

TRIBAL CODE

CHAPTER 37

ELDER AND VULNERABLE ADULT PROTECTION ORDINANCE

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History Note:

Current Ordinance:

Approved and placed for referendum May 23, 2023, Resolution No. 234(23).
Adopted by referendum vote May 23, 2023, effective immediately.

37.101 Title

This Ordinance shall be known as the “Tribal Elder and Vulnerable Adult Protection Ordinance”.

37.102 Authority

This Ordinance is enacted pursuant to Article VI, Section 1, Paragraphs (a), (l) and (r), of the Constitution of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

37.103 Purpose

The purpose of the Tribal Elder and Vulnerable Adult Protection Ordinance is to establish Tribal law to protect the elders and vulnerable adults of the Lac du Flambeau Tribal Community from abuse, neglect and exploitation. The Lac du Flambeau Community honors, respects and protects its elders and vulnerable adults. Our elders possess unique and irreplaceable stores of knowledge, skill and experience that enhance and enrich the lives of the entire Lac du Flambeau Community. Our vulnerable adults have a unique place in the Lac du Flambeau Community and are at high risk for abuse, neglect and exploitation.

The interests of the Lac du Flambeau Community, now and in the future, are advanced when our elders and vulnerable adults remain confident that they are protected from abuse, neglect and exploitation and are free to fully participate in the activities and proceedings of the Lac du Flambeau Community.

The Lac du Flambeau Tribal Council enacts this Ordinance because it is necessary to protect the safety, social, economic and political well-being of the Lac du Flambeau Community and its members, especially those members most susceptible to abuse, neglect and exploitation.

37.104 Scope

This Ordinance shall be liberally construed to affect the purpose set forth above and shall be interpreted to comply with the customs and traditions of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

37.105 Jurisdiction

- (1) The jurisdiction of the Lac du Flambeau Tribal Court and effective scope of this Ordinance shall minimally include, but not necessarily be limited to all Lac du Flambeau Tribal members, both present and future, any elder or vulnerable adult who is related to a Lac du Flambeau Tribal member and has significant emotional, social and/or economic ties to the Lac du Flambeau Indian Reservation.
- (2) The Lac du Flambeau Tribal Court shall have jurisdiction to hear all matters pertaining to violations of this Ordinance. Proceedings for violation of this Ordinance shall be governed

by Chapters III and IV of the Tribal Court Code, Chapter 80 of the Lac du Flambeau Tribal Ordinances.

- (3) The Lac du Flambeau Tribal Court shall construe this section liberally to exercise maximum jurisdiction consistent with applicable Tribal law and custom, and applicable state and federal laws.

37.106 Effective Date

This Ordinance shall take effect on the day following the date of approval of this Ordinance by the Tribal Council and Secretary of the Interior.

37.107 Applicability

- (1) This Ordinance shall apply to activities on the Lac du Flambeau Reservation.
- (2) This Ordinance shall apply to Lac du Flambeau Tribal members, both present and future, any elder or vulnerable adult who is related to a Lac du Flambeau Tribal member and has significant emotional, social and/or economic ties to the Lac du Flambeau Indian Reservation.
- (3) This Ordinance shall apply to Tribal Departments, Programs and Agencies that respond to reports of elder/vulnerable adult abuse and/or that provide services to elders and/or vulnerable adults.

37.108 Severability

If any section, provision, or portion of the Ordinance is adjudged to be invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby.

37.109 Sovereign Immunity Preserved

The Lac du Flambeau Tribe, by the adoption of this Ordinance, does not waive, either in a limited manner or otherwise its sovereign immunity in any respect. There shall be no liability on the part of the Tribe, its agencies, agents or employees, for any damages which may occur as a result of reliance upon or actions taken pursuant to this Ordinance.

37.110 Abrogation and Greater Restrictions

Where this Ordinance imposes greater restrictions than those contained in other Tribal Ordinances, Codes or Resolutions, the provisions of this Ordinance shall govern.

37.111 Definitions

For purposes of this Ordinance, the following definitions shall be used. Words used in present tense include the future; the singular includes the plural; and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive.

- (1) "Abandonment" means desertion of an elder or vulnerable adult by an individual who has assumed responsibility for providing care for such elder or vulnerable adult.

