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**KICKAPOO
TRADITIONAL
TRIBE OF TEXAS**

2212 Rosita Valley Rd.
Eagle Pass, Texas 78852



TRIBAL COUNCIL

RESOLUTION No. 2026-010

**RESOLUTION DULY ADOPTED BY THE KICKAPOO TRADITIONAL COUNCIL
APPROVING AND ADOPTING THE KICKAPOO TRADITIONAL
TRIBE OF TEXAS ELDER AND VULNERABLE ADULT
PROTECTION CODE**

WHEREAS, The Kickapoo Traditional Tribe of Texas ("Tribe") is an Indian tribe organized under Section 16 of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), codified at 25 U.S.C. 476, et seq., and under the Tribal Constitution, which was approved by the United States Secretary of Interior on July 11, 1989; and

WHEREAS, The Traditional Council of the Tribe ("Tribal Council") is the governing body of the Tribe as specified under Article III, Section I, of the Tribal Constitution; and

WHEREAS, The Tribal Council has the powers necessary to act for the Tribe and to represent the Tribe in all matters under powers vested in it by Article VII of the Tribal Constitution; and

WHEREAS, The Tribal Council has the power to regulate and maintain law and order on lands within the Tribe's jurisdiction; and

WHEREAS, The Tribal Council has the power to provide for the administration of justice by establishing tribal courts; and

WHEREAS, The Tribal Council hereby wishes to approve and adopt the Kickapoo Traditional Tribe of Texas Elder and Vulnerable Adult Protection Code; and

WHEREAS, The Tribal Council wishes to enact the Kickapoo Traditional Tribe of Texas Elder and Vulnerable Adult Protection Code; and

WHEREAS, The Tribal Council finds that it is in the best interest of the Tribe, to approve, adopt and enact the Kickapoo Traditional Tribe of Texas Elder and Vulnerable Adult Protection Code, in substantially the form attached hereto as Exhibit A.

NOW THEREFORE, BE IT RESOLVED, that the Tribal Council hereby adopts, approves, and enacts, the Kickapoo Traditional Tribe of Texas Elder and Vulnerable Adult Protection Code be approved, adopted and enacted in the form attached hereto as Exhibit A; and **FURTHER BE IT RESOLVED,** that the proper officials of the Tribe be, and they hereby severally are, authorized, empowered, and directed, for, in the name of, and on behalf of the Tribe, to execute all such further documents, certificates, or instruments, and to take all such further actions, as any such officer may deem necessary or desirable in order to carry out the foregoing resolution and fully to effectuate the purposes and intents thereof, the taking of such action by such official or officials to be conclusive evidence of such authority, and that all actions taken by the officers of the Tribe to date, in connection with the foregoing resolutions or otherwise, are hereby in all respects confirmed, ratified, and approved in all respects; and **FINALLY BE IT RESOLVED,** that this resolution becomes effective immediately upon Tribal Council execution.

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EXHIBIT A

CHAPTER 15
Kickapoo Traditional Tribe of Texas
ELDER AND VULNERABLE ADULT PROTECTION CODE

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SUBCHAPTER A. GENERAL PROVISIONS

Section 1. Purpose and Policy

This Elder and Vulnerable Adult Protection Code (the "Code") establishes requirements and procedures for reporting and investigating abuse, neglect, and exploitation of elders and vulnerable adults within the jurisdiction of the Kickapoo Traditional Tribe of Texas. It establishes procedures for securing protective services for elders and vulnerable adults where necessary through an order of the Kickapoo Tribal Court. This code is intended to provide the least restrictive alternatives, including leaving the elders or vulnerable adult in their own home, to the extent necessary to prevent harm. It provides for the Kickapoo Traditional Tribe of Texas to petition for the Kickapoo Tribal Court to make a determination of competency so that the KTTT may be appointed guardianship in order to assist an elder or vulnerable adult.

Section 2. Nature and Construction of this Code

- (A) This code provides for civil remedies in the form of elder and vulnerable adult protection orders to address abuse, neglect, or exploitation as defined in this code. The code shall be liberally interpreted in order to achieve its purposes.
- (B) Nothing in this code shall preclude a criminal prosecution in addition to civil penalty, or affect applicable provisions of the laws of the Tribe, if a crime has also been committed.
- (C) Any section or portion of this code containing the word "elder" may be construed to include and mean a "vulnerable adult" or "incapacitated adult."
- (D) This code does not apply to actions to withhold or withdraw life-sustaining treatment in accordance with a person's health care directive that is executed in compliance with applicable law.
- (E) Unless otherwise stated, the standard of proof in all protection order and guardianship proceedings shall be preponderance of the evidence.

Section 3. Definitions

In this Code, unless the context otherwise requires:

A) "Abuse" includes:

1. Assault: an attempt to cause bodily harm to another person through the use of force, or the creation in another of a reasonable fear of imminent physical or other harm.

2. **Battery:** application of force to another person resulting in bodily harm or offensive touching.
3. **Threatening:** words or conduct that place another in fear of physical or other harm on any person or their property, including but not limited to yelling and harsh words.
4. **Coercion:** compelling a person, through force or threat of force, to engage in or abstain from conduct that the person has a right to abstain from or engage in.
5. **Unreasonable confinement, intimidation, or cruelty:** acts which result in physical harm or pain or mental anguish of an elder or vulnerable adult by any person, particularly anyone such as a spouse, a child, other family members, caregiver(s), or other persons recognized by statutory or common law as having a special relationship with or duty to the elder or vulnerable adult.
6. **Sexual abuse:** any physical contact with an elder or vulnerable adult for emotional or physical gratification of the person making the contact and to which the elder or vulnerable adult does not give consent, for which the elder does not have the capacity to consent, or for which consent is obtained by coercion, threat, intimidation or fraud.
7. **Emotional abuse:** infliction of threats, humiliation, or intimidation that cause emotional trauma.
8. **Intimidation:** willfully placing another in fear by coercion, extortion, or duress.
9. **Harassment or stalking:** Unwanted contact in any form, including electronic contact, or any course of conduct directed at a specific person that involves repeated (two or more times) visual or physical proximity, nonconsensual communication, or verbal, written, or implied threats.
10. **Exploitation:** the illegal use of funds, property, or other resources of an elder or vulnerable adult for personal gain by threat, humiliation, intimidation, coercion, deception, or fraud. Exploitation is also failure to use the funds, property, or other resources of any elder or vulnerable adult for the benefit of the elder or vulnerable adult and includes, but is not limited to, leaving a child or children or other persons for indefinite periods of time or under circumstances in which the elder or vulnerable adult cannot adequately care for such children or other persons.
11. **Abandonment:** action or inaction by a person with a duty of care for an elder or a vulnerable adult that leaves the elder or vulnerable adult without the means or ability to obtain Essential Services.

12. Breach of a fiduciary duty: breach by a family member or caregiver of his or her fiduciary duties toward an elder or vulnerable adult.

