

## **CHAPTER 4. DOMESTIC VIOLENCE PREVENTION**

### **Section 1. Title, Purpose and Definitions**

#### **(a) Title**

This Chapter may be cited as the “Smith River Rancheria Domestic Violence Prevention Code.”

#### **(b) Purpose**

The purpose of this Code is to:

- (1) Eliminate barriers to meeting the safety and other needs of victims of family violence;
- (2) To hold batterers accountable for their actions; and
- (3) To enhance the provision of services to victims and their batterers.

#### **(c) Construction**

This chapter shall be liberally construed to effect the purposes stated above and shall be interpreted to comport with the customs and traditions of the Smith River Rancheria. If tribal law, customs and traditions are inconclusive in any matter arising under this chapter, then federal law and, as a last resort, the laws of the State of California or Oregon, may be used for guidance.

#### **(d) Definitions**

(1) **Domestic violence** includes:

- (A) Intentional infliction of physical harm to a family or household member;
- (B) An act, word, gesture or any other behavior that places a family or household member in fear of imminent physical harm;
- (C) Intentional use of force, coercion, threat, intimidation, humiliation, or confinement which results in mental or emotional harm to a family or household member; or
- (D) Causing a family or household member to engage involuntarily in sexual activity by force, coercion, threat, intimidation, humiliation, confinement, or administering alcohol or drugs to the family or household member without their knowledge.

(2) **Imminent physical harm** as used above refers to such physical harm that is close or near at hand, that is impending, perilous, or on the point of happening. It does not require that such physical harm be immediate or without delay after the behavior that places the victim in fear.

(3) **Family or household member** includes:

- (A) adults and/or minors who are current or former spouses;
- (B) adults and/or minors who have a child, including an unborn child, in common;
- (C) adults and/or minors who are living together or have lived together and who have engaged in a sexual relationship;
- (D) adults and/or minors who are involved or have been involved in a sexual or otherwise intimate, ongoing relationship including persons who are identified in the community as boyfriend and girlfriend; and
- (E) adult relatives who are living together or who have lived together.
  - (i) Where the victim is a vulnerable or elderly adult, Chapter 5 of this Title offers additional protections.

(4) **Exclusion** - Domestic violence in the parent-minor child relationship is not covered in this Code. The occurrence of domestic violence in that relationship is covered in the Smith River Rancheria Children's Code (Title 9, Chapter 2).

## **Section 2. Jurisdiction and Civil Nature of this Code**

### **(a) Jurisdiction & Authority to Enact This Code**

This Code is adopted pursuant to Article IV of the Smith River Rancheria Constitution and pursuant to an exercise of the Smith River Rancheria's inherent sovereign authority.

### **(b) Jurisdiction of the Court & Civil Nature of this Code**

The jurisdiction of the Tribal Court shall be civil in nature and shall include the power to issue all orders necessary to insure the purposes and provisions of this Code are put into effect. This includes the power to enforce subpoenas, orders of contempt, and any other orders as appropriate.

### **(c) Availability of Criminal Penalties**

The provisions of this Code do not replace the criminal penalties and procedures available under state law for an act of domestic violence.

## **Section 3. Civil Orders for Protection**

### **(a) Who May Petition the Court**

(1) A person who is subject to the jurisdiction of the Smith River Rancheria's

Court and who has been a victim of domestic violence may file a Petition for an Order for Protection against a family or household member who commits an act of domestic violence.

- (2) A parent, guardian, or other representative may file a Petition for an Order for Protection on behalf of a minor victim against the family or household member who commits an act of domestic violence.
- (3) No filing fee, bond, or other payment shall be required from the victim for the filing of a Petition for an Order for Protection under this Code.

