

**HANNAHVILLE INDIAN COMMUNITY  
TITLE IV, CHAPTER 4  
ADULT PROTECTION CODE**

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**HANNAHVILLE INDIAN COMMUNITY  
GENERAL CIVIL CODE - FAMILY/DOMESTIC LAW  
TITLE IV, CHAPTER 4  
ADULT PROTECTION CODE**

**4.4.100 Title**

This Code shall be known as the “Hannahville Indian Community Tribal Vulnerable Adult Protection Code.” It may also be cited as the “Adult Protection Code.”

**4.4.101 Policy**

It is the policy of the Hannahville Indian Community to hold its elders and vulnerable adults in high esteem. The elders of our community are custodians of tribal history, culture and traditions, which are vital to Native culture. The community also values and it is the policy to protect those vulnerable adults who have attained the age of 18 years or more and who cannot protect themselves because of mental or physical impairments. This Code shall be liberally construed to effect these policies and purposes. Provided, however, that nothing in this Code shall be construed to mean that a mentally competent, fully informed person is abused, neglected or in need of emergency or protective services solely because he or she constantly relies upon treatment, medical or otherwise, by spiritual means or through prayer for healing in accord with his or her religious tradition. Nor shall a mentally competent person be held to be abused or neglected who, understanding the consequences of his/her decision, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.

**4.4.102 Purpose**

The purpose of this Code is to protect the vulnerable adults within the jurisdiction of the Hannahville Indian Community from abuse or neglect as defined by this Code. The Code shall be construed to achieve this purpose. The Code provides for:

- (1) Reporting abuse or neglect to the proper agency.
- (2) Receiving and investigating reports of abuse or neglect.
- (3) Providing protective services for vulnerable adults.

**4.4.103 Civil Nature of Code**

This Code is civil in nature and does not affect any applicable provisions of the Hannahville Indian Community Criminal Code unless specifically addressed and modified in this Code.

**4.4.104 Jurisdiction**

The Hannahville Indian Community Tribal Court, within the geographic jurisdiction of the court, shall have personal jurisdiction over the following persons:

- (1) All vulnerable adults.
- (2) The household and family members or caretakers of vulnerable adults.
- (3) Any other persons having a duty to provide or providing services, or otherwise having contact with a vulnerable adult.
- (4) Any person causing a vulnerable adult to come within the jurisdiction of the court.
- (5) A non-Indian vulnerable adult who resides or is temporarily found within the jurisdiction of the Hannahville Indian Community and only to the extent necessary to provide for the immediate safety of the person.
  - (a) Waiver. Provided, however, that in appropriate circumstances, a waiver by the Tribal Council may permit the court to continue its jurisdiction under this subsection.
- (6) Jurisdiction is continuing whether or not a person subject to the jurisdiction of the tribal court leaves the physical boundaries of the court's jurisdiction.

#### **4.4.105 Transfer of Jurisdiction**

To give effect to § 4.4.104(5), the court may transfer jurisdiction to an appropriate state or tribal court on its own motion or on the motion of a prosecutor, party, or other interested person.

#### **4.4.106 Definitions**

The following definitions shall apply.

- (1) Abuse is:
  - (a) An intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional or psychological abuse or cruel punishment of a vulnerable person, which results in physical or mental pain or anguish. emotional/psychological abuse includes, but is not limited to, verbal assaults, insults, threats, intimidation, humiliation and harassment. Physical abuse includes but is not limited to such acts of violence as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, burning, the inappropriate use of drugs and physical restraints and force-feeding. Abuse may be inflicted by relatives, acquaintances, caretakers or any person who comes in contact with a vulnerable adult;

