

TITLE 14C

ELDER AND DEPENDANT ADULT PROTECTION CODE ORDINANCE # 01-07

**OF THE
HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION**

**APPROVED BY TRIBAL COUNCIL
APRIL 5, 2007**

ELDER AND DEPENDANT ADULT PROTECTION CODE.....	3
CHAPTER 1 GENERAL PROVISIONS	4
14C.1.01. TITLE	4
14C.1.02 AUTHORITY	4
14C.1.03 PURPOSE	4
14C.1.04 CONSTRUCTION	4
14C.1.05 INCONSISTENT PROVISIONS OF OTHER LAW	5
14C.1.06 SEVERABILITY	5
14C.1.07 SOVERIEGN IMMUNITY NOT WAIVED	5
14C.1.08 EFFECTIVE DATE AND AMENDMENT	5
14C.1.06 JURISDICTION	6
14C.1.07. CRIMINAL PENALTIES.....	6
14C.1.08 DEFINITIONS.....	6
CHAPTER 2 REPORTS OF SUSPECTED ELDER OR DEPENDANT ADULT ABUSE OR NEGLECT.....	10
14C. 2. 01 MANDATED REPORTING AGENCY.....	10
14C.2.02 MANDATED REPORTERS	10
14C.2.03 CONTENT OF REPORTS.....	13
CHAPTER 3 POWERS AND DUTIES OF ADULT PROTECTIVE SERVICES WORKERS.....	13
14C.3.01 PROTECTIVE SERVICES AGENCY	13
14C.3.02 PUBLIC GUARDIAN.....	14
14C.3.03 Power and Duties of Adult Protective Service Workers.....	14
14C.3.04 VOLUNTARY SERVICES.....	15
CHAPTER 4 INVESTIGATION OF REPORTS OF ELDER OR DEPENDANT ADULT ABUSE OR NEGLECT.....	15
14C.4.01 TIMELINESS OF INVESTIGATION.....	15
14C.4.02 AGENCIES RESPONSIBLE FOR INVESTIGATION	15
14C.4.03 INVESTIGATION PROCEDURES	16
14C.4.04 POSSIBLE OUTCOMES OF INVESTIGATION	16
CHAPTER 5 EMERGENCY PLACEMENT OF ENDANGERED ADULTS.....	17
14C.5.01 LEGISLATIVE INTENT.....	17
14C.5.02 AUTHORITY TO TAKE INTO PROTECTIVE CUSTODY.....	17
14C.5.02 AUTHORITY TO PLACE	18
14C.5.03 APPROPRIATE TEMPORARY RESIDENCE.....	18
14C.5.04 APPROPRIATE TEMPORARY PROTECTIVE SERVICES	18
14C.5.05 PROTECTIVE ORDER UNDER TITLE	19
CHAPTER 6 FILING EMERGENCY ADULT PROTECTION PETITION.....	19
14C.6.01. AUTHORIZATION FOR PETITION BY THE DIVISION OF HUMAN SERVICES.....	19
14C.6.02 TIMELINE FOR FILING EMERGENCY PETITION	19
14C.6.03 NOTICE OF EMERGENCY HEARING.....	19
14C.6.04. CONTENTS OF THE PETITION	19
14C.6.05 HEARING	20

14C.6.06 OUTCOME OF EMERGENCY PROTECTION HEARING	20
14C.6.07 EMERGENCY SERVICES PROTECTIVE ORDER	21
CHAPTER 7 ADULT PROTECTIVE SERVICES ORDER.....	22
14C.7.01 PETITION IN NON-EMERGENCY CASES	22
14C.7.02 TIMING OF HEARING.....	22
14C.7.02 HEARING	22
14C.7.03 ADULT PROTECTIVE SERVICES ORDER.....	23
14C.7.04 REVIEW AND EXTENTIONS OF ADULT PROTECTIVE ORDERS	23
CHAPTER 8 FIDUCIARY OBLIGATIONS OF GUARDIANS OR CONSERVATORS	24
14C.8.01 FIDUCIARY OBLIGATIONS.....	24
14C.8.02 EXPLANATION OF FIDUCIARY OBLIGATIONS.....	24

ELDER AND DEPENDANT ADULT PROTECTION CODE

ELDER AND DEPENDANT ADULT PROTECTION ORDINANCE
HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
TITLE 14C

Ordinance No: 01-07

Date Approved: April 5, 2007

Subject: Protection of Elders and Dependiant Adults

WHEREAS, the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. § 1301 *et seq.*);

WHEREAS, the Hoopa Valley Tribal Council is authorized to negotiate with federal, state and local governments on behalf of the Tribe; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that the Tribe has a responsibility to protect these persons.

WHEREAS, the Hoopa Valley Tribal Council desires to direct special attention to the needs and problems of elderly persons, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

WHEREAS, the Hoopa Valley Tribal Council, further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

WHEREAS, the Hoopa Valley Tribal Council recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their families or caretakers suffer physical impairments and

other poor health that place them in a dependent and vulnerable position. WHEREAS, the Hoopa Valley Tribal Council further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

WHEREAS, the Hoopa Valley Tribal Council deems an Elder and Dependant Adult Protection Ordinance is necessary for safeguard and promotion of peace, safety, morals and the general welfare of the Hoopa Valley Tribe as well as individual members of the Hoopa Valley Tribe.