**(b) Contents of Petition**

- (1) The Petition shall include membership status or any other information necessary to establish jurisdiction of the Court; the Petitioner's name and address at the time of the incident of domestic violence; the name, address, and relationship of the family or household member who is the Respondent; a description of the specific facts and circumstances justifying the relief requested; the relief requested; and the current location of the Respondent, if known.
- (2) The current location of the Petitioner shall not be released by the Court except on Petitioner's written request.
- (3) The Petition shall also state the nature of any other legal matter pending regarding the Petitioner or the Respondent, for example, criminal charges, child protection proceeding, and divorce.
- (4) The Petition may include a request that the Court arrange for law enforcement to be present at the time of the hearing.

**(c) Duty of Court Personnel to Provide Forms & Clerical Assistance**

- (1) The Clerk of Court or other designated person shall provide to a person requesting an Order for Protection:
  - (A) a standard Petition form with instructions for completion,
  - (B) all other forms required to petition for an Order for Protection, such as those needed for service of process,
  - (C) clerical assistance in filling out the forms and filing the Petition for an Order for Protection, and
  - (D) provide written notice to the victim identifying the nearest available provider of shelter and advocacy services.
- (2) In order to facilitate enforcement under full faith and credit provisions of

state law, the Clerk of the Court or other designated person shall send an authenticated copy of the Emergency Order for Protection and the Order for Protection to the court clerk for the county where Respondent is located within one business day of the issuance of the Order.

**(d) Emergency Orders for Protection**

- (1) The Court shall immediately grant an ex-parte Emergency Order for Protection (also known as a Temporary Restraining Order) if, based on the specific facts stated in the Petition, there is reasonable grounds to believe that the Petitioner is in danger of domestic violence occurring prior to a hearing on the Petition. An allegation of a recent incident of domestic violence constitutes reasonable grounds to believe the Petitioner is in danger.
- (2) The Emergency Order for Protection may include the following relief:
  - (A) Prohibiting the Respondent from committing or threatening to commit acts of domestic violence against the Petitioner and the Petitioner's family and household members;
  - (B) Prohibiting the Respondent from contacting or communicating with the Petitioner directly or indirectly;
  - (C) Removing and excluding Respondent from the Petitioner's residence, regardless of ownership;
  - (D) Removing and excluding Respondent from the Petitioner's place of employment and other locations frequented by Petitioner; and
  - (E) Such other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.
- (3) The Emergency Order for Protection shall be served with the notice of hearing on the Respondent and shall expire at the time of the hearing.

**(e) Notice to Respondent & Other Interested Parties**

Respondent shall be served a notice of hearing along with a copy of the Petition and a copy of any Emergency Order for Protection at least forty-eight (48) hours prior to the time of the hearing.

**(f) Hearing**

- (1) The Court shall hold a hearing on the Petition for an Order for Protection within seven (7) days of the filing date of the Petition.
- (2) The Court may extend the time for a hearing once for up to fourteen (14)

days upon consent of the parties or upon finding that Respondent has not been timely served a notice of hearing.

**(g) Remedies Available in an Order for Protection**

- (1) The Court may grant the following relief in an Order for Protection if requested by the Petitioner and after notice and hearing, whether or not the Respondent appears:
  - (A) Prohibit the Respondent from threatening to commit or committing acts of domestic violence against the Petitioner;
  - (B) Prohibit the Respondent from harassing, telephoning, contacting, or otherwise communicating with the Petitioner directly or indirectly, or through others;
  - (C) Remove and exclude Respondent from Petitioner's residence, or if Respondent owns or leases the residence and the Petitioner has no legal interest in the residence, then the Court may order the Respondent to avoid the residence for a reasonable length of time until the Petitioner relocates;
  - (D) Remove and exclude Respondent from Petitioner's place of employment at any time Petitioner is present;
  - (E) Remove and exclude Respondent from other specified locations frequented by Petitioner;
  - (F) Remove and exclude Respondent from specified public social events and activities;
  - (G) Limit or prohibit contact with minor children of Respondent where necessary to protect the safety of the Petitioner or child;
  - (H) Refer minors who are family or household members for assessments and services through applicable tribal and other community programs;
  - (I) Require Respondent to participate in relevant assessments and to participate in treatment where the treatment program meets the batterer treatment standards for the State of California or Oregon;
  - (J) Limit or prohibit Respondent from using or possessing a firearm or other weapon as specified by the Court. The Court may order disposal of such firearm or weapon as appropriate, including but not limited to ordering destruction, confiscation by local law enforcement agency or safekeeping by a responsible relative;
  - (K) Require Respondent to reimburse the Petitioner or any other person for any expenses associated with the domestic violence, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;
  - (L) Require Respondent participate in community service, such as cutting wood or providing other services for elderly members of the Tribe;
  - (M) Require substance abuse assessment and testing, as appropriate or necessary.

