

1 (4) *Elder*. The word “elder” means a person who is sixty (60) years of
2 age or older.

3
4 (5) *Protective Order*. The term “protective order” shall have the same
5 meaning as the definition provided in Section 50E-2(d) of the
6 Cherokee Code (Vulnerable Adult Protective Order Code).

7
8 (6) *Tribe*. The word “Tribe” means the Eastern Band of Cherokee
9 Indians.

10
11 (7) *Vulnerable Adult*. The term “vulnerable adult” means a person who
12 is eighteen (18) years of age or older or a lawfully emancipated
13 minor, and who is unable to make decisions or take action to
14 protect him or herself from exploitation, neglect, or physical abuse,
15 due to a physical or mental disease, illness or chronic condition,
16 including but not limited to alcohol or chemical addiction, a
17 developmental disability, or a disability caused by degenerative
18 conditions associated with advanced age.

19
20 (c) *Crimes and Penalties*.

21
22 (1) *Exploitation of an Elder or Vulnerable Adult*.

23
24 a. It shall be unlawful to

25
26 i. make a false representation, abuse a position of trust or
27 fiduciary duty, or coerce, command, or threaten, with the
28 intent to permanently deprive an elder or vulnerable adult of
29 property, and, as a result of the act, the elder or vulnerable
30 adult gives or loses possession and control of property,
31 assets, or money; or

32
33 ii. use the property or personal identifying information of an
34 elder or vulnerable adult to commit, or commit against an
35 elder or vulnerable adult, any one of the following offenses,
36 as defined by the Eastern Band of Cherokee Indians
37 Criminal Code:

38
39 1. extortion (§ 14-60.2);
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- 2. blackmail (§ 14-60.3);
- 3. fraudulent use of a credit, debit, or bank card (§ 14-60.4);
- 4. forgery (§ 14-60-10);
- 5. criminal simulation (§ 14-60-11);
- 6. fraudulent handling of recordable instruments (§ 14-60.12);
- 7. tampering with records (§ 14-60.13);
- 8. embezzlement (§ 14-60.20);
- 9. false pretenses (§ 14-60.30);
- 10. securing execution of documents by deception (§ 14-60.31);
- 11. worthless checks (§ 14-60.32);
- 12. obtaining property in return for worthless check, draft, or order (§ 14-60.33);
- 13. defrauding creditors (§ 14-60.37); or
- 14. making a false credit report (§ 14-60.38).
- 15. larceny (§ 14-60.60)

Any person in violation of this section shall be guilty of the offense of Exploitation of an Elder or Vulnerable Adult.

b. It shall be unlawful for a caretaker of an elder or vulnerable adult to commit an offense in (c)(1)a(i) or (c)(1)a(ii) of this section. Any person in violation of this section shall be guilty of the offense of Caretaker Exploitation of Elder or Vulnerable Adult.

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c. Penalties

i. Unless a person's conduct is covered under some other provision of law providing greater punishment, Exploitation of an Elder or Vulnerable Adult shall be subject to punishment by a fine of up to \$5,000, by imprisonment for up to twelve (12) months, by exclusion for a period of not less than two years nor more than five years; or any combination of these penalties.

ii. Unless a person's conduct is covered under some other provision of law providing greater punishment, Caretaker Exploitation of an Elder or Vulnerable Adult shall be subject to punishment by a fine of up to \$15,000, by imprisonment for up to three years, by exclusion for a period of not less than two years nor more than 10 years; or any combination of these penalties.

(2) Neglect of an Elder or Vulnerable Adult.

a. It shall be unlawful to wantonly or recklessly

i. fail to exercise a degree of care that a reasonable person in a like situation would exercise to

A. assist an elder or vulnerable adult in personal hygiene, or the provision of food, clothing, or shelter; or

B. provide to an elder or vulnerable adult medical care for physical and mental health needs; or

C. protect an elder or vulnerable adult from health and safety hazards; or

D. prevent malnutrition or dehydration

ii. interfere in the delivery of necessary services or resources to an elder or vulnerable adult;

Any person in violation of this section shall be guilty of Neglect of an Elder or Vulnerable Adult

1 b. It shall be unlawful for a caretaker of an elder or vulnerable adult
2 to commit an offense in (c)(2)a(i) or (c)(2)a(ii) of this section.
3 Any person in violation of this section shall be guilty of the
4 offense of Caretaker Neglect of Elder or Vulnerable Adult.

