

Resolution No. 155-05  
Date Enacted: 12-12-2005  
Subject Matter: Approval of Makah Law &  
Order Code Revised  
Title 12, Family Code Chapter 12.1 Elders  
and Disabled Abuse Code

RESOLUTION NUMBER 155-05 OF THE MAKAH TRIBAL COUNCIL

WHEREAS, the Makah Tribal Council is the governing body of the Makah Indian Tribe of the Makah Indian Reservation, Washington, by authority of the Constitution and Bylaws of the Makah Indian Tribe, as approved by the Secretary of the Interior on May 16, 1936; and

WHEREAS, Article VI, Section (i), of the Makah Constitution empowers the Makah Tribal Council to promulgate and enforce ordinances providing for the maintenance of law and order and the administration of justice on the Makah Reservation; and

WHEREAS, the Makah Tribal Council has a duty to protect the peace, health, safety, and general welfare of the members of the Makah Tribe and other persons on the Makah Reservation; and

WHEREAS, the Makah Tribal Council approved Resolution No. 181-76, enacting the Makah Law and Order Code; and

WHEREAS, the Makah Tribal Council approved Resolution No. 52-89 in 1989, revising the Makah Law and Order Code; and

WHEREAS, the Makah Tribal Council approved Resolution No. 138-90 in 1990, amending the Makah Law and Order Code by adding Title 11 Domestic Violence Code; and


WHEREAS, the Makah Tribal Council acknowledges that Abuse of Elderly Disabled People continues to be a serious and pervasive problem on the Makah Reservation; and

NOW, THEREFORE, BE IT RESOLVED that the Makah Tribal Council hereby enacts the revised Title 12 Elder and Disabled Abuse Code in the form attached hereto; and

BE IT FURTHER RESOLVED that, upon approval by the Secretary of the Interior, the revised Title 12 Elder and Disabled Abuse Code, enacted by this Resolution, shall be effective immediately.

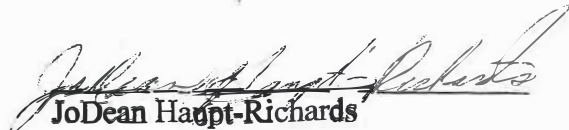
BE IT FURTHER RESOLVED that this Resolution shall remain in effect until rescinded or superseded by further action of the Makah Tribal Council.

MAKAH TRIBAL COUNCIL

  
Ben Johnson, Jr.  
Chairman

Certification

The foregoing Resolution was adopted at a meeting held on December 12, 2005 at which a quorum was present, and the Resolution was adopted by a vote of 3 FOR and 0 AGAINST, the Chairman or the Vice-Chairman, in the Chairman's absence, being authorized to sign Resolution.

  
JoDean Haupt-Richards  
Tribal Secretary

received  
1-20-06

Maureen Soles



## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Northwest Regional Office  
911 N.E. 11<sup>th</sup> Avenue  
Portland, Oregon 97232-4169



Mr. Ben Johnson, Jr.  
Chairman  
Makah Indian Tribe  
Post Office Box 115  
Neah Bay, Washington 98357-0115

JAN 17 2006

Dear Chairman Johnson:

This office is in receipt of Resolution No. 155-05, establishing the Elders' Abuse Code (Code), which revises the Makah Law and Order Code, Title 12 Elders and Disabled Abuse Code. This resolution was enacted by the Makah Tribal Council (Tribe) on December 12, 2005, and the Regional Director approved this document on December 23, 2005. Our comments are as follows:

The term, "court" is not defined in the Code's definition section. When the term appears in Section 12.1.90, the "the presenting officer may seek a court order from the court to prevent interference with the investigation", we do not know with which court the presenting officer may file. Would the officer go to the Makah Tribal Court, a state court, or other forum? Likewise, the next Section, 12.1.100 states that the "presenting officer, law enforcement or the vulnerable adult may file a petition for an emergency order of protection of a vulnerable adult". But, the section does not identify the entity with whom to file the petition. We recommend adding the phrase "tribal court", if that indeed is the correct entity, between the words "petition" and "for".

Section 12.1.190(a) contains a spelling error: "ex prate" should be changed to "ex parte".

