



TRIBAL COUNCIL RESOLUTION No. 2012- 28

**Tribal Resolution Adopting the Pueblo of Jemez Elder
and Vulnerable Adult Protection Code**

At a duly called meeting of the Tribal Council of the Pueblo of Jemez, the following resolution was passed:

WHEREAS, the Pueblo of Jemez is a federally recognized Indian Tribe with inherent powers of self-government and pursuant to its tribal sovereignty has the powers to legislate and enact tribal laws to control the conduct and activities within its tribal lands; and

WHEREAS, the Pueblo of Jemez recognizes that elders and vulnerable adults may be subjected to abuse, neglect, or exploitation and that the Pueblo has a responsibility to protect these persons; and

WHEREAS, the Pueblo of Jemez regards its elders as the custodians of tribal history, culture, and traditions that are vital to the members of the pueblo: and

WHEREAS, the purpose of the Code is to protect our elders and vulnerable adults from abuse, neglect and exploitation; to provide for a process for investigating incidents of alleged elder or vulnerable adult abuse, neglect, and exploitation; and to provide a fair process or hearing for the parties so their rights under Pueblo of Jemez law are recognized and enforced; and

WHEREAS, the Jemez Social Services Program with the assistance of a consultant drafted the Pueblo of Jemez Elder and Vulnerable Adult Protection Code and recommend for its adoption by the Tribal Council and that it be incorporated and made a part of the Pueblo of Jemez Tribal Code as Title XV.

NOW THEREFORE BE IT RESOLVED that the Pueblo of Jemez Elder and Vulnerable Adult Protection Code, Title XV, Sections 15-1-1 to Section 15-9-1 are adopted as laws of the Pueblo and are to be incorporated into the Pueblo of Jemez Tribal Code.

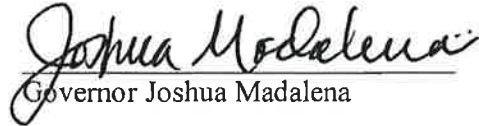
Office of the Governor

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and Vulnerable Adult Protection Code
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CERTIFICATION

I, the undersigned, as the Governor of the Pueblo of Jemez hereby certify that at a duly called meeting of the Tribal Council held on the 17th day of December, 2012, the foregoing resolution was passed, a quorum being present and that 10 voted for with 0 opposed and 0 abstained.


Governor Joshua Madalena

ATTEST: 
Lieutenant Governor

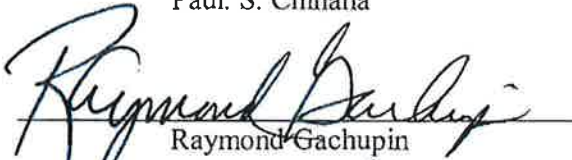
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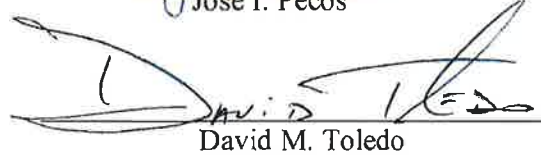

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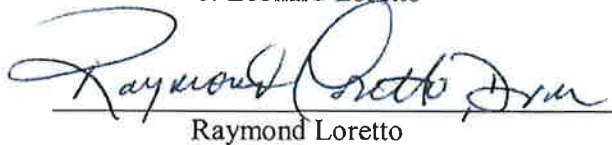

David M. Toledo

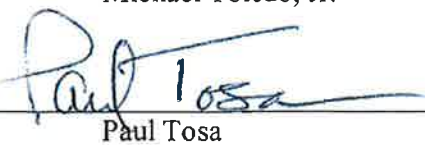

Frank Loretto

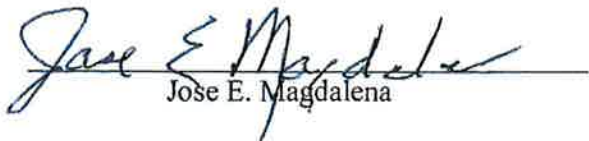

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**TITLE XV
PUEBLO OF JEMEZ ELDER AND
VULNERABLE ADULT PROTECTION CODE
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**TITLE XV
PUEBLO OF JEMEZ ELDER AND
VULNERABLE ADULT PROTECTION CODE**

CHAPTER 1 GENERAL PROVISIONS

SECTION 15-1-1 PURPOSE

The purpose of the Pueblo of Jemez Elder and Vulnerable Adult Protection Code is to protect elders and vulnerable adults from abuse, neglect, and exploitation. It is customary for the Pueblo of Jemez to hold our elders in high esteem. The elders of the community are the custodians of tribal history, culture, and traditions that are vital to the Hemish People.

