

**TITLE III**  
**CHAPTER 5**  
**ADULT PROTECTION**

**Part 1**

**General Provisions**

**3-5-101. Purpose.** The purpose of this Chapter is to prevent harm to and promote the independence of elders and vulnerable adults at risk of abuse, neglect, sexual abuse, and exploitation who come within the jurisdiction of the Confederated Salish and Kootenai Tribes. Elders are recognized by the Confederated Salish and Kootenai Tribes as one of the most valued resources and custodians of the Tribes' history, culture and tradition. It is in the interest of the health, safety, and welfare of the Tribes and its people to provide procedures for protecting elder and vulnerable adult abuse. This Chapter shall be liberally interpreted and implemented in the least restrictive manner possible in order to achieve its purpose. *(Rev. 4-15-03)*

**3-5-102. Eligibility.** Adult protective services may be provided to any elder or vulnerable adult identified as being at risk of abuse, neglect, sexual abuse, and/or exploitation. Adult protective services are available on a voluntary and time-limited basis for those elders or vulnerable adults not declared incapacitated by the Tribal Court or a court of competent jurisdiction. Adult Protective Services may be court-ordered for those persons legally determined to be unable to care for themselves and/or to lack the capacity to understand the nature of the services offered.

**3-5-103. Civil nature of Chapter.** The provisions of this Chapter are civil and regulatory in nature and are intended to provide assistance and protection to elders and vulnerable adults who may be at risk of abuse, sexual abuse, neglect, and/or exploitation. This Chapter does not affect any applicable provisions of Title II of this Code. *(Rev. 4-15-03)*

**3-5-104. Procedural rights.** (1) All rights as set forth herein and in the Indian Civil Rights Act shall be enforced strictly during proceedings under this Chapter. The Court shall appoint an attorney, physician, and visitor on behalf of any elder or vulnerable adult whose capacity is being questioned.

(2) No hearing shall be held unless notice has been given to the elder or vulnerable adult and other interested parties, including the elder or vulnerable adult's family and caretaker. The elder or vulnerable adult and all other interested parties shall have the right to appear, to be heard fully, and to present evidence unless the Tribal Court determines that the elder or vulnerable adult's health would be at risk at such proceeding. The Tribal Court shall publish a written statement of its findings in support of any issuing order.

(3) No elder or vulnerable adult shall be found to be abused, neglected or exploited solely on the grounds of environmental factors which are beyond the elder's, vulnerable adult's, or caretaker's control. Such factors include but are not limited to inadequate housing, furnishings, income, clothing, and medical care.

(4) Adult protective services will be provided based on the least restrictive alternative, and shall involve the input of the elder/vulnerable adult to the extent that said person is able.

(5) Adult protective service intervention will only be maintained until the risk is reduced or removed, or alternatively, until the elder or vulnerable adult declines to accept services provided that said elder or vulnerable adult is able to care for himself or herself and/or has the capacity to understand the nature of the services offered.

(6) An elder or vulnerable adult and/or caretaker shall be informed about an investigation of elder or vulnerable adult abuse, neglect or exploitation before it begins unless an emergency situation exists, in which case the elder or

vulnerable adult and/or caretaker shall be informed as soon as possible, but no later than 72 hours after the investigation begins.

(7) The elder or vulnerable adult's caretaker may refuse adult protective services for himself or herself, but not for the elder or vulnerable adult.

(8) An elder, vulnerable adult, caretaker, or home occupant may refuse to allow the Designated Tribal Authority or the Tribal Police into their home and the Designated Tribal Authority or the Tribal Police shall so inform the elder, vulnerable adult, caretaker, or home occupant of this right and the right of the Designated Tribal Authority or the Tribal Police to seek a warrant before seeking entry.

(9) The elder or vulnerable adult in whose name any petition is filed shall be personally served with a copy of the petition pursuant to this code.

