

TITLE TWENTY FOUR (24)

ELDER AND VULNERABLE ADULT PROTECTION CODE

CHAPTER ONE (1) - REPORTING ELDER OR VULNERABLE ADULT ABUSE

24-1-100 Mandated Reporters

- A. Any Mandated Reporter must report if, in an official or professional capacity, he or she:
1. Has knowledge that an elder or vulnerable adult has been subjected to abuse or neglect; or
 2. Observes an elder or vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect.
- B. A mandated reporter is required to report as soon as possible.

Table 1. Mandated Reporters

Mandated Reporters include:		
Physician	Pharmacist	Optometrist
Nurse	Dentist	Chiropractor
Caregiver	Dental hygienist	Occupational therapist
Community Health Workers	QSP's	Certified Nurse Aids (CNAs)
Mental health professional	Podiatrist	Physical therapist
Law enforcement officer	Family therapist	Marriage therapist
Counselor	Social worker	Hospital personnel
Emergency medical personnel	Firefighter	Medical examiner
Addiction counselor	Coroner	Nursing home personnel
Clergy (NOTE: not required if knowledge is gained as a spiritual advisor)	Qualified individuals (investment adviser representative)	Other professionals

24-1-200 Non-Mandated Reporter - Duty to Report Abuse or Neglect of an Elder or Vulnerable Adult

Any other person who has reasonable cause to suspect or who witnesses abuse of an elder or vulnerable adult shall report the abuse or suspected abuse to any Law Enforcement Officer or the Elder and Vulnerable Adult Protection Team immediately.

24-1-300 Failure to Report

Any person who is required to report under section 24-1-100 and fails to report has committed a civil infraction.

24-1-400 Civil Violation and Penalty for Failing to Report

- A. Any person who is required to report suspected elder or vulnerable adult abuse, neglect, self-neglect, or exploitation and fails to do so is subject to a civil penalty not to exceed \$2,000.
- B. The Court shall assess the penalty only after petition, notice, an opportunity for hearing and a determination that the person had a mandated duty to report, and failed to do so, as required by this Code.
- C. Further, the person failing to report is subject to any civil suit brought by or on behalf of the elder or vulnerable adult for damages suffered as a result of the failure to report, notwithstanding any determination by the Court that the person failing to report violated this Code.

24-1-500 Content of Report

Anyone can report alleged elder or vulnerable abuse or neglect. The report may be made to law enforcement or the Elder and Vulnerable Adult Abuse Protection Team in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible. The report referred to shall contain:

- A. Name, age, and address of the alleged elder or vulnerable adult.
- B. Name and address of the caregiver (if any).
- C. Name and address, if available, of the person who is alleged to have abused, neglected or exploited the elder or vulnerable adult.
- D. Nature and extent of the alleged abuse or neglect or the conditions and circumstances that would reasonably be expected to result in abuse or neglect.
- E. Any evidence of previous abuse or neglect.

F. Date(s) and location(s) of when and where the alleged abuse occurred.

G. The name and address of the person making the report.

H. Any other pertinent information known to the person making the report.

24-1-600 Immunity

A person, not a party to the abuse, participating in good faith in making a report pursuant to this Code shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participating in any court proceedings.

24-1-700 Filing of a False Report

A. Any person that files a written report knowing the same to be false and with the malicious intent to harm another shall be guilty of an offense and punished by up to one (1) year in jail, a five thousand dollar (\$5000) fine or both.

B. In those cases where the filing of a false report results in financial loss to the person, the Court may also order restitution upon conviction.

C. Upon conviction, the Defendant shall also reimburse the Elder and Vulnerable Adult Protection Team for its costs in investigating the false report.

24-1-800 Interference with Investigation

Any person who intentionally interferes with, obstructs or knowingly provides false information in a lawful investigation of suspected elder or vulnerable adult abuse shall be guilty of an offense and punished by up to one (1) year in jail, a five thousand dollar (\$5000) fine or both.

**CHAPTER TWO (2) - ELDER AND VULNERABLE ADULT PROTECTION PROGRAM
& TEAM**

24-2-100 Staff Roles and Responsibilities

The Elder and Vulnerable Adult Protection Program shall have the following roles and responsibilities:

- A. Provide leadership, planning and direction for elder and vulnerable adult abuse activities through a collaborative network.
- B. Provide staff to manage, develop and evaluate the Elder and Vulnerable Adult Protection Program.
- C. Set policies and procedures for the administration of the Program.
- D. Submit grant proposals to fund elder and vulnerable adult abuse prevention activities.
- E. Maintain an elder and vulnerable adult abuse reporting system to collect and analyze data related to elder and vulnerable adult abuse prevention activities.
- F. Analyze the unmet needs of victims; the extent of enforcement of laws; and interventions available to address the problems of abuse, neglect, exploitation and consumer fraud.
- G. Provide public information and education on the identification, prevention and treatment of elder and vulnerable adult abuse, neglect, exploitation and consumer fraud.
- H. Provide technical assistance, information and referrals to programs providing services to victims.
- I. Coordinate services with adult protective services, domestic violence programs, regulatory services, consumer protection agencies, victim services, law enforcement and the judicial system.
- J. Serve as a clearinghouse for elder and vulnerable adult abuse, neglect, exploitation and consumer fraud information to the public.
- K. Collaborate with area agencies to identify target populations.
- L. Share information between agencies who serve victims of abuse, neglect, exploitation and poly-victimization.

