

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 48

ADULT PROTECTION CODE

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
10-07-87
Council Adopted
10-07-87

48-01-01 INTENT

Be it enacted by Sisseton-Wahpeton Sioux Tribal Council to prohibit abuse and neglect of disabled adults, to require reporting of all cases of suspected abuse or neglect of disabled adults, to provide for adult protective services and to provide a penalty for substantiated cases of abuse or neglect.

48-02-01 DEFINITION OF TERMS

As used in this Adult Protection Code, the following definitions shall apply:

48-02-02 DISABLED ADULT - is any person who is:

1. incapacitated due to a physical or mental disability (including alcoholism).
2. found to be in a situation or condition whereby he is unable to protect himself from abuse or neglect by others.
3. found to be in a situation or condition in which there is imminent risk of serious harm, or threat of danger, or harm to his emotional or physical health.

48-02-03 ABUSE - is any willful or negligent act by a caretaker, by a family member, by a non-related person, by the disabled person himself, or by a public or private institution, which results in physical injury or pain, causes or threatens imminent risk of serious emotional or physical harm to health, and causes mental anguish or mental injury; it includes sexual abuse, unreasonable confinement, malnutrition, and deprivation of the goods and services necessary to avoid physical harm or mental anguish, to maintain health free of imminent risk of serious emotional or physical health, or to prevent other maltreatment or exploitation.

48-02-04 MENTAL ANGUISH OR INJURY - is willfully subjecting a disabled adult to fear, agitation, confusion, severe depression, or to other forms of serious emotional distress by perpetrating threats, harassment, or other forms of intimidating or manipulative behavior.

48-02-05 NEGLECT - is failure by the caretaker or responsible family member to provide adequate shelter, food, clothing, or medical services to a disabled adult; it includes the disabled adult's own failure to care for himself.

48-02-06 CARETAKER - is an individual, or public or private institution, which has assumed responsibility for the care of the disabled adult, either voluntarily, by contract, by receipt of payment for care, as the result of family relationship or by order of a Court.

48-02-07 EXPLOITATION - is illegal or improper utilization of a disabled adult or their resources for monetary or personal benefit, profit, or gain.

48-02-08 GOODS AND SERVICES NECESSARY TO AVOID PHYSICAL HARM OR MENTAL ANGUISH - includes but is not limited to:

1. The provision of medical care to meet physical and mental health needs.
2. Assistance in personal clothing.
3. Providing adequate shelter with heat, a sanitary environment and ventilation.
4. Protection from health and safety hazards.
5. Protection from malnutrition.
6. Maintaining medical treatment regimens.
7. The transportation necessary to secure these needs.

The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this Code.

48-03-01 ELDER ABUSE PENALTY

Any person or caretaker who is convicted for violation in Section 48-02-01 shall be sentenced to imprisonment for a maximum of eight (8) months in jail and to a fine of not more than one thousand dollars (\$1,000.00), plus Court costs. (Class A Misdemeanor).

48-04-01 SPIRITUAL TREATMENT DOES NOT IN ITSELF CONSTITUTE NEGLECT OR ABUSE

Notwithstanding any other provision of this Code, no caretaker or family member who in good faith is providing treatment to a person solely by spiritual means in accordance with the tenets and practices of an established belief in a Higher Power, through a duly recognized practitioner or healer, shall for that reason alone be considered to have abused or neglected the disabled adult.

