



HABEMATOLEL POMO OF UPPER LAKE

TITLE 3: PUBLIC PEACE AND SAFETY

**CHAPTER 3. CHILDREN, ELDERS AND
DISABLED ADULTS' PROTECTION CODE**

TABLE OF CONTENTS

ARTICLE 1. TITLE.....4

ARTICLE 2. PURPOSE4

ARTICLE 3. JURISDICTION4

ARTICLE 4. DEFINITIONS.....4

 SECTION 4.1. DEFINED TERMS 4

ARTICLE 5. PROHIBITIONS7

 SECTION 5.1. ABUSE7

 SECTION 5.2. COMPLICIT IN ABUSE..... 7

ARTICLE 6. FILING A COMPLAINT OF ABUSE8

 SECTION 6.1. WHO MAY FILE8

 SECTION 6.2. COMPLAINT 8

ARTICLE 7. EMERGENCY REMOVAL/PLACEMENT8

 SECTION 7.1. EMERGENCY SITUATIONS8

 SECTION 7.2. PLACEMENT OF CHILD/DISABLED ADULT/ELDER..... 9

ARTICLE 8. ADJUDICATION HEARING9

 SECTION 8.1. TIMING OF HEARING9

 SECTION 8.2. ISSUING OF SUMMONS9

 SECTION 8.3. NOTICE TO FAMILY9

ARTICLE 9. REFERRAL TO WELLNESS BOARD9

ARTICLE 10. MANDATED REPORTERS10

 SECTION 10.1. MANDATED REPORTERS ON THE RESERVATION..... 10

 SECTION 10.2. REPORTING PROCEDURE10

 SECTION 10.3. INTERNAL INVESTIGATION PROCESS..... 11

ARTICLE 11. PENALTIES11

 SECTION 11.1. FINES 11

 SECTION 11.2. OTHER REMEDIES 12

ARTICLE 12. STATUTE OF LIMITATIONS.....12

 SECTION 12.1. PHYSICAL ABUSE.....12

SECTION 12.2. SEXUAL ABUSE.....12
SECTION 12.3. FAILING TO REPORT..... 12
ARTICLE 13. OTHER PROVISIONS.....12
SECTION 13.1. SOVEREIGN IMMUNITY12
SECTION 13.2. AMENDMENTS13
SECTION 13.3. SEVERABILITY13
SECTION 13.4. EFFECTIVE DATE..... 13

ARTICLE 1. TITLE

This Chapter shall be titled the Habematolel Pomo of Upper Lake Children, Elders and Disabled Adults' Protection Code and may be cited as the HPUL Protection Code. This Chapter shall be codified as Chapter 3 of Title 3 of the Habematolel Pomo of Upper Lake Book of Codes.

ARTICLE 2. PURPOSE

The purpose of this Chapter is to ensure the safety and protection of Children, Disabled Adults and Elders from Abuse both on the Reservation and anywhere our Tribal Member's live¹, by establishing laws prohibiting Abuse and a process to bring charges against those committing Abuse.

ARTICLE 3. JURISDICTION

The Habematolel Pomo of Upper Lake Tribal Court shall have authority to adjudicate cases of Child, Disabled Adult or Elder Abuse on the Reservation when the health, safety, or welfare of a Tribal Member, or other resident of the Reservation is affected. The Tribal Court shall also have authority to restrict access to the Reservation and to levy fines against any person found to be committing, or complicit to, Abuse against a Child, Disabled Adult or Elder. If no Tribal Court is in operation, the Executive Council, or its express designee, shall act as the Tribal Court for all references within this Chapter.

ARTICLE 4. DEFINITIONS

SECTION 4.1. DEFINED TERMS

For purposes of this Chapter, the following terms shall have the meanings ascribed below:

- (A) “**Abuse**” shall mean a situation in which a Child/Disabled Adult/Elder suffers from any one or more of the following:
- (1) Serious physical injury inflicted upon the Child/Disabled Adult/Elder by other

¹ The Executive Council has determined that the health, safety and welfare of its Tribal Members, whether living on or off the reservation is an internal matter of the Tribe and any conduct in violation of this Chapter has a direct and tangible effect on the health and welfare of the Tribe and its members. See *Montana v. United States*, 450 US 544, 565-566 (1981); *United States v. Cooley*, 593 US ___; *Strate v. A-1 Contractors*, 520 US 438, 442 (1997). Additionally, the Executive Council has determined that abuse or attempted abuse of a Tribal Member shall be considered to be a domestic relations issue which tribes possess inherent sovereign immunity. *John v. Baker*, 982 P.2d 738, 752.

than accidental means.

