

# TITLE 13 - FAMILY

## CHAPTER 8 VULNERABLE ADULT PROTECTION ACT

### **Section 8-01. Purpose**

This Act establishes protections from abuse, neglect, and exploitation for the Vulnerable Adults of the Sac and Fox Nation. The Nation recognizes that the Elders of the Nation possess irreplaceable stores of knowledge, skill, and experience that enhance and enrich the lives of the entire Nation. Unfortunately, Elders, along with children, are the most vulnerable to abuse by those who interact with them. Elders, though, are not the only adults vulnerable to mistreatment. Adults that suffer from physical or mental disability, incapacity, other disability, or are substantially impaired whether from age, disease, alcohol, substance abuse, or psychological problems all deserve to lead a life of safety and respect.

The dignity, self-reliance and rights of the Nation's Elders and Vulnerable Adults must be respected by family members, the Tribal community, employees of the Nation and all people who are part of or inter-act with the Nation and its Vulnerable Adults and Elders. Through this Act the Sac and Fox Nation recognizes that Vulnerable Adult abuse is not a private matter when the well-being and safety of the Adult is endangered. The Nation establishes these services and assures their availability to all Sac and Fox Adults when in need of them and will take prompt action upon receipt of a report of suspected cases of the abuse, neglect or self-neglect, or exploitation of a Vulnerable Adult or Elder

### **Section 8-02. Scope**

This Act supplements the protections afforded to all Tribal members in the Nation's *Domestic Abuse Act*, Sac Fox Code, Title 13 - Chapter 9. The provisions of this Act shall control in event of conflicting procedures in the Nation's *Domestic Abuse Act* and shall be liberally construed to effect the purpose stated above. This Act shall be interpreted to comport with the customs and traditions of the Sac and Fox Nation.

### **Section 8-03. Definitions**

Terms used in this Act have the following meaning -

(a) "Attorney General" means the Sac and Fox Nation Attorney General or the Attorney General's assistant or designee.

(b) "Abuse" means one or more of the following:

(1) The intentional or negligent infliction of bodily harm, unreasonable

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confinement, or intimidation causing mental anguish by any person, including a person having a special relationship with the Vulnerable Adult, e.g., a spouse, child, or other relative, or a caretaker.

(2) The intentional or negligent infliction of emotional or mental anguish or injury on a Vulnerable Adult, or sexual abuse or exploitation of a Vulnerable Adult.

(3) The infliction of emotional harm to an Elder by unreasonably denying or restraining Grandparent Rights recognized by Sac and Fox law or custom.

(4) Attempting to cause or causing physical harm, bodily injury, or assault on the Vulnerable Adult's family or caretaker because of the Vulnerable Adult.

(5) The deprivation by a caretaker or other person providing services to a vulnerable adult of nutrition, clothing, shelter, health care, or other care or services without which physical or mental injury is likely to occur to a Vulnerable Adult.

(6) Verbal abuse through the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person in a like condition to the Vulnerable Adult to experience humiliation, intimidation, fear, shame or degradation.

(c) "Advocate" means an employee of the Nation designated to provide oversight of Vulnerable Adult abuse prevention and intervention programs and to ensure Vulnerable Adults have access to and benefit of protective services.

(d) "Caretaker" means any of the following.

(1) A person who is required by Tribal law or custom or state law to provide services or resources to a Vulnerable Adult.

(2) A person who voluntarily undertakes to provide care, services, or resources to a Vulnerable Adult.

(3) An institution or agency which voluntarily or is required by Tribal, state, federal law or contract to provide services or resources to a Vulnerable Adult.

(4) An employee of any institution or agency specified in paragraph (3), above.

(e) "Court" means the Sac and Fox Nation Court.

(f) "Department" means the Sac and Fox Nation Department or Agency responsible for

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Vulnerable Adult services.

(e) Reserved.

(f) “Emergency” means any situation in which a Vulnerable Adult is immediately at risk of injury or death.

(g) “Exploitation” means any of the following:

(1) The improper use of funds, property, or other resources of a Vulnerable Adult;

(2) The improper use of a Vulnerable Adult by any person for personal gain or profit of someone other than the Vulnerable Adult;

through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense, or

(3) The failure or refusal to use the funds, property, or other resources of a Vulnerable Adult either for the Vulnerable Adult’s benefit or according to the Vulnerable Adult’s reasonable desires.

(h) “Family” means all of the customary family relationships recognized by the Nation, including extended family relationships. When this Act requires notice to family, it includes not only the next of kin, but to the extent possible a minimum of three family members to be notified. If family of the Vulnerable Adult are within the reservation boundaries of the Nation they should be notified if possible. Family notification should strive to include a representative sample of a Vulnerable Adult’s relations including, if such exists, a spouse, children, adult grand-children, siblings and other customary or traditional relations. This Act recognizes that Family also has a duty as it relates to a Family Elder. Inclusion of family in this Act is not for purposes of guaranteeing the Nation notices all family members as to all aspects of a proceeding but that by informing at least three or more family members a reasonable likelihood exists that all concerned family members will become aware of the proceedings.

