

AGUA CALIENTE BAND OF CAHUILLA INDIANS  
TRIBAL COUNCIL

---

REID D. MILANOVICH CHAIRMAN • CANDACE PATENCIO ANDERSON VICE CHAIRMAN  
SAVANA R. SAUBEL SECRETARY-TREASURER • JOHN R. PRECKWINKLE III MEMBER • VIRGINIA SIVA-GILLESPIE MEMBER

**ORDINANCE NO. 21-2024**

**AN ORDINANCE OF THE AGUA CALIENTE BAND OF  
CAHUILLA INDIANS ADDING A NEW CHAPTER 10.24  
TRIBAL ELDER AND DEPENDENT ADULT PROTECTION  
TO THE AGUA CALIENTE TRIBAL CODE**

**WHEREAS**, the Agua Caliente Band of Cahuilla Indians (the “**Tribe**”) is a federally recognized Indian tribe governing itself according to the Constitution and By-Laws of the Agua Caliente Band of Cahuilla Indians adopted by the Tribe on June 28, 1955 (the “**Constitution**”); and

**WHEREAS**, the Tribe, acting by and through its duly elected Tribal Council and pursuant to Articles II and IV (a) of the Constitution, exercises inherent sovereign authority and jurisdiction over the territory within the exterior boundaries of the Agua Caliente Indian Reservation (the “**Reservation**”) and over other lands which may be added to the Reservation; and

**WHEREAS**, pursuant to Article V (a) and (b) of the Constitution, the Tribal Council, among other things, is empowered to administer the affairs and manage the business of the Band; to regulate the procedures of the Tribal Council and of other Tribal agencies; to enact ordinances and resolutions pertaining to Tribal affairs and to take all proper means to enforce the same; and

**WHEREAS**, the Tribal Council desires to add the chapter noted above to the Agua Caliente Tribal Code.

**NOW, THEREFORE**, the Tribal Council of the Agua Caliente Band of Cahuilla Indians does hereby ordain as follows:

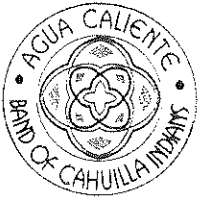
**SECTION 1.** All the recitals set forth above are true and correct, and the Tribal Council so finds and determines.

**SECTION 2.** New chapter 10.24 is hereby added to the Agua Caliente Tribal Code to read as follows:

**CHAPTER 10.24 TRIBAL ELDER AND DEPENDENT ADULT PROTECTION**

**Sec. 10.24.010. Purpose.**

This Chapter shall be liberally interpreted and construed to fulfill the following expressed purposes:



- (a) To acknowledge that the law clearly provides that Indian tribes remain a separate people, with the power of regulating their internal and social relations, and when tribes exercise this power of self-governance, they do so as part of their retained sovereignty and not as an arm of the Federal Government.
- (b) To acknowledge that the settled law makes clear that moreover, tribes possess “historic sovereign authority” that predates the United States Constitution.
- (c) To ensure the safety and protection of all elders and dependent adults within the Tribal community from abuse and neglect.
- (d) To provide clear procedures for Tribal interventions where allegations of elder or dependent adult abuse or neglect have been reported.
- (e) To enhance the protection of elderly persons and dependent adults by providing a mechanism for temporary emergency protective custody of elderly or dependent adults who are suspected victims of abuse or neglect, and who are found to be in a situation that poses an immediate risk of serious injury or death, and when no other means are available to mitigate the risk to the elderly or dependent adult.
- (f) To extend the authority of Tribal Family Service Advocates and Caseworkers to include investigations, placement, and provision of services in elder and dependent adult abuse and neglect cases.
- (g) To provide adult welfare services to elders and dependent adults and families that are in accord with the laws, traditions, and cultural values of the Tribe.
- (h) To preserve the opportunity for dependent adults to continue to learn about their culture and heritage and experiencing their culture on an ongoing basis.
- (i) To secure for each elder and dependent adult coming before the Tribal Court the care, guidance, protection, and control needed to continue placement in his own home where possible and to serve the welfare and best interests of the elder and dependent adult and to balance the interests, care, and protection of elders, dependent adults, and families within the jurisdiction of the Tribe.
- (j) To take such actions that will best serve the spiritual, emotional, mental, and physical welfare of the elder and dependent adult and the best interests of the Tribe to prevent the abuse, neglect, and abandonment.
- (k) To provide a continuum of services for elders, dependent adults, and their families with emphasis whenever possible on prevention, early intervention, and community-based alternatives.



(l) To secure the rights of and ensure fairness to the elders, dependent adults, caretakers, family, guardians, and other individuals who come before the Tribal Court under the provisions of this Code.

(m) To recognize that the Tribal Court is in the best position to make decisions regarding the interests of the elder, dependent adult and keeping the Indian family together, including providing at-risk families with services and social supports. Furthermore, the cases are governed by this Tribe's laws as a Sovereign Nation.

#### **Sec.10.24.020. Jurisdiction of tribal court.**

(a) The Tribal Court has the authority to issue protection orders in all cases of abuse or neglect, as defined within this code, of a Tribal elder or Tribal dependent adult, that arise within the territory of the Tribe. This includes the power to enforce subpoenas, orders of contempt, orders of restriction, fines, and other orders as appropriate.

(b) General Jurisdiction. The Tribal Court shall have jurisdiction within the meaning of this Chapter over the following persons:

(1) An enrolled member of the Tribe or person eligible for membership age eighteen (18) years and older residing within the territory of the Tribe.

(2) Any person causing an elder or dependent adult to come within the jurisdiction of this Code.

(3) Extended family residing in the household.

