

**TRIBAL ELDER AND VULNERABLE ADULT PROTECTION CODE**  
**SECTION 1: PURPOSE**

The Yurok Tribal Council, in accordance with the Constitution of the Yurok Tribe and in the exercise of the Yurok Tribe's sovereign power to safeguard and provide for the health, safety and welfare of the members of the Yurok Tribe, hereby enacts this Code in furtherance of our values and cultural mandates to care for elders and vulnerable adults in our community. With the enactment of this Code, the Tribal Council is expressing their sovereign intent to create a system that honors and respects its duties and responsibilities to its elders and vulnerable adults. These duties and responsibilities include provision for their basic needs and insuring their continued participation in the Tribal community.

**SECTION 2: JURISDICTION**

The jurisdiction of the Yurok Tribal Court and the effective scope of this Code shall minimally include, but not necessarily be limited to all Yurok Tribal members, both present and future, any elder or vulnerable adult related to a Yurok Tribal member, all territory within the Yurok Indian Reservation, as defined by Article 1 of the Yurok Tribal Constitution, including but not necessarily limited to all real property including fee patents, allotments, assignments; all roads, waters, and bridges used or maintained for Tribal purposes, and existing and future lands outside the boundaries of the currently federally recognized Reservation owned or controlled by the Yurok Tribe for the benefit of its members.

The Courts of the Yurok Tribe shall have jurisdiction over all cases arising under the provisions of this Code and all cases arising under the provisions of any state or country that arise under that jurisdiction's codes as related to any provision related to an elder or vulnerable adult which may be in need of protection pursuant to this Code. This Code is intended as a civil code and shall be enforced as such.

All cases of abuse of an elder or a vulnerable adult, involving any member of the Yurok Tribe that may arise outside the Yurok Reservation are subject to the assertion of concurrent jurisdiction by the Yurok Tribal Court and until such time as the retrocession of Public Law 82-280 shall be subject to the provisions of this Code which hereby allow for transfer of said case to the Yurok Tribal Court.

The Court shall construe this section liberally to exercise maximum jurisdiction consistent with applicable tribal law and custom, state and federal law.

### **SECTION 3: DEFINITIONS**

As used in this Code, these terms have the following meanings;

- A. **Abuse** is an intentional or negligent infliction of bodily injury, including but not necessarily limited to sexual abuse or exploitation, unreasonable confinement, intimidation, emotional abuse or cruel punishment of an elder or vulnerable person which results in physical injury or pain, or mental anguish. Also includes improper or unauthorized use of an elder or vulnerable adult's funds, property (real or personal), including regalia, or any other resource in a manner not consistent with the elder or vulnerable adult's interests and needs. Also includes failure to care for elder or vulnerable adult when a standard of care or need has been medically or legally established which results in physical injury, pain or mental anguish; when said care has been communicated to the caregiver, who has accepted the duty to care for said person in need of care.
- B. **Advisor to Tribal Court** any party to an action pursuant to this Code may nominate a member of their family or or another person known to them to act as an advisor to the Court, or the Court may nominate a person to serve this role for the elder or family. The advisor's role is not designated to replace a party advocate but is to help the Court reach a disposition in each case that is consistent with the purposes of this Code to protect elders and vulnerable adult's rights to basic needs and community participation that is consistent with Yurok cultural imperatives. For that purpose the advisor is allowed to address the Court with a non-binding recommendation or, with the permission of the parties, address the court in chambers in an unreported hearing for the purpose of making non-binding recommendations.
- C. **Caretaker** is a person who is required by Tribal or state law or Tribal custom to provide services or resources to an elder or vulnerable adult; a person who volunteers to provide services or resources to an elder or vulnerable adult; and/or an institution or agency and its employees who are required by Tribal, state or Federal law, Tribal custom or through any other agreement to provide services or resources to an elder or vulnerable adult.
- D. **Care Plan for Protection** of a named individual must contain a safety plan as approved by the Court whenever a temporary or permanent Order of Protection is issued pursuant to this Code. The requirements for a plan are established herein.
- E. **Duty of Care** requires that a person act toward others and the public with watchfulness, attention, caution and prudence that a reasonable person in the circumstances would. If a person's actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence.
- F. **Elder** is a citizen of the Yurok Tribe who is 55 years of age or older or a person who resides on the Yurok Reservation who is 55 years of age

or older to whom a tribal member owes a duty of care because of traditional or familial ties.