(i) “Grandparents’ Rights” means the rights of a child’s grandparents to have a role in a child’s life at all stages of development according to Sac and Fox custom.

(j) “Incapacity” or “Incapable” means

(1) the inability of a person to sufficiently understand, make, or communicate responsible decisions about him or herself and to understand the consequences of any such decision as a result of physical illness or disability, mental illness, deficiency or disability, or chronic use of drugs or alcohol, or

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(2) that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others, or

(3) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Sac and Fox Guardianship and Conservatorship Act, Title 13 Chapter 5, or a similar tribal or state law.

Incapacity may vary in degree and duration and shall not be determined on the basis of age without a showing of organic brain damage caused by advanced age or other physical degeneration to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her care or custody.

(k) “Least Restrictive Alternative” means an approach which allows a Vulnerable Adult independence and freedom from intrusion consistent with the Vulnerable Adult’s needs by requiring that the least disruptive method of intervention be used when intervention is necessary to protect the Vulnerable Adult from harm.

(l) “Neglect” means any of the following:

(1) repeated instances by a guardian, family member, caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

(A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,

(B) refusing to pay for necessities or utilities in a timely manner, or

(C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources;

(2) The failure of a Vulnerable Adult’s family, guardian, or caretaker to provide for the basic needs of a Vulnerable Adult by not supplying assistance, services, or supervision necessary to maintain a Vulnerable Adult’s physical and/or mental health and includes the inability of a Vulnerable Adult to supply such basic needs for him or herself.

(3) The interference with the delivery of necessary services or resources.

(4) The failure to report abuse, neglect, or exploitation of a Vulnerable Adult.

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(5) The failure to provide reasonable services or resources essential to the Vulnerable Adult's practice of his or her customs, traditions, or religion when responsible for the welfare of the Vulnerable Adult.

(6) The abandonment of a Vulnerable Adult through failure of his or her family to provide reasonable support or to maintain regular contact with a Vulnerable Adult.

(m) "Protective Placement" means the placement of a Vulnerable Adult in a hospital, nursing home, residential care facility, hospice, or the transfer of the Vulnerable Adult from one such institution to another with the Vulnerable Adult's consent or appropriate legal authority.

(n) "Protective Services" means those services provided to a Vulnerable Adult, with the Vulnerable Adult's consent or with appropriate legal authority, which are necessary to aid a vulnerable adult in meeting the essential requirements for mental or physical health and safety that the vulnerable adult is unable to provide or obtain without assistance. Such services include, but are not limited to, psychiatric and health evaluations, home care, day care, legal assistance, social services, health care, case management, guardianship, and other services consistent with this Act. Protective services include protective supervision, but does not include protective placement.

(o) "Protective Supervision" means a legal status created by the Court following adjudication on the grounds of neglect or exploitation permitting the Vulnerable Adult to remain in the home, providing that the Department or designated agent provide supervision and assistance correcting the neglect or exploitation of the Vulnerable Adult.

(p) "Retaliation" means taking any of the following actions against any person(s) or the person's family for reporting Vulnerable Adult abuse, neglect, or exploitation: threatening the person(s); causing bodily harm; causing termination, suspension or reprimand by the employer; or damaging real or personal property.

(q) "Self-neglect" means a significant danger to a Vulnerable Adult's physical or mental health because the Vulnerable Adult is responsible for her or his own care but is unable to provide themselves adequate food, shelter, clothing, or medical/dental care.

(r) "Vulnerable Adult" means an individual, age 18 or older including an Elder, who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

(s) "Guardian" means a person appointed under the Sac and Fox Guardianship and Conservatorship Act or a similar tribal or state law, or under this Act on a temporary basis, to

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take care of the person or property of another and includes general or limited guardians of the person, general or limited guardians of property, and special guardians. The Department may be appointed as guardian pursuant to this Act or the Sac and Fox Guardianship and Conservatorship Act, but the Sac and Fox Police Department and its officers, in their official capacity, may not.

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### SUB-CHAPTER ONE - REPORT AND INVESTIGATION

#### **Section 8-101. Duty to Report Abuse, Neglect, Self-Neglect and Exploitation of a Vulnerable Adult**

(a) Any person who has reasonable cause to suspect that a Vulnerable Adult has been abused, neglected or self-neglected, or exploited shall immediately report the abuse, neglect or self-neglect, or exploitation to the Sac and Fox Nation Department of Social Services (“Department”). The following individuals have a heightened duty in reporting abuse, neglect or exploitation:

(1) The Vulnerable Adult’s family, guardian or caretaker;

(2) Any employee or elected official of the Nation or an enterprise owned by the Nation, whether or not managed by the Nation including a medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, human services worker, Vulnerable Adult’s service provider, nursing home provider, or any other Vulnerable Adult, social services provider or the employees of providers of health care and services, excluding employees prohibited from disclosure because of privilege.

