

TITLE 20. ELDERLY SERVICES

ACULAKE VJVSTETV

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CHAPTER 1. SENIOR SERVICES DEPARTMENT

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- 1-101. Creation of new department.
 - 1-102. Administrative management.
 - 1-103. Senior Services Advisory Committee.

Historical and Statutory Notes

NCA 99-09, §§ 101, 103, provide:
 “Section 101. Findings: The National Council finds that:

“A. There is a responsibility to further develop and enhance services for the growing elderly population, defined as persons 55 years of age and older, of the Muscogee (Creek) Nation. This responsibility includes establishing supportive services which will improve the quality of life for the frail, for the impaired, and for those citizens who have a need. This responsibility can best be performed under a separate department with a mission to serve as advocate for all elderly programs throughout the Muscogee (Creek) Nation.

“B. By Constitutional mandate, the Principal Chief is authorized to create and organize the Executive Office with the advice and con-

sent of the National Council (Article V, Section 2).”

“Section 103. Purpose:

“The purpose of this Act is to authorize the Executive Branch to establish a new department, hereinafter to be called the Senior Services Department. This department’s primary mission is to develop and coordinate community based systems of services for all older persons within the Muscogee (Creek) Nation. Presently there is a need among the elderly for such supportive services as transportation services, legal assistance and education services, in-home services, elder abuse prevention services, health support services, and outreach services; of which the Muscogee (Creek) Nation has only the nutrition program, an advocacy program, and the Community Health Representative program.”

Cross References

Budget, Senior Services Department, see Title 37, § 2-120.

§ 1-101. Creation of new department

The Senior Services Department of the Muscogee (Creek) Nation is hereby established as a new department within the Executive Branch.

[NCA 99-09, § 102, approved Feb. 3, 1999.]

Library References

Indians ⇄126, 210.
 Westlaw Topic No. 209.

C.J.S. Indians §§ 46 to 50, 53, 57 to 59, 66 to 72.

§ 1-102. Administrative management

A. The administration of the Muscogee (Creek) Nation Senior Services Department shall be the responsibility of the Manager, Senior Services Department, who shall be a member of the Muscogee (Creek) Nation, who is experienced, knowledgeable and capable of ensuring performance under federal and state funding guidelines for programs for the elderly. The Manager shall be appointed by the Principal Chief with the advice and consent of the National Council.

B. The Manager, Senior Services Department, shall be responsible and report directly to the Executive Director.

C. The Manager, Senior Services Department, is authorized to submit proposals to federal and other funding entities, negotiate and execute contracts with the advice and consent of the National Council.

[NCA 99-09, § 105, approved Feb. 3, 1999; amended by NCA 01-74, § 2, approved July 10, 2001; NCA 02-005, § 1, approved Feb. 28, 2002.]

§ 1-103. Senior Services Advisory Committee

The Senior Services Advisory Committee shall be established in compliance with federal regulations or by Tribal law with the assistance of the Manager, Senior Services Department. The Committee is merely an advisory committee; it is not a governing body and has no policy-making power. The Committee can offer advice regarding the overall operation of the Senior Services Department to the Department Manager and the Committee shall consist of one (1) elderly member from each Chartered Community.

[NCA 99-09, § 106, approved Feb. 3, 1999.]

CHAPTER 2. OMBUDSMAN PROGRAM FOR RESIDENTS OF NURSING HOMES

Section

- 2-101. Establishment of program.
- 2-102. Regular and routine inspections.
- 2-103. Complaints.

§ 2-101. Establishment of program

The Ombudsman Program for nursing home residents is hereby established; to be administered by the Principal Chief according to the terms of this chapter.

[NCA 81-73, § 101, approved June 27, 1981.]

Library References

Indians ⇄126.
Westlaw Topic No. 209.
C.J.S. Indians §§ 46 to 50, 53.

§ 2-102. Regular and routine inspections

The Community Health Representatives shall make regular and routine inspections of all nursing homes in the Muscogee (Creek) Nation to determine the health and well-being of Indian residents.

[NCA 81-73, § 102, approved June 27, 1981.]