- M. Provide direct services to victims of elder and vulnerable adult abuse through telephone assurance, assistance with court appearances, assistance with navigating social services and the court system.

24-2-200 Elder and Vulnerable Adult Protection Program Evaluation

The Elder and Vulnerable Adult Protection Program will be evaluated on an annual basis to determine its effectiveness at meeting the program goals within the service area.

24-2-300 Elder and Vulnerable Adult Protection Program Reporting

The Elder and Vulnerable Adult Protection Program will submit completed programmatic reports as required by the Tribal Council and funding agencies.

24-2-400 Elder and Vulnerable Adult Protection Team

- A. The Elder and Vulnerable Adult Protection Program shall create and oversee the Elder and Vulnerable Adult Protection Team.
- B. The Elder and Vulnerable Adult Protection Team shall be a multidisciplinary team who shall have the responsibility and legal authority to investigate reports of elder and vulnerable adult abuse and neglect, provide protective services to that person, and where necessary, initiate actions in the Tribal Court on behalf of the abused or neglected person.
- C. Additional responsibilities include, but are not limited to:
 - 1. Providing input and services as part of case consultation and/or case management for elders and vulnerable adults in need of or subject to guardianship.
 - 2. Developing and implementing policies for the protection of and provision of services to elders and vulnerable adults.
 - 3. Providing education and prevention efforts for the purpose of protecting elders and vulnerable adults.

24-2-500 Elder Protection Team membership shall include, but is not limited to, the following members:

Elder and Vulnerable Adult Coordinator	First Nations Women's Alliance	Public Health Nurse (PHN)	Social Services
Clinic nurse	Health Board Member	Senior Service Director	Traditional Court
Clinic Physician	Housing	Spirit Lake Behavioral Health	Spiritual Leader
Community Health Worker	Law & Order Board	Spirit Lake Victims Assistance	Tribal Court (Tribal Judge (except during case reviews & prosecution))
Emergency Medical Services (EMS)	Law Enforcement, BIA or Tribal	Spirit Lake Victims Assistance	Vulnerable adults (VAPS)
Religious leader	Program Evaluator		

24-2-600 Elder and Vulnerable Adult Protection Team Records

The Elder or Vulnerable Adult Protection shall keep a separate file for each report of abuse and each guardianship report it compiles. The files shall include the original complaint or court order regarding guardianship, all records regarding the investigation of the report or guardianship, any services provided and the report to the court on the same.

24-2-700 Confidentiality of Elder or Vulnerable Adult Protection Team Records

- A. The Elder or Vulnerable Adult Protection Team may share information among the team members for the purposes of case consultation, case management, and the provision of services to an elder or vulnerable adult subject to abuse or in need of guardianship.
- B. For all other confidential information, the Elder and Vulnerable Adult Protection Team shall obtain releases of information from the elder, vulnerable adult and/or the

guardian which identifies the information being requested for release and the purpose for the request.

- C. Confidentiality of records must be preserved to protect the rights of the persons served under the Elder and Vulnerable Adult Protection Program.

D. Allowable Access and Rules for Disclosure

Information gathered in the process of receiving a report of abuse, neglect or exploitation and/or making a referral may be disclosed:

1. If all parties to the complaint or the report consent in writing to the release of the information; or
2. If the release of the information is made pursuant to a valid subpoena; or
3. If the release of the information is made pursuant to an order of a court of competent jurisdiction; or
4. If the information is released to a law enforcement agency.

- E. All reasonable efforts must be made to resolve any conflicts with other public agencies with respect to the confidentiality of abuse, neglect and/or exploitation information, including signing a Memorandum of Understanding to narrowly limit disclosure of information consistent with this policy.

- F. Elder and Vulnerable Adult Protection Team members will sign confidentiality forms.

- G. If an Elder and Vulnerable Adult Protection team member is discussing cases inappropriately outside the meetings, the individual will be removed from the Team and the incident will be reported to the appropriate officials.

- H. For all other confidential information, the Elder and Vulnerable Adult Protection Team shall obtain releases of information from the elder, vulnerable adult and/or the guardian which identifies the information being requested for release and the purpose for the request.