Other than these comments we have no legal reason to rescind the approval of December 23, 2005, therefore, the Code is effective as of that date. For future purposes the Tribe may wish to make the above corrections.

If you have any questions, please contact Betty Scissons, Tribal Government Specialist at (503) 231-6723.

Sincerely,

Northwest Regional Director



# People of The Cape



## **TITLE 12 FAMILY CODE**

### **ELDERS' ABUSE CODE**

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## GENERAL PROVISIONS

**12.1.10 Purpose.** There are elders and other vulnerable adults within the jurisdiction of the Makah Tribe who are at risk of abuse, neglect, and exploitation, and may need the protection of the tribal court.

The Makah Tribe intends to prevent and remedy the abuse, neglect, or exploitation of elders and other vulnerable adults by providing a procedure for identifying these persons and providing the services necessary for their well-being.

The tribe further finds that many of these elders and other vulnerable adults may be homebound or otherwise unable to represent themselves in court, or to retain legal counsel in order to obtain the relief available to them under this chapter.

In addition, elders and other vulnerable adults may need the assistance of a guardian or protective payee, or both, to conduct personal business or to obtain the services necessary for their well being.

**12.1.20 Definitions.** When the words listed in this section appear in this chapter, they shall have the following meaning unless a different meaning is clearly intended.

- (a) “ Abuse” means physical, verbal, or mental mistreatment, intimidation or injury that harms or threatens a person’s well-being.
- (b) “Consent” means written consent granted after the person has been fully informed of the nature of the services to be offered and understands that receiving services is voluntary.
- (c) “Exploitation” means the illegal or improper use of a vulnerable adult of that adult’s resources for another person’s profit or advantage. Exploitation includes but is not limited to:
  - (1) Any unauthorized use or occupation of the vulnerable adult’s property, food, telephone, utility services, residence, land assignment, vehicle, money or other resources, or the gaining of funds, property or other resources of an elder by threat, humiliation, intimidation, or other coercion.
  - (2) Use of a vulnerable adult’s possessions or utilities that exceeds the authorization he or she has given.
  - (3) Unreasonable imposition on the vulnerable adult’s time or resources, such as leaving children in the care of the vulnerable adult for extended periods or under circumstances in which the adult cannot adequately care for the children.
- (d) “Neglect” means any action or inaction that leaves the vulnerable adult without the means or ability to obtain food, clothing, shelter or health care and to be able to

maintain minimum physical and mental health. Neglect also includes, but is not limited to, any interference with the provision of social and health services to maintain the vulnerable adult's physical and mental health.

- (e) "Protective payee" means a person appointed by the court to receive and disburse funds on behalf of another to protect that person's financial resources.
- (f) "Vulnerable adult" means elders over the age of 50 and persons 18 years of age or older who do not have the functional, mental, emotional, or physical ability to protect and care for him or herself.

**12.1.30 Reporting Abuse—Neglect and Exploitation of Adults.** (a) The care of elders and vulnerable adults is a family and a tribal responsibility. Any member of the Makah Tribe and persons residing within the jurisdiction of the tribe who have reason to believe that a vulnerable adult has suffered abuse, neglect, or exploitation, or is otherwise in need of protective services may report such information to the presenting officer or the tribal police department.

(b) Reporting under this section is mandatory for tribal employees and contractors with the tribe who perform services to the community in the areas of education, health, and human services, law enforcement and members of the clergy.

**12.1.40 Contents of Report.** Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. The reports made under this chapter shall contain the following information, if known:

- (a) The name and address of the vulnerable adult;
- (b) The nature and extent of the suspected abuse, neglect, or exploitation, including the date, time, and location of the events, if known;
- (c) Evidence of previous abuse, neglect, or exploitation;
- (d) The name and address of the person making the report; and
- (e) Any other helpful information

**12.1.50 Immunity.** All persons who report or testify about the abuse, neglect, or exploitation of a vulnerable adult are immune from civil liability and criminal prosecution. Conduct complying with the reporting and testifying provisions shall not be deemed a violation of any confidential communication privilege.