(3) Any person, agency or employee with a fiduciary duty to the Vulnerable Adult such as an attorney, accountant, financial institution, or property manager.

(b) Anonymous Reports. Except for those persons in sub-sections (a)(2) - (3), persons reporting Vulnerable Adult abuse, neglect, or exploitation may remain anonymous.

(c) Immunity for Reporting. Any person who in good faith reports suspected abuse, neglect or self-neglect, and exploitation of a Vulnerable Adult shall be immune from any legal action based on that person’s report.

#### **Section 8-102. Civil Violation and Penalty For Failing to Report**

(a) Any person who is required by this Act to report suspected Vulnerable Adult abuse, neglect or self-neglect, or exploitation and fails to do so is subject to civil penalty not to exceed Twenty-five hundred (2,500) dollars, as determined by the Sac and Fox Nation Court upon petition of the Attorney General. Further, the person failing to report is subject to any civil suit brought by or on behalf of the Vulnerable Adult for damages suffered as a result of the failure to report, including reasonable attorney’s fees. However, nothing here shall constitute a waiver of the Nation’s sovereign immunity.

(b) **Privileged Communication**. No evidentiary privilege except for the doctor-patient,

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attorney-client or priest-penitent privilege may be raised as a defense or reason for failing to report suspected Vulnerable Adult abuse or neglect or for testifying as required by this Act.

### **Section 8-103. Civil Violation and Penalty For a Report Made in Bad Faith**

Any person who makes a report of suspected abuse, neglect or self-neglect, or exploitation knowing it to be false is subject to a civil penalty not to exceed Twenty-five hundred (2,500) dollars, as assessed by the Sac and Fox Nation Court upon petition of the Attorney General. Any person making a false report is subject to any civil suit for damages brought by or on behalf of the person(s) named as suspected abusers in the false report.

### **Section 8-104. Incident Reports**

Reports of suspected Vulnerable Adult abuse, neglect, or exploitation shall be made to the Department. The person in the Department taking an oral report shall immediately complete a written incident report. Unless anonymously made, the incident report should contain the name of the reporter and, if possible, the reporter should sign the report. The following information should, if possible, be part of an incident report:

- (a) The Vulnerable Adult's name, address and/or location, and telephone number;
- (b) The name, address or location, and telephone number of the person(s) or agency suspected of abusing, neglecting, or exploiting the Vulnerable Adult;
- (c) The name(s), address or location, and telephone number(s) of the Vulnerable Adult's family or caretaker;
- (d) The name, address or location, and telephone number of witness(s);
- (e) The nature and current condition of the Vulnerable Adult;
- (f) A description of the acts which may constitute abuse, neglect or exploitation; and
- (g) Any other information that the reporter believes might be helpful in establishing abuse, neglect, or exploitation.

### **Section 8-105. Investigations**

(a) The Department shall begin investigation of each report within forty-eight (48) hours of receipt. The investigator shall conduct in-person interviews with the Vulnerable Adult, the



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Vulnerable Adult's family and caretaker, the person(s) suspected of having committed the acts reported, employees of agencies or institutions with knowledge of the Vulnerable Adult's circumstances, and any other person the investigator believes has pertinent information. The investigator shall also conduct observations and other fact finding as required. The contents of medical records and other reports of abuse or neglect should be ascertained.

**(b) Investigation Report.** A written report shall be prepared and filed with the Department. The investigation report shall contain the information set forth in sub-section (a) above and the results of the investigator's interview, observations and assessments, including when possible:

(1) Results or records of an examination on the vulnerable adult who is alleged to have been abused, neglected, or exploited and any other clinical notes, x-rays, photographs, or previous or current records relevant to the case. If, after beginning their investigation, the department believes criminal abuse, neglect or exploitation may have occurred the Department shall notify the Sac and Fox Police Department, and, if appropriate, other local law enforcement. Upon the request of the law enforcement agency, the Department shall submit copies of any records regarding the Vulnerable Adult, to the extent not prohibited by Federal Law;

(2) Any findings of abuse, neglect, or exploitation of a vulnerable adult shall also be sent to any agency with concurrent jurisdiction over persons or issues identified in the investigation including, but not limited to, where appropriate, the Health Services Department, Boards of Nursing, or any other appropriate tribal or state licensure or certification board, agency, or registry;

(3) Reasonable efforts made to locate and notify the caretaker, legal guardian and next of kin of the vulnerable adult who may be in need of protective services pursuant to this Act;

(4) Any diagnostic evaluation(s) to determine whether the person needs protective services;

(5) Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person;

(6) A statement of the least restrictive services needed;

(7) Whether services are available from the Department or in the community and how the services can be provided;

(8) Whether the person would be capable of obtaining services for their self and could bear the cost or would be eligible for services from the Department;

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(9) Whether a caretaker or legal guardian would be willing to provide services or would agree to their provision;

(10) Whether the person desires the services;

(11) A statement of any follow-up investigation or monitoring of the services that may be needed; and

(12) Such other facts as deemed appropriate by the investigator.