- (2) "Abuse" means any of the following:
- A. Physical abuse.
 - B. Emotional abuse.
 - C. Sexual abuse.
 - D. Treatment without consent.
 - E. Unreasonable confinement or restraint.
 - F. Financial Exploitation.
- (3) "Bodily Harm" means physical pain or injury, illness, or any impairment of physical condition.
- (4) "Caregiver" means a person who has assumed responsibility for all or a portion of an individual's care voluntarily, by contract, or by agreement, including a person acting or claiming to act as a legal guardian.
- (5) "Elder" means any person residing within the exterior boundaries of the Lac du Flambeau Reservation, who is fifty-five (55) years of age or older, including Tribal members, spouses or significant others of Tribal members, and persons who have significant social, emotional and/or economic ties with the Tribe.
- (6) "Emotional Abuse" means language or behavior that serves no legitimate purpose and is intended to be intimidating, humiliating, threatening, frightening, or otherwise harassing, and that does or reasonably could intimidate, humiliate, threaten, frighten, or otherwise harass the individual to whom the conduct or language is directed. Examples of emotional or psychological abuse of an elder or vulnerable adult include behaviors intended to humiliate (e.g., derogatory names or insults) or threaten (e.g., expressing an intent to initiate nursing home placement).
- (7) "Financial Exploitation" means any of the following:
- A. Obtaining an individual's money or property by deceiving or enticing the individual, or by forcing, compelling, or coercing the individual to give, sell at less than fair market value, or in other ways convey money or property against his or her will without his or her informed consent.
 - B. Theft.
 - C. The substantial failure or neglect of a fiscal agent to fulfill his or her responsibilities.
 - D. Unauthorized use of an individual's personal identifying information or documents, as prohibited in s. 943.201, Wis. Stats.
 - E. Unauthorized use of a person's identifying information or documents, as prohibited in s. 943.203, Wis. Stats.

- F. Forgery, as prohibited in s. 943.38, Wis. Stats.
 - G. Financial transaction card crimes, as prohibited in s. 943.41, Wis. Stats.
- (8) "Fiscal agent" includes any of the following:
- A. A guardian of the estate appointed by a court of competent jurisdiction.
 - B. A conservator appointed by a court of competent jurisdiction.
 - C. An agent under a power of attorney under ch. 244, Wis. Stats.
 - D. A representative payee under 20 CFR 416.635.
 - E. A conservatorship under the U.S. Department of Veterans Affairs.
- (9) "Good faith" means an honest and reasonable belief or purpose and the lack of intent to defraud or deceive.
- (10) "Guardian" means one appointed by a court to have care, custody and control of the person of an adult or an incompetent or the management of the estate of an adult, an incompetent or a spendthrift.
- (11) "Harassment" means any of the following:
- A. Striking, shoving, kicking or otherwise subjecting another person to physical contact; engaging in an act that would constitute abuse, sexual assault or stalking; or attempting or threatening to do the same.
 - B. Engaging in a course of conduct or repeatedly committing acts which harass or intimidate another person and which serve no legitimate purpose.
- (12) "Individual at Risk" means an elder adult at risk or a vulnerable adult at risk.
- (13) "Lac du Flambeau Elder and Vulnerable Adult Protection Team" means the team created pursuant to Section 37.112 of this Ordinance.
- (14) "Neglect" means the failure of a caregiver, as evidenced by an act, omission, or course of conduct, to endeavor to secure or maintain adequate care, services, or supervision for an individual, including food, clothing, shelter, or physical or mental health care, and creating significant risk or danger to the individual's physical or mental health. "Neglect" does not include a decision that is made to not seek medical care for an individual, if that decision is consistent with the individual's previously executed declaration or do-not-resuscitate order under ch. 154, Wis. Stats., a power of attorney for health care under ch. 155, Wis. Stats., or as otherwise authorized by law.
- (15) "Physical Abuse" means the intentional or reckless infliction of bodily harm.
- (16) "Reasonable Cause to Suspect" that abuse or neglect of an elder or vulnerable adult has occurred or will occur means sufficient credible information, indications or signs of such

abuse or neglect as to cause a reasonable person to suspect that abuse or neglect of an elder or vulnerable has occurred, is occurring, or may occur.