§ 2-103. Complaints

A. Complaints may be initiated by any Community Health Representative by written report to the Director of Community Services.

B. Any other individual who has reason to believe that the health and/or well-being of Indian residents of a nursing home is threatened by improper care, negligence, or any other reason relating to the policies or performance of that institution, may request a Community Health Representative to make a special inspection visit.

C. The Director of Community Services shall consult with the Office of Justice and the Social Research and Development Administration prior to making recommendations to the Executive Director and Principal Chief.

D. The Executive Director and Principal Chief shall review all complaints within ten (10) days of receipt by the Director of Community Services. They may consult with such other persons as they believe may assist them in reaching a decision. The decision of the Principal Chief shall be final for the purpose of this chapter.

E. Upon determination by the Principal Chief that a complaint is justified and in need of corrective action, he shall:

1. Initiate, conduct, complete and proclaim any negotiations with the institution complained against; or

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2. Notify the following state agencies in writing:
 - a. Inspector General, Department of Human Services, P.O. Box 25352, Oklahoma City, OK 73125.
 - b. Chairman, State Board of Health, P.O. Box 53551, Oklahoma City, OK 73152, Attention: License and Certification Division.
- [NCA 81-73, § 103, approved June 27, 1981.]

CHAPTER 3. PROTECTION OF TRIBAL ELDERS

Section

- 3-101. Title.
- 3-102. Policy.
- 3-103. Purpose.
- 3-104. Civil nature of chapter.
- 3-105. Definitions.
- 3-106. Duty to report abuse or neglect of elder.
- 3-107. Immunity for reporting.
- 3-108. Failure to report; civil penalty; damages; criminal liability.
- 3-109. Bad faith report; civil penalty; damages; criminal liability.
- 3-110. Investigation.
- 3-111. Interference with investigation and retaliation prohibited; civil penalty.
- 3-112. Privileged communication.
- 3-113. Criminal investigation.
- 3-114. Elder protective services and elder protective placement; other services; evaluation procedure; duty to pay.
- 3-115. Emergency.
- 3-116. Rights of elders, their families and caretakers.
- 3-117. Procedures for determining incapacity, abuse or neglect.
- 3-118. Confidentiality of reporter, records, hearings; penalty for not complying with confidentiality.
- 3-119. Elder protection order; time limits.
- 3-120. Term of protective order.
- 3-121. Petition; hearing.

Cross References

Abuse of elders or mentally incapacitated persons, see Title 14, § 2-318.

§ 3-101. Title

This chapter shall be known and cited as the Muscogee (Creek) Nation (MCN) “Tribal Elder and Adult Code.”

[NCA 92-141, § 101, approved Nov. 4, 1992.]

§ 3-102. Policy

It is the policy of Muscogee (Creek) Nation to continue the traditional respect the citizens of Muscogee (Creek) Nation have for Tribal elders. Elders are valuable resources as they are our custodians of Tribal history, culture and tradition and they are the best hope of the Muscogee (Creek) Nation to pass on Tribal history, culture and tradition to youth and adults of the Nation. Thus, it is in the interest of and serves the welfare of the Muscogee (Creek) Nation to protect Tribal elders.

[NCA 92-141, § 102, approved Nov. 4, 1992.]

Library References

Indians ⇌126.

Protection of Endangered Persons ⇌3.

Westlaw Topic Nos. 209, 315P.

C.J.S. Indians §§ 46 to 50, 53.

§ 3-103. Purpose

The purpose of this chapter is to protect elders within the jurisdiction of the Muscogee (Creek) Nation from abuse and/or neglect as defined in this chapter.

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This chapter shall be liberally interpreted in order to achieve its purpose. This chapter provides for:

- A. Reporting abuse or neglect to the proper agency;
- B. Receiving reports of and investigating suspected abuse or neglect;
- C. Delivering elder protection services.
- D. Delivering protection services to any other incapacitated adult.

[NCA 92–141, § 103, approved Nov. 4, 1992.]

Library References

Indians ☞126.

Westlaw Topic Nos. 209, 315P.