(c) When an incident report is received pertaining to a vulnerable adult who has a legal guardian, a copy of the investigative report of the Department shall be filed with the court to which the guardian is accountable.

(d) The report will remain on file with the Department for a period of five (5) years, even if no further legal or Department action is taken.

(e) When a report of abuse is found to have been made in bad faith, the investigation report shall be held and maintained as an inactive file for possible use in a civil violation or proceeding pursuant to Section 8-103 of this Act.

### **Section 8-106.           Subpoena of Medical and Financial Records**

The Trial Court may issue subpoenas for the release of medical records and financial records upon request of the Attorney General's Office. Such Motion's shall receive expedited consideration by the Court in order to facilitate prompt investigation of reported Vulnerable Adult abuse. Motions for subpoenas may be upon affidavit and ex parte. Upon a showing of reasonable grounds to believe that Vulnerable Adult abuse or exploitation is occurring or has occurred the Court shall issue a subpoena. A subpoena issued under this section shall expire within ten (10) days unless renewed by the Court for good cause.

### **Section 8-107.           Interference with Investigation and Retaliation – Civil Penalty**

(a) No person shall knowingly interfere with an official investigation of suspected Vulnerable Adult abuse.

(b) No person shall retaliate by any means against any person who has made a good faith report of suspected Vulnerable Adult abuse or who cooperates with an investigation of suspected Vulnerable Adult abuse.

(c) Any person who violates the provisions of sub-section (a) or (b), above, shall be enjoined from such activity and subject to a civil penalty of up to One thousand (1,000) dollars

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per occurrence. The Sac and Fox Nation Court shall assess the penalty upon petition of the Attorney General or the person retaliated against under subsection (b) above. Notice of such determination shall be provided to the person's employer and appropriate licensing agencies if such interference was related to or arose from the offender's job. If the person violating the above provisions is an employee of the Nation, appropriate disciplinary action shall be imposed by the Nation, including at a minimum of an official reprimand and up to termination.

### **Section 8-108. Civil Investigation not effected by Criminal Investigation**

Civil or social service investigations and any other procedure allowed under this Act may continue regardless of any criminal investigation or charges that might be instigated or pursued by the Nation. In all instances the safety and welfare of the Vulnerable Adult shall be paramount regardless of the nature or status of the investigation.

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## SUB-CHAPTER TWO - PROTECTIVE SERVICES

### **Section 8-201. Provision of Services**

After an investigation of Vulnerable Adult abuse, neglect or self-neglect, or exploitation is completed, the Department shall determine if the Vulnerable Adult or any other individual involved in the alleged abuse, neglect or self-neglect, or exploitation is in need of services under this Act.

### **Section 8-202. Vulnerable Adult Protection Program**

The Department shall develop a comprehensive Vulnerable Adult Protection Program. The Program shall be submitted to the Business Committee for approval not later than 120 days following the passage of this Act. The Program shall be reviewed and updated annually and shall include a recommended budget necessary to meet the objectives of the Program. The Program shall provide for the following.

(a) A Vulnerable Adult Advocate to provide referral and outreach services for Vulnerable Adults and to develop and coordinate programs for the prevention of Vulnerable Adult abuse, neglect or self-neglect, and exploitation.

(b) Establish criteria and standards for Vulnerable Adult abuse, neglect or self-neglect, and exploitation intervention.

(c) The process, procedures, and points of contact for reporting and investigating suspected abuse, neglect or self-neglect, or exploitation.

(d) A process for conducting physical, mental, and social assessments of a Vulnerable Adult when a petition for Vulnerable Adult protection order has been filed.

(e) The process and procedures for petitioning the Court for protective services or placement.

(f) The delivery of Vulnerable Adult protective services or protective placement services.

(g) An education and training program for Vulnerable Adult Advocates to ensure they have the knowledge and skills required to provide quality service to the Nation's Vulnerable Adults.

(h) Recommendations, and potential obstacles, as to the creation and implementation of guardianships for Vulnerable Adults and an anticipated or proposed costs for the Nation to implement or oversee a Vulnerable Adult guardianship program. The recommendation may

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include anticipated or recommended sources of funding, whether tribal, state or federal.

(i) Such other recommendations or actions as believed necessary to carry out this Act.

### **Section 8-203. Voluntary Protective Services and Placements**

(a) Protective services or placement may be provided on a voluntary basis by the Department when requested, or accepted, by a Vulnerable Adult that is abused, neglected, self-neglected, or exploited and the Vulnerable Adult is found by the Department to be in need of such services or placement.

(b) Voluntary protective services or protective placement will cease if the Department deems such services are no longer needed by the Vulnerable Adult or the Vulnerable Adult's consent to such services is withdrawn unless the Vulnerable Adult is found to be incapacitated.

