

**JAMESTOWN S'KLALLAM TRIBE
TRIBAL CODE
TITLE 38 - ELDER AND VULNERABLE ADULT PROTECTION CODE**

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Section 38.01.01 Declaration and Purpose

It is the culture, tradition and belief of the Jamestown people to honor and protect their elders, as they are the possessors of the spiritual and collective wisdom and traditions of the Jamestown S’Klallam Tribe which are passed on from generation to generation.

As such, the elders of the Jamestown S’Klallam Tribe warrant the special concern and protection of the people of the Jamestown Tribe. It is also the culture, tradition and belief of the Jamestown people to honor and protect all elders of all tribes.

This Elder and Vulnerable Adult Protection Code is to be liberally construed for the protection of all elders and vulnerable adults within the jurisdiction of the Jamestown S’Klallam Tribe. The purpose and presumption of this Title is to keep Elders or Vulnerable Adults in the least restrictive surroundings, including leaving them in their own homes, unless their health, safety or welfare is in serious jeopardy. This Title is not intended to abrogate any existing civil or criminal laws of the Jamestown S’Klallam Tribe.

Section 38.01.02 Tribal Court Jurisdiction

- A. The Jamestown Tribal Court shall have jurisdiction over any proceeding arising under this Title, and actions arising under the customs and traditions of the Jamestown S’Klallam Tribe of Indians affecting elder or vulnerable adult protection and welfare which involve any Jamestown Tribal elder or vulnerable adult, or other Indian elder or vulnerable adult who resides or is domiciled on reservation and trust lands of the Jamestown Tribe.
- B. Whenever state, federal or other tribal courts have jurisdiction over any of the matters provided for in this Title, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.
- C. Nothing contained herein shall be construed as a reflection of the Tribe's view as to the legally permissible limits of Tribal jurisdiction.

Section 38.01.03 Definitions

In this Title, unless the context specifies otherwise, the following definitions shall apply:

- A. "Abuse" includes:
 - 1. Assault: an attempt to cause bodily harm to another person through the use of force, or the creation of a reasonable fear of imminent physical or other harm in another person.
 - 2. Battery: application of force to another person resulting in bodily harm or offensive touching.
 - 3. Threatening: words or conduct that place another in fear of physical or other harm on any person or their property, including but not limited to yelling and harsh words.
 - 4. Coercion: compelling a person, through force or threat of force, to engage in or abstain from conduct that the person has a right to abstain from or engage in.
 - 5. Unreasonable confinement, intimidation or cruelty: acts which result in physical harm or pain or mental anguish of an elder or vulnerable adult by any person, particularly anyone such as a spouse,

a child, other family members, caregiver(s) or other persons recognized by statutory or common law as having a special relationship with or duty to the elder or vulnerable adult.

6. Sexual abuse: any physical contact with an elder or vulnerable adult for emotional or physical gratification of the person making the contact and to which the elder or vulnerable adult does not give consent or for which consent is obtained by intimidation or fraud.
 7. Emotional abuse: infliction of threats, humiliation, or intimidation that cause emotional trauma.
 8. Intimidation: willfully placing another in fear by coercion, extortion or duress.
 9. Exploitation: the illegal use of funds, property or other resources of an elder or vulnerable adult for personal gain by threat, humiliation, intimidation, coercion, deception or fraud. Exploitation is also failure to use the funds, property, or other resources of any elder or vulnerable adult for the benefit of the elder or vulnerable adult and includes, but is not limited to, leaving a child or children or other persons for indefinite periods of time or under circumstances in which the elder or vulnerable adult cannot adequately care for such children or other persons.
 10. Neglect means a pattern of conduct or inaction resulting in deprivation of Essential Services necessary to the elder or vulnerable person. Neglect also includes:
 - a. Preventing or interfering with delivery of Essential Services and resources to an elder or vulnerable adult.
 - b. Failing to report abuse, neglect, or exploitation of an elder or vulnerable adult when there is reasonable suspicion to justify such reporting.
 - c. Failing to provide services or resources essential to the elder or vulnerable adult's practice of customs, traditions, or religion.
 11. Self-neglect shall mean a willful or habitual pattern, engaged in by an elder or vulnerable adult, whereby they deprive themselves of services necessary to maintain minimum physical or mental health, including, but not limited to, the deprivation of food, shelter, clothing or services necessary to maintain physical or mental health.
 12. Abandonment: action or inaction by a person with a duty of care for an elder or a vulnerable adult that leaves the elder or vulnerable person without the means or ability to obtain Essential Services.
 13. Breach of a fiduciary duty: breach by a family member or caregiver of their fiduciary duties toward an elder or vulnerable adult.
- B. "Adult Protection Team" shall be appointed by the Tribal Council, and shall consist of a Tribal law enforcement officer, a Protective Services Worker, a Tribal mental health professional, a Community Health Nurse and a Tribal social services worker. The Adult Protection Team shall be charged with implementation and enforcement of this Title.
- C. "Business day" shall include and mean any day regular business of the Tribe is conducted and shall exclude Saturdays, Sundays and legal holidays. For the purposes of this Title, legal holidays shall be construed to mean those days appointed as a holiday by the Tribal Council.
- D. "Caretaker" shall mean any individual, group of individuals, or institution that is permanently or temporarily responsible by relationship, contract or court order to provide food, shelter, clothing, medical or other life-sustaining necessities to an elder or vulnerable adult.
- E. "Elder" shall mean any enrolled Jamestown S'Klallam Tribal citizen who has reached the age of fifty-five (55) years or older.

