

WYANDOTTE NATION
TITLE 27
ELDER PROTECTION CODE
(APPROVED BY THE BOARD OF DIRECTORS 11-12-2024)

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**WYANDOTTE NATION
TITLE 27
ELDER PROTECTION CODE**

**CHAPTER ONE
INTRODUCTION**

Section 101. Citation.

This Title may be cited as the “Wyandotte Nation Elder Protection Code.”

Section 102. Authority.

The Wyandotte Nation Constitution, Article 7, Section 2(d) provides authority for the Board of Directors to enact laws to govern the actions of the membership and residents within the Wyandotte Nation’s jurisdictional boundaries.

Section 103. Policy.

It is the policy of the Wyandotte Nation to continue the traditional respect the citizens of the Wyandotte Nation have had for elders and to implement laws, which will serve the best interests of elders and provide for their safety and protection.

Section 104. Purpose.

This Code shall be liberally construed and applied in order to carry out its purpose, which is to promote and protect the general welfare of Wyandotte Nation elders by providing for identification, remedial measures, and services on behalf of elders who are exploited, abused, or neglected.

Section 105. Civil Nature of Code.

This Code is civil and does not affect any applicable provision of the Wyandotte Nation Criminal Code, except where modified by the provisions herein.

Section 106. Definitions.

Unless the context otherwise requires, as used in this Title, the term:

(a) “Abandonment” means the desertion of an elder by the individual’s family or caregiver(s), or an elder’s family or caregiver(s) refusing or neglecting to provide for the elder.

(b) “Abuse” means assault, battery, threatening conduct, coercion, unreasonable confinement, intimidation, cruelty, sexual abuse, emotional abuse, intimidation, exploitation, abandonment, and financial exploitation.

(c) “Adult Protection Team” means a multidisciplinary team that coordinates and collaborates for the purposes of providing case management and/or services to elderly victims of abuse, neglect or exploitation.

(d) “Assault” means attempt to cause bodily harm.

(e) “Battery” means actions resulting in bodily harm or an offensive touching of another.

(f) “Caregiver” means:

1) a person who is required by Tribal law or custom, State or Federal law to provide services or resources to an elder;

2) a person who has voluntarily undertaken to provide care or resources to an elder;

3) an institution or agency which voluntarily provides or is required by Tribal law or custom, State or Federal law, or agreement to provide services or resources to an elder;
or,

4) an employee of any institution or agency specified within this code.

(g) “Coercion” means forcing someone to engage in or abstain from conduct, which the person has a right to engage in or abstain from.

(h) “Consent” means agreement given, without intimidation or coercion, by an elder with the capacity to make an agreement.

(i) “Cruelty” means acts which result in physical harm or pain or mental anguish.

(j) “Economic abuse” means an action when someone has control over the elder’s economic resources, which diminishes the elder’s ability to support themselves, and forces them to depend on the perpetrator financially.

(k) “Elder” means a person subject to the jurisdiction of the Wyandotte Nation who is at least fifty-five (55) years of age.

(l) “Emergency” means a situation in which an elder is immediately at risk of death or injury and is unable to consent to services, which would remove the risk.

(m) “Emotional Abuse” means the infliction of threats, humiliation, or intimidation by a person on an elder.

(n) “Exploitation” means 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.

(o) “Family” means an individual with a significant relationship as defined by tribal custom to a person subject to this Code.

(p) “Financial abuse” means the illegal or unauthorized use of an elder’s property, money, pension, or other valuables (including changing the elder’s will to name the abuser as an heir) and/or fraudulently obtaining power of attorney, followed by deprivation of money or other property or by eviction from their own home. It may also include preventing the elder from obtaining a job or education.

(q) “Good Faith” means a reasonable person’s honest belief or purpose and the lack of intent to defraud.

(r) “Incapacity” means a legal determination made by a Tribal or State court regarding the current 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 alcohol, and to understand the consequences of any such decision. Incapacity may vary in degree and duration.