5
6 c. Penalties:

7
8 i. Unless a person's conduct is covered under some other
9 provision of law providing greater punishment, a first
10 conviction of Neglect of an Elder or Vulnerable Adult shall be
11 punishable by a fine of up to \$5,000 by imprisonment for up
12 to six (6) months, by exclusion for a period of not less than
13 one year nor more than five years; or any combination of
14 these penalties.

15
16 ii. Unless a person's conduct is covered under some other
17 provision of law providing greater punishment, a second or
18 subsequent conviction of Neglect of an Elder or Vulnerable
19 Adult shall be punishable by a fine of up to \$5,000, by
20 imprisonment for up to twelve (12) months, by exclusion for
21 a period of not less than two years nor more than five years;
22 or any combination of these penalties.

23
24 iii. Unless a person's conduct is covered under some other
25 provision of law providing greater punishment, Caretaker
26 Neglect of an Elder or Vulnerable Adult shall be punishable
27 by a fine of up to \$15,000, by imprisonment for up to three
28 years, by exclusion for a period of not less than two years
29 nor more than 10 years; or any combination of these
30 penalties.

31
32
33 (3) *Abuse of an Elder or Vulnerable Adult.*

34
35 a. It shall be unlawful to

36
37 i. intentionally inflict physical injury, or to allow physical injury
38 to be inflicted, or create or allow to be created a substantial
39 risk of physical injury, upon or to an elder or vulnerable adult;
40 or

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ii. commit any one of the following offenses, as defined by the Eastern Band of Cherokee Indians Criminal Code, against an elder or vulnerable adult or the property of an elder or vulnerable adult:

1. injuring real property (§ 14-10.11);
2. injuring telephone, wires or other telephone equipment (§ 14-10.14);
3. criminal trespass (§§ 14-10.15, 14-10.16, and/or 14-10.17);
4. burglary (§ 14-10.40);
5. breaking and entering (§ 14-10.41);
6. criminal mischief (§ 14-10.9);
7. arson (§§ 14-10.50, 14-10.51; and/or 14-10.52);
8. assault (§§ 14-40.49, 14-40.50, 14-40.54, 14-40.55, 14-40.56, 14-40.57, 14-40.59, 14-40.60, and/or 14-40.62);
9. maiming (§ 14-40.14);
10. discharging a firearm into an occupied building (§ 14-40-15);
11. harassment; telephone harassment (§§ 14-25.13 and/or 14-5.3);
12. kidnapping (§ 14-40.30);
13. false imprisonment (§ 14-40.31);
14. custodial interference (§ 14-40.32);

1 15. homicide (§§ 14-40.40 and/or 14-40.41);

2
3 16. sex offenses, including aggravated sexual abuse,
4 sexual abuse, sexual abuse of a minor or ward,
5 abusive sexual contact (§§ 14-20.2, 14-20.3, 14-20.4,
6 14-20.8);

7
8 17. stalking (§ 14-5.5);

9
10 18. communicating threats (§ 14-5.2);

11
12 19. cruelty to animals (§ 14-5.20);

13
14 20. robbery and robbery with a dangerous weapon (§§
15 14-10.30 and/or 14-10.31).

16
17 Any person in violation of this section shall be guilty of the
18 offense of Abuse of an Elder or Vulnerable Adult.

19
20 b. It shall be unlawful for a caretaker of an elder or vulnerable
21 adult to commit an offense in (c)(3)a(i) or (c)(3)a(ii) of this
22 section. Any person in violation of this section shall be guilty
23 of the offense of Caretaker Abuse of Elder or Vulnerable
24 Adult.

25
26
27 c. Penalties

28
29 i. Unless a person's conduct is covered under some other
30 provision of law providing greater punishment, Abuse of an
31 Elder or Vulnerable Adult shall be punishable by a fine of up
32 to \$5,000, by imprisonment for up to twelve (12) months, by
33 exclusion for a period of not less than two years nor more
34 than five years; or any combination of these penalties.

35
36 ii. Unless a person's conduct is covered under some other
37 provision of law providing greater punishment, Caretaker
38 Abuse of an Elder or Vulnerable Adult shall be punishable by
39 a fine of up to \$15,000, by imprisonment for up to three
40 years, by exclusion for a period of not less than two years

1 nor more than 10 years; or any combination of these
2 penalties.

