

**Title XXXVI
(36)**

**DISABLED ADULT PROTECTION
CODE**
Amends the
Standing Rock Sioux Tribal Code of Justice



**Ordinance No. 322-12
Resolution No. 530-12**

**Adopted Approved
(All New Title)
November 13, 2012
By
Standing Rock Sioux Tribal Council**

ORDINANCE NO. 322-12

NOW THEREFORE BE IT RESOLVED, that TITLE XXXVI - DISABLED ADULT PROTECTION CODE of the Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby approved.

[ATTACHED PAGES]

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RESOLUTION NO. 530-12

WHEREAS, the Standing Rock Sioux Tribe is an unincorporated Tribe of Indians, having accepted the Indian Reorganization Act of June 18, 1934 [48 Stat. 984], with the exception of Section 16; and the recognized governing body of the Tribe is known as the Standing Rock Sioux Tribal Council; and

NOW THEREFORE BE IT RESOLVED, that pursuant to the power vested in the Standing Rock Sioux Tribal Council under Article IV, Section 1 of the Amended Constitution of the Standing Rock Sioux Tribe, the foregoing Ordinance No. 322-12, TITLE XXXVI - DISABLED ADULT PROTECTION CODE, of the Code of Justice of the Standing Rock Sioux Tribe, be and the same is hereby further approved; and

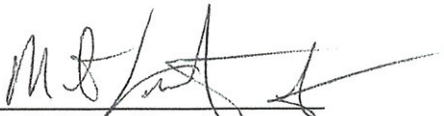
BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Tribal Council are hereby authorized and instructed to sign this resolution for and on behalf of the Standing Rock Sioux Tribe.

CERTIFICATION

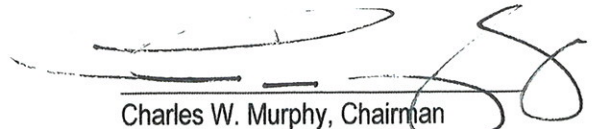
We, the undersigned, Chairman and Secretary of the Tribal Council do hereby certify that the Tribal Council is composed of [17] members of whom 13 constituting a quorum, were present at a meeting, thereof, duly and regularly called, noticed, convened and held on the 13th day of **NOVEMBER, 2012**, and that the foregoing resolution was adopted by the affirmative vote of 11 members, with 0 opposing, and with 2 not voting. **THE CHAIRMAN'S VOTE IS NOT REQUIRED, EXCEPT IN CASE OF A TIE.**

DATED THIS 13th DAY OF NOVEMBER, 2012.

ATTEST:



Adele M. White, Secretary
Standing Rock Sioux Tribe


Charles W. Murphy, Chairman
Standing Rock Sioux Tribe

[OFFICIAL TRIBAL SEAL]

Meeting Date 11-13-2012
Motion No. 30

TITLE XXXVI

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**TITLE XXXVI
STANDING ROCK SIOUX TRIBE
DISABLED ADULT PROTECTION CODE**

I. GENERAL PROVISIONS

36-101 Policy and Intent

It is the policy of the Standing Rock Sioux Tribe to prohibit abuse and neglect of disabled adults, to require and/or encourage reporting of all cases of suspected abuse and neglect of disabled adults, to provide a penalty for substantiated cases of abuse and neglect of disabled adults, and to establish procedures by which disabled adults may obtain certain protective services.

It is the further policy of the Tribe that the federal government – through the Bureau of Indian Affairs and Indian Health Services – has a duty and responsibility to provide protective services for disabled Native Americans. Therefore, while under this Title the Tribe shall handle protective payee services for eligible disabled adults, it is the intent of this Title to ensure that, when a disabled adult is found to be in need of any other protective services, the federal government be held to its trust responsibility to provide those services.