- (N) Any other relief as the Court deems necessary to protect and provide for the safety of the Petitioner and any designated family or household member.
- (2) An Order for Protection shall not contain any provisions that impose requirements on a victim of domestic violence. The Court may recommend services for the victim and shall verify that the victim is aware of locally available shelter facilities.
- (3) The Court shall cause the Order for Protection to be delivered for service of process; make reasonable efforts to ensure that the Order is understood by the Petitioner, and Respondent if present at the hearing; and transmit a copy of the Order for Protection to the local law enforcement agency or agencies within one business day after the Order is issued if requested by the Petitioner.
- (4) The Court shall not grant a mutual Order for Protection to opposing parties.
- (5) The Court shall not deny a Petitioner the relief requested solely because of a lapse of time between an act of domestic or family violence and the filing of the Petition.

**(h) Duration, Extension, and Modification of Orders for Protection**

- (1) An Order for Protection or a modification of an Order for Protection is effective until further order of the Court.
- (2) An Order for Protection may be modified or withdrawn following notice and hearing, on the Court's own motion or upon the request of either Petitioner or Respondent if:
- (A) Assessments or treatments ordered by the Court have been completed;
  - (B) Respondent demonstrates behavioral changes which eliminate the risk of a recurrence of acts of domestic violence as verified by treatment providers or other independent sources identified by the Court; or
  - (C) The Court determines the safety needs of the Petitioner and other family or household members are provided for by the modification or withdrawal of the Order for Protection.
- (3) If Respondent is excluded from Petitioner's residence, or ordered to stay away from Petitioner, an invitation by the Petitioner to do so does not waive or nullify an Order for Protection.

(i) **Enforcement and Penalties for Violation** Where Respondent has violated an Order for Protection, the Court may order additional remedies as provided in Section G above, and may impose such penalties as are deemed necessary by the Court given the severity of the violation of the Order. Penalties include, but are not limited to those available for contempt, fines, assessments of court costs and fees, and exclusion from tribal offices and businesses.

(j) **Full Faith & Credit**

(1) Any protection order that is consistent with subsection 2 of this section by the court of one state or Indian tribe (the issuing state or Indian tribe) shall be accorded full faith and credit by the Smith River Rancheria and enforced as if it were the order of this Tribal Court.

(2) A protection order issued by a state or tribal court is consistent with this subsection if:

(A) Such court has jurisdiction over the parties and matter under the law of such state or tribe; and

(B) Reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the issuing state's or tribe's law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(3) A protection order issued by a state or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(A) No cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(B) A cross or counter petitioner has been filed and the court did not make specific findings that each party was entitled to such an order.

## **Section 4. Intervention and Referrals**

(a) **Confidentiality for Victims**

(1) A victim of domestic abuse may refuse to disclose and may prevent any volunteer or employee of a program for victims of domestic abuse from disclosing, the content of oral communication and written records and

reports concerning the victim.