(c) Jurisdiction over extended family. Where the Tribal Court asserts jurisdiction over a person under Section 10.24.020(b), the Court shall also have jurisdiction over the person's extended family whenever that Court deems it appropriate.

(d) Continuing jurisdiction. Where the Tribal Court deems it appropriate, the Court may retain jurisdiction over elders and dependent adults and their extended families who leave the territory of the Tribe.

#### **Sec. 10.24.030. Transfer of jurisdiction.**

(a) Transfer from Other Courts. The Tribal Court may accept or decline, under the procedures set forth in this Code, transfers of elder or dependent adult welfare cases from other federal, state, or tribal courts and the transfer would be in the best interests of the elder or dependent adult.

(b) Transfer to State Court or Other Tribal Court. In any proceeding before the Tribal Court, the Tribal Court may transfer the proceedings to an appropriate state court or another tribal court where the state or other Indian tribe has a significant interest in the elder or dependent adult and the transfer would be in the best interests of the elder or dependent adult.



**Sec. 10.24.040. Procedures for transfer from state court.**

- (a) Receipt of Notice: The Agua Caliente Legal Department or designee (ACLD) shall be the agent for service of notice of the state court adult protection proceedings.
- (b) Intervention. The ACLD or designee shall file a motion to intervene in the state court within five (5) days of receipt of notice upon confirmation by the Agua Caliente Tribal Enrollment Committee as set forth in Chapter 10.04 that the elder or dependent adult is Tribal member or is eligible for membership. Failure to file such a motion within the five-day time period shall not preclude the Tribe from intervening at a later date.
- (c) Investigation and Pre-Transfer Report: The Tribal Family Services Advocate and Caseworker (Caseworker) shall investigate, file a written report, and issue a recommendation on transfer with the ACLD.
- (d) Decision to Transfer. The ACLD shall consider these factors in deciding whether or not the Tribe should petition for transfer from the state court:
- (1) The best interests of the elder or dependent adult.
  - (2) The best interests of the Tribe.
  - (3) Availability of services for the elder or dependent adult and his family.
  - (4) Prospects for permanent placement for the elder or dependent adult; and
  - (5) Conservation of Tribal resources.
- (e) Request for Hearing. The ACLD shall request a hearing on the recommendation with the Tribal Court.
- (f) Tribal Court Hearing on Transfer Recommendation: In the absence of exigent circumstances, the Tribal Court shall conduct a hearing to determine if the Tribal Court should accept transfer prior to the filing of a petition for transfer with the state court. The Tribal Court shall consider the factors set forth in subsection (d) above.
- (g) The Tribal Court has discretion to accept or deny transfers from state courts. The hearing on whether or not to accept transfer shall be conducted prior to dismissal of the matter in state court.
- (h) Petition for Transfer. In the absence of exigent circumstances, the Tribal petition for transfer shall be filed in the state court by the ACLD or designee within five (5) working days of receipt of the Tribal Court's decision.
- (i) Hearings upon Transfer. Upon receipt of transfer of jurisdiction from state court, the Tribal Court shall hold appropriate hearings in accordance with this Code.



**Sec. 10.24.050. Criminal penalties.**

This Code in no way interferes with or limits the state's right to prosecute any criminal case arising out of the same facts for which a protection order is sought. Further, the Tribal Court may refer cases filed under this title to the Riverside County District Attorney's office for prosecution, where appropriate.

**Sec. 10.24.060. Mandated reporting agency.**

(a) Tribal Elder and Dependent Adult Cases. In all cases that occur within the territory of the Tribe, where the alleged victim is a member or eligible for membership in the Tribe, the mandated reporting agency for suspected elder or dependent adult abuse or neglect shall be the Tribal Family Services Department.

(b) Non-Tribal Elder and Dependent Adult Cases. In all cases where the alleged victim is not a member of, or eligible for membership, the mandated reporting agency is the Family Services Department and the local county adult protective services agency.

**Sec. 10.24.070. Mandated reporters.**

(a) Persons Specifically Required to Report.

(1) Physical Abuse, abandonment, abduction, isolation, or neglect. Those persons who are mandated to report suspected abuse or neglect, as defined under this code, include any physician, registered nurse, licensed practical nurse, community health representative, mental health professional, other health professional, dentist, optometrist, or law enforcement official; judge; attorney, except where it conflicts with attorney-client privilege; clerk of the court; other judicial system official; any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults; any elder or dependent adult care custodian; or employee of a county adult protective services agency.

(2) Financial Abuse. Those persons who are mandated to report suspected financial abuse, as defined under this code, include all officers and employees of financial institutions. As used in this section, the term "financial institution" means any of the following:

a. A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

b. An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

c. A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an



institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(b) **Anonymous Reports.** Any person, other than those specified in subsection (a) above, may remain anonymous when making a report, except where either (1) the protection of the safety of the elder or dependent adult requires limited disclosure of the identity; or (2) the reporter consents to disclosure of his identity. The anonymous reporter has the right to petition the Tribal Court and be heard at a closed hearing with regard to the issue of disclosure. Where the Tribal Court declines to breach the reporter's anonymity, the in-court record and any papers filed in connection with the hearing, will be sealed.

(c) **Immunity from Liability.** All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect will be immune from civil liability and criminal prosecution.

(d) **Circumstances Mandating Report of Suspected Abuse or Neglect:** physical abuse, abandonment, abduction, isolation, or neglect. Any mandated reporter who, in his professional capacity, or within the scope of his employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he has experienced such behavior, including an act or omission, constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days to the mandated reporting agency specified in Section 10.24.060 above.