3
4 (4) *Aggravated Elder Abuse.*

5
6 a. It shall be unlawful to commit

7
8 i. any intentional act of abuse (as per subsection (c)(3) of this
9 section) or any act of neglect (as per subsection (c)(2) of this
10 section) that causes an elder or vulnerable adult to suffer
11 serious bodily injury (as defined in §14-40.54(b)) or death or
12 extreme emotional distress; or

13
14 ii. any intentional act of exploitation (as per subsection (c)(1) of
15 this section) against an elder or vulnerable adult which
16 exceeds a value of \$5,000

17
18 Any person in violation of this section shall be guilty of the offense
19 of Aggravated Elder Abuse.

20
21 b. Penalty. Unless a person's conduct is covered under some
22 other provision of law providing greater punishment,
23 Aggravated Elder Abuse shall be punishable by a fine of not
24 less than \$500 nor more than \$15,000, by imprisonment for
25 a for not less than six months nor more than three years, by
26 exclusion for a period of not less than two years nor more
27 than life; or any combination of these penalties. No part of
28 any sentence under this subsection may be suspended or
29 stayed.

30
31 (5) *Failure to Report Elder Abuse.*

32
33 a. It shall be unlawful to intentionally fail to make a report of
34 suspected exploitation, neglect, or abuse that is required by
35 law, including a report required under either Cherokee Code
36 Section 14-1.6 or Section 108-9, as either may be amended.
37 Any person in violation of this section shall be guilty of the
38 offense of Failure to Report Elder Abuse.

1 b. Penalty. Unless a person's conduct is covered under some
2 other provision of law providing greater punishment, Failure
3 to Report Elder Abuse shall be punishable by a fine of up to
4 \$5000.00, by imprisonment for up to six (6) months; or any
5 combination of these penalties.

6
7 (6) Violation of a Vulnerable Adult Protective Order.

8
9 a. It shall be unlawful to willfully violate any term or
10 condition of a Protective Order or any term or condition of a
11 lawful order issued by a properly constituted judicial authority
12 pursuant to a criminal or civil case in tribal, federal, or state
13 court that:

14
15 1. Enjoins the perpetrator from threatening to commit or
16 committing any acts of exploitation, neglect, or
17 physical abuse;

18
19 2. Prohibits the perpetrator from intimidating, harassing,
20 menacing, annoying, telephoning, contacting, or
21 otherwise interfering or communicating with an elder
22 or vulnerable adult;

23
24 3. Removes and/or excludes the perpetrator from the
25 residence or a reasonable area surrounding the
26 residence of an elder or vulnerable adult;

27
28 4. Requires a perpetrator to stay away from the
29 residence, place of employment, place of worship, or
30 a specified place frequented by an elder or vulnerable
31 adult; or

32
33 5. Prohibits the perpetrator from using or possessing a
34 firearm or other weapon specified by the order.

35
36 Any person in violation of this section shall be guilty of the
37 offense of Violation of a Vulnerable Adult Protective Order.

38
39 b. Penalty. Unless a person's conduct is covered under some
40 other provision of law providing greater punishment,

1 Violation of a Vulnerable Adult Protective Order shall be
2 punishable by a fine of up to \$5,000, by imprisonment for up
3 to twelve (12) months; or any combination of these penalties.

4
5 (d) *Limitations on Penalties.* In no case shall the Cherokee Court impose a
6 penalty of imprisonment greater than three (3) years or a fine greater than
7 \$15,000 for any one crime or offense listed in this Section 14-40.13.

8
9 (e) *Restitution.* In every instance where a crime prosecuted under this
10 Section resulted in any damages incurred by an elder or vulnerable adult,
11 including but not limited to damages resulting from loss of an elder or
12 vulnerable adult's property, or physical or emotional injury, including
13 monies spent on medical services, the Tribal Prosecutor shall seek
14 restitution against the offender.

15
16 (f) *Agency and CIPD Mutual Reporting Mandate.*

17
18 (1) *Reporting Mandate.* The Agency shall deliver any report of
19 suspected exploitation, neglect, or physical abuse that it receives or
20 develops internally to the CIPD within thirty-six (36) hours of
21 receiving the report. Likewise, the CIPD shall deliver any report of
22 suspected exploitation, neglect, or physical abuse that it receives,
23 irrespective of how the report was delivered or the report's source,
24 to the Agency within thirty-six (36) hours of receiving the report.

25
26 (2) *Content of Report.* A report received under this Subsection (f) may
27 be delivered in any reasonable manner, provided, that the entity
28 delivering the report shall provide, to the extent possible, the
29 following information:

30
31 a. the name, age, address, and contact information of the elder
32 or vulnerable adult involved, the person making the report,
33 and the caretaker involved, if any;

34
35 b. the name of the alleged perpetrator or perpetrators;

36
37 c. the nature and extent of any injury, whether physical,
38 emotional, or financial, to the elder or vulnerable adult;

1 d. the nature and extent of the condition that prompted the
2 report; and

3
4 e. any other pertinent information.