(10) An alleged at-risk or abused elder or vulnerable adult whose capacity is not in question shall have the right to defer civil court proceedings and have access to the Adult Protective Team. The Adult Protective Team may be utilized by an elder or vulnerable adult as an alternative to a civil court proceeding. *(Rev. 4-15-03)*

### **3-5-105. Definitions.**

(1) "Abuse" means the intentional infliction of physical or mental injury, unreasonable confinement, intimidation, cruel punishment, or deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an elder or a vulnerable adult.

(2) "Adult protective services" means activities, resources, and support provided to at-risk elders and vulnerable adults under this code to detect, prevent, reduce or eliminate abuse, neglect and exploitation, and to promote maximum independent living.

(3) "Caretaker" means an individual or institution that is required by law to provide or has assumed the responsibility for the care needed to maintain the physical or mental health of an elder or vulnerable adult. This responsibility may arise voluntarily, by contract, by receipt of payment for care, as a result of a familial relationship, or by order of the Confederated Salish and Kootenai Tribal Court or other court of competent jurisdiction. It is not the intent of this code to impose responsibility on an individual if the responsibility would not otherwise exist in law.

(4) "Designated Tribal authority" is the person or persons directed by the Confederated Salish and Kootenai Tribal Council to receive and investigate reports of elder and vulnerable adult abuse, neglect and/or exploitation; to assess and determine the need for protective services; and to coordinate the delivery of said services with the elder advocates and appropriate service agencies. Said person/persons shall be referred to as the Adult Protective Service Worker(s).

(5) "Elder" means a tribal member or other person eligible for services residing on the Flathead Reservation who is:

(a) 60 years of age or older; or

(b) determined by Tribal Court or Tribal custom to be an elder.

(6) "Essential services" means those services or things necessary to sustain a person's life, physical and mental health, and general well-being, such as adequate food, clothing, shelter, and health care. It may include services or items considered essential under the person's customs, traditions or religion, including but not limited to access to traditional foods and access to religious ceremonies or services.

- (7) "Emergency situation" means a situation in which an elder or vulnerable adult is immediately at risk of death or injury as a result of abuse, neglect and/or exploitation, and is unable to consent to services which would remove the risk.
- (8) "Exploitation" means the unreasonable use of an elder or vulnerable adult or their money, property, or other resources by a caretaker or other person without the elder or vulnerable adult's consent or through fraud, misrepresentation, coercion, or duress.
- (9) "Incapacitated person" means any person determined by the Tribal Court or a court of competent jurisdiction to be impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or which cause has so impaired the person's judgment that she or he is incapable of realizing and making a rational decision with respect to his or her need for treatment.
- (10) "Informed consent" means the consent obtained for a proposed course of protective services action following a reasonable attempt to provide information to the elder, vulnerable adult, and/or caretaker which conveys, at a minimum, the risks, alternatives and outcomes of the various modes of protective service provisions available under the circumstances.
- (11) "Least restrictive alternative" means an approach which allows an elder or vulnerable adult independence and freedom from intrusion consistent with the elder's or vulnerable adult's needs by requiring that the least drastic and intrusive method of intervention be used when intervention is necessary to protect the elder or vulnerable adult from harm.
- (12) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.
- (13) "Neglect" means the failure to provide for oneself or the failure of a caretaker to provide, to the extent of legal responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of an elder or vulnerable adult.
- (14) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.
- (15) "Sexual abuse" means any sexual involvement with an elder or vulnerable adult that the elder or vulnerable does not consent to, is physically and/or mentally incapable of voluntarily consenting to, or consents to as the result of intimidation, duress or fraud.
- (16) "Tribal police department" means the enforcement branch of the Confederated Salish and Kootenai Tribes.
- (17) "Vulnerable adult" means a tribal member or other person eligible for services residing on the Flathead Reservation who:
- (a) is at least 18 years of age and is declared by the Tribal Court or a court of competent jurisdiction to be incapacitated;
- (b) is at least 18 years of age and has been determined to be disabled by an agency such as the Social Security Administration, Vocational Rehabilitation Division, Veteran's Administration, or Medicaid; or
- (c) is at least 18 years of age and is suffering from a continuing disability or a disability that is expected to continue indefinitely that is attributed to mental retardation, or related neurological conditions or illnesses.