- (2) Harm by reason of intentional neglect, malnutrition, theft or sexual abuse.
 - (3) Going without necessary and basic physical care.
 - (4) Willful mental injury, financial harm, negligent treatment, Restraint, seclusion or maltreatment of a Child/Disabled Adult/Elder by a person who is responsible for the Child's/Disabled Adult's/Elder's welfare under circumstances that indicate that the Child's/Disabled Adult's/Elder's health or welfare is harmed or threatened thereby;
 - (5) A pattern of verbal abuse and/or harassment;
 - (6) Self-abuse or behavior that causes harm or damage to oneself, including neglect;
- (B) **“Adult”** shall mean a person who is 18 years or older;
- (C) **“Attempt”** shall mean when an individual engages in conduct which constitutes a substantial step toward the commission of an offense of abuse;
- (D) **“Caretaker”** shall mean a person who, either voluntarily or by law, provides care services or resources to an Elder, Disabled Adult or Child;
- (E) **“Chapter”** shall mean this Chapter X.X. Children, Elders and Disabled Adults’ Protection Code;
- (F) **“Child”** shall mean a person under 18 years of age;
- (G) **“Complicit”** shall mean someone that is aware abuse is occurring and failed to report it as outlined in Section 5.2;
- (H) **“Disabled Adult”** shall mean a person who is considered a “Disabled Adult” by the Tribe in its other program because he or she has physical or mental limitations that restrict his or her ability to carry out normal activities. For purposes of this Chapter, a Disabled Adult shall also include a Legally Incompetent Individual;
- (I) **“Elder”** shall mean a person who is 60 years or older;
- (J) **“Emergency Situation”** shall mean a serious, unexpected, and often dangerous situation requiring immediate action;
- (K) **“Executive Council”** shall mean the governing body of the Habematolel Pomo of Upper Lake;
- (L) **“Legally Incompetent Individual”** shall mean a person who has been adjudicated incompetent by a court because of a mental condition that renders him or her unable to care for his/her person or unable to handle one (1) or more life functions. For purposes of this Chapter, a Disabled Adult shall also include a Legally Incompetent Individual;

- (M) **“Local Child/Adult Protective Services Agency”** shall mean the County Child Protective Services Department or County Adult Protective Services Department;
- (N) **“Local Law Enforcement Agency”** shall mean the applicable County Sheriff’s Office unless the Tribe has a Tribal Police Department in operation for occurrences on the Reservation. If a Tribal Police Department is in operation, then Local Law Enforcement Agency shall refer to the Tribal Police Department for those living on trust land in the Tribe’s Reservation area;
- (O) **“Parent”** shall mean any person who exercises care, custody, and control of the Child as established by law;
- (P) **“Physical Abuse”** shall mean any non-accidental physical injury to a Child, Disabled Adult or Elder;
- (Q) **“Reservation”** shall mean all lands within the exterior boundaries of the Habematolel Pomo of Upper Lake Reservation located in Lake County, California and all lands owned by the Tribe both fee and non-fee land and lands held in trust for individuals and all lands considered “Indian lands” under federal, state or tribal law²;
- (R) **“Restraint”** shall mean legally depriving someone of their physical freedom. Restraint is strictly prohibited in all Tribal buildings or as used by any staff or contractors, except as required by law (i.e., seatbelts or car seats) or as a method of last resort, if the individual is in imminent danger to himself or others. Restraint by the use of a drug is also prohibited by all persons if the drug is used to control the behavior or to restrict the person’s freedom of movement if that drug is not prescribed by a doctor or not standard treatment for the person’s medical or psychiatric condition. If restraint is used, he or she shall be released at the earliest possible time. A person(s) utilizing restraint must exercise the standard of care that would be expected of a reasonable and prudent person in that situation and in accordance with accepted practices in the industry;
- (S) **“Sex Act”** shall mean any of the following:
- (1) Contact between the penis and the vulva or the penis and the anus, with some penetration, however slight.
 - (2) Contact between the mouth and penis, the mouth and vulva, or the mouth and anus.
 - (3) The penetration, however slight, of the anal or genital opening of another by hand or finger or any object, with an intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person;
- (T) **“Sexual Abuse”** shall mean ANY sexual act committed against a Child (also referred to as child molestation) or Disabled Adult; and any illegal or wrongful sex act committed against an Elder in the following circumstances;

² See the federal definition of Indian Country as set forth in 18 U.S.C. Section 1151.