48-05-01 ALL PROVIDERS REQUIRED BY LAW TO REPORT SUSPECTED CASES OF ABUSE OR NEGLECT OF DISABLED ADULTS

Any physician, dentist, pharmacist, chiropractor, optometrist, nurse, nursing assistant, community health nurse, health outreach worker, home health aide, homemaker aide, hospital intern or resident, mental health professional, psychologist, counselor, social worker, spiritual healing practitioner, podiatrist, nutritionist, audiologist, nursing home or hospital administrator, parole or probation officer, court prosecutor, law enforcement officer, program manager, veterans service officer, provider of transportation to disabled adults, Elderly Advisory Board member, Human Services Board member, Alcoholism Treatment Board member, clergyman or spiritual leader, or coroner, knowing or having reasonable cause to suspect that a disabled adult is or has been abused or neglected, other than by accidental means, shall report such abuse or neglect to the Tribal Criminal Investigator. The Criminal Investigator shall immediately notify the appropriate social services agency. The report may be oral or in writing and shall contain:

1. The name, age, and address of the disabled adult (if known).
2. The name and address of the caretaker of the disabled adult.
3. The nature and extent of the abuse or neglect.
4. Any other pertinent information known to the person making the report.

48-06-01 PENALTY

Any person who intentionally fails to make a report required by Section 48-05-01 is guilty of a Class One Misdemeanor. Any other person who knows, suspects or has reason to believe that a disabled adult is or has been abused or neglected, other than by accidental means, may make a report as provided by law.

48-07-01 IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY AND PROTECTION FROM HARASSMENT FOR REPORTING OR TESTIFYING

Any person who in good faith makes any report pursuant to this Code, or who testifies in any administrative or judicial proceeding arising from such report, shall be immune from any civil or criminal liability and shall be saved from harassment because of such report or testimony.

48-08-01 INVESTIGATIONS OR OTHER SERVICES CONDUCTED BY THE BUREAU OF INDIAN AFFAIRS SOCIAL SERVICES AND INDIAN HEALTH SERVICES
Upon receiving a report that a disabled adult is abused or neglected, the Tribal Criminal Investigator, in conjunction with the Bureau of Indian Affairs Social Services and/or Indian Health Services, shall make a prompt and thorough investigation to determine if such abuse or neglect exists and whether the disabled adult is in need of and consents to protective services. Services provided shall include:

1. Identification of the disabled adult and determination that he is eligible for services from the Bureau of Indian Affairs Social Services.
2. Assessment of the disabled adult's physical and mental status and needs.
3. Filing a petition for all cases of substantiated abuse or neglect of a disabled adult in the Tribal Court.
4. Assistance in arranging for necessary protective services of abused or neglected adults by:
 - (a) Recommending that the Tribal Court declare them to be Disabled Adults in Need in Supervision and that the Court place them in protective custody.
 - (b) Establishing a system for and then licensing adult foster care and group homes for providing adult protective services.
 - (c) Assistance in identifying, preparing, and arranging for placement of a Disabled Adult in Need of Supervision, according to the placement priority schedule stated in subsection 5 (b).
5. Provision of social casework and counseling shall include but not be limited to:
 - (a) Every effort shall be made to respect, stabilize, support, and sustain the disabled adult within the context of his family and community. In order to effect this, the Bureau of Indian Affairs Social Services and/or Indian Health Social Services shall:
 - (1) Provide a written statement of requirements and expectations to the caretakers who are providing care to the Disabled Adult in Need of Supervision.
 - (2) Monitor care provided to the Disabled Adult in Need of Supervision and communicate to the caretakers immediately and, subsequently, in writing on all deficiencies observed and of steps which must be taken to

correct the problem by modifying behavior in the family, changing the living environment, or otherwise adjusting the household to better address the needs of the disabled adult.

(3) Exhaust all remedies before moving the Disabled Adult in Need of Supervision from his family.

(b) Assistance, when necessary, in locating and arranging for placement in an approved or licensed care facility, in accordance with the following placement priority schedule:

(1) Approved home of a relative who resided on the Reservation.

(2) Approved home of a relative who resides off the Reservation but maintains close social and economic ties.

(3) Licensed adult foster care home of a non-relative who resides on the Reservation.

(4) Licensed or accredited group care, supervised living care, intermediate care, or skilled care facilities located on or near the Reservation.

(5) Licensed home of a relative who resides off the Reservation but does not maintain close social and economic ties with the Reservation.

(6) Licensed or accredited group care, supervised living care, intermediate care or skilled care facilities located off the Reservation.

