

**TITLE 5 – CIVIL CODE**  
**CHAPTER 5 – ELDERLY AND ADULT PROTECTION**

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*Adopted on May 24, 1990 as revised Law & Order Code by Resolution No. C5-103-90 and Ordinance No. 5*

*Adopted January 28, 2003 as Pascua Yaqui Code and rescinded all prior codes by Resolution No. C01-04-03*

*Recodified on August 9, 2006 by Resolution No. C08-313-06.*

**Section 10 Declaration of Purpose (5 PYTC § 5-10)**

It is the tradition and custom of the Yaqui people to honor and protect their elderly as they are the possessors of the spiritual and collective wisdom and traditions of the Pascua Yaqui Tribe of Arizona which are passed on from generation to generation. As such, the elderly of the Pascua Yaqui Tribe warrant the special concern and protection of the people of the Pascua Yaqui Tribe. This Elderly and Adult Protection chapter is to be liberally construed for their protection.

**Section 20 Definitions (5 PYTC § 5-20)**

- (A) "Abuse" means:
- (1) Intentional infliction of physical harm.
  - (2) Injury caused by negligent acts or omissions.
  - (3) Unreasonable confinement.
  - (4) Sexual abuse or sexual assault.
- (B) "Exploitation" means the illegal or improper use of an incapacitated adult or his resources for another's profit or advantage.
- (C) "Elderly" shall mean any person who has reached the age of 55 years or older.
- (D) "Incapacity" means impairment by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced aged, chronic use of drugs, chronic intoxication or other cause to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.
- (E) "Neglect" means a pattern of conduct resulting in deprivation of services necessary to maintain minimum physical and mental health.
- (F) "Protective services" means a program of identifiable and specialized social services that may offer social services appropriate to resolve problems which have produced visible signs of incapacitation and abuse, exploitation or neglect.
- (G) "Protective services workers" means a person who has been selected by and trained under the requirements prescribed by the Tribal Social Services Department to provide protective services.

**Section 25 Protective Services; Program Goals (5 PYTC § 5-25)**

- (A) Tribal protective services programs shall seek to maintain the adult in his familiar environment by strengthening his capacity for self-maintenance or by providing supportive services.
- (B) Nothing in this section shall be construed to mean that an adult is abused, neglected or in need of protective services for the sole reason that he relies on treatment from a recognized religious method of healing in lieu of medical treatment.

**Section 30 Tribal Protective Services Workers; Powers and Duties (5 PYTC § 5-30)**

- (A) A Tribal protective services worker shall:
  - (1) Receive reports of incapacitated and abused, exploited or neglected adults and elderly.
  - (2) Receive from any source, oral or written information regarding an adult or elderly who may be in need of protective services.
  - (3) Upon receipt of such information, make an evaluation to determine if the adult or elderly is in need of protective services and what services, if any, are needed.
  - (4) Offer an adult or elderly in need of protective services or his guardian, whatever services appear appropriate in view of the evaluation.
  - (5) File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator or make application for a special visitation warrant. Proceedings for guardianship of adult incompetent or incapacitated adults shall be the same as for guardians of minors, but shall be in the Tribal Courts. Grounds for incompetence shall be established under 5 PYTC § 6-50.
- (B) The Tribal Social Services Department may be appointed as guardian or conservator of an elderly person suffering from incapacity as defined by the chapter.
- (C) A Tribal adult and elderly protective services worker is immune from civil liability for applying for a special visitation warrant or for filing a petition for guardianship or conservatorship unless the application or filing is done in bad faith.