- B) “Caretaker” shall mean any individual, group of individuals, or institution that is permanently or temporarily responsible by relationship, contract, or court order to provide food, shelter, clothing, medical or other life-sustaining necessities to an elder or vulnerable adult.
- C) “Court” shall mean the court of the Kickapoo Traditional Tribe of Texas Tribal Court commonly used in this Code as KTTT Tribal Court.
- D) “Elder” shall mean any enrolled member of the Tribe who has reached the age of fifty (50) years or older.
- E) “Emergency” shall mean an exigent circumstance in which an elder or vulnerable adult’s health or safety is placed in imminent danger. Imminent danger is when death or severe bodily injury could reasonably be expected to occur without intervention.
- F) “Essential Service” means those services or things necessary to sustain a person’s life, physical and mental health, and general well-being, such as adequate food, clothing, shelter, and health care. It may include services or things considered essential under the person’s customs, traditions and religion, including but not limited to access to traditional foods and access to religious ceremonies or services.
- G) “Family Member” for purposes of this code shall mean immediate family including children, parents, and siblings, and grandparents or grandchildren of an elder or vulnerable adult, as well as extended family members or traditional family members with significant contacts with or responsibilities to care for an elder or vulnerable adult.
- H) “Fiduciary Duty” shall mean a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person, including but not limited to a duty to exercise a high standard of care in assisting that person with Essential Services, as well as managing another’s money or property.
- I) “Guardian” means a person or agency appointed by a court to exercise rights including conservatorship of property and provide for basic needs of an elder or vulnerable adult; a “Limited Guardian” may be appointed to exercise rights and provide for basic needs to the extent that the elder or vulnerable adult is incapacitated from performing those functions without the assistance of a guardian.
- J) “Heritage Personal Property” includes traditional cultural handwork created by the elder or an ancestor, handed down into the possession and care of the elder or vulnerable adult, including but not limited to beadwork, basketry, carvings, tools, or other items of material culture.

- K) “Incapacitated” is the functional inability of a person to sufficiently understand, make, and communicate responsible decisions about him or herself: and to understand the consequences of any such decision, because of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or alcohol. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.
- L) “Least restrictive” is an approach which allows an elder or vulnerable adult the most independence and freedom from intrusion, consistent with their needs, by requiring that the least intrusive method of intervention is used to protect the elder or vulnerable adult from harm, including an attempt to remove the perpetrator while making every attempt to keep the elder or vulnerable adult in his or her own home.
- M) “Neglect” or “Self-Neglect” means any action or inaction by a caregiver, or failure by the elder or vulnerable adult, which leaves the elder or vulnerable adult without the means or ability to obtain food, clothing, shelter, a safe environment, or health care, or to maintain physical and mental health. This includes failing to report abuse, neglect, or exploitation of an elder or vulnerable adult when there is reasonable suspicion. Neglect may also include, but is not limited to, interference with delivery of necessary services and resources, including reasonable accommodation for the elder's practice of religion, tradition, or custom, and a caregiver or required reporter failing to report abuse or neglect of an elder or vulnerable adult. “Self-neglect” does not include the conscious and voluntary decision made as a matter of personal choice of a mentally competent elder or vulnerable adult, to live in circumstances that may threaten his or her own health or safety.
- N) “Officer” shall mean any law enforcement officer.
- O) “Protective (or Representative) Payee” means a person or agency appointed by the Court to receive payment of funds, to secure the elder or vulnerable adult's funds, property, services or other resources, and to expend funds so that the elder or vulnerable adult's needs for food, clothing, shelter, health care, and a safe environment are met.
- P) “Protective Placement” means placement or transfer of an elder or vulnerable adult in a hospital, nursing home, residential care facility, family or community member's home, designated tribal housing, or other suitable placement with the elder's consent or by appropriate legal authority.
- Q) “Kickapoo Adult Protective Services” means the Tribe's program, including the Tribe's Protective Services Worker and the Adult Protection Team, dedicated to protecting elders and vulnerable adults as may be authorized by the Tribe or act under this code to carry out investigations and provide reports to the Court regarding alleged abuse; to assist elders, vulnerable adults, and their families by convening a family conference meeting; to provide protective services and protective plans; and to ensure that responsibilities for Adult Protective Services under this Code are carried out by qualified professional staff

or contractors, or by cooperative contracts or agreements with the Texas State Adult Protection Services.

- R) "Protective Services Worker" means a person or persons who has been appointed or employed by the Tribe and trained to provide protective services to elders and vulnerable adults. The Protective Services Worker may not be appointed as guardian, conservator, or temporary guardian or temporary conservator.
- S) "State" shall mean a geographical area subject to the sovereignty, control or jurisdiction of a State such as Texas.
- T) "Tribe", "Tribal", or "Tribes" shall mean the Kickapoo Traditional Tribe of Texas. The word "tribal" shall refer to other tribes.
- U) "Vulnerable Adult" means a person 18 years of age or older who is an enrolled member of the Tribe and who suffers permanent or temporary impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication, or other impairment such that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person and/or is unable to protect himself/herself from abuse as defined in this Code. The Protective Services Worker may make a finding based on vulnerability at the scene or it may be made by court order, but any determination of mental illness, mental deficiency, or mental disorder shall be made by a licensed mental health professional.

Section 7. Adult Protective Services Worker Goals and Responsibilities

(A) The Adult Protective Services Worker has a duty to provide necessary protection services to an elder or vulnerable adult who has been or is being abused or neglected. Any protection services provided shall be the least restrictive alternative available and necessary to meet the needs of the elder or vulnerable adult, when possible, the affected elder or vulnerable adult, their families and their caregiver(s) shall be consulted in determining what services shall be provided.

(B) In the process of carrying out the responsibilities and duties in this Code, the Adult Protective Services Worker shall make effective use of multidisciplinary services available through all Tribal and/or other public agencies, community-based organizations, and informal resources.

(C) In the process of carrying out the responsibilities and duties in this Code, the Adult Protective Services Worker may request the assistance of the staff or resources of all appropriate Tribal departments, agencies, commissions, or health directors, and may utilize any other appropriate and available tribal public or private agencies, groups or individuals. Interagency cooperation shall include the involvement, when appropriate, of law enforcement personnel, department personnel, medical personnel and any other person or entity deemed necessary due to their specialized training in providing services

to elders or vulnerable adults. Interagency cooperation may also include access to client information necessary for the provision of services to elders or vulnerable adults. Interagency staffing and sharing of client and facility information shall be used, when necessary, to provide services to elders and vulnerable adults.

(D) The Adult Protection Services Worker may work with the Adult Protection Services Department of other countries, states or tribes in accordance with any agreement between the Tribe and the agencies regarding adult protection investigations and services.

Section 8. Rights of Elders, Their Families, and Caretakers

(A) An elder or vulnerable adult may refuse protective services provided that the Kickapoo Adult Protective Services finds there is good cause to believe that the person can take care of him or herself and knows of the services offered, and no emergency exists. An interpreter should be offered if needed during the services provided by Adult Protective Services and Court.

(B) Family members or caregivers may refuse services for themselves but cannot refuse services for the elder or vulnerable adult.

(C) Elders and vulnerable adults may refuse to allow investigators into their own home, but the investigator shall provide information that he or she may obtain a Court order for entry by showing good cause for entry. A caregiver may not prevent an investigator from having any access to privately communicate with an elder.

