

WARM SPRINGS TRIBAL CODE

CHAPTER 331

DOMESTIC RELATIONS

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WARM SPRINGS TRIBAL CODE

CHAPTER 331

DOMESTIC RELATIONS

I. GENERAL

331.010 Definitions. As used in this chapter except where the context otherwise requires:

- (1) "Indian" means a member of the Confederated Tribes of the Warm Springs Reservation of Oregon, or any other person of Indian blood who is a member of a federally recognized Indian tribe or any other person on the Reservation who is recognized by the community as an Indian, including a Canadian Indian and Alaska native.
- (2) "Tribal Court" means the Tribal Court of the Warm Springs Reservation of Oregon.
- (3) "Tribes" means the Confederated Tribes of the Warm Springs Reservation of Oregon.

II. MARRIAGE

331.100 Tribal Custom Marriages and Divorces Legalized. All marriages and divorces contracted and consummated in accordance with the state laws or in accordance with tribal custom, prior to November 23, 1947, are recognized and are hereby declared to be legal and binding.

331.105 Future Indian Custom Marriages. No marriage or divorce of any member of the Tribe shall be legal and binding unless the same shall have been consummated by the laws of the respective state, or as hereinafter provided; and no tribal custom marriage shall be legal or recognized from and after November 23, 1947, except as herein provided.

331.110 Marriage Contract, Age and Parties. Marriage is a civil contract which may be entered into by males of the age of 18 years and females of 15 years, who are otherwise capable.

331.115 Prohibited Marriages. The following marriages are prohibited:

- (1) Marriages in which either party thereto had a wife or husband living at the time of such marriage;
- (2) Marriages when the parties thereto are first cousins or any nearer of kin to each other.

331.120 Voidable Marriages. The tribal court is empowered to annul any marriage which is prohibited by this code, or which was obtained by force or fraud or upon the lack of consent of a parent, guardian, or the superintendent as herein provided; provided, however, that

the children of any voidable marriage shall be deemed legitimate. Voidable marriage shall be annulled by the Tribal Court only upon the action of the party laboring under the disability or upon whom the force or fraud is imposed.

331.125 Marriage License. Before any member of the tribes can be joined in marriage the prospective bride and groom are required to secure a health certificate from any duly licensed practicing physician or surgeon, that such persons have taken the Wasserman test showing negative results, and that they are free of any other venereal disease. The Warm Springs Agency office shall then issue a marriage license to the said parties.

331.130 When Consent of Parents Necessary. A marriage license shall not be issued without the written consent of the parent or guardian, if any there be, if the female is under the age of 18 years or the male the age of 21 years, but if either of the parties have no parent or guardian, the consent may be given by the superintendent of the Warm Springs Agency.

331.135 Persons Who May Solemnize Marriages. Marriage shall be solemnized by the following person only:

- (1) Persons provided for by State law when such marriage is being solemnized under license from the State;
- (2) Any ordained minister or priest so authorized under the laws of Oregon, provided that evidence of authority of such persons shall be filed as provided by Oregon laws;
- (3) Any Judge of the Tribal Court.

331.140 Records.

- (1) The Warm Springs Agency issuing the marriage license shall keep a record thereof and shall file and record evidence of such marriage; all members of the Confederated Tribes of the Warm Springs Reservation of Oregon marrying under State laws shall file with the Warm Springs Agency evidence of such marriage, which records shall be kept in the same record book of marriages entered into under this Chapter;
- (2) Any person or persons who have been married by Tribal Custom during the time when such marriages were valid shall file evidence thereof in the records of the Warm Springs Agency.

331.145 Certification of Marriage to be Given to Parties. Persons solemnizing the marriage shall give to each of the parties thereto, a certificate specifying their names, residence of the parties, names of at least two witnesses present, the time and place of such marriage, and the date of the marriage license therefore, and by whom issued and signed by the person who solemnized such marriage.

331.150 Form of Solemnization - Witnesses. In the solemnizing of a marriage, no particular form is required, except the parties thereto shall assent or declare in the presence of the minister, priest, or Judge solemnizing the same and in the presence of at least two attending witnesses that they each take the other to be husband and wife.