The Pueblo of Jemez Elder and Vulnerable Adult Protection Code is written to achieve the following purposes:

1. To insure that Pueblo of Jemez values regarding elders and vulnerable adults are upheld and maintained;
2. To prevent abuse, neglect, and exploitation of elders and vulnerable adults living on lands subject to the jurisdiction of the Pueblo of Jemez;
3. To preserve and restore the family unit whenever possible by providing care, protection, supervision, rehabilitation and treatment options for the elders or vulnerable adults who come before the Pueblo of Jemez Tribal Court;
4. To achieve the purposes of the Pueblo of Jemez Elder and Vulnerable Adult Protection Code in a family environment whenever possible; separating the elder person or vulnerable adult from his or her caregiver only when necessary for the elderly person or vulnerable adult's welfare or in the interest of public safety; and
5. To clearly identify processes for investigating incidents of alleged elder or vulnerable adult abuse, neglect, exploitation and to provide a process for those accused of abusing, neglecting, or exploiting an elderly person or vulnerable adult and provide parties a fair process or hearing in which their rights under Pueblo of Jemez law are recognized and enforced.

SECTION 15-1-2 POLICY

The policy of the Pueblo of Jemez regarding elders and vulnerable adults shall be as follows:

1. The Pueblo of Jemez is a federally recognized Indian Tribe with inherent powers of self-government and pursuant to its tribal sovereignty has power to legislate and enact tribal laws to control the conduct and activities within its tribal land.
2. The Pueblo of Jemez recognizes that elders and vulnerable adults may be subjected to abuse, neglect, or exploitation and that the Pueblo has a responsibility to protect these persons.

3. The Pueblo of Jemez directs special attention to the needs and problems of elders and vulnerable adults, recognizing that these persons represent a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and exploitation.

4. The Pueblo of Jemez further recognizes that elders and vulnerable adults may have developmental disabilities and mental and verbal limitations that may leave them vulnerable and incapable of asking for help and protection.

5. The Pueblo of Jemez recognizes that elders and vulnerable adults may be at greater risk of abuse, neglect, or exploitation by their family or caregiver suffer physical impairments and other poor health that may place them in dependent and vulnerable positions.

6. The Pueblo of Jemez further recognizes factors that contribute to abuse, neglect, or exploitation of elders and vulnerable adults may be due to economic instability of the family, resentment of caregiver responsibilities, stress on the caregiver, and abuse by the caregiver of drugs or alcohol.

7. The Pueblo of Jemez deems an Elder and Vulnerable Adult Protection Code is necessary to safeguard and promote peace, safety, morals, and the general welfare of the Pueblo community as well as for individual Pueblo citizens.

SECTION 15-1-3 RIGHTS OF ELDERS AND VULNERABLE ADULTS

The Pueblo of Jemez recognizes that elders and vulnerable adults have specific rights in their daily life and in their interaction with service providers.

1. The Pueblo of Jemez recognizes that the elders and vulnerable adults living within the territorial jurisdiction of the Pueblo of Jemez enjoy the following rights in their everyday life and family relations:

- a. The right to be treated with fairness and dignity.
- b. The right to be free from abuse, neglect, and exploitation.
- c. The right to not suffer in silence.
- d. The right to participate in activities that are social, religious, and/or community-oriented.
- e. The right to have access to food, clothing, shelter, and medical/dental care.
- f. The right to participate in tradition, culture, and ceremonies of the community.
- g. The right to have access to family and friends.

2. The Pueblo of Jemez acknowledges the elders and vulnerable adults enjoy the following rights in any interaction involving the elder or vulnerable adult with any agency of the Pueblo of Jemez:

- a. The right to be treated with fairness and dignity.
- b. The right to be reasonably protected from the defendant/perpetrator.
- c. The right to make a victim impact statement.
- d. The right to prevent disclosure of confidential information.

- e. The right to know the current status of their case/court case.
- f. The right to be assisted if called as a witness.
- g. The right to attend all court proceedings (if case goes to court).
- h. The right to have restitution for their crime related losses.