- (2) This privilege may be waived only by the victim. It must be in writing and must identify what information may be disclosed, to whom, and for what purpose. Such a waiver is not valid after thirty (30) days or after the victim revokes the waiver.
- (3) This privilege does not relieve a person from a duty imposed under the Children's Code or applicable state law to report child abuse or neglect or from providing evidence about child abuse or neglect in court as may be required.
- (4) These provisions on confidentiality for victims shall not prevent the disclosure of information compiled about incidents of domestic violence which protects the identity of the victim and family or household members of the victim.

**(b) Intervention for Batterers**

- (1) Where services are provided for batterers pursuant to an Order for Protection, the batterer who is ordered into the program shall be required by the Court to sign the following releases:
  - (A) Allowing the provider of services to inform the victim and victim's advocate whether or not the batterer is in treatment pursuant to the Order, whether or not the batterer is in compliance with treatment provisions, and whether or not the safety of the victim is at risk;
  - (B) Allowing prior and current treating agencies to provide information about the batterer to the service provider; and
  - (C) Allowing the service provider to provide information about the batterer to relevant legal entities including courts, parole and probation officers, and child protective services.

- (c) **Written policies and procedures** developed pursuant to this chapter may include requiring tribal programs and other entities within the jurisdiction of the Smith River Rancheria to provide information about the rights of victims and about remedies and services available, set standards for service providers concerning domestic violence, and establish protocols for intervention and referrals for services for suspected victims or batterers, and their household and family members.

**LEGISLATIVE HISTORY**

This Chapter was originally adopted on March 30, 2010, as the Smith River Rancheria's Domestic Violence Prevention Code Chapters 4 and 5.

## CHAPTER 5. ABUSE OF ELDERS AND VULNERABLE ADULTS

### Section 1. Title, Policy, Intent

This Chapter may be cited as the “Smith River Rancheria Elder Abuse Protection Code.”

It is the policy of the Smith River Rancheria to hold our elders in high esteem. The elders of our community are the custodians of Tribal history, culture and traditions which are vital to Native Culture. It is also the policy of the Smith River Rancheria to protect those vulnerable adults who exceed the age of 18 and cannot protect themselves because of mental or physical impairments. This Code shall be liberally construed to affect its policies and purposes.

It is the intent of the Tribal Council to prevent or remedy the abuse, neglect, exploitation, or abandonment of elders and vulnerable adults who have a functional, mental, or physical inability to care for or protect themselves and to provide these persons with the protection of the Smith River Rancheria Court and the least restrictive services, such as home care, and preventing or reducing inappropriate institutional care. The Council finds that it is in the interests of the public health, safety, and welfare of the Smith River Rancheria Community to provide a procedure for identifying these elder and vulnerable persons and providing the services and remedies necessary for their well-being.

The Tribal Council further finds that many elders and vulnerable adults may be homebound or otherwise may be unable to represent themselves in court or to retain legal counsel in order to obtain the relief available to them under this Chapter. It is the intent of the Council to improve access to the courts for victims of abuse, neglect, exploitation, and abandonment in order to better protect the elderly and vulnerable adults to thrive.

### Section 2. Definitions

Unless the context clearly requires otherwise, the definitions in this Section apply throughout this Chapter.

**"Abandonment"** means action or inaction by a person or entity with a duty of care for an elder or a vulnerable adult that leaves the elder or vulnerable person without the means or ability to obtain essential services.

**"Abuse"** means a nonaccidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual.

**"Department"** means the Smith River Rancheria Community and Family

Services Department.

**"Consent"** means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

**"Director"** means the Director or administrator of the Smith River Rancheria Community and Family Services Department.

**"Elder"** means any person who is fifty-five (55) years of age or older.

**"Essential Services"** means those services or things necessary to sustain a person's life, physical and mental health, and general well-being, such as adequate food, clothing shelter, and health care. It may include service or items considered essential under the person's customs, tradition or religion, including but not limited to, access to traditional foods and access to religious ceremonies or services.