(e) **Circumstances Mandating Report of Financial Abuse.** Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information before him at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two (2) working days to the mandated reporting agency specified in Section 10.24.060.

(f) **Exceptions to Report Requirement.**



(1) A mandated reporter who is a physician, a registered nurse, or a mental health professional, shall not be required to report, pursuant to paragraph (a), an incident where all of the following conditions exist:

a. The mandated reporter has been told by an elder or dependent adult that he has experienced behavior constituting physical abuse, abandonment, abduction, isolation, financial abuse, or neglect.

b. The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

c. The elder or dependent adult has been diagnosed with a mental illness or dementia or is the subject of a court-ordered conservatorship or guardianship because of a mental illness or dementia.

d. In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the mental health professional, reasonably believes that the abuse did not occur.

(2) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

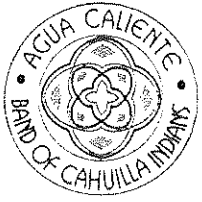
a. The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations; and

b. In the exercise of his professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

c. This subdivision shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(g) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this Code.

(h) When two or more mandated reporters jointly have knowledge or reasonably suspect that physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or a



dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall thereafter make that report.

(i) Penalties for Failure to Report.

Those persons mandated to report a case of known or suspected abuse or neglect who knowingly fail to do so or willfully prevent someone else from doing so may be subject to immediate removal from their position and/or such other penalties including a fine not exceeding one thousand dollars (\$1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars (\$5,000), and any damages as may be allowed under Tribal Law including proceedings in the form of a private civil action under this provision in Tribal Court.

(j) As used in this Section, "suspected abuse or neglect of an elder or dependent adult" occurs when a person who is required to report under subsection (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of abuse or neglect, as defined in Chapter 10.02.

(k) Content of Reports. The written abuse reports required for the reporting of abuse or neglect shall contain the following items:

- (1) The name, address, telephone number, and occupation of the person reporting.
- (2) The name and address of the victim.
- (3) The date, time, and place of the incident.
- (4) Other details, including the reporter's observations and beliefs concerning the incident.
- (5) Any statement relating to the incident made by the victim.
- (6) The name of any individuals believed to have knowledge of the incident.
- (7) The name of the individuals believed to be responsible for the incident and their connection to the victim.

**Sec. 10.24.080. Powers and duties of family services advocates and caseworkers.**

(a) Caseworkers possess the following powers and perform the following duties for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future:





- (1) Receive and investigate reports of suspected abuse or neglect involving any Tribal elder or dependent adult residing within the territory of the Tribe.
  - (2) Determine whether to offer voluntary services to the elder, dependent adult, or caretaker or family.
  - (3) Determine whether to initiate emergency or other adult protection proceedings.
  - (4) Determine whether and where an elder or dependent adult should be placed pursuant to the emergency provisions of this Code.
  - (5) Supervise elder and dependent adult placements made under this Code.
  - (6) Analyze problems and strengths of the elder or dependent adult and their support system.
  - (7) Make referrals of cases to other agencies and share information with other agencies if their assistance appears to be needed or desirable pursuant to an internally established protocol on the sharing of confidential data.
  - (8) Present cases in the Tribal Court filed under this Code.
  - (9) Establish a service plan for each person on whom the report has been made to alleviate the identified problems, utilizing client input wherever appropriate.
  - (10) Provide counseling for clients and significant others to alleviate the identified problems and to implement the service plan.
  - (11) Make reports and recommendations to the Tribal Court in adult protection proceedings.
  - (12) Supervise and assist elders and dependent adults pursuant to Tribal Court orders and service plan.
  - (13) Reassess the elder or dependent adult's needs, as appropriate.
  - (14) Maintain a current database of all public and private service agencies available to assist victims of abuse or neglect, as defined under this Code, and refer victims to the appropriate services or agencies in the event that the Tribal Family Services Department cannot resolve the immediate needs of the victim, and/or serve the victim on a long-term, follow up basis.
  - (15) Furnish such other related services as may be directed by the Tribal Court.
- (b) The Tribal Family Services Department may be appointed the public guardian of a protected adult's property or person where no other suitable guardian is available pursuant to Section 10.18.270 of this Code.



(c) Cooperation with Other Agencies. Tribal Family Services shall cooperate with such state, county, and community service agencies as are necessary to achieve the purposes of this Code. Tribal Family Services may negotiate working agreements with other jurisdictions. Such agreements shall be subject to ratification by the Tribal Council.

(d) Early Communication with Riverside County Department of Public Social Services Adult Services Division (DPSS-ASD) or other adult protective services agency regarding a referral received by DPSS-ASD or other agency reporting possible abuse or neglect involving an elder or dependent adult. Every effort should be made by Tribal Family Services to communicate with DPSS-ASD or other agency prior to DPSS-ASD or other agency completing their investigation, removing the elder or dependent adult, or initiating an action in state probate court. Consideration should be given to issuing notice to DPSS-ASD or other agency at the earliest possible time that the Tribe intends to remove the elder or dependent adult or initiate an adult protective services petition and assert the Tribe's concurrent jurisdiction. Early communication from DPSS-ASD to Tribal Family Services should be strongly encouraged as well.

(e) Quarterly Meetings with County Tribal Liaison. Tribal Family Services shall exercise its best efforts to meet with the Tribal Liaison for DPSS-ASD and the attorney for DPSS-ASD every quarter to ensure that lines of communication are timely, open, and effective. Opportunities to improve and expand communication between Tribal Family Services and DPSS-ASD should be constantly pursued in order to enhance the ability of Tribal Family Services to fulfill their duties and responsibilities under this Code.

