

# OMAHA TRIBAL CODE (2013)

## TITLE 13. ELDER ABUSE

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*Source:* Omaha Tribal Council Ordinance No. 03-118 (7-9-03)

### CHAPTER 1. GENERAL

#### SECTION 13-1-1. Purpose.

The Omaha Tribe of Nebraska hereby recognizes that the domestic abuse, exploitation and neglect of vulnerable adults by caregivers or family members is a pervasive phenomenon which exists within the Omaha Nation. While this phenomenon exists elsewhere, it is especially abhorrent in the Omaha Nation where the traditions of the Omaha people specifically protect and venerate older and vulnerable adults. The Omaha Tribe hereby rejects acceptance of abuse, exploitation or neglect of vulnerable adults and hereby adopts a zero tolerance policy.

The provisions of this Title specifically criminalize the abuse, exploitation or neglect of vulnerable adults with the intent of restoring the quality of life and dignity afforded such persons by traditional Omaha culture.

#### SECTION 13-1-2. Scope.

The provisions of this Title supplement the provisions of Title 5 and Title 11 of this Code and do not otherwise limit any other civil or criminal remedies which may otherwise be available to the Tribe or any other victim of abuse, exploitation or neglect of vulnerable adults as detailed elsewhere in the code, but shall take precedent over any general laws of applicability.

#### SECTION 13-1-3. Implementation.

The provisions of this Code shall be in effect immediately upon approval by resolution of the Omaha Tribal Council. All civil provisions are effective and available immediately and may be implemented for incidents that precede the effective date of the Title. No provision of this Title or Title 5 shall have ex post facto effect. Additionally, any criminal complaint, Petition or action instituted under the provisions of this Code shall continue to be in force and effect and shall be maintained and survive this Code being repealed.

#### SECTION 13-1-4. Definitions.

- (a) Caregiver: This term shall mean any family member or other non-professional person who provides day-to-day or routine residential or quality of life services, whether on a temporary or long term basis, to a vulnerable adult and has responsibility, either voluntarily or not, for the care of the same vulnerable adult.
- (b) Credible Threat: This term shall mean a verbal or written threat, or a threat implied by conduct or a pattern of conduct, or any combination of such verbal/written statements and conduct. Such threat may be conveyed either directly, or through a third party, if made with the intent to place the vulnerable adult who is the target of the threat in reasonable fear for his or her safety. The standard for establishing a credible threat is the victim's perception of a threat to his/her safety as well as the apparent ability of the defendant to carry out his threat, whether verbal, written or implied through a willful pattern of conduct.
- (c) Family members: This term shall mean any of the following:
  - (1) Persons who are current or former spouses;
  - (2) Persons who are related, or formerly related, by marriage, as recognized by Omaha traditions, to include in-laws no more than one degree removed;
  - (3) Persons who have a child in common;
  - (4) Siblings;

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(5) Direct descendants or ancestors;

(6) Children of a person in a relationship that is described in sub-paragraphs (A) through (E) above.

(d) Mental Anguish: This term shall mean fear, agitation, confusion, severe depression, or other forms of serious emotional distress, subjected upon a vulnerable adult through threats, harassment, or other forms of intimidating behavior;

(e) Pattern of Conduct: This term shall mean a course of conduct contains a series of acts carried out by the Defendant over a period of time; however short, which demonstrates a continuity of purpose (i.e. to harass, annoy, follow etc...), and which would cause a reasonable similarly situated person to suffer like emotional distress or fear.

(f) Professional Caregiver: This term shall mean any person who provides medical, psychiatric or psychological treatment, residential or quality of life services in the home, or in any institution or facility, as function of their employment, whether they may be licensed or not. This term shall also include any person contracted by any natural person, governmental entity, institution or facility to provide those services, or whom receives tangible benefit from providing those services. This shall include, but not be limited to, monetary payments from any agency or governmental entity, reduced or free living accommodations. It shall be of no account that such person shall be a family member as defined by this Title.

(g) Vulnerable adult: This term shall mean any person over the age of eighteen (18) who possesses one or more of the following qualities:

(1) Has attained the age of sixty (60) years.

(2) Has physical infirmities such that he or she has significant impairment in conducting daily activities.

(3) Has psychiatric or psychological infirmities such that he or she has significant impairment in conducting daily activities.

(4) Has been medically evaluated to be incompetent, or has been legally determined to be a person to be incapable of handling his or her own affairs.