SECTION 15-1-4 DEFINITIONS

For the purposes of this Title, unless otherwise provided in this Title:

1. "Abuse" means one or more of the following:
 - a. An intentional or negligent act that causes bodily harm, unreasonable confinement, or mental anguish by any person, including a person having a special relationship with the elder or vulnerable adult, e.g. a spouse, child, or other relative, or a caregiver.
 - b. The causing of physical, mental, or emotional injury to an elder or vulnerable adult, or sexual abuse or exploitation of an elder or vulnerable adult.
 - c. Attempting to cause or causing physical harm, bodily injury, or assault on the elder or vulnerable adult.
 - d. Causing emotional or mental harm of an elder or vulnerable adult by any person whose actions deny the elder or vulnerable adult the rights guaranteed in Section 15-1-3 of this Chapter.
2. "Appointed Tribal Leaders" means positions of leadership in the Pueblo of Jemez that are appointed on an annual basis.
3. "Caregiver" means any of the following:
 - a. A person who has the responsibility to provide care, services, or resources to an elder or vulnerable adult because of family agreement or the traditions of the Pueblo of Jemez custom.
 - b. A person who voluntarily undertakes to provide care, services, or resources to an elder or vulnerable adult.
 - c. A person, agency, or institution which is required by local, tribal, state or federal law or court order to provide care, services, or resources to the elder or vulnerable adult.
 - d. An employee of any institution or agency specified in (3), above.
4. "Elder" is defined as a person who has attained the age of fifty-five (55) years.
5. "Exploitation" is defined as the use of the elder or vulnerable adult's funds, credit, services, property, or other resources through improper or unauthorized means.

6. "Family" is defined as all of the legal and customary relationships defined as family by the custom and tradition of the Pueblo of Jemez.
7. "Family Gathering" is defined as an alternative process in which family members and other interested persons attempt to develop a plan to prevent further abuse, neglect, or exploitation of an elder or vulnerable adult.
8. "Neglect" is defined as:
 - a. The failure of a family member, guardian, or caregiver to provide for the basic needs of an elder or vulnerable adult by not supplying resources, services, or supervision necessary to maintain the elder or vulnerable adult's physical and/or mental health, and includes the inability of the elder or vulnerable adult to provide such basic needs for him or herself.
 - b. The interference with the delivery of necessary services or resources.
 - c. Failure to provide services or resources essential to the practice of the elder or vulnerable adult's customs, traditions or religion.
 - d. The failure to report the abuse, neglect or exploitation of an elder or vulnerable adult.
 - e. Abandonment of an elder or vulnerable adult by his or her family.
9. "Perpetrator" is defined as a person who is accused of abuse, neglect, or exploitation, or of committing a crime against an elder or vulnerable adult.
10. "Person in Need of Services" is defined as an elder or vulnerable adult who:
 - a. Has no family support system and is receiving support services from any local, tribal, state or federal agency.
 - b. A person who, due to neglect, abuse, or exploitation, is in need of court ordered support services.
11. "Privileged Relationship" is defined as a relationship, between an elder or vulnerable adult and a person that is recognized as one in which communications between the parties is not subject to admission as evidence in Court.
12. "Other Interested Persons" is defined as:
 - a. Persons having a close relationship with the elder or vulnerable adult and their family whom the family feels should be present at a Family Gathering.
 - b. Representatives of agencies providing services or resources to the elder or vulnerable adult who the family feels should be present at a Family Gathering.

13. "Police Department" means the Pueblo of Jemez Police Department.
14. "Social Services" is defined as the Pueblo of Jemez Social Service Program.
15. "Tribal Court" is defined as the Pueblo of Jemez Tribal Court.
16. "Vulnerable Adult" is defined as a person over the age of eighteen (18) who, due to handicap, disability, or incapacity, is unable to care for themselves.
17. "Wrong-doer" is a person, in the Family Gathering forum, who is presumed to have abused, neglected, or exploited an elder family member.

SECTION 15-1-5 CONSTRUCTION

The Pueblo of Jemez Elder and Vulnerable Adult Protection Code shall be liberally construed and interpreted to protect the rights of elders and vulnerable adults and to fulfill the purpose of this Title.

CHAPTER 2 JURISDICTION

SECTION 15-2-1 APPLICABILITY OF THE PUEBLO OF JEMEZ ELDER AND VULNERABLE ADULT PROTECTION CODE

The Pueblo of Jemez Elder and Vulnerable Adult Protection Code shall govern the activities of all agencies and caregivers providing services to elders and vulnerable adults residing or domiciled on Pueblo of Jemez lands.