**3-5-106. Reports of abuse, neglect and exploitation - penalties - confidentiality.**

(1) Who must report.

(a) Personal knowledge or reasonable belief. All persons within the civil jurisdiction of the Confederated Salish and Kootenai Tribes unless excepted by privilege must report to the Designated Tribal Authority if they have knowledge of or a reasonable belief that abuse, neglect or exploitation of an elder or vulnerable adult has occurred or will occur. Said person include but are not limited to:

(i) All human and health professionals, including the community health representatives, dentists, physicians and Tribal Health and Human Services personnel;

(ii) Police officers;

(iii) Social workers, counselors and similar elder or vulnerable adult service providers;

(iv) Elected officials;

(v) Tribal or Federal employees involved with an individual elder's or a vulnerable adult's monies, real or personal property and/or well-being;

(vi) Employees or staff of private, tribal or state medical, retirement, group, foster or nursing home facilities located on the Flathead Reservation; and

(vii) Elder advocates, home health providers, or any other person working with elders or vulnerable adults.

(b) Employee. If a person is required to report as stated above but is an employee not authorized to report directly to the Designated Tribal Authority by a program, department or agency for which he or she works, said person shall make the report to the person designated by that program, department or agency to transmit such reports to the Designated Tribal Authority. The Designated Tribal Authority shall be notified, in writing, by the program, department or agency of the person or persons authorized to transmit such reports.

(2) Penalty for retaliation. Under the code, a person or entity who takes discriminatory, retaliatory or disciplinary action against an employee or other person who makes a report, against a person who cooperates with the agency to provide testimony or other information about a report, or against a victim of abuse, commits a violation of this code. The person who takes the discriminatory, retaliatory or disciplinary action is subject to a civil lawsuit by the person who made the report, the victim of abuse named in the report, or the person who cooperated with the Designated Tribal Authority. If the Court hearing the lawsuit decides in favor of the plaintiff, the plaintiff shall recover triple compensatory and punitive damages or \$5,000.00, whichever is greater, from the person or entity that committed the violation.

(3) Failure to report; Civil Penalty; Damages; Criminal Liability. Any person who is required by this code to report suspected elder or vulnerable adult abuse, neglect, or exploitation and fails to do so is subject to a civil penalty of up to \$500.00 and/or 50–100 hours of community service for the benefit of elders or vulnerable adults. The Tribal Court shall assess the penalty only after petition, notice, opportunity for hearing, and a determination that the person had a mandatory duty to report, had good reason to suspect elder or vulnerable adult abuse, neglect or exploitation, and failed to report as required by this code. The person failing to report additionally is subject to any civil suit brought by or on behalf of the elder or vulnerable adult for damages suffered as a result of the failure to report and any criminal penalties set forth in the Confederated Salish and Kootenai Tribal Law and Order Code.

(4) Knowingly False Reporting; Civil Penalty; Damages; Criminal Liability.

Any person who makes a report of suspected elder abuse knowing it to be false is subject to a civil penalty of \$500.00 and/or 50–100 hours of community service for the benefit of elders or vulnerable adults. The Tribal Court shall assess the penalty only after petition, notice, opportunity for hearing, and a determination that the

reporter made the report knowing it to be false. The person failing to report also is subject to any civil suit brought by or on behalf of the elder or vulnerable adult for damages suffered as a result of the failure to report and any criminal penalties set forth in the Confederated Salish and Kootenai Tribal Law and Order Code.

(5) Oral and Written Reports. Persons required to report shall make their report orally to the Designated Tribal Authority within three (3) working days of their observance of an incident of abuse, neglect or exploitation of an elder or vulnerable adult, unless the elder or vulnerable adult's immediate well-being is threatened, in which case the report should be made at the earliest time possible. Service providers will follow any oral report they make with a written report within five (5) working days. Other persons reporting shall be assisted by the Designated Tribal Authority in making a written report within five (5) working days of their oral report.

(6) Elder's or Vulnerable Adult's Confidentiality and Destruction of Records.