- (17) “Representative Payee” means a person who is appointed by a tribal or other governmental entity to receive and manage funds on behalf of an elder or vulnerable adult who is incapable of managing such funds by reason of physical or mental incapacity.
- (18) “Retaliation” means taking any adverse action against an individual for reporting elder or vulnerable adult abuse, neglect, self-neglect or exploitation. Such actions may include, but shall not be limited to, threatening the person; causing bodily harm; interference in employment; termination of employment, suspension or reprimand by an employer or agent thereof; damaging real or personal property; defamation, libel and/or slander; and harassment.
- (19) “Self-Neglect” means a significant danger to an individual's physical or mental health because the individual is responsible for his or her own care but fails to obtain adequate care, including food, shelter, clothing, or medical or dental care.
- (20) “Sexual Abuse” means a violation of s. 940.225 (1), (2), (3), or (3m), Wis. Stats. In addition to sexual assault, “sexual abuse” includes coerced nudity, and sexually explicit photography.
- (21) “Statutory Mandatory Reporter” means any person who, by virtue of his or her profession, is required by the laws of the State of Wisconsin to report to the proper authorities incidents of known or suspected abuse, neglect, self-neglect, or exploitation of an elder or vulnerable adult.
- (22) “Substantiated Report” means a report of alleged abuse of an elder or vulnerable adult, where after investigation, it appears to the investigator that there is probable cause to believe the allegations are true.
- (23) “Tribe” means the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- (24) “Tribal Employee” for the purposes of this Ordinance means anyone employed in any capacity by the Tribe or any business or entity owned, in whole or in part, by the Tribe, including, but not limited to, full-time, part-time, limited term, and contractual employees. For purposes of this Ordinance, independent contractors and interns providing services to the tribe in exchange for payment are also considered tribal employees.
- (25) “Tribal Member” shall mean an enrolled member of the Lac du Flambeau Band of Lake Superior Chippewa Indians.
- (26) “Tribal Official” means a person elected by the Lac du Flambeau Tribal membership or a person appointed by the Lac du Flambeau Tribal Council, including a Tribal law enforcement officer.
- (27) “Unsubstantiated Report” means a report of alleged abuse of an elder or vulnerable adult where after investigation it appears to the investigator that there is not probable cause to believe the allegations are true.

- (28) “Vulnerable Adult” means any person who has attained or exceeded the age of eighteen (18) years, resides within the exterior boundaries of the Lac du Flambeau Indian Reservation, has physical or mental limitations or incapacities that restrict his or her ability to carry out normal activities or to protect his or her rights (including but not limited to, persons who have physical or developmental disabilities) and is currently experiencing or is at risk of experiencing abuse, neglect, self-neglect or exploitation.

37.112 Establishment of an Elder/Vulnerable Adult Protection Team

- (1) There shall be established an Elder/Vulnerable Adult Protection Team which shall be comprised of the following professionals: Lac du Flambeau Chief of Police or designee, Lac du Flambeau Tribal Prosecutor, Peter Christensen Health Center Medical Social Worker, and an Aging and Long-Term Care representative. The Tribal Council shall designate two (2) community members, at least one of whom shall be an elder community member, and the other who may be of any age, to serve as a member of the Elder/Vulnerable Adult Protection Team. Additionally, the Elder/Vulnerable Adult Protection Team may from time to time select other persons to serve as temporary team members, on a case-by-case basis, when in the best interests of Elders and/or vulnerable adults who may benefit from services.
- (2) The Elder/Vulnerable Adult Protection Team shall receive, investigate and respond to reports of abuse and/or neglect of elders and vulnerable adults within the Lac du Flambeau Community.
- (3) The Elder/Vulnerable Adult Protection Team is intended to be flexible, and shall utilize a wraparound model to coordinate and/or provide services to and for elders and vulnerable adults who are victims of abuse and/or neglect. Services may include, but shall not be limited to, follow-through care, advocacy in Guardianship and Restraining Order/Injunction proceedings, and establishing safeguards to prevent situations of abuse and/or neglect on an as-needed basis.
- (4) The Elder/Vulnerable Adult Protection Team shall meet routinely, as well as when necessary to respond to emergency situations, and shall perform the following functions:
 - A. Direct, conduct and/or assist in investigations of reported incidents of abuse and/or neglect of elders and/or vulnerable adults.
 - B. Evaluate and assess to determine whether probable cause exists to believe that an elder or vulnerable adult is in danger of harm due to abuse or neglect, including self-neglect.
 - C. As appropriate, recommend actions to promote the care and protection of elders and vulnerable adults.
 - D. Determine whether a legal action, such as a Guardianship or Temporary Restraining Order/Injunction proceeding, should be initiated in LDF Tribal Court for the protection of an elder or vulnerable adult.

