

WASHOE TRIBE OF NEVADA AND CALIFORNIA

Proposed Revision to Title 5: Elder Abuse & Vulnerable Adult Abuse Code

Washoe Tribe Law and Order Code, Title 5, Criminal Offenses

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Attached is the draft “Elder and Vulnerable Adult Abuse” code, which is scheduled to be presented for approval at the April 14, 2017 Tribal Council meeting in Woodfords, which will be included in Title 5, Criminal Offenses. Currently, there is no “Elder and Vulnerable Adult Abuse” code in the Washoe Tribe’s Law and Order Code. Along with the Tribal Prosecutor, Chief of Police, Director of the Elders Center, Elders Site Council, Director of Social Services, and Tribal Court Clerk Coordinator, we have developed the following code to ensure that Tribal departments will have the ability to address their relevant duties outlined in the code. I have assured the elders in our communities that this code is top priority as this crime occurs in our communities at an alarming rate. Currently, there is no remedy for the elder that has suffered injustice. The code is a reflection of the Bureau of Indian Affairs model “Elder Abuse” code, and is tailored to the needs of the Washoe Tribe. I have worked with the IT department to publish our law and order code on the Tribal website for our membership to view (under the Tribal Documents tab). I encourage all members of our communities to access the website at: <https://www.washoetribe.us/contents/organization/tribal-documents/law-and-order-code>. Should any Tribal member have any questions or concerns about the proposed amendment, please contact me at: Jeanne.mortimer@washoetribe.us or (775) 265- 7252. Thank you.

5-50-060 OFFENSES AGAINST THE ELDERLY AND VULNERABLE ADULT

5-50-070 Definitions and Terms

When used in this Section 5-50-060, unless the contexts otherwise requires:

1. “Caregiver” is a person who is required by tribal law to provide services or resources to an elder, is a person who has volunteered to provide care or resources to an elder, an institution or agency which voluntarily provides or is required by Tribal law to provide services or resources to an elder; or an employee or any institution or agency that has been retained to provide services or resources to an elder.
2. “Elder” is a person subject to the jurisdiction of the Washoe Tribe who is at least fifty-five (55) years old.
3. “Emergency” is a situation in which an elder is immediately at risk of death or injury and is unable to consent to services which would remove this risk.
4. “Emotional Abuse” is the intentional infliction of threats, humiliation, intimidation, or any other demeaning behavior towards an elder.
5. “Financial Exploitation” is the unauthorized or improper use of funds, property, or other resources of an elder; or the unauthorized or improper use of an elder by a caregiver or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an elder to the elder’s benefit or according to the elder’s desires.
6. “Incapacity” is a legal determination made by a court of competent jurisdiction regarding the current inability (functional inability) of a person to sufficiently understand, make, and communicate responsible decisions about themselves as a result of mental illness, mental deficiency, physical illness, or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.
7. “Neglect” is the wanton, reckless, and grossly negligent:
 - a. Failure of a caregiver to provide for the basic needs of an elder by not supplying resources, services, or supervision necessary to maintain an elder's physical and mental health and includes the inability of an elder to supply such basic needs for himself;
 - b. Interference with the delivery of necessary services and resources;

- c. Failure to report abuse, exploitation or neglect of an elder by any person;
 - d. Failure to provide services or resources essential to the elder's practice of his customs, traditions or religion; or
 - e. Abandonment of an elder.
8. “Physical Abuse” is any intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of an elder (over age 55) or vulnerable adults, with resulting physical harm or pain or mental anguish by any person.
9. “Power of Attorney” is a written document signed by an elder and notarized providing another person with the legal authority to conduct business on behalf of the elder in the name of the elder. There are two main types of power of attorney.
- a. A General Power of Attorney covers all the elder's business activities, including signing papers, title documents, contracts, bank accounts, etc
 - b. A “Special Power of Attorney” grants powers limited to specific areas as set forth in the document.
10. “Retaliation” is threatening of a reporter mandatory or otherwise of elder abuse or the reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated, suspended from employment, or reprimanded by an employer; or damaging the reporter's or the reporter's family's real or personal property in any way.
11. “Substantial Mental Harm” means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of his ability to function within his normal range of performance or behavior.
12. “Sexual Abuse of an Elder ” is any physical contact which is not consented to by the elder intended for sexual gratification or any person making such contact or to abuse, humiliate, or degrade the elder.
13. “Substantiated Report” is when there is probably cause to make a finding of abuse after an investigation has been conducted by a protective or social

services worker. The report is sent to the Tribal Prosecutor's officer for further action.

14. "Vulnerable Adult" is an adult who exceeds the age of 18, and is unable to protect themselves from abuse, neglect, or exploitation. This includes the person who is unable to make responsible decisions for themselves because of mental illness or deficiency, physical disability, or illness, age related capacity issues, or the effects of chronic use of drugs and alcohol.

5-50-080 Elder and Vulnerable Adult Abuse.

Elders (word in Washoe) are an invaluable resource to the Washoe Tribe, and it is the policy to continue the traditional respect that the Washoe Tribe has had for elders. Elders are the custodians of tribal history, language, culture and tradition. Thus, the interests of the Washoe Tribe, now and in the future, are advanced when its Elders can be confident they are protected from abuse, neglect, and exploitation, and are free to fully participate in activities and proceedings of the Washoe Tribe.