(a) Information contained in written reports and records of oral reports that includes the elder's or vulnerable adult's identity shall be kept confidential by the Designated Tribal Authority and shall not be released unless:

(i) the elder or vulnerable adult consents after being fully informed of the right to confidentiality, the nature of the information to be released, and the intended use of the information;

(ii) the information is needed for a court proceeding or police investigation;

(iii) the Tribal Court orders the release for good cause shown; or

(iv) agencies of the Tribal, State or Federal government that provide services to elders or vulnerable adults need to know the information in performance of their duties.

(b) The use of confidential information released shall be restricted to the purposes for which its use is authorized.

(c) The Designated Tribal Authority shall retain all substantiated written reports received and records of all substantiated oral reports received for a period of three (3) years, after which they shall be destroyed; any report deemed made in bad faith shall be destroyed immediately.

(7) Confidentiality of a Reporter's Identity; Immunity for a Reporter.

(a) The identity of a person filing a report shall be kept absolutely confidential and shall not be released unless essential for an administrative proceeding, court proceeding or police investigation, then only to be used for such purposes;

(b) Persons who are required or authorized to report are immune from liability arising from the report so long as the report was made in good faith and with reasonable suspicion ; and

(c) Any person who is sued in connection with the making of a report and prevails in the suit is entitled to recover reasonable attorney's fees and court costs as determined by the Court.

(8) Privileged Communication. No evidentiary privilege, except for the attorney-client privilege, may be raised as a justifiable defense or reason for failing to report suspected elder or vulnerable adult abuse, neglect or exploitation, or for failing to testify as required by this code.

### **3-5-107. Designated tribal authority's investigative action on reports.**

(1) Reports made to the Designated Tribal Authority.

(a) The Designated Tribal Authority, for purposes of this Chapter, shall receive all reports of elder or vulnerable adult abuse, neglect or exploitation.

(b) The Designated Tribal Authority shall investigate reports of elder or vulnerable adult abuse, neglect or exploitation, immediately referring criminal investigation matters as defined in this Code, to the Tribal Prosecutor. Matters not referred to the Tribal Prosecutor shall be completely investigated by the Designated Tribal Authority. Criminal matters appearing after the complete investigation shall be formally referred to the Tribal Prosecutor.

(2) Upon receipt of any report or information regarding an elder or vulnerable adult who may be in need of adult protective services, it shall be the duty of the Designated Tribal Authority to investigate or cause to be investigated the circumstances surrounding the report. This investigation shall include, but not be limited to: the elder or vulnerable adult's physical injury, emotional injury, financial injury, and all matters which, in the discretion of the Designated Tribal Authority, shall be relevant to the investigation.

(a) If from the report or investigation it appears that the elder or vulnerable adult is in need of essential services only and is not at risk of abuse, neglect and/or exploitation, the Designated Tribal Authority shall deliver a referral to the appropriate services agency for further action, including but not limited to: the Elder Advocates, the Adult Protection Team, Tribal Prosecutor, Tribal Health and Human Services, and Tribal Housing.

(b) If from the report or investigation it appears that the elder or vulnerable adult has been or is in a situation of abuse, neglect and/or exploitation, the Designated Tribal Authority shall investigate the matter as described in Subsection (3) of this Section to determine whether the elder's or vulnerable adult's present situation is an emergent situation or a non-emergent situation.

(3) The Designated Tribal Authority shall immediately investigate a report of elder/vulnerable adult abuse, neglect and/or exploitation and within 72 hours of the referral prepare a written report of the investigation which shall include the information set out in Subsection (6) of this Section as well as the results of interviews, observations and assessments, and other fact finding. The Designated Tribal Authority shall conduct in-person interviews with the elder or vulnerable adult and/or caretaker of the elder or vulnerable adult, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder or vulnerable adult's circumstances, and any other person that the Designated Tribal Authority believes to have pertinent information. The existence and contents of medical records and other reports of abuse, neglect, and/or exploitation shall be ascertained. A substantiated investigative report of the Designated Tribal Authority shall be filed with the Tribal Prosecutor within ten working days.

(4) Designated Tribal Authority's contact with the elder/vulnerable adult.