SECTION 15-2-2 JURISDICTION OF THE PUEBLO OF JEMEZ TRIBAL COURT

The jurisdiction of the Pueblo of Jemez Tribal Court shall be as follows:

1. **Personal Jurisdiction:**

a. The Tribal Court shall have jurisdiction over matters authorized by the Elder and Vulnerable Adult Protection Code that involve an elder or vulnerable adult as defined under Sections 15-1-4 (4) and 15-1-4 (16).

2. **Subject Matter Jurisdiction:**

a. The Tribal Court shall have jurisdiction over all matters arising under the Elder and Vulnerable Adult Protection Code, including:

- i. Cases of abuse, neglect, exploitation of an elder or vulnerable adult;
- ii. Determining if an elder or vulnerable adult is a "Person in Need of Services";
- iii. Appointment of a caregiver or guardian for the elder or vulnerable adult;
- iv. Protection of a mentally ill or mentally challenged elder or vulnerable adult; or
- v. Determining temporary and protective custody placement matters involving elders and vulnerable adults.

3. **Territorial Jurisdiction:**

a. The Tribal Court shall have jurisdiction over all matters under the Elder and Vulnerable Adult Protection Code arising in the territory within the original confines of the Pueblo of Jemez and to other such lands that may hereafter be acquired or added to the reservation held in trust for the Pueblo under any laws of the United States or otherwise.

CHAPTER 3 REPORTING REQUIREMENTS

SECTION 15-3-1 DUTY TO REPORT ABUSE, NEGLECT, OR EXPLOITATION OF AN ELDER OR VULNERABLE ADULT

Any person who has reasonable cause to believe that an elder or vulnerable adult has been abused, neglected, or exploited shall immediately report the abuse, neglect, or exploitation to either the Pueblo of Jemez Social Services Program or Pueblo of Jemez Police Department.

SECTION 15-3-2 MANDATED REPORTING

The following persons have an absolute duty to report elder or vulnerable adult abuse, neglect or exploitation:

1. The elder person's or vulnerable adult's family or caregiver;
2. Any employee of the Pueblo of Jemez Health and Human Services Department;
3. Any employee of the Pueblo of Jemez Emergency Medical Services Program;
4. Any employee of the Pueblo of Jemez Probation Office, Pueblo of Jemez Police Department, or BIA Police Department;
5. Appointed tribal officials;
6. Any person, agency or employee of an agency that is in a fiduciary relationship with the elder or vulnerable adult such as attorney, accountant, or property manager.

SECTION 15-3-3 ANONYMOUS REPORTS

Any person, including persons who have a privileged relationship with the elder or vulnerable adult, may make an anonymous report of abuse, neglect or exploitation if there is an urgent need for hospitalization, guardianship, protective services or protective placement.

SECTION 15-3-4 IMMUNITY FOR REPORTING

Any person, who in good faith, reports suspected abuse, neglect, or exploitation of an elder or vulnerable adult shall be immune from any legal action based on that person's report.

SECTION 15-3-5 FAILURE TO REPORT

Any person who has a mandated duty under Section 15-3-2, to report elder or vulnerable adult abuse, neglect, or exploitation as identified in Section 15-1-4 (1), (5), or (8), and fails, neglects, or refuses to report suspected elder or vulnerable adult abuse, neglect, or exploitation, shall be subject to a fine of not less than \$500.00 and/or jail time of not more than ninety (90) days.

SECTION 15-3-6 REPORTING IN BAD FAITH, PENALTIES

Any person who makes a report of suspected elder or vulnerable adult abuse, neglect or exploitation, knowing such report to be false is subject to a fine of not more than \$500.00 and/or jail time of not more than ninety (90) days.

CHAPTER 4 INVESTIGATIONS

SECTION 15-4-1 INVESTIGATION OF ELDER OR VULNERABLE ADULT ABUSE, NEGLECT OR EXPLOITATION, EMERGENCY CUSTODY & PLACEMENT

A preliminary investigation of suspected elder or vulnerable adult abuse, neglect, or exploitation shall be conducted by a Case Worker from the Pueblo of Jemez Social Services Program.

1. Social Services may include the Jemez Police Department in the investigation if it appears that a crime has been committed.
2. If Social Services or the Jemez Police Department determine that there is potential of harm or risk of harm, the elder or vulnerable adult may be immediately removed from the home.