1. A person is guilty of elder or vulnerable adult abuse if he intentionally inflicts physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation or the willful deprivation by a caretaker of the basic necessities of life - such as but not limited to food, shelter, clothing, and medical and personal care -which are necessary to avoid physical harm, mental anguish, or mental illness, or any other type of maltreatment. However, no person shall be deemed to be abused for the sole reason they are being furnished nonmedical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment.
2. Criminal elder or vulnerable adult abuse is a Class B offense, and subject to the provisions of Title 4, §4-70-070(1)(b) and Title 4, § 4-70-070(6).
3. Criminal elder or vulnerable adult neglect is a Class C offense, and is subject to the provisions of Title 4, §4-70-070(1)(d) and Title 4, § 4-70-070(6).
3. If a person is found guilty of elder or vulnerable adult abuse or neglect, the Washoe Tribal Court shall also require a length of mental health counseling as a condition of sentencing.

5-50-090 Duty to Report

Any person who has reasonable cause to suspect that an elder has been abused, neglected, self-neglected, or exploited shall immediately report the abuse, neglect, or self-neglect, or exploitation to the Department of Social Services, or any law enforcement officer of the

Washoe Tribe. The following individuals have a special duty in reporting abuse, and are mandated to report any suspected elder abuse:

1. Physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider;
2. Any employee or elected official of the Washoe Tribe;
3. Any elder and adult program services case/social worker, or elder services provider;
4. Psychiatrist, psychologist, or psychological assistant;
5. Licensed or unlicensed marriage, family, or child counselor;
6. Person employed in the mental health profession;
7. Judge, attorney, court counselor, clerk of the court, or other judicial system official.
8. Any person subject to federal reporting requirements under 18 U.S.C. § 1169.

5-50-100 Confidentiality

1. The identity of a person who in good faith reports suspected elder abuse, neglect, self-neglect or exploitation is confidential and shall not be released unless the reporter consents or the Washoe Tribal Court or court of competent jurisdiction, orders the release because it finds, after notice to the reporter and an opportunity to be heard; that the need to protect the elder outweighs the reporter's interest in confidentiality.

5-50-110 Immunity for Reporting

1. A person who in good faith reports suspected abuse or neglect for an elder is immune from any civil or criminal suit based on that person's report.

5-50-120 Failure to Report

1. Any person who is required by this code to report suspected elder abuse and fails to do so is subject to a civil penalty of up to \$2,500 and a term of imprisonment not to exceed six (6) months, or both upon being found guilty of a Class B misdemeanor.

2. Any person who makes a report of suspected elder abuse knowing it to be false maybe subject to a fine not to exceed \$2,500 and a term of imprisonment not to exceed six (6) months, or both upon being found guilty of a Class B misdemeanor.

5-50-130 Reports of Elder Abuse

1. Reports of suspected elder abuse as defined in this code shall be made to the Director of Social Services or any Washoe Tribal Police Officer. The officer taking an oral report shall immediately complete a written incident report, and provide an “Elder Abuse Report” to the Director of Social Service’s on forms provided by Department of Social Services. Unless anonymously made, the incident report should contain the name of the reporter and, if possible, the reporter should sign the report. Anonymous reports shall be investigated as required by this code.

5-50-140 Emergency Protection Order

1. The Washoe Tribal Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon petition by clear and convincing evidence that:
 - a. The elder is at risk for immediate (physical) harm;
 - b. The elder is incapacitated and cannot consent to protective services;
 - c. The person possessing power of attorney for the elder is unavailable, or there is no one authorized by law or court order to give consent on an emergency basis;
 - d. An emergency exists.
2. The Emergency Protection order shall:
 - a. Set out the specific emergency services to be provided to the elder to remove the conditions creating the emergency;
 - b. Provide only those services which will remove the emergency;
 - c. Allow protective placement only if the evidence shows that it is necessary;
 - d. Designate the Department of Social Service’s required to implement the order;

3. The Washoe Tribal Court may authorize forcible entry by law enforcement to enforce the emergency protection order after it has been shown that attempts to gain voluntary access to the elder have failed.
4. The petition for an emergency protection order shall contain the [name/address/location], and interest in the petitioner; the [name/address/location], and condition of the elder; the nature of the emergency; the nature of the elder's incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any to secure the elder's consent to services; and, any other facts the petitioner believes will assist the Washoe Tribal Court.
5. The emergency protection order shall be issued only after notice or attempts to provide notice have been given. The notice accompanied by a copy of the petition shall be given to the elder, the elder's family and caregiver at least [72] hours before a hearing on the petition is scheduled and the [tribal court] has had the opportunity to hear all parties and the evidence. The Tribal Court may waive the waiting period if the emergency is such that the elder will suffer immediate and irreparable harm or reasonable attempts have been made to notify the parties.
6. The Washoe Tribal Court shall hold a hearing on a petition to provide protective services or placement to an elder within [_72_] hours after an emergency protection order is issued.
7. If there is good cause to believe that an emergency exists and that an elder is at risk of immediate and irreparable (physical) harm and, based on personal observation, an [investigator/ law enforcement officer] believes that the elder will be irreparably harmed during the time an emergency protection order is secured, the [investigator/ law enforcement officer] shall immediately protect the elder, including, where necessary, transporting the elder for medical treatment or to an appropriate facility. Immediately after the elder is protected, a petition for an emergency protection order shall be filed and the procedures set out in this section followed.
8. Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on that person's actions.

5-50-150 Written Reports

1. In all cases of elder abuse as defined in this code the officer involved shall make a written report with the tribal court prosecutor, setting forth the reason(s) for his/her decision within [ten (10) days] of the incident.

5-50-160 Reporting Statistics

1. In all cases of elder abuse as defined in this code the officer shall make a written report which will be reviewed by the tribal prosecutor and housed at the tribal court. A quarterly report shall be made by the tribal court and shared with law enforcement, elected tribal officials, and other appropriate tribal employees that includes the number of elder abuse reports, investigations, and arrests. These reports will exclude all identifiable information of individuals involved.

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