(s) “Intimidation” means willfully placing an elder in fear of harm by coercion, extortion, or duress.

(t) “Least Restrictive Alternative” means an approach which allows an elder independence and freedom from intrusion consistent with the elder’s needs by requiring the least invasive method of intervention be used when intervention is necessary to protect the elder from harm. Caregivers, Tribal or State courts and any other person or entity providing services to elders will be controlled by this standard.

(u) “Power of Attorney” means 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. The two main types of power of attorney are:

1) A General Power of Attorney: This document covers all the elder’s business activities, including signing papers, titles documents, contracts, bank accounts, etc.

2) A Special Power of Attorney: This document grants powers limited to specific areas as set forth in the document.

(v) “Protective Placement” means placement of an elder in a hospital, nursing home, residential care facility or the transfer of an elder from one such institution to another by a Tribal or State court with the elder’s consent or appropriate legal authority.

(w) “Protective Services” means services provided to an elder with the elder’s consent or with appropriate legal authority and include, but are not limited to, social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship and other services consistent with this Code. Protective services include protective supervisions, but they do not include protective placement.

(x) “Retaliation” means the 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.

(y) “Threatening Conduct” means conduct that places another in fear of physical or other harm.

(z) “Verbal Abuse” means insulting, frightening, humiliating, threatening and/or treating without respect an elder.

Section 107. Jurisdiction.

(a) The Wyandotte Nation Tribal Court shall have general jurisdiction over elder protection matters as set forth under this Code.

(b) Persons subject to the Elder Protection Code jurisdiction include:

1) Enrolled citizens of the Wyandotte Nation;

2) Any member of a Federally recognized Indian Tribe who resides within the exterior boundaries of the Wyandotte Nation Reservation; and

3) All other persons residing within the exterior boundaries of the Wyandotte Nation not otherwise prohibited by Federal law.

Section 108. Severability.

If any portion or provision of this Code shall be adjudicated by a court of competent jurisdiction to be invalid or unconstitutional, the judgment shall not affect, impair or invalidate the remainder thereof.

Section 109. Sovereign Immunity.

Nothing in this Code shall constitute a waiver of the Wyandotte Nation’s inherent right to sovereign immunity and the protections afforded therein.

CHAPTER TWO REPORTING AND INVESTIGATION

Section 201. Duty to Report Abuse or Neglect of an Elder.

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 Wyandotte Nation Family Services Department or other designated tribal entity unless they have a privileged relationship as attorney-client, doctor-patient or priest-penitent. The following individuals have a special duty in reporting abuse, neglect, self-neglect or exploitation:

- 1) the elder's family or caregiver as defined within this Code;
- 2) any employee or elected official of the Wyandotte Nation, other Tribal or State governments;
- 3) any medical doctor, physical therapist, coroner, or medical examiner;
- 4) any nurse, physician's assistant; or health aide;
- 5) any dentist or dental hygienist;
- 6) an elder and adult program services case/social worker, or elder services provider;
- 7) any mental health practitioner or counselor;
- 8) any law enforcement officer;
- 9) any person with a fiduciary duty to the elder, including but not limited to a guardian or employee of elder or nursing home;
- 10) any Wyandotte Nation court employee;
- 11) any person subject to Federal reporting requirements under Title 18 United States Code Section 1169.

Section 202. Confidentiality.

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 Court 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.

203. Standard of Proof.

The standard of proof for actions brought under this Section is the preponderance of evidence.

204. Immunity for Reporting.

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

205. Failure to Report; Civil Penalty; Damages; Criminal Liability.

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 five thousand dollars (\$5,000). The Wyandotte Nation Tribal Court shall assess the penalty only after petition, notice, an opportunity for a hearing, and a determination that the person had a mandated duty to report, had good reason to suspect elder abuse or neglect, and failed to report it as required by this Code. Further, the person failing to report is subject to any civil suit brought by or on behalf of the elder for damages suffered as a result of the failure to report and to any penalties set out in the Wyandotte Nation Criminal Code or as allowed by this Code.