5
6 No report shall be deemed a public record and in no case shall the
7 name of the person originally making the report be revealed, unless
8 such person specifically requests or consents to such disclosure or
9 unless the report or information therein is used in a public judicial
10 proceeding resulting from the report.

11
12 (3) *Registry.* The Agency and the CIPD shall each maintain a separate
13 registry of the reports received and delivered under this
14 Subsection(f), the investigations made based on those reports, and
15 the findings and actions recommended and taken thereafter. A
16 registry shall not be deemed a public record and shall not be
17 disclosed unless ordered by the Cherokee Court, provided,
18 however, that the Agency shall be entitled to inspect the registry
19 maintained by the CIPD and the CIPD shall be entitled to inspect
20 the registry maintained by the Agency.

21
22 (g) *Mandatory Investigation.*

23
24 (1) *Investigations Required.*

25
26 a. If the Cherokee Court issues a Protective Order or the
27 Agency delivers a report of suspected exploitation, neglect,
28 or physical abuse under Subsection(f), the CIPD shall
29 conduct an investigation for the purposes of determining
30 whether probable cause exists to prosecute an offense
31 arising under Eastern Band of Cherokee Indians Criminal
32 Code.

33
34 b. If the Cherokee Court issues a Protective Order that was not
35 commenced by the Agency, the Agency shall conduct an
36 investigation for the purposes of determining whether the
37 "vulnerable adult" subject to the Protective Order needs
38 "essential services" or "protective services", as each of those
39 terms are defined under Cherokee Code Section 108-7.

1 c. Neither the CIPD nor the Agency is required to complete an
2 investigation required under this Section (g) if either entity
3 determines that such an investigation would duplicate an
4 existing investigation undertaken by that entity involving the
5 same facts, suspect or respondent, and victim.

6
7 (2) *Cherokee Court's Duty to Deliver Orders.* The Cherokee Court
8 shall serve any Protective Order it issues or any order issued
9 pursuant to Cherokee Code Chapter 108, Article II (Adult Protection
10 Act) to the CIPD and the Agency within forty-eight (48) hours of the
11 issuance of such order. The Cherokee Court shall further serve
12 any order of conviction of a crime to which an elder or vulnerable
13 adult is a victim to the Agency, regardless of whether the underlying
14 conviction is for a crime delineated in this Section.

15
16
17 (h) *Video Tape Depositions.*

18
19 (1) *Video Tape Depositions Authorized.* In any case in which a
20 defendant is charged with a crime against an elder or vulnerable
21 adult, or in any case involving a victim or witness who is an elder or
22 vulnerable adult, the prosecution may file a motion with the court at
23 any time prior to the commencement of the trial for an order that a
24 deposition be taken of the testimony of the elder or vulnerable adult
25 victim or witness and that the deposition be recorded and
26 preserved on a video imaging format. The Cherokee Court shall
27 identify the witness and fix the date and time for the deposition in
28 the order.

29
30 (2) *Timing; Cross-Examination.* The prosecution shall file a motion
31 requesting a recorded deposition prior to the commencement of the
32 trial and at least fourteen (14) days prior to the taking of the
33 deposition; except that for good cause shown, the Cherokee Court
34 may permit the filing of a motion requesting a recorded deposition
35 less than fourteen (14) days prior to taking the deposition. The
36 defendant shall receive reasonable notice of the taking of the
37 deposition. The defendant shall have the right to be present and to
38 be represented by counsel at the deposition unless the defendant
39 voluntarily fails to appear after receiving notice of the date, time,
40 and place of the deposition.

1
2 (3) *Types of Depositions; Discovery; Process.* Notwithstanding any
3 other provision of the Tribe's laws:

4
5 a. Upon receipt of the motion, the Cherokee Court shall
6 schedule the deposition to take place within fourteen (14)
7 days without further findings, except for good cause shown
8 by the prosecution if the motion asks for the deposition to be
9 taken in less than fourteen days.

10
11 b. The Cherokee Court may, of its own motion, order a
12 deposition for a victim or witness who is an elder or
13 vulnerable adult victim

14
15 c. Both the prosecution and the defendant shall provide all
16 available discovery no later than five (5) days before the
17 scheduled deposition. If the discovery has not been
18 provided as set forth in this Subsection(h)(3)c., either party
19 may file a motion with the court to reschedule the deposition
20 in order to obtain the necessary discovery to adequately
21 prepare for the deposition.