#### **Sec. 10.24.090. Voluntary services.**

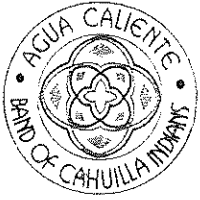
(a) The Caseworker has the discretion to offer an elder or dependent adult, caretaker, or family voluntary services in lieu of filing an adult protection petition under this Code. The voluntary services agreement must be in writing and must explain the length and nature of the services offered, examples of the actions or inactions that will result in non-compliance with the agreement, and the effect of non-compliance with the agreement.

(b) Elders or dependent adults may refuse to accept voluntary protective services provided there is good cause to believe that the individual can take care of himself, and the elder or dependent adult knows of the services offered.

(c) The family, caretaker, or extended family with whom the elder or dependent adult resides may refuse voluntary services for themselves but cannot refuse services for the elder or dependent adult.

#### **Sec. 10.24.100. Central registry.**

(a) Tribal Family Services shall maintain a central registry of reports, investigations, and evaluations made under this Chapter. The registry shall contain the information furnished by Tribal personnel including caseworkers and Tribal Family Services employees.



(b) Data shall be kept in the central registry until the elder or dependent adult dies or regains competency or as otherwise ordered by the Tribal Court.

(c) Data and information in the central registry shall be confidential and shall be made available only with the approval of the Tribal Family Services Director and/or the Tribal Court. The ACLD, Tribal Programs, county adult protective services personnel, Public Health, and Law Enforcement agencies, licensed health practitioners, and health and educational programs or institutions licensed or regulated by the Tribe may be entitled to the records with the required approval. A request for the release of information must be submitted in writing, and such request and its approval shall be made part of the file.

**Sec. 10.24.110. Investigation of reports of elder or dependent adult abuse or neglect.**

(a) Protocol. A Caseworker shall:

(1) Receive from any source, oral or written, information regarding an elder or dependent adult who may be the subject of possible abuse or neglect.

(2) Upon receipt of any report or information of suspected abuse or neglect, initiate a prompt and thorough investigation within twenty-four (24) hours which shall include a determination of the nature, extent, and cause of any condition which is contrary to the elder or dependent adult's best interests.

a. Contact with Elder or Dependent Adult. When an allegation of abuse of an elder or dependent adult is reported to Tribal Family Services and a Caseworker has reason to believe an elder or dependent adult has suffered or is at substantial risk of abuse or neglect, as defined under this Code, the Caseworker shall attempt to obtain consent to enter and meet privately with the elder or dependent adult about whom the report was made in the residence or dwelling in which the elder or dependent adult resides without the presence of the person's caretaker, attendant, or family or household member, unless the person requests the presence of the attendant, caregiver, or family member, or refuses to meet with the Caseworker.

b. Law Enforcement Warrants. A law enforcement agency may seek a search warrant from the Tribal Court to enable a peace officer to have access to, and to inspect the premises if a Caseworker has been denied access to the premises by the person or persons in possession of the premises and there is probable cause to believe an elder or dependent adult on those premises is subject to abuse or neglect. While executing the search warrant, the law enforcement officer may allow a Caseworker, or any other appropriate person, to accompany him.

c. Persons with Information. The Caseworker shall attempt to interview all persons with information related to the abuse or neglect claims.



(3) In conducting its investigation, the Caseworker shall seek the assistance of and cooperate with law enforcement officials within twenty-four (24) hours after becoming aware that one or more of the following conditions exist:

a. Abuse or neglect is the suspected cause of an elder or dependent adult's death.

b. The elder or dependent adult is the victim of suspected sexual abuse or sexual exploitation.

c. Abuse or neglect resulting in severe physical, mental, or emotional injuries to the elder or dependent adult which requires medical treatment or hospitalization. For purposes of this section, "severe physical injury" means brain damage, skull or bone fracture, subdural hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other visible physical injury that seriously impairs the health or physical well-being of an elder or dependent adult.

d. Law enforcement intervention is necessary for the protection of the elder or dependent adult, the Caseworker, or another person involved in the investigation.

e. Any alleged perpetrator of the elder or dependent adult's injury is not a person responsible for the elder or dependent adult's health or welfare.

(4) Take an elder or dependent adult into temporary custody, if necessary, pursuant to Section 10.24.130.

(5) Substantiate whether there is probable cause to believe that the elder or dependent adult is an endangered adult.

(6) Offer to the caretaker or family of any endangered adult appropriate services.

(7) Within thirty (30) days after a referral of a potential endangered adult, submit a written report of his investigation and evaluation which shall be included in the files maintained by Tribal Family Services and shall include a determination as to whether the report was substantiated or unsubstantiated.

(8) Take any other actions necessary to faithfully carry out their duties and responsibilities under this Code.

(b) Cooperation of Law Enforcement Officials. Law enforcement officials shall cooperate with the Caseworker and Tribal Family Services in conducting investigations pursuant to this Chapter.

(c) Sharing of Reports between Tribal Family Services and Law Enforcement.



(1) Whenever this Code requires an adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to the Tribal Family Services Department.

(2) Whenever this Code requires a law enforcement agency to report to the Tribal Family Services Department, the Department shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this Code shall not include the disclosure of Tribal Family Services records or case files that are confidential, nor shall this subsection be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of Tribal or federal law.

**Sec. 10.24.120. Possible outcomes of investigation.**

(a) **Substantiated Reports.** If, upon completion of the investigation, the investigating agency concludes there is probable cause to believe the abuse or neglect alleged did occur, any of the following may occur:

(1) The elder or dependent adult may be taken into protective custody.

(2) The Tribal Family Services Department or ACLD or designee may file a petition for protection of the elder or dependent adult under Section 10.24.150 or 10.24.170 of this Code.