(a) The elder/vulnerable adult shall be contacted by the Designated Tribal Authority as soon as possible, but not later than three (3) working days after receipt of the initial written or oral referral. In emergency situations, as described in Section 3-5-110, contact with the elder/vulnerable adult shall be made immediately by the Tribal Police Department.

(b) Contact with the elder/vulnerable adult is authorized for the purposes of substantiating a report of abuse, neglect or exploitation, for talking to the elder/vulnerable adult, for informing the elder/vulnerable adult of protective services or other services available, and for evaluating the need for an Adult Protective Services Order or other intervention.

(5) Designated Tribal Authority's access to dwelling of an elder/vulnerable adult.

(a) Entry of a private dwelling or any other location where there is a reasonable expectation of privacy for the purpose of contacting an elder/vulnerable adult is not permitted unless:

(i) the elder/vulnerable adult, their caretaker, or the owner or occupant of the dwelling consents, provided that the person authorized to contact the elder/vulnerable adult first identifies himself or herself, his or her title, and the purpose of the visit;

(ii) there is reason to believe that the elder's/vulnerable adult's life may be in imminent danger or that there is imminent threat of bodily harm to the elder/vulnerable adult;

(iii) pursuant to a court order based on probable cause that the elder/vulnerable adult has been abused, neglected or exploited or may be in danger of being abused, neglected or exploited; or

(iv) there is a need to acquire evidence for use under this code which may be lost or destroyed due to the delay of obtaining a court order.

(b) Nothing in this sub-section shall be construed to limit or restrict police in hot pursuit of fleeing suspects as allowed under existing law.

(c) If the Designated Tribal Authority authorized to seek entry of a premises believes that the effort to obtain entry will be forcibly resisted or there is otherwise apparent danger for the Designated Tribal Authority, the assistance of the Tribal Police Department shall be available to assist with peaceable entry. If peaceable entry is not feasible, a court order may be obtained to restrain persons resisting entry.

(6) Every investigative report made by the Designated Tribal Authority shall be in writing and contain the following information:

(a) the elder/vulnerable adult's name, address or location, and telephone number;

(b) name, address or location, telephone number of the person(s) or agency who is suspected of abusing, neglecting, or exploiting the elder or vulnerable adult;

(c) the nature and degree of capacity of the elder or vulnerable adult based on the Designated Tribal Authority's professional opinion and observation;

(d) the name, address or location, and telephone numbers of witnesses;

(e) the name, address or location, and telephone of a caretaker;

(f) a description of the acts which are complained of; and

(g) any other information that the Designated Tribal Authority believes might be helpful in establishing abuse, neglect, or exploitation.

(7) All investigative reports shall be maintained, filed and adequately kept to ensure confidentiality and safety by the Designated Tribal Authority, and shall remain on file for a period of three (3) years. *(Rev. 4-15-03)*

**3-5-108. Voluntary adult protective services.** (1) Adult protective services may be provided on a voluntary basis by the Adult Protective Services Worker when requested by or for any non-incapacitated abused or neglected elder or vulnerable adult and the elder or vulnerable adult is found by the Adult Protective Services Worker or Adult Protective Team to be in need of such services.

(2) Voluntary adult protective services shall include those essential and/or protective services necessary to reduce or eliminate the threat of harm and to promote continued independent living.

(3) Voluntary adult protective services are provided subject to available appropriations, resources, and staff, and only as determined necessary by the Adult Protection Worker.

(4) Voluntary adult protective services shall be provided on a time-limited basis and monitored by the Adult Protective Services worker or Adult Protection Team. Said services shall only be provided until the risk is eliminated or reduced, or until the elder/vulnerable adult refuses to accept such services.

(5) Voluntary services shall be based on the least restrictive alternative.

(6) An elder/vulnerable adult in need of voluntary services shall have a choice in selecting the services.