NOW, THEREFORE BE IT RESOLVED, that the following Ordinance governing tribal intervention in cases of alleged abuse or neglect of tribal elders or dependant adults is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

CHAPTER 1 GENERAL PROVISIONS

14C.1.01. TITLE

This title shall be known as the Hoopa Valley Tribal Elder and Dependant Adult Protection Code.

14C.1.02 AUTHORITY

This Title is enacted pursuant to Article IX, Sections (k) and (l) of the Hoopa Valley Tribe's Constitution.

14C.1.03 PURPOSE

The purposes of this Code are to:

- (1) insure the safety and protection of all elders and dependants adults within the community from abuse and neglect;
- (2) to provide clear procedures for tribal interventions where allegations of elder or dependant adult abuse or neglect have been reported; and
- (3) to extend the authority of tribal social service workers to include investigations, placement, and provision of services in elder and dependant adult abuse and neglect cases .

It is the intent of this code to afford the appropriate protection for any tribal member elder or tribal member dependant adult who is suffering abuse or neglect within the Hoopa Valley.

14C.1.04 CONSTRUCTION

(a) Rules of Construction

Chapter 1 through Chapter ___ shall be exempted from the rules of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which they were enacted. The terms and provisions of Chapter 1 through Chapter ___ shall be construed according to the fair import of their terms, but when the language is susceptible to differing construction, it shall be interpreted to further the general purposes stated in this Chapter

(b) Definition of Terms

- (1) Where a term is not defined herein, it shall be given its ordinary meaning.
- (2) Any reference to "he," "him" or other masculine terms shall include male and female persons.
- (3) Any reference to a singular term includes the plural.
- (4) "Shall" is mandatory and "may" is permissive.

14C.1.05 INCONSISTENT PROVISIONS OF OTHER LAW

If any provision of Hoopa Valley law is found to be inconsistent with this Title, the provisions of this Title shall govern in all cases where Tribal Social Services is investigating and seeking to intervene to protect an elder or dependant adult from abuse or neglect. This code is meant to compliment Chapter four of Title 14B, the Tribal Protective Order Code, and will govern in all cases where Tribal Social Services has filed a petition to protect and/or provide services to an elder or dependant adult. Title 14B will govern in all cases where Tribal Social Services has filed a petition for a protective order that will simply restrain someone from committing certain acts. This code will govern social service interventions in cases of alleged abuse or neglect of an elder or dependant adult unless there is good cause shown that application of this Title would not be in the interests of justice and that application of this title would defeat one of the purposes described in Section 14C.1.03 above. The civil procedure provisions of title 2 of the Hoopa Valley Tribal Code apply to cases filed under this code, unless a specific provision of this code contradicts Title 2. Whenever a specific provision exists in this code, that provision will govern the procedure in alleged abuse or neglect of an elder or dependant adult.

14C.1.06 SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder will continue to be in full force and effect to the maximum extent possible.

14C.1.07 SOVERIEGN IMMUNITY NOT WAIVED

Nothing in this code shall be deemed to constitute a waiver by the Hoopa Valley Indian Tribe of its sovereign immunity, rights, powers or privileges.

14C.1.08 EFFECTIVE DATE AND AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended as provided in Title 6 of the Hoopa

Valley Tribal Code.

14C.1.06 JURISDICTION

The Hoopa Valley Tribal Court has the authority to issue protection orders in all cases of abuse or neglect, as defined within this code, of a tribal elder or tribal dependant adult, that arise within the exterior boundaries of the Hoopa Valley Reservation. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

14C.1.07. CRIMINAL PENALTIES

This code in no way interferes with or limits the state's right to prosecute any criminal case arising out of the same facts for which a protection order is sought. Further, the Court may refer cases filed under this title to the Humboldt County District Attorney's office for prosecution, where appropriate.

14C.1.08 DEFINITIONS

The following definitions apply to all chapters in this code:

"Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

"Abuse of an elder or a dependent adult" means either of the following:

(a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.

(b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. This includes situations where an individual deprives an elder of medication legally prescribed to the elder.

"Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests, harmed or threatened with harm, caused physical or mental injury due to the action or inaction of another person or their own action as a result of ignorance, illiteracy, incompetence, mental limitation, substance abuse, or poor health, lacking in adequate food, shelter, or clothing, exploited of their income and resources, or deprived of entitlement due them.

"Adult protective services agency" means the Hoopa Valley Division of Human Services, or any county welfare department, which provides adult protective services.

"Court" means the Hoopa Valley Tribal Court, unless otherwise specified.

"Dependent adult" means any person between the ages of 18 and 54 years who resides within the exterior boundaries of the Hoopa Valley Reservation and who has physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age.

"Developmentally disabled person" means a person with a developmental disability specified by or as described in subdivision (a) of Section 4512 of the California Welfare and Institutions Code.

"Elder" means any person residing within the exterior boundaries of the Hoopa Valley Reservation, 55 years of age or older.