36-102 Definitions

For the purposes of this Title, the following terms shall have the following meanings respectively designated as follows:

- (a) “Abuse” shall mean the willful act or omission which results in: infliction of physical pain; injury or mental anguish; unreasonable confinement; exploitation; the deprivation of services which are necessary to maintain mental and physical health; or the imminent risk of serious emotional or physical harm to health.
- (b) “BIA” shall mean the Bureau of Indian Affairs.
- (c) “Caretaker” shall mean an individual (whether family member, friend or neighbor of an abused adult), public or private institution, or operator of a nursing, combination or residential care facility, who/which has the responsibility for the care of a disabled adult as a result of a familial relationship or who has been appointed general guardian, guardian of the person, or guardian of the estate, or to whom the disabled adult has given a comprehensive power of attorney, or who has assumed responsibility for the care of the disabled adult, either voluntarily, by contract, by receipt of payment for care, or by order of a Court. “Caretaker” does not include individuals or organizations that provide specific, limited services to the disabled adult voluntarily or by contract, such as an in-home aide, adult day care program, home health aide, or general hospital.
- (d) “Competent” shall mean that an individual has the ability to decide what is best for herself, and is not under the influence of threats or coercion from another person.
- (e) “Court” means the Standing Rock Sioux Tribal Court.

- (f) “Disability” shall mean a physical or medical impairment which substantially impacts a person’s ability to provide care for herself. However, for the purposes of this Title, alcohol and/or drug use and addiction shall not in and of itself be considered a disability under this Title except when the person has an underlying physical or mental impairment which has resulted from alcohol and/or drug addiction, or which is exacerbated by the use of such substances. A determination of whether an individual’s physical or mental impairment rises to the level of disability under this Title shall be made by the Court based upon the opinions of medical experts, other competent witnesses, and medical records documenting the individual’s condition. In making such a determination, the Court may also give weight to a finding or determination by a federal agency such as the Social Security Administration or the Veterans Affairs Administration that the individual is disabled.
- (g) “Disabled Adult” shall mean an individual between the ages of 18 and 59 who is physically or mentally incapacitated due to a disability and is in need of protective services and is either (i) an Indian person – including Tribal members - living on the Reservation who is between the ages of 18 and 59, or (ii) a Tribal member, wherever located, who was living on the Reservation prior to becoming disabled and who is temporarily located off the Reservation due to her need for services, hospitalization or institutionalization.
- (h) “Disabled Adult in Need of Supervision” shall mean a disabled adult who, by order of the Court, is deemed incompetent to consent to protective services or other necessary and appropriate assistance, and is thereby provided all necessary and appropriate services and assistance through such order of the Court.
- (i) “Exploitation” shall mean the illegal or improper use of a disabled adult or his or her resources for another’s profit or advantage, including financial exploitation, sexual exploitation, and forcing a disabled adult to work without pay.
- (j) “IHS” shall mean Indian Health Services.
- (k) “Mental Anguish” shall mean psychological or emotional damage - as may be characterized by fear, agitation, confusion or ridicule - caused by a willful act or omission which requires medical treatment or care, or is characterized by behavioral change or physical symptoms.
- (l) “Neglect” shall mean the failure of a caretaker, guardian or responsible family member to provide the services that are necessary to maintain the disabled adult’s mental or physical health, including necessary sustenance and housing in a situation where the disabled adult has sufficient resources for the provision of adequate housing.
- (m) “Permanent Restraining Order” shall mean a Court-issued order, for a period not to exceed one (1) year, which restrains an individual believed to have committed acts of abuse or neglect against a disabled adult from having any contact – whether in person, by letter or telephone, or otherwise – with the disabled adult during the restraint period.
- (n) “Protective Payee Services” shall mean services necessary for the receipt of a disabled adult’s benefits, royalties and other sources of income, and subsequent disbursement of payments for the disabled adult’s personal clothing, housing and utilities, and nutritional needs.
- (o) “Protective Services” shall mean:
 - (1) Services available to a disabled adult by the BIA and/or IHS which include:
 - i. All reasonable efforts to respect, stabilize, support and sustain the disabled adult within the context of his or her family and community, including:
 - (a) Making and implementing a case and/or treatment plan;