- F. "Emergency" shall mean an exigent circumstance in which an elder or vulnerable adult's health or safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention.
- G. "Emergency Medical Services" shall mean local or Tribal government medical services provided through an emergency dispatch system.
- H. "Essential Services" means those services or things necessary to sustain a person's life, physical and mental health, and general well-being, such as adequate food, clothing, shelter and health care. It may include services or things considered essential under the person's customs, traditions and religion, including, but not limited to, access to traditional foods and access to religious or traditional ceremonies or services.
- I. "Fiduciary Duty" shall mean a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person, including but not limited to a duty to exercise a high standard of care in assisting that person with Essential Services, as well as managing another's money or property.
- J. "Least restrictive surroundings" is an approach which allows an elder or vulnerable adult the most independence and freedom from intrusion, consistent with their needs, by requiring that the least intrusive method of intervention is used to protect the elder or vulnerable adult from harm, including an attempt to remove an alleged perpetrator (the person accused of offenses under this Title against an elder or vulnerable adult, as defined above), while making every attempt to keep the elder or vulnerable adult in their own home.
- K. "Officer" shall mean any Jamestown Tribal Police Officer, or any non-Tribal law enforcement personnel operating within their jurisdiction.
- L. "Protective Services" means a program of identifiable and specialized social services that offers services appropriate to attempt to resolve problems that have produced visible signs of self-neglect, abuse, exploitation or neglect.
- M. "Protective Services Worker" means a person who has been appointed by Tribal Council resolution and trained under the requirements prescribed by the Tribe's Social Services department and/or Indian Health Services to provide protective services and is a member of the Adult Protection Team.
- N. "Relative" shall mean any biological, legal or traditional relationship, including step, half and in-law relationships.
- O. "Tribe," "Tribal" or "Tribes" shall mean the Jamestown S'Klallam Tribe of Indians. The words "tribe" or "tribal" shall refer to other tribes.
- P. "Vulnerable adult" means a person eighteen (18) years of age or older who suffers permanent or temporary impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other impairment such that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning their person and/or is unable to protect themselves from abuse, neglect, or exploitation. The Protective Services Worker may make a presumptive finding of vulnerability at the scene or it may be made by court order, but any determination of mental illness, mental deficiency, or mental disorder shall be made by a licensed mental health professional.

Section 38.01.04 Program Goals and Responsibilities

- A. The Adult Protection Team and Protective Service Workers have a duty to provide necessary protection services to an elder or vulnerable adult who has been or is being abused, neglected or exploited. Any protection services provided shall be the least restrictive alternative available and necessary to meet the needs of the elder or vulnerable adult, their family, and their caregiver(s). When possible, the affected elder

or vulnerable adult, their families and their caregiver(s) shall be consulted in determining what services shall be provided.

- B. In the process of carrying out the responsibilities and duties in this Title, the Adult Protection Team and Protective Service Workers shall make effective use of multidisciplinary services available through any and all Tribal and/or other public agencies, community-based organizations, and informal resources.
- C. In the process of carrying out the responsibilities and duties in this Title, the Adult Protection Team and Protective Service Workers may request the assistance of the staff or resources of all appropriate Tribal departments, agencies, commissions, or health directors, and may utilize any other appropriate and available tribal, public or private agencies, groups or individuals. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel, and any other person or entity deemed necessary due to their specialized training in providing services to elders or vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to elders or vulnerable adults. Interagency staffing and sharing of client and facility information shall be used, when necessary, to provide services to elders and vulnerable adults.
- D. Nothing in this Title shall be construed to mean that a vulnerable adult or elder is abused, neglected or in need of protective services for the sole reason that he/she relies on treatment from a recognized religious method of healing in lieu of medical treatment, nor shall the provisions of this Title be construed to require any medical care or treatment in contravention of the stated or implied objection of an elder or vulnerable adult, except as noted.