- (1) Without his or her consent.
 - (2) The person compels the other person to submit by force or by the threat of imminent death, serious bodily injury, extreme pain, or unlawful restraint to be inflicted on the other person or anyone else.
 - (3) The person has impaired the other person's power to appraise or control his or her conduct by administering or employing without the other person's knowledge drugs, intoxicants, or other means for the purpose of preventing resistance.
 - (4) The person knows that the other person suffers from a mental disease or defect which renders the other person incapable of appraising the nature of his or her conduct.
 - (5) The other person is unconscious, or the person knows that the other person is unaware that a sexual act is being committed upon him or her or that the other person submits because he or she falsely supposes that the person is his or her spouse;
- (U) **“Tribal Court”** shall mean the Habematolel Tribal Court established Tribal Ordinance. If a Tribal Court is not in operation, the Executive Council or its designee shall operate as the Tribal Court;
- (V) **“Tribal Member”** shall mean an enrolled member of the Habematolel Pomo of Upper Lake;
- (W) **“Tribe”** shall refer to the Habematolel Pomo of Upper Lake, a federally- recognized Indian tribe, or an authorized official or agency thereof.

ARTICLE 5. PROHIBITIONS

SECTION 5.1. ABUSE

No person shall, on any land within the exterior boundaries of the Habematolel Pomo of Upper Lake Reservation, on land held in trust by the United States for the benefit of the Tribe, or in any location in which a Tribal Member resides or is present be permitted to commit or attempt to commit Abuse towards a Child, Disabled Adult or an Elder.

SECTION 5.2. COMPLICIT IN ABUSE

- (A) No person shall, on any land within the exterior boundaries of the Habematolel Pomo of Upper Lake Reservation, or on land held in trust by the United States for the benefit of the Tribe, or in any location in which a Tribal Member resides or is present be permitted to be complicit in the Abuse of a Child, Disabled Adult or an Elder.
- (B) To be found complicit in the Abuse, the person must have been aware that Abuse was occurring and failed to report the Abuse to the Tribal Court or law enforcement.

ARTICLE 6. FILING A COMPLAINT OF ABUSE

SECTION 6.1. WHO MAY FILE

Any person, including the Tribe if an individual is cited by Tribal Police, may file a complaint of Abuse with the Tribal Court.

SECTION 6.2. COMPLAINT

The complaint shall set forth the following, if known, with specificity;

- (A) The name, birth date, gender, address, and tribal affiliation of the Child/Disabled Adult/Elder;
- (B) The basis for the Tribal Court's jurisdiction;
- (C) The allegations/facts that cause the Child/Disabled Adult/Elder to be a victim of Abuse;
- (D) The names, addresses and tribal affiliation of the Child's/Disabled Adult's/Elder's Parent or Caretaker;
- (E) The names and addresses of all known members of the Child's/Disabled Adult's/Elder's extended family and all former Caregivers.
- (F) The name and addresses of the person alleged to have committed the Abuse.

The complaint shall be written and may be on a form authorized for that purpose by the Executive Council.

ARTICLE 7. EMERGENCY REMOVAL/PLACEMENT

SECTION 7.1. EMERGENCY SITUATIONS

After the complaint is filed, if at any time an emergency situation arises that makes the placement of the Child(ren), Disabled Adult or Elder unsafe living in the home or living in the home not in the best interest of the Child(ren), Disabled Adult or Elder, Tribal Police, ICWA Advocate or Member Services shall immediately call the County Sheriff's Office and/or County Child Protective Services (CPS) or Adult Protective Services (APS) to investigate and handle the emergency situation. Tribal Police may temporarily remove the Child(ren), Disabled Adult or Elder from the situation for his/her safety until the Sheriff's Office or CPS/APS arrive on scene.

If CPS/APS determines that an emergency exists and temporary removal of the Child(ren), Disabled Adult, or Elder from the home is necessary, County CPS/APS shall have the authority

to remove the Child(ren), Disabled Adult or Elder and place the child(ren) or Elder in an appropriate temporary home in coordination with the Member Services Department and/or ICWA Advocates.

If the Child(ren), Disabled Adult or Elder are removed from the home, the Tribal Police, ICWA Advocates, and/or Member Service's Department shall file documentation of the removal from the home and/or CPS/APS's involvement in the case with the Tribal Court for prosecution under this Chapter.