206. Bad Faith Report; Civil Penalty; Damages; Criminal Liability.

Any person who makes a report of suspected elder abuse knowing it is to be false is subject to a civil penalty of up to five thousand dollars (\$5,000). The Wyandotte Nation Tribal Court shall assess the penalty only after petition, notice, an opportunity for a hearing, and a determination that the reporter made the report knowing it to be false. Further, the reporter is subject to any civil suit brought by or on behalf of the person(s) named as suspected abusers in the false report for damages suffered as a result of the false report, including reasonable attorney's fees, and to any criminal penalties set out in the Wyandotte Nation Criminal Code or as allowed by this Code.

207. Reports.

Reports of suspected elder abuse, neglect, self-neglect or exploitation shall be made to the Wyandotte Nation Tribal Police Department. The officer 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. Anonymous reports shall be investigated as required by this Code. The following information, if possible, should be part of the incident report:

- 1) the elder's name, address and/or location, and telephone number;
- 2) the name, address or location, telephone number of the person(s) or agency who is suspected of abusing, neglecting, or exploiting the elder;
- 3) the current general condition of the elder, including the suspected nature and degree of incapacity of the elder, if any;
- 4) the name, address or location, and telephone number of the witnesses;
- 5) the name, address or location, and telephone number of the elder's family or caregiver;
- 6) a description of the acts which are complained of as abusive or neglectful; and
- 7) any other information that the reporter believes might be helpful in establishing abuse, neglect or exploitation.

208. Investigation.

(a) The Wyandotte Nation Tribal Police shall initiate an investigation of the report within twenty-four (24) hours. The Tribal Police shall prepare a preliminary written report of the investigation, which shall include the information set out in Section 207 as well as the results of interviews, observations, photographs necessary to document injuries or conditions which have or may result in abuse and neglect, assessments and other fact finding. The investigator shall conduct in-person interviews with the elder, elder's family and caregiver, the person or persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder's circumstances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse and neglect shall be ascertained. The investigator personally shall assess the elder's living conditions including the elder's sleeping quarters, using the Wyandotte Nation general housing standards.

(b) The Wyandotte Nation Tribal Court may issue subpoenas for the release of medical records or financial records upon request of the Nation's Attorney General, Nation's Prosecutor or other appropriate entity's office. Such motions shall receive expedited consideration by the Wyandotte Nation Tribal Court in order to facilitate prompt investigation of reported elder abuse, neglect or exploitation.

(c) The investigation report shall be filed within seven (7) days and remain on file and not be destroyed for a period of ten (10) years, even if it is determined that there is insufficient evidence to pursue any legal action. However, if the investigating agency determines that the investigation report was made in bad faith, it shall be held and maintained as an inactive file for possible use in a civil violation or proceeding pursuant to Section 206 of this Code.

209. Interference with Investigation and Retaliation Prohibited; Civil Penalty.

(a) No person shall interfere intentionally with a lawful investigation of suspected elder abuse.

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

(c) Any person who violates the provisions of paragraphs (a) or (b) of this Section shall be enjoined from such activity and shall be subject to a civil penalty of up to five thousand dollars (\$5,000) per occurrence and, if a tribal employee, to appropriate disciplinary action as allowed by the tribal personnel policies and procedures. The penalty shall be assessed by the Wyandotte Nation Tribal Court only after petition, notice, an opportunity to be heard and a determination that either interference or retaliation as set out in this Section occurred. Further, notice of such determination shall be provided to the person's tribal employer and appropriate licensing agencies.

210. Privileged Communication.

No evidentiary privilege, except for the attorney-client, doctor-patient or priest-penitent privilege as detailed in Section 201, may be raised as a justifiable defense or reason for failing to report suspected elder abuse or neglect or for testifying as required by this Code.

211. Criminal Investigation.

The investigation and any other procedures allowed by this Code may continue regardless of any criminal investigation that might be instigated or pursued by the Wyandotte Nation. In all instances, the safety and welfare of the elder shall be paramount regardless of the nature and status of the investigation.