(c) Voluntary protective services or placement shall be provided for a period of not more than twenty-one (21) days at a time. At the end of each 21-day period, the Department shall reassess the Vulnerable Adult's needs before continuing to provide services and placement.

(d) (1) When a caretaker of a vulnerable adult who consents to the receipt of protective services refuses to allow the provision of such services to the person, the Department may petition to the court for a decree enjoining the caretaker from interfering with the provision of protective services to the person.

(2) The complaint must allege specific facts sufficient to show that the person is a vulnerable adult in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the provision of such services.

(3) If the court finds that the person is a vulnerable adult in need of protective services, consents to the receipt of protective services, and that the caretaker refuses to allow the provision of such services, the court may enter a decree:

(A) enjoining the caretaker from interfering with the provision of protective services to the vulnerable adult,

(B) freezing the assets of the vulnerable adult if it has been determined by preponderance of the evidence that the vulnerable adult is being exploited and it is necessary to protect such assets, and

(C) issuing a Temporary Restraining Order freezing the assets of the caretaker or other person if upon oath or affirmation it appears immediate and irreparable injury, loss, or damage will result to the Vulnerable Adult before the adverse party or his attorney can be heard in opposition and that the Court finds

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the TRO necessary to protect it's ability to remedy the Vulnerable Adult's alleged exploitation during the pendency of a full hearing on the exploitation.

(e) If a vulnerable adult does not consent to the receipt of protective services or withdraws consent to the receipt of such services, the services shall be terminated, unless the Department believes that the person lacks capacity to consent, in which case the Department may seek court authorization to provide services pursuant to Section 8-204 and Sub-Chapter 3 of this Act.

(f) Voluntary placement shall not be continued after sixty (60) days without a Court order permitting continued voluntary placement.

(g) Voluntary protective services or placements will be provided contingent upon funding and resources available.

### **Section 8-204. Involuntary Services or Placements**

(a) Except as provided for in Section 8-206, protective services or placements shall be provided on an involuntary basis by the Department only as the Court determines they are necessary upon petition of the Department, by the Attorney General as attorney for the Department or upon the Court's own initiative if the Vulnerable Adult is otherwise properly before the Court on another matter. When the Court orders protective services or placement upon its own initiative, the Court shall promptly notify the Department of it's actions and the Department shall thereafter assume the advocacy role as if it had initiated the action.

(b) The Court's determination of the degree of incapacity, if any, as well as whether Vulnerable Adult abuse, neglect, or exploitation has occurred shall be the basis for developing individual Vulnerable Adult protection services plans or placements.

### **Section 8-205. Third Party Services, Cost of Services**

(a) Services may be delivered to the Vulnerable Adult's family or caretaker if the Department determines the services are necessary to protect the Vulnerable Adult.

(b) The Vulnerable Adult, and where appropriate the Vulnerable Adult's family or caretaker, if able to shall pay for all or part of the costs of services or placement provided to the Vulnerable Adult.

### **Section 8-206. Emergency Involuntary Protection or Placement**

(a) If there is good cause to believe that a Vulnerable Adult:

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- (1) is within the jurisdiction of the Court;
- (2) is at risk of immediate physical harm;
- (3) is reluctant or not voluntarily seeking assistance, and;

(4) the Law Enforcement Officer has probable cause to believe the Vulnerable Adult will be harmed before an Emergency Vulnerable Adult Protection Order can be obtained from the Court,

the Law Enforcement Officer may immediately take action to protect the Vulnerable Adult. These actions include:

(5) ordering the individuals whom the Officer believes are a threat to the Vulnerable Adult to leave the premises or residence within the tribal jurisdiction where the Vulnerable Adult is residing, works, or is threatened;

(6) to exclude non-members from the tribal jurisdiction;

(7) take into custody without a warrant anyone they have probable cause to believe is violating the Sac Fox Criminal Offenses Code and hold them without bail; or

(8) such other actions as the Officer reasonably believes necessary to temporarily protect the Vulnerable Adult from immediate harm,

all for a period not to exceed forty-eight (48) hours, excluding weekends and holidays, unless a court order is issued extending the time period not to exceed the holding of a show cause hearing,

(b) In addition to the remedies available under sub-section (a), if the Vulnerable Adult is incapacitated, the Law Enforcement Officer or Department investigator may immediately transport the Vulnerable Adult for medical treatment or to an appropriate protective placement.

(c) The investigator or officer shall immediately contact the Court, which may be in person or by telephone, digital, electronic or other means of communication to request an Emergency Vulnerable Adult Protective Order. Within 24 hours after the Vulnerable Adult is protected, the Department or law enforcement shall file notice of the incident with the court. The court shall upon receiving an incident notice set a show cause hearing or Emergency Vulnerable Adult Protection Order hearing, as outlined in Section 8-301 *et. seq.* of this Act.

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### SUB-CHAPTER THREE - COURT PROCEEDINGS.