**"Exploitation"** means the illegal or improper use of an elder or vulnerable adult or that person's income or resources, including trust funds, for another person's profit or advantage. Exploitation includes the unreasonable imposition on the elder's time resources, such as leaving children or other persons in the care of the elder or vulnerable adult for extended periods or under circumstances in which the elder or vulnerable adult cannot adequately care for such children or other persons.

**"Neglect"** means a pattern of conduct or inaction by a person or entity with a duty of care for an elder or vulnerable adult that results in the deprivation of essential services to the elder or vulnerable person.

**"Vulnerable adult"** means a person eighteen (18) years of age or older who has the functional, mental, or physical inability to care for himself. "Vulnerable adult" shall include:

- (a) Persons found incapacitated or adult persons who are otherwise eligible for the appointment of a guardian under this Code;
- (b) A person who has a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the Director to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely,

and which constitutes a substantial handicap to the individual. The Department shall adopt criteria which define neurological or other conditions under this Subpart in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions and notify the Tribal Council upon such adoption; or

- (c) Persons admitted to any long-term care facility or receiving services from home health, hospice, or home care agencies located or operating within the jurisdiction of the Smith River Rancheria.

### **Section 3. Additional Remedies**

Unless otherwise provided by this Chapter, nothing in this Chapter shall be deemed to preclude the Tribal Court, to the extent authorized by Tribal law, from:

- (a) issuing an injunction, temporary restraining order, or similar relief by ordering a respondent to temporarily or permanently refrain from conducting the acts or actions that gave rise to a complaint under this Chapter;
- (b) ordering the respondent to pay compensation or restitution to an individual or any other entity injured by the actions of the respondent; or
- (c) imposing any other civil or criminal remedy for violations of Tribal law or regulations.

### **Section 4. Immunity from Liability**

- (a) Nothing in this Chapter shall be construed as a waiver of the sovereign immunity of the Smith River Rancheria unless otherwise provided by tribal law or the Tribal Council. Nor shall this Chapter be construed as superseding or abridging remedies provided by tribal law or the Tribal Council against any tribal officers, employees or volunteers.
- (b) A person is immune from liability resulting from a report made under this Chapter or testimony, if in good faith, he or she:
  - (1) Participates in making such report; or
  - (2) Testifies about the abuse, neglect, abandonment, or exploitation of an elder or vulnerable adult in a judicial proceeding under this Chapter.
- (c) Conduct conforming with the reporting and testifying provisions of this Chapter shall not be deemed a violation of any confidential communication privilege.

## **Section 5. Standing\Jurisdiction**

A petition for a protective order or an action for damages under this Chapter may be brought by the plaintiff, or where necessary, by his or her family members and/or guardian or legal fiduciary, or as otherwise provided under this Chapter. The death of the plaintiff shall not deprive the court of jurisdiction over a petition or claim brought under this Chapter. Upon petition, after the death of the plaintiff, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for the benefit of the surviving spouse, child or children, or other heirs.

## **Section 6. Custom and Tradition**

Any action under this Chapter shall be conducted in a manner that is consistent with the custom and/or traditional beliefs, if any, of the elder or vulnerable adult to which the action applies and any such action which is contrary to such custom and/or traditional beliefs is prohibited. In determining the custom or traditional beliefs of a particular elder or vulnerable adult, any person taking action under this Chapter may rely on the advice of persons familiar with such custom or traditional beliefs.

## **Section 7. Prevention of Abuse, Exploitation, Neglect and Abandonment**

### **(a) Reporting Requirements**

(1) Except as otherwise provided by this Section, the following persons shall make an immediate oral report of such information to the Department and shall report such information in writing to the Department within ten (10) days of receiving the information:

(A) Any person, including but not limited to, financial institutions or attorneys, having reasonable cause to believe that an elder or vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, or is otherwise in need of protective services may, report such information to the Department; and

(B) Any professional police officer, social worker, employee of the Department, a social service, welfare, mental health, or health Department, including but not limited to Indian Health Service (IHS) personnel, home health, hospice, and home care agencies located within the jurisdiction of the Smith River Rancheria, congregate long-term care facility, including but not limited to adult family homes, boarding homes, nursing homes located within the jurisdiction of the

Smith River Rancheria or assisted living services located or operating within the jurisdiction of the Smith River Rancheria, or health care provider located or operating within the jurisdiction of the Smith River Rancheria, including but not limited to doctors, nurses, psychologists, and pharmacists having reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment.