### SECTION 13-1-5. Department of Adult Protection Services.

The Department of Adult Protective Services for the Omaha Tribe is hereby established. The Department of Adult Protection Services (APS) shall be under the authority of the Tribe. The Department of Adult Protection Services (APS) shall provide support to those law enforcement agencies tasked with the enforcement of all laws relating to the welfare of Vulnerable Adults, including assisting sworn Law Enforcement Officer(s) when the officer(s) remove Vulnerable Adults from a caregivers home or remove persons from a Vulnerable Adult's residence. This shall include laws related to abuse and neglect, and all other laws designed to protect and assist Vulnerable Adults. The Department shall take the initiative in securing enforcement of laws for the protection of Vulnerable Adults where no adequate provision is made for such enforcement. APS shall also provide services as ordered by the Omaha Tribal Court and such other voluntary services as may be available.

(a) Such department may be consolidated and cooperate or use communal resources with Omaha Tribal CPS (CPS).

(b) APS may be designated as a guardian for a person defined as a vulnerable adult as if the Department was a natural person.

(c) APS may act as an advocate for a person defined as a vulnerable adult, even if such person is competent to handle their own affairs, and may file legal documents or make statements to the Court in any proceeding commenced under this Title on behalf of any vulnerable adult.

(d) APS shall maintain a central registry of persons convicted of an offense under Sections 13-2-1 through 13-2-4. Such person shall be maintained on the APS Central Registry for ten (10) years from the date of the last qualifying conviction under this Title.

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## SECTION 13-1-6. Severability Clause.

If any clause, section or part of this Title is declared invalid by the Tribal Court or any relevant Court with Appellate jurisdiction, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

## CHAPTER 2. CRIMINAL PROVISIONS

### SECTION 13-2-1. Physical Abuse of a Vulnerable Adult.

A person shall be guilty of a violation of this provision if he or she commits one of the following acts:

(a) Purposely or knowingly inflicts physical injury or pain on a vulnerable adult.

(1) The infliction of pain during legitimate caregiving activities, such as physical therapy, shall not be a violation of this section if conducted in a manner consistent with and recognized by the professional community.

(2) Voluntary intoxication shall not be defense to this section.

(3) Provocation shall not be a defense to this section, and self defense shall only be an affirmative defense which the Defendant must prove by proof beyond a reasonable doubt. Notice of intent to present any such claim must be filed in writing at least five (5) working days prior to the scheduled trial date.

(b) Any sexual contact with a vulnerable adult that is forcible or accomplished through the use of intimidation, intimidation being defined as the use of threat of imminent bodily injury directed towards the victim or any other person or where the victim is incapable of providing consent due to mental or psychological impairments which the person making the contact knew, or should had knowledge of.

(1) The provisions of Section 5-4-22 Provisions Applicable to Sexual Offenses of the Omaha Tribal Code shall not apply to any action under this Title.

(2) Rape or any other sexual provision contained in Title 5 of this Code shall not be considered a lesser included offense of this section.

(c) Purposely or knowingly, unnecessarily or unreasonably restraining or confining a vulnerable adult.

(d) Violations of sub-sections 1 or 2 of this section shall constitute a Class A offense as defined under Title 5 of this Code.

(e) Violations of sub-section 3 of this section shall constitute a Class B offense as defined under Title 5 of this Code.

### SECTION 13-2-2. Mental Abuse of a Vulnerable Adult.

A person shall be guilty of a violation of this section if he or she commits one of the following acts:

(a) Purposely or knowingly makes any threat of imminent bodily injury directed towards any Vulnerable Adult or any other person, with the intent to terrorize the vulnerable adult or place them in fear of imminent bodily injury to themselves or another.

(1) Threat may be inferred from actions and may be the result of non-verbal action(s).

(2) The determination of whether the threat of bodily injury was imminent shall not be an objective analysis, but a subjective analysis of whether a reasonable person in the victim's position would find the threat credible.

(b) Purposely or knowingly subjects any vulnerable adult to mental anguish.

(c) Purposely or knowingly overmedicates a vulnerable adult for the purpose of making them more tractable, docile or reducing the effort expended by a caregiver or professional caregiver and such overmedication does not result in injury or infliction of pain such that Section 13-2-1(a) does not apply.

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(d) Any violation of this Section shall be a Class B offense as defined under Title 3 of this Code.

### SECTION 13-2-3. Neglect of a Vulnerable Adult.

A person shall be guilty of a violation of this section if he or she commits one of the following acts or omissions:

(a) Recklessly unnecessarily or unreasonably restrains or confines a vulnerable adult.

(b) Recklessly subjects any vulnerable adult to mental anguish.