(D) When a petition is filed with the Court under this title, the Court must make diligent efforts to provide service of notice to the elder or vulnerable adult, the primary caregiver, and any adult children, parents, or siblings, or in the absence of children, parents, or siblings, to the closest known relative of the elder or vulnerable adult.

(E) The elder or vulnerable adult and the primary caregiver are required parties to any Court proceeding under this code. A family member, including an extended family member, may also attend closed proceedings under this Code unless the Court determines that the person does not have sufficient ties with the elder or vulnerable adult, or the person's presence is not in the elder or vulnerable adult's best interest.

(F) The Court may exclude a person, including the caregiver or a party other than the elder or vulnerable adult, from Court proceedings if the Court finds that the attendance of the person is not in the elder or vulnerable adult's best interest, but may not issue an order against that person unless the person has had an opportunity to be heard. Separate hearings may be ordered upon a finding of good cause, including to protect the health and safety of the elder or vulnerable adult.

(G) A family member, including an extended family member, may seek to intervene as a party upon a showing that the family member has sufficient interests in the outcome

of the case, that the party status is necessary to protect the rights of the family member, or would be helpful in protecting the best interests of the elder or vulnerable adult.

(H) The Court may limit a party's access to medical or other confidential records such as financial records as necessary to protect the health, safety, and welfare of the elder or vulnerable adult. A party may petition for the Court to order financial, medical, psychological, or psychiatric evaluation of the elder or vulnerable adult at the party's own expense.

(I) Nothing in this Code shall be construed to mean that a vulnerable adult or elder is abused, neglected, or in need of protective services for the sole reason that he/she relies on treatment from a recognized religious method of healing in lieu of medical treatment, nor shall the provisions of this Code be construed to require any medical care or treatment in contravention of the stated or implied objection of an elder or vulnerable adult, except as noted.

Section 9. Non-Waiver of Sovereign Immunity

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

SUBCHAPTER B. INVESTIGATIONS OF ABUSE/NEGLECT

Section 1. Responsibilities of Kickapoo Adult Protective Services

(A) Kickapoo Adult Protection Services shall promptly investigate, report allegations of abuse, neglect, or exploitation, and may request Tribal law enforcement to assist in such investigations. Adult Protective Services agencies may assist in investigations only if there is a cooperative agreement between the agency and the Tribe. All investigations shall be documented in written reports.

(B) Kickapoo Adult Protection Services shall, upon completion of an investigation, determine whether a Tribal elder or vulnerable adult is in imminent danger of harm and whether an emergency exists; whether the elder or vulnerable adult should be immediately removed from the current situation by emergency order, and shall identify proper placement; and shall determine, in consultation with the Tribal Adult Protective Services Attorney, whether further legal action to ensure protection of an elder or vulnerable adult should be initiated by the Tribe. If a legal action is not warranted, whether voluntary family counseling or provision of services may address problems that led to the report, or whether the report was unwarranted.

(C) Kickapoo Adult Protection Services shall identify available resources and services in order to draft voluntary and involuntary protection plans in cooperation with Tribal programs and other agencies and is authorized to convene Adult Protection Team meetings and family conferences where appropriate to accomplish this purpose. Protective services are provided to an elder or vulnerable adult with consent, or by appropriate legal authority, and include, but are not limited to: social case work, psychiatric and health evaluations, home care, day care, housing assistance, social services, health care, case management, guardianships that were placed under this Code and other services consistent with this code.

(D) Kickapoo Adult Protection Services shall address the potential for abuse, neglect, or exploitation in the Tribal community proactively through the assistance of family members and use of available services, including, where appropriate, by means of voluntary plans including voluntary protective services and guardianships. Kickapoo Adult Protective Services may convene family group meetings to accomplish this purpose.

(E) Kickapoo Adult Protective Services shall report to the Adult Protection Team and the Adult Protection Team shall provide recommendations regarding plans or proposals to promote the long-term well-being of elders or vulnerable adults and their families in the Tribal community.

(F) Kickapoo Adult Protective Services may seek grants and funds through cooperative agreements with federal, state, tribal, and local governments in coordination with the Court, the Elders Department, or other departments of the Tribe.

(G) Kickapoo Adult Protective Services shall coordinate with Texas Adult Protective Services when an investigation involves an elder or vulnerable adult who is not a Tribal member, but residing on the lands of the Tribe or when an elder or vulnerable adult is a Tribal member, but lives outside the lands of the Tribe.

(H) Kickapoo Adult Protection Services shall maintain confidentiality as to all matters involving elders or vulnerable adults, except as necessary to carry out its functions under this code.

Section 2. Interagency Cooperation for Investigations and Required Reports

(A) Kickapoo Adult Protection Services shall conduct investigations, provide ongoing case planning and consultation, and prepare required reports under this Code in cooperation with the following:

1. Any mandated reporter as described in Section 3 below;
2. Adult Protection Team and its members;

3. Consultants specifically authorized by the Tribe to participate in investigations and case planning;
 4. Designated representatives of the State or another tribe, if client information exchanged is necessary to a case under joint investigation or for the joint provision of protective services. Sharing of information considered privileged by Tribal law or policy or other applicable law and requires a Court order.
- (B) An ex parte Court order to disclose information otherwise confidential:
1. May be issued on the request of the Kickapoo Adult Protection Services Attorney where the Court determines that good cause exists to issue such an order, and where other ways of obtaining the necessary information are not available or would not be effective, and where the information is necessary to protect the health, safety, or welfare of the elder or vulnerable adult; and,
 2. Shall limit disclosure to those records essential to fulfill the objectives of the order.

Section 3. Protection Investigation Warrant

- (A) Kickapoo Adult Protective Services may, by and through the Adult Protective Services Attorney, petition the Kickapoo Tribal Court for a Protection Investigation Warrant.
- (B) Any warrant issued pursuant to this Section of the Code shall comply with the procedural requirements as set forth under the laws of the Tribe.
- (C) The Court may issue a Protection Investigation Warrant upon a showing of probable cause by the investigator that elder or vulnerable adult abuse or neglect has occurred and that the family, caregiver(s), elder or vulnerable adult has refused the investigator access.
- (D) Any warrant issued pursuant to this section of the Code shall be executed by an Officer to ensure the safety of the Protective Services Worker. Once the residence or other location is secured, the Protective Services Worker may enter the scene to conduct any necessary assessment or interviews.
- (E) The warrant allows the Protective Services Worker to assess the elder or vulnerable adult's living conditions and interview the elder or vulnerable adult without the family, caregiver or the elder or vulnerable adult's consent. The purpose of the interview is to determine whether or not reasonable grounds exist to believe that the elder or vulnerable adult is incapacitated or has been subjected to abuse or neglect.

Section 4. Duty to Report

(A) Mandated Reporters.