- (b) Providing a written statement of requirements and expectations to the caretakers who are providing care to the disabled adult;
 - (c) Monitoring care provided to the disabled adult and communicating to the caretakers immediately and subsequently, in writing, on all deficiencies observed and of steps which must be taken to correct the problem by modifying behavior in the family, changing the living environment, or otherwise adjusting the household to better address the needs of the disabled adult; and
 - (d) Exhausting all remedies before moving the disabled adult from his or her family.
- ii. Assistance, when necessary, in locating and arranging for protective custody placement in an approved or licensed facility, in accordance with the following placement priority schedule:
 - (a) Approved home of a relative who resides on the Reservation;
 - (b) Approved home of a relative who resides off the Reservation but maintains close social and economic ties to the Reservation;
 - (c) Licensed adult foster care home of a non-relative which is located on the Reservation;
 - (d) Licensed or accredited group care, supervised living care, intermediate care, or skilled care facilities located on or near the Reservation;
 - (e) Licensed home of a relative who resides off the Reservation but does not maintain close social and economic ties with the Reservation;
 - (f) Licensed or accredited group care, supervised living care, intermediate care or skilled care facilities located off the Reservation.
 - iii. Assistance in arranging for a protective payee or limited financial guardian; and
 - iv. Coordinate and collaborate with other involved agencies to provide for the needs of the disabled adult;
- (2) Protective Payee Services provided by the Standing Rock Sioux Tribe Elderly Protection Team or, if created, the Standing Rock Sioux Tribe Disabled Adults Protection Team, or by another reasonable person or agency. Such services may be provided by the Tribe only upon the provision of sufficient resources;
 - (3) Restraining Orders;
 - (4) Protective Custody with the disabled adult's family member(s) or to a licensed or accredited supervised living care, intermediate care, or skilled facility, and that such custody may be awarded under the supervision of or with services provided by an appropriate agency; and/or
 - (5) Guardianship as permitted by the Standing Rock Sioux Tribal Code of Justice.
- (p) "Reservation" shall mean the land within the exterior boundaries of the Standing Rock Sioux Tribe Reservation.
 - (q) "Temporary Restraining Order" shall mean an ex parte Court-issued order that may be in effect for a period not to exceed ten (10) days or until a hearing is held on whether a Permanent Restraining Order shall be issued, whichever is less. A Temporary Restraining Order shall be issued only upon a probable cause determination as provided for in this Title, and may restrain an individual believed to have committed acts of abuse or neglect against a disabled adult from

having any contact – whether in person, by letter or telephone, or otherwise – with the disabled adult during the restraint period, and may further require an alleged perpetrator who resides with the disabled adult to immediately vacate the residence of the disabled adult for the pendency of the order.

- (r) “Tribe” or “Tribal” shall mean the Standing Rock Sioux Tribe.
- (s) “Tribal Council” shall mean the Tribal Council of the Standing Rock Sioux Tribe as established by the Constitution of the Standing Rock Sioux Tribe.
- (t) “Tribal Member” shall mean an enrolled member of the Standing Rock Sioux Tribe.

36-103 Severability

If a court of competent jurisdiction invalidates any part of this Title, all valid parts that are severable from the invalid part shall remain in effect. If a part of the Title is invalid in one or more of its applications, but remains valid for any other application, that part remains in effect in all valid applications that are severable from the invalid application(s).

II. ABUSE AND NEGLECT

36-201 Criminal Penalty

Any individual who commits an act of abuse or neglect against a disabled adult shall be guilty of a Class A misdemeanor as defined by Title IV of the Standing Rock Sioux Tribal Code of Justice, with mandatory minimum sentences based upon the following graduated scale:

- (a) First offense – no less than ten (10) days incarceration
- (b) Second offense – no less than 30 days incarceration.
- (c) Third and subsequent offense(s) – no less than 180 days incarceration.

36-202 Mandatory Reporting

- (a) Any physician, dentist, pharmacist, chiropractor, optometrist, nurse, nursing assistant, community health nurse, community health representative, health outreach worker, home health aide, homemaker aide, hospital intern or resident, mental health professional, psychologist, counselor, social worker, spiritual healing practitioner, podiatrist, nutritionist, audiologist, nursing home or hospital administrator, parole or probation officer, court prosecutor, law enforcement officer, program manager, veterans service officer, provider of transportation to disabled adults, Elderly Protection Team Member, Disabled Protection Team Member (if such entity is created by the Tribe), Human Services Board member, clergyman or spiritual leader, or coroner, knowing or having reasonable cause to suspect that a disabled adult is or has been abused or neglected, other than by accidental means, shall report such abuse or neglect to law enforcement. Report may be made orally or in writing, but if a report is made by oral means it must be followed up by a written report within 72 hours. Such report shall contain, if known:
 - (1) The name, age and address of the disabled adult;
 - (2) The name and address of the caretaker of the disabled adult;

- (3) The name and address of the individual alleged to have committed abuse or neglect;
 - (4) The nature and extent of the abuse or neglect;
 - (5) The name, address and phone number of the individual initiating the report, unless there is a request for anonymity; and
 - (6) Any other pertinent information known to the individual making the report.
- (b) Any person who intentionally or with reckless disregard fails to make a report required by subsection (a) of this Section is guilty of a Class A misdemeanor as defined by Title IV of the Standing Rock Sioux Tribal Code of Justice.