(c) While being a caregiver or professional caregiver of a vulnerable adult, purposely, knowingly or recklessly deprives a vulnerable adult of the basic necessities of life such as, but not limited to, food, shelter, clothing, and medical and personal care which are necessary to avoid physical harm, mental anguish, or mental illness, or any other type of maltreatment.

(1) No Vulnerable Adult shall be deemed to be neglected for the sole reason that they are being furnished non-medical remedial treatment by spiritual means through prayer alone in accordance with a recognized religious method of healing in lieu of medical treatment.

(d) Recklessly overmedicates a vulnerable adult for the purpose of making them more tractable, docile or reducing the effort expended by a caregiver or professional caregiver.

(e) Any violation this section shall be a Class C offense as defined under Title 5 of this Code.

### SECTION 13-2-4. Financial Exploitation.

A person shall be guilty of a violation of this section if he or she commits one of the following acts:

(a) Purposely or knowingly uses a vulnerable adult's financial, personal or real property or other resources of a vulnerable adult for their own or another person's profit, advantage, gain, or for monetary or personal benefit without legal entitlement to do so.

(b) Purposely or knowingly gains legal entitlement to administer the finances of a vulnerable adult through violations of Sections 13-2-1 through 13-2-3 or through deceptive means.

(1) This shall not be a lesser included offense of Omaha Tribal Code section 5-4-49 Unlawful Dealing with the Property of a Fiduciary by a Fiduciary.

(c) Any violation this section shall be a Class B offense as defined under Title 5 of this Code.

### SECTION 13-2-5. Hindering Prosecution.

(a) Any such person who may be a witness to the same who refuses to cooperate in the investigation of any such offense, or refuses to testify in any subsequent criminal proceeding shall be guilty of a violation of this provision.

(1) Violation of this section shall be a Class C offense as defined by Title 5 of this Code.

## CHAPTER 3. PROCEDURES APPLICABLE TO THIS TITLE

### SECTION 13-3-1. Spousal Privilege.

All spousal privileges are hereby abrogated as may impact any provision of this Title.

### SECTION 13-3-2. Conditions of Release.

(a) The Court shall order as a condition of any bond for violations of Section 13-2-1 through 13-2-4 above a no contact provision that shall be in absolute effect for seven (7) days from the date of offense.

(1) This absolute no contact can not be waived by the abused or allegedly abused party.

(2) Any violation of this no contact provision shall result in the immediate arrest of the violating party with no further bond to be set prior to trial.

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(b) The Court may at its discretion order, as conditions of release, temporary orders as may relate to the following:

- (1) Custody and Visitation regarding minor children of the parties.
- (2) Exclusive use or residence or property.
- (3) Orders preventing the sale, transfer, hypothecation, hiding or otherwise disposing of marital or mutually held property without prior approval of the Court, except in the ordinary course of business.
- (4) Orders suspending any legal authority, guardianship, payee status, power of attorney or other legal document providing access to the financial resources of a vulnerable adult and temporarily vesting such authority in APS.

### SECTION 13-3-3. Exceptions to the Hearsay Rule

The following exceptions to the hearsay rules of evidence are specifically authorized for any proceeding under this Title.

(a) Statements made by any person to, or in the presence of, law enforcement officers, detention officers, members of APS during the course of their investigations or processing of persons after their arrest or detention.

(b) Statements made to counselors, advisors or other persons involved in assisting victims of abuse, neglect or exploitation of vulnerable adults.

(c) Statements made by minor children to any mandatory reporter.

(d) Statements which fall under the auspices of subsections (a), (b) or (c) above shall be admissible following a demonstration by the party desiring to have such evidence admitted that the party making the statement (Declarant) is:

- (1) Physically located outside the boundaries of the Omaha Tribal Reservation; or
- (2) Location unknown after a demonstration of due diligence by the party seeking to have the statement admitted; or
- (3) Available, but unwilling to testify, or unable to testify due to memory loss or a demonstrable lack of ability to effectively communicate to the Court due to age, disability, fear or other such factor as the Court may find good cause.

(A) Pattern evidence shall be admissible, including evidence of prior bad acts, upon a finding that the evidence is both relevant and more probative than prejudicial.

### SECTION 13-3-4. Sentencing.

(a) Class A offenses contained within this title carry the additional sentencing provisions:

- (1) Second offense shall carry a minimum penalty of four (4) months incarceration and fine.
- (2) Subsequent offenses shall carry a mandatory minimum penalty of (6) months incarceration and fine.
- (3) Multiple previous Class B or Class C offenses shall constitute a single Class A offense for the purposes of sentence enhancement.