- E. Determine whether removal of an elder or vulnerable adult from his or her home is necessary for his or her protection from abuse and/or neglect, or as a result of the inability of the elder or vulnerable adult to care for himself or herself as a result of incompetence, and make placement recommendations as appropriate.
 - F. Identify available community resources, programs and services and make referrals as appropriate.
 - G. Promote cooperation, communication, and consistency between agencies.
 - H. Assist in the development and implementation of plans to promote the long-term well-being of elders and vulnerable adults and their families.
 - I. Develop Care Plans and Safety Plans for elders and vulnerable adults at risk of abuse and/or neglect.
- (5) As appropriate, and when in the best interests of an elder or vulnerable adult, the Elder/Vulnerable Adult Protection Team shall endeavor to address situations of abuse or neglect with the assistance of family members and the community, and may convene meetings with designated family and community members to accomplish this purpose.
 - (6) The Elder/Vulnerable Adult Protection Team shall maintain confidentiality as to all matters involving elders and vulnerable adults that come before the team, except as necessary to carry out its functions as set out in this Ordinance, and except as set forth in par. (7), below.
 - (7) The Elder/Vulnerable Adult Protection Team may report to a licensing agency any concerns that a person regulated by that agency has failed to comply with mandatory reporting requirements under Wisconsin Law or has abused or neglected an elder or vulnerable adult. The Elder/Vulnerable Adult Protection Team may also report its concerns to the person's employer.
 - (8) The Elder/Vulnerable Adult Protection Team may request assistance from the Lac du Flambeau Tribal Police Department, the Wisconsin Department of Corrections, and any other agency it deems appropriate, in the investigation of allegations of elder/vulnerable adult abuse or neglect. The Elder/Vulnerable Adult Protection Team shall advise the Lac du Flambeau Tribal Police Department of allegations of abuse or neglect of an elder or vulnerable adult.
 - (9) The Elder/Vulnerable Adult Protection Team is authorized to solicit and apply for grants from federal, state, tribal and local governments and private funding sources, to facilitate the goals and objectives of this Ordinance.

37.113 Reporting Elder or Vulnerable Adult Abuse and Neglect

- (1) Any person may report abuse or neglect of an elder or vulnerable adult to the Lac du Flambeau Tribal Police Department, Vilas County Sheriff's Department or Vilas County Social Services Department. Every employee of any entity that is licensed, certified, or approved by or registered with the State of Wisconsin Department of Safety and Professional Services is considered a statutory mandated reporter pursuant to Wisconsin

Law and this Ordinance. Pursuant to s. 46.90 (4), Wis. Stats., the following shall file a report:

A health care provider as defined in Section 155.01 (7) of the Wisconsin Statutes: Chiropractor, dentist, physician assistant, perfusionist, podiatrist, physical therapist, physical therapist assistant, occupational therapist or occupational therapy assistant, Christian Science treatment, optometrist, psychologist, a partnership thereof, a corporation or limited liability company thereof that provides health care services, a cooperative health care association organized under s. 185.981, Wis. Stats., that directly provides services through salaried employees in its own facility, or a home health agency; social worker, professional counselor, or marriage and certified family therapist

- (2) All Tribal employees, including contracted employees and volunteers, are required to make an immediate report of elder or vulnerable adult abuse or neglect, including self-neglect, to the Lac du Flambeau Tribal Police Department, Vilas County Sheriff's Department or Vilas County Social Services Department, if, in the course of employment, the Tribal employee observes an incident or threat of elder or vulnerable adult abuse or neglect, or learns of an incident or threat of such abuse or neglect, and the employee has reasonable cause to suspect that such abuse or neglect has occurred or will occur.
- (3) Because it is the moral and ethical responsibility of *all* members of the Lac du Flambeau community to protect elders and vulnerable adults from abuse and neglect, all persons are encouraged to report observed or reasonably suspected incidents of elder and vulnerable adult abuse or neglect to the Lac du Flambeau Tribal Police Department, Vilas County Sheriff's Department or Vilas County Social Services Department. Further, Tribal employees are encouraged to report elder and vulnerable adult abuse and neglect observed or reasonably suspected outside the scope of employment.
- (4) The standard for reporting is "reasonable cause to suspect that elder or vulnerable adult abuse or neglect has occurred or will occur." Reasonable cause to suspect is the belief an ordinary person would reach given the same information.
- (5) To the extent practicable, the identity of a person making a good faith report of abuse or neglect of an elder or vulnerable adult shall remain confidential.