#### **Section 8-301.        Jurisdiction**

The Court has jurisdiction to hear a cause of action for Vulnerable Adult protection and issue orders as necessary if either the Vulnerable Adult resides within the jurisdiction of the Court or the source of the alleged abuse, such as finances, property or persons, are within the jurisdiction of the Sac and Fox Nation.

#### **Section 8-302.        Show Cause Hearing**

(a) Upon the Nation taking action to protect a Vulnerable Adult under Section 8-206 of this Act, the Court shall within 48 hours of notice of the action hold a show cause hearing as to why the Nation took such action. If:

(1) the Vulnerable Adult consented to such Services or Placement at the time of the emergency action;

(2) the Vulnerable Adult consents to such action at the time of the show cause hearing; or

(3) there was probable cause to believe the Vulnerable Adult was at risk of immediate physical harm and the Vulnerable Adult was incapable of seeking assistance,

the Court shall find the Department or law enforcement had good cause for providing Emergency Involuntary Protection or Placement.

(b) If good cause and is not found and:

(1) the Vulnerable Adult was removed under Section 8-206, the Vulnerable Adult shall be immediately returned to the place from which they were removed or at another appropriate location within the Sac and Fox Nation of the Vulnerable Adult's choosing.

(2) if action was taken under Section 8-206(a)(5)-(8) the person removed, excluded, or taken into custody shall have restrictions imposed under Section 8-206(a) lifted.

(c) If the Vulnerable Adult is capable, and has explained to him or her the right to a show cause hearing and knowingly waives that right, and no action was taken under Section 8-206(a)(5)-(8), no show cause hearing is necessary. However, special care shall be taken to guarantee that the right of the Vulnerable Adult to a show cause is protected.



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### **Section 8-303. Petition for Vulnerable Adult Protection Order**

(a) If the Department determines a vulnerable adult is suffering from abuse, neglect, or exploitation that presents a risk of physical harm to the person or financial exploitation of the estate of the person, and the vulnerable adult consents to Protection, or lacks mental capacity to consent to receive protective services and no consent can be obtained, the Department or the Attorney General's office on behalf of the Department, may petition the Court for a Vulnerable Adult Protection Order (VAPO).

(b) The petition shall contain:

- (1) the name, address, location, and interest of the petitioner;
- (2) the name, address, location, and condition of the Vulnerable Adult;
- (3) the name, address, location, and interest of the next of kin, guardian(s), caretaker or other interested party;
- (4) the nature of the Vulnerable Adult's incapacity, if any;
- (5) the nature of abuse, neglect, or exploitation the Vulnerable suffers;
- (6) the attempt(s), if any, to secure the Vulnerable Adult's consent to services;
- (7) the proposed protective services, and / or placement;
- (8) whether a temporary guardianship is sought; and
- (9) any other facts the petitioner believes will assist the Court.

(c) If the Petition requests that an Emergency VAPO be issued, in addition it must state the nature of the emergency and whether substantial, immediate or serious harm to the vulnerable adult or his estate is likely to occur if an immediate order is not issued.

(d) Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on the person's actions.

### **Section 8-304. Notice**

Twenty-four (24) hours notice of the Vulnerable Adult Protection Order hearing and petition shall be given to the Vulnerable Adult, the Vulnerable Adult's family and/or caretaker (if within the Nation's jurisdiction). If the Vulnerable Adult's family or caretaker are not within the Nation's jurisdiction, notice shall be promptly sent but shall not delay the hearing. The Court

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may waive notice to the family or caretaker if the Court finds the Vulnerable Adult will suffer immediate and irreparable harm or if reasonable attempts have been made to notify the parties.

### **Section 8-305.        Proof**

The Court shall issue a Vulnerable Adult Protection Order upon showing that:

(a) The Vulnerable Adult is at substantial risk of death, serious physical harm or financial exploitation;

(b) The Vulnerable Adult consents, or is incapacitated and cannot consent, to protective services; and

(c) There is no one authorized by law, or the person possessing such authority for the Vulnerable Adult is unavailable, or without good cause is unwilling, to give consent.

### **Section 8-306.        Hearing**

(a) Except as specifically noted in this Act, hearings shall be held only after notice has been given to the Vulnerable Adult and good faith attempt to notice other interested parties, including the Vulnerable Adult's family and caretaker. The Vulnerable Adult and all other interested parties shall have the right to be heard and present relevant evidence. The Court shall issue a written statement of its findings in support of any order under this Act.

(b) The Court shall hold a hearing on a petition to provide protective services or placement to a Vulnerable Adult within Ten (10) days of filing a Protection Order or after an Emergency Vulnerable Adult Protection Order is issued.