CHAPTER THREE (3) - GUARDIANSHIP OF AN ELDER OR VULNERABLE ADULT

24-3-100 Petition for Guardianship or other Protective Order

- A. Any tribal agency or representative, medical professional, social worker, or mental health worker; or any parent, spouse or relative of an elder or vulnerable adult may file a petition alleging that the appointment of a tribal or private guardian is necessary. A petition by an individual other than a tribal agency or representative shall be considered the least restrictive appointment available and shall be used where possible.
- B. The person to be protected, any person who is interested in the estate, affairs, or welfare of the person to be protected, including the protected person's parent or custodian, or any person who would be adversely affected by the lack of effective management of the property and affairs of the person to be protected may petition for the appointment of a guardian or for other appropriate protective order.
- C. The petition shall set forth:
 - 1. The name and address of the Petitioner and relationship of the Petitioner to the proposed protected person.
 - 2. Whether there is a nomination as to who should act as guardian, as well as the nominated party's relationship to the proposed protected person.
 - 3. The name, address and date of birth of the proposed protected person.
 - 4. The names and addresses of the nearest relatives and spouse, if any, of the proposed protected person.
 - 5. The probable value and general character of the proposed protected person's real and personal property and the probable amount of the proposed protected person's debts.
 - 6. Facts showing that the proposed protected person is impaired to the extent of lacking sufficient understanding, capacity, or willingness to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability or unwillingness to meet personal needs for medical care, nutrition, clothing, shelter, safety and/or finances. Evidence supporting guardianship may include the following: medical records, incident reports, and

affidavits from family, friends, medical professionals, social workers, or mental health workers.

7. The powers the Petitioner believes are necessary to protect and supervise the proposed protected person, their finances and/or their estate.
 8. Facts showing that no less restrictive alternatives to guardianship are available including, but not limited to, care coordination, case management, family or caregiver education or support, powers of attorney, trusts, health care directives, a representative payee, development of community support, economic assistance benefits, waiver services, and community services.
- D. If the Petitioner is not a tribal agency or representative, the cost of filing shall be paid by the Petitioner. The Petitioner may request to be reimbursed the cost of the filing fee from the protected person's estate upon appointment of a guardian through proceedings in Court. Determinations made pursuant to a request to proceed in forma pauperis shall be based on the protected person's income and estate.
- E. A petition shall be filed by a tribal agency or representative seeking to be appointed guardian only where no other individual or institution is available for appointment. The Elder and Vulnerable Adult Protection Program shall establish rules for petitioning for the appointment of a guardian of an elder or vulnerable adult, including the circumstances under which the Program and the Tribe are responsible for the costs associated with acting as a guardian.
- F. In any action filed in Court under any provision of this Code, the Spirit Lake Tribe's Rules of Civil Procedure shall generally apply.

24-3-200 Due Process Requirements

- A. The Respondent has the right to be represented by counsel. The Respondent may waive their right to counsel unless the Respondent is incapable of attending court proceedings either in person or by electronic means; or if the Court determines that due to cognitive impairment the Respondent is unable to make a knowing waiver of the right to be represented. The Court may rely on factors such as an examiner's statement in support of appointment or present impressions of the Respondent during the initial proceedings in making its determination of whether the Respondent can make a knowing waiver.

- B. The Respondent and their counsel shall receive notice of all proceedings under this Code. The notice must include a statement that the Respondent must attend, either in person or by electronic means, any court hearings to which they are a party. All notices shall be personally served within a reasonable time prior to the hearing.
- C. If a guardian is appointed, the protected person retains all rights not restricted by the Court Order. These rights include the right to:
1. Treatment with dignity and respect.
 2. Due consideration of current and previously stated personal desires, medical treatment preferences, religious and spiritual beliefs, and other preferences and opinions in decisions made by the guardian.
 3. Receive timely and appropriate healthcare and medical treatment that does not violate the known conscientious, religious, spiritual or moral beliefs of the protected person.
 4. Exercise control of all aspects of life not delegated specifically by Court order to the guardian.
 5. Guardianship services individually suited to the protected person's conditions, needs, finances and estate.
 6. Petition the Court to prevent or initiate a change in residence.
 7. Due consideration for care, comfort, social needs, recreational needs, training, education, habilitation, and rehabilitation care and services, within available resources.
 8. Be consulted concerning, and to decide to the extent possible, the reasonable care and disposition of the protected person's finances, estate, clothing, furniture, vehicles, and other personal effects.
 9. To object to the disposition of personal property and effects.
 10. To petition the Court for a review of the guardian's proposed disposition.
 11. Personal privacy.
 12. Communication and visitation with persons of the protected person's choice. If the guardian has found that certain communication or visitation may result in

harm to the protected person's finances, estate, health, safety, or wellbeing, that communication or visitation may be restricted but only to the extent necessary to prevent the harm.