**12.1.60 Sanctions.** Any person who is required to report abuse or neglect under Section 12.1.30 and who knowingly fails to report the abuse, neglect, or exploitation of a vulnerable adult is subject to a civil fine not to exceed \$5,000.

**12.1.70 Open communications Policy.** The policy of the Makah Tribe toward investigation of the abuse, neglect, or exploitation of a vulnerable adult is one of open communication and cooperation between agencies and departments for the protection of vulnerable adults while respecting the confidentiality of statements by victims, their families, and reporters of abuse, neglect, and exploitation. Where there is a conflict between confidentiality and the need for communication, protection of the vulnerable adult shall be the overriding consideration.



**12.1.80 Role of the Presenting Officer.** The tribal council, with the compliance of the Senior Citizen Advisory Board shall designate a presenting officer who shall be authorized to carry out activities specified under this chapter. The duties of the presenting officer include but are not limited to:

- (1) Receive reports of abuse, neglect or exploitation of vulnerable adults;
- (2) Investigate reports of abuse, neglect or exploitation of vulnerable adults., The presenting officer shall coordinate closely with tribal law enforcement to ensure that any matters which may be criminal in nature are promptly referred to tribal law enforcement for investigation;
- (3) Assist law enforcement in cases they are investigating, upon request; work with tribal law enforcement to ensure that appropriate protective services are provided to the vulnerable adult;
- (4) Assist referrals from law enforcement in cases where law enforcement believes there is insufficient evidence to refer the case for criminal prosecution and in cases where law enforcement and the presenting officer believe a civil remedy will be more effective to protect the vulnerable adult;
- (5) Take the lead role in finding services for the protection and well-being of vulnerable adults;
- (6) Develop a plan to assist vulnerable adults and their families to prevent future abuse, neglect or exploitation. This plan may be in the form of a contract between the parties or a recommendation to the court for a court-ordered plan;
- (7) Prepare reports and appear in court as required under this code and as required by the court;
- (8) Coordinate and communicate with all agencies and departments involved in the protection of vulnerable adults.

**12.1.90 Access to Investigate-Court Order.** (a) If access is denied to the presenting officer when investigating an allegation of abuse, neglect, or exploitation of a vulnerable adult by an individual, the presenting officer may seek an order from the court to prevent interference with the investigation.

(b) Access to investigate criminal matters by law enforcement shall be governed by the criminal laws and procedures of the Makah Tribe.

**12.1.100 Emergency Orders for the Protection of Vulnerable Adults-Petition.**

The presenting officer, law enforcement or the vulnerable adult may file a petition for an emergency order of protection of a vulnerable adult. The Makah Tribe may also file a petition for an order of protection on behalf of any vulnerable adult within the jurisdiction of the Makah Tribe. The petition shall include the name and address of the petitioner, the specific facts and circumstances warranting protection under this code, the name, address and age of the person known by the petitioner to be in need of protection; and the name, address, and age of the person from whom the vulnerable adult needs protection and his or her relationship to the vulnerable adult.



**12.1.120 Emergency Orders for the Protection of Vulnerable Adults-Probable Cause.**

The court may issue an emergency order of protection of a protection of a vulnerable adult, without a prior hearing, upon filing a petition with a statement of facts showing probable cause to believe that:

- (a) The adult who is the subject of the petition is an elder over the age of 50 or is a person 18 years of age or older who do not have the functional, mental, emotional or physical ability to protect and care for himself or herself; and
- (b) The vulnerable adult has suffered abuse, neglect, or exploitation, or is otherwise in need of protective services and that his or her health, safety, and welfare will be seriously endangered if the petition is not granted.

**12.1.130 Emergency Orders for the Protection of Vulnerable Adults-Contents.**

- (a) The emergency order of protection of a vulnerable adult shall be signed by the judge or judicial officer and may:
  - (1) Restrain any person from committing acts of abuse, neglect, or exploitation with respect to the vulnerable adult;
  - (2) Exclude any person from a vulnerable adult's residence for a specified period;
  - (3) Prohibit contact with the vulnerable adult by any person for a specified period;
  - (4) Require an accounting of the disposition of the vulnerable adult's income or other resources; and
  - (5) Restrain the transfer of property for a specified period.
- (b) Relief granted by an order of protection of a vulnerable adult shall be for a period fixed by the court. A full hearing on the order shall be provided in the fact-finding hearing and may be revoked or modified in the vulnerable adult protection order.
- (c) An emergency order of protection of a vulnerable adult may be transmitted by the via computer of fax, telephonic, if the judge cannot be present on the reservation.