*Legislative History: Amended 1/6/94 By Tribal Council Resolution No. C1-02-94*

**Section 40 Immunity of Participants; Non-Privileged Communication (5 PYTC § 5-40)**

- (A) Any person making a complaint, furnishing a report, information or records required or authorized by this chapter or otherwise participating in the program authorized by this chapter or in a judicial or administrative proceeding or investigation resulting from reports, information or records submitted or obtained pursuant to this chapter, is immune from any civil or criminal liability by reason of such action, unless the person acted with malice or unless such person has been charged with or is suspected of incapacitating, abusing, exploiting or neglecting the adult or elderly in question. Except as provided in Subsection (B) of this section, the-physician-patient privilege, husband-wife privilege or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by the law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of the confidential communications, shall not pertain in any civil or criminal litigation in which an adult's or elderly's exploitation, abuse or neglect is an issue nor in any

judicial or administrative proceeding resulting from a report, information or records submitted or obtained pursuant to Section 50 nor in any investigation of an incapacitated adult's or elderly exploitation, abuse or neglect conducted by a peace officer or a protective services worker.

- (B) In any civil or criminal litigation in which incapacitation, abuse, exploitation or neglect of an adult or elderly is an issue, a clergyman or priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman or a priest in the course of the discipline enjoined by the church to which he belongs.

**Section 50      Duty to Report, Abuse, Neglect and Exploitation of Incapacitated Adults or Elderly;  
Duty to Make Medical Records Available (5 PYTC § 5-50)**

- (A) A physician, hospital intern or resident, surgeon, dentist, psychologist, social worker, peace officer or other person who has the responsibility for the care of an adult or elderly who suffers from incapacity and whose examination or observation of the adult or elderly yields a reasonable basis to believe that abuse or neglect of the adult or elderly has occurred or the exploitation of the adult's or elderly's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective service worker. The guardian or conservator of an incapacitated adult or elderly shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within 48 hours or on the next working day if the 48 hours expires on a weekend or holiday.
- (B) An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of an adult or elderly who suffers from incapacity or a person who has responsibility for any other action concerning the use or preservation of the adult's or elderly's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult's or elderly's property has occurred or that abuse or neglect of the adult or elderly has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a Tribal protective services worker.
- (C) Reports pursuant to Subsections (A) and (B) shall contain:
  - (1) The names and addresses of the adult or elderly and any persons having control or custody of the adult or elderly, if known.
  - (2) The adult's or elderly's age and the nature and extent of this incapacity.
  - (3) The nature and extent of the adult's or elderly's injuries or physical neglect or the exploitation of the adult's or elderly's property.
  - (4) Any other information that the person reporting believes might be helpful in establishing the cause of the adult's or elderly's injuries or physical neglect or of the exploitation of the adult's or elderly's property.
- (D) Any person other than one required to report or cause reports to be made in Subsection (A) who has a reasonable basis to believe that abuse or neglect of an incapacitated adult or elderly has occurred may report the information to a peace officer or to a Tribal protective services worker.
- (E) A person having custody or control of medical or financial records of an incapacitated adult or elderly for whom a report is required or authorized under this Section shall make such records, or a copy of such records, available to a peace officer or Tribal adult and elderly protective services worker investigating the incapacitated adult's or elderly's neglect, exploitation or abuse on written request for the records signed by the peace officer or Tribal adult and elderly protective services

- worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative or authorized capacity under this section.
- (F) If reports pursuant to this section are received by a peace officer, he shall notify the adult protective services of the Tribe's Department of Social Services as soon as possible and make such information available to them.
  - (G) A person required to receive reports pursuant to Subsections (A), (B), or (D) may take or cause to be taken photographs of the abused adult or elderly and the vicinity involved. Medical examinations including radiological examinations of the involved adult or elderly may be performed. The person, department, agency, or court that initiates such photographs, examinations, accounts, inventories or adults shall pay the associated costs in accordance with the existing statutes and rules. [If any person is found to be responsible for the abuse, neglect or exploitation of an incapacitated adult or elderly in a criminal or civil action, the Tribal Court may order the person to make restitution as the Court deems appropriate.]
  - (H) If psychiatric records are requested pursuant to Subsection (E), the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:
    - (1) Personal information about individuals other than the patient.
    - (2) Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.
  - (I) If any portion of a psychiatric record is excised pursuant to Subsection (H), the Tribal Court, upon application of a peace officer or adult and elderly protective services worker, may order that the entire record or any portion of such record containing information relevant to the reported abuse or neglect be made available to the peace officer or adult and elderly protective services worker investigating the abuse or neglect.
  - (J) A person found guilty of violating any provision of this section may be sentenced to imprisonment for a period not to exceed 365 days or to pay a fine not to exceed \$5,000, or both.