Protection of Endangered Persons ☞3, 6, 14.

C.J.S. Indians §§ 46 to 50, 53.

§ 3–104. Civil nature of chapter

A. This chapter is civil and does not affect any applicable provisions of the Muscogee (Creek) Nation Criminal Code unless modified specifically by this chapter.

B. The chapter may also be applied to any adult citizen of MCN should circumstances warrant; as defined in this chapter, any section or portion thereof containing the word “elder” may be liberally construed to include and mean “or other adult”.

[NCA 92–141, § 104, approved Nov. 4, 1992.]

§ 3–105. Definitions

A. Abuse is:

1. intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of an elder with resulting physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the elder such as a spouse, a child, or other relative recognized by Tribal law and custom, or a caretaker;

2. sexual abuse, which is any physical contact with an elder intended for sexual gratification of the person making such contact and which is not consented to by the elder or for which the consent was obtained by intimidation or fraud;

3. emotional abuse, which is intentional infliction of threats, humiliation, or intimidation; or

4. exploitation which is the unauthorized and/or improper use of funds, property, or other resources of an elder; or the unauthorized and/or improper use of the person of the elder by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an elder’s benefit or according to the elder’s desires.

B. Caretaker is:

1. a person who is required by Tribal law or custom (or state law) to provide services or resources to an elder;

2. a person who has voluntarily undertaken to provide care or resources to an elder;

3. an institution or agency which voluntarily provides or is required by Tribal law or custom (state or federal law, or Tribal-state agreement) to provide services or resources to an elder, including the duty to follow-up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; or,

4. an employee of any institution or agency specified in paragraph 3 of this subsection.

C. **Elder** is a senior citizen of the Muscogee (Creek) Nation who is at least fifty-five (55) years of age.

D. **Emergency** is a situation in which an elder is immediately at risk of death or injury and is unable to consent to services which would remove the risk.

E. **Family** is determined by Tribal law and custom or tradition.

F. **Good faith** is an honest belief or purpose and the lack of intent to defraud.

G. **Incapacity** is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

H. **Least restrictive alternative** is an approach which allows an elder independence and freedom from intrusion consistent with the elder's needs by requiring that the least drastic and intrusive method of intervention be used when intervention is necessary to protect the elder from harm.

I. **Neglect** is the failure of a caretaker to provide for the basic needs of an elder by not supplying resources, services, or supervision necessary to maintain an elder's minimum physical and mental health and includes the inability of an elder to supply such basic needs for himself/herself. Neglect also is:

1. interfering with delivery of necessary services and resources;
2. failing to report abuse or neglect of an elder by any person;
3. failing to provide services or resources essential to the elder's practice of his customs, traditions, or religion.

J. **Other adult** shall be defined as a person who is mentally or physically incapacitated, regardless of age.

K. **Protective placement** is placement of an elder in a hospital, nursing home, residential care facility, or transfer of the elder from one such institution to another with the elder's consent or appropriate legal authority.

L. **Protective services** are services provided to an elder with the elder's consent or with appropriate legal authority and include, but are not limited to: social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship and

other services consistent with this chapter. It does not include protective placement.

M. **Retaliation** is threatening a reporter of elder abuse or the reporter’s family in any way; causing bodily harm to the reporter or the reporter’s family; causing the reporter or any of the reporter’s family to be terminated, suspended from unemployment or reprimanded by an employer, or damaging the reporter’s or the reporter’s family’s real or personal property in any way.

[NCA 92–141, § 105, approved Nov. 4, 1992.]

§ 3–106. Duty to report abuse or neglect of elder

Suspected abuse or neglect of an elder shall be reported to Muscogee (Creek) Nation Children and Family Services by:

- A. the elder’s family or caretaker;
- B. any Tribal employee;
- C. any Tribal elected official;
- D. any employee of a Tribally-owned business, even if not managed by the Tribe;
- E. Indian Health Service personnel and all Muscogee (Creek) Nation clinics and hospitals;
- F. Bureau of Indian Affairs personnel;
- G. any medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, human services worker, elders’ service provider, nursing home provider, or any other health and elder or human service provider, or its employees who deliver services to Tribal elders;
- H. Any person or agency or employee of such agency with a fiduciary duty to the elder such as a lawyer, accountant financial institution, or property manager;
- I. Any person who has good reason to suspect that an elder has been or is being abused or neglected.