**12.1.140 Emergency Orders for the Protection of Vulnerable Adults-service and Duration.** All persons restrained or otherwise subject to the emergency order for the protection of a vulnerable adult shall be personally served with a copy of the order by law enforcement. If law enforcement cannot locate the person within five days, the court, the presenting officer and the vulnerable adult shall be notified. The order may be served by law enforcement up to two years after the date it was signed by the judge.

## **FACT-FINDING HEARINGS**

**12.1.150 Fact-finding Hearings-Purpose.** The court shall conduct a fact-finding hearing to determine whether an adult is a vulnerable adult.

**12.1.160 Fact-finding Hearings-Petition Contents and Filing.** A petition for a fact-finding hearing shall be filed by the presenting officer, law enforcement, or other person authorized by the tribe to file the petition and shall include:

- (a) The name, date of birth, and permanent address of the adult;
- (b) The facts establishing the court's jurisdiction; and

- (c) A detailed statement of the facts and reasons, which support the allegation that the adult is a vulnerable adult.

**12.1.170 Fact-finding Hearings-Time and Notice.** The court shall set the date for the hearing to take place within twenty days of the date the petition is filed. The court clerk shall provide notices of hearing to all parties at least five working days before the hearing. The notice shall include the date, time and place of the hearing along with a copy of the petition. The presenting officer and law enforcement are responsible for letting the court clerk know as early as possible who the parties are so timely notice of the hearing can be given.

**12.1.180 Fact-finding Hearings-Evidence and Burden of Proof.** Rules of evidence and burden proof shall be the same as those that apply to civil actions before the Makah Tribal Court.

**12.1.190 Fact-finding hearings-Agreed Order.(a)** The parties to a fact-finding hearing may agree to a proposed order which resolves some or all of the issues of the case. One or more guardians or a protective payee may be appointed in an agreed order. A family meeting or other informal mediation process may be used to help reach an agreement. Before deciding whether to approve the agreed order, the judge may hold an in-chamber, ex prate discussion with the vulnerable adult or any person who will be subject to the order to:

- (1) Explain the proposed agreed order in detail;
- (2) Assure that the person's consent to the proposed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
- (3) Explain the person's right to a spokesperson/counsel at his or her own expense;
- (4) Explain that the tribe has the burden of proving the allegations in the petition and that the person does not have to agree to the proposed order; and
- (5) Explain that once the person agrees to the proposed order and it is signed and entered by the court, it will be too late for the person to change his or her mind.

- (b) The in-chambers conversation need not be recorded. If the person wants a friend, family member, or other people to present, the judge shall allow it after first speaking alone with him or her. If the court finds that any consent was the result of fraud or duress, the agreed order may be vacated.

## **VULNERABLE ADULT PROTECTION PLAN**

**12.1.200 Suggested Vulnerable Adult Protection Plan.** The presenting officer shall prepare a written plan describing all reasonable and appropriate alternatives for protecting the vulnerable adult and assisting his or her family. The plan shall explain why it is necessary and its benefits to the vulnerable adult and to the family. It shall fully explain any recommendations for removal from the home of any person found to have abused, neglected, or exploited the vulnerable adult. It may recommend the appointment of one or more



guardians or protective payees to assist the vulnerable adult to conduct personal business or to obtain the services necessary for his or her well-being. The professional opinions of all persons consulted shall be included. The presenting officer shall file the report with the court and provide copies to all parties at least five days before any hearing on the plan.

**12.1.210 Vulnerable Adult Protection Plan-Other Recommendations and Plans.** Any person who is effected in the case may prepare his or her recommendations to the court in the form of a vulnerable adult protection plan. Copies shall be provided to all parties to the case prior to any hearing on the plan.