Chapter 38.02
Adult Protection Team; Powers & Duties of Protective Service Workers

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Section 38.02.01 Coordination Between Adult Protection Team and Protective Service Workers

Section 38.02.02 Duties of Protective Worker

Section 38.02.03 Limitations and Immunities Regarding a Protective Services Worker

Section 38.02.04 Special Powers and Duties in Cases of Self -Neglect

Section 38.02.05 Immunity of Participants; Non-Privileged Communication

Section 38.02.01 Coordination of Adult Protection Team and Protective Service Workers

The Adult Protection Team, in furtherance of its duty, shall advise and coordinate with the Protective Service Workers to facilitate the implementation and enforcement of this Title, and in doing so may adopt and issue regulations, pursuant to a notice and comment period, establishing criteria and procedures that comply with the policy and requirements of this Title for:

- A. Receiving reports of suspected elder or vulnerable adult abuse, neglect or exploitation;
- B. Investigating all reports of suspected abuse, neglect or exploitation;
- C. Reporting violations of this Title to the Tribal law enforcement, with follow-up to the Tribal Prosecutor for review and possible prosecution;
- D. Seeking and securing elder or vulnerable adult protection investigation warrants pursuant to Title;
- E. Determining whether an incident is an emergency and necessitates immediate removal of the elder or vulnerable adult from the home where abuse is reported;
- F. Establishing and providing elder or vulnerable adult protective services;
- G. Initiating procedures for determining incapacity of the elder or vulnerable adult;
- H. Implementing and ensuring confidentiality requirements, including compliance with all applicable Tribal and federal laws; and
- I. Coordinating services with other Tribal departments or agencies or other tribes.

Section 38.02.02 Duties of Protective Service Workers

The Protective Services Worker's duties shall include, but not be limited to, the following:

- A. Receiving reports of abused, exploited, self-neglected or neglected vulnerable adults and elders;
- B. Conducting investigations into reports of abused, exploited, self-neglected or neglected vulnerable adults and elders;
- C. If the allegations in a report indicate that an emergency exists, the Protective Service Worker must initiate an investigation immediately and initiate contact with the affected elder or vulnerable adult within eight (8) hours of receiving such report. All other investigations must be initiated within seventy-two (72) hours;
- D. In an emergency, the Protective Service Worker shall enlist the assistance of an Officer and/or Emergency Medical Services to ensure the safety of the elder or vulnerable adult. In responding to an emergency occurring off of Tribal lands, the Protective Service Worker shall enlist the assistance of Jamestown Tribal Police and local law enforcement as needed to ensure the safety of the elder or vulnerable adult;
- E. The investigation shall include a determination of the nature, extent, and cause of the abuse, neglect, self-neglect, or exploitation, an examination of evidence and consultations with persons thought to have knowledge of the circumstances and identification, if possible, of the persons alleged to be responsible for any abuse, neglect, or exploitation of the elder or vulnerable adult;

- F. The investigation shall include an interview with the elder or vulnerable adult, if possible. The Protective Service Worker shall preferably conduct the interview by means of a personal visit with the elder or vulnerable adult in their dwelling. If that is not possible, the interview may occur in the Protective Service Worker's office, by telephone conversation, or by any other means possible;
- G. Upon completion of the investigation, the Protective Service Worker shall prepare a written report of the investigation. The name of the person making the original report, or any person mentioned in the report shall not be disclosed unless those persons specifically request such disclosure or unless the disclosure is made pursuant to a request by law enforcement for emergency access, a court order or hearing;
- H. If, as a result of any investigation initiated under this Title, it appears that the abuse, neglect or exploitation has caused injury or a serious imposition on the rights of the elder or vulnerable adult, the Protective Service Worker shall immediately contact an Officer, who shall initiate an investigation and forward a report to the Tribal Prosecutor to determine whether criminal proceedings shall be initiated. Offer a vulnerable adult or elder in need of protective services, or his/her guardian, whatever services appear appropriate in view of the evaluation; and
- I. File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator, as provided for in this Title or other existing Tribal law.

Section 38.02.03 Limitations and Immunities Regarding a Protective Services Worker

- A. The Protective Service Worker may not be appointed as guardian, conservator, temporary guardian or temporary conservator.
- B. The Protective Service Worker shall be immune from liability for filing a petition for guardianship or conservatorship, unless the application or filing is done in bad faith.

Section 38.02.04 Special Powers and Duties in Cases of Self-Neglect

- A. If a report issued pursuant to this Title contains a finding of self-neglect involving an elder or vulnerable adult, the Protective Service Worker has the authority to petition the Tribal court for the appointment of a temporary or permanent guardian or conservator as provided for in this Title or any other applicable provision of the Tribal Code.
- B. In an emergency, an elder or vulnerable adult suffering from self-neglect shall be transported to an appropriate medical facility. A good-faith presumptive finding of self-neglect may be made at the scene by the Protective Service Worker, an Officer or by the Emergency Medical Services personnel.
- C. No self-neglect finding or medical care may violate any living will, advance directive, or other specific wishes of an elder or vulnerable adult who was competent when such decision was made.

Section 38.02.05 Immunity of Participants; Non-Privileged Communication

- A. Any person making a complaint, furnishing a report, information or records required or authorized by this Title, or participating in a judicial or administrative proceeding or investigation resulting from reports, information or records submitted or obtained pursuant to this Title is immune from any civil, criminal, or licensing sanction liability by reason of such action, unless the person acted with malice, bad faith, gross negligence, committed perjury or unless such person has been charged with or is suspected of incapacitating, abusing, exploiting or neglecting the vulnerable adult or elder in question.
- B. Except as provided in subsection C of this section, below, the physician-patient privilege, therapist-patient, husband-wife privilege or any other privilege, except the attorney- client privilege, as provided for in Title 21 - Law and Order Code of the Tribal Code, shall not pertain in any civil or criminal litigation in which a vulnerable adult's or elder's exploitation, abuse or neglect is an issue, nor shall they pertain in any investigation of a vulnerable adult's or elder's exploitation, abuse or neglect conducted by an Officer or a Protective Services Worker.