**3-5-109. Adult protective services order.** (1) The Tribal Court is authorized to issue an Adult Protective Services Order to elders or vulnerable adults that it or a court of competent jurisdiction determines to be incapacitated and at risk of abuse, neglect, or exploitation, pending notice and hearing. The Court shall have broad discretion within the bounds of the law, to fashion adult protective services orders so that the purposes of this code may be accomplished, including but not limited to the following kinds of protective orders:

(a) Removing the person who has abused, neglected or exploited an elder or vulnerable adult from the elder's or vulnerable adult's home;

(b) Restraining the person who has abused, neglected or exploited an elder/vulnerable adult from continuing such acts;

(c) Requiring an elder's or vulnerable adult's family, caretaker or any other person with a fiduciary duty to the elder or vulnerable adult to account for the elder's or vulnerable adult's funds;

(d) Requiring any person who has abused, neglected or exploited an elder or vulnerable adult to pay restitution to the elder or vulnerable adult for damages resulting from that person's wrongdoing;

(e) Appointing a legal representative;

(f) Appointing a representative payee, conservator, or guardian for the elder or vulnerable adult;

(g) Ordering the Designated Tribal Authority to prepare a plan for and deliver adult protection services which provide the least restrictive alternative for services, care, or treatment consistent with the elder's or vulnerable adult's needs; or

(h) Removing the elder or vulnerable adult from the place where the abuse, neglect or exploitation has taken or is taking place.

(2) Contents of an Adult Protective Services Order. An Adult Protective Services Order shall contain the following information:

(a) the name of the person to whom it is directed;

(b) the name, address or location, and condition of the elder or vulnerable adult;

(c) a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is incapacitated;

(d) a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is at risk of abuse, neglect, or exploitation;

(e) the restrictions or requirements imposed by the Court in sufficient detail;

(f) the date the adult protective services order is issued and the date the order expires or the time within which the protective order will be reviewed;

(g) the protective services which will reduce or eliminate the abuse, neglect, or exploitation;

(h) the consequences for failure to comply with the order; and



(i) the order shall also include a statement which states that a person bound by the order shall remain bound by it even if circumstances which prompted the order have changed, and that it is the responsibility of any person seeking to avoid the consequence of the order to request that the order be modified to reflect the changed circumstances. However, no such modification shall be made without a hearing at which the petitioner or representative of the petitioner is present.

(3) Petition and Hearing of an Adult Protective Services Order.

(a) The Tribal Prosecutor shall file petitions and present facts on behalf of the Confederated Salish and Kootenai Tribes for legal proceedings authorized or required by this code; and

(b) A hearing on a petition authorized or required by this code shall be conducted with the purpose of protecting the incapacitated elder or vulnerable adult only where necessary and only to the extent shown by the facts and using the least restrictive alternatives.

(4) Term of an Adult Protective Services Order.

(a) An Adult Protective Services Order shall be issued for a period not to exceed one (1) year; and

(b) The order may be extended at one (1) year intervals as many times as necessary to protect the elder or vulnerable adult, but only after a petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing evidence that such an extension is necessary for the protection of the elder or vulnerable adult.

**3-5-110. Emergency adult protective services order.** (1) The Tribal Court shall issue an Emergency Protection Order authorizing adult protective services on an emergency basis, upon petition supported by clear and convincing evidence that an elder or vulnerable adult:

(a) is allegedly incapacitated and cannot consent to protective services;

(b) is at risk of immediate physical harm; and

(c) no one is authorized by law or court order to give consent on an emergency basis.

(2) The Emergency Adult Protective Services Order shall:

(a) set forth a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is incapacitated;

(b) set forth a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is in immediate and imminent danger of abuse, neglect, or exploitation;

(c) set out the specific emergency services to be provided to the incapacitated elder or vulnerable adult to remove the conditions creating the emergency situation;

(d) provide only those services which will remove the emergency situation;

(e) designate the agency required to implement the order; and

(f) be issued for a maximum of 72 hours and may be renewed only once for a maximum of 72 hours provided the evidence shows a continuing emergency situation.

(3) The Tribal Court may authorize forcible entry by the Tribal Police Department to enforce the Emergency Adult Protective Services Order after it has been shown that attempts to gain voluntary access to the elder or vulnerable adult have failed.