331.155 Certificate of Marriage to be Filed with Agency and Tribe. A person solemnizing the marriage shall, within one week thereafter, make and deliver to the Superintendent who issued the license for said marriage, and to the Tribal Vital Statistics Department, a certificate containing the particulars specified in WSTC 331.145.

331.160 Marriages Consummated in Other Jurisdictions. For the purposes of this Chapter a marriage that is valid and legal in the jurisdiction where consummated shall be valid and legal within the jurisdiction of the Tribal Court.

III. DIVORCE AND ANNULMENT

331.200 Divorce Jurisdiction. The Tribal Court is empowered to grant a divorce based on the merits where one of the parties is an Indian who is residing or domiciled on the Reservation as provided for in WSTC 331.205, and each side has had an opportunity to fully present all charges and facts in the case.⁵

331.205 Residence Requirements. In an action for dissolution or annulment in Tribal Court at least one of the parties must be a resident or domiciled on the Reservation at the time the action is commenced and continuously for a period of 30 days prior thereto.

331.210 Waiting Period.

- (1) Except as provided in Subsection (2) of this section no trial or hearing on the merits in an action for divorce shall be had until after the expiration of sixty (60) days from the date of:
 - (a) The service of the summons and complaint upon the defendant; or
 - (b) The first publication of summons under WSTC 200.200.
- (2) The Court may in its discretion, on written motions supported by affidavits setting forth ground of emergency of necessity and facts which satisfy the Court that immediate action is warranted or required to protect the right or interest of any party or person who might be affected by a final decree or order in the proceedings, hold a hearing and grant a decree of divorce prior to the expiration of the waiting period. In such cases the grounds of emergency or necessity and the facts with respect thereto shall be found and recited in the decree.

⁵ WSTC 331.200 was amended to authorize mixed marriage divorces by Resolution No. 6780, adopted November 14, 1984.

331.215 Grounds for Divorce. A divorce may be decreed where irreconcilable differences between the parties have caused the irremediable breakdown of the marriage.

331.220 Filing Fee. Upon filing suit for divorce, in addition to the filing fee provided in WSTC 201.200, plaintiff shall pay to the Clerk of the Court an additional amount to be established and published by the Chief Tribal Judge. The Chief Tribal Judge shall have authority to waive such fees as justice requires.

331.225 Records. The Court shall file a memorandum of the facts found in such case and a memorandum of its decision, which shall be kept as a permanent record of such proceeding, in the Court's records, and shall submit a copy of the decree to the Warm Springs Agency and to the Tribal Vital Statistics Department.

331.230 Remarriage. Neither party to a divorce action shall have the legal capacity to remarry another party within 60 days after the granting of any divorce.

331.235 Provisions Court May Make by Order after Commencement of Action and Before Decree.

- (1) After commencement of the divorce action in the Tribal Court, the Judge may in his or her discretion, upon proper showing of the necessity therefor, provide by Order as follows:
 - (a) That a party pay to the Clerk of the Court, such amount of money as may be necessary to enable the other party to prosecute or defend the action, as the case may be, and also such amount of money as may be necessary to support and maintain the other party;
 - (b) For the care, custody, support and maintenance of the minor children of the marriage by one party or jointly and for visitation right of the parent or parents not having custody of such children;
 - (c) For the restraint of a party from in any manner molesting or interfering with the other or the minor children;
 - (d) That if the minor children reside in the family home and the court considers it necessary for their best interests to do so, the Court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.
 - (e) Restraining and enjoining either party or both from encumbering or disposing of any of their property, real or personal, except as ordered by the Court.

- (f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of installment liens and encumbrances thereon.
 - (g) That even if no minor children reside in the family home, the Court may require one party to move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties, if that party assaults or threatens to assault the other.
- (2) In case default is made in the payment of any monies falling due under the terms of an Order pending action, any such delinquent amount shall be entered and docketed as a judgment, and execution may issue thereon to enforce payment thereof in the same manner and with like effect as upon the final decree.