(3) The Tribal Family Services Department or ACLD or designee may file for a protective order under 10.24.180.

(4) The elder may be offered temporary adult protective services.

(5) The elder or dependent adult's caretaker or family may be offered voluntary social services.

(6) The investigating agency may refer the matter to law enforcement or the Riverside County District Attorney's Office or other agency for prosecution.

(b) **Unsubstantiated Reports.** Where the report is unsubstantiated either of the following may occur:

(1) The case may be closed; or

(2) The elder may be offered voluntary adult protective services; and/or the elder or dependent adult's caretaker or family may be offered voluntary social services.



### **Sec. 10.24.130. Emergency placement of endangered adults**

(a) Authority to Take into Protective Custody. The Tribal Family Services Department shall have the authority to place an elder or dependent adult into protective custody.

(b) When a Caseworker takes an endangered adult into temporary emergency protective custody or initiates adult protection proceedings, they shall cause the endangered adult to be transported to a hospital as soon as possible if medical evaluation and any necessary treatment is required.

(c) Upon taking an endangered adult into custody pursuant to this chapter, the Caseworker shall notify:

- (1) The endangered person's next of kin, when appropriate.
- (2) The ACLD or designee.

(d) Temporary emergency protective custody under this chapter shall not exceed a period of more than three (3) working days from the date of the placement in protective custody. The Tribal Court hearing on the matter must occur within three (3) working days of the emergency protective custody placement.

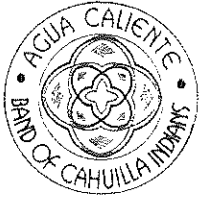
(e) Caseworker has the authority to locate and place an elder or dependent adult in an emergency placement.

(f) Any elder or dependent adult who, during the investigation of the alleged abuse or neglect, is determined by the Caseworker to be an endangered adult, as defined under this Code, must be immediately placed in one of the following appropriate temporary residences:

- (1) A home or dwelling belonging to a member of the endangered adult's family or next of kin, if it would not constitute a risk to the endangered adult.
- (2) An adult residential care facility or residential care facility designated by the Tribe as an emergency shelter and that is licensed by the State of California to deal with the needs of elders or dependent adults.
- (3) A twenty-four (24) hour health facility such as a hospital.

### **Sec. 10.24.140. Appropriate temporary protective services.**

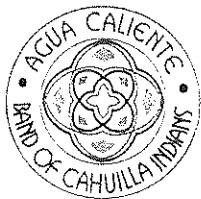
(a) Any elder or dependent adult who, during the investigation of the alleged abuse or neglect, is determined by the Caseworker to be an endangered adult, as defined under this Code, must be immediately offered the following services necessary to ensure that (1) the endangered adult is protected from the immediate risk of serious injury or death due to suspected abuse or neglect, and (2) that the effects of the abuse or neglect are remedied in accordance with the endangered adult's needs. These services may include, but not be limited to, any of the following:



- (1) Social services case work and case management, including, but not limited to, evaluations of the endangered adult's functional capacity and community resources.
  - (2) The development of an appropriate individualized service plan.
  - (3) Appropriate referral and emergency response services.
  - (4) Counseling.
  - (5) Temporary shelter.
  - (6) Emergency health services.
  - (7) Respite services.
  - (8) Alternative housing and housing assistance.
  - (9) In-home supportive services.
  - (10) Medical and adaptive equipment.
  - (11) Transportation.
  - (12) Mental health services.
  - (13) Other health related services and referrals to legal services and advocate agencies.
- (b) In addition to the other temporary services authorized under this section, the Caseworker may file for an emergency protection order under Section 10.24.170 restraining the alleged abusive or neglectful individual from whatever acts are deemed appropriate by the facts of the case.

**Sec. 10.24.150. Emergency adult protection services petition.**

- (a) A Caseworker or the ACLD or designee acting on behalf of Tribal Family Services is the only party authorized to file an adult protection petition under this Code. A petition may only be filed where the Department has received a report of abuse or neglect of an elder or dependent adult, has investigated the report, and reasonably believes that a protective order is necessary to ensure the health, safety, and well-being of the elder or dependent adult.
- (b) The Family Services Department shall initiate an investigation and file a petition for issuance of an emergency protective services order no later than three (3) working days after the elder or dependent adult has been placed into protective custody.
- (c) The Tribal Court shall hold an initial hearing no later than three (3) working days after the filing of the petition, to determine whether there is probable cause for protective custody.



(d) Notice of the filing of a petition for an emergency order shall be given, in language understandable by the endangered adult as reasonably possible, at least twenty-four (24) hours prior to the hearing on the petition for emergency intervention.

(e) The Tribal Court may waive the twenty-four (24) hour notice requirement on a showing that immediate and reasonably foreseeable emotional or physical harm to the person or other persons will result from the twenty-four (24) hour delay, and reasonable attempts have been made to give notice.

(f) Contents of the Petition. The adult protection petition must contain the following information:

(1) The name, address, and interest of the petitioner.

(2) The name, age, and address of the person in need of protective service.

(3) The proposed protective services.

(4) The petitioner's reasonable belief, together with facts supportive thereof, of the existence of those circumstances that warrant the issuance of an emergency protective custody order.

(5) A statement of the petitioner's attempts to obtain the consent of the person for whom the protective services are proposed, and the outcome of those attempts.

(g) Service of Petition. A copy of the Petition and a summons must be personally served upon the elder or dependent adult named in the petition, and any named respondents. Law enforcement shall be responsible for the service of the petition where the Caseworker has concerns for his safety based on past interactions with the elder or dependent adult or any caretaker, attendant, or family of the elder or dependent adult.