- G. **Exploitation** is the improper or unauthorized use of an elder or vulnerable adult's money, property, personal belongings, or other resources. A failure to use an elder or vulnerable adult's funds, property or resources as the elder or adult desires, and/or for their benefit, shall be deemed as exploitation.
- H. **Emergency** is a situation in which an elder or vulnerable adult is put in immediate risk of death or physical injury or serious loss of property and is unable to consent to services and/or mitigate or remove the risk.
- I. **Family** is as determined by law including but not necessarily limited to Tribal law, custom or traditions.
- J. **Good Faith** is an honest and reasonable belief or purpose and the lack of intent to defraud or injure.
- K. **Least Restrictive Alternative** is whenever it is necessary to protect an elder or vulnerable adult, the least restrictive method of intervention consistent with protecting their freedom and independence will be utilized.
- L. **Neglect** is a failure to provide for the basic needs of an elder or vulnerable adult by not supplying resources, care or supervision necessary to secure the basic needs of the person, including interfering with delivery of necessary services or resources and failure to report abuse of said persons; said failure will not include any failure based on the lack of available resources to the caretaker.
- M. **Protective Placement** is the placement of an elder or vulnerable adult in a hospital, nursing home, residential care facility, other suitable placement or transfer from one placement to another with consent of that person or with appropriate legal authority.
- N. **Protective Services** are those services provided to an elder or vulnerable adult with consent or by order of appropriate legal authority which includes but is not limited to: social services, mental and physical health examinations, home and day care, legal assistance, guardianship, case management and any other services consistent with the intent of this Code.
- O. **Retaliation** is considered intimidation or a threat to cause bodily harm or causing bodily harm or causing bodily harm to a reporter or family of a person reporting elder abuse; causing or attempting to cause the reporter or reporter's family to be terminated, suspended or reprimanded by an employer; causing property damage to real or personal property belonging to a reporter's family.
- P. **Substantiated Report** is when there is probable cause to make a finding of abuse after an investigation has been conducted by a protective or social services worker. The report is sent to the Tribal prosecutor's office for further action; said report will be kept by the prosecutor's/social services office/protective workers office for a period of five (5) years.

- Q. **Unsubstantiated Report** is when no probable cause exists to pursue further action after an investigation by the assigned protective or social services worker. Said reports will be kept for two (2) years.
- R. **Vulnerable adult** is an adult who exceeds the age of 18 and is unable to protect themselves from abuse neglect or exploitation. This includes the person who is unable to make responsible decisions for himself or herself because of mental illness or deficiency, physical disability or illness, age related capacity issues, or the effects of chronic use of alcohol and/or drugs.

#### **SECTION 4: DUTY TO REPORT ABUSE OR NEGLECT OF ELDER OR VULNERABLE ADULT AND IMMUNITY FOR GOOD FAITH REPORTING**

Suspected abuse or neglect of an elder or vulnerable adult shall be reported to the Tribal Protective Services Worker or Social Services Worker by the following persons; said reports by these reporters are mandated and shall be presumed to be made in good faith; any person who in good faith reports suspected abuse or neglect is immune from any recourse under the law if said report is found to be unsubstantiated. :

- (1) The elder or vulnerable adult's family or caretaker;
- (2) All elected officials of the Tribe;
- (3) Any and all tribal social workers, medical and dental staff, Religious/cultural practitioners and/or any other tribal employees who provide services and or benefits to tribal elders and or vulnerable adults;
- (4) Any person or agency including employees, with fiduciary duties to elders or vulnerable adults; such as attorneys, accountants, property managers, or financial Institutions;
- (5) The elder or vulnerable adult abused; and/or
- (6) Any other person(s) who have reason to suspect that an elder or vulnerable adult is abused or neglected.

