



**NOTTAWASEPPI HURON BAND OF THE POTAWATOMI
RESOLUTION NO. 07-20-23-09**

Adopting Amendments to the NHBP Elder Services and Protection Code, Chapter 7.1

WHEREAS: On December 21, 1995, the Department of the Interior recognized the Nottawaseppi Huron Band of the Potawatomi, as a federally recognized Indian Tribe pursuant to the Federal Acknowledgement Process (60 Fed. Reg. 66315);

WHEREAS: Article VI, Section 1 of the Tribe's Constitution empowers Tribal Council to adopt statutes that are necessary and proper to carry out the sovereign powers of the Tribe and promote the health, safety, education, and general welfare of the Tribe and its members;

WHEREAS: In furtherance of that authority and responsibility, Tribal Council enacts various laws and amendments to govern the Tribe, its lands, members, and persons coming within the jurisdiction of the Tribe;

WHEREAS: Tribal Council adopted the NHBP Elder Services and Protection Code (the Code) to provide protection for the health and well-being of Tribal Elders living on Tribal lands or within the jurisdiction of the Tribe, through Resolution No. 10-28-10-07;

WHEREAS: Tribal Council, along with various interested Tribal departments and committees, have reviewed the Code and recognize the need to introduce amendments, ensuring the Code is consistent with Tribal regulations and to establish Code procedures at their recommendation;

WHEREAS: Tribal Council desires to adopt the recommended amendment, "Elder Protection Team (EPT)," which shall consist of a Tribal medical practitioner, social services practitioner, and law enforcement personnel, selected by director heads of those departments while ensuring preference for Tribal employees. The EPT is responsible for investigating reports of Abuse of An Elder, reports of an Elder living in Unsafe, Unsanitary, or Dangerous living conditions on Tribal Lands; and reports of an Elder living on Tribal lands in Imminent Danger. The amendment introduces guidelines to conduct investigations and to petition the court;

WHEREAS: Tribal Council desires to adopt the recommended amendment to the Code which provides new regulations regarding Consent to protective services; advice of rights, and allows for new guidelines in which an Elders rights pertaining to the Code are laid out;

WHEREAS: Tribal Council desires to adopt the recommended amendment to the Code that authorizes the submittal of reports to the Tribal Prosecutor;

T.C. RESOLUTION NO. 07-20-23-09

AUTHORIZING AMENDMENTS TO ELDER PROTECTION CODE

APPROVED BY TRIBAL COUNCIL: JULY 20, 2023

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WHEREAS: Tribal Council desires to adopt the recommended amendment to the Code that ensures a process for appropriate recording keeping in accordance with established Tribal recording keeping procedures; and

WHEREAS: Tribal Council desires to adopt the recommended amendment to the Elder Services and Protection Code that identifies and establishes definitions and word usage.

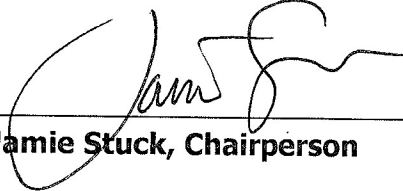
NOW THEREFORE BE IT RESOLVED THAT Tribal Council hereby adopts the amendments to the Elder Services and Protection Code as presented and attached in Exhibit A.

CERTIFICATION

On July 20, 2023, this resolution was approved at a duly called regular meeting of the Tribal Council held at the Pine Creek Indian Reservation, a quorum being present, by an affirmative vote 5 members, 0 opposing, 0 absent, and 0 abstaining, this 20th day of July 2023.

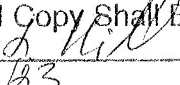


Nancy Smit, Secretary



Jamie Stuck, Chairperson

Distribution: Tribal Council Records
Government Records
Social Services Department
Health and Human Services Department
Tribal Police
Tribal Prosecutor
Legal Department

NHBP Government Records Certified Copy
True Certified Copy Shall Be Embossed
Signed by 
Date 07/20/23

*The following Code does not display images or complicated formatting. Codes should be viewed online.
This tool is only meant for editing.*

Chapter 7.1

Elder Services and Protection

[**HISTORY:** Adopted by the Tribal Council of the Nottawaseppi Huron Band of the Potawatomi 10-28-2010 by Res. No. 10-28-10-07 (Title VII, Ch. 1, of the Tribal Code). Amendments noted where applicable.]