- (b) Sexual abuse, which is an un-consented to physical contact with a vulnerable adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation or fraud;
  - (c) Exploitation, which is the improper or unauthorized use of a vulnerable adult's funds, property or other resources, a failure to use a vulnerable adult's funds, property or resources as the vulnerable adult desires, for his/her benefit, or as the abuser has a legal duty to do, including, without limitation, the improper use of conservatorship, guardianship, or power of attorney.
  - (d) Endangerment, means a life threatening situation caused by the inability of the person whose life is threatened to respond to, or to avert the danger.
- (2) Basic Needs include, without limitation, adequate: food, shelter, clothing, medical, mental health or dental care.
- (3) Neglect is:
- (a) A failure to provide for the basic needs of a vulnerable adult by not supplying resources, care or supervision required to provide for these basic needs;
  - (b) Interference with the delivery of necessary physical, emotional and spiritual resources and services;
  - (c) Failure to report, by a person with a duty to report, the abuse of a vulnerable adult. This subsection may be used as the statutory authorization for a civil cause of action pursuant to section 4.4.111 of this Code.
- (4) Self-Neglect or Abuse is: behavior on the part of a vulnerable adult which creates a significant danger to the person's physical or mental health because the person, although responsible for his or her own care, is unable to provide for his or her own basic needs. This definition excludes a situation in which a mentally competent person, who understands the consequences of his/her decision, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.
- (5) Elder is: a person who has become at least 55 years of age or older.
- (6) Vulnerable Adult is: a person who has become at least 18 years of age or older who is unable to protect him or herself from abuse, neglect or exploitation, including self-abuse or neglect. A vulnerable adult includes a person who because of age, physical handicap, developmental or other physical or mental disability, including chronic use of alcohol or drugs, requires personal care or lacks the personal and social skills required to live independently.
- (7) Caretaker is:

- (a) A person who is required by applicable state, federal or tribal law to provide services or resources to a vulnerable adult;
  - (b) A person who volunteers to provide services or resources to a vulnerable adult;
  - (c) An institution or agency and its employees who are required by applicable state, federal or tribal law, by operation of law, or by agreement to provide services or resources to a vulnerable adult.
- (8) Emergency is: a situation in which a vulnerable adult is immediately at risk of death or serious injury and is unable to consent to services to remove the risk or is unable to appreciate the risk of death or injury.
- (9) Family is: as determined by tribal law, tradition or custom.
- (10) Good Faith is: an honest and reasonable belief or purpose and the lack of an intent to commit fraud.
- (11) Household Member is: any person who resides with the vulnerable adult whether on a permanent or temporary basis.
- (12) Last Restrictive Alternative is: that environment which is most like the vulnerable adult's residence and which is most capable of supporting the protected person's physical and mental health and emotional well-being and basic needs.
- (13) Protective Placement is: the placement of a vulnerable adult in a hospital, nursing home, residential care facility, other suitable placement, or transfer from one facility to another either with the consent of the person protected or as directed by appropriate legal authority.
- (14) Protective Services are: services provided to a vulnerable adult with the consent of the protected person or by order of appropriate legal authority which includes, without limitation: social services; mental and physical examinations; medical, vocational and educational evaluation and review; home and day care; legal assistance; guardianship; case management; and any other services rendered to assure the best interests of the vulnerable adult and the adult's basic needs.
- (15) Retaliation is: intimidation, threat of injury or other harm to a person or property, or the causing of injury or other harm to persons or property of a person who reports or has reported the abuse or neglect of a vulnerable adult.
- (16) Substantiated Report is: when, after an investigation, a protective or social services worker finds that reasonable cause exists to believe that neglect or abuse has occurred or is occurring to a vulnerable adult.

- (17) Unsubstantiated Report is: when, after an investigation, a protective or social services worker finds that reasonable cause does not exist to believe that neglect or abuse has occurred or is occurring a vulnerable adult.

#### **4.4.107 Adult Welfare Committee; Creation**

There is created the Adult Welfare Committee for the purpose of protecting the best interests of the vulnerable adults of the Hannahville Indian Community who are at risk because of abuse, neglect or exploitation.