36-203 Permissive Reporting

Any person who is not a mandated reporter under Section 202 of this Title, but who also suspects or has reason to believe that a disabled adult is or has been abused or neglected other than by accidental means, may make a report to law enforcement as provided by law.

36-204 Immunity From Liability and Retaliation

Any person who, in good faith, makes a report pursuant to either Section 202 or Section 203 of this Title, or who testifies in an administrative or judicial proceeding arising from such a report, shall be immune from any civil or criminal liability, and shall be protected from harassment or retaliation because of such report or testimony through court-issued orders of restraint or protection and/or applicable criminal charges. Members of the Elderly Protection Team and the Disabled Protection Team, if created, shall be immune from any civil or criminal liability for all actions taken in good faith under this Title, even beyond the making of reports and provision of testimony.

36-205 Investigation of Reported Abuse or Neglect

- (a) Upon receipt of a report that a disabled adult has been abused or neglected, law enforcement – in addition to any independent criminal investigation and/or charges brought as a product of such report -shall coordinate with the BIA and/or IHS to conduct a prompt and thorough investigation to identify the disabled adult; to determine if the reported abuse or neglect exists; and to determine whether the disabled adult is in need of and eligible for services as a Disabled Adult in Need of Supervision under Chapter III of this Title. If the investigating agency finds there is substantiated cause to believe the disabled adult has been abused or neglected, it shall file a petition with the Court for a restraining order pursuant to Section 206 of this Title.
- (b) Pursuant to Chapter III of this Title, if, after the completion of the investigation, the investigating agency finds the disabled adult requires or is eligible for protective services and other necessary or appropriate assistance, and if the eligible disabled adult is competent to consent to services as a and consents to such services, BIA and/or IHS shall thereafter provide all appropriate and necessary services, and shall provide assistance in arranging for any additional services or protective custody that may be necessary or appropriate. If the eligible disabled adult is not competent to consent to such services on his or her own behalf, BIA and/or IHS may petition the Court under Chapter III of this Title.

36-206 Restraining Orders

- (a) Whenever a disabled adult, the investigating agency or any other person has a good faith belief that a disabled adult is in a life-threatening situation, or a situation of serious and immediate danger, a petition may be made to the Court by any concerned party for a Permanent Restraining Order (“PRO”) protecting the disabled adult from the alleged perpetrator causing the life-threatening situation or situation of serious and immediate danger.
- (b) Upon filing of the petition, the Court shall schedule a hearing to be held within ten (10) days to determine whether a PRO shall be issued. Upon filing of the petition, the Court may also issue an ex parte Temporary Restraining Order (“TRO”) upon a determination that there is probable cause to believe the disabled adult is in a life-threatening situation, or a situation of serious and immediate danger. The TRO may only be in effect for ten (10) days or until a hearing is held on whether a PRO shall be issued, whichever occurs sooner.
- (c) At the PRO hearing, the Court shall hear all relevant testimony, and shall provide the alleged perpetrator the opportunity to show cause, if he or she has any, as to why such an order should not be put in place.

36-207 Confidential Relations Privilege Not Permitted

The confidential-relations privilege between client and provider may not be claimed in any judicial or administrative proceeding involving abuse or neglect of a disabled adult, or resulting from the giving of any report concerning abuse or neglect of a disabled adult.

36-208 Establishment of Central Registry for Reports and Convictions of Abuse and Neglect of Disabled Adults

The Court shall establish a central registry for reports and convictions of abuse or neglect of disabled adults. The information in the central registry shall be confidential and may be released only to the Tribal Prosecutor, a law enforcement agency investigating a report of abuse or neglect of a disabled adult, a Court, a protective service worker of another agency who is investigating a reported incident of abuse or neglect of a disabled adult, public officials who require the information in the discharge of their official duties, or to any agency having the legal responsibility to care for, treat, or supervise a person who is the subject of a report. The information in the central registry may also be released to a state, regional or federal registry pertaining to the abuse and neglect of disabled adults.