1. Any professional, including but not limited to physicians, dentists, psychologists, social workers, emergency response personnel, or other person who has responsibility for the care of a vulnerable adult or elder and whose examination or observation of the vulnerable adult or elder yields a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of the vulnerable adult, elder, or the property of the vulnerable adult or elder has occurred, shall immediately report or cause reports to be made of such to a Tribal Police Officer and the Tribe's Protective Services Worker.
2. Any guardian or conservator of a vulnerable adult or elder who becomes aware of or suspects abuse, neglect; self-neglect, or exploitation of the vulnerable adult, elder, or the property of the vulnerable adult or elder to which they act as guardian or conservator has occurred, shall immediately report or cause reports to be made of such awareness or suspicion to a Tribal Police Officer and the Protective Services Worker and the KTTT Tribal Court.
3. Any attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax or other financial records of a vulnerable adult or elder, or a person who has responsibility for any other action concerning the use or preservation of a vulnerable adult's or elder's property and who, in the course of fulfilling that responsibility, discovers cause to believe that financial abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or vulnerable adult's or elder's property has occurred, shall immediately report or cause reports to be made of such to a Tribal Police Officer and the Tribe's Protective Services Worker.
4. Any person, including any caregiver, other than one required to report or cause reports to be made in accordance with this Section, who has a reasonable basis to believe that abuse, neglect, self-neglect, or exploitation of a vulnerable adult, elder or the property of a vulnerable adult or elder has occurred, has a duty to report the information to a Tribal Police Officer and the Tribe's Protective Services Worker as soon as possible.

(B) Persons Receiving Reports. All of the reports required in subsection A above, shall be made immediately in person or by telephone to a Tribal Police Officer and the Tribe's Protective Services Worker, and shall be followed by a written report emailed, mailed, or delivered 72 hours or on the next working day if the seventy-two hours expires on a weekend or holiday to a Tribal Police Officer or the Protective Services Worker.

(C) Contents of Reports. Reports pursuant to this section shall contain as much of the following information as possible:

1. The names, tribal status, telephone numbers and addresses of the vulnerable adult or elder and any persons having responsibility, control or custody of the vulnerable adult or elder.
2. The vulnerable adult's or elder's age, the nature and extent of his/her vulnerability.
3. The nature and extent of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or elders property.
4. The name, telephone number and contact information of the person or persons who is/are alleged to have abused, neglected, or exploited the vulnerable adult or elder.
5. The date, time and location of the alleged incident(s).
6. The name, telephone number and contact information of the person reporting the alleged abuse, neglect, self-neglect or exploitation.
7. Any other information that the person reporting believes might be helpful in establishing the cause of the suspected abuse, neglect, self-neglect or exploitation of the vulnerable adult, elder, or the vulnerable adult's or elder's property.

(D) Confidentiality and Immunity of Reporting Party. A person acting in good faith shall be immune from any claim or cause of action stemming from or arising out of making a report under this code. The identity of the reporter of abuse or neglect under this code is confidential and shall not be released unless the reporter consents, or the Court determines that the need of the elder or vulnerable adult exceeds the reporter's right to privacy and mandates disclosure. The reporter has the opportunity to petition and be heard at a closed evidentiary hearing with regard to any such disclosure, and disclosure shall be limited to the extent necessary to protect the elder or vulnerable adult.

(E) Penalties for Failure to Report. Any person who is a mandated reporter and who fails to make any report required in this Code, shall be subject to a civil penalty of up to \$5,000.00, and may be subject to other appropriate discipline if the mandatory reporter is a contractor or employee of the Tribe. Kickapoo Adult Protective Services shall report concerns that a mandatory has failed to comply with mandatory reporting requirements to the Tribal Prosecutor. The Court shall assess the civil penalty after petition by the Tribal Prosecutor, notice and an opportunity for hearing, and a determination that the person had a mandated duty to report, had good reason to suspect abuse or neglect, and failed to report as required by this Code.

(F) Penalties for bad faith reporting, retaliation, or intentionally interfering with an investigation. A person who makes a report of alleged abuse or neglect knowing it to be

false has committed a civil infraction. Any person who retaliates by intimidating, threatening to cause or causing bodily, emotion, property, or financial harm against a person who reports or investigates abuse or neglect, has committed a civil infraction. It is a civil infraction to interfere intentionally with a lawful investigation of suspected abuse or neglect of an elder or vulnerable adult. The Court shall assess the appropriate civil penalty of up to \$5,000.00 after petition by the Tribal Prosecutor, notice, an opportunity for hearing, and a determination that the person made a report in bad faith, or that interference or retaliation as set out in this section has occurred. Notice of such a determination shall also be provided to the person's employer (if the Tribe), and appropriate licensing agencies for appropriate discipline. This Code does not change or affect penalties that may be imposed upon mandated reporters pursuant to other applicable law or licensing requirements.

Section 4. Investigation and Written Investigation Report

(A) Tribal law enforcement, Elder Department's, or other person who receives reports of alleged elder abuse or neglect shall refer all such reports to the Kickapoo Adult Protection Services for investigation.

(B) Kickapoo Adult Protection Services shall conduct, or shall cause to be conducted, an initial investigation within 24 hours if the situation appears to be an emergency and prepare a written summary of the investigation results which shall include all information in part (C) below, as well as results of interviews, observations, and assessments and other fact finding. If the situation is not emergent, the investigation shall be initiated within 72 hours and completed within 20 days. The investigator shall conduct interviews with the elder or vulnerable adult, elder or vulnerable adult's family, caretaker, the person suspected of having committed the abuse, and other persons or agencies with knowledge of the elder's circumstances. The existence and content of medical records shall be ascertained as may be made available by permission of the elder; other reports of abuse or neglect shall be ascertained. The investigator shall assess the elder or vulnerable adult's living conditions. The investigator shall inform all parties of the rights enumerated in this Code.

(C) Tribal agencies, departments, and programs, including the Tribe's Health Clinic, shall provide in a timely manner all relevant reports, files, medical records, welfare check reports, and any other relevant information to the Kickapoo Adult Protective Services request during the investigation of alleged abuse or neglect of an elder or vulnerable adult. Kickapoo Adult Protective Services shall not further disseminate or release such information except as authorized by applicable Tribal or federal statute. Access to other relevant medical and treatment records for purposes of investigation shall be obtained with a duly executed waiver, or by court order.

(D) If there is good cause for the investigator or law enforcement officer to believe that an emergency exists and an elder or vulnerable adult is at risk of immediate or irreparable harm upon personal observation, the investigator and/or law enforcement officer shall take immediate steps to protect the abused person, including transporting

him or her to adequate shelter facilities. Once the person is protected, the Adult Protective Services Attorney shall immediately initiate procedures for obtaining an emergency protection order.

(E) A copy of the investigation report shall be provided to the Tribal Prosecutor and to Tribal law enforcement. The investigation report shall remain confidential and filed with the Kickapoo Adult Protective Services office for a period of five years, even if it is determined that no abuse or neglect has occurred in the present instance.

(F) The investigation report may recommend that a petition for elder protection be filed, or that no such action is warranted. If the investigation concludes that the situation does not warrant a petition for voluntary protective services or protective guardianship, and the Adult Protective Services Attorney concurs, informal resolution services such as family group conferencing or staffing with the Adult Protection Team may be recommended and initiated by the Kickapoo Adult Protection Services Worker in order to develop appropriate voluntary plans for elder support to assist the elder under this Code. Such voluntary protective services or placements are provided subject to available resources and only as determined necessary by Kickapoo Adult Protective Services.