**Sec. 10.24.160. Hearing on emergency adult protection services petition.**

(a) Evidence to be Considered. All material and relevant evidence which is reliable and trustworthy may be admitted and relied upon by the Tribal Court to the extent of its probative value, including hearsay contained in a written investigative report, provided that the preparer of the report is present and available to provide testimony. The parties, including the elder or dependent adult, shall be afforded an opportunity to examine and controvert written reports, and cross-examine individuals whose testimony is presented.

(b) Elder or Dependent Adult Present. The person with respect to whom an emergency order is sought shall be present unless that person knowingly and voluntarily waives the right to be present or due to the person's physical or psychological condition, he is unable to be present. Waiver or inability to be present shall not be presumed from that nonappearance of the endangered





adult but shall be determined on the basis of factual information supplied to the Tribal Court by counsel or a representative appointed by the Tribal Court.

(c) Right to Cross Examine Witnesses. The endangered adult or his representative may present evidence and cross-examine witnesses.

(d) The Tribal Court shall issue, for the record, a statement of its findings in support of any order for emergency protective services.

(e) The elder, or dependent adult, and all named respondents have the right to independent medical, psychological, or psychiatric evaluations at their own expense.

(f) No Probable Cause Found. If, as a result of the initial hearing, the Tribal Court determines that probable cause does not exist to continue temporary emergency protective custody, the adult shall be released from temporary protective custody.

(g) Probable Cause Found. If, as a result of the initial hearing, the Tribal Court determines that probable cause continues to exist for temporary emergency protective custody, the Tribal Court may issue an order authorizing the provision of protective services on an emergency basis to an adult after finding on the record, based on clear and convincing evidence, that all of the following apply:

(1) The adult is an endangered adult; and

(2) No other appropriate means are available to mitigate the situation that placed the endangered adult at risk of serious bodily harm or death.

#### **Sec. 10.24.170 Emergency protective services order.**

(a) Grounds for Issuance. No emergency protective order may issue under any provision of this Code where the elder or dependent adult objects to its issuance, unless there is a finding by clear and convincing evidence that the order is necessary to protect the elder or dependent adult.

(b) Relief Available. In issuing an emergency order under this Chapter, the Tribal Court shall adhere to all of the following limitations:

(1) Only those protective services that are necessary to remove the conditions creating the emergency shall be ordered, and the Tribal Court shall specifically designate the approved services in the emergency order.

(2) Protective services authorized by an emergency order shall not include hospitalization or a change of residence unless the Tribal Court specifically finds that action is necessary and gives specific approval for that action in its order.



(3) Duration of Order. Protective services may be provided through an emergency order for no more than fourteen (14) days, exclusive of Saturdays, Sundays, and legal holidays pending a hearing for long-term custody.

(4) Temporary Guardian. In its emergency order under this Chapter, the Tribal Court shall appoint the petitioner, next of kin, or other interested person, as appropriate, as a temporary guardian of the endangered adult pursuant to Section 10.18.270.

a. The Tribal Court's appointee shall be responsible for the care of the endangered adult.

b. The Tribal Court's appointee may, until the expiration of the Tribal Court's order, give consent for the provision of protective services for the endangered adult, in accordance with the emergency order.

(5) Temporary Guardian of Property. Temporary control of the endangered adult's finances must be specifically assigned to a named individual in the order, and the extent of the financial control must be specifically stated.

(6) The issuance of an emergency order and the appointment of a temporary guardian of the endangered adult shall not deprive that endangered adult of any rights except to the extent provided in the order of appointment.

**Sec. 10.24.180. Petition in non-emergency cases.**

(a) Timeline for filing of Petition. In cases where the elder or dependent adult is in need of services, but does not appear to be an endangered adult, the Caseworker must file a Petition for Adult Protective Services within ten (10) days of the completion of the investigation.

(b) Content of Petition. The adult protection petition must contain the following information:

(1) The name, address, and interest of the petitioner.

(2) The name, age, and address of the person in need of protective services.

(3) The proposed protective services.

(4) The petitioner's reasonable belief, together with facts supportive thereof, as to the existence of those circumstances that warrant the issuance of an adult protective services order.

(5) A statement of the petitioner's attempts to obtain the consent of the person for whom the protective services are proposed, and the outcome of those attempts.

(c) Service of Petition, Notice of Hearing, and Summons. A copy of the petition, the notice of hearing, and a summons must be personally served upon the elder or dependent adult named in the petition, and any named respondents. Law enforcement shall be responsible for the service of these





documents where the Caseworker has concerns for his safety based on past interactions with the elder or dependent adult or any caretaker, attendant, or family of the elder or dependent adult. These must be served at least five days prior to the hearing date, unless good cause exists to waive this notice period.

(d) Timing of Hearing.

(1) Endangered Adult Cases. Within fourteen (14) days of the issuance of an emergency protection order, the Tribal Court must hear all evidence in favor of, and against, the issuance of an adult protective services order. The Tribal Court may grant a continuance of hearing for good cause shown for a period not to exceed fourteen (14) days. Any temporary protective placement or services order will remain in effect until the continued hearing date.

(2) Non-Emergency Cases. In cases where there have been no allegations that the elder or dependent adult is an endangered adult, the Court must hear all evidence in favor of, and against, the issuance of an adult protective services order within fourteen (14) days of the filing date of the petition.

(e) Hearing. The procedures of Section 10.24.160 above shall apply to the adult protective services order hearing.

**Sec. 10.24.190. Adult protective services order.**

(a) Grounds for Issuance. No adult protective services order may issue under any provision of this Code where the elder or dependent adult objects to its issuance, unless there is a finding by clear and convincing evidence that the order is necessary to protect the elder or dependent adult.