(4) The petition for an Emergency Adult Protective Services Order shall contain the name and interest of the petitioner; the name, address or location and condition of the elder or vulnerable adult; the nature of the emergency; the nature of the elder or vulnerable adult's incapacity; the proposed protective services; the attempts, if any, to secure the elder or vulnerable adult's consent to protective services; and any other facts the petitioner believes will assist the Tribal Court.

(5) The Tribal Court shall hold a hearing on a petition for an Adult Protective Services Order within 72 hours after an Emergency Adult Protective Services Order is issued, weekends and holidays excluded.

(6) An Emergency Adult Protective Services Order can be set aside by the Tribal Court upon a petition of any party showing good cause.

(7) If the Designated Tribal Authority or law enforcement officer has good cause to believe that an emergency situation exists in which an elder or vulnerable adult who appears to be incapacitated is at risk of immediate and irreparable harm, and that the elder or vulnerable adult may be irreparably harmed during the procurement of an Emergency Adult Protective Services Order, the elder or vulnerable adult immediately may be taken into temporary protective custody, and where necessary transported for medical treatment or to an appropriate facility. Immediately after an elder or vulnerable adult is placed in protective custody, a petition for an Emergency Adult Protective Services Order shall be filed pursuant to the procedure set forth in this Section.

(8) Any person who acts in good faith pursuant to this Section is immune from civil or criminal suit based on that person's actions.

### **3-5-111. Procedures for determining incapacity.**

(1) Determinations regarding the capacity of an elder or vulnerable adult for the purposes of an action under this code must be made after petition; appointment of an advocate, physician, and visitor; notice; hearing; and a finding based on clear and convincing evidence that the elder or vulnerable adult is incapacitated in accordance with Section 3-5-104, Procedural Rights.

(2) In proceedings necessitating a declaration of incapacity, such as a hearing on a petition for Adult Protective Services or a petition for Emergency Protective Services, the Court shall first address the issue of incapacity and only upon a finding that the elder or vulnerable adult is incapacitated shall the Court proceed with the issue of whether judicial intervention is necessary because the elder or vulnerable has been or is at risk of abuse, neglect, and exploitation. *(Rev. 4-15-03)*

**3-5-112. Guardianship and conservatorship proceedings.** (1) The incapacitated elder or vulnerable adult or any person alleging an elder or vulnerable adult to be incapacitated, including the Designated Tribal Authority, may petition for a limited or full guardianship, or a conservatorship of an incapacitated elder or vulnerable adult who is unable to manage all or some of his/her own affairs for the purpose of promoting and protecting the well-being of the elder or vulnerable adult. The guardianship or conservatorship must be designed to encourage the development of maximum self-reliance and independence in the elder or vulnerable adult, and may be ordered only to the extent that the elder's or vulnerable adult's actual or mental limitations require it.

(2) A petition for guardianship shall state:

(a) The elder or vulnerable adult's name, birth date, residence, tribal affiliation, and enrollment number. If the elder or vulnerable adult is not living in his or her own home, then petitioner shall state the location where the elder or vulnerable adult has resided since leaving his or her own home, and the name and address of the person(s) or institution where the elder or vulnerable adult is presently located;

(b) Petitioner's name, birth date, residence, tribal affiliation, and the relationship to the elder or vulnerable adult;

(c) A description of the physical and/or mental limitations that incapacitates the elder or vulnerable adult;

(d) If a limited guardianship over the elder's or vulnerable adult's person is requested, then a description of the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required;

(e) If a guardianship or conservatorship of any or all property is requested, then a general description of the personal or non-trust property of the elder or vulnerable adult;

(f) If a guardianship or conservatorship over any or all of the financial affairs is requested, then a general description of the income or other financial resources or personal property of the elder or vulnerable adult;

(g) The names, addresses and relationship of the elder's or vulnerable adult's children, so long as such information is reasonably available, and any brothers, sisters, grandchildren or other parties who have been significantly involved in the care of the elder or vulnerable adult during the past three years;

(h) Whether a guardian has been appointed for the elder or vulnerable in any other tribal or state proceeding;

(i) The requested length of time for which the petitioner is requesting the guardianship or conservatorship; and

(j) List any other person(s) and relationship to the elder or vulnerable adult, if any, who may be available to share the guardianship responsibilities with the petitioner.