- (2) The making of permissive reports as provided under this Section does not create any duty to report and no civil liability shall attach for any failure to make such report. Any person mandated to report abuse, neglect, exploitation or abandonment of a vulnerable adult as provided by this Section who knowingly fails to do so or wilfully prevents someone else from doing so shall be subject to a civil cause of action by the vulnerable adult, or where necessary, by his or her family members and/or guardian or legal fiduciary.

**(b) Reports/Contents**

- (1) A report made under this Chapter shall contain, if known:
  - (A) the identification of the elder or vulnerable adult;
  - (B) the nature and extent of the suspected abuse, neglect, exploitation, or abandonment;
  - (C) any evidence of previous abuse, neglect, exploitation, or abandonment;
  - (D) the name and address of the person making the report; and
  - (E) any other helpful information.
- (2) Unless there is a judicial proceeding or the person consents, the identity of the person making the report shall be confidential.

**(c) Response to Reports**

- (1) The Department shall insure that all reports made under this Chapter are responded to. In non-emergency situations the Department shall investigate a report submitted under this Chapter within three (3) days of receiving the report. In the case of an emergency, the Department and/or law enforcement shall immediately investigate a report submitted under this Chapter.

- (2) Entry of a private dwelling or any other location where there is a reasonable expectation of privacy for the purpose of investigating a report submitted under this Chapter may be conducted in accordance with the Smith River Rancheria Constitution and other tribal law.
- (3) If the Department finds that an incident of abuse, neglect, exploitation, or abandonment has occurred, it shall:
- (A) provide information to the elder or vulnerable adult on protective services available to the elder or vulnerable adult;
  - (B) inform the elder or vulnerable adult of the right to refuse such services; and
  - (C) with the consent of the elder or vulnerable adult, insure that appropriate protective services are provided to the elder or vulnerable adult.
- (4) As part of its obligations under this Section, the Department may develop cooperative agreements with Smith River Rancheria or other community-based agencies servicing the abused elderly and vulnerable adults. The agreements may cover such subjects as the appropriate roles and responsibilities of the Department and community-based agencies in identifying and responding to reports of abuse, neglect, exploitation or abandonment, the provision of case-management services, standardized data collection procedures, and related coordination activities. The services shall not be provided if the elder or vulnerable adult withdraws or refuses consent. If the Department determines that the elder or vulnerable adult lacks the ability or capacity to consent, it may file a petition for guardianship for the purpose of providing the services under this Section.

**(d) Obstruction or Denial of Access**

- (1) If access to an elder or vulnerable adult alleged to be abused, neglected, exploited, or abandoned, is denied to an employee of the Department seeking to investigate such abuse, neglect, exploitation, or abandonment:
- (A) the Department may seek an injunction to prevent interference with the investigation. The Tribal Court shall issue the injunction if the Department shows that:
    - (i) there is reasonable cause to believe that the person is an elder or vulnerable adult and is or has been abused, neglected, exploited, or abandoned; and

(ii) the employee of the Department seeking to investigate the report has been denied access as provided by this Section.

(B) the person authorized to seek entry of the premises may contact the law enforcement who shall assist in obtaining access, if the denial of access is conducted in a manner which causes such authorized person to reasonably believe that efforts to obtain entry will be forcibly resisted or there is otherwise apparent danger to such person. If peaceable entry is not feasible, law enforcement may take such action as is authorized by tribal law to obtain entry.