SUBCHAPTER C. VOLUNTARY PROTECTIVE SERVICES PLANS

Section 1. Voluntary Protective Service Plans Eligibility

Protective services will be provided through Kickapoo Adult Protective Services on a voluntary basis when requested by an elder who the Kickapoo Adult Protective Services determines to be in need, or when such services are consented to by a non-incapacitated elder who the Kickapoo Adult Protective Services determines to be in need.

Section 2. Voluntary Protective Service Plans Development

An Agreed Voluntary Protection Plan incorporating such services shall be developed as follows:

(A) Kickapoo Adult Protective Services shall convene a conference meeting including members of the elder's family and/or caretakers and/or service providers as they are determined to be necessary and appropriate parties. If a voluntary protection plan is created, it shall be set forth in writing, including any conditions or requirements to be performed, within agreed time periods. The protection plan shall include services for the elder or vulnerable adult's family and care provider, as Kickapoo Adult Protective Services determines is necessary to protect the elder or vulnerable adult. The elder, and as applicable, involved family members and the elder's caregiver(s) shall also sign the voluntary protection plan.

(B) Proceedings of the family conference shall be confidential and closed to the public. No information obtained at such a conference may be admitted into evidence at a subsequent Court hearing unless all parties agree; provided that the terms of an agreed upon protection plan are admissible as evidence in any subsequent proceeding for an elder protection order.

Section 3. Referral from Voluntary Services to Involuntary Services

If no agreement is reached in the conference in Section 2(A) above, or the parties to a voluntary agreement fail to comply with its terms, a petition for an elder protection order hearing may be filed by the Adult Protective Service Attorney. If Kickapoo Adult Protective Services determines that the facts before it during a conference would be more appropriately handled by the Court, the Kickapoo Adult Protective Services may refer the case to the Adult Protective Service Attorney for an elder protection order.

SUBCHAPTER D. INVOLUNTARY PROTECTION ORDERS

Section 1. Emergency Involuntary Orders and Temporary Protection Plan

(A) If an initial investigation of a report of abuse or neglect indicates that the abuse or neglect is substantial, and there is probable cause to believe that an emergency exists involving danger or a threat of immediate or serious harm to person or property, and no competent person is authorized by law or court order to take necessary steps to protect the elder or vulnerable adult, then upon petition of the Adult Protective Attorney, the Court shall issue a temporary protection order. The Court may order any emergency remedy it deems proper, including:

1. Restrain a person from committing acts of abuse, neglect, or exploitation with respect to elder/vulnerable adult;
2. Exclude a person from the residence of the elder/vulnerable adult, even if this is a residence they share;
3. Prohibit contact, including by mail, telephone, e-mail, or through third parties, with the elder/vulnerable adult except by further order of the Court;
4. Prohibit any party from knowingly coming within, or knowingly remaining within, a specified distance of a specified location;
5. Order emergency removal of an elder/vulnerable adult to protective placement;
6. Requiring family or caregiver(s) or any other person(s) with a fiduciary duty to the elder or vulnerable adult to provide an accounting to the Court of the elder or vulnerable adult's funds and property;

7. Implement a Temporary Protection Plan, if one is available, from Kickapoo Adult Protective Services, pending a full hearing.

(B) Parties entitled to service of emergency orders, notice, and opportunity to appear at hearings and other non-voluntary procedures under this code are: the elder or vulnerable adult; any third party person or persons restrained or otherwise subject to an emergency order; any family members that the elder or vulnerable adult wishes to have appear; and any guardian or temporary caregiver with responsibility for the elder or vulnerable adult.

(C) An emergency protection order shall be effective for a fixed period not to exceed 45 days, except for good cause shown. A hearing shall be set within 72 hours from the issuance of the emergency protection order, and shall be held within 14 days unless there is good cause to grant a delay. Any person restrained or otherwise subject to the emergency protection order shall be personally served with a copy of any temporary restraining order along with a copy of the petition and notice of the date for the hearing, and all parties, and any attorneys that have been retained by a party, are permitted to attend the hearing. At the hearing, the sufficiency of the petition will be determined on a totality of circumstances. The Court may continue a temporary protection order for good cause. The Court shall state all good cause on the record.

(D) If a party cannot be located for service, the emergency order of protection shall be served via public notice in the tribal service area. If service of process was not successful within 7 days, the Court and the elder or vulnerable adult respondent shall be notified of the fact. The Court may continue the hearing if the party is deemed a necessary party, and the emergency protection order shall remain in effect for an additional term of 45 days unless good cause exists to terminate it.

Section 2. Procedures for Involuntary Protection Orders

(A) Elder or Vulnerable Adult Protection Order.

1. The Adult Protective Services Attorney, after consultation with the Kickapoo Adult Protective Services, and based on the results of an investigation and report provided under this Code, may file a petition with the KTTT Tribal Court seeking a Protection Order. The petition shall include the name and interest of the petitioner, the name and address or location of the elder or vulnerable adult with a description of the elder's situation, including a statement of the specific facts or circumstances from which relief is sought, including date(s), time(s), and location(s) at which the alleged facts occurred; the proposed protective services; previous attempts to get the elder's consent for protection; and other facts that will assist the Court.
2. The Court may order a medical or other professional evaluation if such evaluation would assist the Court to determine degree of capacity or

incapacity, and any relevant evidence of abuse or neglect once the petition is filed.

3. The Kickapoo Adult Protective Services shall prepare a proposed Protection Plan in consultation with the elder, relevant family members and/or caregiver(s), and the Adult Protection Team. With the elder's consent, appropriate voluntary services may be initiated pending the fact-finding hearing.
4. The Court may appoint an attorney ad litem to advise the Court on best interests of the elder or vulnerable adult and to advise the Court regarding any protection plans that are being proposed. The guardian ad litem shall meet, at a minimum, with the elder or vulnerable adult, family members, caregiver(s), and other persons or agencies that may be designated by the Court.

(B) Notice and Service of Process for Hearing. Upon the receipt of the petition the Court shall order a Fact-Finding Hearing on the petition, which shall be held not later than 14 days from the date of the order. Personal service shall be made upon all parties. In the event that personal service cannot be timely made, the Court may set a new hearing date to allow sufficient time to complete service.

1. On a showing that personal service cannot be made upon a party, the Court may in its discretion allow for service by certified mail with return receipt requested or by publication of a hearing on a petition for a protection order, or of the entry of a protection order. Reasons for allowing service of notice by mail or by publication shall include, but not be limited to, the following:
 - a. That law enforcement, a process server, or other party designated by the Court to provide service has made a good faith effort to locate the party to provide service, but without success.
 - b. That the party has no known address or whereabouts, but that there is good cause to believe that the party has engaged in activity that constitutes elder/vulnerable adult abuse on a Tribal member or within the Tribe's jurisdiction.
 - c. That there is good cause to believe the party is hiding to avoid service or contact with law enforcement.
2. Notice via publication of the entry of a protection order shall be considered complete three weeks after publication.
3. Notice by mail of the entry of a protection order shall be considered complete on the Court receiving the return receipt confirming delivery.