13. Petition the Court for termination or modification of the guardianship or for other appropriate relief.

14. Execute a health care directive which may include but, not be limited to, health care instructions and the appointment of a health care agent, if appropriate.

24-3-300 Emergency Appointment of Guardian

A. If the Court finds that compliance with the procedures of this Code will likely result in substantial harm to the Respondent's finances, estate, health, safety, or welfare, the Court may, on petition by a person interested in the Respondent's welfare, appoint an emergency guardian whose authority will not exceed thirty (30) days unless good cause is shown for a longer duration and who shall exercise only the powers specified by the Court in the order. The powers of the emergency guardian shall be limited to those necessary to protect the Respondent's finances, estate, safety, health, and welfare and to allow for a more permanent determination of the Respondent's capacity. Reasonable notice of the time and place of a hearing on the petition must be given to the Respondent and any other persons as the Court directs.

B. An emergency guardian may be appointed without notice to the Respondent and the Respondent's lawyer only if the Court finds from affidavit or other sworn testimony that the Respondent will be substantially harmed before a hearing on the appointment can be held. If the Court appoints an emergency guardian without notice to the Respondent, the Respondent must be given notice of the appointment within forty eight (48) hours after the appointment. The Court shall hold a hearing on the appropriateness of the appointment within five (5) days after the appointment.

24-3-400 Regular Appointment of Guardian

A. The Court shall grant an order for appointment of a guardian or other protective order under this Code if the Court finds that a guardian or other protective order is required based on clear and convincing evidence.

B. The Court shall grant only those powers to the guardian deemed necessary to protect the proposed protected person's finances, estate, safety, health, and welfare.

24-3-500 Temporary Guardianship

- A. Upon appointment of a guardian, the appointed guardian shall be considered temporary until they undergo a background check and drug testing.
- B. All background checks and drug testing shall be completed within 30 days of temporary appointment.
- C. The guardian shall bear the cost of the background checks and drug testing and may request to be reimbursed the cost of the background checks and drug testing from the protected person's estate through proceedings in the Court.
- D. The Court shall have access to all background checks and drug screens of proposed, temporary and permanent guardians.
- E. The appointed guardian shall sign all releases necessary to provide these records to the Court.
- F. If the background check reveals a conviction that would bar the temporary guardian from their appointed role, the Court shall schedule a hearing within seven (7) days to dismiss the temporary guardian and to subsequently appoint a new temporary guardian.
- G. If the drug test is positive for non-prescribed drugs, the Court shall schedule a hearing within seven (7) days to dismiss the temporary guardian.

24-3-600 Individuals Eligible to Serve as Guardian

- A. If the Court finds that a guardian is needed, the Court shall appoint a guardian who has an already existing relationship or connection to the proposed protected person if possible. The Court shall appoint a guardian based on the best interests of the proposed protected person. The following priority is applicable:
 - 1. The spouse of the Respondent.
 - 2. An adult child or grandchild of the Respondent.
 - 3. A parent of the Respondent.
 - 4. An adult with whom the Respondent has resided for more than six months before the filing of the petition.
 - 5. An adult who is related to the Respondent by blood, adoption, or marriage.
 - 6. A Tribal Guardian or any other adult or a professional conservator or guardian.

- B. The Court may decline to appoint a person having priority and appoint a person having a lower priority or no priority if that appointment is in the best interests of the proposed protected person.
- C. With respect to persons having equal priority, the Court may appoint based on the best interests of the proposed protected person.
- D. The following individuals may not be appointed as a guardian:
 - 1. Any person who has been convicted of any crime of sexual violence is barred from being appointed as a guardian.
 - 2. Any person who has been convicted of a violent felony is barred from being appointed as a guardian.
 - 3. Any person who has been convicted of arson is barred from being appointed as a guardian.
 - 4. Any person against whom a substantiated finding of maltreatment of an Elder, Vulnerable Adult or child has been made by Spirit Lake, a county in the State of North Dakota, another tribal nation or another state is barred from being appointed as a guardian.
 - 5. Any person who has been convicted or sentenced in the past five years (5) of any of the following crimes is barred from being appointed as a guardian:
 - a) Maltreatment or neglect.
 - b) Assault.
 - c) Any drug offense, misdemeanor or felony.
 - d) Theft or robbery.
 - e) Domestic violence.
- E. Tribal Guardian - At the request of counsel or by the protected person's family, a Tribal Guardian may be appointed as the guardian of a protected person who is found to need a guardian.