"Endangered adult" means a dependent or elder adult who is at immediate risk of serious injury or death, due to suspected abuse or neglect and who demonstrates the inability to take action to protect himself or herself from the consequences of remaining in that situation or condition

"Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, or retains real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, or retaining real or personal property of an elder or dependent adult to a wrongful use or with intent to defraud, or both.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates or retains possession of property in bad faith.

(1) A person or entity shall be deemed to have acted in bad faith if the person or entity knew or should have known that the elder or dependent adult had the right to have the property transferred or made readily available to the elder or dependent adult or to his or her representative.

(2) For purposes of this section, a person or entity should have known of a right specified in paragraph (1) if, on the basis of the information received by the person or entity or the person or entity's authorized third party, or both, it is obvious to a reasonable person that the elder or dependent adult has a right specified in paragraph (1).

(c) For purposes of this section, "representative" means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the

authority of the power of attorney.

"Goods and services necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:

- (a) The provision of medical care for physical and mental health needs.
- (b) Assistance in personal hygiene.
- (c) Adequate clothing.
- (d) Adequately heated and ventilated shelter.
- (e) Protection from health and safety hazards.
- (f) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.
- (g) Transportation and assistance necessary to secure any of the needs set forth in subdivisions (a) to (f), inclusive.

"Imminent danger" means a substantial probability that an elder or dependent adult is in imminent or immediate risk of death or serious physical harm, through either his or her own action or inaction, or as a result of the action or inaction of another person.

"Investigation" means that activity undertaken to determine the validity of a report of elder or dependent adult abuse.

"Isolation" means any of the following:

- (1) Acts intentionally committed for the purpose of preventing, and that do serve to prevent, an elder or dependent adult from receiving his or her mail or telephone calls.
- (2) Telling a caller or prospective visitor that an elder or dependent adult is not present, or does not wish to talk with the caller, or does not wish to meet with the visitor where the statement is false, is contrary to the express wishes of the elder or the dependent adult, whether he or she is competent or not, and is made for the purpose of preventing the elder or dependent adult from having contact with family, friends, or concerned persons.
- (3) False imprisonment, as defined in Section 236 of the California Penal Code.
- (4) Physical restraint of an elder or dependent adult, for the purpose of preventing the elder or dependent adult from meeting with visitors.
 - (a) The acts set forth in subdivision (a) shall be subject to a rebuttable presumption that they do not constitute isolation if they are performed pursuant to the instructions of a physician and surgeon licensed to practice medicine in the state, who is caring for the elder or dependent adult at the time the instructions are given, and who gives the instructions as part of his or her medical care.
 - (c) The acts set forth in subdivision (a) shall not constitute isolation if they are performed in response to a reasonably perceived threat of danger to property or physical safety.

"Mental suffering" means fear, agitation, confusion, severe depression, or

other forms of serious emotional distress that is brought about by forms of intimidating behavior, threats, harassment, or by deceptive acts performed or false or misleading statements made with malicious intent to agitate, confuse, frighten, or cause severe depression or serious emotional distress of the elder or dependent adult.

"Neglect" means either of the following:

(1) The negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care that a reasonable person in a like position would exercise.

(2) The negligent failure of an elder or dependent adult to exercise that degree of self care that a reasonable person in a like position would exercise.

(b) Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition or dehydration.

(5) Failure of an elder or dependent adult to satisfy the needs specified in paragraphs (1) to (4), inclusive, for himself or herself as a result of poor cognitive functioning, mental limitation, substance abuse, or chronic poor health.

"Physical abuse" means the causing of physical pain, serious illness, or an impairment of a physical condition. It includes but is not limited to:

(a) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(b) unwanted or nonconsensual sexual contact of any kind, including sexual contact where the alleged abuser is aware, or should be aware, that the elder or dependant adult is unable to consent because of a physical or mental impairment at the time of the sexual activity;

(c) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

"Reasonable suspicion" means an objectively reasonable suspicion that a person would entertain, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

"Substantiated Report": A report of elder abuse or dependant adult abuse, where after investigation it appears to the investigator that there is probable cause to believe the allegations are true.

"Tribal Dependant Adult" means any dependant adult who is a member of, or eligible for enrollment in, a federally recognized Tribe.

"Tribal Elder" means any elder who is a member of, or eligible for enrollment in, a federally recognized Tribe.

"Unsubstantiated Report": A report of elder or dependant adult abuse or neglect where after investigation it appears to the investigator that there no probable cause to believe the allegations are true.

CHAPTER 2 REPORTS OF SUSPECTED ELDER OR DEPENDANT ADULT ABUSE OR NEGLECT

14C. 2. 01 MANDATED REPORTING AGENCY

(a) Tribal Elder and Dependant Adult Cases

In all cases that occur within the exterior boundaries of the Hoopa Valley Reservation, where the alleged victim is a member or, or eligible for enrollment in, a federally recognized tribe, the mandated reporting agency for suspected elder or dependant adult abuse or neglect shall be the Hoopa Valley Division of Human Services.

(b) Non-Tribal Elder and Dependant Adult Cases

In all cases where the alleged victim is not a member of, or eligible for enrollment in, a federally recognized tribe, the mandated reporting agency is either the Hoopa Valley Division of Human Services or the local county adult protective services agency.