CHAPTER THREE PROTECTIVE SERVICES

Section 301. Elder Protective Services and Elder Protective Placement; Other Services; Evaluation Procedure; Duty to Pay.

The Wyandotte Nation Family Services Department shall adopt and issue regulations establishing criteria and procedures, which comply with the policy and requirements of this Code.

1) Protective services or protective placement are provided either on a voluntary or involuntary basis. Such services or placement may be provided on a voluntary basis by the Wyandotte Nation Family Services Department when requested by any abused or neglected elder and the elder is found by the Wyandotte Nation Family Services Department to be in need of such services or placement. Such services or placement shall be provided on an involuntary basis by the Wyandotte Nation Family Services Department only if the Wyandotte Nation Tribal Court determines they are necessary. Such services or placement may be provided on an emergency basis or, if necessary, on a permanent basis through a guardian appointed pursuant to tribal law and shall be provided in a manner least restrictive of the elder's liberty and rights consistent with the elder's welfare and needs. The Wyandotte Nation Tribal Court determination of the degree of incapacity, if any, as well as whether elder abuse or neglect has occurred is the standard the Wyandotte Nation Family Services Department shall use to develop a plan for the delivery of elder protection services.

2) Voluntary protective services or protective placement are provided subject to available appropriations and resources and only as determined necessary by the Wyandotte Nation Family Services Department. If the elder's consent to such services or placement is withdrawn, they shall cease. Such protective services or protective placement shall be provided for a period of no more than ninety (90) days for each occurrence. At the end of each period, the Wyandotte Nation Family Services Department shall reassess the elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued without a Wyandotte Nation Tribal Court order permitting continued voluntary placement after the elder has been in such placement for ninety (90) days.

3) Involuntary protective services or protective placement shall be provided to any elder who is incapacitated or who is abused, neglected, or exploited and incapacitated and only upon a

Wyandotte Nation Tribal Court order as required by this Code. If an involuntary action is filed in the Wyandotte Nation Tribal Court, a Guardian Ad Litem shall be appointed for the elder. If a voluntary action is filed in the Wyandotte Nation Tribal Court, a Guardian Ad Litem may be appointed for the elder.

4) Services as determined necessary by the Wyandotte Nation Family Services Department may be delivered to the elder's family or caregiver in order to protect the elder.

5) The Wyandotte Nation Family Services Department shall establish a process for conducting a comprehensive, physical, mental and social assessment, evaluation and/or study of an elder when a petition for a protection order has been filed.

6) The elder, and, where appropriate, the elder's family and caregiver shall be informed by the Wyandotte Nation Family Services Department of rights as allowed under this Code and other Tribal law, including the right to refuse voluntary services and placement and the right to have the Wyandotte Nation Tribal Court determine the necessity of involuntary services and placement.

7) The elder and where appropriate, the elder's family and caregiver, if able to do so, shall pay for all or part of the costs of services or placement provided to the elder. In the case of voluntary services or placement, the elder and where appropriate, the elder's family and caregiver shall pay the cost as determined by applicable standards and income guidelines.

Section 302. Emergency Protection Order.

(a) The Wyandotte Nation Tribal Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon petition supported by clear and convincing evidence that:

- 1) the elder is at risk of immediate physical or emotional harm;
- 2) the elder is incapacitated and cannot consent to protective services;
- 3) there is no one who is authorized, or the person possessing power of attorney for the elder is unavailable, by law or court order to give consent on an emergency basis; and
- 4) an emergency exists.

(b) The emergency protection order shall:

- 1) set out the specific emergency services to be provided to the elder to remove the conditions creating the emergency;
- 2) provide only those services, which will remove the emergency;
- 3) allow protective placement only if the evidence shows that it is necessary;

4) designate that the Wyandotte Nation Family Services Department is required to implement the order;

5) be issued for a maximum of seventy-two (72) hours, excluding weekends and holidays, and may be renewed only once for a maximum of five (5) days provided the evidence shows that the emergency is continuing.