- (1) Membership. The Adult Welfare Committee shall consist of 5 adult tribal members and 2 adult tribal member alternates selected for staggered terms at regularly scheduled tribal elections. A simple majority of three members, including alternates, shall constitute a quorum.
- (a) The Adult Welfare Committee members and the Child Welfare Committee members shall be the same and shall be known together as the Adult/Child Welfare Committee.
- (2) Authority. The Adult Welfare Committee shall have only the authority, which is expressly delegated to it by the tribal council. Committee members are not investigators and shall not independently gather information regarding the matter under review. The Committee may, however, request that further information be provided or that further investigation be conducted by the social services department or other appropriate authority. The duties of the Adult Welfare Committee are the following:
- (a) Make case management recommendations to the tribal social services workers, placement agency workers, tribal attorneys, tribal prosecutors and defense attorneys and the court regarding the care, supervision and guardianship of vulnerable adults under court jurisdiction.
- (b) Assist in the accessing of culturally relevant spiritual and other services, as requested by case managers, the court, or other persons responsible for the care of vulnerable adults who are protected persons under this Code.
- (3) Conflicts of Interest.
- (a) Adult Welfare Committee members shall not participate as committee members in matters involving members of their immediate family or members of their own household. “Immediate family” is defined to include parents, grandparents, children, grandchildren, spouse, brothers and sisters. A “household member” is any individual who is not otherwise an immediate family member but who resides, or resided in the same household as the committee member when the matters which are being reviewed took place.

- (b) A member who is disqualified from participation in the committee discussion and voting in a particular case under the preceding paragraph shall excuse himself or herself from the meeting room during the discussion and voting in such cases. However, the committee member shall be entitled to participate in the Adult Protection Team meeting in which the case is reviewed and discussed.
- (4) Confidentiality.
- (a) Meetings of the Adult Welfare Committee shall be closed to the public except for persons requested to attend by the committee. Care shall be taken to ensure that confidentiality of case information is maintained in respect to all persons in attendance.
  - (b) The committee shall hold to the same standards of confidentiality as other court personnel, the department of social services and other professionals working in health care fields. If committee members are contacted outside of a formal meeting by an interested party he or she shall refer the party to the caseworker, social worker, or court, as appropriate.
- (5) Committee Policies and Procedures. The Adult Welfare Committee is authorized and directed to adopt such policies and procedures as it deems necessary and appropriate to carry out its duties as set forth in this Code. All policies and procedures must be reduced to writing and must be adopted by the affirmative vote of 4 regular committee members. Before the policy or procedure so adopted shall become effective, it must be submitted to the tribal council for approval.

#### **4.4.108 Adult Protection Team**

There is created an Adult Protection Team for the purpose of protecting the best interests of the vulnerable adults of the Hannahville Indian Community who are at risk because of abuse or neglect. The Adult Protection Team is technical and advisory in nature and is not intended to replace the authority of individual agencies or the court.

- (1) Membership. The Adult Protection Team shall, at a minimum, consist of the Hannahville Indian Community Department of Social Services, the Indian Outreach Worker, the Community Health Representative(s), a representative of the Adult Welfare Committee, two representatives selected by the elders of the Community who shall themselves be elders; the tribal Prosecuting Attorney, a member of the court staff, Hannahville Law Enforcement and the Victim's of Crime office. Other medical, mental health, social workers and staff of other local agencies shall be consulted as necessary to assure the best decision making, recommendations and case management for each individual case.
- (2) Authority. The Adult Protection Team shall:

- (a) Monitor, review and track all substantiated vulnerable adult abuse or neglect cases whether or not under court jurisdiction, making recommendations to agencies, workers and the court, as appropriate, which are in accord with the purposes of this Code. Team members shall perform investigative functions as requested by the team.
  - (b) Identify available tribal and state resources, programs and services to assure that the protected adult will receive the best available services.
  - (c) Provide education to communities about vulnerable adult abuse and neglect problems and solutions.
  - (d) Assist in the development and implementation of plans to promote the long term well-being of vulnerable adults and their family and household members.
- (3) Conflicts of Interest.
- (a) Any team member who has an economic or other beneficial interest in the outcome of the case must immediately disclose such interest and shall be restrained from further participation in the discussion unless specifically requested to participate by the team.
  - (b) Any person who is the subject of an investigation or court proceeding under this Code or who is the alleged perpetrator of vulnerable adult abuse or neglect shall not participate in the discussion unless specifically requested to participate by the team.
- (4) Confidentiality.
- (a) Meetings of the Adult Protection Team shall be closed to the public except for persons requested to attend by the team. Care shall be taken to ensure that confidentiality of case information is maintained in respect to all persons in attendance.
  - (b) The team shall hold to the same standards of confidentiality as other court personnel, the department of social services and other professionals working in health care fields. If team members are contacted, outside of a formal meeting, by an interested party who is not a member of the team he or she shall refer the party to the caseworker, social worker, or court, as appropriate. Team members shall not, however, be restrained under this part from communicating with each other in the reasonable pursuit of their employment.
- (5) Team Policies and Procedures. The Adult Protection Team is authorized and directed to adopt such policies and procedures as it deems necessary and appropriate to carry out its duties as set forth in this Code. All policies and procedures must be reduced to writing and must be adopted by the affirmative vote of a majority of team members. Before the

policy or procedure so adopted shall become effective, it must be submitted to the tribal council for approval.

#### **4.4.109 Duty to Report Neglect or Abuse of a Vulnerable Adult**

Suspected or actual abuse or neglect of a vulnerable adult shall be reported to the Hannahville Indian Community Department of Social Services or, in the absence or unavailability of social services personnel, to a law enforcement officer by the following mandatory reporters:

- (1) The vulnerable adult's adult or emancipated adult household or family members or caretaker.
- (2) Elected officials of the Hannahville Indian Community.
- (3) All members of the Adult Protection Committee and Adult Protection Team, tribal social workers; medical, dental and mental health caregivers and supporting staff; religious practitioners and spiritual leaders; educators; and any other persons, including, without limitation, independent contractors and volunteers who provide services to vulnerable adults.

#### **4.4.110 Immunity for Reporting**

Reports of suspected or actual vulnerable adult abuse or neglect are presumed to be made in good faith. A person who in good faith reports the actual or suspected abuse or neglect of a vulnerable adult is immune from any civil or criminal action based upon that person's report even if the report is found to be unsubstantiated after an investigation or court proceeding.

#### **4.4.111 Failure to Report; Civil Penalty; Damages; Criminal Liability**

A person who is required to report the suspected or actual abuse or neglect of a vulnerable adult and who fails to report may be subject to a civil penalty of up to \$500 per occurrence, plus costs. Fines may be assessed only after an opportunity to have a hearing and a finding by the court that the person to be assessed had a duty to report and intentionally failed to report. A person having a duty to report suspected or actual abuse or neglect of a vulnerable adult may be subject to suit by or on behalf of abused persons for damages resulting from unreported abuse or neglect. Criminal charges may also be brought as provided in the Hannahville Indian Community Criminal Code.

#### **4.4.112 Bad Faith Reports; Civil Penalty; Damages; Criminal Liability**

Any person who makes a report of actual or suspected abuse or neglect under this Code, knowing it to be false, shall be subject to a civil penalty of up to \$500, plus costs. A person accused of knowingly making a false report under this section is entitled to notice and an opportunity for a hearing on the issue of knowingly making a false report. A person knowingly making a false report of actual or suspected abuse or neglect of a vulnerable adult may also be subject to a civil suit for damages brought by persons damaged by the knowing false report.

Criminal charges may also be brought as provided in the Hannahville Indian Community Criminal Code.