14C.2.02 MANDATED REPORTERS

(a) Persons Specifically Required to Report

(1) *Physical Abuse, abandonment, abduction, isolation, or neglect*

Those persons who are mandated to report suspected abuse or neglect, as defined under this code, include any physician; nurse; dentist; optometrist; or any other medical or mental health professional; peace officer or other law enforcement official; judge; attorney- except where it conflicts with attorney client privilege; clerk of the court; other judicial system official; any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults; any elder or dependent adult care custodian; or employee of a county adult protective services agency.

(2) Financial Abuse

Those persons who are mandated to report suspected financial abuse, as

defined under this code, include all officers and employees of financial institutions. As used in this section, the term "financial institution" means any of the following:

(A) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(B) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

(C) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(c) Anonymous Reports

Any person, other than those specified in section (B) above, may remain anonymous when making a report, except where either (1) the protection of the safety of the elder or dependant adult requires limited disclosure of the identity; or (2) the reporter consents to disclosure of his identity. The anonymous reporter has the right to petition the Court and be heard at a closed hearing with regard to the issue of disclosure. Where the Court declines to breach the reporter's anonymity, the in court record and any papers filed in connection with the hearing, will be sealed.

(d) Immunity from Liability

All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect will be immune from civil liability and criminal prosecution.

(e) Circumstances Mandating Report of Suspected Abuse or Neglect

(1) *Physical Abuse, abandonment, abduction, isolation, or neglect*

Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days to the mandated reporting agency specified in section 14C.3.02 of this Chapter.

(2) *Financial Abuse*

Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within

that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the mandated reporting agency specified in section 14C.3.02 of this Chapter.

(f) Exceptions to Report Requirement

(1) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, shall not be required to report, pursuant to paragraph (a), an incident where all of the following conditions exist:

(A) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect.

(B) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(C) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(D) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, reasonably believes that the abuse did not occur.

(2) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

(A) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(B) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(3) This subsection shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(g) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(h) When two or more mandated reporters jointly have knowledge or reasonably suspect that physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall thereafter make that report.

(i) Penalties for Failure to Report

Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so may be subject to immediate removal from their position and/or such other penalties including a fine not exceeding one thousand dollars (\$1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars (\$5,000), and any damages as may be allowed under Tribal Law including proceedings in the form of a private civil action under this provision in Tribal Court.

(2) As used in this section, "suspected abuse or neglect of an elder or dependent adult" occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of abuse or neglect, as defined under section 14C.1.08 of this code.

14C.2.03 CONTENT OF REPORTS

The written abuse reports required for the reporting of abuse or neglect shall contain the following items:

(1) The name, address, telephone number, and occupation of the person reporting.

(2) The name and address of the victim.

(3) The date, time, and place of the incident.

(4) Other details, including the reporter's observations and beliefs concerning the incident.

(5) Any statement relating to the incident made by the victim.

(6) The name of any individuals believed to have knowledge of the incident.

(7) The name of the individuals believed to be responsible for the incident and their connection to the victim.

CHAPTER 3 POWERS AND DUTIES OF ADULT PROTECTIVE SERVICES WORKERS

14C.3.01 PROTECTIVE SERVICES AGENCY

Tribal Protective Services workers will be employed by the Division of Human

Services. To assist the protective services workers in performing their duties, the head of the Division of Human Services will do the following:

- (a) Establish internal policies and procedures for a database of elder and dependant adult abuse and neglect records;
- (b) Establish internal policies and procedures for maintaining the confidentiality of elder and dependant adult abuse and neglect reports.
- (c) Establish internal policies and procedures governing the retention of, and access by outside agencies to, all confidential elder and adult abuse neglect records;
- (d) Establish internal policies and procedures governing timelines for actions required by this code, where no timeframe is included in the code;
- (e) Establish internal policies and procedures governing the priority of investigation of elder and dependant adult abuse and neglect reports, where multiple reports are made within close proximity to one another;
- (f) Negotiate agreements for services, record sharing, referral, and funding for adult protective services.
- (g) Authorize the Division's acceptance of legal custody of Tribal elders and dependant adults when ordered by the Tribal Court.

14C.3.02 PUBLIC GUARDIAN

The Division of Human Services may be appointed the public guardian of a protected adult's property or person where no other suitable guardian is available. The division will have a fiduciary obligation to the property of the protected adult.

14C.3.03 POWER AND DUTIES OF ADULT PROTECTIVE SERVICE WORKERS

Adult Protective Services Workers will possess the following powers and perform the following duties for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future:

- (a) Receive and investigate reports of suspected abuse or neglect involving any tribal elder or dependant adult residing within the exterior boundaries of the Hoopa valley Reservation;
- (b) determine whether to offer voluntary services to the elder, dependant adult, or caretaker
- (c) determine whether to initiate emergency or other adult protection proceedings;
- (d) Determine whether and where an elder or dependant adult should be placed pursuant to the emergency provisions of this code;
- (e) Supervise elder and dependant adult placements made under this code;
- (f) analyze problems and strengths of elder or dependant adult and their support system;
- (g) Make referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable; pursuant to an internally established protocol on the sharing of confidential data;