37.114 Immunity for Good Faith Reporting

- (1) No Tribal employee making a report of elder or vulnerable adult abuse, neglect or self-neglect *in good faith* may be discharged from employment, disciplined or otherwise discriminated against in regard to employment, or threatened with any such treatment because that employee made a report in good faith.
- (2) Any person, who in good faith reports suspected abuse, neglect, self-neglect of an elder or vulnerable adult or testifies in any judicial proceedings arising from such report shall be immune from suit in Tribal Court based on that person's report.

37.115 Bad Faith Reporting

No person shall intentionally make a false report of elder or vulnerable adult abuse or neglect or make a report of elder or vulnerable adult abuse or neglect that such person knows lacks factual foundation.

37.116 Temporary Restraining Orders and Injunctions Based Upon Abuse of Elders and Vulnerable Adults

(1) **Adoption of Wisconsin Statute.** To the extent the same does not conflict with the provisions of this Ordinance, Section 813.123 of the Wisconsin Statutes, as the same may be amended from time to time, is hereby adopted and incorporated herein as though fully set forth.

(2) **Commencement of Action and Response.**

A. An action may be commenced under this section by the filing and service of a petition by an elder or vulnerable adult at risk, or a person acting on behalf of an elder or vulnerable adult at risk. In an emergency situation, consistent with the Lac du Flambeau Tribal Council's Constitutional responsibility to protect the health, security, and general welfare of the Tribe, a member of the Executive Committee of the Lac du Flambeau Tribal Council (i.e., President, Vice President, Secretary or Treasurer) may execute a Petition for Temporary Restraining Order and/or Injunction on behalf of an elder or vulnerable adult. The action commences with service of a petition upon the respondent if a copy of the petition is filed before service or promptly after service. The petitioner is responsible for causing service to be had upon the respondent, and for ensuring that a Proof or Affidavit of Service is properly filed with the Clerk of Court. The elder or vulnerable adult at risk or any person acting on behalf of said individual may be a petitioner under this section. If the petition is filed by a person other than the individual at risk, the petitioner shall serve a copy of the petition on the individual at risk.

B. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

C. The court may go forward with a petition filed under this section if the individual at risk has been adjudicated incompetent, notwithstanding an objection by an individual at risk who is the subject of the petition, or an objection by the guardian of the individual at risk.

(3) **Petition.**

A. The petition shall allege facts sufficient to show the following:

- i. The name of the petitioner and the name of the individual at risk.
- ii. The name of the respondent and that the respondent is an adult.
- iii. That the respondent interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the elder adult at risk under s. 46.90 (5), Wis. Stats., an investigation of the adult at risk under s.

55.043, Wis. Stats., the delivery of protective services to or a protective placement of the individual at risk under ch. 55, Wis. Stats., or the delivery of services to the elder adult at risk under s. 46.90 (5m), Wis. Stats.; or that the respondent engaged in, or threatened to engage in, the abuse, financial exploitation, neglect, stalking, or harassment of an individual at risk or mistreatment of an animal that is owned by or of significance to the individual at risk.

iv. If the petitioner knows of any other court proceeding in which the petitioner/individual at risk is a person affected by a court order or judgment that includes provisions regarding contact with the respondent, any of the following that are known by the petitioner:

(a) The name or type of the court proceeding.

(b) The date of the court proceeding.

(c) The specific provisions regarding contact between the petitioner/individual at risk and respondent.

B. The petition under this subsection and the court order under sub. (5) or (6), below, may not disclose the address of the petitioner or of the individual at risk. The petitioner shall provide the Clerk of Court with the address of the petitioner and of the individual at risk when he or she files a petition under this section. The clerk shall maintain the addresses in a confidential manner.

(4) General Procedure.

A. The procedure for an action under this section is in two parts. First, if the petitioner requests a temporary restraining order, the court shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (6), below, on whether to issue an injunction, which is the final relief. If the court issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

B. The court, on its own motion or upon the motion of any party, shall order that a guardian ad litem be appointed for the individual at risk, if the petition for a temporary restraining and/or injunction was filed by a person other than the individual at risk, and may order that a guardian ad litem be appointed in other instances when justice so requires.