(b) Class B offenses contained within this title carry the additional sentencing provisions:

- (1) A second Class B Offense shall carry a minimum penalty of sixty (60) days incarceration and fine.
- (2) Subsequent Class B offenses shall carry a minimum penalty of ninety (90) days incarceration and fine.
- (3) Class A offenses or multiple Class C offenses shall constitute a single Class B offense for enhancement purposes.

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(c) Class C offenses contained within this title carry the additional sentencing provisions:

(1) A second Class C offense shall carry a minimum penalty of twenty-one (21) days incarceration.

(2) Subsequent offenses shall carry a minimum penalty of forty-five (45) days incarceration.

(3) Class A or Class B offenses under this Title shall apply to this section for purposes of enhancement.

(d) For any person convicted of a violation of any section in this Title above who is a professional care giver as defined by section 13-1-4(f) the sentence shall be enhanced as if one prior qualifying offense had occurred.

(e) For purposes of sentence enhancement under sections 13-3-4(a) through 13-3-4(c) above, for offenses occurring prior to the effective date of this Title, the Court may use prior offenses for enhancement purposes upon a finding of fact by the Court that such offense were based upon facts which would support a conviction under sections 13-2-1 through 13-2-4 of this Title.

(1) Notice of the proposed use of such earlier conviction must be filed with the Court at least five (5) working days prior to trial, or sentencing in the event of a guilty plea at arraignment.

(2) The proposed use of such earlier conviction is grounds for rescinding a guilty plea made at arraignment, unless notice of the proposed use of earlier conviction was given at or before the time of arraignment.

### **SECTION 13-3-5. Authority of the Court to Reject Plea**

(a) The Court may, upon its own Motion or Motion of other party in interest reject any proposed plea or plea bargain which would dispose of any charge proffered under this Title; if:

(1) Such plea would result in all charges under Section 13-2-1 through 13-2-5 of this Title being dismissed; and

(2) Such dismissal appears to be for the purpose of evading the enhanced sentences provided for in this Title or the collateral effects of a conviction under this Title.

### **SECTION 13-3-6. Statute of Limitations**

Statute of limitations shall not toll for any time period during which the Defendant is not physically to be found within the exterior boundaries of the Omaha Tribal Reservation.

### **SECTION 13-3-7. Duration of Use of Conviction for Enhancement**

No conviction for which a defendant was sentenced more than five (5) years prior to the date of the subsequent offense shall not be used for purposes of enhancement.

### **SECTION 13-3-8. Collateral Effects of Conviction under this Title.**

(a) Any person convicted of any Class A or Class B offense or subsequent Class C offense shall be ineligible for the guardianship of a vulnerable adult for a period of five years from the date of the most recent conviction.

(b) Any person, being a caregiver or professional caregiver as defined by Section 13-1-4 of this Title, convicted of any Class A or Class B offense or subsequent Class C offense under this Title, shall have any legal authority, guardianship, payee status, power of attorney or other legal document providing access to the financial resources of a vulnerable adult terminated by the Court and such authority vested in APS.

(c) Any person convicted of an offense under Sections 13-2-1 through 13-2-4 shall be placed on an APS central registry and their name maintained on such registry for ten (10) years.

(d) Any person convicted of any Class A or subsequent Class B offense shall not own, use or possess any firearm for a period of twenty-four (24) months following the date of the most recent conviction. This

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section is enforceable by the contempt powers of the Court.

(e) Any person convicted of any offense under this Title may be disqualified for certain positions or types of employment with the Omaha Tribe of Nebraska, its wholly owned subsidiaries, or companies or agencies doing business with the Omaha Tribe or on the Omaha Tribal Reservation.

(f) Any professional caregiver convicted under this Title who maintains a professional license shall have his or her privilege to practice under the auspices of this Title for a period of five years from the date of the last conviction. Additionally, such conviction shall be reported to the licensing agency or board for administrative actions.

(g) All of these collateral effects shall be made part of the rights advisory at arraignment for any offense under this Title.

### **SECTION 13-3-9. Jurisdiction Over the Victim**

(a) No alleged victim of an offense under Section 13-2-1 through 13-2-4 shall be permitted to post bond for any person arrested under this Title.

(b) Any alleged victim approaching the Court for a bond reduction, suspension of a condition of release or otherwise indicating a desire for reconciliation must voluntarily submit to the jurisdiction of the Court. The Court may make any reasonable demands upon such an alleged victim which are in keeping with the stated purposes of this Title.

### **SECTION 13-3-10. Specific Authorization for Release of Information**

The Court shall specifically order the release of any potentially probative information in the possession of any third party, institution or legal entity upon request of either party without the necessity of securing the consent of either the defendant, alleged victim or parent/guardian of any such party.