- (h) Present in Court cases filed under this code;
- (i) Establish a service plan for each person on whom the report has been made to alleviate the identified problems, utilizing client in put wherever appropriate;
- (j) Provide counseling for clients and significant others to alleviate the identified problems and to implement the service plan.
- (k) Make reports and recommendations to the Court in adult protection proceedings;
- (l) Supervise and assist elders and dependant adults pursuant to court orders and service plan;
- (m) Reassess elder or dependant adult's needs, as appropriate
- (n) maintain a current database of all public and private service agencies available to assist victims of abuse or neglect, as defined under this code, and refer victims to the appropriate services or agencies in the event that the Hoopa Valley adult protective services agency cannot resolve the immediate needs of the victim, and/or serve the victim on a long-term, follow up basis; and
- (o) Furnish such other related services as may be directed by the Court.

14C.3.04 VOLUNTARY SERVICES

- (a) The adult protective services worker will have the discretion to offer an elder or dependant adult caretaker voluntary services in lieu of filing an adult protection petition under this code. The voluntary services agreement must be in writing, and must explain the length and nature of the services offered, examples of the actions or inactions that will result in non-compliance with the agreement, and the effect of non-compliance with the agreement.
- (b) Elders or dependant adults may refuse to accept voluntary protective services provided there is good cause to believe that the individual can take care of himself and the elder or dependant adult knows of the services offered.
- (c) Respondents may refuse voluntary services for themselves but cannot refuse services for the elder or dependant adult.

CHAPTER 4 INVESTIGATION OF REPORTS OF ELDER OR DEPENDANT ADULT ABUSE OR NEGLECT

14C.4.01 TIMELINESS OF INVESTIGATION

The elder or dependant adult abuse or neglect report must be investigated within a timely and diligent manner which assures, to the greatest degree possible, the continued safety of the child who is the subject of the report.

14C.4.02 AGENCIES RESPONSIBLE FOR INVESTIGATION

(a) The Division of Human Services, and/or the Hoopa Valley Tribal Police Department, will be responsible for completing investigations of elder or dependant adult abuse or neglect. Where the Division of Human Services requests the assistance of the Hoopa Valley Tribal Police, the Tribal Police render assistance as soon as possible.

(b) Sharing of Reports between Social Services and Law Enforcement

(1) Whenever this section requires an adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to an adult protective services agency, the adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of tribal or federal law.

14C.4.03 INVESTIGATION PROCEDURES

(a) Contact with Elder or Dependant Adult

When an allegation of abuse of an elder or dependent adult is reported to a county designated adult protective service agency and an agency social worker has reason to believe an elder or dependent adult has suffered or is at substantial risk of abuse or neglect, as defined under this code, the social worker shall attempt to obtain consent to enter and meet privately with the elder or dependent adult about whom the report was made in the residence or dwelling in which the elder or dependent adult resides without the presence of the person's caretaker, attendant, or family or household member, unless the person requests the presence of the attendant, care giver, or family member, or refuses to meet with the social worker.

(b) Law Enforcement Warrants

A law enforcement agency may seek a search warrant from a tribal judge to enable a peace officer to have access to, and to inspect, premises if an adult protective services worker has been denied access to the premises by the person or persons in possession of the premises and there is probable cause to believe an elder or dependent adult on those premises is subject to abuse. While executing the search warrant the peace officer may allow an adult protective services worker, or any other appropriate person, to accompany him or her.

(c) Persons with Information

The adult protective services worker shall attempt to interview all persons with information related to the abuse or neglect claims/

14C.4.04 POSSIBLE OUTCOMES OF INVESTIGATION

(a) Substantiated Reports

If, upon completion of investigation, the investigating agency concludes there is probable cause to conclude the abuse or neglect alleged did occur, any of the following may occur:

- (1) The elder or dependant adult may be taken into protective custody if the provisions of chapter 5 below apply; and/or
- (2) The Division of Human Service may file a petition for protection of the elder or dependant adult under chapter 5 of this code; and/or
- (3) The Division of Human Services may file for a protective order under Title 14D of the Hoopa Valley Tribal Code; and/or
- (4) The elder may be offered temporary adult protective service; and/or
- (5) the elder or dependant adult's caretaker may be offered voluntary social services;
- (6) The investigating agency may refer the matter to law enforcement or the Humboldt county District Attorney's office for prosecution.

(b) Unsubstantiated Reports

Where the report is unsubstantiated either of the following may occur:

- (1) the case may be closed; or
- (2) the elder may be offered voluntary adult protective services; and or the elder or dependant adult's caretaker may be offered voluntary social services.

CHAPTER 5 EMERGENCY PLACEMENT OF ENDANGERED ADULTS

14C.5.01 LEGISLATIVE INTENT

- (a) Due to limited resources, and limitations of existing law, authorities are currently unable to intervene in time to prevent victims of abuse and neglect from being seriously injured.
- (b) These limitations have left endangered adults, or elder and dependent adults subject to avoidable pain, suffering, and death, and has resulted in the expenditure of public funds of the treatment of with proper and timely intervention.
- (c) It is the intent of the Hoopa Valley Tribal Council, in enacting this chapter, to enhance the protection of elderly persons and dependent adults by providing a mechanism for temporary emergency protective custody of elderly or dependent adults who are suspected victims of abuse or neglect, and who are found to be in a situation that poses an immediate risk of serious injury or death, and when no other means are available to mitigate the risk to the elderly or dependent adult.