Article I

Purpose; Definitions

§ 7.1-1 Purpose.

The purpose of this chapter is to provide protection of the health and well-being of Tribal Elders residing on Tribal lands or who are otherwise within the jurisdiction of the Tribe.

§ 7.1-2 Definitions and word usage.

A. Terms used in this chapter, unless a different meaning is clearly indicated by context, mean:

ABUSE or ABUSED

Any threatened, negligent, or intentional act which creates a serious risk of, or results in, physical injury or pain, emotional distress or injury, sexual abuse, unreasonable confinement, malnutrition, exploitation, or the reckless or negligent deprivation by a caretaker of goods and services necessary to maintain physical health or mental health.

BUSINESS DAY

Any day of the year, excluding weekends, NHBP-recognized holidays, and days in which the NHBP Tribal Court closes due to inclement weather or emergency situations.

CALENDAR DAY

Each day shown on the calendar beginning at 12:00 Midnight, including weekends and holidays, to the following midnight.

DANGEROUS

Any act, conduct, situation, or circumstance that is able or likely to cause physical injury or mental harm.

ELDER

A person 50 years or older.

ELDER PROTECTION TEAM (EPT)

A specialized team established to investigate and render services for Elder's in need of Protection

IMMINENT DANGER

The existence of any condition or circumstance, which is expected to result in serious physical or mental harm to an Elder if not immediately addressed.

INCAPACITATION

The impairment of an individual by mental illness or deficiency, physical illness or disability, or chronic drug or alcohol abuse, to the extent that personal decision-making, or the ability to comprehend the consequences of personal decisions, is impossible.

LEAST RESTRICTIVE ALTERNATIVE

Elder protective services provided in a manner no more restrictive or intrusive of an Elder's liberty than necessary to maintain safe and sanitary living conditions or to avoid Imminent Danger of an Elder.

NEGLECT or NEGLECTED

The failure of a caregiver to meet the needs of a dependent Elder, which may be intentional (e.g., withholding of food, medications, failure to clean or bathe) or unintentional, resulting from genuine ignorance of, or physical inability to address, a particular need.

NHBP or TRIBE/TRIBAL

The Nottawaseppi Huron Band of the Potawatomi.

PERSON IN NEED OF CARE

An Elder who is in need of protective service.

UNABLE

An Elder's inability to independently make decisions or provide for their personal, medical, financial, or physical needs because of possible Incapacitation that impacts the activities of daily living such as mobility, eating, toileting, dressing, grooming, housekeeping, cooking, shopping, money management, banking, driving or using public transportation, medication regulation, and other related activities.

UNSAFE

Any environment or circumstance that lacks security or safety or otherwise involves danger or risk of physical injury or mental harm.

UNSANITARY

Any unclean environment which harbors or presents a likelihood of containing or developing mold, disease, or other pathogens, to the extent it endangers the health of animals or individuals.

Article II

Elder Protection Team (EPT)

§ 7.1-3 Composition; confidentiality; frequency of meeting.

- A. The EPT shall consist of one Tribal medical practitioner, social services practitioner, and law enforcement personnel.
- B. The directors of NHBP's Health and Human Services, Social Services, and Police Departments will select the individual Tribal employees who will serve on the EPT from their department. However, preference shall be given for Tribal member employees and employees who are members of another tribe.
- C. The EPT shall have the responsibility to: investigate reports of Abuse of an Elder; investigate reports

of an Elder living in Unsafe, Unsanitary, or Dangerous living conditions on Tribal lands; and investigate reports that an Elder living on Tribal lands is in Imminent Danger.

D. Members of the EPT will maintain confidentiality as to all information acquired through or for an EPT meeting.

E. The EPT will convene on a case-by-case or as-needed basis.

Article III Investigation and Provisions of Protective Services

§ 7.1-4 EPT investigation; report.

A. The EPT shall make a prompt and thorough investigation within thirty (30) Calendar Days of receiving a report that an Elder living on Tribal Lands is: Abused or Neglected; living in conditions that are Unsafe, Unsanitary, or Dangerous; or in Imminent Danger, to determine if such conditions exist and whether the Elder is a Person in Need of Care.