### **SECTION 13-3-11. Orders Implementing the Purposes of this Title**

The Court may make any order reasonably calculated to advance the interest of justice and the purpose detailed in this Title by exercise of the Court's plenary powers.

### **SECTION 13-3-12. Persons Not Subject to Jurisdiction**

In the event that any person who is not subject to the criminal jurisdiction of the Omaha Tribe commits any action which would meet the element of offense for any Class A offense or subsequent Class B offense, the Tribal Court shall make application to the Omaha Tribal Council to begin proceedings to expel, ban or exclude such person from the exterior boundaries of the Omaha Tribal Reservation.

### **SECTION 13-3-13. Person Mandated to Report the Abuse, Neglect or Exploitation of a Vulnerable Adult.**

(a) Any person who is a health care provider, mental health professional or counselor, social worker, law enforcement officer, teacher, school counselor or licensed or registered caregiver who has reasonable cause to believe that a vulnerable adult has been abused or neglected is required to report such information. The report shall be made to the tribal prosecutor, the Tribal Department of Adult Protective Services or to law enforcement officials. Reports shall include the name, address, and age of the vulnerable adult, the name and address of the vulnerable adult's immediate family or guardian, if known, and details of suspected or known instances of abuse or neglect of a vulnerable adult. The Department of Adult Protective Services shall be the central registry for such information.

(b) Any person identified in section 13-3-13 (a) above who fails to report information in their possession that would reasonably indicate abuse or neglect shall be subjected to a civil penalty of a minimum of \$250 fine and a maximum fine of \$1,000.

(c) If such failure to report results in subsequent harm to the vulnerable adult of the nature indicated by the information that was not reported shall be additionally criminally liable as an accomplice with no

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requirement that the abusive or neglecting party knew of the reporters knowledge of the information or failure to report. Should such a person not be within the criminal jurisdiction of this Court then the Court shall direct that the person failing to report be reported to the appropriate licensing authority, if any, and enjoined from practicing in any field or profession within the exterior boundaries of the Omaha Reservation that would qualify the person as a mandatory reporter under section 13-3-13 (a) above for a period of three years for a first offense and a permanent injunction shall be issued for a subsequent offense.

### **SECTION 13-3-14. Immunity from Liability**

Any person acting in good faith in the making of a report or the submission of copies of medical examination, treatment or hospitalization records pursuant to this Chapter, is immune from liability, civil or criminal, that might otherwise be incurred or imposed and has the same immunity for participation in any judicial proceeding resulting from the report. Immunity also extends to persons involved in the investigation and treatment of the abuse, neglect or exploitation of vulnerable adults or to any person who in good faith cooperates with the Department of Adult Protective Services in investigation, placement or treatment plan. The provisions of this section allowing the granting of immunity do not extend to any person alleged to have committed an act or acts of abuse, neglect or exploitation of a vulnerable adult.

## **CHAPTER 4. ARREST AND INVESTIGATION PROCEDURES**

### **SECTION 13-4-1. Mandatory Arrest**

(a) Any sworn officer of the Omaha Nation Law Enforcement shall effect an arrest without a warrant, under the provisions of this Title in the following circumstances:

(1) The Officer witnesses any action which constitutes an offense under Section 13-2-1 or 13-2-2 of this Title; or

(2) The officer has reasonable grounds to believe that any person is committing actions which constitute an offense under Section 13-2-1 or 13-2-2, or has committed such actions in the last twenty-four (24) hours; and one of the following circumstances exist:

(A) Probable cause for the officer to believe that further abuse or neglect of a vulnerable adult may be directed against the same victim or another is likely; or

(B) Evidence physical injury; or

(C) Evidence of damage to property; or

(D) Probable cause to believe a vulnerable adult has reasonable grounds for fear of imminent bodily injury from another party.

(3) In the event that all caregivers present are arrested Adult Protective Services (APS) shall be contacted.

(b) It shall not be necessary for the victim to cooperate or desire that an arrest be made in order for the officer to effect an arrest. All alleged victims and abusers shall be informed that it is the prerogative of the Omaha Nation to proffer criminal charges and not a prerogative of the alleged victim.

(c) All arrest reports under this Title shall be submitted within twenty-four (24) hours or by the beginning of the next regular work day for the Tribe. Each such report shall include an affidavit of probable cause.

(d) In the event that an officer shall respond to a incident of abuse or neglect of a vulnerable adult and no arrest is made a report shall still be filed within twenty-four (24) hours or by the beginning of the next regular work day for the Tribe, indicating the circumstances and the reasons that no arrest was made.