14C.5.02 AUTHORITY TO TAKE INTO PROTECTIVE CUSTODY

- (a) Law enforcement shall have the authority to place an elder or dependant adult into protective custody.
- (b) When an authorized person takes an endangered adult into temporary emergency protective custody or initiates adult protective proceedings, the person shall cause the endangered adult to be transported to a hospital as soon as possible if medical evaluation and any necessary treatment is required.
- (c) Upon taking an endangered adult into custody pursuant to this chapter,

the law enforcement agency taking the endangered adult into custody shall notify:

(1) The endangered person's next of kin, when appropriate.

(2) Adult protective services.

(d) Temporary emergency protective custody under this chapter shall not exceed a period of more than three working days from the date of the placement in protective custody. The court hearing on the matter must occur within three working days of the emergency protective custody placement.

14C.5.02 AUTHORITY TO PLACE

Both law enforcement personnel and adult protective services workers have the authority to locate and place an elder or dependant adult in an emergency placement.

14C.5.03 APPROPRIATE TEMPORARY RESIDENCE

Any elder or dependant adult who, during the investigation of the alleged abuse or neglect, is determined by a Division of Human Services worker to be an endangered adult, as defined under this code, must be immediately placed in one of the following appropriate temporary residences:

(a) A home or dwelling belonging to a member of the endangered adult's family or next of kin, if it would not constitute a risk to the endangered or dependent adult.

(b) An adult residential care facility or residential care facility for the elderly designated by the Tribe as an emergency shelter and that is licensed by the State of California to deal with the needs of elder or dependent adults.

(d) A 24-hour health facility such as a hospital.

14C.5.04 APPROPRIATE TEMPORARY PROTECTIVE SERVICES

Any elder or dependant adult who, during the investigation of the alleged abuse or neglect, is determined by a Division of Human Services worker to be an endangered adult, as defined under this code, must be immediately offered the following appropriate services necessary to ensure that (1) the endangered adult is protected from the immediate risk of serious injury or death due to suspected abuse or neglect, and (2) that the effects of the abuse or neglect are remedied in accordance with the endangered adult's needs. These services may include, but not be limited to, any of the following:

(a) Social services case work and case management, including, but not limited to, evaluations of the endangered adult's functional capacity and community resources.

(b) The development of an appropriate individualized service plan.

(c) Appropriate referral and emergency response services.

(d) Counseling.

(e) Temporary shelter.

(f) Emergency services.

(g) Respite services.

- (h) Alternative housing and housing assistance.
- (i) In-home supportive services.
- (j) Adaptive equipment.
- (k) Transportation.
- (l) Psychology services.
- (m) Other health related services and referrals to legal services and advocate agencies.

14C.5.05 PROTECTIVE ORDER UNDER TITLE 14D

In addition to the other temporary services authorized under this section, the adult protective services worker may file for an emergency protection order under Title 14D restraining the alleged abusive or neglectful individual from whatever acts are deemed appropriate by the facts of the case.

CHAPTER 6 FILING EMERGENCY ADULT PROTECTION PETITION

14C.6.01. AUTHORIZATION FOR PETITION BY THE DIVISION OF HUMAN SERVICES

A caseworker from the Division of Human Services is the only person authorized to file an adult protection petition under this code. A petition may only be filed where the division has received a report of abuse or neglect of an elder or dependant adult, has investigated the report, and reasonably believes that a protective order is necessary to ensure the health, safety, and well being of the elder or dependant adult.

14C.6.02 TIMELINE FOR FILING EMERGENCY PETITION

(a) The Division of Human Services shall initiate an investigation and file a petition for issuance of an emergency protective services order no later than two working days after the elder or dependant adult has been placed into protective custody.

(b) The court shall hold a preliminary hearing no later than the next working day after the filing of the petition, to determine whether there is probable cause for grounds for protective custody.

14C.6.03 NOTICE OF EMERGENCY HEARING

(a) Notice of the filing of a petition for an emergency order shall be given, in language as understandable by the endangered adult as reasonably possible, at least 24 hours prior to the hearing on the petition for emergency intervention.

(b) The court may waive the 24-hour notice requirement on a showing that immediate and reasonably foreseeable physical harm to the person or other persons will result from the 24-hour delay, and reasonable attempts have been made to give notice.

14C.6.04. CONTENTS OF THE PETITION

The adult protection petition must contain the following information:

- (a) The name, address, and interest of the petitioner.

- (b) The name, age, and address of the person in need of protective service.
- (c) The proposed protective services.
- (d) The petitioner's reasonable belief, together with facts supportive thereof, of the existence of those circumstances that warrant the issuance of an emergency order.
- (e) A statement of the petitioner's attempts to obtain the consent of the person for whom the protective services are proposed, and the outcome of those attempts.
- (f) Service of Petition

A copy of the Petition and a summons must be personally served upon the elder or dependant adult named in the petition, and any named respondents. Law enforcement shall be responsible for the service of the petition where the adult protective services worker has concerns for his or her safety based on past interactions with any of the parties to the case.