B. The findings of any such investigation shall be in a written report prepared by the Tribal social services practitioner and unanimously adopted by the members of the EPT.

§ 7.1-5 Provision of protective services.

A. Upon completion of the investigation, if the EPT determines that a report is substantiated, the EPT shall develop a service plan .

B. Services offered to a Person in Need of Care may include, but are not limited to:

- (1) Assistance in obtaining needed counseling services for the Elder and/or the abuser.
- (2) Assistance in locating and moving to alternative living quarters, on a temporary or permanent basis.
- (3) Assistance in obtaining needed medical care, food, clothing and household goods.
- (4) Assistance in addressing Unsafe, Unsanitary, or Dangerous living conditions in an Elder's home.
- (5) Removal of neglected animals.
- (6) Appointment of a guardian by order of the court only.
- (7) Removal of any perpetrator from the Elder's home.

§ 7.1-6 Consent to protective services; advice of rights

A. Elders may refuse to accept protective services provided there is good cause to believe that the Elder is not Incapacitated. Upon initiating an investigation, the EPT shall provide an Elder with a written advice of rights statement that explains:

- (1) The type of and details concerning the report made;
- (2) The EPT is investigating that report;
- (3) The Elder may refuse to allow EPT members into their home unless presented with a warrant or Court Order, provided that such EPT member is not acting in his or her capacity as law

enforcement personnel responding to an emergency or some imminent risk of harm;

- (4) If services are offered by the EPT following an investigation, the Elder may refuse services unless Unable to do so;
- (5) If the EPT believes the Elder is Unable to consent to or decline services, it may petition the Tribal Court to determine whether the Elder is Incapacitated for purposes of providing services initially refused by the Elder; and
- (6) The Elder shall have access to their EPT file at any time during business hours of the Tribe, which may be redacted to remove the name of the individual making the report and the names of any witnesses

§ 7.1-7 Reports to the Tribal Prosecutor.

Whenever the EPT substantiates a report of Abuse or Neglect under § 7.1-3, the EPT shall inform the Tribal Prosecutor and shall furnish information as requested by the Prosecutor. Whenever the EPT substantiates a report that an Elder is living in Unsafe, Unsanitary or Dangerous conditions, or is in Imminent Danger, under § 7.1-3, and the Elder is Unable to consent to services, the EPT may inform the Tribal Prosecutor and shall furnish information as requested by the Prosecutor.

**Article IV
Petition for Protective Services**

§ 7.1-8 Petition to Court for protective services.

- A. If the EPT determines that an Elder is a Person in Need of Care and there is good cause to believe the person is Unable to refuse services, the Prosecutor may petition the Tribal Court for an order determining Incapacitation and authorizing the EPT services. The petition must:
 - (1) Allege specific facts of Abuse or Neglect, Unsafe, Unsanitary or Dangerous living conditions, or Imminent Danger, to show that the Elder is a Person in Need of Care;
 - (2) Allege specific facts concerning the Elder's inability to refuse services, potential Incapacitation and degree of Incapacitation;
 - (3) Explain the proposed services and why the Elder would benefit from court-ordered services;
- B. Within five (5) Business Days of receiving a petition, the Tribal Court shall schedule a hearing to determine whether the Elder is Incapacitated, the degree of Incapacitation, and if court-ordered services are necessary.

§ 7.1-9 Rights to the Elder.

The Elder shall be served a copy of the Tribal Court petition and the date and time of the hearing within twenty-four (24) hours of filing the petition or scheduling the hearing. The Elder shall have the right to be present at the hearing, to be represented by counsel at their expense, and to present testimony on their behalf. The Elder shall also have a right to obtain an independent medical evaluation by a physician or mental health professional of their choice.

§ 7.1-10 Hearing; determination by Court.

- A. At the hearing, the EPT shall present evidence that the Elder is Incapacitated and a Person in Need of Care, as well as any evidence that the proposed services are necessary to protect the Elder.
- B. The Court must determine whether there is clear and convincing evidence that an Elder is

Incapacitated, and the degree of Incapacitation.