- C. In any civil or criminal litigation in which abuse, exploitation, self-neglect or neglect of a vulnerable adult or elder is an issue, a clergyman or priest shall not be examined as a witness concerning any confession made to them in their role as a clergyman or a priest.

Chapter 38.03
Duty to Report; Anonymity; Confidentiality; Violation

Sections:

Section 38.03.01 Duty to Report

Section 38.03.02 Contents of Report

Section 38.03.03 Anonymity; Confidentiality

Section 38.03.04 Violation

Section 38.03.01 Duty to Report

- A. Any professional, including, but not limited to, physicians, dentists, psychologists, social workers, emergency response personnel, or other person who has responsibility for the care of a vulnerable adult or elder and whose examination or observation of the vulnerable adult or elder yields a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of the vulnerable adult, elder, or the property of the vulnerable adult or elder has occurred, shall immediately report or cause reports to be made of such to an Officer and a Protective Service Worker.
- B. Any guardian or conservator of a vulnerable adult or elder who becomes aware or suspects abuse, neglect, self-neglect, or exploitation of the vulnerable adult, elder, or the property of the vulnerable adult or elder to which they act as guardian or conservator has occurred, shall immediately report or cause reports to be made of such awareness or suspicion to an Officer and a Protective Service Worker and the Tribal Court.
- C. Any attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax or other financial records of a vulnerable adult or elder, or a person who has responsibility for any other action concerning the use or preservation of a vulnerable adult's or elder's property and who, in the course of fulfilling that responsibility, discovers cause to believe that abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or vulnerable adult's or elder's property has occurred, shall immediately report or cause reports to be made of such to an Officer or a Protective Service Worker.
- D. All of the reports required in subsections A, B or C, above, shall be made immediately in person or by telephone to an Officer and a Protective Service Worker and shall be followed up by a written report mailed or delivered within seventy-two (72) hours or on the next working day if the seventy-two hours expires on a weekend or holiday to an Officer or a Protective Service Worker.
- E. Any person, including any caretaker, other than one required to report or cause reports to be made in accordance with this Chapter, who has a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of a vulnerable adult, elder or the property of a vulnerable adult or elder has occurred, has a duty to report the information to an Officer or the Protective Service Worker as soon as possible.

Section 38.03.02 Contents of Report

Reports pursuant to this Chapter shall contain as much of the following information as possible:

- A. The names, telephone numbers and addresses of the vulnerable adult or elder and any persons having responsibility, control or custody of the vulnerable adult or elder;
- B. The vulnerable adult's or elder's age, the nature and extent of his/her vulnerability;
- C. The nature and extent of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or elder's property;
- D. The name, telephone number and contact information of the person or persons who is/are alleged to have abused, neglected, or exploited the vulnerable adult or elder;
- E. The date, time and location of the alleged incident(s);

- F. The name, telephone number and contact information of the person reporting the alleged abuse, neglect, self-neglect or exploitation; and
- G. Any other information that the person reporting believes might be helpful in establishing the cause of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or elder's property.

Section 38.03.03 Anonymity; Confidentiality

- A. The reporting party in any report under this Title may remain anonymous; however, whenever possible the Protective Service Worker or other party receiving the report shall encourage the reporting party to, instead, give their name and remain a confidential informant. The Tribal Court, or any person investigating violations of this Title, shall place more credibility upon a report by a confidential informant rather than an anonymous informant.
- B. The name of the reporting party who reports any abuse, neglect, self-neglect or exploitation, as required by this Title, shall remain confidential and shall not be released to any person unless the reporting party consents to such release or such release is ordered by the Tribal Court.

Section 38.03.04 Violation

A person found to be criminally responsible for violating any provision of this Title, including anyone who purposefully or knowingly fails to make any report required in this Title, may be sentenced to imprisonment for a period not to exceed 365 days or to pay a fine not to exceed \$5,000.00, or both.

Chapter 38.04 Arrest and Detention

Sections:

Section 38.04.01 Mandatory Arrest

Section 38.04.02 Discretionary Arrest

Section 38.04.03 Detention After Arrest

Section 38.04.04 Immunity of Law Enforcement

Section 38.04.01 Mandatory Arrest

- A. An Officer shall arrest and take into custody persons whom the Officer has probable cause to believe abused, exploited or neglected an elder or vulnerable adult. No warrant is required to make such arrest. This mandatory arrest provision means that the victim need not sign a complaint for an arrest to occur. Further, under this provision, an Officer may arrest under probable cause even though it may be against the express wishes of the victim.
- B. An Officer shall arrest and take into custody a person whom the Officer has probable cause to believe has violated a court order for protection, restraining the person from contact with the victim or excluding the person from the residence, if the existence of the court order can be verified. Regardless of whether the person violating the court order was invited back into the home, an arrest shall be made. Nothing in the above provision, or other provisions of this Title, shall be construed to provide authority to arrest if it does not otherwise exist under applicable law.
- C. Arrest is the MANDATORY response in elder/vulnerable adult cases that involve:
1. Injury to the victim;
 2. The use or threatened use of a weapon;
 3. Violation of a restraining court order; or
 4. Imminent danger through abuse or neglect of an elder/vulnerable adult.