**12.1.220 Vulnerable Adult Protection Plan-Hearing.** A hearing shall be held to decide what plan will best meet the needs of the vulnerable adult and assist the family. This hearing may take place right at the conclusion of the fact-finding hearing or may take place up to twenty days from the date of the fact-finding hearing. The court shall determine the scheduling and shall cause notices of hearing to be served on all parties.

**12.1.230 Vulnerable Adult Protection Plan-Court-ordered Plan-Disposition.** (a) The court shall order a plan for the protection and well-being of a vulnerable adult. The plan may restrain or exclude from the vulnerable adult's home any person found to have abused, neglected, or exploited the vulnerable adult. The court may make the return to the home conditional on compliance with its orders.

(b) The court shall make any other orders necessary for the protection and well-being of the vulnerable adult and his or her family. Such orders may include but are not limited to: restraining orders; evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; and other services or activities for the benefit of the vulnerable adult and his or her family. (c) The court may also appoint one or more guardians or a protective payee for the benefit of the vulnerable adult if the court finds it necessary to assist the vulnerable adult to conduct personal business or to obtain the services necessary for his or her well-being.

**12.1.240 Vulnerable Adult Protection Plan-Review Hearings.** The court shall conduct a hearing to review its plan six months from the date of the order, or earlier upon motion of any party, and shall set a schedule for future periodic reviews. The court shall review whether the parties are complying with the order and shall consider whether modification is necessary to protect the vulnerable adult.

**12.1.250 Vulnerable Adult Protection Plan-Proceedings To Be Supplemental.** Any proceeding under this code may be used in conjunction with any other civil or criminal code.

#### **DISPOSTION OF FINES:**

**12.1.260** All fines collected by the court under the provisions of this title shall be held in a special account of the Makah Tribal Council to be used for the maintenance of the Makah Tribal Court and that one half shall specifically go to the Makah Seniors Program.

# MAKAH ELDER ~ VULNERABLE ADULT INTAKE

DATE: \_\_\_\_\_ TIME: \_\_\_\_\_

ELDER OR VULNERABLE ADULT NAME: \_\_\_\_\_ D.O.B. \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

PHYSICAL ADDRESS: \_\_\_\_\_

ELDER OR VULNERABLE ADULT PROVIDER: \_\_\_\_\_  
(IF ANY)

## CASE INFORMATION:

CASE NUMBER: \_\_\_\_\_ INTAKE WORKER I.D. \_\_\_\_\_

## OTHERS IN HOUSEHOLD:

NAME: \_\_\_\_\_ RELATIONSHIP: \_\_\_\_\_

NAME: \_\_\_\_\_ RELATIONSHIP: \_\_\_\_\_

## TYPE OF COMPLAINT:

ABUSE: ☐ EXPLOITATION: ☐

NEGLECT: ☐

SPECIFIC ALLEGATIONS (Describe specific behaviors and conditions, include where and when incident(s) occurred.)

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MEDICAL TREATMENT REQUIRED: ☐  
MEDICAL EVALUATION RECOMMENDED: ☐



**ALLEGED PERPETRATOR IDENTIFICATION:**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**PHYSICAL ADDRESS:**

TELEPHONE NUMBER: \_\_\_\_\_

**SUMMARIZE THE RESULTS OF THE INVESTIGATION : (List dates, circumstances, and reasons why the vulnerable wants protection at this time)**

This image shows a single page of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

# RELEASE FOR PHOTOGRAPHING FORM

## Release for Photographing

Name of EDPS Client: \_\_\_\_\_

Location: \_\_\_\_\_

Photographer: \_\_\_\_\_

EDPS Case ID Number: \_\_\_\_\_

This section to be completed by the Client or Legal Representative:

☐

**I voluntarily agree** to allow staff from DSHS Adult Protective Services to photograph me during this investigation.

Or

☐

**I do not want** staff from DSHS Adult Protective Services to photograph me at this time.

Signature: \_\_\_\_\_

(If not the EDPS client, please also print name and indicate legal relationship)

Date: \_\_\_\_\_

EDPS staff: initial and date the applicable line(s) if a release was not obtained from the EDPS client/Representative and photos were taken.