**4.4.113 Confidential Identity of Reporters, Records, Hearings and Proceedings; Penalties for Noncompliance**

- (1) The identity of a person who reports the actual or suspected abuse or neglect of a vulnerable adult is confidential and shall not be released without the consent of the reporter or by order of the court. The person reporting shall have the opportunity to petition the court and be heard at a closed hearing in regard to any such disclosure. In considering the release of the identity of the reporter the court shall weigh the need for the disclosure against the privacy right of the reporter and shall order such disclosure only to the extent needed to protect the vulnerable adult.
- (2) Records of investigations, case management, committee meetings or tribal court hearings relating to the abuse or neglect of a vulnerable adult are confidential and may be discovered or accessed only by those persons directly involved with the case who have a need to know in order to assure the protective care of the vulnerable adult. The release of the identity of the person reporting the abuse or neglect shall be made as a separate determination and reports which are filed with the court or otherwise distributed, including to committee and team members, shall be modified to keep the identity of the reporter confidential.
- (3) Court proceedings and hearings shall be closed and confidential. Only parties and persons determined to be necessary to the proceedings shall be given notice to be in attendance. Unless directed otherwise by order of the court, persons in attendance at court proceedings shall keep confidential all aspects of the proceedings except as necessary to permit those persons charged with the administration of the case to perform their respective job duties.
- (4) Any person who breaches the confidentiality imposed by this section of the Code may be subject to fine of up to \$500 per occurrence, plus costs. Petition, notice and an opportunity for hearing before the court will determine whether a violation has occurred. This subsection does not prohibit any administrative action which an employer or board determines is necessary in response to such a breach. Nothing in this provision shall preclude separate contempt of court proceedings, if applicable.

**4.4.114 Investigation**

- (1) Upon receipt of a report of suspected or actual vulnerable adult abuse or neglect, the social services department and law enforcement shall consult and cooperate in investigating the alleged abuse or neglect.
  - (a) The Hannahville Department of Social Services shall investigate the reported abuse or neglect within 72 hours and shall prepare a written report within 10 days which should include information based upon:

- [1] Personal interviews with the abused or neglected individual, the immediate family, suspected perpetrator(s), employees of agencies currently rendering services to the vulnerable adult and any other person who may have relevant information.
    - [a] The investigation shall, if at all possible, include an interview with the adult. The investigating worker shall conduct the interview by means of a personal visit with the adult in the adult's place of residence or in any other setting which will assure that the adult is free from coercion on the part of any potentially interested parties; by telephone conversation; or by any other means that may be available to the investigating agency. In attempting to conduct a personal visit with the adult in the adult's residence, if admission to the adult's residence is denied the investigating agency may seek and obtain a search warrant.
  - [2] Medical, psychological, social, vocational and educational evaluation and review including records and other evidence of current or past abuse or neglect which are legally available to the investigator(s) and are legally capable of disclosure.
  - [3] Assessments of the vulnerable adult's living conditions using tribal health standards for housing.
  - [4] Any other observations, assessments, or documentary evidence which may aid in completing an accurate report.
- (b) The written report shall contain:
- [1] The vulnerable person's name, date of birth if available, and residence or location and telephone number;
  - [2] If available, the name, address, location and telephone number(s) of the person(s) or agency alleged to be the cause of the actual or suspected abuse or neglect;
  - [3] Observations of the physical and mental condition of the abused or neglected person;
  - [4] Names of witnesses and sufficient information to effect the subpoena power of the court over them;
  - [5] Name(s), address(es) or location(s) and telephone number(s) of caretakers;
  - [6] A description of the act(s) which constitute the actual or suspected abuse or neglect;

[7] Any other information legally available and legally capable of being disclosed which would be helpful in establishing abuse or neglect, including any past instances of related abuse or neglect.