#### **SECTION 5: FAILURE TO REPORT AND/OR FALSE REPORTING**

Any person who is required to report pursuant to this statute and willfully fails to report suspected or actual abuse or neglect may be subject to a civil money penalty of up to \$5,000 and may suffer any other appropriate civil fine/order that might be necessary to insure compliance with this Code and protect any individual who is entitled to protection pursuant to this Code. All persons required to report who fail to report are entitled to receive specific notice in a timely fashion and an opportunity for hearing in Tribal court prior to any penalty being assessed. Any penalty or order may only be assessed after determination of a duty to report is found at the hearing. A person failing to report suspected abuse or neglect may be subject to suit by or on behalf of abused persons for damages resulting from unreported abuse.

A person who makes a report of suspected abuse or neglect knowing such report to be false will be subject to a civil money penalty of up to \$5,000. Said fine or other appropriate civil orders to insure compliance with this code will not be assessed unless and until the accused false reporter receives specific notice in a timely fashion and an opportunity for hearing in Tribal court prior to any penalty being assessed. The false reporter may also suffer civil damages being assessed pursuant to an action by the person falsely accused.

## **SECTION 6: CONFIDENTIALITY OF REPORTER, REPORTS, HEARINGS: PENALTIES FOR NONCOMPLIANCE**

All proceedings under this Code are confidential unless otherwise provided. The Court and all individuals and agencies who are responsible for enforcing or participating in the enforcement of the provisions of this Code will ensure that disclosure of confidential personal information received or maintained in the course of actions brought under this Code shall be limited to purposes directly connected with the administration of this Code. Protections include but are not necessarily limited to the following:

1. The identity of the reporter of abuse or neglect under this Code is confidential and shall not be released unless the reporter consents or the Tribal Court determines that the need of the elder or vulnerable adult exceeds the reporter's right to privacy and mandates disclosure. The reporter has the opportunity to petition and be heard at a closed evidentiary hearing with regard to any such disclosure. Any disclosure may be released only to the extent necessary to protect the elder or vulnerable adult. However, the investigating worker's name is not protected.

2. Records of investigations concerning abuse or neglect under this Code are confidential. Protective services, Law Enforcement, court officials, attorneys, Coroner, medical staff and any other person whom the Court determines have reasonable cause to have access may view the record(s).

3. Anyone who violates this section of the Code shall be subject to a money penalty of up to \$5,000 per occurrence. A petition, notice and an opportunity for hearing in Tribal court will determine if a violation has occurred.

## **SECTION 7: INVESTIGATION REQUIREMENTS**

A state or tribal protective/social services worker shall initiate an investigation upon receiving a report of elder or vulnerable adult abuse or neglect. The protective/social services worker shall investigate the report of abuse or neglect within 48 hours, the worker will immediately assess whether or not an emergency situation exists and if one does, will proceed under Section 8 of this Code. If an emergency situation does not exist then the worker shall prepare a written report within 10 days based upon:

1. Personal interviews of the abused, the immediate family and caretaker, suspected abuser, employees of agencies (if involved), and any other person who may have pertinent information;

2. Medical records and other evidence of abuse;
3. Assessment of elder or vulnerable adult's living conditions using Tribal standards for housing; and
4. Any other observations, assessments, or documents that may aid in completing an accurate and complete report.

The written report shall contain:

1. The elder or vulnerable person's name, address or location, telephone number;
2. Name, address or location, telephone number(s) of the person(s) or agency who is suspected of abuse or neglect under this Code;
3. The condition of the abused;
4. Names of witnesses and sufficient information to affect the subpoena power of the court over said witnesses;
5. Name, address or location, telephone number of reported caretaker(s);
6. A description of the act(s) which are suspected of being abusive or neglectful; and
7. Any other information helpful in establishing abuse or neglect.

## **SECTION 8: EMERGENCY SITUATION INVESTIGATIONS AND PROCEDURES**

A. The Tribal Court may issue an ex parte emergency protection order authorizing emergency services or protective placement upon clear and convincing factual statements and/or evidence that an elder or vulnerable adult:

1. Is at risk of immediate physical harm or irretrievable or irreversible loss of valuable resources or benefits;
2. No one is authorized by law or existing court order to give consent, or after reasonable efforts, no said person can be located; and
3. The elder or vulnerable adult or authorized caretaker is incapacitated and cannot consent to services.