Section 38.04.02 Discretionary Arrest

Arrest of a person *exploiting* an elder, vulnerable adult or the property of an elder or vulnerable adult is not mandatory, but is discretionary. The investigating Officer shall file a written report in accordance with the provisions of this Chapter.

Section 38.04.03 Detention After Arrest

Any person arrested under this Title shall be held in the custody of the appropriate local jail or detention facility where the Tribe has a contractual arrangement in place, until after the person's arraignment before a judge, and only after such arraignment and the setting of a bond by such judge can the person post a bond or otherwise be released. The arraignment before a judge shall occur within seventy-two (72) hours (excluding weekends and holidays) of any arrest made under this Title.

Section 38.04.04 Immunity of Law Enforcement

Any Officer taking action to arrest a suspect under authority of this Chapter shall be immune from any civil, criminal, or other liability by reason of such action, unless the Officer acted with malice, bad faith, gross negligence, committed perjury or unless such Officer has been charged with or is suspected of abusing, exploiting or neglecting the vulnerable adult or elder in question.

Chapter 38.05
Elder Protection Investigation Warrant

Sections:

Section 38.05.01 Petition to Tribal Court for Warrant

Section 38.05.02 Basis for Issuing Warrant by Court

Section 38.05.03 Use of Warrant Issued by Court

Section 38.05.01 Petition to Court for Warrant

- A. The Protective Services Worker may, by and through the Tribal Prosecutor, petition the Jamestown Tribal Court for an Elder Protection Investigation Warrant.
- B. Any warrant issued pursuant to this Chapter of the Title shall comply with the procedural requirements as set forth in Title 21 - Law and Order Code of the Tribal Code.

Section 38.05.02 Basis for Issuing Warrant by Court

- A. The Tribal Court may issue an Elder Protection Investigation Warrant upon a showing of probable cause by the investigator that elder or vulnerable adult abuse or neglect has occurred and that the family, caregiver(s), elder or vulnerable adult has refused the investigator access. The Elder Protection Investigation Warrant is enforceable through contempt proceedings.
- B. Any warrant issued pursuant to this Chapter of the Title shall be executed by an Officer to ensure the safety of the Protective Services Worker. Once the residence or other location is secured, the Protective Services Worker may enter the scene to conduct any necessary assessment or interviews, as set out on Section 38.05.03, below.

Section 38.05.03 Use of Warrant Issued by Court

The warrant allows the Protective Services Worker to assess the elder or vulnerable adult's living conditions and interview the elder or vulnerable adult without the family, caregiver or the elder or vulnerable adult's consent. The purpose of the interview is to determine whether or not reasonable grounds exist to believe that the elder or vulnerable adult is incapacitated or has been subjected to abuse or neglect.

Chapter 38.06
Jurisdiction; Role of Tribal Prosecutor; Complaint Registry

Sections:

Section 38.06.01 Jurisdiction of Tribal Court

Section 38.06.02 Role of the Tribal Prosecutor

Section 38.06.03 Complaint Registry

Section 38.06.01 Jurisdiction of Tribal Court

The Jamestown Tribal Court has jurisdiction to prevent, restrain and remedy any conduct proscribed or prescribed in this Title.

Section 38.06.02 Role of Tribal Prosecutor

- A. The Tribal Prosecutor will assist in locating an interpreter for the Court, if necessary, in actions brought pursuant to this Title, whether or not the Tribal Prosecutors' Office is a party in such action.
- B. The Tribal Prosecutor will assist in locating an expert witness regarding the customs and traditions of the Tribes, if necessary, in actions brought pursuant to this Title, whether or not the Tribal Prosecutors' Office is a party in such action.
- C. The Tribe, through the Tribal Prosecutor, may file a civil or criminal action pursuant to this Title on behalf of the Tribe and those vulnerable adults or elders who have been abused, neglected or exploited and in such action may seek to prevent, restrain, or remedy the conduct proscribed in this Title.
- D. The Tribal Prosecutor may, upon timely application, intervene in any civil action brought under this Title if the Tribal Prosecutor certifies that, in his/her opinion, the action is of special public importance. Upon intervention, the Tribal Prosecutor may assert any available claim and is entitled to the same relief as if the Tribal Prosecutors' Office had instituted a separate action.
- E. In addition to the Tribe's right to intervene as a party in any action under this Title, the Tribal Prosecutor may appear as a friend of the Court in any proceeding in which a claim under this Title has been asserted or in which the Court is interpreting this Title.

