

Section 8-8 Offenses Against Senior Citizens and Vulnerable Adults ~~Tribal Elders~~

8-8.01 Legislative Intent.

The Spokane Tribe of Indians ("Tribe") treats its Senior Citizens and Vulnerable Adults with the highest respect. The Tribe declares that Senior Citizens and Vulnerable Adults are deserving of special consideration and protection.

Senior Citizens are a valuable resource to the Tribe because they are repositories and custodians of Tribal history, language, culture and tradition. Senior Citizens are the best hope of the Tribe to pass on the Tribal history, language, culture, and tradition to children of the Tribe. Abuse of Senior Citizens and Vulnerable Adults is a serious human rights issue. It can include physical, psychological, social, or sexual assault, neglect, and financial exploitation. The harm is most often caused by someone in a trusted or ongoing relationship like a spouse, partner, family member, or caregiver.

The Tribe expects everyone to honor and respect its Senior Citizens and Vulnerable Adults. Thus, the interests of the Spokane Tribe, now and in the future, are advanced when Senior Citizens and Vulnerable Adults are protected from abuse, neglect, and exploitation and are free to fully participate in the activities and proceedings of the Spokane Tribe.

The Spokane Tribe will recognize and continue this traditional respect for Senior Citizens and extend the same respect and protection to Vulnerable Adults, and enact it into law under this section, for the protection of such persons. This Section of the Code shall be liberally construed to meet the Tribe's goal to protect its Senior Citizens and Vulnerable Adults from abuse, exploitation, and neglect.

8-8.02 Definitions.

(A) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult, which have the following meanings:

(1) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints except as used by qualified medical professionals for necessary medical care;

(3) "Sexual abuse" means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform

sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that: (i) Is inconsistent with tribal, federal, or state licensing or certification requirements for facilities, hospitals, or other authorized programs; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(5) Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

(B) "Caregiver" means:

(1) All persons who provide paid, hands-on personal care services for Senior Citizens or Vulnerable Adults, or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities, all direct care workers in state-licensed or tribal-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities; or

(2) Any person who is required by RSLOC, or State law, if applicable, to provide services or resources to a Senior Citizen or Vulnerable Adult;

(3) An institution or agency and any employee of an institution or agency who is required by the RSLOC, State law, if applicable, or Federal law, or who is required under any other agreement, to provide services or resources to a Senior Citizen or Vulnerable Adult; and

(4) Any person who holds oneself out to the community or Senior Citizen or Vulnerable Adult's family as assuming the responsibility of caring for the Senior Citizen or Vulnerable Adult.

(C) "Senior Citizen" means a who is at least 60 years of age.

(D) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a Senior Citizen or Vulnerable Adult causing the Senior Citizen or Vulnerable Adult to act in a way that results in the conversion or misuse of a Senior Citizen or Vulnerable Adult's property, medication, money or other assets. is inconsistent with relevant past behavior, or causing the Elder or Vulnerable Adult to perform services for the benefit of another. Exploitation also includes taking or misusing a Senior Citizen or Vulnerable Adult's property, medication, money, or other assets. without their full consent.

(E) "Neglect" means:

(1) The deprivation by an individual, including a caregiver, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being, or;

(2) Deserting a person an individual is responsible for, where responsibility may be determined through a Court order, or through holding oneself out to the community or person's family as assuming the responsibility of caring for the person.

(F) "Vulnerable Adult" means:

(1) A person 60 years of age or older with functional, physical, or mental inability to care for self; or

(2) An adult 18 years of age or older who:

i. Has a developmental disability; or

ii. Has a guardian as per RCW 11.88 or Tribal Code; or

iii. Lives in a nursing facility, boarding home, adult family home, or soldier's home, residential habilitation center, or any facility licensed or required to be licensed by the Washington State Department of Social and Health Services; or

iv. Receives in-home services through a licensed health care agency, hospice, or an individual provider; or

v. Self-directs his/her own care to a paid personal aide in the performance of a health care task.