SECTION 7.2. PLACEMENT OF CHILD/DISABLED ADULT/ELDER

At the Adjudication Hearing, the Tribal Court may place the removed Child/Disabled Adult/Elder in the temporary custody of extended family, an Indian family on the Reservation, or Tribally approved foster home.

ARTICLE 8. ADJUDICATION HEARING

SECTION 8.1. TIMING OF HEARING

The Tribal Court shall conduct an Adjudication Hearing within fifteen (15) business days after the filing of the complaint to determine whether the preponderance of the evidence shows that the Child/Elder is a victim of Abuse.

SECTION 8.2. ISSUING OF SUMMONS

The Child's/Disabled Adult's/Elder's Parent or Caretaker, and all persons alleged to have committed the Abuse shall be issued summons, in accordance with Tribal Court rules, to appear at the Adjudication Hearing;

SECTION 8.3. NOTICE TO FAMILY

The Tribe, ICWA Advocate, Member Services Department and the Child's/Disabled Adult's/Elder's family shall be given notice of the hearing. Family includes caretakers, parents, spouse, siblings and children.

ARTICLE 9. REFERRAL TO WELLNESS BOARD

If the Tribal Court Judge finds that the Child/Disabled Adult/Elder is a victim of Abuse, then the Child/Disabled Adult/Elder may be referred to the Tribe's Wellness Board for creation of a wellness plan.

ARTICLE 10. MANDATED REPORTERS

SECTION 10.1. MANDATED REPORTERS ON THE RESERVATION

- (A) In accordance with 18. U.S.C. 1169 and Tribal law, any person who;
- (1) Is employed in the Tribal Administration, Member Services Department, Education Department, Early Childhood Education Department, Public Safety, Transportation, Housing, Tribal Court and ICWA shall be considered a mandated reporter, also any person who is a physician, surgeon, dentist, podiatrist, chiropractor, nurse, dental hygienist, optometrist, medical examiner, emergency medical technician, paramedic, or health care provider, teacher, school counselor, instructional aide, teacher's aide, teacher's assistant, property manager, transporter, or bus driver employed by any Tribal, Federal, public or private school, administrative officer, supervisor of child welfare and attendance, or truancy officer of any tribal, Federal, public or private school, child day care worker, Head Start teacher, public assistance worker, worker in a group home or residential or day care facility, or social worker, psychiatrist, psychologist, or psychological assistant, licensed or unlicensed marriage, family, or child counselor, person employed in the mental health profession, or law enforcement officer, probation officer, worker in a juvenile rehabilitation or detention facility, or person employed in a public agency who is responsible for enforcing statutes and judicial orders;
 - (2) Knows or has reasonable suspicion that a Child, Disabled Adult, or Elder was abused while on the Reservation, or that actions are being taken, or are going to be taken that would reasonably be expected to result in abuse of a Child, Disabled Adult, or Elder on the Reservation.
- (B) Must immediately report such abuse or actions to the Member Services Department and/or the ICWA Advocate. The Member Services Department or ICWA Advocate will immediately make the appropriate referral to the County Sheriff's Office and/or County CPS/APS.

SECTION 10.2. REPORTING PROCEDURE

In accordance with 25 U.S.C. 3201, when a Local Law Enforcement Agency or Local Child/Adult Protective Services Agency receives an initial report from any person of abuse of a Child, Disabled Adult, or Elder on the Reservation, or actions which would reasonably be expected to result in abuse of a Child, Disabled Adult or Elder on the Reservation. The receiving agency shall;

- (A) Immediately notify appropriate officials of the other agency of such report;
- (B) Within 36 hours after receiving initial report, prepare a written report that includes the

names, address, age, and sex of the Child/Disabled Adult/Elder that is the subject of the report, the grade and the school in which the child is currently enrolled; the name and address of the child's parents or other person responsible for the Child's/Disabled Adult's/Elder's care; the name and address of the alleged offender; the name and address of the person who made the report to the agency; a brief narrative as to the nature and extent of the Child's/Disabled Adult's/Elder's injuries, including any previously known or suspected abuse of the Child/Disabled Adult/Elder or the child's siblings and the suspected date of the abuse; and any other information the agency or the person who made the report to the agency believes to be important to the investigation and disposition of the alleged abuse;