**4.4.115 Interference with Investigation and Retaliation Prohibited; Civil Penalty**

- (1) A person shall not interfere with a lawful investigation of suspected or actual vulnerable adult abuse or neglect.
- (2) A person shall not retaliate by any means against a person, including his or her family or household members, who has made a good faith report of suspected or actual abuse or neglect or who cooperates with an investigation of suspected or actual vulnerable adult abuse or neglect.
- (3) A person who violates either of the preceding paragraphs of this section shall be enjoined from such activity and shall be subject to a civil penalty of up to \$500, upon notice and an opportunity for hearing and upon a finding of responsibility by the court. The person may also be subject to criminal prosecution as provided by the Hannahville Indian Community Criminal Code.
- (4) In addition to any penalties which may be available under other applicable provisions of law, any person who interferes with an investigation of suspected or actual abuse or neglect of a vulnerable adult or who retaliates against anyone, including his or her family members, reporting or cooperating in an investigation of suspected or actual abuse or neglect of a vulnerable adult shall be subject to a civil suit by or on behalf of anyone injured by the interference or retaliation.

**4.4.116 Privileged Communications**

In proceedings under this Code there are no relevant communications which are privileged except those of attorney-client. Privilege shall not be used as a defense to exclude evidence nor to excuse the failure to make a required report of suspected or actual vulnerable adult abuse or neglect. Issues of relevancy may be determined by the court in confidential proceedings in camera.

**4.4.117 Criminal Investigations Concurrent**

Criminal investigations and other proceedings may run concurrently with investigations and proceedings pursuant to this Code. A dismissal or acquittal under the criminal law shall in no way effect proceedings under this Code.

**4.4.118 Voluntary and Involuntary Services; Authority to Remove; Placement; Preferences; Notices;**

- (1) Voluntary Services. When requested or agreed to by an abused or neglected vulnerable adult, protective, emergency and other social, medical or psychological services sufficient to assure the adult's best interests and basic needs may be supplied to the adult by the Hannahville Indian Community department of social services and any other agencies able to provide such services.
  - (a) It is not necessary that these services be supplied pursuant to a court proceeding and consent to services may be withdrawn by a mentally competent adult at any time, at which time services shall cease, unless the vulnerable adult has voluntarily requested court supervised services and the court has found, upon clear and convincing evidence that there is a need for such services.
  - (b) Voluntary protective services are subject to available appropriations and resources as determined by the affected agencies and the requesting adult's ability to pay for services to be received.
  - (c) The vulnerable adult, family and/or caretaker shall be informed of the right to refuse voluntary services, including the right to a court determination of the need for protective services on an involuntary basis.
- (2) Involuntary Services.
  - (a) Removal; Authority to Remove.

[1] Emergency Removal without a Court Order. When a social services worker or law enforcement officer has reasonable cause to believe that an emergency exists, as defined in this Code, a social services or law enforcement officer may remove a vulnerable adult from any place and from the presence of any persons contributing or reasonably suspected of contributing to the emergency situation or may take such other action to secure the immediate safety of the vulnerable adult including the removal of any persons contributing to or reasonably suspected of contributing to the emergency. Insofar as possible such removals of vulnerable adults shall be made with notice to and the recommendation of the Adult Welfare Committee and Adult Protection Team in accord with protocols and procedures developed by these bodies as authorized pursuant to this Code. *Provided, however, that the removal of the vulnerable adult shall be the last choice to be exercised and if the vulnerable adult can be reasonably made safe by the removal of persons causing or reasonably suspected to be responsible for the abuse or neglect of the protected adult or by the addition of protective services in the home of the protected adult, then the vulnerable adult shall not be removed.*

- [a] Actual notice to the court shall be made by the person or agency responsible for the removal of the vulnerable adult no later than 3:00 p.m. on the next court working day, at which time a petition shall be filed

requesting continued removal or other appropriate relief or the vulnerable adult shall be returned to his or her residence.