331.240 Provisions of Decree.

- (1) Whenever the court grants a decree of annulment or dissolution of marriage it has the further power to decree as follows:
 - (a) For the future care and custody of all minor children of the parties born, adopted or conceived during the marriage, and for minor children born to the parties prior to the marriage, and for the visitation rights of the parent or parents not having custody of such children as it may deem just and proper. In determining custody the Court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties. No preference in custody shall be given to the mother over the father for the sole reason that she is the mother.
 - (b) For the recovery from the party not allowed the care and custody and such children, or from either party or both parties if joint custody is decreed, such amount of money in gross or in installments, or both, as may be just and proper for such party to contribute toward the nurturing and education of such children.
 - (c) For the support of a party, in gross or in installments, such amount of money for such period of time as may be just and proper for such party to contribute to the maintenance of the other.
 - (d) For the delivery of one party of such party's personal property in the possession of the other at the time of giving the decree;
 - (e) For the division or other disposition between the parties of the real or personal property or both, of either or both of the parties as may be just and proper in all the circumstances;

- (f) For the appointment of one or more trustees to collect, receive, expend, manage or invest, in such manner as the Court shall direct, any sum of money decreed for the maintenance of a party or the support and education of minor children committed to such party's care and custody;
 - (g) To change the name of the wife.
 - (h) To order either party to sign and/or deliver all necessary documents to effect the provisions of the decree.
- (2) The Court shall have broad discretion to consult with elders regarding the award and distribution of ceremonial and artifact items.

331.245 Domestic Relations Referee. The Tribal Court may appoint a referee to receive evidence in any suit for divorce concerning child custody, support, and division of Indian artifacts and other property. The referee shall assist the parties in arriving at a mutual agreement, if possible, and shall make finding and issue recommendations to assist the Tribal Court.

331.250 Counseling for Reconciliation. Upon the motion of either or both spouses, or upon the Court's own motion, the Court shall order that the parties meet and discuss their marital difficulties with a counselor to be appointed by the Court. The Court may require the attendance of the spouse by subpoena. When a motion for reconciliation counseling shall have been filed, no trial or hearing on the merits of the divorce action between the parties shall be had until after the expiration of thirty (30) days from the filing of such motion.

331.255 Appeal. An appeal may be taken from a judgment of the Court declaring or dissolving the marriage contracts or from any part of the judgment rendered in pursuance to the foregoing provisions, as provided in WSTC Chapter 203.

331.260 Setting Aside or Modifying Judgment. At any time the Court or Judge thereof, upon complaint of either party, shall have the power to set aside, alter or modify so much of the judgment as may provide for the appointment of a trustee or trustees for the care and custody of minor children, or the support or education thereof and for the maintenance of either party to the action upon a showing of changed circumstances; provided, however, that said judgment shall be a final judgment as to any installment or payments of money or payments of property provided for therein which have accrued up to the time either party shall file an action with the Court to set the judgment aside or alter or modify the same;

IV. GUARDIANS

331.300 Guardians. Whenever it becomes necessary or desirable to sell, lease, rent or exchange any real or personal property of a minor Indian child or an Indian found incompetent by the Tribal Court, after notice to the proposed ward and hearing by the Court, and owning an interest in property on the Warm Springs Reservation, a guardian may be appointed by the Tribal Court upon petition. The guardian shall make a full report to the court regarding the proposed transaction and findings shall be made as to whether it is to the ward's best interest that such sale, lease or exchange be consummated. If the court finds that such sale, lease or exchange would be

of benefit to the ward and his estate an order shall be entered directing the guardian to take whatever steps necessary to effectuate the sale, lease or exchange of the contemplated real or personal property. Any funds received from the minor's or incompetent's property shall be deposited to the IIM Account for the benefit of the minor or incompetent.

V. ADOPTION

331.400 Who May Be Adopted. ⁶ A minor Indian child may be adopted by any Indian person or persons, providing that the surviving natural parents must consent in writing.