- (C) Submit, when prepared, a copy of the written report required in subsection (B) above to the other agency;
- (D) Where a report of abuse involves an Indian child or where the alleged abuser is an Indian and where a preliminary inquiry indicates a criminal violation has occurred, the Local Law Enforcement Agency, if other than the Federal Bureau of Investigation ("FBI"), shall immediately report such occurrence to the FBI;
- (E) Immediately initiate an investigation of such allegation and shall take immediate, appropriate steps to secure the safety and well-being of the Child, Disabled Adult, or Elder involved;
- (F) Upon completion of the investigation of any report of alleged abuse that is made to a Local Law Enforcement Agency or Local Child/Adult Protective Services Agency, such agency shall prepare a final written report on such allegation;
- (G) Shall not disclose the identity of the individual making the report, without the consent of the individual, to any person other than a court of competent jurisdiction or an employee of the Tribe, State or Federal Government who needs to know the information in the performance of such employee's duties.

SECTION 10.3. INTERNAL INVESTIGATION PROCESS

In order to provide outside agency's lead time to investigate any reports of abuse, ten (10) days after a report of abuse, suspected abuse or potential abuse is received by the Member Services Department, the Director shall inform the Executive Council of the report in writing and begin investigation of the report as directed by the Executive Council.

ARTICLE 11. PENALTIES

SECTION 11.1. FINES

- (A) Any person found to have committed Abuse, or was complicit in the Abuse, against a Child/Disabled Adult/Elder on the Reservation shall be fined up to \$5,000 for each

violation.

- (B) Any mandated reporter who failed to report Abuse, as required under this Chapter, against a Child/Disabled Adult/Elder on the Reservation shall be fined up to \$5,000 for each violation.

SECTION 11.2. OTHER REMEDIES

The Tribal Court may also order the individual; to perform community service, to receive counseling or behavioral health services, to participate with the Wellness Board, to have restricted access to the Reservation, to repay the Tribe any expenses spent to care for the victim, to be placed in care where monitoring of self-harm may be observed and all other penalties the Tribal Court deems just and necessary.

A Tribal Member found to have violated this Chapter may be declared by the Tribal Court to not be in good standing with the Tribe for a period of time no less than one (1) year.

ARTICLE 12. STATUTE OF LIMITATIONS

SECTION 12.1. PHYSICAL ABUSE

The commencement of an action for physical Abuse of a Child/Disabled Adult/Elder, as prohibited under this Chapter, shall be within five (5) years after the commission of the offense.

SECTION 12.2. SEXUAL ABUSE

There shall be NO statute of limitations for the commencement of an action for sexual Abuse of a Child/Disabled Adult/Elder, as prohibited under this Chapter.

SECTION 12.3. FAILING TO REPORT

The commencement of an action against a mandated reporter for failure to report Abuse, as required under this Chapter, shall be within one (1) year after the commission of the offense. If the mandated reporter intentionally concealed his/her failure to report then the failure to report is a continuing offense until Tribal Police discover the offense.

ARTICLE 13. OTHER PROVISIONS

SECTION 13.1. SOVEREIGN IMMUNITY

Nothing in the provisions of this Chapter constitutes consent by the Habematolel Pomo of Upper Lake or its sub-organizations to be sued in any court. Neither this Title nor any action (or inaction) taken by the Habematolel Pomo of Upper Lake or its sub-organizations pursuant to this Title represents a waiver of the Tribe's sovereign immunity for any purpose.

SECTION 13.2. AMENDMENTS

This Chapter, or any section herein, may be amended by a majority vote of the Executive Council.

SECTION 13.3. SEVERABILITY

If any part of this Chapter is found void and without legal effect, the remainder of the Chapter shall continue to remain in full force and effect, as though such part had not been contained therein.

SECTION 13.4. EFFECTIVE DATE

This Chapter shall take effect on the date it is approved by the Executive Council.

CERTIFICATION

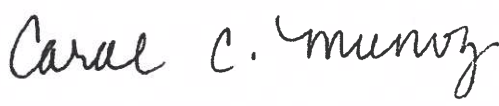
As a duly-elected official of the Habematolel Pomo of Upper Lake, I do hereby certify that, at a meeting duly called, noticed, and convened on the 5th day of November, 2021, at which time a quorum of 7 was present, this Title 3: Chapter 3: Children, Elders and Disabled Adults' Protection Code was duly adopted by a vote of 6 FOR, 0 AGAINST, 1 ABSTAINED, and said Chapter has not been rescinded or amended in any form.



Executive Council Chairperson

1 NOV 10 2021

Date

ATTEST:


Tribal Secretary

11/09/2021

Date