[NCA 92–141, § 106, approved Nov. 4, 1992.]

Library References

Indians ☞126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9.	C.J.S. Indians §§ 46 to 50, 53.

§ 3–107. Immunity for reporting

A person who in good faith reports suspected abuse or neglect of an elder is immune from any civil or criminal suit based on that person’s report.

[NCA 92–141, § 107, approved Nov. 4, 1992.]

Library References

Indians ☞126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9.	C.J.S. Indians §§ 46 to 50, 53.

§ 3–108. Failure to report; civil penalty; damages; criminal liability

Any person who is required by this chapter to report suspected elder abuse and fails to do so is subject to a civil penalty of up to five hundred dollars (\$500.00). The Tribal District Court shall assess the penalty only after petition, notice, and opportunity for hearing, and a determination that the person had a mandated duty to report, had good reason to suspect elder abuse or neglect, and failed to report it as required by this chapter. Further, the person failing to report is subject to any civil suit brought by or on behalf of the elder for damages suffered as a result of the failure to report and to any penalties set out in the Muscogee (Creek) Nation Criminal Code or as allowed by this chapter shall be guilty of a misdemeanor and upon conviction thereof be assessed penalty as provided in the Criminal Code.

[NCA 92–141, § 108, approved Nov. 4, 1992.]

Library References

Indians ☞126, 535.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9, 12.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3–109. Bad faith report; civil penalty; damages; criminal liability

Any person who makes a report of suspected elder abuse knowing it to be false is subject to a civil penalty of up to five hundred dollars (\$500.00). The Tribal District Court shall assess the penalty only after petition, notice, and opportunity for hearing, and determination that the reporter made the report knowing it to be false. Further, the reporter is subject to any civil suit brought by or on behalf of the person(s) named as suspected abusers in the false report for damages suffered as a result of the false report and to any criminal penalties set out in the Muscogee (Creek) Nation Criminal Code or as allowed by this code, shall be guilty of a misdemeanor and upon conviction thereof be assessed penalty as provided in the Criminal Code.

[NCA 92–141, § 109, approved Nov. 4, 1992.]

Library References

Indians ☞126, 535.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞9, 12.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3–110. Investigation

A. Muscogee (Creek) Nation Children and Family Services shall receive a report of elder abuse or neglect and shall refer a report when necessary under the circumstances to Lighthorse Administration for investigation as required by subsection B of this section.

B. The Muscogee (Creek) Nation Children and Family Services or Lighthorse Administration shall investigate the report within seventy-two (72) hours and prepare a written report of the investigation which shall include the information set out in subsection C of this section as well as the results of interviews, observations and assessments and other fact finding. The investigator shall conduct in-person interviews with the elder, elder’s family and caretaker, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder’s circum-

stances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse and neglect shall be ascertained. The investigator personally shall assess the elder's living conditions including the elder's sleeping quarters. The investigator shall use Tribal standards of housing and care in the assessment. An investigative report shall be filed with the office of the Attorney General within ten (10) days.

C. The report may be oral or in writing and shall contain:

1. the elder's name, address or location, telephone number;
2. name, address or location, telephone number of the person(s) or agency who is suspected of abusing or neglecting the elder;
3. the nature and degree of incapacity of the elder;
4. the name, address or location, telephone number of witnesses;
5. the name, address or location, telephone number of the elder's caretaker;
6. a description of the acts which are complained of as abusive or neglectful; and
7. any other information that the reporter believes might be helpful in establishing abuse or neglect.
8. such report may be made on the Report of Suspected Abuse or Neglect form(s) of Children and Family Services.

D. The investigation report shall be filed in the Attorney General office within ten (10) days and remain on file and not be destroyed for a period of four (4) years, even if it is determined that there is insufficient evidence to pursue legal action. (However, if the investigating agency determines that the investigation report was made in bad faith, it shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect.)