C. The court, on its own motion or upon the motion of any party, may order any of the following:

i. That all persons, other than the individual at risk, the parties, their attorneys and/or lay advocates, representatives of the Elder/Vulnerable Adult Protection Team, witnesses, court personnel, and any guardian or any guardian ad litem, be excluded from any hearing under this Section.

- ii. That access to any record of an action under this section be available only to the individual at risk, the parties, their attorneys and/or lay advocates, the Elder/Vulnerable Adult Protection Team, witnesses, court personnel, any guardian or any guardian ad litem, and court personnel, including an appellate judge or panel, if applicable.

(5) Temporary Restraining Order.

- A. Unless the individual at risk, guardian, or guardian ad litem consents in writing and the judge agrees that the contact is in the best interests of the individual at risk, the judge shall issue a temporary restraining order if all of the following occur:
 - i. The petitioner submits to the court a petition alleging the elements set forth under sub. (3), above.
 - ii. The judge finds reasonable grounds to believe any of the following:
 - (a) That the respondent has interfered with or, based on prior conduct of the respondent, may interfere with an investigation of the individual at risk, the delivery of protective services to or a protective placement of the individual at risk under Chapter 55 of the Wisconsin Statutes, or the delivery of services to the individual at risk; and that the interference complained of, if continued, would make it difficult to determine whether abuse, financial exploitation, neglect, or self-neglect has occurred, is occurring, or may recur.
 - (b) That the respondent engaged in or threatened to engage in the abuse financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal.
- B. A temporary restraining order issued by the court shall require the respondent to do one or more of the following:
 - i. Avoid interference with an investigation of the elder or vulnerable adult at risk, or the delivery of protective services to or a protective placement of the individual at risk under Chapter 55 of the Wisconsin Statutes, or the delivery of services to the elder or vulnerable adult at risk.
 - ii. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal that is owned by or significant to the individual at risk.
 - iii. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian, guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.

- iv. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.
 - v. Avoid contacting or causing any person other than a party's attorney or lay advocate or a law enforcement officer to contact the individual at risk.
 - vi. Engage in any other appropriate remedy not inconsistent with the remedies requested in the petition.
- C. Notice need not be given to the respondent before the court issues a temporary restraining order under this section. A temporary restraining order may be entered only against the respondent named in the petition.
- D. The temporary restraining order shall be in effect until a hearing is held on issuance of an injunction under sub. (6), below, except that the court may extend the temporary restraining order for up to 48 hours for firearm surrender by the respondent, if applicable. The court shall hold a hearing on issuance of an injunction within 14 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties, extended by the original judge to permit appointment of and hearing on the issuance of an injunction by, a successor judge, if the original judge determines that recusal is appropriate, or extended once for 14 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence. The court may not extend the temporary restraining order in lieu of ruling on the issuance of an injunction.

(6) Injunction.

- A. Unless the individual at risk, guardian, or guardian ad litem consents in writing to a contact and the judge agrees that the contact is in the best interests of the individual at risk, the judge may grant an injunction if all of the following occur:
- i. The petitioner files a petition alleging the elements set forth under sub. (3), above.
 - ii. The petitioner or Clerk of Court causes to be served upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction. The notice served under this subdivision shall inform the respondent that, if the court issues an injunction, the court may also order the respondent not to possess a firearm while the injunction is in effect. The person who serves the respondent with the notice shall also provide the respondent with all of the following information:
 - (a) Notice of the requirements and penalties under s. 941.29, Wis. Stats., and notice of any similar applicable federal laws and penalties.