SECTION 15-4-2 POST-PRELIMINARY INVESTIGATION PROCEDURES

Once the preliminary investigation is completed:

1. The results of the investigation, including reports and statements will be shared between all investigative agencies, including the Pueblo of Jemez Social Services Program and the Pueblo of Jemez Police Department, including BIA Law Enforcement.
2. The Case Worker will conduct a risk assessment of the elder or vulnerable adult's situation to determine if it is necessary to proceed with filing a petition for removal.
3. In cases involving physical or sexual abuse, the Case Worker shall schedule a medical exam for the elder or vulnerable adult within 48 hours. If the case is a sexual abuse case, the Jemez Police Department shall be immediately notified.

SECTION 15-4-3 EMERGENCY REMOVAL, AUTHORITY

The elder or vulnerable adult may be taken into emergency custody and removed from the location of the abuse, neglect, or exploitation depending on the severity of the case. This will be a decision made by Social Services or the Police Department.

1. The alleged perpetrator may be temporarily removed from the home by Police Department until the Jemez Tribal Court reviews the case at the Ex Parte hearing. The Tribal Court may extend the wrongdoer's removal from the home based on clear and convincing evidence that the wrongdoer poses a threat to the victim.
2. The Case Worker may arrange for the elder or vulnerable adult's placement in a relative's house, domestic violence shelter, or other shelter.

3. The physical removal of either the victim or alleged perpetrator shall be done in a manner that affords the most consideration for the safety of the victim and social workers involved in the case.

SECTION 15-4-4 EMERGENCY REMOVAL AND CUSTODY, PROCEDURES

The following process shall be followed to initiate an action in the Pueblo of Jemez Tribal Court for the protection of an elder or vulnerable adult in emergency situations:

1. If emergency removal is necessary, the Case Worker files a Petition for an Ex Parte placement order within 24 hours and hand delivers it to the Tribal Court.
2. A custody hearing is held as soon as possible, but no later than 72 hours after placement.
3. If required, the Police Department files the criminal charges of abuse, neglect, or exploitation against the alleged perpetrator in Tribal Court.
4. The Case Worker prepares a report to be presented to the court during the first hearing in the elder's or vulnerable adult's case.
5. The Case Worker attends the scheduled court hearing and serves as an advocate for the elder or vulnerable adult in court.
6. The Case Worker makes recommendations to the court regarding disposition of the case and best interest of the elder or vulnerable adult.

CHAPTER 5 FAMILY GATHERING, PURPOSE, LIMITATIONS, ELIGIBILITY

SECTION 15-5-1 FAMILY GATHERING – PURPOSE

The purpose of a Family Gathering is to provide a forum for resolving cases of elder and vulnerable adult abuse, neglect, or exploitation in an informal process that allows the victim, family, and other interested persons to come to agreement to resolve the issues of abuse, neglect, or exploitation.

SECTION 15-5-2 FAMILY GATHERING – LIMITATIONS

Family Gathering will not be considered as an appropriate remedy in the following circumstances:

1. A case in which physical and sexual violence against the elder or vulnerable adult is alleged.
2. A case in which a criminal complaint has been filed.
3. A case in which the victim does not agree to the Family Gathering process.
 - a. A victim is deemed not to agree with Family Gathering in the following circumstances:
 - i. Expressly states that they do not want to participate in Family Gathering,
 - ii. The victim's body language or lack of participation during the Family Gathering indicates the victim is afraid of the alleged wrongdoer or is uncomfortable being in close proximity of the alleged wrongdoer.
4. A case in which the victim is unable to participate in the Family Gathering due to loss of mental faculties.
5. A case in which the alleged wrongdoer is not considered to be a member of the victim's family.

SECTION 15-5-3 FAMILY GATHERINGS – ELIGIBILITY

Persons eligible to be the subject of a Family Gathering process include:

1. Any elder or vulnerable adult member of the Pueblo of Jemez.
2. Any elder or vulnerable adult, non-member resident of the Pueblo of Jemez.

SECTION 15-5-4 FAMILY GATHERING - PARTIES

Family Gathering is a remedy that requires the participation of a number of interested parties:

1. Family Gatherings conducted under the authority of this Code may include, at a minimum, the following persons:
 - a. The victim,
 - b. Family members that live with or provide care to the victim, including persons who are not members of the Pueblo of Jemez.
 - c. The facilitator,
 - d. Pueblo of Jemez Social Services caseworker or designee.
2. The following persons may also participate in the Family Gathering with the concurrence of the victim:
 - a. Any person chosen by the victim to speak on the victim's behalf,
 - b. Other family members or service providers identified by the victim not identified under Section 15-5-4(1).
3. Any of the following category of persons shall not participate in a Family Gathering unless they qualify under Section 15-5-4(1).
 - a. Attorneys;
 - b. Representatives of federal or state agencies, unless specifically requested by the victim;
 - c. Appointed officials of the Pueblo of Jemez.