331.405 Adoption Petition. The person or persons seeking to adopt such child shall file a petition with the Tribal Court in a form prescribed by the Tribal Court.

331.410 Consent to Adoption.

- (1) If the child to be adopted is over the age of 14 years, the child must appear before the Court and consent in writing to his or her adoption.
- (2) Any person whose parental rights are to be terminated by the adoption order must consent in writing, except in circumstances outlined below.
- (3) If either party has been adjudged mentally ill or mentally deficient and remains so at the time of the adoption proceedings, the Tribal Court may issue a citation to show cause why the adoption of the child should not be adjudged. This citation shall also be served upon the guardian of the mentally ill or mentally deficient person or, if he has no guardian, the court shall appoint a guardian ad litem to appear for the person in the adoption proceedings. Upon hearing being had, if the court finds that the welfare of the child will be best promoted through the adoption of the child, the consent of the mentally ill or mentally deficient parent is not required and the court shall have authority to proceed regardless of the objection of such parent.
- (4) If either parent is believed to have willfully deserted or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption and such parent does not consent in writing to the adoption, the tribal court shall cause to served upon such parent a citation to show cause why the adoption of the child should not be adjudged. Upon hearing being had, if the court finds that such parent has willfully deserted or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption, the consent of such parent at the discretion of the court is not required and, if the court determines that such consent is not required, the court shall have authority to proceed regardless of the objection of such parent.

⁶ WSTC 331.400 was amended by Tribal Council Resolution No. 11,433 adopted May 9, 2011.

- (5) In cases where a parent does not consent to the adoption of a child, the court shall order citation to be served on the parent personally and if the person cannot be found with reasonable diligence the court shall order that service of the citation be made by publication as provided in WSTC 200.190.

331.415 Failure to Appear. Any person served in accordance with WSTC 200.190 that fails to appear before the Tribal Court at the hearing for adoption shall be deemed to have given consent to the adoption.

331.420 Adoption Hearing. Upon receipt of the adoption petition the court shall schedule an adoption hearing. The parties must appear at the hearing and after the Court has heard the facts on such adoption proceedings and if it believes that it is to the best interests of such child to be adopted, the court shall enter an order accordingly, which shall be kept in the records of the Warm Springs Agency. A copy of the order shall also be transmitted to the Vital Statistics Department.

331.425 Appeal from Judgment of Adoption. Any party to an adoption proceeding may appeal the judgment of the court in the manner provided for in WSTC Chapter 203.

331.430 Effect of Judgment of Adoption. After a judgment of adoption the relationship between an adopted person and his adoptive parents, their descendants and kindred shall be the same to all legal intents and purposes as if the adopted person had been born in lawful wedlock to his adoptive parents and his relationship with his natural parents, their descendants and kindred shall be the same to all legal intents and purposes as if he had not been born to his natural parents. The judgment of adoption shall have no effect on the adopted person's tribal rights.

331.435 Adoption of Tribal Members by Non-Members. No member of the Confederated Tribes shall be adopted by any person or persons who are not members of the Confederated Tribes without the written permission of the Tribal Council and without otherwise complying with the provisions of this Chapter.

VI. CHANGE OF NAME

331.500 Change of Name. The Tribal Court is empowered to change the name of any person upon the petition of such person or upon the petition of the parents or legal guardian of any person under the age of 18 years. The order granting such change of name shall be kept as a permanent record, and a copy of such order shall be filed with the Warm Springs Agency office, the Tribal Vital Statistics Department, and the Tribal Court file. This change of name section shall not apply to changes of traditional Indian names.

VII. FILIATION PROCEEDINGS⁷

331.600 Legislative History and Explanatory Notes. Prior to restatement and amendment by the Twenty-Fifth Tribal Council in 2012, WSTC Chapter 331, Part VII, did not mandate DNA testing in Filiation cases. While the statute authorized judges of the Warm Springs Tribal Court to order blood tests, such authority was rarely exercised and usually in contested Filiation cases only.