Section 38.06.03 Complaint Registry

The Tribal Prosecutor shall maintain a registry containing such public records as are available identifying the names of persons and entities against whom civil or criminal complaints have been filed with the Tribal court pursuant to this Title, the dates of the conduct set forth in the complaint, the general nature of the complaint and the disposition of the complaint, if known. This information will be made available to the Tribe upon written request.

Chapter 38.07
Elder or Vulnerable Adult Protection Orders

Sections:

Section 38.07.01 Petition to Tribal Court for Protection Order

Section 38.07.02 Protection Order Hearing

Section 38.07.03 Protection Order Issuance by Court

Section 38.07.04 Term of Protection Order; Extensions of Order

Section 38.07.01 Petition to Tribal Court for Protection Order

A Protective Services Worker or any other person or party may petition the Tribal Court for an Elder/Vulnerable Adult Protection Order. This petition will contain allegations that, regarding an elder or vulnerable adult, abuse, neglect, self-neglect or exploitation has occurred and/or that the elder or vulnerable adult is incapacitated and cannot appropriately care for themselves.

Section 38.07.02 Protection Order Hearing

The Jamestown Tribal Court may issue an Elder/Vulnerable Adult Protection Order after affording notice to all affected parties and holding a hearing which demonstrates by clear and convincing evidence that the elder or vulnerable adult is incapacitated and/or that elder or vulnerable adult abuse, neglect, self-neglect or exploitation has occurred. A temporary, ex parte, Adult Protection Order of no more than fourteen (14) days may be issued by the Court pending a hearing.

Section 38.07.03 Protection Order Issuance by Court

If the Tribal Court determines that an elder or vulnerable adult has been abused, neglected, self-neglected, exploited or incapacitated and cannot care for himself or herself, the Court may issue an Elder or Vulnerable Adult Protection Order, which provides appropriate protective services for the elder or vulnerable adult. Such protective services, subject to available resources, may include, but are not limited to, the following:

- A. Removing the person or persons who have abused, neglected, or exploited an elder or vulnerable adult from the elder or vulnerable adult's home; however every effort shall be made to allow the elder or vulnerable adult to remain in their home while this is taking place, provided that this can be done safely. If the elder or vulnerable adult needs to be removed so that the person(s) who have committed abuse, neglect or exploitation can be removed, every effort shall be made to return the elder or vulnerable adult to their home as soon as possible;
- B. Removing the elder or vulnerable adult from the abusive or neglectful situation for not longer than fourteen (14) days; however, every effort shall be made to return the elder or vulnerable adult to their home as soon as possible;
- C. Restraining the person or persons who have abused, neglected, or exploited an elder or vulnerable adult from continuing such acts, including a no-contact order;
- D. Requiring family or caregiver(s) or any other person(s) with a fiduciary duty to the elder or vulnerable adult to provide an accounting to the Court of the elder or vulnerable adult's funds and property;
- E. Requiring any person who has abused, neglected, or exploited an elder or vulnerable adult to pay restitution to the elder or vulnerable adult for any damages, and such other legal or equitable relief as the Court deems appropriate that occurred as a result of that person's wrongdoing;
- F. Appointing a representative or guardian for the elder, vulnerable adult or their estate, in the event that the Court determines that the elder or vulnerable adult is incapable of taking care of themselves or managing their property;
- G. Naming a responsible representative payee who meets all legal requirements in order to receive such funds;
or

- H. Ordering the Protective Services Worker to prepare a plan to deliver protection services that provides the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's or vulnerable adult's needs.

Section 38.07.04 Term of Protection Order; Extensions of Order

- A. An Elder/Vulnerable Adult Protection Order will be issued for a period not to exceed six (6) months, unless the Court determines that the elder or vulnerable adult is incapacitated and as a result is incapable of taking care of themselves, in which case the Elder/Vulnerable Adult Protection Order may be indefinite.
- B. An Elder/Vulnerable Adult Protection Order may be extended as many times as necessary to protect the elder or vulnerable adult, but only after notice and opportunity for hearing is given and a determination is made based on clear and convincing evidence that such an order is necessary for the protection of the elder or vulnerable adult. Each extension will be for a period not to exceed thirty (30) days.

Chapter 38.08 Civil Liabilities

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Section 38.08.01 Civil Liabilities

Section 38.08.02 Preliminary Court Orders

Section 38.08.03 Additional Court Orders

Section 38.08.04 Miscellaneous Provisions Related to Civil Actions

Section 38.08.01 Civil Liabilities

- A. A vulnerable adult or elder whose life or health is being or has been endangered, injured or imperiled by neglect, abuse or exploitation may cause to be filed a civil action in Jamestown Tribal Court, either by themselves, their guardian, conservator, or the Tribe, against any Caretaker, Relative, or other person or institution that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a Court of competent jurisdiction to provide care to such vulnerable adult or elder for having caused or permitted such conduct.
- B. Any person who fails to comply with any reporting or other duties enumerated within this Title may be held civilly liable for any damages arising out of their actions or omissions.

Section 38.08.02 Preliminary Court Orders

Prior to a determination of liability in any civil action authorized by this Title, the Tribal Court may issue orders that include, but are not limited to, the following relief:

- A. Elder/Vulnerable Adult Protection Orders or restraining orders.
- B. Temporary injunctions.
- C. Setting satisfactory performance bonds.
- D. Creating receiverships.
- E. Appointing qualified receivers.
- F. Creating or enforcing constructive trusts.