SECTION 15-5-5 FAMILY GATHERING FACILITATORS

The facilitator is the key person in a Family Gathering process and shall conduct the Family Gathering from a perspective of fairness, dignity, and harmony for the parties involved and the community as a whole.

1. The facilitator of any Family Gathering session conducted under this Code shall:
 - a. Have completed training in Family Gathering process,
 - b. Not be a member of the victim's household,
 - c. Not be an employee of Jemez Social Services.

SECTION 15-5-6 FAMILY GATHERING PLAN

The Family Gathering Plan is the documentation that an agreement has been made between the participants of the Family Gathering.

CHAPTER 6 JEMEZ TRIBAL COURT PROCEEDINGS

SECTION 15-6-1 RESPONSIBILITIES OF THE JEMEZ TRIBAL COURT

The Pueblo of Jemez Tribal Court shall conduct all proceedings involving abuse, neglect and exploitation of elders or vulnerable adults under this Code.

SECTION 15-6-2 POWER AND AUTHORITY

In addition to the powers and authorities authorized under the Pueblo of Jemez Tribal Code, the Tribal Court shall have the following powers authorized under the Elder and Vulnerable Adult Protection Code:

1. The authority to issue an Order of Protection on behalf of the elder or vulnerable adult victim.
2. The authority to determine if an elder or vulnerable adult is a "Person in Need of Services."
3. The authority to order placement or custody of an elder or vulnerable adult on a temporary or permanent basis.
4. Filing a civil case under the Elder and Vulnerable Adult Protection Code will not preclude the filing of criminal charges against the alleged perpetrator of abuse, neglect, or exploitation under the Pueblo of Jemez Criminal Code.

SECTION 15-6-3 APPLICABLE LAW

All proceedings in the Tribal Court shall be governed and conducted in accordance with the Pueblo of Jemez Tribal Code.

SECTION 15-6-4 FORM AND CONTENT OF PETITION

A petition initiating a Tribal Court proceeding under this Code shall be captioned:

In the Tribal Court
Pueblo of Jemez
State of New Mexico

In the matter of _____, an elder or vulnerable adult,
(DOB: _____)
and shall state with specificity:

1. The facts asserting the jurisdiction of the Tribal Court.
2. That the elder or vulnerable adult is in need of services, care or rehabilitation.

3. A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged abuse, neglect or exploitation occurred.
4. The name, birth date, tribal enrollment status, residence and address of the elder or vulnerable adult.
5. The names and addresses of family members, caregivers, or guardians deemed essential to the proceedings.
6. The name of the person presenting the petition and the submission date.
7. Whether the elder or vulnerable adult has been placed into emergency custody, and if so, the time he or she was taken into custody.
8. If the Pueblo of Jemez Social Services is the petitioner and there was a Family Gathering regarding the victim, the existence of the Family Gathering Plan must be alleged.

SECTION 15-6-5 SUMMONS, SERVICE

Service of process for cases arising under this Title shall be as follows:

1. Upon the filing of a Petition, the Clerk of the Tribal Court shall send the petition to the respondent, instructing the respondent to respond to the contents of the petition within a set date, but no more than ten (10) working days from receipt of service.
2. The summons shall be issued to the elder or vulnerable adult, to the elder or vulnerable adult's family, parents, caregiver, Jemez Social Services, and to such other persons as the court considers essential to the proceedings.
3. All notices shall state the date and time of any required appearances and shall specify the matter to be heard.
4. Service of the summons and all notices shall conform to the laws of the Pueblo of Jemez.

SECTION 15-6-6 FINAL HEARING, EVIDENCE, DISPOSITION

1. All hearings before the Tribal Court based on the Elder and Vulnerable Adult Protection Code shall be conducted separate from other tribal court proceedings and in accordance with the laws of the Pueblo of Jemez. The proceedings may be recorded by electronic or other means the Court finds appropriate.
2. All hearings before the Tribal Court shall be closed to the general public, except the parties, witnesses and other persons who are essential to the proceedings and are approved by the Court in accordance with Section 15-8-3 of this Code may be allowed to attend.