- (b) An explanation of s. 813.1285, Wis. Stats., including the procedures for surrendering a firearm and the circumstances listed under s. 813.1285 under which a respondent must appear at a hearing to surrender firearms.
 - (c) A firearm possession form developed under s. 813.1285 (5) (a), Wis. Stats., with instructions for completing and returning the form.
 - iii. After hearing, the judge finds reasonable cause to believe any of the following:
 - (a) That the respondent has interfered with or, based upon prior conduct of the respondent, may interfere with an investigation of an allegation of abuse or neglect or other crime against the elder or vulnerable adult at risk and that the interference complained of, if continued, would make it difficult to determine if abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or mistreatment of an animal is occurring or may recur.
 - (b) That the respondent has interfered with the delivery of protective services to or a protective placement of the individual at risk under ch. 55, Wis. Stats., after the offer of protective services or protective placement has been made and the individual at risk or his or her guardian, if any, has consented to receipt of the protective services or protective placement; or that the respondent has interfered with the delivery of services to an elder adult at risk under s. 46.90 (5m), Wis. Stats., or any Tribal Ordinance.
 - (c) That the respondent has engaged in or threatened to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal that is owned by or significant to the individual at risk.
- B. An injunction granted under par. (6)(A) shall order the respondent to do one or more of the following:
 - i. Avoid interference with an investigation of an allegation of abuse or neglect or other crime against the elder or vulnerable adult at risk, the delivery of protective services to or a protective placement of the individual at risk under ch. 55, Wis. Stats., or the delivery of services to the elder adult at risk.
 - ii. Cease engaging in or threatening to engage in the abuse, financial exploitation, neglect, harassment, or stalking of an individual at risk or the mistreatment of an animal that is owned by or significant to the individual at risk.
 - iii. Refrain from removing, hiding, damaging, harming, or mistreating, or disposing of, a household pet and allow the individual at risk or a guardian,

guardian ad litem, family member, or household member of the individual at risk acting on his or her behalf to retrieve a household pet.

- iv. Avoid the residence of the individual at risk or any other location temporarily occupied by the individual at risk, or both.
 - v. Avoid contacting or causing any person other than a party's attorney or lay advocate or a law enforcement officer to contact the individual at risk.
 - vi. Any other appropriate remedy not inconsistent with the remedies requested in the petition.
- C. The injunction may be entered only against the respondent named in the petition.
- D. An injunction under this section is effective according to its terms, but for not more than 4 years, except as provided in paragraph G, below.
- E. When an injunction expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the individual at risk. This extension shall remain in effect until 6 months after the date on which the court first entered the injunction, except as provided in paragraph G, below. Notice need not be given to the respondent before extending an injunction under this paragraph. The Clerk of Courts shall notify the respondent after the court extends an injunction under this paragraph.
- F. If the petitioner states that an extension is necessary to protect the individual at risk, the court may extend the injunction for not more than 2 years, except as provided in paragraph G, next. Notice need not be given to the respondent before extending an injunction under this paragraph. The Clerk of Courts shall notify the respondent after the court extends an injunction under this paragraph.
- G. A judge may, upon issuing an injunction or granting an extension of an injunction issued under this section, order that the injunction is in effect for not more than 10 years, if the court finds, by a preponderance of the evidence stated on the record, that any of the following is true:
- i. There is a substantial risk that the respondent may commit first-degree intentional homicide under s. 940.01, Wis. Stats., or 2nd-degree intentional homicide under s. 940.05, Wis. Stats., against the person at risk.
 - ii. There is a substantial risk that the respondent may commit sexual assault under s. 940.225 (1), (2), or (3), Wis. Stats., or under s. 948.02 (1) or (2), Wis. Stats., against the person at risk.
- H. Nothing in this Section 5 shall prohibit a petitioner from requesting a new temporary restraining order or injunction under this Section 5 before or at the expiration of a previously entered order or injunction.
- (7) **Interference Order.** Any order under sub. (5) or (6) also shall prohibit the respondent from intentionally preventing a representative or employee of the Tribe involved in the

provision of services or protection to elders and individuals at risk, or a representative or employee of a county protective services agency, from meeting, communicating, or being in visual or audio contact with the adult at risk, except as provided in the order.

(8) Restriction on Firearm Possession; Surrender of Firearms.

- A. If a judge issues an injunction under sub. (6) and the judge determines, based on clear and convincing evidence presented at the hearing on the issuance of the injunction, that the respondent may use a firearm to cause physical harm to another or to endanger public safety, the judge may prohibit the respondent from possessing a firearm.
- B. An order prohibiting a respondent from possessing a firearm issued under par. A remains in effect until the expiration of the injunction issued under sub. (6).
- C. An order issued under par. A that prohibits a respondent from possessing a firearm shall do all of the following:
 - i. Inform the respondent named in the petition of the requirements and penalties under s. 941.29, Wis. Stats., and any similar applicable federal laws and penalties.
 - ii. Except as provided in par. D, below, require in writing the respondent to surrender any firearms that he or she owns or has in his or her possession to the Tribal Police Department or to another person designated by the respondent and approved by the judge, in accordance with s. 813.1285, Wis. Stats.
- D. If the respondent is a peace officer, an order issued under par. A may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