- [b] The person or agency responsible for the removal of the vulnerable adult shall make all reasonable attempts to notify family and household members and/or caretakers within 12 hours of the removal.
- [c] The court shall hold a preliminary hearing not later than 72 hours after any removal. The hearing may be conducted by telephone but shall be on the record and the court shall make specific findings in regard to the allegations and evidence which constitute reasonable cause to believe that the alleged abuse, neglect, or emergency situation exists or did exist. In any event, and except for good cause, an adjudication hearing shall be held not more than 45 days from the filing of the petition.
- [d] Subject to the waiver provision of § 4.4.104(5)(a) of this Code, if the vulnerable adult is not a resident and tribal member of the Hannahville Indian Community, the agency, tribe, state or court capable of exercising care or jurisdiction over the vulnerable adult shall be notified of the removal as soon as reasonably possible.

[2] Removal with a Court Order. The tribal court may issue an ex parte protective or investigative order upon reasonable cause to believe that abuse or neglect, an emergency or other need for involuntary protective services exists.

- [a] The protective order shall:
  - i. Set out the specific emergency services to be provided to remove the emergency.
  - ii. Allow protective placement only if the evidence indicates that it is clearly necessary and provide that the least restrictive placement shall be made.
  - iii. Designate the agency or agencies required to implement the order.
  - iv. Clearly identify the persons who are subject to the order.
  - v. If ex parte and there has been a removal, provide for a preliminary hearing date which is not later than 72 hours after the removal. The hearing may be conducted by telephone but shall be on the record and the court shall make specific findings in regard to the allegations and evidence which constitute reasonable cause to believe that the alleged abuse, neglect or emergency situation exists or did exist. In any event and except for good cause, an adjudication hearing shall be held not more than 45 days from the filing of the petition.

- vi. Provide that the person or agency responsible for the removal of the vulnerable adult shall make all reasonable attempts to notify family and household members and/or caretakers within 12 hours of the removal.
- vii. Subject to the waiver provision of subsection 4.504(5)[a] of this Code, if the vulnerable adult is not a resident and tribal member of the Hannahville Indian Community, the agency, tribe, state or court capable of exercising care or jurisdiction over the vulnerable adult shall be notified of the removal as soon as reasonably possible.
- viii. Specify the length of time the order is to be in effect.
- ix. Provide for the payment of the costs of protective services by any person who may be held legally responsible to the vulnerable adult whether by way of legal relationship or perpetration by act or omission of the adult's need for protective services.
- x. Provide for any other services necessary to protect the vulnerable adult, including, without limitation, the appointment of a payee or a guardian of the person or the person's estate and the removal of any person from the vulnerable adult's residence of any person responsible for or contributing to the abuse, neglect or emergency situation of the adult.

#### **4.4.119 Petition; Authorization to File; Contents**

A protective petition alleging the need for protective services for a vulnerable adult may be filed by any person. The prosecuting attorney or tribal attorney shall file the petition on behalf of the tribe. The contents of the petition shall be verified and shall include, if known, at a minimum, the following:

- (1) The name or other information sufficient to reasonably identify the vulnerable adult; the address, or other location of the person alleged to be abused, neglected, or subject to an emergency situation;
- (2) The basis for the court's jurisdiction, including tribal affiliation;
- (3) The acts alleged to constitute clear and convincing evidence of the abuse, neglect or emergency situation and when they are alleged to be occurring or have occurred as well as any attempts to secure voluntary compliance with services in order to avoid the need for petition;
- (4) Sufficient information to reasonably identify the suspected perpetrator of the abuse, neglect or emergency situation;

- (5) The names and addresses of the vulnerable adult's caregiver or legally responsible person or agency and the names of family or household members residing with the elder or vulnerable adult;
- (6) Any other information which will tend to show the reason for the proceeding.
- (7) The relief being requested.
- (8) The date of filing.