(C) Fact Finding Hearing.

1. The Court shall first address the issue of capacity, and upon a finding based on clear and convincing evidence that the elder or vulnerable adult is incapacitated and unable to consent to necessary services or to protective placement, the Court shall proceed with the issue of whether judicial intervention is necessary because the elder or vulnerable adult has been or is at risk of abuse or neglect. All relevant evidence that is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value, including hearsay that is corroborated by other evidence. All parties shall be afforded an opportunity to examine, and challenge written reports, and cross examine individuals whose testimony is presented. The Court may rely on virtual hearings or conference by telephone or another electronic device that permits all those appearing or participating to hear and speak to one another.
2. The Court shall make a decision at the conclusion of the hearing. If the allegations of the petition regarding abuse or neglect are not substantiated by clear and convincing the evidence, the Court shall dismiss the matter. If the allegations of the petition are sustained, the Court shall find the elder or vulnerable adult needs protection and enter orders to protect the elder or vulnerable adult. At the Court's discretion, a hearing to determine the provisions of an order may be conducted immediately or at an appropriate interval following the fact-finding hearing.
3. The fact-finding hearing under this section shall be a closed proceeding.

(D) A Protection Order shall incorporate any appropriate and/or agreed Protection Plan.

The Protection Order shall incorporate, as appropriate, services according to any Protection Plan created by the Kickapoo Adult Protective Services, in consultation with the Adult Protection Team, or Agreed Order developed in consultation with the elder or vulnerable adult's family and extended family. Such order shall provide for the least restrictive alternatives while meeting the elder or vulnerable adult's needs. The Protection Plan may include services for the elder's family or caregiver(s), as necessary to protect the elder. Necessity shall be determined by the Court. An order may also:

1. Secure removal of the elder or vulnerable adult to a safe location.
2. Appoint a representative, guardian, limited guardian, or a protective payee for the elder or vulnerable adult. The Court may set terms and conditions for a protective payee, guardian, or limited guardian including an oath, bond, insurance, or other provisions to protect the elder or vulnerable adult. Any such person appointed has a fiduciary responsibility toward the elder or vulnerable adult. The Court shall set documentation and reporting requirements for any person authorized to receive payments of funds, to secure the elder or vulnerable adult's funds, property, services, or other resources, or to expend funds.

3. If the Court determines an elder or vulnerable adult has been abused or neglected, the Court may make an order against the abuser if he or she has had notice and opportunity to be heard at the hearing, including opportunity to cross examine individuals whose testimony is presented. As the Court deems appropriate, the order for protection of the elder or vulnerable adult may:
 - a. Restrain the abuser from committing any act of harm to an elder or vulnerable adult including but not limited to emotional and financial abuse, or from contact with the elder or vulnerable adult; and may exclude the abuser from the residence and financial assets of the elder or vulnerable adult or from any specified location for a specified period or until further ordered by the Court, and prohibit contact, including by mail, e-mail, telephone, or by using third parties, for a specified period or until further ordered by the Court;
 - b. Require an accounting of the elder or vulnerable adult's income or other assets or resources as the respondent's expense;
 - c. Restrain or terminate any transfer of the elder or vulnerable adult's property for a specified period of time;
 - d. Require the abuser to pay the costs incurred with bringing the action;
 - e. Order any payments the abuser receives from the Tribe to be withheld in order to pay restitution costs;
 - f. Require the abuser to do community service; or,
 - g. Impose any other financial or civil penalties as may be provided by the laws of the Tribe.
4. Denials and Appeals. If the court declines to issue a protection order, the Court shall state the reasons for the Court's denial in writing. All Orders are final and non-appealable.
5. Review Hearings, Modification of Protection Order. Review by the Court of the need to continue a protection order shall occur three months, or earlier upon motion to ensure all assets and information has been submitted. Thereafter, every 12 months the review hearing shall include an accounting for the elder or vulnerable adult's funds, property, credit, services, or other resources if the Court has designated a protective payee or guardian with fiduciary responsibility for safeguarding or expanding resources. The Court shall review all available information provided by the Kickapoo Adult Protective Services about the elder or vulnerable adult including services provided, mental and physical status, living conditions, and other information that may be helpful to the Court. After each such review, the Court may extend or amend the protection order if cause is shown by clear and convincing evidence.

- a. There shall be no need to serve a review hearing order on a party where such party failed to appear or did not provide the Court with an address where he or she can receive mail unless the underlying order has been modified. Where the underlying order has been modified, the Court shall arrange service by serving the assigned attorney.

Section 3. Confidentiality of Investigative Reports and Court Records

Records of investigations and Court proceedings under this title are confidential. Only the elder or vulnerable adult, Kickapoo Adult Protective Services, Tribal law enforcement, court officials, attorneys for the parties, the Adult Protective Services Attorney, the Tribal Prosecutor, medical staff treating the elder or vulnerable adult, and other persons determined by the Court to have good cause, may view the records.

SUBCHAPTER E. GENERAL COURT PROVISIONS

Section 1. Tribal Court Jurisdiction

The KTTT Tribal Court has original jurisdiction over all proceedings arising under this Code, and actions arising under the customs and traditions of the Kickapoo Tribe of Indians affecting elder or vulnerable adult protection and welfare which involve any enrolled elder or vulnerable adult of the Tribe. The Tribe intends to vest the Court with the fullest jurisdiction possible, to protect the Tribe's elders and vulnerable adults. Protective orders filed in any other court of competent jurisdiction that pertain to Tribal members or other persons within the jurisdiction of the Tribe, shall need to be domesticated and recognized in the KTTT Tribal Court, to protect the health, safety or welfare of an elder or vulnerable adult. As an initial matter in all cases brought before the Court, the Court shall:

- (A) Make a determination membership or eligibility for membership in the Tribe, if the elder or vulnerable adult does not have an enrollment card, in consultation with the Tribe's Enrollment Department;
- (B) Determine whether there has been a guardian or conservator previously appointed by a court of competent jurisdiction. However, completing such determination shall not prevent the Court from acting under this code to provide an emergency protection order;
- (C) In the event that a guardian or conservator has previously been appointed for a Tribal member elder or vulnerable adult in another court of competent jurisdiction, the Court shall, upon request of the petitioner, conform the Court's concurrent jurisdiction, and provide notice to such court that transfer of jurisdiction to the KTTT Tribal Court would be accepted if provisionally ordered upon the other court's own motion, or pursuant to a petition for transfer by the elder or vulnerable adult, the guardian or conservator, or another person wishing to assume the guardianship or conservatorship.