**Section 60      Permitting Life or Health of an Incapacitated Adult or Elderly to be imperiled by Neglect; Classifications; Civil Remedy (5 PYTC § 5-60)**

- (A) An incapacitated adult or elderly whose life or health is being or has been endangered, injured or imperiled by neglect, abuse or exploitation, may file an action in Tribal Court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such incapacitated adult or elderly, for having caused or permitted such conduct.
- (B) The tribe may file an action pursuant to this section on behalf of those persons endangered, injured or imperiled to prevent, restrain or remedy the conduct described in this section.
- (C) The Tribal Court has jurisdiction to prevent, restrain and remedy the conduct described in this section, after making provision for the rights of all innocent persons affected by such conduct and after hearing or trial, as appropriate, by issuing appropriate orders.
- (D) Prior to a determination of liability, the orders may include, but are not limited to, entering restraining orders or temporary injunctions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers and the enforcement of constructive trusts, as the Court deems proper.

- (E) After a determination of liability, such orders may include, but are not limited to:
- (1) Ordering the payment of actual and consequential damages, as well as punitive damages, costs of suit and reasonable attorney fees, to those persons injured by the conduct described in this section.
  - (2) Ordering the payment of all costs and expenses of the prosecution and investigation of the conduct described in this section, civil and criminal, incurred by the Tribe as appropriate to be paid to the general fund of the Tribe.
- (F) A defendant convicted in any criminal proceedings is precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding. For the purposes of this subsection, a conviction may result from a verdict or plea, including a plea of no contest.
- (G) The initiation of civil proceedings pursuant to this section shall be commenced within seven years after actual discovery of the cause of action.
- (H) The standard of proof in actions brought pursuant to this section is the preponderance of the evidence.
- (I) The Tribal prosecutor may, upon timely application, intervene in any civil action or proceeding brought under this section if the Tribal prosecutor certifies that in his opinion the action is of special public importance. Upon intervention, the Tribal prosecutor may assert any available claim and is entitled to the same relief as if the Tribal prosecutor had instituted a separate action.
- (J) In addition to the Tribe's right to intervene as a party in any action under this section, the Tribal prosecutor may appear as a friend of the court in any proceeding in which a claim under this section has been asserted or in which a court is interpreting Section 40 or this Section.
- (K) A civil action authorized by this action is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.
- (L) The cause of action or the right to bring a cause of action pursuant to Subsection (B) or (C) of this section shall not be limited or affected by death of the incapacitated adult or elderly.
- (M) In this section, "enterprise" means any corporation, partnership, association, labor union, or other legal entity, or any group of persons associated in fact although not a legal entity, which is involved with providing care to an incapacitated adult or elderly.

**Section 65      Registry (5 PYTC § 5-65)**

- (A) The Tribal prosecutor shall maintain a registry containing such public records as are available identifying the names of persons and enterprises against whom civil or criminal complaints have been filed with the court pursuant to this article, the dates of the conduct set forth in the complaint, the general nature of the complaint and the disposition of the complaint, if known. This information is available to the public on written request. A person or agency that distributes information in the registry in good faith is immune from civil liability or criminal penalty based on the release of the information. Any person or enterprise desiring to do so may present a written statement in his own behalf to custodian of the registry, and such statement becomes a part of the record for distribution in response to all inquiries concerning that person or enterprise.

**DISPOSITION TABLE**

<b>Former Section</b>	<b>New Section</b>
Sec. 12-1200	Section 10
Sec. 12-1201	Section 20
NEW	Section 25
Sec. 12-1202	Section 30
Sec. 12-1203	Section 40
Sec. 12-1204	Section 50
Sec. 12-1205	Section 60
NEW	Section 65