14C.6.05 HEARING

(a) Evidence to be Considered

All material and relevant evidence which is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value, including hearsay contained in a written investigative report, provided that the preparer of the report is present and available to provide testimony. The parties, including the elder or dependant adult, shall be afforded an opportunity to examine and controvert written reports, and cross-examine individuals whose testimony is presented.

(b) Elder or Dependant Adult Present

The person with respect to whom an emergency order is sought shall be present unless that person knowingly and voluntarily waives the right to be present or due to the person's physical or psychological condition, he or she is unable to be present. Waiver or inability to be present shall not be presumed from that nonappearance of the endangered adult, but shall be determined on the basis of factual information supplied to the court by counsel or a representative appointed by the court.

(c) Right to Cross Examine Witnesses

The endangered adult or his or her representative may present evidence and cross-examine witnesses.

(d) The court shall issue, for the record, a statement of its findings in support of any order for emergency protective services.

(e) The elder, or dependant adult, and all named respondents have the right to independent medical, psychological or psychiatric evaluations at their own expense

14C.6.06 OUTCOME OF EMERGENCY PROTECTION HEARING

(a) No Probable Cause Found

If, as a result of the preliminary hearing, the court determines that probable cause does not exist to continue temporary emergency protective custody, the adult shall be released from temporary protective custody.

(b) Probable Cause Found

If, as a result of the preliminary hearing, the court determines that probable cause continues to exist for temporary emergency protective custody, the court may issue an order authorizing the provision of protective services on an emergency basis to an adult after finding on the record, based on clear and convincing evidence, that all of the following apply:

- (1) The adult is an endangered adult.
- (2) No other appropriate means are available to mitigate the situation that placed the endangered adult at risk of serious bodily harm or death.

14C.6.07 EMERGENCY SERVICES PROTECTIVE ORDER

(a) Grounds for issuance

No emergency protective order may issue under any provision of this code where the elder or dependant adult objects to its issuance, unless there is a finding by clear and convincing evidence that the order is necessary to protect the elder or dependant adult.

(b) Relief Available

In issuing an emergency order under this article, the court shall adhere to all of the following limitations:

- (1) Only those protective services that are necessary to remove the conditions creating the emergency shall be ordered, and the court shall specifically designate the approved services in the emergency order.
- (2) Protective services authorized by an emergency order shall not include hospitalization or a change of residence unless the court specifically finds that action is necessary and gives specific approval for that action in its order.

(3) Duration of Order

Protective services may be provided through an emergency order for no more than 14 days, exclusive of Saturdays, Sundays, and legal holidays pending a hearing for long-term custody.

(4) Temporary Conservator

In its emergency order under this article, the court shall appoint the petitioner, next of kin, or other interested person, as appropriate, as a temporary conservator of the endangered adult.

(A) The court's appointee shall be responsible for the care of the endangered adult.

(B) The court's appointee may, until the expiration of the court's order, give consent for the provision of protective services for the endangered adult, in accordance with the emergency order.

(5) Temporary Guardian of Property

Temporary control of the endangered adult's finances must be specifically assigned to a named individual in the order, and the extent of the financial control must be specifically stated

(6) The issuance of an emergency order and the appointment of a temporary conservator of the endangered adult shall not deprive that endangered adult of any rights except to the extent provided in the order of appointment.

CHAPTER 7 ADULT PROTECTIVE SERVICES ORDER

14C.7.01 PETITION IN NON-EMERGENCY CASES

(a) Timeline for filing of Petition

In cases where the elder or dependant adult is in need of services, but does not appear to be an endangered adult, the adult protective services worker must file a Petition for adult protective services within ten days of the completion of the investigation.

(b) Content of Petition

The adult protection petition must contain the following information:

- (a) The name, address, and interest of the petitioner.
- (b) The name, age, and address of the person in need of protective service.
- (c) The proposed protective services.
- (d) The petitioner's reasonable belief, together with facts supportive thereof, of the existence of those circumstances that warrant the issuance of an adult protective services order.
- (e) A statement of the petitioner's attempts to obtain the consent of the person for whom the protective services are proposed, and the outcome of those attempts.

(c) Service of Petition, Notice of Hearing, and Summons

A copy of the Petition, the notice of hearing and a summons must be personally served upon the elder or dependant adult named in the petition, and any named respondents. Law enforcement shall be responsible for the service of these documents where the adult protective services worker has concerns for his or her safety based on past interactions with any of the parties to the case. These must be served at least five days prior to the hearing date, unless good cause exists to waive this notice period.

14C.7.02 TIMING OF HEARING

(a) Endangered Adult Cases

(1) Within 14 days of the issuance of an emergency protection order, the tribal court must hear all evidence in favor of, and against, the issuance of an adult protective services order.

(2) The court may grant a continuance of hearing for good cause shown for a period not to exceed fourteen days. Any temporary protective placement or services orders will remain in effect until the continued hearing date.