Section 38.08.03 Additional Court Orders

After a determination by the Tribal Court of liability in any civil action authorized by this Title, the Court may create additional orders:

- A. Ordering the payment as well as punitive damages, costs of suit and reasonable attorney fees, of actual and consequential damages to those vulnerable adults or elders or their estates, injured by the conduct proscribed in this Title.
- B. Ordering the payment of all costs and expenses of the prosecution and investigation of the conduct proscribed or prescribed, in this Title, incurred by the Tribe, as appropriate; such payment shall be made to the general fund of the Tribe.

Section 38.08.04 Miscellaneous Provisions Related to Civil Actions

- A. The initiation of civil proceedings pursuant to this Title shall be commenced within one (1) year after actual discovery of the cause of action, but no longer than three (3) years from the date of the last incident.
- B. Title 20 - Civil Actions and Title 21 - Law and Order Code of the Tribal Code shall govern over actions brought under this Title, except to the extent that this Title specifically provides otherwise.
- C. The standard of proof in actions brought pursuant to this Title is the *preponderance of the evidence*.

- D. Any action authorized by this Title is not limited by any other civil remedy or criminal action or any other provision of law.
- E. The cause of action or the right to bring a cause of action pursuant to this Title shall not be limited or affected by death of the neglected, abused or exploited elder or vulnerable adult.
- F. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which they were convicted in any civil proceeding. For the purposes of this subsection, a conviction may result from a verdict or plea, including a plea of no contest.
- G. Voluntary intoxication through the use of alcohol, drugs, or any other intoxicating substance, including but not limited to those listed in Title 21 - Law and Order Code of the Tribal Code, shall not be used as a defense to any civil liability under this Title.

Chapter 38.09
Criminal Liabilities

Sections:

Section 38.09.01 Criminal Liabilities

Section 38.09.02 Treatment and Probation Options

Section 38.09.01 Criminal Liabilities

- A. Any Caretaker, Relative, or other person who has been employed to provide care, or who has assumed a legal duty to provide care, or who has been appointed by a court to provide care to a vulnerable adult or elder and who causes or permits the life of the vulnerable adult or elder to be endangered, his/her health to be injured or to be imperiled by abuse, neglect or exploitation is guilty of the criminal offense of Elder or Vulnerable Adult Abuse, punishable by imprisonment for a period not to exceed 365 days or a fine not to exceed \$5,000.00, or both.
- B. Any Caretaker, Relative, or other person who aids, abets or otherwise assists or condones the acts or omissions of another person who abuses, neglects or exploits a vulnerable adult or elder shall be treated as if such person committed the offenses himself or herself and is guilty of the criminal offense of Aiding and Abetting Elder or Vulnerable Adult Abuse, punishable by imprisonment for a period not to exceed 365 days or a fine not to exceed \$5,000.00, or both.
- C. Anyone failing to report or filing a bad faith report under this Title is guilty of a criminal offense, punishable by imprisonment for a period not to exceed 365 days or a fine not to exceed \$5,000.00, or both.
- D. Anyone criminally convicted of violating this Title two (2) times in a five (5) year period, each conviction having arisen from an independent occurrence, shall face a mandatory minimum sentence of the maximum imprisonment period and the maximum monetary fine. Any previously conditionally suspended jail time may be re-imposed by the Court. Anyone criminally convicted of violating this Title three (3) times in a five (5) year period, each conviction having arisen from an independent occurrence, shall face a mandatory sentence of the maximum imprisonment period and the maximum monetary fine. Any previously conditionally suspended jail time may be re-imposed by the Court.
- E. When a person is arrested and charged with a criminal violation of this Title, the Tribal Prosecutor shall file a Temporary Restraining Order with the Court.
- F. The initiation of criminal proceedings pursuant to this Title shall be commenced within one year after actual discovery of the cause of action.
- G. The rules in Title 15 Criminal Actions, Title 19 Rules of Court and Title 21 in the Law and Order Code of the Jamestown S’Klallam Tribe of Indians, shall govern over criminal actions brought under this Title, except to the extent that this Title specifically provides otherwise.
- H. The standard of proof in criminal actions brought pursuant to this Title is *beyond a reasonable doubt*.

Section 38.09.02 Treatment and Probation Options

- A. Once a person has been found guilty of an offense under this Title and a sentence has been issued, they have the right to petition the Court to allow them the option of entering into an appropriate treatment program, at the perpetrator’s own expense, and be placed on probation. It shall be the responsibility of the perpetrator to make sure an appropriate evaluation occurs and that any findings are forwarded to the Court. The Court shall then review the evaluation findings.
- B. If it is the opinion of the Court that treatment and probation are appropriate, the Court shall then suspend the previously ordered sentence conditioned upon successful completion of a Court- approved treatment/probation plan, and set forth the treatment status report schedule and probation requirements.