(b) Relief Available. The adult protective services order shall include the following:

(1) A statement of the factual basis for the finding that an adult protective services order is necessary.

(2) The placement of the elder or dependent adult, if any.

(3) The services to be provided as part of the service plan, if any.

(4) The identity of any conservator or guardian appointed for the elder or dependent adult and the extent of that individual's authority.

(5) A statement as to whether or not any protective order has been issued under Section 10.24.230 and the identity of the restrained individual(s) under that order.

(6) The date of the review order, to be set not more than six (6) months from the current hearing date.



(7) Any other provisions necessary to ensure the health and safety of the protected adult.

(c) The adult protective services order may include the following:

(1) A requirement that any party having a fiduciary duty to the elder or vulnerable adult to account for the elder or vulnerable adult's funds and or property.

(2) An award of compensatory damages to be paid by a wrongdoer to the elder or vulnerable adult for injuries resulting from the wrongdoer's actions.

(3) A requirement that the wrongdoer pay for the services ordered to be provided to the protected adult.

(4) Whenever the Tribal Court appoints a guardian of the person or their property, the order must specifically include the factual basis of the finding that the protected adult cannot care for himself or manage his own money.

(d) Duration of Order. The adult protective services order shall state the expiration date of the order. If no expiration date is included the order will expire in six (6) months.

#### **Sec. 10.24.200. Fiduciary obligations of guardians.**

(a) Requirements for Guardians. Anyone appointed a guardian of the person or property of a protected adult must have the following qualifications:

(1) A reputation for honesty and trustworthiness within the community.

(2) A competency in reading comprehension.

(3) A competency with arithmetic and financial management for guardians of property.

(4) The ability to secure a bond in an amount sufficient to cover the value of the property being managed for another, if required.

(b) Fiduciary Obligations. Any individual appointed a guardian of a protected adult's property shall have a fiduciary relationship with the property. At a minimum, the guardian must do all of the following:

(1) Take the utmost care to preserve the property of the protected adult.

(2) Avoid waste of the property of the protected adult.

(3) Keep a careful accounting of all transactions involving the protected adult's property or finances and present the accounting to the Tribal Court whenever ordered.

(4) Keep the protected adult's property and finances separate from the guardian's own property and finances, including no commingling of funds.





(5) Never use the property or finances of the protected adult for the guardian's personal gain.

(c) Explanation of Fiduciary Obligations. The Tribal Court must personally explain at the hearing the fiduciary obligations to any proposed guardian of property. Where the Tribal Family Services Department is appointed public guardian, the Court need not explain the fiduciary duties to the Caseworker.

#### **Sec. 10.24.210. Petition for protective order.**

Authorization for Petition. A Caseworker or the ACLD or designee acting on behalf of the Tribal Family Services Department is the only party authorized to file a petition for a protective order under this Code where the Department has received a report of abuse or neglect of an elder or dependent adult, has investigated the report, and reasonably believes that a protective order is necessary to ensure the health, safety, and well-being of the elder or dependent adult.

#### **Sec. 10.24.220. Emergency protective order.**

(a) Grounds for Issuance. The Tribal Court may issue an ex parte emergency protective order, upon a showing by a preponderance of the evidence that an elder or dependent adult is at risk of immediate physical, financial, or serious emotional harm. No protective order may issue under any provision of this Chapter where the elder or dependent adult objects to its issuance, unless there is a finding by clear and convincing evidence that the order is necessary to protect the elder or dependent adult.

(b) Relief Available. The Emergency Protective Order may include the following temporary relief if requested by the Petitioner:

- (1) Enjoining the Respondent from committing further abusive acts.
- (2) Prohibiting the Respondent from accessing or possessing the protected person's cash, bank accounts, credit cards, food stamps, or other financial resources.
- (3) Prohibiting the Respondent from contacting or communicating with the protected person directly or indirectly.
- (4) Prohibiting the Respondent from attending the protected person's medical appointments.
- (5) Prohibiting the Respondent from accessing or possessing the protected person's medication.
- (6) Prohibiting the Respondent from possessing or driving the protected person's automobile.



(7) Limiting or prohibiting the Respondent from owning, possessing, purchasing, attempting to purchase, or receiving any guns or firearms, and to sell or turn in any guns or firearms that the Respondent controls.

(8) Such other relief as the Tribal Court deems necessary to protect and provide for the safety of the elder or dependent adult and any designated family or household member.

**Sec. 10.24.230. Protective order after hearing.**

(a) In addition to, or instead of, the remedies available in Section 10.24.220, the Court may additionally order the following after hearing:

(1) Remove and exclude Respondent from the protected person's residence, or if Respondent owns or leases the residence and the protected person has no legal interest in the residence, then the Tribal Court may order the Respondent to avoid the residence for a reasonable length of time until the protected person relocates.

(2) Remove and exclude Respondent from specified events and activities.

(3) Prohibit Respondent from transferring, removing, encumbering, mortgaging, concealing, disposing, or altering any of the protected person's property except as authorized by the Tribal Court, and requiring that an accounting be made to the Tribal Court for all authorized transfers, encumbrances, disposition, and expenditures.

(4) Order the Respondent to make the following payments to the protected person, to the Court or to another party: requiring compensatory damages to be paid by the Respondent to the elder or dependent adult for injuries resulting from the Respondent's actions including but not limited to medical expenses, counseling, shelter, costs of a guardian or conservator if one is appointed under this Title, and repair or replacement of damaged property. Failure to reimburse any Tribal program within the stated time frame shall constitute a debt to the Tribe.