24-3-700 Powers of a Guardian

A guardian shall always be subject to the control and direction of a Tribal Court order. The Tribal Court order may grant to a guardian only those powers necessary to provide for the demonstrated needs of the protected person. The duties and powers of a guardian and the limitations on a guardian include, but are not limited to:

- A. Where a protected person has inherited an undivided interest in real estate, the Tribal Court Judge, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate.
- B. The guardian shall have the power to revoke, suspend, or terminate all or any part of a durable power of attorney of which the protected person is the principal with the same power the principal would have if the principal were not incapacitated. If a durable power of attorney is in effect, a decision of the guardian takes precedence over that of an attorney-in-fact.
- C. If a protected person has made a financial transaction or gift or entered a contract during the two-year period before establishment of the guardianship, the guardian may petition the Tribal Court for review of the transaction, gift, or contract.
- D. If the Tribal Court Judge finds that the protected person was incapacitated or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the Tribal Court Judge may declare the transaction, gift, or contract void except as against a bona fide transferee for value, and order reimbursement or other appropriate relief.
- E. If a guardian is appointed and if the guardianship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessities, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage houses, or other financial institutions, or transfers of cash or securities made by the protected person after the filing and before the termination of the guardianship shall be voidable.
- F. The guardian shall have the power to have custody of the protected person and the power to establish a place of residence within or outside the Spirit Lake Reservation.
- G. The guardian shall have the power to give any necessary consent for necessary medical or other professional care, counsel, treatment, or service, except that no guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is granted by Tribal Court order.

- H. The guardian shall not have the power to consent to any medical care for the protected person which violates the known conscientious, religious, or moral beliefs of the protected person.
- I. The guardian shall not have the power to revoke the health care directive of a protected person absent a Tribal Court order.

24-3-800 Duties of a Guardian

- A. On behalf of the protected person, their finances and/or their estate, the guardian shall:
 - 1. Have a fiduciary duty to manage the estate in the best interest of the protected person.
 - 2. Have access to and the ability to sign and authorize all financial and bank accounts, income streams and any other income source designed to benefit the protected person.
 - 3. Ensure all housing, medical, grocery, pharmaceutical and other costs related to the cost of living are paid from the protected person's estate.
 - 4. Provide for the protected person's care, comfort, and maintenance needs, including food, clothing, shelter, health care, transportation, social and recreational requirements, and whenever appropriate, training, education, habilitation or rehabilitation.
 - 5. Take reasonable care of the protected person's clothing, furniture, vehicles, and other personal effects, and if other property requires protection, the power to seek appointment of a conservator of the estate.
 - 6. Ensure the funds of any protected person be used solely for the support of the protected person.
 - 7. Any other reasonable duties in a manner according to the circumstances of the protected person.
 - 8. The guardian has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the guardian should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate.
- B. On behalf of the protected person, their finances and/or their estate, the guardian may:
 - 1. Make gifts from the protected person's estate.

2. Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties.
3. Exercise the power to create, terminate, or alter the beneficial interests and beneficiaries of a payable on death (POD) account, a transfer on death (TOD) security registration or account, or joint tenancy interests with rights of survivorship.
4. Make, amend, or revoke the protected person's will. Any changes to the protected person's will must be done with good cause and have judicial approval.
5. Apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

CHAPTER FOUR (4) - JUDICIAL REVIEW, REPORTING AND GENERAL PROCEDURES

24-4-100 Initial Review Hearing

- A. Three (3) months after a guardian is appointed, the Tribal Court shall schedule a review hearing.
- B. Two (2) weeks prior to the review hearing, the guardian shall provide to the Tribal Court a detailed financial record of any and all transactions that have occurred on behalf of the protected person.
- C. At the initial review hearing, the Tribal Court shall review the guardian's background check and drug tests as well as the detailed financial records.
- D. The guardian or conservator may be made permanent by Tribal Court order after the initial review hearing.

24-4-200 Reporting Duties

- A. Within sixty (60) days following appointment, and at such other times as the Tribal Court directs, a guardian shall file an inventory of the real and personal property of the protected person with the Tribal Court.
- B. The guardian shall file an annual accounting report of the estate, including any money acquired or expended on behalf of the protected person's estate.
- C. Any gifts, transactions, or purchases over the amount of \$1,000.00 on behalf of the protected person must first be approved by the Tribal Court except for medical related expenses.
- D. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian and/or criminal prosecution.

24-4-300 Review of Guardian Actions and Decisions

- A. Additional review hearings may occur at the discretion of the Tribal Court Judge but shall occur, at a minimum, on an annual basis.
- B. In reviewing or approving a guardian's exercise of their powers, the Tribal Court Judge may consider:
 - 1. The financial needs of the protected person, the needs of individuals who are dependent on the protected person for support and the interests of creditors.
 - 2. Possible effects on income, estate, gift, or inheritance.