C. If the Tribal Court finds an Elder is Incapacitated it will then determine, based on clear and convincing evidence, whether court-ordered services are necessary because the Elder is:

(1) Being Abused or Neglected;

(2) In Imminent Danger; or

(3) Living in Unsafe, Unsanitary, or Dangerous living conditions.

§ 7.1-11 Elder protection order.

An order for Elder protective services may include, but is not limited, to the following:

A. Requiring the person who has Abused or Neglected an Elder to remove themselves from the Elder's home;

B. Restraining the person who has Abused or Neglected an Elder from continuing such acts or prohibiting the person who has Abused or Neglected an Elder from contacting or attempting to contact the Elder;

C. Removing the Abused or Neglected Elder from the place where the Abuse or Neglect has taken or is taking place if it is demonstrated that removal is necessary to prevent serious emotional or physical harm;

D. Requiring an Elder's family or caretaker or any other person with a fiduciary duty to account for the Elder's funds and property;

E. Requiring any person who has Abused or Neglected an Elder to pay restitution to the Elder for damages resulting from the person's wrongdoing;

F. Appointing a guardian ad litem for the Elder;

G. Identifying appropriate family members for future service of hearings and orders, as appropriate;

H. Appointing a representative payee for the Elder;

I. Directing the appropriate Tribal agencies and programs to prepare a plan for and deliver Elder protective services which provide the Least Restrictive Alternative for services, care, treatment, or placement consistent with the Elder's needs. However, if there are any costs associated with these services, the Tribe shall not be liable for such costs where the Elder or another state or federal program or agency, including but not exclusive of Medicare, Medicaid, or LIHEAP, can or is otherwise obligated to pay these costs; or

J. Elder placement in a hospital, nursing home, residential care facility, private residence, or transfer from one such institution to another

§ 7.1-12 Duration of Elder protection order.

An Elder protection order shall be issued for a period not to exceed sixty (60) Calendar Days. The Tribal Court shall review the order every sixty (60) Calendar Days to determine whether the need for services still exists and shall have the discretion to amend an order or close the case at any time.

Article V
Recordkeeping and Access to Records

§ 7.1-13 EPT records.

- A. The EPT shall keep a separate case file for each report it receives under this chapter. The file shall include a complete record of the report itself, the results of the investigation, any services offered or provided, copies of court documents, a summary of any court proceedings, and any other pertinent information.
- B. The EPT shall maintain the records and files created and compiled under this chapter with the Social Services Department in accordance with the NHBP Tribal Government Records and Public Access Code, Government Records' *Records Retention Policy*, and the Social Services Department's internal records retention policy. However, the EPT records and files shall be kept separate from other Social Services Department records and files and not be accessible to other Social Services Department staff who are not members of the EPT.

§ 7.1-14 Confidentiality; penalty.

- A. Name of reporter. The name of any person who reports under this chapter is confidential and shall not be released to any person other than the members of the EPT and Tribal Prosecutor unless the reporter consents to the release or the release is ordered by the Tribal Court. The Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the Elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent determined necessary to protect the Elder.
- B. Investigation records. The EPT records shall be confidential, except that the Elder who is the subject of a report shall have access to their file at any time during business hours of the Tribe, subject to redaction of the reporting person or any witnesses whose identification may jeopardize their health, safety, and well-being. The Elder shall be informed of such access during the initial investigation. The Tribal Prosecutor shall have access to the EPT records to prepare and present a petition to the Tribal Court; and the Tribe's law enforcement program may provide such information as required by the Tribal Prosecutor for any criminal proceedings.
- C. Court proceedings and hearing records. A proceeding held under this chapter will be closed and confidential. Persons who may attend are the Elder, the Elder's family and caretaker, representatives of EPT, necessary court officials, the Tribal Prosecutor, and attorneys for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal information about the proceeding unless ordered to do so by court order. Records of proceedings will also be closed and confidential.
- D. Violations; penalties. Any person who violates any provision of this section shall be subject to civil penalty of up to \$250 per occurrence. The Court shall assess the penalty after petition, notice, opportunity for hearing, and a determination that a violation has occurred. In addition, if the violation is committed by an employee of the Tribe, the employee may also be subject to disciplinary action in accordance with applicable policies and procedures.