The Tribal Council believes that Filiation Proceedings are very important because all people have a right to know their true identity, parentage, and lineage, and that such knowledge is a significant factor in the health, security, and general welfare of all people. Further, Filiation Proceedings are very important because the Tribal Court's paternity determination may serve as the basis for application and enrollment as a member of the Confederated Tribes. The paternity determination may impact other rights and responsibilities as well, including child custody, visitation, and support; insurance and inheritance claims; and access to family medical history.

Given the importance of Filiation Proceedings and the fact that DNA testing is now widely available, minimally invasive, reasonably priced, and highly accurate, the Twenty-Fifth Tribal Council concluded that DNA testing should be mandatory in every Filiation case. Thus, DNA testing of the child and alleged father shall occur in conjunction with the filing of a Filiation petition. Alternatively, if the alleged father objects to DNA testing and the petitioner presents a prima facie case, the Court shall order DNA testing of the alleged father and child. It is the intention of the Tribal Council that no Filiation petition shall be granted absent DNA testing.

331.605 Jurisdiction. The Tribal Court shall have the authority to determine paternity of any Indian where the petition is filed by either:

- (1) A member of the Tribes in order to determine the paternity of the member filing the petition; or
- (2) A member of the Tribes in order to determine the paternity of a minor child of the member filing the petition.

331.610 Definition. For the purpose of WSTC 331.600 to 331.620, a person whose background is to be determined means any Indian who initiates action by himself or whose parents initiate action in his behalf for determination of his paternity or his tribal lineage.

331.615 Initiation of Proceedings.

- (1) Proceedings shall be initiated by the filing of a petition containing the following:
 - (a) The name of the mother of the person whose background is to be determined;

⁷ WSTC 331.600 was amended and WSTC 331.610(1)(e) was added by Resolution No. 6563 adopted by the Tribal Council on November 16, 1983. WSTC Part VII. Filiation Proceedings, Sections 331.600-331.620 was amended and restated by Resolution No. 11,651, adopted by the Tribal Council on August 21, 2012.

- (b) A statement of who the father of the person whose background is to be determined is alleged to be;
 - (c) The probable time or period of time during which conception took place;
 - (d) A request for the Tribal Court to determine the following:
 - (i) The paternity of the person whose background is to be determined;
 - (ii) If support is sought from the alleged father, a request that the Tribal Court order the alleged father to pay such support.
 - (e) As an attachment to the petition, a certified copy of the birth certificate of the person whose background is to be determined.
 - (f) As an attachment to the petition, if executed previously by the alleged father or another putative father, a copy of a Voluntary Acknowledgment of Paternity or other legal document acknowledging paternity with respect to the person whose background is to be determined.
 - (g) As an attachment to the petition, the results of DNA testing, with a reliable chain of custody, demonstrating that the alleged father is, in fact, the father of the person whose background is to be determined. If the alleged father refuses to submit willingly to DNA testing, the petition shall so state, and the results of DNA testing need not be attached to the petition.
- (2) Upon filing of the petition the Tribal Court shall cause a copy of such petition to be served on the alleged father in accordance with WSTC Chapter 200.

331.620 Tribal Court Proceedings.

- (1) Upon receiving the response of the alleged father, or upon his failure to respond within 30 days after notification, the Tribal Court shall hold a hearing to determine the issue of paternity. The Tribal Court may receive any competent evidence on the question of paternity and the appropriate amount of support, if any, to be awarded.
- (2) If the Court is able to determine from the evidence, including mandatory DNA testing, the paternity of the person whose background is to be determined, the Court shall then proceed to determine the proper relief to be granted.
- (3) In any case where the Tribal Court has jurisdiction over the father of the person whose background is to be determined, the Court shall have the authority to order the father to pay such sum as it deems appropriate for the past and the future support and maintenance of the person during his minority and while the person is attending school and the reasonable and necessary expenses incurred or to be

incurred in connection with prenatal care, expenses attendant with the birth and postnatal care.

- (4) The Tribal Court shall have the authority to order the parties to submit to DNA testing to determine paternity.