B. The emergency protection order shall:

1. State the name and interest (or relationship) of the petitioner;
2. State the specific emergency services to be provided to convert the situation to non-emergency status;
3. Allow protective placement only if the evidence indicates that it is absolutely necessary;
4. Designate the person or agency required to implement the order;
5. Be issued for 120 hours excluding weekends and holidays, and may only be renewed for a maximum of an additional 120 hours if evidence of a continuing emergency exists; Said orders may be set aside upon a showing of good cause by any interested party (continuance may be granted for good cause at the discretion of the Court); and

6. Present a transition plan for the at-risk elder or vulnerable adult for the period immediately following the expiration of the Protective Order until the Order expires or a hearing is held pursuant to a permanent order request.

C. Tribal court may issue a warrant for forcible entry by Tribal Law Enforcement if attempts to gain voluntary access have failed and a sworn declaration by a law enforcement officer or protective/social services worker sets forth emergent circumstances that establish probable cause that an elder or vulnerable adult is at risk. Note: this does NOT prohibit law enforcement from acting on probable cause at any scene where the officer personally observes and believes an at risk situation exists; said officer may take the appropriate steps to secure the scene or mitigate the risk including but not limited to transporting the at risk individual to a safe location.

### **SECTION 9: RIGHTS OF ELDERS, VULNERABLE ADULTS THEIR FAMILIES AND THEIR CARETAKERS**

A. An elder, vulnerable adult, family, and/or caretaker shall be informed of an abuse investigation as soon as the investigation begins or as soon thereafter as is possible unless an emergency exists. If an emergency exists, notice must be given using a means reasonably calculated to give actual notice as soon as possible, but in any event shall any notice not be given later than 72 hours.

B. Elders or vulnerable adults may refuse to accept protective services provided there is good cause to believe that the abused can take care of themselves and the elder or vulnerable adult knows of the services offered.

C. Families or caretakers may refuse services for themselves but cannot refuse services for the elder or vulnerable adult unless alternate services have been established and no unusual risk remains.

D. Elders, vulnerable adults, family, or caretakers may refuse to allow investigators into their home and must be told of the right of investigator to seek a warrant should entry be denied.

E. Personal service of notice to the elder, vulnerable adult, family, and/or caretaker is required when a petition is filed pursuant to this code.

F. The elder, vulnerable adult, family, or caretaker has the right to attend all proceedings pertaining to the capacity of the abused unless the Tribal Court determines the elder or adult's health is at risk in attending such proceedings. However, the Court may make accommodations as the Court sees fit to facilitate an elder or vulnerable adult's participation.

H. The elder, vulnerable adult, family, or caretaker has the right to independent medical, psychological or psychiatric evaluations at their own expense, but must

submit to any Court ordered evaluation or suffer a possible adverse inference from the failure to cooperate.

## **SECTION 10: STANDARD OF PROOF REQUIRED**

All matters at issue herein will be determined by the evidentiary standard of clear and convincing evidence, unless a statutory exception is specifically stated herein or in an applicable statute used to enforce this Code.

## **SECTION 11: COURT PROCESS REQUIREMENTS**

The Tribe will be represented by the Tribal prosecutor in all matters pursuant to this Code. The prosecutor will review any and all cases prior to filing of a petition; if the prosecutor declines to prosecute, a private party may file a petition pursuant to this Code and the Court may ask the prosecutor for a recommendation which will include a summary of the reasons for initially declining prosecution.

A. Petition. The tribal prosecutor shall initiate proceedings on behalf of the Tribe, by filing a petition which contains the following information:

1. The name, birth date, age, residence, and gender of the elder and/or vulnerable adult;
2. The factual basis for the court's jurisdiction under this Code;
3. A plain and concise statement of facts upon which the claim is made that the elder and/or vulnerable adult is in need of protection, including date(s), time(s), and location(s) at which the alleged facts occurred.
4. The names, residences, and tribal affiliation (if any), of the person(s) alleged to have neglected and/or abused the elder and/or vulnerable adult.