(e) In the event that no arrest was made because the alleged abuser had fled the scene, active efforts shall be made to locate and arrest the abuser. Application shall be made for an arrest warrant if the alleged abuser is not located and arrested within twenty-four (24) hours.

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## SECTION 13-4-2. Notice of Victims Rights and Responsibilities

A statement of victim's rights and responsibilities shall be formulated and such shall be approved by the Chief Judge of the Omaha Tribal Court. A copy of this statement shall be delivered to each victim at the scene with signed copy to be included with the police report.

## SECTION 13-4-3. Civil Liability – Immunity

(a) Any person reporting an incident of abuse or neglect of a vulnerable adult on a good faith basis shall be immune from civil liability for such action.

(b) Law enforcement officers who operate on a good faith basis shall be immune from civil liability for decisions to arrest or not.

## SECTION 13-4-4. Bond

Any person arrested under Section 13-4-1 above for a violation of Section 13-2-1 through 13-2-4 shall not be eligible for bond for at least twenty-four (24) hours following the arrest.

## SECTION 13-4-5. Victim Advocates

Any person may be qualified and approved by the Tribal Court to act as a victim advocate, either on a single case or routine basis. Members of APS are specifically authorized to act as advocates in any action filed under this Title. Such advocates may be authorized to assist in the processing and filing of protective orders on behalf of the victim and may be authorized to speak on the victims behalf at bond hearings, modification or review of bond hearings or sentencing hearings.

## CHAPTER 5. PROTECTION ORDERS

### SECTION 13-5-1. Eligibility

(a) Any person who has been the victim of any crime under Section 13-3-1 through 13-3-4, whether or not such crime has been reported to the police or other authorities, is eligible for a protection order.

(b) Any guardian, family member, member of APS or designated Victim Advocate of a vulnerable adult who has been a victim of any crime under Section 13-2-1 through 13-2-4, whether or not such crime has been reported to the police or other authorities, on behalf of such vulnerable adult.

### SECTION 13-5-2. Cost waived

No victim, or authorized advocate, shall be charged any fee for the filing, service or associated costs of the protection order being processed.

### SECTION 13-5-3. Uniform form required; required language.

(a) The Court shall formulate and adopt uniform forms for the Petition for a protection order and temporary and final protection orders and provide such forms to the Clerk of Court.

(b) Each Petition shall contain a listing of each civil action involving both parties, a listing including birth dates, if known, a listing of common residences and automobiles and a listing of all legal documents entitling the abuser to authority over the person, property or finances of the vulnerable adult.

(c) Each petition must contain a clear and concise statement of the nature of the alleged abuse, neglect or exploitation of the vulnerable adult.

(d) Each petition must be sworn under oath before a Clerk of the Omaha Tribal Court or other such Court personnel so designated and shall be subject to criminal penalties for providing false information to the Court. Such penalties must be printed in bold faced capital letters of the Petition form.

(e) All protection orders must have the following printed in bold faced capital letters on the protection order:

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- (1) “Consequences for violation of this protection order include...”
- (2) “The respondent shall not own or possess a firearm for one year following the effective date of any final order for protection and consequences for violation of this condition are...”
- (3) “If so ordered by the Court, the Respondent is forbidden to enter or stay in the Petitioner’s residence, even if invited to do so by the Petitioner or any other person. In no event shall the order for protection be voided by other than the Omaha Tribal Court after full hearing.”

### SECTION 13-5-4. Jurisdiction; Venue; residency not required.

(a) The Omaha Tribal Court shall have jurisdiction under this Title to hear any Petition for protection orders if:

- (1) The Petitioner is domiciled or to be found within the boundaries of the Omaha Tribal Reservation.
- (2) The Respondent is domiciled or to be found within the boundaries of the Omaha Tribal Reservation.
- (3) Any act of abuse, neglect or exploitation of a vulnerable adult as defined in this Title has been committed within the boundaries of the Omaha Tribal Reservation.
- (4) The Court is being asked to recognize and enforce a valid order of another Court of competent jurisdiction.

(b) The Court shall construe this provision broadly in order to provide maximum possible jurisdiction.

(c) All motions or other proceeding designed to alter, void or challenge a court order for protection from another Court of Competent jurisdiction shall be heard in the Court granting the Original protection order unless the party bringing the proceeding can show overwhelming evidence why venue should be transferred to this Court.

(d) There is no minimum residency requirement to petition this Court for an order of protection.