(5) Require the Respondent to undergo evaluation to determine the need, if any exists, for counseling and treatment for anger control, substance abuse, chemical dependency, or any other form of counseling and treatment which may be reasonably required to correct the conditions which gave rise to the incident (s) of elder or dependent abuse or neglect.

(6) Require the Respondent to complete any treatment program(s) recommended by the above evaluation(s), if any is recommended, and have a copy of completion submitted to the Tribal Court.

(7) Require Respondent to participate in community service, though Respondent's community service cannot involve any unsupervised time with Tribal elders or dependent adults.

(8) Any other relief as the Tribal Court deems necessary to protect and provide for the safety of the protected person and any designated family or household member.





**Sec. 10.24.240. Contents of the petition for protective order.**

- (a) The Petition must contain the following information:
- (1) The names of the Petitioner and all Respondents.
  - (2) The Tribal membership status of all Respondents, if known.
  - (3) The physical address and mailing address of Petitioner and all Respondents, if known.
  - (4) A factual statement which describes what property, rights, or assets are to be protected, and what behavior of the Respondent has led the Petitioner to seek a protective order for the elder or dependent adult.
  - (5) A description of the harm, if any, that will likely come to the elder or dependent adult if the protective order is not granted.
  - (6) A description of what behavior the Petitioner is seeking to compel or restrain the Respondent from.

**Sec. 10.24.250. Contents of the response to petition.**

In addition to admitting or denying the information contained in the petition, the response must include a description of the specific harm, if any, that the Respondent will suffer if the protective order is granted.

**Sec. 10.24.260. Hearing on petition for protective order.**

- (a) Notice. No protective order (excepting an emergency protective order) shall be issued without notice to the adverse party. In cases where time is of the essence to preserve the elder or dependent adult's health, safety, welfare, rights, property, or assets, the Tribal Court will set a hearing date within fourteen (14) days of the filing of the petition. It will be the responsibility of the Petitioner to have a copy of the petition, the original summons, and the notice of hearing served on the Respondent no less than seven (7) days prior to the hearing. If the Respondent is not served at least seven (7) days prior to the hearing date, the Tribal Court must grant the Respondent a continuance where requested. The Tribal Court may continue the hearing date once for up to fourteen (14) days upon a finding of good cause.
- (b) Hearing on Petition. The procedures to be followed are those set forth in Section 10.24.160.
- (c) Form and Scope of Protective Order. Every Tribal Court protective order shall set forth the reasons for its issuance; shall be specific in terms including the duration of the protective order; shall describe in reasonable detail the act or acts sought to be restrained or required; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and



upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(d) Burden of Proof. The burden of proof rests with the Petitioner, who must prove by clear and convincing evidence that the person of the elder or dependent adult and/or his rights, property, or assets of the elder or dependent adult will be irreparably harmed if the Respondent is not compelled to act, or restrained from acting, as requested in the petition.

**Sec. 10.24.270. Review and extensions of adult protective services orders and protective orders.**

(a) Review Hearings. Review of the need for continued protective services orders and protective orders shall occur at least every six (6) months or as otherwise ordered by the Tribal Court or upon motion of an interested party as accepted by the Tribal Court.

(b) Extensions. Extensions may be obtained as many times as necessary if good cause for the extension is shown by a preponderance of the evidence. The Tribal Family Services Department, the Protected Person, Respondent, or the Tribal Court on its own motion may request a hearing to determine whether an extension of an existing protective services order and/or protective order is necessary for the continued health and safety of the elder or dependent adult.

**Sec. 10.24.280. Finality.**

All judgments of the Tribal Court shall be final, and shall be in writing, signed by the Tribal Court judge.

**SECTION 3.** The Tribal Council hereby finds that the adoption of this Ordinance does not constitute a “Major Tribal Action” requiring the preparation of an environmental assessment or an environmental impact statement.

**SECTION 4.** If any section, subsection, phrase, or clause of this Ordinance is for any reason held to be unlawful or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Tribal Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase, or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unlawful or unconstitutional.

**SECTION 5.** Nothing contained in this Ordinance is intended to, nor does in any way, limit, alter, restrict, or waive the Agua Caliente Band of Cahuilla Indians’ sovereign immunity.

**SECTION 6.** The Tribal Council expressly reserves the right to alter, amend, or repeal this Ordinance if it determines that such action is in the best interest of the Tribe.





**SECTION 7.** This Ordinance shall become effective immediately upon its adoption.

**SECTION 8.** Upon the effective date of this Ordinance, any and all prior inconsistent resolutions, policies, ordinances, and/or procedures of the Tribe that pertain to the subject matter hereof are hereby repealed, superseded, and/or amended to comply with this Ordinance.

**SECTION 9.** Within fifteen (15) days after adoption, Tribal staff shall cause a summary of this Ordinance to be published one time in a newspaper of general circulation published and circulated on the Reservation.

**BE IT ADOPTED AND ENACTED** by the Tribal Council of the Agua Caliente Band of Cahuilla Indians, this 4<sup>th</sup> day of June, 2024.

Reid D. Milanovich, Chairman

Candace C. Patencio, Vice Chairman

Savana R. Saubel, Secretary-Treasurer

John R. Preckwinkle III, Member

Virginia Siva, Member

I, the undersigned, the Secretary-Treasurer of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5, constituting a quorum, were present at a meeting whereof, duly called, noticed, convened and held on this 4<sup>th</sup> day of June, 2024; that the foregoing Ordinance was duly adopted at such meeting by the affirmative vote of 4-0-0 and that said Ordinance has not been rescinded or amended in any way.

Savana R. Saubel, Secretary-Treasurer