- A. **Funding of Protective Placements and Services:** Protective services or protective placements shall be provided on either a voluntary or involuntary basis. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the Citizen Potawatomi Nation District Court. The Elder, and where appropriate the Elder's family, if able to do so, shall pay for all or part of the costs of services or placement provided to them.
- B. **Voluntary Placements and Protective Services:** Protective services or placements may be provided on a voluntary basis by the Citizen Potawatomi Nation District Court when requested by any abused Elder or vulnerable adult and the Court finds the Elder or vulnerable adult to be in need of such services or placement after an investigation has been conducted. The Court shall act on such petitions within 20 days. These services or placements shall be provided in the manner least restrictive to the Elder's or vulnerable adult's liberty and rights consistent with the Elder's or vulnerable adult's welfare and needs. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by a preponderance of the evidence by the Citizen Potawatomi Nation District Court.
- C. **Involuntary Protective Placement and Services:** Upon an Order of the Citizen Potawatomi Nation District Court, involuntary protective services or placement shall be provided to any Elder or vulnerable adult who is incapacitated or who is abused.

Section 18-1-9. Emergencies

- A. **Emergency Action:** The Citizen Potawatomi Nation District Court may act without going through the process outlined in Section 18-1-7 when emergency circumstances exist.

The Court shall issue an Emergency Protection or Guardianship Order authorizing protective services or protective placement on an emergency basis upon receiving proof beyond a preponderance of the evidence that an Elder:

1. Is at risk of immediate physical harm,
 2. Is incapacitated and cannot consent to protective services,
 3. An emergency exists.
- B. **Show Cause Hearing:** The Citizen Potawatomi Nation shall hold a show cause hearing if it issues an Emergency Protection or Guardianship Order as outlined above and at this show cause hearing investigators with the Citizen Potawatomi Nation's Adult Protective Services program may provide statements to the Judge of the Citizen Potawatomi Nation District Court based on their investigations and these statements are exempt from the hearsay rules.
- C. **Maximum length of time for Emergency or Guardianship Order:** The Emergency Protection or Guardianship order shall be issued for a maximum of 20 days and shall specify the emergency services to be provided, by whom the services shall be provided and any other relevant information to the existing emergency.
- D. **Forcible entry:** The Citizen Potawatomi Nation District Court may authorize a forcible entry to enforce the Emergency Protection or Guardianship order after attempts to gain voluntary access to the Elder have failed. Officials and Officers of the Citizen Potawatomi Nation are immune from liability for lawful actions taken pursuant to an Order of the Citizen Potawatomi District Court under this Act.

Section 18-1-10. Rights of Elders, Their Families, Guardians and Caretakers

Elders and family of Elders have the following rights:

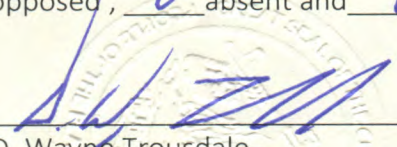
1. An Elder, the Elder's family, Guardians and caretakers shall be informed about an Elder abuse investigation before the Petition is filed unless an emergency exists or the investigation warrants confidentiality.
2. The Elder, Elder's family, Guardian and caretaker have the right to attend any proceeding pertaining to the determination of the Elder's situation.
3. The Elder, Elder's family, Guardian and caretaker have the right, at their own expense, to seek independent medical, psychological, or psychiatric evaluation of the Elder. These records shall be released to the Tribal Court if the Elder, Elder's family, Guardian or caretaker wants the Court to consider such evaluations.

NOW, THEREFORE BE IT ENACTED BY THE LEGISLATURE OF THE CITIZEN POTAWATOMI NATION that an Ordinance amending Title 18, of the Citizen Potawatomi Nation Tribal Code IS HEREBY APPROVED.

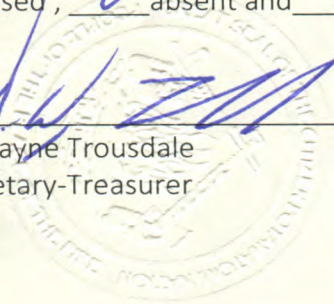
EFFECTIVE DATE: This ordinance shall become effective upon adoption by the Legislature of the Citizen Potawatomi Nation.

CERTIFICATION

In his capacity as Secretary-Treasurer of the Citizen Potawatomi Nation, the undersigned hereby certifies that the above and foregoing ordinance is a true and correct copy of Ordinance #18-01-HHS-T18, as approved on the 31st day of May, 2018 with 16 voting for, 0 opposed, 0 absent and 0 abstaining.

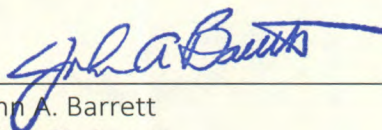


D. Wayne Trousdale
Secretary-Treasurer



Executive Approval:

Approved
 Disapproved



John A. Barrett
Tribal Chairman