(3) Service of Petition and Notice of Hearing.

(a) Before appointing a guardian or conservator, a notice of hearing and a copy of the petition shall be given personally to the elder or vulnerable adult over whom the guardianship or conservatorship is requested. A certificate of personal service shall be filed with the Tribal Court.

(b) Notice and a copy of the petition shall be personally given to the elder or vulnerable adult's spouse residing within the exterior boundaries of the Flathead Reservation, if any, unless such person waives, in writing, the personal service of notice and petition.

(c) By first-class United States mail, notice and a copy of the petition shall be given to: all children of the elder or vulnerable adult; the spouse of the elder or vulnerable adult if residing off the Flathead Reservation; any other person with whom the elder or vulnerable adult is living with; and the Confederated Salish and Kootenai Tribal Health and Human Services.

(d) The Tribal Court, upon receipt of a petition for guardianship or conservatorship, shall appoint an advocate to represent the elder or vulnerable adult, a physician to examine the elder or vulnerable adult for the purposes of determining capacity, and a visitor.

(e) A hearing on the petition shall be held not less than twenty and not more than forty days from the service of the notice and petition on the elder or vulnerable adult over whom the guardianship is requested. Following the hearing, the Court may appoint a full or limited guardian if it is satisfied that the person for whom the guardianship is sought is incapacitated and that judicial intervention in his/her personal freedom of action and decision is necessary to meet the essential requirements for health and safety.

(f) In the event of an emergency, where serious harm to the allegedly incapacitated elder's or vulnerable adult's health or property is likely to occur before a hearing can be held, the Court may appoint with or without notice a temporary guardian for the allegedly incapacitated elder or vulnerable adult for a specified period not to exceed six (6) months. The Court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment.

(g) Any guardian shall advise the Court by written report at least once a year or upon request of the Court on the parties involved or the actions of the guardian on behalf of the elder's or vulnerable adult's person or estate..

(h) No guardian may dispose of any of the elder's or vulnerable adult's property without advance approval from the Court.

**3-5-113. Adult protection team.** (1) Composition. The Adult Protection Team shall be comprised of a multi-disciplinary group of professionals representing various tribal disciplines and agencies who meet on a regular basis to assist in developing a case plan and coordination of protective services for elder's and vulnerable adult's who are victims of abuse, neglect, or exploitation.

(2) Purpose. The Adult Protection Team shall be charged with the responsibility of helping an elder or vulnerable adult resolve any civil conflict or problems that may prevent the proper care, treatment, and respect for the elder or vulnerable adult involved. The Adult Protection Team may suggest and encourage resolutions based on tribal custom and tradition.

(3) Appointment.

(a) The Adult Protection Team shall be chosen by the Confederated Salish and Kootenai Tribal Council;

(b) The Adult Protection Team shall be comprised of at least five people, but not more than seven (7) people; and

(c) The Adult Protection Team shall be composed of individuals who are knowledgeable in one or more of the following areas:

(i) Tribal culture;

(ii) Tribal Health and Human Services available to elders/vulnerable adults;

(iii) Legal remedies;

(iv) Available medical services; and

(v) Tribal administrative procedure.

(4) Adult Protection Team Time Limits. If the Adult Protection Team determines that it cannot be effective in helping resolve the elder or vulnerable adult's situation, it shall refer the matter back to the Designated Tribal Authority within 90 days of receipt of the case.

(5) Confidentiality. The case records and personal information regarding any elder or vulnerable adult that a member of the team provides shall be kept confidential and shall be used only by team members for the purpose of assessing the needs of the elder or vulnerable adult, and developing and monitoring a protective services plan.

**3-5-114. Regulations.** The Designated Tribal Authority shall coordinate with the Confederated Salish and Kootenai Tribal Health and Human Services and shall submit proposed rules and regulations to the Tribal Council of the Confederated Salish and Kootenai Tribes for adoption.

**3-5-115. Severability.** If any provision or application of this Chapter is held invalid, such invalidity shall not affect the remaining provisions or application thereof.