VIII. PARENT AND CHILD RELATIONSHIP

331.700 Duty of Support. Parents have the legal obligation to support their children under the age of 18 years who are poor and unable to work to maintain themselves.

331.710 Petition for Support. A Tribal Department on behalf of a minor child, a custodial parent or a guardian may apply to the Tribal Court for an order directing such child's father or mother, or both, to provide for the child's support. The petition shall be in a form prescribed by the Tribal Court. If satisfied that just cause exists, the Court shall direct that the father and/or mother appear at a time set by the Court to show cause why an order of support should not be entered in the matter. An order of support which is issued may be enforced in the same manner as other judgments for money against Indians or non-Indians or, in the case of Indians that are ordered to pay support, by the contempt power of the Court.

331.720 Jurisdiction of Support Proceedings. The Tribal Court shall have jurisdiction in proceedings commenced under WSTC 331.710 where the minor is an Indian child residing on the Reservation or one of the parents is an Indian residing on the Reservation.

IX. ABUSE PREVENTION LAW⁸

331.800 Short Title. WSTC 331.800 to 331.820 shall be known as the "Abuse Prevention Law."

331.805 Definitions for WSTC 331.800 to 331.820. As used in WSTC 331.800 to 331.820 and 202.120:

- (1) "Abuse" means the occurrence of one or more of the following acts between family or household members:
 - (a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.
 - (b) Intentionally, knowingly or recklessly placing another in fear of imminent serious bodily injury.

331.810 Petition to Tribal Court for Relief.

- (1) Any person may seek relief under WSTC 331.800 to 331.820 and 202.120 by filing a petition with the Tribal Court alleging that he or she has been the victim

⁸WSTC 331.800 through WSTC 331.820 was amended by Resolution No. 10,096, adopted by Tribal Council on October 10, 2001.

of abuse committed by the respondent. The Tribal Court shall have jurisdiction over all proceedings under WSTC 331.800 to 311.820 and 202.120.

331.815 Scope of Relief; Bond or Filing Fee Not Required.

- (1) The court shall have the power to grant any temporary restraining order or an injunction or approve any consent agreement to bring about a cessation of abuse of the petitioner, including relief as provided in paragraph (d) of subsection (1) of WSTC 331.235; and, in addition, may award temporary custody of or establish temporary visitation rights with regard to the minor children of the parties.
- (2) Any relief granted by the court shall be for a fixed period of time not to exceed one year. The court may amend its order or the consent agreement at any time.
- (3) No order or agreement made under WSTC 331.800 to 331.820 and 202.120 shall in any manner affect title to any real property.
- (4) The court shall not require bond or filing fee from the petitioner to issue an order under WSTC 331.800 to 331.820.
- (5) Any proceeding under WSTC 331.800 to 331.820 and 202.120 shall be in addition to any other available civil or criminal remedies.

331.820 Enforcement of Restraining Orders; Contempt Hearings; Bail.

- (1) Whenever a restraining order, as authorized by paragraph (c) or (d) of subsection (1) of WSTC 331.235 or WSTC 331.815 which includes bail and an expiration date pursuant to this section and WSTC 331.815, is issued and the person to be restrained has actual notice thereof, the petitioner shall deliver forthwith to the Warm Springs Tribal Police Department, or the duly authorized law enforcement authority of any jurisdiction where the respondent may be found, a true copy of the order. Such delivery shall constitute notice of the existence of such order to all Warm Springs Tribal Police Officers and Bureau of Indian Affairs law enforcement officers on the Warm Springs Indian Reservation and any other law enforcement authority to which delivered. Law Enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable at any location within or outside the exterior boundaries of the Warm Springs Indian Reservation, and by any law enforcement authority to which it has been delivered.
- (2) In any situation where a restraining order described in subsection (1) of this section is terminated before the expiration date, the petitioner shall deliver forthwith a true copy of the termination order to the Warm Springs Tribal Police Department.