[NCA 92-141, § 110, approved Nov. 4, 1992.]

Library References

Indians ☞126.

Westlaw Topic Nos. 209, 315P.

Protection of Endangered Persons ☞9.

C.J.S. Indians §§ 46 to 50, 53.

§ 3-111. Interference with investigation and retaliation prohibited; civil penalty

A. No person shall interfere intentionally with a lawful investigation of suspected elder abuse.

B. No person shall retaliate by any means against any person who has made a good faith report of suspected elder abuse or who cooperates with an investigation of suspected elder abuse.

C. Any person who violates subsection A or B of this section shall be enjoined from such activity and shall be subject to a civil penalty of up to five hundred dollars (\$500.00) per occurrence shall be guilty of a misdemeanor and upon conviction, thereof be assessed penalty as provided in the Criminal Code (and, if a Tribal employee, to appropriate disciplinary action as allowed by the

Tribal personnel policies and procedures). The penalty shall be assessed by the Tribal District Court only after petition, notice, the opportunity to be heard, and a determination that either interference or retaliation as set out in this section occurred. Further, notice of such determination shall be provided to the person's Tribal employer and appropriate licensing agencies.

[NCA 92-141, § 111, approved Nov. 4, 1992.]

§ 3-112. Privileged communication

No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected elder abuse or neglect or for testifying as required by this chapter.

[NCA 92-141, § 112, approved Nov. 4, 1992.]

Library References

Indians ⇨520(1).

Protection of Endangered Persons ⇨9.

Westlaw Topic Nos. 209, 315P.

C.J.S. Indians §§ 151 to 179.

§ 3-113. Criminal investigation

The investigation and other procedures allowed by this chapter may continue even if an investigation for the purpose of filing criminal charges is undertaken.

[NCA 92-141, § 113, approved Nov. 4, 1992.]

§ 3-114. Elder protective services and elder protective placement; other services; evaluation procedure; duty to pay

A. Protective services or protective placement are provided either on a voluntary or involuntary basis. Such services or placement may be provided on a voluntary basis by the Muscogee (Creek) Nation Children and Family Services when requested by any abused or neglected elder and the elder is found by the Muscogee (Creek) Nation Children and Family Services Administration to be in need of such services or placement. Such services or placement shall be provided on an involuntary basis by the Muscogee (Creek) Nation Children and Family Services Administration only if the Tribal District Court determines they are necessary. Such services or placement shall be provided on an emergency basis (or, if necessary, on a permanent basis through a guardian appointed pursuant to Tribal law) and shall be provided in a manner least restrictive of the elder's liberty and rights consistent with the elder's welfare and needs. The Tribal District Court determination of the degree of incapacity, if any, as well as whether elder abuse or neglect has occurred is the standard the Muscogee (Creek) Nation Children and Family Services Administration shall use to develop a plan for the delivery of elder protection services.

B. Voluntary protective services or protective placement are provided subject to available appropriations and resources and only as determined necessary by the Muscogee (Creek) Nation Children and Family Services Administration. If the elder's consent to such services or placement is withdrawn, they shall cease. Such protective services or protective placement shall be provided for a period of no more than one (1) month at a time. At the end of each period, the Muscogee (Creek) Nation Children and Family Services shall

reassess the elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued with a court order permitting continued voluntary placement after the elder has been in such placement for twelve (12) months.

C. Involuntary protective services or protective placement shall be provided to any elder who is incapacitated or who is abused or neglected and incapacitated and only upon order of the Tribal District Court as required by this chapter.

D. Services as determined necessary by Children and Family Services may be delivered to the elder's family or caretaker in order to protect the elder.

E. The Muscogee (Creek) Nation Children and Family Services shall establish a process for conducting a comprehensive, physical, mental and social assessment, evaluation study of an elder when a petition for a protection order has been filed.

F. The elder, and, where appropriate, the elder's family and caretaker shall be informed by Children and Family Services of rights as allowed under this code and other Tribal law, including the right to refuse voluntary services and placement and the right to have the Tribal District Court determine the necessity of involuntary services and placement.