Section 2. Procedures for Transfer of Jurisdiction to the Kickapoo Tribal Court

- (A) To confirm transfer of a guardianship or conservatorship of an elder or vulnerable adult Tribal member provisionally transferred to the KTTT Tribal Court from another state or tribal court, the party who petitioned for the provisional order of transfer shall petition the Court to accept the guardianship or conservatorship. The petition must include a certified copy of the other court's provisional order of transfer.
- (B) Notice of a petition under subsection (A) of this section must be given to those persons that would be entitled to notice if the petition were for the appointment of a guardian or issuance of a protection order under this code.
- (C) On request of the guardian or conservator, the elder or vulnerable adult, or any other person required to be notified of the proceeding, the Court shall hold a hearing on a petition filed pursuant to subsection (A) of this section.
- (D) The Court shall issue an order provisionally granting a petition filed under subsection (A) unless an objection is made, and the objector establishes that transfer of the proceeding would be contrary to the interests of the elder or vulnerable adult.
- (E) The Court shall issue a domesticated order accepting the proceeding and appointing the guardian or conservator upon its receipt from the court from which the proceeding is being transferred of a final order transferring the proceeding to the KTTT Tribal Court.
- (F) In granting a petition under this section, the Court shall recognize a guardianship or conservatorship order from the other state or tribe, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.
- (G) Not later than one month after the issuance of the final order accepting transfer of a guardianship or conservatorship, the Court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of the Kickapoo Traditional Tribe of Texas.

Section 3. Procedures for Transfer of Jurisdiction from the KTTT Tribal Court

- (A) A guardian of the person or estate of an elder or vulnerable adult may petition the Court for a transfer of guardianship to another tribal or state court.
- (B) Notice of a petition under subsection (A) of this section must be given to those persons that would be entitled to notice if the petition were for the appointment of a guardians or issuance of a protection order under this Code.

(C) On the Court's own motion or on request of the guardian or conservator, the elder or vulnerable adult, or any other person required to be notified of the proceeding, the Court shall hold a hearing on a petition filed pursuant to subsection (A) of this section.

(D) The Court shall issue an order provisionally granting a petition for transfer of guardianship and shall direct the guardian of the person or estate to petition for guardianship in the other court if the Court is satisfied that the guardianship will be accepted by that court and the Court also finds that:

1. The elder or vulnerable adult is physically present in or is reasonably expected to move permanently to the other state or tribal jurisdiction;
2. An objection to the transfer has not been made or, if an objection has been made, the objector has not established that transfer of the proceeding would be contrary to the interests of the elder or vulnerable adult;
3. Plans for care and service for the elder or vulnerable adult are reasonable and sufficient and include means and assurances to provide continuing relationship with the elder or vulnerable adult's extended family, traditional cultural institutions, and the Tribal community.
4. Adequate arrangements consistent with the Tribe's law and policies will be made for management of the protected persons' real, personal, and Heritage Personal Property.

(E) The Court shall issue a final order confirming the transfer and terminating the guardianship of the person or estate of the elder or vulnerable adult upon its receipt of:

1. A provisional order accepting the proceeding from the court to which the proceeding will be transferred; and,
2. Documentation including inventory and accounting of resources and property at the time of transfer such as required under this Code.

Section 4. Role of the Adult Protective Services Attorney.

The role of the Adult Protective Services Attorney under this Code is to:

- (A) File petitions with the Court as provided in this Code;
- (B) Represent the Tribe in all proceedings under this Code; and
- (C) Perform such other duties as the Court or this Code may require.

Section 5. Non-Privileged Communication

(A) Except as provided in subsection B of this section, the physician-patient privilege, therapist-patient or any other privilege, except the attorney-client privilege, provided for by the laws of the Tribe shall not pertain in any civil or criminal litigation in which a vulnerable adult's or elder's exploitation, abuse or neglect is an issue, nor shall they pertain in any investigation of a vulnerable adult's or elder's exploitation, abuse or neglect conducted by a Tribal Police Officer or a Protective Services Worker.

(B) In any litigation in which abuse, exploitation, self-neglect or neglect of a vulnerable adult or elder is an issue, any traditional religious and spiritual leader shall not be examined as a witness concerning any confession made to him/her in his/her role as a clergyman or a priest.

SUBCHAPTER F. GUARDIANSHIPS OF ADULT OR VULNERABLE ELDER FILED BY ADULT PROTECTIVE SERVICES

Section 1. Full or Limited Guardianships

The Tribe on their own or on the behalf of any interested person, may petition for a limited or full guardianship of an elder or vulnerable adult that has been found by the KTTT Tribal Court incapacitated, who is unable to manage all or some of his or her own affairs. A guardianship must promote and protect the well-being of the elder or vulnerable adult and be designed to encourage maximum self-reliance and independence in the elder or vulnerable adult, and may be ordered to the extent that the elder or vulnerable adult's physical or mental limitations require assistance.

Section 2. Petitions

(A) The contents of a petition for guardianship shall be filed by KTTT Adult Protective Services and include:

1. The elder or vulnerable adult's name, birth date, residence, Tribal enrollment number, address of the person's own home, or locations or institution (name and address) where the elder or vulnerable adult has resided and is now located, if not at his or her own home;
2. The petitioner's name, birth date, residence, tribal affiliation, and relationship to the elder or vulnerable adult;
3. A description of the physical and/or mental problems or limitations that make the elder or vulnerable adult unable to manage his or her own affairs;
4. A doctor's report or letter, under oath, to the effect that the vulnerable adult is not presently able to handle his or her property and affairs, the anticipated

duration of the incapacity, and any prior judicial finding of incapacity, if available;

5. If a limited guardianship over the elder or vulnerable adult's person is requested, then a description of the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required;
6. If a limited or full guardianship over any or all real property is requested, then a general description of the personal or non-trust property of the elder or vulnerable adult;
7. If a limited or full guardianship over any or all of the financial affairs is requested, then a general description of the income or other financial resource or personal property of the elder or vulnerable adult;
8. The names, addresses, and relationship, if reasonably available, of the elder or vulnerable adult's spouse, children, parents, and any siblings, grandchildren or other persons who have been significantly involved in the care of the elder or vulnerable adult during the past three years, and the name or any other person(s) and relationship to the elder or vulnerable adult who may be available to share the guardianship responsibilities with the petitioner;
9. Whether a limited or full guardian has been appointed for the elder or vulnerable adult in any other court;
10. Whether the elder or vulnerable adult has provided for powers of attorney or appointment of representative payee on his or her own behalf;
11. The requested length of time for which the petitioner is requesting the guardianship

(B) Service of the Petition and Notice of Hearing shall be provided as follows:

1. Notice of the guardianship hearing and a copy of the petition shall be personally served upon the elder or vulnerable adult for whom the guardianship is requested, the person or persons proposed as guardian for the elder or vulnerable adult, any family members whom the elder or vulnerable adult wishes to have appear, and any existing guardian or primary caregiver with responsibility for the elder or vulnerable adult.
2. Notice and a copy of the petition shall be served by certified US mail to parents and any adult children of the elder or vulnerable adult, the spouse of the elder or vulnerable adult, and any other person with whom the elder or vulnerable adult is living or who is serving as a care provider or undertaking fiduciary responsibilities pursuant to a power of attorney or protective payee appointment.

3. A hearing on the Petition for Guardianship shall be held not less than 21 days or more than 45 days from the service of the notice and petition unless good cause is shown.