B. Notice of Petition Filing; Hearing. Any person who has an interest in the welfare of the elder and/or vulnerable adult, including but not necessarily limited to the immediate family and/ or known caretakers, shall be provided notice of the filing of the petition and the date of hearing pursuant to the Tribe's notice requirements as set out in the Rules of Court.

C. Hearings. The Court shall conduct a hearing on the petition to determine whether the facts support a finding that the elder and/or vulnerable adult is in need of protection. All material and relevant evidence that is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value, including hearsay contained in a written investigative report, provided that the preparer of the report is present and available to provide testimony. The parties, including the elder and/or vulnerable adult, shall be afforded an opportunity to examine and controvert written reports, and cross examine individuals whose testimony is presented. The Court may rely on

conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

D. Judgments. The Court shall make a decision at the conclusion of the hearing and make orders including ordering a specific party to draft the Temporary or Permanent Orders for the Court's review and signature. If the allegations of the petition are not sustained, the Court shall dismiss the matter. If the allegations of the petition are sustained, the Court shall find that the elder and/or vulnerable adult is in need of protection, and may enter further orders for evaluation, assessment, or other orders to protect the elder and/or vulnerable adult. The Court may also enter Orders of Mandatory Review to check on the status of the protected individual.

### **SECTION 12: ELDER AND VULNERABLE ADULTS ORDERS: TERMS**

If the Tribal court determines that there is incapacity or evidence of abuse or neglect of an elder or vulnerable adult, a protection order will be issued which must contain a Care Plan for the Protection (said Care Plan for the Protection of a named individual must also be issued when temporary orders for protection are made) of the named individual and which shall contain protections addressing the care of the elder or vulnerable adult, but shall not necessarily be limited to the following:

1. Removal of the abuser from the place where abuse or neglect occurs, including the elder or vulnerable adult's home;
2. Securing the abused in a care facility;
3. Enjoining the abuser from committing further abusive acts;
4. Requiring any party having a fiduciary duty to the elder or vulnerable adult to account for the elder or vulnerable adult's funds, and/or real or personal property;
5. Requiring compensatory damages to be paid by an abuser or neglectful person to the elder or vulnerable adult for injuries resulting from abuser's or neglectful person's wrongful act(s)
6. Assess a fine pursuant to this Code; and
7. Appointing a representative, guardian, guardian ad litem, or appoint or order the securing of a representative payee for the elder or vulnerable adult's benefits, or to otherwise manage their personal resources.

All such Orders must be reviewed at least every twelve (12) months, and should be set for such a review if earlier dates of review are not established at the conclusion of the Order establishing the need for a protective order.

### **SECTION 13: CRIMINAL PROSECUTIONS STATE OR TRIBAL**

Criminal prosecution in any applicable jurisdiction does NOT bar an action pursuant to this Code. Criminal prosecution does not bar a defendant from

receiving services pursuant to this Code. A criminal prosecution does not bar an investigation or petition/orders pursuant to this Code.

**SECTION :SEVERABILITY**

If a court, with the authority to do so, finds any clause or section of this Code to be invalid, such clause or section shall be severed, and the remainder of this Code shall remain in full force and effect.

**C\*E\*R\*T\*I\*F\*I\*C\*A\*T\*I\*O\*N**

**THE FOREGOING ORDINANCE, ENTITLED THE YUROK TRIBE ELDER AND VULNERABLE ADULT PROTECTION CODE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUROK TRIBAL COUNCIL ON FEBRUARY 10, 2011 AT WHICH A QUORUM WAS PRESENT AND THAT THIS ORDINANCE WAS APPROVED BY A VOTE OF 7 FOR, 0 OPPOSED, WITH NO ABSTENTIONS**

**DATED THIS 10<sup>th</sup> DAY OF FEBRUARY, 2011**

  
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**Thomas P. O'Rourke Sr., Chairman  
Yurok Tribal Council**

**Attest:**

  
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**Richard Myers, Secretary  
Yurok Tribal Council**