### SECTION 13-5-5. Ex-Parte Relief Available

(a) The Court may, upon a valid filing for an order of protection under this Title, without notice or hearing, order any relief available under this Section 13-4-8 of this Title, except Section 13-4-8 (g), on a temporary basis until such time as a hearing may be held provided:

(1) The Court finds that the Petition and any attached statements, medical or police reports articulate reasonable grounds to believe that any act of abuse, neglect or exploitation of a vulnerable adult has occurred between the parties and that an order of protection is reasonably necessary to protect the victim and/or the property, finances or other resources of the victim.

(b) If the Court makes such an ex-parte order the Court shall schedule a hearing within fourteen days and the order shall include:

(1) A notice of hearing providing all pertinent information to the Respondent regarding the scheduled hearing.

(2) The following statement in bold faced capital letters:

**“THE RESPONDENT SHALL BE ADVISED THAT UPON HEARING, THIS ORDER SHALL REMAIN IN FORCE UNTIL SUCH TIME AS SERVICE IS COMPLETED OF THE FINAL ORDER OF PROTECTION.**

**THE RESPONDENT SHALL BE FURTHER ADVISED THAT IF HE/SHE FAILS TO APPEAR AT THE HEARING FOR A FINAL ORDER OF PROTECTION THE COURT MAY GRANT THE RELIEF REQUESTED. THE RESPONDENT SHALL BE FURTHER ADVISED THAT IF THE RESPONDENT FAILS TO APPEAR, SUCH FAILURE SHALL NOT BE USED AS A DEFENSE BY THE RESPONDENT TO A VIOLATION OF RIGHTS.”**

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(3) The Court shall transmit any such order to the Omaha Nation Police Department and APS by the end of the working day and to all other law enforcement agencies within the exterior boundaries of the Omaha Tribal reservation within seventy-two (72) hours.

(4) The Omaha Nation Law Enforcement shall make active efforts to serve the Respondent with a copy of the ex-parte order within seventy-two (72) hours of the Department receiving the order.

(5) If possible and applicable the Respondent shall be served at the time of his/her arraignment.

(c) If the Court denies a Petition for relief on an ex-parte basis, without notice or hearing, the Clerk of Court shall notify in person or by regular U.S. Postal mail that they still have the right to request a hearing with notice to the Respondent.

### SECTION 13-5-6. Required notice.

(a) If the Respondent has not been served with a copy of the ex-parte Order for Protection by the time of the scheduled hearing and:

(1) The Court is provided with sworn affidavits or testimony of Omaha Nation Law Enforcement personnel detailing reasonable efforts at service; and

(2) The Petitioner, or other person entitled to make such a filing on behalf of a vulnerable adult, advises under sworn oath in open Court that he/she believes that the Respondent is avoiding service by concealment or otherwise, is unaware of the current whereabouts of the Respondent, or is aware of the current whereabouts of the Respondent and the Respondent has removed his/herself from the exterior boundaries of the Omaha Tribal Reservation.

Then the Court shall order the Clerk to set another hearing within fourteen (14) days of the date of the original hearing date.

(b) If the Court orders a second hearing set, the Omaha Nations Law Enforcement shall be provided with the notice of the second hearing and shall continue to attempt service of the ex-parte order along with the second notice of hearing.

(c) If the Court orders a second hearing set, the Clerk of Court shall mail notice by regular U.S. Postal mail to the last and best known address of the Respondent. If no address is known, or the Respondent's last known address was the home of the Petitioner and the Respondent has removed him/herself from the residence, or has been ordered to remove himself from the residence, the Clerk of Court shall mail by regular U.S. Postal mail to two of the Respondent's relatives known to reside within the exterior boundaries of the Omaha Tribal Reservation or to the Respondent's last known place of employment if no known relatives are found. The Clerk shall provide an affidavit of service to the Court.

(d) If the Respondent fails to appear at the second hearing the Court shall hold the hearing, regardless of any proof of actual service.

### SECTION 13-5-7. Hearing for Final Order.

(a) The Court shall hear all evidence available and shall use the standards of reliability and probative value as overriding considerations when applying rules of evidence with the goal of ascertaining the facts surrounding the Petition.

(b) If the either party fails to appear the Court may issue default orders, either for dismissal or for entry of a Final Order of Protection.

(c) The Court shall make all findings to the standard of preponderance of the evidence.

### SECTION 13-5-8. Available Relief.

(a) The Court may order any of the following types of relief as part of an Order of Protection:

(1) Enjoin the Respondent from threatening to commit or committing acts of abuse, neglect or

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exploitation against the Petitioner.

(2) Prohibit the Respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the Petitioner directly or indirectly through friends, co-workers or relatives etc...

(3) Order the Respondent to stay a minimum distance away from the residence or place of employment or any other specified place frequented by the Petitioner.