G. The elder (and where appropriate, the elder's family and caretaker), if able to do so, shall pay for all or part of the costs of services or placement provided to the elder. In the case of voluntary services or placement, the elder (and where appropriate, the elder's family and caretaker) shall pay the cost. [NCA 92-141, § 114, approved Nov. 4, 1992.]

Library References

Indians ☞126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞14, 15.	C.J.S. Indians §§ 46 to 50, 53.

§ 3-115. Emergency

A. The Tribal District Court shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon petition supported by clear and convincing evidence that:

1. an elder is at risk of immediate (physical) harm;
2. an elder is incapacitated and cannot consent to protective services
3. no one is authorized by law or court order to give consent on an emergency basis; and,
4. an emergency exists.

B. The emergency protection order shall:

1. set out the specific emergency services to be provided to the elder to remove the conditions creating the emergency;
2. provide only those services which will remove the emergency;
3. allow protective placement only if the evidence shows that it is necessary;
4. designate the agency required to implement the order;

5. be issued for a maximum of seventy-two (72) hours and may be renewed only once for a maximum of seventy-two (72) hours provided the evidence shows that the emergency is continuing.

C. The Tribal District Court may authorize forcible entry by Lighthorse Administration enforcement to enforce the emergency protection order after it has been shown that attempts to gain voluntary access to the elder have failed.

D. The petition for an emergency protection order shall contain the name, and interest of the petitioner; the name, address, location, and condition of the elder; the nature of the emergency; the nature of the elder's incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any to secure the elder's consent to services; any other facts the petitioner believes will assist the Court.

E. The Tribal District Court shall hold a hearing on a petition to provide protective services or placement to an elder within seventy-two (72) hours after an emergency protection order is issued, weekends and holidays excluded.

F. An emergency protection order can be set aside by the Tribal District Court upon a petition of any party showing good cause.

G. If there is good cause to believe that an emergency exists and that an elder is at risk of immediate and irreparable harm and, based on personal observation, an investigator or a law enforcement officer believes that the elder will be irreparably harmed during the time an emergency protection order is secured, the investigator or law enforcement officer shall immediately protect the elder, including, where necessary, transporting the elder for medical treatment or to an appropriate facility. Immediately after the elder is protected, a petition for an emergency protection order shall be filed and the procedures set out in this section followed.

H. Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on that person's actions.

[NCA 92-141, § 115, approved Nov. 4, 1992.]

Library References

Indians ⇨126.	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ⇨14.	C.J.S. Indians §§ 46 to 50, 53.

§ 3-116. Rights of elders, their families and caretakers

A. An elder, the elder's family and caretaker shall be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but no later than seventy-two (72) hours after the investigation begins.

B. An elder may refuse to accept elder protection services even if there is good cause to believe that the elder has been or is being abused provided that the elder is able to care for himself/herself and/or has the capacity to understand the nature of the services offered.

C. The elder's family or caretaker may refuse for themselves, but not for the elder, elder protection services offered pursuant to this chapter.

D. An elder, the elder's family or caretaker may refuse to allow an investigator into their home and the investigator shall so inform the elder, the elder's

family and caretaker of this right and the right of the investigator to seek a warrant before seeking entry.

E. The investigator shall inform the elder's family and caretaker of their rights as allowed by the Indian Civil Rights Act, whenever it appears that the investigation may lead to criminal charges being filed under the Muscogee (Creek) Nation Criminal Code.

F. The elder, elder's family and caretaker shall be served personally with a petition filed pursuant to this chapter.

G. The elder, elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the elder's capacity and the elder shall be present at all proceedings unless the Tribal District Court determines the elder's health would be at risk at such proceeding.

H. The elder, elder's family and caretaker have the right to be represented by counsel at all proceedings (at their own expense, unless provided for in other codes or laws).

I. The elder, elder's family and caretaker have the right to seek independent medical, psychological, or psychiatric evaluation of the elder (at their own expense).

[NCA 92-141, § 116, approved Nov. 4, 1992.]