3. The Tribal Court, prior to the start of a hearing, shall inform all persons present at the hearing of the confidential nature of the proceedings and the penalties for violation of the confidentiality requirements. Any person or party who intentionally divulges information in violation of this section may be found to be in contempt of court and be subject to imprisonment not to exceed forty-eight (48) hours and be ordered to pay a fine not to exceed \$500.00.
4. The Tribal Court may consider and rely on all relevant and material evidence helpful in determining the issues presented in a petition, including verbal and written reports, provided that such evidence tends to prove facts even when it might not otherwise be admissible.
5. The Tribal Court, after hearing all of the evidence on the allegations presented in the petition, shall make and record its findings on whether or not the allegations in the petition have been established by the evidence presented.
 - a. The standard of proof in a proceeding under this Code shall be clear and convincing evidence or based upon a valid admission to the allegations of the petition.
6. If the Tribal Court finds that the allegations in the petition have been established, the Court may proceed to render a determination or disposition in accordance with Chapter 7 of this Code or as the Court deems necessary and appropriate in the best interests of the elder or vulnerable adult.
7. If the Tribal Court finds that the allegations on the petition have not been established, it shall dismiss the petition. However, the Court may issue such other order that is in the best interest of the elder or vulnerable adult.
8. The Tribal Court may, on its own motion or by motion of a party, continue the hearing on the petition for a reasonable time to receive reports, evaluations, or assessments, or other evidence on the need for care or rehabilitation, or in connection with the disposition. During any continuance under this subsection, the Tribal Court shall make an appropriate order for the protection of the elder or vulnerable adult.
9. Evaluations, assessments, disposition reports and other material to be considered by the Tribal Court in the hearing shall be submitted to the Tribal Court no later than five (5) days before the scheduled hearing date.
 - a. An affidavit including reasons why a report has not been completed shall be filed with the Tribal Court no later than five (5) days before the scheduled hearing date if the report will not be submitted before the deadline.
 - b. The Tribal Court may, in its discretion, dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.
10. A respondent in any Tribal Court proceeding under this Code is entitled to an opportunity to introduce evidence and be heard, and to confront and cross-examine witnesses testifying against him or her, and to admit or deny the allegations in a petition.

11. In petitions filed in the Tribal Court alleging the existence of a Family Gathering Plan, the Family Gathering Plan shall be accepted as evidence in a hearing before the Jemez Tribal Court.

CHAPTER 7 REMEDIES

SECTION 15-7-1 CIVIL REMEDIES

Civil remedies provided by the Pueblo of Jemez Tribal Court in matters arising under the Elder and Vulnerable Adult Protection Code are as follows:

1. The issuance of a protective order limiting and proscribing contact between the victim and perpetrator, including but not limited to the following:
 - a. Removing the elder or vulnerable adult from the place where the abuse, neglect, or exploitation has been taking place,
 - b. Immediately removing the person who abused, neglected, or exploited the elder or vulnerable adult from the victim's residence,
 - c. Restraining the person who has abused, neglected, or exploited the elder or vulnerable adult from continuing such acts,
 - d. Requiring the elder's or vulnerable adult's family, caregiver, or any other person with a fiduciary duty to the elder or vulnerable adult to account for the funds and property belonging to the elder or vulnerable adult.
 - e. Requiring any person who has abused, neglected, or exploited an elder or vulnerable adult to pay restitution for damages resulting from the abuse, neglect or exploitation,
 - f. Appointing a representative or a guardian ad litem for the elder or vulnerable adult,
 - g. Ordering that a representative payee be named,
 - h. Ordering the Pueblo of Jemez Social Services Program to prepare a plan for and deliver protective services that provide the least restrictive alternatives for services, treatment, or placement consistent with the elder's or vulnerable adult's needs.
2. The declaration that the elder or vulnerable adult is a "Person in Need of Services."
 - a. Jemez Social Services shall prepare a service plan for all elders or vulnerable adults who are declared to be a "Person in Need of Services." The Service Plan shall specifically address issues to prevent further abuse, neglect, or exploitation of the "Person in Need of Services."
 - b. The Service Plan for an elder or vulnerable adult declared to be a "Person In Need of Services" may be created using the Family Gathering process to determine the best solution(s) for the elder and family.
3. The issuance of an order temporarily or permanently placing the elder or vulnerable adult in the custody of a caregiver or an agency of the Pueblo of Jemez.