3. The protected person's previous pattern of giving or level of support.
4. Whether the protected person's needs can be met from the person's remaining assets after any transfer is made, taking into account the effect of any transfer on eligibility for medical assistance and long-term care services.
5. Any breach of fiduciary duties by the guardian.
6. Lack of necessary reporting and/or financial accountability by the guardian.
7. Any fraud or evidence of mismanagement of the protected person's financial resources, estate, or personal property.
8. Any other factors the Tribal Court considers relevant.

24-4-400 Loan Applications

Any person who has been appointed as a guardian, who seeks to make a long or short-term loan utilizing the income or future income of a protected person, or who purports to use that person as a co-signer, shall file a report with the Elder and Vulnerable Adult Protection Program staff or the Elder and Vulnerable Adult Protection Team to ensure that the protected person is not exploited and the funds being requested will actually benefit of the protected person. The Elder and Vulnerable Adult Protection Team shall make a recommendation to disapprove any loan that they find would not benefit the protected person. Any person that seeks to use funds of a protected person improperly may be prosecuted and punished accordingly.

24-4-500 Reimbursement for Guardian

- A. A guardian is entitled to reasonable compensation for services (not to exceed \$100 per month) and to reimbursement for expenditures made on behalf of the protected person. Any compensation for services and reimbursement must be disclosed to the Tribal Court within fourteen (14) days.
- B. Compensation and reimbursement shall be paid to the guardian from the protected person's estate.
- C. A guardian is entitled to reimbursement for mileage expenses at the current federal rate for travel to and from medical appointments for the protected person and court hearings held on the matter of guardianship.

D. A guardian may request that the Tribal Court consider other expenses incurred in the scope of guardianship for reimbursement.

24-4-600 Termination of Guardianship

- A. When a protected person is restored to capacity or dies, any interested party may petition for dismissal of the guardianship.
- B. Upon death, the guardianship shall automatically terminate after six (6) months from death unless otherwise dismissed or extended by Court Order.
- C. This section shall apply to the termination of appointment of a guardian where guardianship proceedings are ongoing:
 - 1. The court may terminate a guardian for good cause on a motion by the protected person or other interested person, if by a preponderance of the evidence, the court finds that the guardian has failed in their fiduciary care or duties.
 - 2. At any time, a guardian may petition the Tribal Court for termination of their appointed role.
 - 3. A hearing shall be held to determine if a dismissal of the guardian is appropriate.
 - 4. No guardian shall be dismissed until a new temporary guardian or conservator is appointed.
 - 5. Unless the dismissal was for good cause, a dismissed guardian may be considered at a later date for a subsequent appointment.

24-4-700 Denial and Appeals Process

- A. Any person denied appointment of guardianship or any person dismissed as guardian may petition the Tribal Court for review of the decision.
- B. All petitions shall be reviewed by the Tribal Court Judge under a best interest of the protected person standard and in consideration of the totality of the circumstances.
- C. The Tribal Court Judge may issue a decision on the appeal of a petition with or without a hearing.

CHAPTER FIVE (5) – OFFENDER REGISTRY

24-5-100 Elder and Vulnerable Adult Protective Services Registry

- A. Spirit Lake Senior Services and the Spirit Lake Elder and Vulnerable Abuse Protection Program shall maintain a listing of all persons in Spirit Lake who have a substantiated case of abuse, neglect, mistreatment, and/or financial exploitation in their backgrounds.
- B. All public and home care facilities shall check this Registry before hiring any new employee.

24-5-200 Scope of Abuse Covered by the Registries

Verbal, psychological, emotional, physical, sexual or financial abuse, neglect or exploitation.

24-5-300 Application

- A. **No waiver of immunity.** Nothing under this Title shall be construed as a waiver of sovereign immunity for the **Spirit Lake Tribe**, its elected officials, its departments, agencies, employees, or agents. Any person acting under good faith of this Title shall be immune from any civil liability arising out of such actions.
- B. This title shall apply to any individual who resides, attends school, or is employed within the boundaries of the Spirit Lake Nation or to any individual who enters the Spirit Lake Nation for the purposes of adjudication, incarceration, education, studying, working, conducting business, conducting personal affairs, or for any other purpose if that individual has been convicted of a any criminal offense (including attempt and conspiracy) involving elder or vulnerable adult abuse as described in Section 24-5-200.

24-5-400 Registration

Any person described in Section entitled "Application" set forth in 24-5-300 shall be required to register with the Spirit Lake Elder and Vulnerable Adult Offender Registry (SL EVA Offender Registry) within three (3) days of entering the exterior boundaries of the Spirit Lake Nation.