22
23 d. A deposition authorized under this Subsection(h) must be
24 taken, preserved on a video imaging format, and conducted
25 as directed by the Cherokee Court. After the deposition is
26 taken, the prosecution shall transmit the recording to the
27 clerk of court for the Cherokee Court. At least five (5) days
28 before trial, the prosecution shall file a transcript of the
29 deposition with the clerk of court for the Cherokee Court and
30 provide a copy to the defendant or the defendant's attorney
31 without cost.

32
33 (5) *Admissibility.* If at the time of trial the Cherokee Court finds that the
34 victim or witness is medically unavailable or otherwise unavailable
35 within the meaning of rule 804(a) of the North Carolina Rules of
36 Evidence, the Cherokee Court may admit the recording of the
37 victim's or witness' deposition as former testimony under rule
38 804(b)(1) of the North Carolina Rules of Evidence.
39

1 (i) Severability. In the event that a court finds invalid any clause or provision
2 of this Section, such invalid clause or provision shall be severed from the
3 remaining body of the Section, and the remainder of this Section shall
4 remain in full force and effect.

5
6 (j) Prior inconsistent laws repealed. Any existing laws that are inconsistent
7 with this Section are expressly repealed.
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14 **Add Chapter 50E (Vulnerable Adult Protective Orders) to the Cherokee Code.**

15
16 **Chapter 50E – VULNERABLE ADULT PROTECTIVE ORDERS**

17 Sec. 50E-1 – Purpose.

18 The Eastern Band of Cherokee Indians is committed to protecting all vulnerable
19 adult members of our Tribe and continuing our traditional respect for Tribal elders. The
20 purpose of this chapter is to provide protection within the territory of the Eastern Band of
21 Cherokee Indians to vulnerable adults, including Tribal elders, who have been the victim
22 of abuse, neglect, or exploitation. This chapter expresses the process by which persons
23 may obtain civil vulnerable adult protective orders.
24

25 Sec. 50E-2 – Definitions.
26

27 For the purposes of this Chapter:
28

- 29 a) “Abuse” means the commission of any acts constituting “Exploitation of an Elder
30 or Vulnerable Adult,” “Neglect of an Elder or Vulnerable Adult,” or “Abuse of an
31 Elder or Vulnerable Adult” as defined in Cherokee Code (“C.C.”) Section 14-
32 40.13(c).

- 1
2 b) “Agency” means the Eastern Band of Cherokee Indians Public Health and Human
3 Services Division as set out in the Cherokee Code Section 130A.
4
5 c) “Court” means the Cherokee Court of the Eastern Band of Cherokee Indians.
6
7 d) “Plaintiff” means the elder or vulnerable adult to be protected by the protective
8 order and, if the Court grants the complaint, the protected person.
9
10
11 e) “Defendant” means the person against whom the protective orders are sought and,
12 if the complaint is granted, the restrained person.
13
14 f) “Tribe” means the Eastern Band of Cherokee Indians.
15
16 g) “Vulnerable Adult” shall have the meaning as that term is defined in C.C. § 108-7.

17 Sec. 50E-3 – Commencement of Action.

- 18 a) A vulnerable adult who is alleged to have suffered Abuse may seek protective
19 orders as provided in this Chapter.
20
21 b) An action is commenced under this Chapter by filing a complaint for a protective
22 order in Court or by filing a motion in an existing civil action, by:
23
24 1. the vulnerable adult who (1) is the victim of Abuse that has occurred in
25 territory subject to the jurisdiction of the Tribe or (2) is the victim of Abuse
26 that has occurred outside the territory subject to the jurisdiction of the Tribe
27 but who resides within such territory;
28
29 2. a conservator or trustee of the vulnerable adult subject to Abuse, an
30 attorney-in-fact of a vulnerable adult subject to Abuse who acts within the
31 authority of a power of attorney, a person appointed as guardian ad litem
32 for the vulnerable adult subject to Abuse, or other person with the legal
33 authority to seek the relief, on behalf of the vulnerable adult; or
34
35 3. the Agency on behalf of the vulnerable adult in either of the following
36 circumstances:
37
38 i. If the vulnerable adult has provided written authorization to the
39 Agency to act on his or her behalf; or

1
2 ii. If the vulnerable adult has an impaired ability to appreciate and
3 understand the circumstances that place him or her at risk of harm.

4
5 c) No court costs or attorneys' fees shall be assessed for the filing or service of the
6 complaint, or the service of any orders, except as provided in Rule 11 of the Rules
7 of Civil Procedure.