(b) Non-Emergency cases

In cases where there have been no allegations that the elder or dependant adult is an endangered adult, the court must hear all evidence in favor of, and against, the issuance of an adult protective services order within ten days of the filing date of the petition.

14C.7.02 HEARING

The procedures of section 14C.6.05 above shall apply to the adult protective services order hearing.

14C.7.03 ADULT PROTECTIVE SERVICES ORDER

(a) Grounds for issuance

No adult protective services order may issue under any provision of this code where the elder or dependant adult objects to its issuance, unless there is a finding by clear and convincing evidence that the order is necessary to protect the elder or dependant adult.

(b) Relief Available

(1) The adult protective services order shall include the following:

(A) a statement of the factual basis for the finding that an adult protective services order is necessary;

(B) The placement of the elder or dependant adult, if any;

(C) The services to be provided as part of the service plan; if any

(D) The identity of any conservator or guardian appointed for the elder or dependant adult and the extent of that individual's authority;

(E) a statement as to whether or not any protective order has issued under chapter 6 of Title 14D, the Hoopa Valley Protective Order code, and the identity of the restrained individual(s) under that order.

(F) the date of the review order, to be set not more than six months from the current hearing date;

(G) any other provisions necessary to ensure the health and safety of the protected adult.

(2) The adult protective services order may include the following:

(A) A Requirement that any party having a fiduciary duty to the elder or vulnerable adult to account for the elder or vulnerable adult's funds and or property;

(B) An award of compensatory damages to be paid by a the wrongdoer to the elder or vulnerable adult for injuries resulting from the wrongdoer's actions;

(C) A requirement that the wrongdoer pay for the services ordered provided to the protected adult

(c) Whenever the court appoints a conservator or guardian of the person or their property, the order must specifically include the factual basis of the finding that the protected adult cannot care for himself or manage his own money.

(d) Duration of order

The adult protective services order shall state the expiration date of the order. If no expiration date is included the order will expire in six months.

14C.7.04 REVIEW AND EXTENTIONS OF ADULT PROTECTIVE ORDERS

(a) Review Hearings

Review of the need for continued protective orders shall occur at least every 6 months or upon motion of an interested party as accepted by the Court.

(b) Extensions

Extensions may be obtained as many times as necessary if good cause for the extension is shown by a preponderance of the evidence. The elder,

vulnerable adult, interested party or the Court upon its own motion may request a hearing to determine whether an extension of an existing protective order is necessary for the continued health and safety of the elder or vulnerable adult.

CHAPTER 8 FIDUCIARY OBLIGATIONS OF GUARDIANS OR CONSERVATORS

14C.8.01 FIDUCIARY OBLIGATIONS

(a) Requirements for Guardians or Conservators

Anyone appointed a guardian or conservator of the person or property of a protected adult must have the following qualifications:

- (1) A reputation for honesty and trustworthiness within the community;
- (2) A competency in reading comprehension;
- (3) A competency with arithmetic and financial management for conservators or guardians of property;
- (4) the ability to secure a bond in an amount sufficient to cover the value of the property being managed for another, if required.

(b) Fiduciary Obligations

Any individual appointed a conservator or guardian of a protected adult's property shall have a fiduciary relationship with the property. At a minimum, the conservator or guardian must do the following:

- (a) Take the utmost care to preserve the property of the protected adult;
- (b) avoid waste of the property of the protected adult;
- (c) Keep a careful accounting of all transactions involving the protected adult's property or finances, and present the accounting to the court whenever ordered;
- (d) Keep the protected adult's property and finances separate from the guardian or conservator's own property and finances, including no co-mingling of funds;
- (e) Never use the property or finances of the protected adult for the guardian or conservator's personal gain.

14C.8.02 EXPLANATION OF FIDUCIARY OBLIGATIONS

(a) Requirement

The judge must personally explain at hearing the fiduciary obligations to any proposed conservator or guardian of property.

(b) Exception

Where the Division of Human Services is appointed public guardian the judge need not explain fiduciary duties to the adult protective services worker.

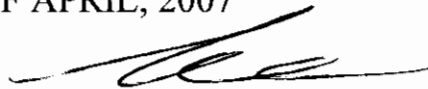
TITLE 14C
ELDER AND DEPENDANT ADULT PROTECTION CODE
OF
THE HOOPA VALLEY TRIBE

Approved by Tribal Council
April 5, 2007
Ordinance No. 01-07

CERTIFICATION

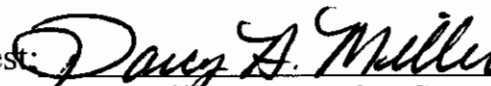
I, the undersigned, as Chairman of the Hoopa Valley Tribal Council so certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which six (6) members were present, constituting a quorum, at a regular meeting thereof; duly and regularly called, noticed, convened, and held this fifth day of April, 2007; and that this ordinance was adopted by a vote of five(5) for, zero (0) opposed, and zero (0) abstaining; and that since approval, this ordinance has not been rescinded, amended, or modified in any form.

DATED THIS FIFTH DAY OF APRIL, 2007



Leonard Masten Jr., Vice-Chairman
Hoopa Valley Tribal Council

Attest:


Darcy Miller, Executive Secretary
Hoopa Valley Tribal Council