(4) Order the seizure of and prohibit the Respondent from using or possessing a firearm or other weapon specified by the Court.

(5) Remove and exclude the Respondent from the residence of the Petitioner, regardless of ownership or lease of the residence. The Court may direct the appropriate law enforcement agency to accompany the Petitioner to ensure that they are safely restored to possession of the residence, motor vehicle or other personal property, effects or documents, or to supervise the Petitioner's or Respondent's removal of personal belongings.

(6) Prohibit the destruction, liquidation, disposal or concealment of any and all joint assets or property and any and all specific assets of the Petitioner.

(7) Dissolve or modify any legal authority, guardianship, payee status, power of attorney or other legal document providing access to the financial resources of a vulnerable adult and temporarily vesting such authority in APS or other such person as the Court may find appropriate.

(8) Order the Respondent to pay:

(A) Reimbursement to the Petitioner for any expenses related to the act of abuse, neglect or exploitation of the vulnerable adult, including but not limited to medical expenses, counseling, shelter and repair or replacement of damaged property;

(B) Reasonable attorney's fees;

(C) Any costs or fees incurred by the Petitioner in bringing the action.

(9) Order any such relief as the Court deems necessary and reasonably related to the goal of providing for the safety and welfare of the Petitioner.

### **SECTION 13-5-9. Petitioner cannot violate or waive Protection Order**

(a) If the respondent is excluded from the residence of a Petitioner or ordered to stay away from a Petitioner, an invitation to do so does not waive or nullify the order for protection.

(b) The Petitioner cannot violate or be arrested for a violation of his or her own order of protection, ex parte or final.

(c) Abuse of process by a Petitioner, or other person on behalf of the Petitioner intentionally creating or causing to be created a situation for the purpose of causing a violation of the Protection order by the Respondent shall upon a finding by the Court be punishable by the Civil Contempt powers of the Court.

### **SECTION 13-5-10. Mutual Orders Prohibited**

The Court shall not grant a mutual order for protection, ex parte or final, to opposing parties, unless supported by a finding of clear and convincing evidence that such a mutual order shall be required.

### **SECTION 13-5-11. Time Limits.**

(a) The Court shall not deny a Petitioner relief requested under this Title solely because of a lapse of time between the act of abuse, neglect or exploitation of a vulnerable adult and the filing of the Petition, except where the Statute of Limitations for the underlying criminal offense have expired.

(b) An initial protection order issued after notice and hearing shall be for a term of one year. If, at the expiration of that term the Petitioner requests that the order be continued, the Court may, after proper notice and hearing to the Respondent, extend the period of the Protection order for up to three years. There is no

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limit to the number of additional three year terms which may extend the duration of the Protection order.

(c) At any time during the duration of a protection order either party may petition the Court for a modification or dismissal of the Protection order. After proper notice and hearing the Court may, at its discretion and upon a finding, by clear and convincing evidence, of a material change in circumstance, modify or dismiss the order of protection.

### SECTION 13-5-12. Enforcement of Foreign Orders

(a) A copy of an order for protection issued by another tribal, state, county or other Court of competent jurisdiction, shall be given full faith and credit by Omaha Tribal law enforcement authorities and the Court and shall have full force and effect as if issued by the Omaha Tribal Court.

(b) Law enforcement officers shall attempt to verify the existence or validity of any foreign order of protection. In the event that the victim does not have a copy of the order, the officer cannot verify the existence of such an order or the copy is not clear enough to determine its validity, the officer should arrest the subject on any applicable violation of the Omaha Tribal Code and shall assist the victim in obtaining verification of the order and/or explain the procedure for obtaining a Protection Order through the Omaha Tribal Court.

(c) Valid foreign orders shall be entered in the Tribal Protection Order registry.

(d) FAX copies of foreign protection orders shall be considered valid.

### SECTION 13-5-13. Tribal Registry for Orders of Protection

(a) The Omaha Tribal Court shall maintain a registry of all orders for protection issued or recognized by the Omaha Tribal Court.

(b) A Current copy of such registry shall be maintained in the Dispatch Center of the Omaha Nations Law Enforcement Center and apprised dispatch of any withdrawals, revocations or modifications of such orders.

(c) FAX copies shall be recognized.

### SECTION 13-5-14. Violation of Protection Order.

(a) Violations of Orders of Protection shall be Class A offenses which shall require mandatory arrest with no bond available to the violator until the violator is arraigned; except:

(b) If the violation of the Protection Order was for the possession or use of a prohibited firearm or weapon the violator shall be subject to the penalties of a Class A offense with a mandatory incarceration of six (6) months for any such violation.