8
9 d) If the vulnerable adult commencing the action or person or Agency commencing
10 the action on behalf of the vulnerable adult states that disclosure of the plaintiff's
11 address would place the plaintiff or any member of the plaintiff's family or
12 household at risk of further unlawful conduct, the plaintiff's address shall be omitted
13 from all documents filed with the Court before further dissemination. If the plaintiff
14 does not disclose an address under this subsection, the person or Agency
15 commencing the action shall designate an alternative address to receive notice of
16 any motions or pleadings from the opposing party.

17
18 e) All documents filed, issued, registered, or served in an action under this Chapter
19 relating to a temporary or permanent protective order may be filed electronically.

20 Sec. 50E-4 – Issuing a Permanent Protective Order.

21 The Court may issue a permanent protective order to restrain any person for the
22 purpose of preventing a recurrence of Abuse that includes any of the orders or forms of
23 relief set forth in Section 50E-5, if the Court finds by a preponderance of evidence that:

24 a) defendant committed a past act or acts of Abuse of the complaining vulnerable
25 adult;

26
27 b) a protective order is necessary to prevent defendant's commission of further acts
28 of Abuse of the complaining vulnerable adult; and

29
30 c) process was properly served on the defendant.

31
32 d)

33 Sec. 50E-5 – Relief.

34 In issuing a protective order, the Court may issue any of the following restraining orders,
35 whether issued ex parte, after notice and hearing, or in a judgment:

36 a) An order enjoining a party from abusing, intimidating, molesting, attacking, striking,
37 stalking, threatening, sexually assaulting, battering, harassing, telephoning,

1 destroying personal property, contacting, either directly or indirectly, by mail or
2 otherwise, or coming within a specified distance of, or disturbing the peace of, the
3 plaintiff, and, in the discretion of the Court, on a showing of good cause, of other
4 named family or household members or a conservator, if any, of the plaintiff.

5
6 b) An order excluding a party from the plaintiff's residence or dwelling, except that
7 this order shall not be issued if legal or equitable title to, or lease of, the residence
8 or dwelling is in the sole name of the party to be excluded or is in the name of the
9 party to be excluded and any other party besides the plaintiff.

10
11 c) An order enjoining a party from specified behavior that the court determines is
12 necessary to effectuate orders described in paragraphs (1) or (2) of this subsection
13 (c) or prevent further Abuse.

14 Sec. 50E-6 – Process for Action on Permanent Protective Order.

15 a) The Court shall set a hearing on a complaint or motion for a protective order within
16 14 days of it being filed. The clerk shall issue a notice of hearing and effect service
17 of the summons, complaint, and notice of hearing through the appropriate law
18 enforcement agency where the defendant is to be served. If the complaint
19 requests an emergency protective order, then on motion of the plaintiff or on its
20 own motion, the Court may issue a temporary ex parte order in accordance with
21 the requirements of Section 50E-8 of this Chapter.

22
23 b) The summons issued pursuant to this Chapter shall require the defendant to
24 answer within 10 days of the date of service. Attachments to the summons shall
25 include the complaint for the vulnerable adult protective order and any temporary
26 protective order that has been issued.

27
28 c) Service of the summons and attachments shall be by the chief of the Cherokee
29 Indian Police Department or by the chief's designee by personal delivery in
30 accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure, as
31 adopted by Section 7-14 of the Cherokee Code ("Rule 4"). If the defendant cannot
32 with due diligence be served by the chief by personal delivery, the defendant may
33 be served by publication by the plaintiff in accordance with Rule 4(j1) of the North
34 Carolina Rules of Civil Procedure.

35
36 d) The defendant may file a response that explains or denies the alleged Abuse.

37
38 e) The Court may enter a permanent vulnerable adult protective order by default for
39 the remedy sought in the complaint if the defendant has been served in

1 accordance with this Section and fails to answer as directed or fails to appear on
2 any subsequent appearance or hearing date agreed to by the parties or set by the
3 Court.

- 4
- 5 f) If a defendant, named in a permanent protective order issued under this Chapter
6 after a hearing, has not been served personally with the order but has received
7 actual notice of the existence and substance of the order through personal
8 appearance in Court to hear the terms of the order from the Court, no additional
9 proof of service is required for enforcement of the order.