8-8.03 Abuse of a Senior Citizen or Vulnerable Adult. A person is guilty of the crime of Abuse of a Senior Citizen or Vulnerable Adult if:

(a) The person knows or should reasonably know that a person is a Senior Citizen or Vulnerable Adult, and

(b) The person willfully causes or permits an act of Abuse against a Senior Citizen or Vulnerable Adult, or

(c) The person, having the care or custody of a Senior Citizen or Vulnerable Adult, willfully causes or permits the Senior Citizen or Vulnerable Adult to be placed in a situation in which his or her person or health is endangered.

(d) Abuse is defined in RSLOC Section 8-8.02(A).

(e) Penalties. A person who is convicted of Abuse of a Senior Citizen or Vulnerable Adult shall be sentenced to confinement for a period of not more than one (1) year, pay a fine of not more than \$5,000.00, or both, provided however, that there shall be a mandatory minimum of forty (40) days of confinement and a \$1000.00 fine.

8-8.04 Neglect of a Senior Citizen or Vulnerable Adult. A person is guilty of the crime of Neglect of a Senior Citizen or Vulnerable Adult if:

The person is a person entrusted with the physical custody of the Senior Citizen or Vulnerable Adult, is a caregiver as defined by this section, or has otherwise assumed the responsibility to provide to a Senior Citizen or Vulnerable Adult the basic necessities of life and

The person willfully neglects the Senior Citizen or Vulnerable Person.

Neglect is defined in RSLOC Section 8-8.02(E).

Penalties. A person who is convicted of Neglect of a Senior Citizen or Vulnerable Adult shall be sentenced to confinement for a period of not more than one (1) year, pay a fine of not more than \$5,000.00, or both, provided however, that there shall be a mandatory minimum of forty (40) days of confinement and a \$1000.00 fine.

In any prosecution for Neglect of a Senior Citizen or Vulnerable Adult, it shall be a defense that the withholding of the basic necessities of life is due to financial inability only if the person charged has made a reasonable effort to obtain adequate assistance. This defense is available to a person employed to provide the basic necessities of life only when the agreed-upon payment has not been made.

8-8.05 Exploitation of a Senior Citizen or Vulnerable Adult. A person is guilty of the crime of Exploitation of a Senior Citizen or Vulnerable Adult if:

(a) The person knows or should reasonably know that a person is a Senior Citizen or Vulnerable Adult, and

(b) Knowingly exploits, or endeavors to exploit, a Senior Citizen or Vulnerable Adult with the intent to temporarily or permanently deprive the Senior Citizen or Vulnerable Adult of the use, benefit, or possession of the Senior Citizen or Vulnerable Adult's funds, assets, or property, or to benefit someone other than the Senior Citizen or Vulnerable Adult.

(c) Exploitation is defined in RSLOC Section 8-8.02(D).

(d) It is a defense to an offense committed under subsection 8-1.05 if the accused person has been granted a durable power of attorney or has been appointed a legal guardian to manage the affairs of an endangered adult or a dependent, and was acting within the scope of the accused person's fiduciary responsibility.

Penalties. A person who is convicted of Exploitation of a Senior Citizen or Vulnerable Adult shall be sentenced to confinement for a period of not more than one (1) year, pay a fine of not more than \$5,000.00, or both, provided however, that there shall be a mandatory minimum of forty (40) days of confinement, a \$1000.00 fine, and the individual shall pay restitution in the full amount of the financial damage done to the victim.

8-8.06~~1~~ Offenses Against Tribal Senior Citizens Elders- Minimum Sentence and Fine.

- (a) Anyone convicted of any offense ~~against a person subject to the jurisdiction under this chapter against an enrolled member~~ of the Spokane Tribe of Indians who is 60 years or older shall be sentenced to no less than 30 days in jail and fined no less than \$500.
- (b) No deferral, reduction, suspension, parole or probation of the sentence shall be permitted.

Legislative History-Amended 8/5/94. Resolu. 1994-237; Readopted 8/01/06, Resolu. 2006-524.

DRAFT