24-5-500 Registration requirements

- A. An offender covered by this code who is required to register shall provide all the information detailed

in this chapter to the SL EVA Offender Registry. The SL EVA Offender Registry shall obtain all the information detailed in this chapter from covered offenders who are required to register with the Tribe. Specifically:

1. The following information related to the offender's criminal history:
 - a. The date of all arrests.
 - b. The date of all convictions.
 - c. Nature of the crimes.
 - d. Jurisdiction where convicted.
 - e. The offender's status of parole, probation or supervised release.
 - f. The offender's registration status.
 - g. Any outstanding arrest warrants.
2. A photograph of the offender.
3. The full name(s), aliases, any dates of birth, gender, race and physical description of the offender, including any identifying marks, scars or tattoos.
4. The current place of residence of the offender and any other temporary or permanent address(es) of the offender including temporary lodging; and/or the location and description of any residence or location where the offender habitually resides regardless of whether it is a permanent address or a location otherwise identifiable by a street or address.
5. All the offender's valid driver's licenses issued by any jurisdiction and other driver's licenses in the offender's possession.
6. All vehicle information including license plate number(s), registration number(s) and a full vehicle description including make, model and year.
7. All the offender's identification cards including the offender's tribal enrollment card issued by any jurisdiction.
8. The Spirit Lake Elder and Vulnerable Adult Protection Program staff or designee shall make a photocopy of such documents.

9. The name and address of the offender's employer(s), including transient and day-labor working arrangements.
10. Land-line telephone numbers, cellular telephone numbers and voice-over-IP ("VOIP") telephone numbers.
11. The name and address of any schools, educational institutions or programs the offender is or will be attending.
12. All email addresses, instant message identifiers and any other designations used in internet communications or postings by the offender.
13. Current contact information including, but not limited to, mailing address, place of residence and telephone number.
14. Date that the offense(s) were committed, the date of release from incarceration and any parole or probation conditions that may be in effect.
15. Dates of travel and temporary lodging information.
16. All licensing of the offender that authorizes the offender to engage in an occupation or carry out a trade or business.
17. The offender's valid social security number and any social security numbers that the offender used in the past.

B. **Digitization.** All information obtained under this code shall be maintained by the SL EVA Offender Registry in a digitized format.

C. **Electronic Database.** The registry shall be maintained in an electronic database by the SL EVA Offender Registry and shall be in a form capable of electronic transmission.

24-5-600 Public Disclosure of Information

A. The Spirit Lake Elder and Vulnerable Adult Protection Program shall use and maintain a public SL EVA Offender Registry website. The SL EVA Offender Registry website shall include the following content:

1. Links to offender safety and education resources.
2. Instructions on how a person can seek correction of information that the individual contends is

erroneous.

3. A warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.
4. The capability of conducting searches by: (1) name; (2) county, city, and/or town; and, (3) zip code and/or geographic radius.
5. Shall disclose the following information to the public via the public website and Tribal Elder and Vulnerable Adult Offender Bulletin Boards established by the Spirit Lake Elder and Vulnerable Abuse Protection Program:
 - a. A photograph of the offender.
 - b. The full name, aliases, date of birth, gender, race and physical description of the offender, including any identifying marks, scars or tattoos.
 - c. Current mailing address(es) and place(s) of residence.
 - d. All vehicle information including license plate number(s), registration number(s) and a full vehicle description including make, model and year.
 - e. The name-and address of the offender's employer(s).
 - f. The name and address of any schools, educational institutions or programs the offender is or will be attending.
 - g. All email addresses, instant message identifiers and any other designations used in internet communications or postings by the offender.
 - h. The filing of a written statement detailing the date of conviction(s), nature of the offense(s) and jurisdiction(s) where the offender was convicted.
 - i. Date that offense(s) were committed, the date of release from incarceration and any parole or probation conditions

that may be in effect.

- j. A statement detailing whether an offender is violation of their registration requirement, cannot be located, or has absconded.

B. Prohibited Information. The following information shall not be available to the public on the SL EVA Offender Registry website:

1. Any arrest that did not result in conviction.
2. The offender's social security number.
3. Any travel and immigration documents.
4. The identity of the victim(s).
5. Internet identifiers (as defined in 42 U.S.C. §16911).

C. Public Meeting or Written Dissemination In addition to disclosure of information via the SL EVA Offender Registry website, the Spirit Lake Elder and Vulnerable Adult Protection Program shall disclose the following information to the public within five (5) working days, at a public meeting or via distribution of a written community bulletin, when it is determined by the Program and Law Enforcement that the community may be at risk of victimization by an unregistered offender:

1. The full name, aliases, date of birth, gender, race, and physical description of the offender.
2. The current place of residence of the offender.
3. A photograph of the offender.
4. A description of any vehicle owned or registered to the offender and the license plate number of the same.
5. A description of the nature of the crime(s) committed by the offender as well as a description of the type of victim generally targeted by the offender.
6. Date that offense(s) were committed, the date of release from incarceration and any parole or probation conditions that may be in effect.
7. In assessing whether community may be at risk in accordance with 24-5-600 (C), the Spirit Lake Tribal EVA Offender Registration Program and Law Enforcement shall consider any or all the following:

- a. The dates, locations, frequency of crimes for which the offender has been convicted.
- b. Any treatment that the offender may have completed and the outcomes of the same.
- c. The type of person victimized in the past.
- d. Any crimes committed against elders or vulnerable adults shall be cause for automatic public notification by law enforcement and shall not be subject to the discretion of law enforcement personnel.