(c) The Wyandotte Nation 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.

(d) The petition for an emergency protection order shall contain the name, address and location and interest of the petitioner; name, address and 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 Wyandotte Nation Tribal Court.

(e) The emergency protection order shall be issued only after notice. The notice accompanied by a copy of the petition shall be given to the elder, the elder's family and caregiver at least twenty-four (24) hours before a hearing on the petition is scheduled and the Wyandotte Nation has had the opportunity to hear all parties and the evidence. The Wyandotte Nation 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.

(f) The Wyandotte Tribal Court shall hold a hearing on a petition to provide protective services or placement to an elder within seventy-two (72) hours after an emergency protection order is issued.

(g) The Wyandotte Nation Tribal Court can set aside an emergency protection order upon a petition of any party showing good cause.

(h) If there is good cause to believe that an emergency exists and that an elder is at risk of immediate and irreparable physical or emotional harm and, based on personal observation of an investigator or a law enforcement officer, a belief that the elder will be irreparably harmed during the time an emergency protection order is secured, the investigator or 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.

(i) 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.

Section 303. Rights of Elders, Their Families and Caregivers.

(a) An elder, the elder's family and caregiver shall be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but no later than seventy-two (72) hours after the investigation begins.

(b) An elder may refuse to accept elder protection services even if there is good cause to believe that the elder has been or is being abused, neglected, or exploited provided that the elder is able to care for himself or herself and has the capacity to understand the nature of the services offered.

(c) The elder's family or caregiver may refuse for themselves, but not for the elder, those elder protection services offered pursuant to this Code.

(d) An elder, the elder's family or caregiver may refuse to allow an investigator into their home and the investigator shall so inform the elder, the elder's family and caregiver of this right before seeking entry. The investigator or law enforcement officer shall also inform them of the right of the investigator to seek a warrant to gain access.

(e) Service of Process. The elder, elder's family and caregiver shall be served personally with a petition filed pursuant to this Code.

(f) The elder, elder's family and caregiver have the right to attend any proceeding pertaining to the determination of the elder's capacity and the elder shall be present at all proceedings unless the Wyandotte Nation Tribal Court determines the elder's health would be at risk at such proceeding.

(g) The elder, elder's family and caregiver have the right to be represented by counsel at all proceedings at the tribe's or their own expense.

(h) The elder, elder's family and caregiver have the right to seek independent medical, psychological, or psychiatric evaluation of the elder at the tribe's, elder's, or the elder family's expense. Determination as to liability for payment shall be made by the Court, with due consideration of all circumstances, and such decision shall be based upon the best interests of the elder.

Section 304. Procedures for Determining Incapacity, Abuse, Neglect or Exploitation.

(a) The Wyandotte Nation Tribal Court shall determine whether an elder is incapacitated and the degree of incapacity, and, where necessary, whether elder abuse, neglect, or exploitation has occurred. The determination of incapacitation shall be made only after petition, notice, and hearing.

(b) The Wyandotte Nation Tribal Court shall determine whether an elder has been a victim of abuse, neglect or exploitation as defined in this Code.

CHAPTER FOUR CONFIDENTIALITY AND HEARINGS

Section 401. Confidentiality of Reporter, Records, Hearings; Penalty for Not Complying With Confidentiality.

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

(b) Investigation and Hearing Records. Records of an investigation of elder abuse or of the Wyandotte Nation Tribal Court hearing regarding elder abuse are confidential. Such records shall be open only to the elder and the elder's family and caregiver unless the family or caregiver is the suspected abuser. If the Director of the Wyandotte Nation Family Services Department or other designated entity, law enforcement officers, court officials, coroner and medical examiner or any other person who has reason to believe that an elder died as the result of abuse, neglect or exploitation, the Wyandotte Nation Tribal Court will determine who has reasonable cause to have access to such records.