(c) Assistance in arranging for a protective payee or limited financial guardianship.

6. Coordination and collaboration with other involved agencies to provide for the needs of the disabled adult.

48-09-01 TEMPORARY OR EMERGENCY PROTECTIVE CUSTODY OF DISABLED ADULTS
The Tribal Court shall assume, on behalf of the Sisseton-Wahpeton Sioux Tribe, immediate, temporary protective custody of all disabled adults who consent to it, based upon the filed petition of the investigating agency and clear and convincing evidence that the disabled person is in a life-threatening situation or other situation of serious and immediate danger. This temporary custody shall endure until

the Tribal Court holds a hearing or hearings to determine appropriate measures which must be taken to assure the safety, health, and well-being of the disabled adult.

48-10-01 MANDATORY RESTRAINING ORDER

Whenever the investigating agency or any person determines that a disabled adult is in a life or health-threatening situation or other situation of serious and immediate danger, and upon a Tribal Judge determining that there is clear and convincing evidence that a particular person is the perpetrator, the Tribal Judge shall sign a Restraining Order which orders the alleged perpetrator to immediately vacate the residence of the disabled adult for a period of no longer than five (5) Court days, and which orders the alleged perpetrator to have no contact, either personally, by letter or by telephone, with the disabled adult.

48-10-02 A hearing shall be held within the five (5) days to allow the alleged perpetrator to show cause, if any he has, why the restraining order shall not be extended for one (1) year.

48-11-01 DUE PROCESS OF LAW FOR HEARING CASES INVOLVING ABUSE OR NEGLECT OF DISABLED ADULTS

48-11-02 TESTIMONY - The Tribal Court shall hear testimony from the following persons to determine whether it is necessary for the Sisseton-Wahpeton Sioux Tribe to take the disabled adult into permanent and legal protective custody and care:

1. The disabled person in question.
2. Filer of the petition and/or Bureau of Indian Affairs Social Worker's testimony and recommendations.
3. Family members of the disabled adult shall testify on matters including, but limited to:
 - (a) the nature, quality, or extent of the care they are providing.
 - (b) whether the family wants to provide care.
 - (c) whether the family has the capabilities to take care of the disabled adult.
 - (d) any other considerations relevant to the treatment, neglect, or abuse of the disabled adult.
4. Representatives of the agency or organization furnishing income to the disabled adult shall testify as to:

- (a) what the income of the disabled adult is.
 - (b) whether the representative is aware of how this income is expended or used by the disabled adult.
 - (c) what the recommendations of the agency or organization are regarding the disabled adult.
5. Medical witnesses (including physicians, medical social workers, community health nurses, and other practitioners) shall provide testimony on the medical condition of the disabled adult and shall make recommendations to the Tribal Court regarding the levels of care needed by the disabled adult.
6. The Court also hear testimony and recommendations from involved and concerned service providers, clergy persons, or other witnesses with information relative to the status of the disabled adult.

48-12-01 TRIBAL COURT ACTIONS AFTER INITIAL HEARING

The Tribal Court may exercise one or more of the following actions after the initial hearing.

- 48-12-02 Order further investigation on the status of the Disabled Adult in Need of Supervision and, for this period, extend the temporary protective custody until such time that final determination is made by the Court.
- 48-12-03 Order the release of the Disabled Adult in Need of Supervision to the care and custody of his family for a specified period of time, and during this period order the appropriate social services agency to monitor the status of the disabled adult in the context of his family, to provide social casework and counseling as stated in Section 48-08-01, subsection 5., and to provide a written report to the Court when the hearing is held.
- 48-12-04 Order primary alcoholism or chemical dependency treatment in lieu of protective custody and care; require the participation of the disabled adult's family members in the treatment process (in accordance with the recommendations of the primary treatment agency); and hold a hearing forty-five (45) days after treatment is completed, so as to make a final determination.
- 48-12-05 Arrange for alternate care and supervision until a final hearing can be held to issue a determination on the Disabled Adult in Need of Supervision's status.
- 48-12-06 If the disabled adult does not consent to being placed in protective custody, he must be immediately released to his own custody.