10 Sec. 50E-7 – Special Rules for Hearing on Protective Order.

- 11 a) Right to a Support Person. In a proceeding under this Chapter, a support person
12 may accompany a vulnerable adult in Court and, if the vulnerable adult is not
13 represented by an attorney, may sit with the vulnerable adult at the table that is
14 generally reserved for the vulnerable adult and the attorney. The support person
15 is present to provide moral and emotional support for a vulnerable adult who
16 alleges he or she is a victim of Abuse. The support person is not present as a
17 legal adviser and may not provide legal advice. The support person may assist
18 the vulnerable adult who alleges he or she is a victim of Abuse in feeling more
19 confident that he or she will not be injured or threatened by the other party during
20 the proceedings if the vulnerable adult who alleges he or she is a victim of Abuse
21 and the other party are required to be present in close proximity. This subdivision
22 does not preclude the Court from exercising its discretion to remove the support
23 person from the courtroom if the Court believes the support person is prompting,
24 swaying, or influencing the vulnerable adult assisted by the support person.

- 25
- 26 b) Special Evidentiary Rules. The vulnerable adult commencing the action or person
27 or Agency commencing the action on behalf of the vulnerable adult may move the
28 Court for an order permitting a video tape deposition of the plaintiff be taken
29 consistent with the procedures, conditions, and requirements of Cherokee Code
30 14.40-13(h). A video tape deposition ordered by the Court shall be admissible as
31 evidence in establishing proof necessary for a protective order to be issued under
32 this Chapter.

33 Sec. 50E-8 – Temporary Ex Parte Protective Orders.

- 34 a) Issuing a Temporary Ex Parte Protective Order. Either upon the request of the
35 vulnerable adult commencing the action or person or Agency commencing the
36 action on behalf of the vulnerable adult, or upon the Court's own motion, a
37 temporary protective order may be issued ex parte under this Section without
38 evidence of service of process or notice. The temporary protective order may

1 include any of the protective orders described in Section 50E-5. The Court shall
2 issue a temporary protective order upon finding by a preponderance of evidence
3 that there is an immediate danger of Abuse which could result in injury, loss, or
4 damage to the victim before the defendant can be heard in opposition.

5
6
7 b) Time Limitations for Court Action. A request for the issuance of a temporary
8 protective order under this Section shall be granted or denied on the same day
9 that the complaint is submitted to the Court, unless the complaint is filed too late
10 in the day to permit effective review or unless the Court is not in session when the
11 complaint is filed, in which case the complaint should be filed consistent with
12 subsection (g) of this Section and the designated magistrate or judge hearing such
13 complaint shall render a decision within 24 hours of filing.

14
15 c) Effect of Defendant Appearance. If the defendant appears in Court for a hearing
16 on a temporary protective order, the defendant may elect to file a general
17 appearance and testify. The Court may issue a temporary protective order,
18 governed by this Section, or, notwithstanding the requirements of this Section, a
19 permanent order protective order if all requirements of § 50E-4 have been met.

20
21 d) Contents. Every temporary protective order shall:

- 22 1. Be endorsed with the date and hour of issuance.
- 23 2. Be filed immediately in the clerk's office and entered of record.
- 24 3. Define the Abuse, state why it is irreparable and why the order was granted
25 without notice.
- 26 4. Expire by its terms within 14 days after entry.
- 27 5. Give notice of the date of hearing on a permanent protective order sought,
28 if any.

29
30
31
32 e) Relief granted pursuant to a temporary protective order shall expire at such time
33 as a permanent protective order is entered or denied.

34
35
36
37 f) Hearing on Permanent Protective Order after Grant or Denial of Ex Parte
38 Protective Order.

1 1. If a temporary protective order is granted without notice under this Section
2 and a motion for a permanent protective order is then made or remains
3 pending through a complaint, the hearing on the motion for a permanent
4 protective order shall be held within 14 days from the date of the motion.

5
6 2. If a complaint for a temporary protective order is denied and a motion for a
7 permanent protective order is then made or remains pending through a
8 complaint, a hearing on the motion for a permanent protective order shall
9 be held within 14 days from the date of the denial.

10
11 3. When a motion or complaint for a permanent protective order comes on for
12 hearing pursuant to paragraphs (1) or (2) of this subsection (f) and the
13 plaintiff fails to proceed with a request for a permanent protective order, the
14 court shall dissolve the temporary protective order if one remains in place.

15
16 g) Temporary protective orders when Court not in session. The chief trial court judge
17 shall designate at least one judge or magistrate to be reasonably available to issue
18 temporary protective orders when the Court is not in session. When the Court is
19 not in session, an action for a temporary protective order may be commenced
20 under this Chapter by filing for such order before any judge designated to grant
21 relief under this Chapter. If the judge finds that the requirements of Section 50E-
22 8 have been met, the judge may issue a temporary protective order.