#### **4.4.120 Mental Illness Petitions; Prohibition**

A commitment to a mental health facility shall not be effected under this Code. However, in appropriate circumstance and to appropriately assess the mental health of a vulnerable adult as it relates to the abuse or neglect which is alleged to have occurred or be occurring, the Court may order such mental health evaluations of the vulnerable adult, alleged perpetrator or other interested person as it deems necessary in order to effectuate the provisions of this Code.

#### **4.4.121 Preliminary Hearing**

- (1) If a vulnerable adult has been involuntarily removed pursuant to this Code, the court must hold a preliminary hearing within 72 hours of the removal or must return the protected adult to his or her place of residence. The hearing may be conducted by telephone but shall be on the record and the court shall make specific findings in regard to the allegations and evidence which constitute reasonable cause to believe that the alleged abuse, neglect or emergency situation exists or did exist. Reliable hearsay evidence based on information and belief may be taken at the preliminary hearing. In any event and except for good cause, an adjudication hearing shall be held not more than 45 days from the filing of the petition.
- (2) Unless waived, the court shall read the petition on the record and shall advise the vulnerable adult and any alleged perpetrators of the abuse or neglect of the right to have counsel represent him or her at all stages of the proceeding and of the right to remain silent. After advising the involved persons of the right to remain silent the court shall provide them with the opportunity to deny or admit the allegations of the petition.
- (3) Upon a finding of reasonable cause to believe that abuse or neglect of a vulnerable adult has occurred or is occurring, the court shall enter such orders as are necessary to protect the vulnerable adult, including, without limitation, physical, mental or psychological examinations of the protected adult and any involved persons.
- (4) If reasonable cause is not found to believe that the protected adult is abused nor neglected, the petition shall be dismissed.

#### **4.4.122 Adjudication.**

- (1) Time. The adjudication hearing shall begin as soon as possible but, except for good cause, not later than 45 days after the petition is filed with the court. Trial shall be by the court. Good cause shall include, without limitation, the following:
  - (a) Stipulation of the parties.
  - (b) Incomplete service of process after diligent effort has been made.
  - (c) The court finds that necessary material testimony of a presently unavailable witness is needed.
- (2) Evidence. All relevant and material evidence which is reliable and trustworthy may be admitted at the trial.
  - (a) Portions of the trial may occur by teleconference or other electronic device which will permit all those appearing or participating to hear and to speak to each other.
  - (b) All parties shall be given the opportunity to present relevant testimony and to cross-examine witnesses presenting testimony to the court.
- (3) Standard of Proof. The allegations of the petition must be sustained by clear and convincing evidence.
  - (a) If the allegations of the petition are sustained by clear and convincing evidence the court shall enter such orders as are reasonably necessary, in the best interest of the protected adult, to provide for the vulnerable adult's health, safety, and mental and spiritual well-being.
  - (b) If the allegations of the petition are not sustained, the petition shall be dismissed.

#### **4.4.123 Review Hearings**

Review of the need for continued protective orders, including placement orders pursuant to this Code, shall occur every 90 days or at earlier intervals at the written request of a party or other interested person. Provided, however, that in cases where the circumstances giving rise to the case have continued for a year or more and are not reasonably likely to improve, as determined by the court, the court may review the case at 18 month intervals.

#### **4.4.124 Sovereignty; Prohibition of Waiver**

Nothing in this Code shall be construed as a waiver of the Hannahville Indian Community's sovereign immunity or to authorize a cause of action against the tribe nor to obligate the tribe to pay any expenses of a cause of action brought pursuant to this Code unless the tribe specifically so authorizes by tribal council resolution and budgetary authorization.

**4.4.125 Immediate Effect**

This Code is enacted for immediate effect. If any provision, clause or section of this Code shall be held to be invalid the remainder shall remain in full force and effect.

**Enacted on March 15, 2001, by a vote of 8 for, 0 against, 0 abstaining.**