Section 3. Attorney Ad Litem

The Court may appoint an attorney ad Litem at its discretion in order to represent the elder or vulnerable adult, if it appears from medical or other reports submitted with the petition that his or her interests will not be adequately represented, or that he or she may not be able to participate in or assist counsel during guardianship hearings.

Section 4. Emergency Appointment of Temporary Guardian

In the event of an emergency, where serious harm to the allegedly incapacitated elder or vulnerable adult's health or property is likely to occur before a hearing can be held, the Court may appoint, with or without notice, a temporary guardian for the allegedly incapacitated elder or vulnerable adult, for a specified period not to exceed two (2) months. The Court shall not invest the temporary guardian with more powers than are required by the circumstances necessitating the appointment.

Section 5. Initial Finding of Jurisdiction

The Court shall make an initial determination regarding its jurisdiction over the elder or vulnerable adult, and whether another court of competent jurisdiction has previously issued orders of capacity, guardianship, or conservatorship.

Section 6. Hearings and Appointment

(A) The elder or vulnerable adult named in the petition shall be present at all hearings unless the person is incapacitated and unable to appear as documented by a physician, or files a declaration with the Court requesting that the hearing proceed without them. An appointed attorney ad litem may file an affidavit with the Court stating that:

1. He or she has fully explained the nature of the hearing to the elder or vulnerable adult and to the best of their belief the elder or vulnerable adult has understood the nature of the hearing and has clearly expressed a desire not to be present; or
2. That to the best of his or her information and belief, the elder or vulnerable adult is incapable of understanding the nature of the hearing or participating in the hearing.

Upon a finding from the evidence that the elder or vulnerable adult cannot participate in the hearing(s), the court may waive his or her appearance, provided that counsel is present at every hearing on the merits of the petition, in the elder or vulnerable adult's behalf.

(B) At the hearing, the Court shall examine the petition and take such testimony as any interested party wishes to present. The petitioner must prove by a preponderance of the evidence that the elder or vulnerable adult is unable to manage his or her own affairs due to loss of memory or reasoning ability, acute alcoholism or abuse of drugs, mental illness, or other medical condition or incapacity, and that the elder or vulnerable adult lacks the ability to manage his or her own affairs to the extent that his or her personal health or physical and financial security is measurably threatened, and there are no less restrictive alternatives reasonably available to remedy these problems.

(C) The Court shall make specific findings as to the above. If the Court determines that a limited or full guardianship is necessary to protect the person or property of the elder or vulnerable adult, the Court shall make further written findings regarding the scope of the guardianship, and as to whether the limited or full guardianship should be shared among one or more family members or interested persons. The Court will require a criminal background check of potential guardians before issuing a final order. The guardian powers shall extend only to such areas specifically stated in the findings and order, and such powers shall be no more extensive than is necessary to address the facts proven by the petitioner. The preference of the elder or vulnerable adult as contained in an unrevoked durable power of attorney or as otherwise clearly stated, shall control selection of the limited or full guardian or guardians except for good cause or disqualification.

(D) The order shall clearly state the time of guardianship review, and reporting requirements.

Section 7. Guardian Inventory

(A) Persons appointed a limited or full guardianship over the income or personal or real property of the elder or vulnerable adult shall file an inventory with the Court of all such income and personal or real property within 90 days or at such time as may be extended by the Court, upon a showing of good cause for requesting such extension.

(B) The Court may require certain limited or full guardianship funds be placed into a judicially blocked account or bank account.

Section 8. Guardianship Requirements and Reports, Guardianship Review Hearings

(A) **Guardianship Reports Required.** Every guardian shall provide a written report at least once a year or more frequently upon order of the Court, describing the actions of the guardian on behalf of the elder's or vulnerable adult's person and/or estate. Alternatively, the Court may, on the motion of any party or at its own discretion, set an annual review hearing.

(B) **Contents.** The report or hearing shall include, but not be limited to, the following information:

1. Actions taken to provide the elder or vulnerable adult with continued access to his or her accustomed spiritual and religious community;
2. Actions taken to provide the elder or vulnerable adult with access to appropriate Tribal community social and cultural activities, and to family and extended family gatherings;
3. Actions taken to provide necessary and appropriate medical or therapeutic treatment, and other services that the elder or vulnerable adult is receiving, along with the names and contact information of service providers;
4. The current address and living situation, including names, contact information, and responsibilities of all caregivers and/or family members providing assistance to the elder or vulnerable adult;
5. Proposed or anticipated changes, including changes of residence, in order to improve the elder or vulnerable adult's living situation; or additional assistance or services deemed required; and
6. Proposed transfers of property, or makings of a Will.

(C) Final Report. Within 30 days of the death of the elder or vulnerable adult, a final report shall be filed with the Court including all of the above information, including additional information regarding the transfer of remaining resources to the estate of the elder or vulnerable adult.

(D) Service of Reports. A copy of guardianship reports shall be served on Kickapoo Adult Protective Services.

Section 9. Disposition of Property

No guardian may transfer, encumber, or dispose of the elder or vulnerable adult's real estate or personal property interests or Heritage Personal Property, or prepare or have prepared by another a Will on behalf of the elder or vulnerable adult for any property, including Indian trust property, without a finding and order of the Court that such action is in the best interest of the elder or vulnerable adult.

Section 10. Termination/Removal of Guardianship

(A) Failure to file an initial inventory or to appear and file a written report at the time of a scheduled review shall constitute grounds for terminating the limited or full guardianship, provided that the limited or full guardian is given 30 days' notice and an opportunity to request a rescheduling of his or her appearance, and request to file a late report, but not later than 15 days from receipt of notice unless extended by the Court for good cause, in order to avoid termination of the guardianship.

(B) A finding of failure to fulfill limited or full guardianship duties in a reasonable and responsible manner after a review hearing shall be caused to terminate the limited or full guardianship. A hearing on the proposed termination may be filed on the Court's own motion or on the motion of any interested party and shall be scheduled no less than one (1) month from the filing and service to all interested parties, of the motion to terminate.

(C) The limited or full guardianship shall automatically terminate on the death of an elder or vulnerable adult. The guardian shall provide an accounting of resources and property at the time of death to the Court not later than three (3) months from the death of the elder or vulnerable adult, and the Court may require the guardian to appear at a hearing on the matter.

(D) If the Court terminates a limited or full guardianship and the elder or vulnerable adult continues to be in need of a guardian, the Court will appoint a temporary guardian, and Kickapoo Adult Protective Services will provide assistance and services to protect and care for the health, safety, and welfare of the elder or vulnerable adult pending a hearing for appointment of another full or limited guardian.

(E) If the Court terminates a limited or full guardianship and the elder or vulnerable adult continues to need a guardian, the Court may consider transfer of guardianship to another court of competent jurisdiction, as determined necessary and appropriate by the Court.

Section 11. Guardianship Records

The clerk of the Court shall keep a permanent file of all records pertaining to each limited or full guardianship proceeding. Any limited or full guardian duly appointed shall be entitled to receive, without charge, certified copies of letters of limited or full guardianship.