23
24 Sec. 50E-9 – Duration of Protective Orders.

25 a) Temporary. A temporary protective order shall be effective for not more than 14
26 days from the date that the Court fixes, unless within the time so fixed the
27 temporary protective order, for good cause shown, is extended for a like period or,
28 if the defendant consents, a longer period. The reasons for the extension shall be
29 stated in the order.

30
31 b) Permanent. A permanent protective order shall be effective for a fixed period of
32 time not to exceed two years, subject to termination or modification by further order
33 of the Court either on written stipulation filed with the Court or on the motion of a
34 party. The failure to state the expiration date on the face of the permanent
35 protective order creates an order with a duration of two years from the date of
36 issuance.

37
38 c) Any protective order expiring on a day the Court is not open for business shall
39 expire at the close of the next Court business day.

1 Sec. 50E-10 – Renewal / Modification / Dissolution of Permanent Protective Order.

2
3 a) Renewal. A permanent protective order, including an order that previously has
4 been renewed, may be renewed upon the request of a party, for an additional time
5 period not to exceed 2 years, without a showing of any further Abuse since the
6 issuance of the original order, subject to termination or modification by further order
7 of the Court either on written stipulation filed with the Court or on the motion of a
8 party. The request for renewal may be brought at any time before the expiration of
9 the order.

10
11 b) Modification/Dissolution. A party may move to dissolve or modify a permanent
12 protective order on written stipulation filed with the Court or on the motion of the
13 party. In order for the Court to grant a modification or dissolution, the party or
14 parties seeking such modification or dissolution must establish: (1) good cause for
15 such modification or dissolution, such as a substantial change in circumstances;
16 and (2) that the modification or dissolution will not result in a greater likelihood of
17 the vulnerable adult being subjected to Abuse. If an action is filed for the purpose
18 of terminating or modifying a protective order prior to the expiration date specified
19 in the order by a party other than the protected party, the party who is protected
20 by the order shall be given notice of the proceeding by personal service pursuant
21 to Rule 4. If the party who is protected by the order cannot be notified prior to the
22 hearing for modification or termination of the protective order, the Court shall deny
23 the motion to modify or terminate the order without prejudice or continue the
24 hearing until the party who is protected can be properly noticed and may, upon a
25 showing of good cause, specify another method for Rule 4 service of process that
26 is reasonably designed to afford actual notice to the protected party. The protected
27 party may waive his or her right to notice if he or she is physically present in Court
28 and does not challenge the sufficiency of the notice.

29 Sec. 50E-11 – Notice of Orders.

30
31 a) The clerk of court shall deliver to the chief of the Cherokee Indian Police
32 Department or the chief's designee and to the Agency a certified copy of any
33 protective order issued under this Chapter on the same day that it is issued. The
34 Cherokee Indian Police Department and the Agency shall retain a copy of the
35 issued order.

36
37 b) If the defendant was not present in Court when the order was issued, the defendant
38 may be served in the manner provided for by Rule 4. If the summons has not yet

1 been served upon the defendant, it shall be served with the order. Law
2 enforcement agencies shall accept receipt of copies of the order issued by the
3 clerk of court by electronic or facsimile transmission for service on defendant.
4

- 5 c) Any order extending, modifying, or revoking any protective order issued under this
6 Chapter shall be promptly delivered to the chief of the Cherokee Indian Police
7 Department or the chief's designee and the Agency by the clerk and served
8 pursuant to Rule 4.

9 Sec. 50E-12 – Violation.

- 10
11 a) A knowing violation of an order entered pursuant to this Chapter is punishable by
12 civil or criminal contempt as provided in §§ 1-20 and 1-27 of the Cherokee Code.
13
14 b) A defendant's willful violation of a protective order issued under this Chapter or
15 any term or condition thereof is a crime pursuant to C.C. 14-40.13(c)(6).

16 Sec. 50C-13. - Remedies not exclusive.

17
18 The remedies provided by this Chapter are not exclusive but are additional to other
19 remedies provided under law.

20
21
22 **BE IT FINALLY ORDAINED** that this ordinance shall be effective upon ratification
23 by the Principal Chief, and all ordinances and resolutions that are inconsistent with
24 this ordinance are rescinded.
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35 *Submitted by: EBCI Public Health and Human Services, EBCI Legal Assistance*
36 *Office, EBCI Office of the Attorney General.*