§ 3-117. Procedures for determining incapacity, abuse or neglect

The Tribal District Court shall determine whether an elder is incapacitated and the degree of incapacity, and, where necessary, whether elder abuse or neglect has occurred. The determination shall be made only after petition, notice, hearing, and proof that is clear and convincing.

[NCA 92-141, § 117, approved Nov. 4, 1992.]

Library References

Indians ☞126, 510, 511, 519, 520(4).	Westlaw Topic Nos. 209, 315P.
Protection of Endangered Persons ☞5 to 8.	C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3-118. Confidentiality of reporter, records, hearings; penalty for not complying with confidentiality

A. The name of a reporter who reports abuse or neglect as required by this code is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the Tribal District Court. The Tribal District Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent determined necessary to protect the elder.

B. Records of an investigation of elder abuse or of a Tribal District Court hearing regarding elder abuse are confidential. Such records shall be open only to the elder and the elder's family and caretaker (unless the family or caretaker is the suspected abuser), employees of the Muscogee (Creek) Nation Children and Family Services Administration, Lighthouse Administration, Trib-

al District Court officials, coroner or medical examiner who has reason to believe that an elder died as the result of abuse or neglect, and any other person who the Tribal District Court determines has reasonable cause to have access to such record.

C. A proceeding held pursuant to this chapter shall be closed and confidential. Persons who may attend are the elder, the elder's family and caretaker, the person or representative of an institution or agency accused of elder abuse, the representative of the Muscogee (Creek) Nation Children and Family Services Administration, necessary Tribal District Court officials and attorneys for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal information about the proceeding unless ordered to do so by Tribal District Court order.

D. Any person who violates any subsection of this section shall be subject to a civil penalty of up to five hundred dollars (\$500.00) (or any penalty set by Tribal District Court) per occurrence (and, if a Tribal employee, to appropriate disciplinary action as allowed by the Tribal personnel policies and procedures). The penalty shall be assessed by the Tribal District Court after petition, notice, opportunity to be heard, and a determination that a violation occurred.

[NCA 92-141, § 118, approved Nov. 4, 1992.]

§ 3-119. Elder protection order; time limits

If the Tribal District Court determines that an elder is incapacitated and abused or neglected, the Court shall issue an elder protection order which provides appropriate protection for the elder. Such protection may include, but is not limited, to the following:

- A. Removing the elder from the place where the abuse or neglect has taken or is taking place;
- B. Removing the person who has abused or neglected an elder from the elder's home;
- C. Restraining the person who has abused or neglected an elder from continuing such acts;
- D. Requiring an elder's family or caretaker or any other person with a fiduciary duty to the elder to account for the elder's funds and property;
- E. Requiring any person who has abused or neglected an elder to pay restitution to the elder for damages resulting from that person's wrongdoing.
- F. Appointing a representative, guardian ad litem for the elder;
- G. Recommending that a representative payee be named; and,
- H. Ordering the Muscogee (Creek) Nation Children and Family Services Administration to prepare a plan for and deliver elder protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.

[NCA 92-141, § 119, approved Nov. 4, 1992.]

Library References

Indians ☞126, 534.

Protection of Endangered Persons ☞72, 79.

Title 20, § 3–119

ELDERLY SERVICES

Westlaw Topic Nos. 209, 315P.
C.J.S. Breach of the Peace § 18.
C.J.S. Domestic Abuse and Violence §§ 3 to 4,
7 to 11, 15 to 19, 21 to 22, 37 to 38.

C.J.S. Indians §§ 46 to 50, 53, 151 to 179.

§ 3–120. Term of protective order

A. An elder protection order shall be issued for a period not to exceed 12 months.

B. The order may be extended as many times as necessary to protect the elder, but only after petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing proof that such an extension is necessary for the protection of the elder. Each extension shall be for a period not to exceed twelve (12) months.

[NCA 92–141, § 120, approved Nov. 4, 1992.]

Library References

Indians ☞126.
Protection of Endangered Persons ☞79, 82.
Westlaw Topic Nos. 209, 315P.
C.J.S. Breach of the Peace §§ 18, 24 to 28, 32
to 38.