### **Section 8-307.        Orders**

(a) **Protective Orders.** If the Court determines that a Vulnerable Adult is incapacitated and/or abused, neglected or self-neglected, or exploited, the Court shall issue a Vulnerable Adult Protection Order, an Emergency Vulnerable Adult Protection Order or Temporary Guardianship which provides appropriate protection for the Vulnerable Adult. Such order shall set out the specific services to be provided and may include, but is not limited to the following

(1) authorizing protective services, protective placement and/or appointing a temporary guardian of the person and/or the estate,

(2) removing the Vulnerable Adult from the place where the abuse, neglect or

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self-neglect, or exploitation has taken or is taking place;

(3) placing the Vulnerable Adult under protective supervision, wherein the Vulnerable Adult is permitted to remain in the home with the Department or a designated agent providing supervision and assistance to correct the neglect or exploitation of the Vulnerable Adult, and if necessary, immediately removing the person who abused, neglected, or exploited a Vulnerable Adult from the Vulnerable Adult's home;

(4) restraining the person who has abused, neglected, or exploited the Vulnerable Adult from continuing such acts;

(5) specify who may or may not visit the Vulnerable Adult if shown necessary for the protection of the Vulnerable Adult;

(6) freezing the assets of the vulnerable adult, if the vulnerable adult is being exploited, and directing a full accounting and investigation of the person alleged to be improperly managing the estate of the vulnerable adult;

(7) recommending that a representative payee be named to receive, on behalf of the Vulnerable Adult, any funds owed to the Vulnerable Adult and establishing any new accounts necessary to pay the daily living expenses of the vulnerable adult;

(8) designate the tribal department or agency responsible for implementing the order;

(b) **Emergency Vulnerable Adult Protective Order.** In addition to the services listed in sub-section (a) above, an Emergency Vulnerable Adult Protective Order:

(1) shall be issued for a maximum of ten (10) days;

(2) may be issued *ex parte* without notice;

(3) can be set aside by the Court upon a petition of any party showing good cause;

(4) set a date for hearing of the Vulnerable Adult Protective Petition.

(c) **Vulnerable Adult Protective Order.** In addition to the services listed in sub-section (a) above, a Vulnerable Adult Protective Order:

(1) shall be issued after a court hearing with notice;

(2) may suspend or revoke the powers of an attorney-in-fact granted by a durable

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power of attorney, or revoke an irrevocable trust, or terminate a guardianship or conservatorship established pursuant to Sac and Fox law.

(3) require any person who has abused, neglected, or exploited a Vulnerable Adult to pay restitution to the Vulnerable Adult for damages resulting from that person's wrongdoing.

### **Section 8-308. Determining Incapacity**

The Court shall determine whether a Vulnerable Adult is incapacitated based on clear and convincing evidence of incapacitation and the nature and degree of incapacity.

### **Section 8-309. Determining Abuse, Neglect or Exploitation of a Vulnerable Adult**

(a) Upon petition by the Department, the Attorney General, or third parties the Court shall find the Vulnerable Adult is subject to abuse, neglect or self-neglect, or exploitation upon a showing of a preponderance of the evidence. Provided, a protection order issued over the objection of a Vulnerable Adult shall be by clear and convincing evidence.

(b) Upon petition by a Vulnerable Adult, the Court shall find the Vulnerable Adult is subject to abuse, neglect or self-neglect, or exploitation upon a showing of a preponderance of the evidence. Upon such a finding:

(1) the Vulnerable Adult shall be assisted by the Sac and Fox Social Services Department or Justice Department;

(2) the matter shall be civil in nature; and

(3) no incapacitation need be proved.

### **Section 8-310. Time Limits**

(a) An initial non-emergency Vulnerable Adult Protection Order shall be issued for a period not to exceed ninety (90) days.

(b) The non-emergency Vulnerable Adult Protection Order may be extended as many times as necessary to protect the Vulnerable Adult. An extension of a protection order can only be issued upon motion of a party seeking an extension, hearing, and preponderance of the evidence that such an extension is necessary for the protection of the Vulnerable Adult.

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Extension of a protection order over the objection of a Vulnerable Adult shall be by clear and convincing evidence. Each extension order shall be for a period not to exceed sixty (60) days.

(c) Upon parties seeking a second and subsequent extension of a Vulnerable Adult protection order, the court shall counsel, or if appropriate, direct, the parties regarding a guardianship over the Vulnerable Adult as a more appropriate mechanism for long term protection of the Vulnerable Adult.

### **Section 8-311.        Search Warrants**

(a) **Investigations.** Search Warrants may also be issued by the Court during the Department's investigation when the Department is denied entrance to the home or other place of residence of a person believed to be a vulnerable adult in need of protective services, or is denied a private interview with the vulnerable adult. If documentation, or access to records, or other information relating to an investigation regarding a vulnerable adult is denied, the Department may petition the court for an order allowing entry or access.

(b) **Protective Orders.** The Court may authorize a search warrant by law enforcement to enforce the emergency protection order if the Court finds attempts to gain voluntary access to the Vulnerable Adult have failed. Search warrants may also be issued for property of the Vulnerable Adult upon a showing that such property is at risk of loss, destruction, or theft without such warrant.

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### SUB-CHAPTER FOUR - RIGHTS, MISC.