Permission to photograph not required per RCW 74.34.67(7) because:

\_\_\_\_\_ Photographs were taken only of the physical environment.

\_\_\_\_\_ Immediate photographing was necessary to preserve evidence.

\_\_\_\_\_ The legal representative is the alleged perpetrator.

\_\_\_\_\_ The release was not obtained due to other circumstances (briefly describe):



## PHOTOGRAPH LEDGER

### Photograph Ledger\*

Date: \_\_\_\_\_ EDPSAS Case ID Number: \_\_\_\_\_

Location: \_\_\_\_\_

Photographer: \_\_\_\_\_ Time of Day: \_\_\_\_\_

Number	Brief Description of the Photograph

\* This form is an optional tool to ensure the following information is maintained for every EDPS photograph:

- Who took the picture;
- What is the subject of the photograph;
- Date and time the picture was taken; and
- The EDPS Case ID number.

# EDPS EVIDENCE CUSTODY FORM

## EDPS Evidence Custody Form

**Purpose:** Elder & Disabled Protective Services will use this form to document the security and whereabouts of the material/physical evidence described below any time it leaves the physical possession of the EDPS office (e.g., film sent for processing).

**Directions:** If the material described below will leave the possession of EDPS, EDPS must complete the first line of this form and retain a copy in the case record. EDPS will ensure the form accompanies the material to the new secure location. Each time the material is released, the person with current possession will complete the next open line on the form indicating where the material is going. This form stays with the material.

**Description of the material obtained by EDPS while investigating EDPSAS Case ID # \_\_\_\_\_:**

<b>Declaration &amp; Signature of the Person Releasing the Material</b>  By my signature below, I declare that this material has been securely maintained while in my possession or in the possession of my agency.	<b>Date &amp; Time of Release</b>	<b>Name/Title and Location of the Recipient of the Material</b>
Signature:  Printed Name & Title:	Date:  Time:	Name/Title:  Location:
Signature:  Printed Name & Title:	Date:  Time:	Name/Title:  Location:
Signature:  Printed Name & Title:	Date:  Time:	Name/Title:  Location:
Signature:  Printed Name & Title:	Date:  Time:	Name/Title:  Location:

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## **EDPSAS LIST OF ACRONYMS**

**AAA** – Area Agency on Aging  
**ADSA** – Aging & Disability Services Administration  
**AAG** – Assistant Attorney General  
**ADL** – Activity of Daily Living  
**AFH** – Adult Family Home  
**AGO** – Attorney General’s Office  
**AL** – Assisted Living  
**ALTC** – Aging & Long Term Care  
**AP** – Alleged Perpetrator  
**APPT** - Appointment  
**APS** – Adult Protective Services  
**APT** - Apartment  
**ARC** – Adult Residential Care  
**ATTY** - Attorney  
**AV** – Alleged Victim  
**BH** – Boarding Home  
**BRO** - Brother  
**BRO-I-L** – Brother-in-law  
**CA** – Comprehensive Assessment  
**CC** – Collateral Contact  
**CDMHP** – County Designated Mental Health Professional  
**CFH** – Children’s Foster Home (private)  
**CIT** – Crisis Intervention Team  
**CL** – Client  
**CM** – Case Manager  
**COPEs** – Community Options Program Entry System  
**CPS** – Child Protective Services  
**CRU** – Complaint Resolution Unit  
**CSO** – Community Service Office  
**DCFS** – Division of Children & Family Services  
**DDD** – Division of Developmental Disabilities  
**DOH** – Department of Health  
**DMV** – Department of Motor Vehicles  
**DPOA** – Durable Power of Attorney  
**DTR** – Daughter  
**D-I-L** – Daughter-in-law  
**DVR** – Division of Vocational Rehabilitation  
**DX** - Diagnosis  
**EARC** – Enhanced Adult Residential Care  
**FH** – Foster Home (DCFS)  
**FV** – Field Visit  
**GAU** – General Assistance Unemployable  
**GDTR** – Granddaughter  
**GSON** - Grandson  
**HCS** – Home & Community Services Division  
**HV** – Home Visit