37.117 Rights of Elders and Vulnerable Adults

- (1) Elders and vulnerable adults have the right to be safe from abuse, neglect, intimidation, and threats of harm.
- (2) Elders and vulnerable adults have the right to refuse to accept protective services even if there is probable cause to believe that they are victims of abuse or neglect, provided they are competent, able to care for themselves, and able to understand the nature and benefits of the services offered to them.
- (3) Elders and vulnerable adults, as well as the owner/lessee of a home in which an elder or vulnerable adult resides, shall have the right to refuse to permit members of the Lac du Flambeau Elder and Vulnerable Adult Protection Team to enter their home absent a Court Order authorizing entry. This Section does not prohibit a law enforcement officer from entering a home contrary to the wishes of the occupants/owners/lessees, if exigent circumstances exist.

- (4) Any Petition promulgated pursuant to this Ordinance shall be personally served upon the affected elder or vulnerable adult, and provided to all interested parties.
- (5) Elders and vulnerable adults and interested parties as appropriate have the right to attend court proceedings pertaining to the elder or vulnerable adult, unless the Tribal Court makes a finding that the health or safety of the elder or vulnerable adult will be placed in jeopardy as a result of such attendance by any person.
- (6) Elders and vulnerable adults and interested parties have the right to be represented by counsel at all proceedings, at their own expense. Tribal Court shall appoint a guardian ad litem for every elder or vulnerable adult who is the subject of any Petition for Guardianship or for a Temporary Restraining Order or Injunction filed in Tribal Court.
- (7) Elders, vulnerable adults, and their families and caretakers have the right to seek independent medical, psychological or psychiatric evaluations of the elder or vulnerable adult at their own expense.

37.118 Enforcement and Penalties

- (1) **Enforcement.** The provisions of this Ordinance shall be enforced by all sworn officers of the Lac du Flambeau Police Department. In addition, any federal, state, or local law enforcement officer may enforce this Ordinance and institute proceedings for violations of this Ordinance.
- (2) **Penalties for Prohibited Acts.**
 - i. **Abuse or Neglect of an Elder or Vulnerable Adult.** Any person who abuses an elder or vulnerable adult, or attempts to abuse an elder or vulnerable adult, and any caregiver who neglects an elder or vulnerable adult has committed a violation of this Ordinance and may be fined not more than \$1,000.00.
 - ii. **Interference with Investigation of Elder/Vulnerable Adult Abuse or Neglect.** Interference in the investigation of the alleged abuse or neglect of an elder or vulnerable act is prohibited. Any person who intentionally interferes in, obstructs, or knowingly provides false information relative to, a lawful investigation of suspected abuse or neglect of an elder or vulnerable adult abuse has committed a violation of this Ordinance and may be fined not more than \$1,000.00.
 - iii. **Retaliation Against Reporter or Investigator.** Retaliation against a person who reports, in good faith, or investigates, reasonably suspected abuse or neglect of an elder or vulnerable adult is prohibited. Anyone who retaliates or attempts to retaliate against a person who reports, in good faith, or investigates reasonably suspected abuse or neglect of an elder or vulnerable has committed a violation of this Ordinance and may be fined not more than \$1,000.00.
 - iv. **Bad Faith Reporting.** Any person who intentionally makes a false report of elder or vulnerable adult abuse or neglect or makes a report of elder or vulnerable adult abuse or neglect that such person knows lacks factual foundation has committed a violation of this Ordinance and may be fined not more than \$1,000.00.

- v. **Failure to Report.** Any statutory mandatory reporter and any Tribal employee who fails to report reasonably suspected abuse or neglect, including self-neglect, of an elder or vulnerable adult has committed a violation of this Ordinance and may be fined not more than \$1,000.00.
 - vi. **Violation of Elder/Vulnerable Adult Temporary Restraining Order or Injunction.** Any person who violates an Elder/Vulnerable Adult Restraining Order may be fined not more than \$1,000.00.
- (3) **Other Remedies.** The penalties set forth in this section are not intended to be exclusive remedies, but shall be in addition to any other applicable remedy, including but not limited to findings of contempt and penalties therefore, injunctive relief, civil suits, restitution orders, and referrals for criminal prosecution.