(c) Court Proceedings. A proceeding held pursuant to this Code shall, at the option of the elder who is not incapacitated, be closed and confidential. Persons who may attend are the elder, the elder's family and caregiver, the person or representative of an institution or agency accused of elder abuse, the representative of the Wyandotte Nation Family Services Department, necessary tribal 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 such a proceeding shall reveal information about the proceeding unless ordered to do so by a court of competent jurisdiction.

(d) Penalty. Any person who violates any paragraph of this Section shall be subject to a civil penalty of up to five thousand dollars (\$5,000) per occurrence. The tribal court shall assess the penalty after petition, notice, opportunity to be heard, and a determination that a violation occurred. In addition, if the violation is committed by an employee of the Wyandotte Nation, the employee shall also be subject to employee disciplinary action as allowed in the Wyandotte Nation's employment laws.

402. Elder Protection Order; Time Limits.

(a) If the Tribal court determines that an elder is incapacitated or incapacitated and abused, neglected, or exploited, the Tribal court shall issue an elder protection order, which provides appropriate protection for the elder. Such protection may include, but is not limited, to the following:

1) Removing the elder from the place where the abuse or neglect has taken or is taking place for no longer than thirty (30) days;

2) Removing the person who has abused or neglected an elder from the elder's home;

3) Restraining the person who has abused or neglect an elder from continuing such acts;

4) Placing the elder under protective supervision, wherein the elder is permitted to remain in the home providing the Department or a designated agent provides supervision and assistance to correct the abuse, neglect or exploitation of the elder;

5) Requiring an elder's family or caregiver or any other person with a fiduciary duty to the elder to account for the elder's funds and property;

6) Requiring any person who has abused, neglected, or exploited an elder to pay restitution to the elder for damages resulting from that person's wrongdoing;

7) Appointing a Guardian Ad Litem for the elder;

8) Recommending that a representative payee be named; and,

9) Ordering the Wyandotte Nation Family Services Department to prepare a plan for and deliver elder protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.

(b) No protection order shall be issued until twenty-four (24) hours after the petition is served on all parties, except for an emergency protection order.

(c) An initial non-emergency elder protection order shall be issued for a period not to exceed thirty (30) days.

(d) The non-emergency protection order may be extended as many times as necessary to protect the elder. An extension of a protection order can only be issued after a petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on a preponderance of the evidence that such an extension is necessary for the protection of the elder. Each extension shall be for a period not to exceed ninety (90) days.

403. Deferring Criminal Prosecution.

Criminal prosecution of any person accused of elder abuse or neglect may be deferred or dismissed consistent with Tribal law or procedure if:

(a) The crime is not of a serious nature involving intentional bodily injury or intentional property damage;

(b) The accused person does not have a prior record of abuse, neglect or exploitation relating to elders, adults, children, or otherwise;

(c) The elder, the elder's family and caregiver, and the accused, if not a family member or caregiver agree to resolve conflicts either through counseling, tribal peacemakers program, mediation, family restoration treatment or other tribally recognized dispute resolution process;

(d) All parties involved abide by a Wyandotte Nation Tribal Court ordered elder protection plan; and,

(e) Possible future prosecution would not be hindered by foreseeable unavailability of witnesses.

404. Petition; Hearing.

(a) Jurisdiction. The Wyandotte Nation Tribal Court has jurisdiction to hear a cause of action for protection and issue such an order if either the petitioner or the respondent resides within territorial jurisdiction of the Court as defined in Wyandotte Nation constitution, Wyandotte Nation Codes or case law or is subject to the jurisdiction of the Wyandotte Nation per Wyandotte Nation Codes.

(b) The Wyandotte Nation Prosecutor shall file petitions and present facts on behalf of the Petitioner for legal proceedings authorized or required by this Code.

(c) A hearing on the petition authorized or required by this Code shall be conducted with the purpose of protecting the elder only where necessary and only to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this Code and in the Indian Civil Rights Act shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the elder and other interested parties, including the elder's family and caregiver. The elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The Wyandotte Nation Tribal Court shall issue a written statement of its findings in support of any order allowed by this Code.