- C. If it is the opinion of the Court that treatment and probation are not appropriate, or if the perpetrator has been previously convicted of a violation of this Title or has previously entered into a treatment/probation plan after a previous conviction, the perpetrator shall not be allowed a diversion and shall be sentenced appropriately, including re-imposition of a previously suspended sentence.

- D. In addition to any other sentence and Order of the Court, any person convicted under a criminal offense under this Title shall be required to pay, pursuant to a final judgment and Order of the Court, the cost of their incarceration in the local jail or detention facility where they will be incarcerated.

Chapter 38.10
Vulnerable Adult and Elder Program Client Advocate

Sections:

Section 38.10.01 Jamestown Elders Program Client Advocate

Section 38.10.02 Duties and Responsibilities of the Client Advocate

Section 38.10.01 Jamestown Elders Program Client Advocate

Notwithstanding any of the provisions in this Title, the Tribal Council has established a program known as the Jamestown Elders Program with a Coordinator and optionally, an Advocate for clients of the Program.

Section 38.10.02 Duties and Responsibilities of the Client Advocate

The duties and responsibilities of the Elder Coordinator and/or Client Advocate include, but are not limited to, the following:

- A. Assist any vulnerable adult or elder through the legal process in the event that legal proceedings are commenced in accordance with this Title;
- B. Act as an interpreter, or arrange for an interpreter, for any vulnerable adult or elder that has been subject to neglect, abuse, self-neglect or exploitation. Such interpreter duties may include on-call work with a Protective Services Worker or Officer dealing with emergency situations;
- C. Establish regular meeting times and dates with the elders, vulnerable adults, their representatives, guardians, conservators, relatives and prepare a regular and periodic written report to the Jamestown Tribal Council on such meetings when in conjunction with Protective Services proceedings;
- D. Enumerate the needs and concerns of the elder and vulnerable adult populations of the Jamestown Tribe and prepare regular and periodic written report to the Jamestown Tribal Council on such needs and concerns when necessary;
- E. Contact appropriate agencies, Tribal departments, and assistance programs on behalf of an elder or vulnerable adult upon the request of such elder, vulnerable adult, or their representatives, guardians, conservators, relatives and/or other interested parties; and
- F. Keep the elder and vulnerable adult populations on the Jamestown Tribe informed on all relevant matters through regular visits and other appropriate forms of communication.

Chapter 38.11
Miscellaneous Provisions

Sections:

Section 38.11.01 Amendments

Section 38.11.02 Conflict with Other Applicable Laws

Section 38.11.03 Effective Date

Section 38.11.04 Severability

Section 38.11.05 Sovereignty Maintained

Section 38.11.06 Scope of Discovery Limitations

Section 38.11.01 Amendments

This Title may be amended from time to time by the Tribal Council in accordance with the Constitution of the Tribe.

Section 38.11.02 Conflict with Other Applicable Laws

In the event of a conflict between the provisions of this Title and any provision of applicable law that by its terms is applicable, those provisions of law creating a more stringent or otherwise higher standard shall be controlling.

Section 38.11.03 Effective Date

This Title shall take effect within the constitutionally required time frame after the date of its enactment by the Jamestown S’Klallam Tribe of Indians Tribal Council.

Section 38.11.04 Severability

If a court of competent jurisdiction rules that any of the provisions of this Title are unconstitutional, illegal, or otherwise unenforceable, the remaining provisions of this Title shall remain in full force and effect to the extent that the purpose of this Title shall remain.

Section 38.11.05 Sovereignty Maintained

Nothing in this Title shall be construed as a waiver of the sovereign immunity of the Tribe, its elected officials, officers, directors, agents and employees. Nothing in this Title shall be construed as limiting any other remedies which may exist under Tribal law, polices, procedures or agreements, including policies or agreements relating to employees, contractors and volunteers.

Section 38.11.06 Scope of Discovery Limitations

The scope of any discovery allowed to a respondent or defendant in any civil or criminal action brought under this Title shall not extend to the release of the following:

- A. Any written report required under this Title, unless a redacted copy is specifically ordered by the Court, with the name of the reporting party and any information that could lead to the identification of any reporting party having been redacted, unless consent for the release of such information has been executed. Under no circumstances may the name of the reporting party or any information that could lead to the identification of any reporting party be released through discovery without prior written consent for the release of such information having been executed; or
- B. Any investigative report issued under the authority of this Title, unless a redacted copy is specifically ordered by the Court, with the name of the reporting party and any information that could lead to the identification of any reporting party having been redacted, unless consent for the release of such information has been executed. Under no circumstances may the name of the reporting party or any information that could lead to the identification of any reporting party be released through discovery without prior written consent for the release of such information having been executed.

Notwithstanding the above, the defendant will have the opportunity to cross-examine witnesses at trial.

Chapter 38.12
Codification and Amendments

Sections:

Section 38.12.01 Codification

Section 38.12.02 Amendments

Section 38.12.01 Codification

Title 38 was first approved and adopted by the Tribal Council by Resolution #30-2020 dated July 16, 2020.

Section 38.12.02 Amendments

(Reserved).