48-13-01 FINAL HEARING

After due consideration to all testimony and evidence furnished in the final hearing, the Tribal Court shall render the decision whether to:

1. Drop the case and order the disabled adult's return to society, without any conditions attached.
2. Declare, upon concluding that there is clear and convincing evidence in support thereof, and that the disabled adult has consented thereto, that the individual is a Disabled Adult in Need of Supervision and,
 - (a) Order and award unconditional custody of the disabled adult to his family members.
 - (b) Order and award custody of the disabled adult to his family under the supervision of the appropriate agency in accordance with Section 48-08-01, 5. (a) of this Code.
 - (c) Order and award custody and care directly to the administrator of a licensed or accredited supervised living care, intermediate care or skilled care facility.

48-14-01 ESTABLISH CENTRAL REGISTRY FOR REPORTS AND CONVICTIONS OF ABUSE AND NEGLECT OF DISABLED ADULTS

The Tribal Court shall establish a central registry for reports of and convictions of abuse or neglect of disabled persons. The information in the central registry shall be confidential and may be released only to the Tribal Prosecutor, a law enforcement agency investigating a report of abuse or neglect of a disabled adult, a Court, a protective service worker of another agency who is investigating a reported incident of abuse or neglect of a disabled adult, public officials who require the information in the discharge of their official duties, or to any agency having the legal responsibility to care for, treat, or supervise a person who is the subject of a report. The information in the central registry may also be released to a state registry, or to a regional or national registry, of abuse and neglect of disabled adults.

48-15-01 CONFIDENTIALITY OF RECORDS

All records, files, and information concerning disabled adult abuse and neglect are confidential, and no disclosure or release of such information shall be made, except to those agencies with the need-to-know, as authorized by Section 48-14-01 of this Code. Any person who knowingly violates the confidential nature of such records, files and information shall be guilty of a Class One Misdemeanor.

48-16-01 CONSENT TO ACCEPT SERVICES OR ARRANGEMENT FOR LIMITED GUARDIANSHIP

The appropriate agencies shall provide no services to an abused or neglected disabled adult without that individual's consent, due to his disability or incompetency, and the caretaker of the disabled adult refuses to provide the service, the Bureau of Indian Affairs Social Services may petition the Tribal Court for limited guardianship under the terms and conditions of Chapter 42, Guardianship, the same as if the disabled adult were incapacitated as defined therein.

48-17-01 CONFIDENTIAL-RELATIONS PRIVILEGE NOT PERMITTED

The confidential-relations privilege between client and provider may not be claimed in any judicial or administrative proceeding involving abuse or neglect of a disabled adult, or resulting from the giving of any report concerning abuse or neglect of a disabled adult.

48-18-01 PROCEDURE FOR LICENSURE OF HOMES TO BE ESTABLISHED AND FOLLOWED

Pursuant to this Code, the Office of the Tribal Secretary shall establish and follow a procedure for licensure of adult foster care and group care homes, supervised living, intermediate care, and skilled care, including standards for licensure and fair and equitable rates to care providers.

48-19-01 CONSENT IN WRITING OR ATTESTED TO

Nothing in this Chapter shall be construed to allow any Court, agency, provider, family member or any individual whatsoever, to provide, order, or force upon, any adult person, any medical treatment or living condition whatsoever, without that person's consent in writing thereto, or without his oral consent witnessed and attested to by two or more adult persons not connected in any way to any court, agency, provider, family member or individual with any interest herein.

48-20-01 DENIAL OF SERVICES PROHIBITED

Nothing in this Chapter shall be construed to allow any agency to deny any services mentioned herein to a disabled adult who does not consent to protective custody.

48-21-01 SEVERABILITY

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

S.W.S.T. CODE
 Amendment
 New Adoption
Judicial Approved
2-04-88
Council Adopted
01-88