C.J.S. Domestic Abuse and Violence §§ 2 to 4,
7 to 34, 36 to 45.
C.J.S. Indians §§ 46 to 50, 53.

§ 3–121. Petition; hearing

A. The Attorney General shall file petitions and present facts on behalf of the Tribe for legal proceedings authorized or required by this chapter.

B. A hearing on a petition authorized or required by this chapter shall be conducted with the purpose of protecting the elder only where necessary and only to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this chapter and in the Indian Civil Rights¹ Act shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the elder and other interested parties, including the elder's family and caretaker. The elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The MCN Tribal District Court shall issue a written statement of its findings in support of any order allowed by this chapter.

[NCA 92–141, § 202, approved Nov. 4, 1992.]

¹ 25 U.S.C.A. § 1301 et seq.

CHAPTER 4. AIR CONDITIONERS AND FANS

Section

- 4-101. Findings.
- 4-102. Eligibility guidelines.
- 4-103. Administration.
- 4-104. Reporting.
- 4-105. Title; insurance.
- 4-106. Preference of participants.
- 4-107. Inventory accountability.

§ 4-101. Findings

A. There exists a need to provide elderly Creek Tribal members air conditioners and fans for health promotion purposes.

B. Many Creek Tribal elders suffer from health conditions which predispose them to heat related environmental hazards, including heat, chronic respiratory disorders, allergies, and hypertension.

C. Hot weather is a major contributor of heat stroke among Tribal elders and also complicates other disorders.

D. A program is needed to provide Creek Tribal elderly air conditioners and box fans for cooling the interior living spaces of their homes.

E. Funding for this project is available from Tribal bingo revenues.

[NCA 91-63, § 101, approved Aug. 5, 1991.]

§ 4-102. Eligibility guidelines

The eligibility guidelines for this project are as follows:

A. Applicant must verify Creek Tribal Enrollment i.e., Tribal Enrollment Card.

B. Applicant must reside within Creek Nation boundaries.

C. Applicant must present statements verifying household income. Income must be within the following guidelines.

<u>Household Size</u>	<u>Maximum Mo. Amount</u>
1	\$ 523
2	702
3	880
4	1,058
5	1,237
6	1,415

For each additional household member add one hundred seventy-nine dollars (\$179).

D. First priority will be given to bedfast applicants, with the second priority to the homebound, as determined by the community health representatives.

E. Applicant must complete and sign an application.

[NCA 91-63, § 105, approved Aug. 5, 1991.]

§ 4-103. Administration

Project administration shall be handled by the Community Health Representative program. CHR shall make all reasonable attempts to notify all eligible participants, i.e. flyers, community meetings, newspapers, etc. to include date, times and locations of application in-take as well as eligibility guidelines.

[NCA 91-63, § 106, approved Aug. 5, 1991.]

§ 4-104. Reporting

The CHR Manager shall prepare an annual report to the National Council by September 1 of each year, which will include the present condition and storage of all air conditioners.

[NCA 91-63, § 107, approved Aug. 5, 1991; amended by NCA 93-131, § 103, approved Sept. 2, 1993.]

§ 4-105. Title; insurance

Title to air conditioners, box fans, and water coolers, shall remain in the Muscogee (Creek) Nation and the user shall sign an agreement as to upkeep of air conditioners and that the property shall not be sold or disposed. Insurance policies of the Muscogee (Creek) Nation shall include coverage for all cooling devices.

[NCA 91-63, § 108, approved Aug. 5, 1991.]

§ 4-106. Preference of participants

Participants shall be allowed to make the decision as to whether they would prefer air conditioners, box fans, or water coolers, when considered.

[NCA 91-63, § 109, approved Aug. 5, 1991.]

§ 4-107. Inventory accountability

Muscogee (Creek) Nation Community Health Representatives (CHR) Manager shall be responsible for collection, inventory report, and warehousing for future distribution and installation of adequate wiring and air conditioning unit specified for this purpose.

[NCA 91-63, § 110, approved Aug. 5, 1991; amended by NCA 93-131, § 104, approved Sept. 2, 1993.]