- (3) Pending a contempt hearing for alleged violation of a restraining order issued pursuant to paragraph (c) or (d) of subsection (1) of WSTC 331.235 or WSTC 331.815, a person arrested and taken into custody pursuant to WSTC 202.120 may be released as provided in WSTC 202.300 and 202.340. Whenever such restraining order is issued, the issuing court shall set bail for violation of such order.
- (4) A restraining order issued pursuant to paragraph (c) or (d) of subsection (1) of WSTC 331.235 or WSTC 331.815 is binding upon and enforceable by or against both the petitioner and the respondent.
- (5) Either party may request modification or termination of a restraining order issued pursuant to paragraph (c) or (d) of subsection (1) of WSTC 331.235 or WSTC 331.815. The court may order such modification or termination, or the continuation of the order, after a hearing with parties present.

X. TRIBAL ELDER AND ADULT PROTECTION CODE

331.900 Title. WSTC 331.900 to 331.950 shall be known as the “Tribal Elder and Adult Protection Code.”

331.905 Policy. It is the policy of the Confederated Tribes of the Warm Springs Indian Reservation to continue the traditional respect that the members of the Tribes have for tribal elders. Elders are valuable resources as they are our custodians of tribal history, culture and tradition and they are the best hope of the Tribes to pass on tribal history, culture, and tradition to youth and adults of the Tribes. Thus, it is in the interest of and serves the welfare of the Tribes to protect tribal elders.

331.910 Purpose. The purpose of this code is to protect elders within the jurisdiction of the Reservation from abuse and/or neglect as defined in this code. The code shall be liberally interpreted in order to achieve its purpose.

331.915 Nature of Code.

- (1) This code provides for civil remedies in the form of an Elder Protection Order for elder abuse, harassment or neglect situations.
- (2) The Tribal Criminal Code, Chapter 305, shall be applied to all instances where a crime has been committed against an elder victim. The Tribal Exclusion Code, Chapter 300, may be applied to situations involving elder abuse, harassment or neglect committed by a non-Tribal Member.
- (3) The code may also be applied in incapacitated adult members or residents of Reservation should circumstances warrant; as defined in this code, any section or portion thereof containing the word “elder” may be liberally construed to include and mean “incapacitated adult.”

331.920 Definitions.

- (1) “Abuse” is:
- (a) Intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, cruel punishment or treatment of an elder resulting in physical harm or pain or mental anguish of the elder by any person, including, but not limited to anyone who has a special relationship with the elder such as a spouse, a child, or other relative recognized by tribal ordinance and custom, or a care provider;
 - (b) Sexual abuse, which is any physical contact with an elder intended for sexual gratification of the person making such contact and which is not consented to by the elder or for which the consent was obtained by intimidation or fraud;
 - (c) Emotional abuse, which is intentional infliction of threats, humiliation, or intimidation; or
 - (d) Exploitation, which is the unauthorized and/or improper use of funds, property, or other resources of an elder, or failure to use the elder’s funds, property, or other resources to the elder’s benefit or according to the elder’s desires.
- (2) “Care Provider” is a person, institution, or agency that is either (1) required by law or custom, (2) is employed, or (3) volunteers to provide care, services, or resources to an elder.
- (3) “Elder” is a senior citizen found on the Reservation who is at least 60 years of age or is an incapacitated adult over 18 years of age.
- (4) “Emergency” is a situation in which an elder is immediately at risk of death or injury to person or property and is unable to consent to services which would remove the risk.
- (5) “Family” is determined by tribal law and custom or tradition.
- (6) “Good Faith” is an honest belief or purpose and the lack of intent to defraud.
- (7) “Harassment” is gestures, words or actions which tend to annoy, alarm, or verbally abuse or cause tension of stress on an elder. Harassment includes, but is not limited to, situations where a person willfully subjects an elder to unwanted or unwelcome sales, soliciting, or begging.
- (8) “Incapacity” is the current inability or functional inability of responsible decisions about himself/herself as a result of mental illness, mental deficiency, physical illness or ability, or chronic use of drugs or liquor, and to understand the

consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age. A person's incapacity can be recognized by an official determination or by the Community.