D. Law Enforcement Notification. Whenever an offender registers or updates his or her information with the tribe, the Spirit Lake Tribal Elder and Vulnerable Adult Protection Program shall:

1. Monitor and utilize existing exchange Portals for inter-jurisdictional change of residence, employment, or student status.
2. Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, senior welfare or offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors, and tribal probation.
3. Immediately notify all other jurisdictions where the offender is registered due to the offender's residency, school attendance, or employment.
4. Enter or update information posted on the SL EVA Offender Registry website.

E. Community Notification. The Spirit Lake Tribal Elder and Vulnerable Adult Protection Program shall ensure there is an automated community notification process in place that ensures the following:

1. Upon an offender's registration or update of information with the Tribe, the SL EVA Offender Registry website is immediately updated.
2. The SL EVA Offender Registry website has a function that enables the general public to request an e-mail notice whenever an offender's status is updated for any reason.

F. Witness Protection. For offenders who are under a witness protection program, the tribal police may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible offender registry website.

24-5-700 Victim Confidentiality

Law Enforcement and the Spirit Lake Tribal Elder and Vulnerable Adult Protection Program shall always make every effort to maintain the confidentiality of the victim's identity.

**SPIRIT LAKE TRIBE
RESOLUTION NO. A05-21-145A**

WHEREAS, the Spirit Lake Tribe, formerly known as the Devils Lake Sioux Tribe is a federally recognized Indian Tribe governed by a revised constitution dated May 5, 1960, approved by the Acting Commissioner, Bureau of Indian Affairs, July 14, 1961, and as subsequently amended July 17, 1969; May 3, 1974; April 16, 1976; May 4, 1981; and August 19, 1996; and

WHEREAS, the constitution of the Spirit Lake Tribe generally authorizes and empowers the Spirit Lake Tribal Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribe and of the enrolled members thereof; and

WHEREAS, the Spirit Lake Tribal Council (hereinafter the Tribal Council) is the governing body of the Tribe and is empowered to administer the economic resources and financial affairs of the Tribe; and

WHEREAS, Article VI, Section 4 of the Constitution authorizes and empowers the Tribal Council to “enact ordinances to regulate the conduct and domestic relations of the members of the Tribe, or Indians from other tribes on the reservation, subject to the review of the Secretary of the Interior or his duly authorized representative,”; and

WHEREAS, the Tribe currently lacks a comprehensive Code and for addressing issues related to elder and vulnerable adult abuse and protection; and

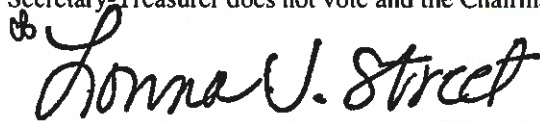
WHEREAS, the substance and content of the proposed Title 24 – Elder and Vulnerable Adult Protection Code was included within the proposed and reviewed Spirit Lake Tribe Elder and Vulnerable Adult Protection Handbook and Policy Manual; and therefore, has been posted for review and comment for a period of at least thirty (30) days pursuant to Section 1-3-101 of the Spirit Lake Law and Order Code (as amended on May 14, 2019 by Resolution A05-19-205) as part of the Proposed Spirit Lake Elder; and

THEREFORE, BE IT RESOLVED, that the previously proposed and reviewed Title 24 – Elder and Vulnerable Adult Protection Code is hereby approved, enacted and adopted for use by the Spirit Lake Tribe; and

BE IT FURTHER RESOLVED that the Tribal Council pursuant to their vested authority hereby executes this resolution approving the amendments and additions to the Code shall become a part of the Code for all purposes and shall be codified and incorporated herein in a manner consistent with the number and organization of this Code.

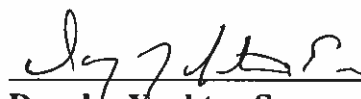
CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Tribal Council, do hereby certify that the Tribal Council is composed of six (6) members of whom five (5) were present, constituting a quorum for a Special Meeting duly called and convened on this 18th day of February, 2021 and approved this resolution by an affirmative vote of three (3) in favor, none (0) opposed, none (0) abstaining, and one (1) absent (Mission District Representative Duane Jackson Sr). The Secretary-Treasurer does not vote and the Chairman votes only in case of a tie.



**Lonna J. Street
Secretary Treasurer**





**Douglas Yankton Sr.,
Tribal Chairman**