#### Section 8-401. Confidentiality and Penalty

(a) **Name of Reporter.** The name of the person who reports abuse or neglect as required by this Act is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the Court. The Court may release the reporter's name only after notice to the reporter is given, a closed hearing is held, and the need for disclosure in order to protect the Vulnerable Adult is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent as determined necessary to protect the Vulnerable Adult.

(b) **Investigation and Hearing Records.** Records of an investigation of Vulnerable Adult abuse or of a Court hearing regarding Vulnerable Adult abuse are confidential. Such records shall be open to the Vulnerable Adult and the Vulnerable Adult's family and caretaker, unless the family or caretaker are the suspected abusers. If the Sac and Fox Health Department Director, Social Services Director, law enforcement officers, Court officials, coroner or medical examiner, or any other person has reason to believe that a Vulnerable Adult was seriously injured or died as the result of abuse or neglect, the Court shall determine who has reasonable cause to access the Vulnerable Adults records.

(c) **Court Proceedings.** A proceeding held pursuant to this Act will, at the option of a Vulnerable Adult who is not incapacitated, be closed and confidential. Persons who may attend are the Vulnerable Adult, the Vulnerable Adult's family and caretaker, representatives of the Department, necessary Court officials, and attorneys for the parties. If the hearing is closed other persons may appear only to testify. No one attending or testifying at a closed proceeding shall reveal information about the proceeding unless allowed to do so by the Court, unless such disclosure is required by law or for the safety of the Vulnerable Adult.

(d) **Penalty.** Any person who violates any provision of this section shall be subject to civil contempt of court and a civil penalty of up to \$500.00 per occurrence. Each day of a continuing violation shall be treated as a separate occurrence. If the violation is committed by an employee of the Nation, the employee shall also be subject to appropriate employee disciplinary action, up to and including termination.

#### Section 8-402. Rights of Vulnerable Adults, Their Families, and Caretakers

(a) **Notice of Investigation.** A Vulnerable Adult, the Vulnerable Adult's family, and the Vulnerable Adult's caretaker shall be informed about a Vulnerable Adult abuse investigation upon its commencement. Provided, if an emergency exists they shall be informed as soon as possible consistent with the prime purpose of immediate protection of the Vulnerable Adult. If the Vulnerable Adult retains capacity to consent to voluntary services, and does not wish for a

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caretaker or family to receive notification of the investigation, the Department shall abide by the wishes of the Vulnerable Adult. If law enforcement commences a criminal investigation, its' duty to inform parties of the investigation shall be the same as in any other criminal investigation.

(b) **Right to Refuse Services.** A Vulnerable Adult may refuse to accept Vulnerable Adult Protective Services, even if there is good cause to believe that the Vulnerable Adult has been or is being abused, neglected, or exploited, provided that the Vulnerable Adult is able to care for himself/herself and has the capacity to understand the nature of the services offered and knowingly refuses such. The Vulnerable Adult's family and caretaker may refuse for themselves, but not for the Vulnerable Adult, those Vulnerable Adult Protective Services offered pursuant to this Act.

(b) **Right to Refuse Entry.** A Vulnerable Adult and the Vulnerable Adult's family or caretaker may refuse to allow an investigator into their home and the investigator shall so inform the Vulnerable Adult, the Vulnerable Adult's family, and the caretaker of this right before seeking entry. The investigator shall also inform them of the right of the investigator to seek a warrant to gain access.

(c) **Service of Process.** The Vulnerable Adult, Vulnerable Adult's family, and caretaker shall be served with the petition filed pursuant to this Act and notice of hearings. Notice of show cause and emergency hearings may be given to family and caretakers by electronic or digital means if actual notice is shown.

(d) **Right to Attend Hearings.** The Vulnerable Adult, Vulnerable Adult's family, and caretaker have the right to attend any proceeding pertaining to the determination of the Vulnerable Adult's capacity, abuse, neglect or self-neglect, or exploitation, unless the Vulnerable Adult is capable and objects to the attendance of family or caretaker. The Vulnerable Adult shall be present at all proceedings unless the Court determines the Vulnerable Adult's health would be at risk at such proceedings. The Vulnerable Adult may attend telephonically, digitally or by video conferencing if they so desire and the Court is capable of such hearings.

(e) **Right to Counsel and Evaluation.** The Vulnerable Adult, Vulnerable Adult's family, and caretaker have the right to be represented at their own expense by counsel at all proceedings. The Vulnerable Adult, Vulnerable Adult's family, and caretaker may, at their own expense, seek independent medical, psychological, or psychiatric evaluation of the Vulnerable Adult.

### **Section 8-403. Criminal Violation of Vulnerable Adult Protection Order**

Knowing violation of the Court's Vulnerable Adult Protection Order is a crime punishable by confinement in jail for not more than Ninety (90) days or a fine of not more than \$1,000 or both. Provided, the Vulnerable Adult may not be charged with violating an Adult

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Protective Order issued on his or her behalf.