- (9) "Neglect" is the failure by a care provider to provide for, or the interference with, the basic needs of an elder by not supplying resources, services, or supervision necessary to maintain an elder's minimum physical and mental health, or failing to provide services or resources essential to the elder's practice of his customs, traditions, or religion.

331.930 Duty to Report Abuse, Harassment, or Neglect of an Elder.

- (1) All adults living or working on the Reservation have a duty to report suspected abuse or neglect of an elder to the Tribal Police, Tribal Senior Department, Tribal Human Services, BIA, or IHS.
- (2) A person who in good faith reports suspected abuse, harassment, or neglect of an elder is immune from any civil or criminal suit based on that person's report.
- (3) Any person who is required by this code to report suspected elder abuse and fails to do so is subjected to a civil penalty of up to \$500.
- (4) Any person who makes a report of suspected elder abuse not in good faith and knowing it to be false is subject to (1) a civil penalty of up to \$500 and or (2) a criminal charge of Initiating a False Report, WSTC 305.454.

331.935 Confidentiality of Elder Abuse Reporting Party. The name of the reporting party who reports abuse, harassment or neglect as required by this code is confidential and shall not be released to any person unless the reporting party consents to the release or release is ordered by the Tribal Court.

331.940 Elder Protection Order.

- (1) The court shall issue an elder protection order which provides appropriate protection for the elder if the Tribal Court determines that an elder is either (1) incapacitated, (2) abused, (3) harassed, (4) neglected, (5) at risk of physical harm, or (6) at risk of financial harm or duress, or in imminent danger thereof. Such protection may include, but is not limited, to the following:
 - (a) Restraining the person who has abused, harassed, or neglected an elder from continuing such acts or contacting the elder;
 - (b) Removing the elder or the person responsible for abuse, harassment, or neglect from the place where the abuse, harassment, or neglect has taken or is taking place;

- (c) Requiring an elder's family, conservator/guardian, care provider or BIA Superintendent to account for the elder's funds and property;
 - (d) Requiring any person who harmed an elder to pay restitution to the elder for damages resulting from that person's wrongdoing.
 - (e) Ordering the care provider, elder's family, IHS, BIA, Senior Department caseworker/social worker or conservator/guardian to prepare a plan for and deliver elder protection services which provide the least restrictive alternatives for services, care, treatment, placement or financial management consistent with the elder's needs.
 - (f) Ordering the commencement of a proceeding for appointment of a conservator or guardian for the elder.
- (2) Any person, including the elder, may file, or request the filing of, a petition for an elder protection order. The petition for an elder protection order shall contain the information, sworn before a Notary Public, required by the Tribal Court on its approved petition form, including, but not limited to, the name, age and address of the elder; a brief description of the emergency, abuse, harassment, or neglect; and the identity and location of the person(s) perpetrating the emergency, abuse, harassment, or neglect.
- (3)
- (a) If a petition in the proper for as set out in section 2 above is filed with the Tribal Court, an elder protection order may be issued ex parte immediately. The ex parte order shall also set the date for a show cause hearing and be served on all the parties by the Tribal Police. The show cause hearing shall be scheduled within 10 working days of the granting of the elder protective order. At the show cause hearing, the elder protection order may be continued, or modified upon a showing by a preponderance of the evidence that the emergency, abuse, harassment, or neglect has occurred.
 - (b) Upon proof of service that the parties have been served with notice of the show cause hearing, the court may (1) reschedule a hearing, (2) issue a default order, or (3) dismiss the elder protection order if one or both of the parties fail to appear at the hearing.
- (4) Any party may request modification or termination of an elder protection order. The court may act on such modification or termination on its own, or may require a hearing with the parties present.
- (5) An elder protection order shall be issued for a period not to exceed 12 months, but may be extended as many times as necessary to protect the elder upon petition to the Court.

331.950 Enforcement. A violation of an elder protection order shall be enforced by the Contempt of the Tribal Court as set out in Chapter 200 of the Tribal Code.