SECTION 15-7-2 ISSUANCE, MODIFICATION OF ORDERS OF PROTECTION

1. No Order of Protection shall be issued under this Code until three (3) days after the petition has been served on all parties, except for an emergency protection order.
2. An initial non-emergency elder or vulnerable adult protection order shall be issued for a period not to exceed ninety (90) days.
3. A non-emergency protection order issued under the authority of this Code may be extended as many times as necessary to protect the elder or vulnerable adult.
 - a. An extension of an Order of Protection shall be issued only after:
 - i. a petition is filed by the party seeking an extension;
 - ii. notice is provided to the perpetrator;
 - iii. an opportunity for a hearing is scheduled; and
 - iv. determination that such an extension is necessary for the protection of the elder or vulnerable adult based on a preponderance of the evidence. Each extension shall not exceed a period of ninety (90) days.

SECTION 15-7-3 CRIMINAL CHARGES, PRETRIAL DIVERSION

Criminal charges may be filed based on investigations conducted under this Code.

1. Criminal charges arising from abuse, neglect, or exploitation of an elder or vulnerable adult may be filed by the Pueblo of Jemez Police Department or by BIA Law Enforcement pursuant to the Jemez Criminal Code or Jemez Domestic Violence Code.
2. Violation of an Order of Protection entered by the Tribal Court under the authority of this Code shall be considered criminal contempt of court, in accordance with Section 3-2-83 of the Jemez Criminal Code, and shall be punished by confinement in jail up to ninety (90) days or a fine of not more than five hundred (\$500) dollars or both.
3. A Family Gathering may serve as a pretrial diversion activity under Rule 9 of the Pueblo of Jemez Rules of Criminal Procedure.
 - a. All provisions of Rule 9 will apply to a pretrial diversion based on the Defendant's participation in the Family Gathering.
 - b. If the Defendant violates the Family Gathering Plan, such a violation will be considered as non-compliance with the Pretrial Diversion Program.

SECTION 15-7-4 REFERRAL TO FAMILY GATHERING

Once the Tribal Court has conducted a hearing, the Court may order the parties to participate in the Family Gathering forum to resolve issues identified by the Court, including remedies.

CHAPTER 8 CONFIDENTIALITY AND PENALTY

SECTION 15-8-1 NAME OF REPORTER

The name of the person who reports abuse, neglect, or exploitation as required by this Code is confidential and shall not be released to any person unless the reporter consents to the release or the Pueblo of Jemez Tribal Court orders the release. The Court may release the reporter's name only after the Court gives notice to the reporter and the Court holds a closed hearing to determine if the need to protect the elder or vulnerable adult is greater than the reporter's right to confidentiality.

SECTION 15-8-2 INVESTIGATIONS AND HEARING RECORDS

Records of an investigation of elder or vulnerable adult abuse, neglect, or exploitation or of a Tribal Court hearing regarding elder or vulnerable adult abuse, neglect, or exploitation are confidential. Such records are open only to the elder or vulnerable adult, their family, or caregivers, unless the family or caregiver is the alleged perpetrator.

1. The decision to release "investigation records" shall be made by the Director of the Jemez Health and Human Services in consultation with the Pueblo of Jemez Social Services Program Manager on a need to know basis.
2. Decisions to release Court records shall be made by the Pueblo of Jemez Tribal Court Clerk on a need to know basis.
3. Records of investigation of elder or vulnerable adult abuse, neglect, or exploitation or of a Tribal Court hearing may be released pursuant to court order.

SECTION 15-8-3 COURT PROCEEDINGS

All civil proceedings in the Tribal Court arising under this Code shall be closed and confidential. Persons who may attend in criminal or civil proceedings are the elder or vulnerable adult, their family or caregiver, representatives of Social Services, and necessary court officials. 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 pursuant to a Court order.

SECTION 15-8-4 PENALTIES

Any person who violates any provision of this section by disclosing to a person not authorized to have the information or records listed in Chapter 15-8-1 and 3 or makes use or knowingly permits the use of information concerning an elder or vulnerable adult before the Court, directly or indirectly derived from the Court records or acquired in the course of official duties, shall be subject to no less than forty-eight (48) hours in jail or a fine not to exceed \$500.00.

CHAPTER 9 SEVERABILITY

SECTION 15-9-1 SEVERABILITY

If any part or parts, or application of any part of this Code is held to be invalid, such holding will not affect validity of the remaining parts of this Code.