**(e) Data collection system**

The Department may maintain a system for statistical data collection, accessible for bona fide research only as the Tribal Council by rule, adopted in accordance with the administrative procedure provisions of this Code, prescribes. The identity of any person obtained through such data collection system is strictly confidential.

**(f) Cause of action for damages**

(1) In addition to other remedies available under tribal law, an elder or vulnerable adult who has been subjected to abuse, neglect, exploitation, or abandonment, shall have a cause of action for damages on account of his injuries, pain and suffering or loss of property sustained thereby, against any person who has caused the abuse, neglect, exploitation, or abandonment or who has permitted another to engage in the abuse, neglect, exploitation, or abandonment.

(2) The tribal prosecutor or the Director may:

(A) upon consultation with the alleged victim, bring an action against any person who engages in the conduct described under this Section; or

(B) if he or she certifies that in his or her opinion, the action is of general public importance, intervene in any action brought under this Section.

(3) In addition to remedies otherwise provided in this Section, upon prevailing in an action under this Subsection, the court shall award the tribe's costs of investigation and penalties. Penalties may not exceed \$5,000 per occurrence.

(4) In an action brought under this Section, a prevailing plaintiff shall be awarded his actual damages, together with the costs of the suit, including a reasonable attorney's fee. The term "costs" includes, but is not limited

to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this Section.

## **Section 8. Abuse and Exploitation Protective Orders**

### **(a) Petition for Protective Order**

- (1) An elder or vulnerable adult or the Department on behalf of and with the consent of an elder or vulnerable adult, or any other concerned person, may file a petition for a protective order from abuse or exploitation, or the threat thereof, in Tribal Court. The petition:
  - (A) shall allege that the petitioner is an elder or vulnerable adult and that he has been abused or exploited or is threatened with abuse or exploitation by the respondent;
  - (B) shall be accompanied by affidavit made under oath stating the specific facts and circumstances which demonstrate the need for the relief sought;
  - (C) may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.
- (2) A petitioner is not required to post bond to obtain relief in any proceeding for a protective order under this Chapter.
- (3) Neither the Department nor the Smith River Rancheria shall be liable for failure to seek relief on behalf of any persons under this Section.

### **(b) Hearing**

- (1) Unless otherwise provided by this Section, the Tribal Court shall order a hearing on a petition for protective order filed under this Chapter not later than fourteen (14) days from the date of such filing. Personal service shall be made upon the respondent not less than five (5) days before the hearing. If timely service cannot be made, the Court may set a new hearing date.
- (2) In the event that the Tribal Court determines that an emergency exists involving danger of immediate harm to person or property, or there is other good cause, it may issue a temporary protection order without notice or hearing. Such protection order shall not be enforced until the person to whom it is directed has been served with a copy of it or has otherwise been informed of its contents, and a hearing shall be held as soon

thereafter as possible.

**(c) Issuance of Order**

(1) An order of protection issued by the Tribal Court under this Chapter may:

(A) restrain the respondent from committing acts of abuse or exploitation;

(B) exclude the respondent from petitioner's residence for a specified period or until further order of the court;

(C) prohibit contact by respondent for a specified period or until further order of the court;

(D) require an accounting by respondent of the disposition of petitioner's income or other resources;

(E) restrain the transfer of property for a specified period not exceeding ninety (90) days;

(F) require the respondent to pay filing fees and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee; or

(G) require other relief as the court deems necessary.

(2) Any relief granted by a protective order, other than a judgment for costs, shall be for a fixed period not to exceed one (1) year after which time it shall be reviewed by the Court to determine if the order should remain in effect for such period as is necessary to protect the elder or vulnerable adult from abuse or exploitation as determined by the Court.

**(d) Execution of Protective Order**

When a protective order under this Chapter is issued, the court may, upon request of the petitioner, request that law enforcement assist in the execution of such order.

**LEGISLATIVE HISTORY**

This Chapter was originally adopted on March 30, 2010, as the Smith River Rancheria's Domestic Violence Prevention Code Chapters 4 and 5.