36-209 Protection of Disabled Adult Witness

In any case in which the Court determines a disabled adult may fear testifying in open court, the Court may, in its discretion, elicit recorded testimony from the disabled adult in private, provided all other parties are provided a complete summary of that testimony.

III. DISABLED ADULT IN NEED OF SUPERVISION

36-301 Disabled Adult Competent to Consent to Services

- (a) A competent, eligible disabled adult may be eligible for and consent to protective services as defined under this Title. A competent disabled adult may either seek such services directly or, if

necessary, may petition the Court for any services that would otherwise be available to a Disabled Adult in Need of Supervision.

- (b) Consent shall be provided by the disabled adult either:
 - (1) In writing, or
 - (2) By oral declaration witnessed and attested to by no fewer than two (2) adult persons not connected in any way to any court, agency, provider, family member, other interested individual, or the disabled adult.

Protective services shall not be provided to a disabled adult who is competent to consent to services, and who refuses to provide consent for such services, unless a limited guardianship is petitioned for and awarded under the Standing Rock Sioux Tribal Code of Justice.

36-302 Disabled Adult Incompetent to Consent to Services

- (a) For an eligible disabled adult who is not competent to consent to services, and where a concerned individual, agency or entity believes that disabled adult is in need of supervision, such individual or entity may file a petition in Court to have that individual declared as a Disabled Adult in Need of Supervision. However, to the extent the agency or entity is the BIA and/or IHS, the agency or entity shall file such a petition.
- (b) An action may be initiated in Court under this Chapter by: an interested relative; another interested individual; by the individual, agency or facility that is responsible or has assumed responsibility for the disabled adult's care or custody; the individual, agency or entity the disabled adult has nominated as guardian or conservator; or the BIA and/or IHS.

36-303 Temporary Order Pending Hearing

Upon petition to the Court, the Court may issue an ex parte temporary order for protective services to be in place until the Court conducts the hearing, which must be held within ten (10) business days of the issue of the temporary order. A copy of any temporary order issued under this Section shall be immediately served upon the disabled adult and any other necessary party.

36-304 Hearing on Disabled Adult in Need of Supervision

- (a) Notice of the hearing to declare a disabled adult a Disabled Adult in Need of Supervision shall immediately be served upon the disabled adult and any other necessary party by the Court.
- (b) At the beginning of the hearing, the Court shall make a determination, by clear and convincing evidence, as to whether the disabled adult is competent. If the Court determines the disabled adult is competent, and the disabled adult does not consent to obtaining services, the Court shall dismiss the petition and the disabled adult must be immediately returned to his or her own custody. If the Court determines the disabled adult is incompetent, the Court shall proceed with the hearing.
- (c) At the hearing, the Court may hear and consider testimony from the following persons to determine whether a disabled adult should be declared a Disabled Adult in Need of Supervision:
 - (1) The disabled adult;
 - (2) The individual, agency or entity who/which filed the petition;
 - (3) Family members of the disabled adult who may testify on matters including:

- i. The nature, quality or extent of the care being provided to the disabled adult;
 - ii. Whether the family wishes to provide care to the disabled adult;
 - iii. Whether the family has the ability and resources to care for the disabled adult; and
 - iv. Any other considerations relevant to the matter at hand.
 - (4) Representatives of the agency or organization furnishing income to the disabled adult who may testify on matters including:
 - i. What the income of the disabled adult is;
 - ii. Whether the representative is aware of how this income is expended or used by the disabled adult; and
 - iii. The recommendations of the agency or organization regarding the disabled adult.
 - (5) Medical witnesses (including physicians, medical social workers, community health nurses and other practitioners) who may provide testimony in person or in writing on the medical condition of the disabled adult and shall make recommendations to the Tribal Court regarding the levels of care needed by the disabled adult;
 - (6) Involved and concerned service providers, clergy, or other witnesses with relevant information on the status of the disabled adult.
- (d) In any case in which the Court determines a disabled adult may fear testifying in open court, the Court may, in its discretion, elicit recorded testimony from the disabled adult in private, provided all other parties are provided a complete summary of that testimony;
- (e) At the conclusion of the hearing, in lieu of making a final determination on whether a disabled adult shall be declared a Disabled Adult in Need of Supervision, the Court may exercise one or more of the following actions:
- (1) Continue the hearing for a reasonable time not to exceed 45 days and order further investigation on the status of the disabled adult and, during the pendency of the investigative period, extend and/or amend any prior temporary protective custody orders or, if such an order was not previously initiated but the Court determines is necessary, issue such an order. Such order – whether extended, amended or newly issued – may be for the period prior to the final determination of the Court;
 - (2) Continue the hearing for a reasonable time not to exceed 45 days and order the release of the disabled adult to the care and custody of his or her family for a specified period of time, during which the appropriate social services agency shall monitor the status of the disabled adult while in such care and custody, provide social casework and counseling, and provide a written report to the Court at the continued hearing;
 - (3) Continue the hearing and order primary alcoholism or chemical dependency treatment, and require the participation of the disabled adult’s family members in the treatment process in accordance with the recommendations of the primary treatment agency, and schedule the continued hearing for no more than 45 days after treatment has completed to make a final determination; or
 - (4) Continue the hearing for a reasonable time not to exceed 45 days and arrange for alternate care and supervision until the continued hearing, at which time a final determination will be made if the disabled adult should be declared a Disabled Adult in Need of Supervision.

36-305 Final Determination

At the conclusion of the hearing, or after a period of time which may be ordered pursuant to Section 304(e) of this Title, and after due consideration to all testimony and evidence furnished in the final hearing, the Court shall render a decision whether to:

- (a) Dismiss the petition without any conditions attached; or
- (b) Declare, upon a finding that there is clear and convincing evidence to support such a finding, that the disabled adult is a Disabled Adult in Need of Supervision, and order any appropriate and/or necessary protective services as defined in this Title.

36-306 Review

In any case in which the Court has asserted jurisdiction over a disabled adult, and made a final determination that a disabled adult is a Disabled Adult in Need of Supervision under Section 305(b) of this Title, the Court shall conduct a review hearing no less than once (1) per year to determine if the disabled adult remains disabled and/or in need of court-ordered services as a Disabled Adult in Need of Supervision, or whether to dismiss the matter.

IV. MISCELLANEOUS PROVISIONS

36-401 Denial of Services Prohibited

Nothing in this Title shall be construed to allow any individual, agency or entity properly ordered or otherwise required to provide protective services from denying the provision of such services.

36-402 Confidentiality of Records

All records, files and information concerning disabled adult abuse and neglect, or protective services for a disabled adult, shall be confidential, and no disclosure or release of such information shall be made, except to those agencies as provided by Section 208 of this Title. Violation of this Section shall be punishable as a Class A Misdemeanor as defined by Title IV of the Standing Rock Sioux Tribal Code of Justice.

36-403 Licensure of Homes

- (a) Pursuant to this Title, the Standing Rock Sioux Tribe Elderly Protection Team or, if created, the Standing Rock Sioux Tribe Disabled Adult Protection Team, shall establish and follow a procedure for the licensure of adult group care, supervised living care, intermediate care or skilled care facilities located or to be located on the Reservation.

- (b) At minimum, such procedures must include standards for licensure and fair and equitable rates to care providers.
- (c) Such procedures shall be contingent upon the provision of sufficient resources for the licensure of and payment to said homes.
- (d) Nothing in this Section shall be construed as requiring the Tribe to provide any such homes or to ensure on-Reservation housing for disabled adults. Rather, this Section only provides that procedures for licensure of such homes be established and followed when such housing is available.

36-404 Loan Applications

Any person who has been appointed as a guardian of a disabled adult, and who seeks to make a long or short-term loan utilizing the income, future income, or other funds of a disabled adult, or who purports to use that person as a co-signor, shall be reported to the Standing Rock Sioux Tribe Elderly Protection Team, or the Disabled Adult Protection Team, if created, in order for the applicable Protection Team to ensure that the disabled adult is not exploited and the funds being requested actually will benefit the disabled adult. The Protection Team Director shall make a recommendation to disapprove any loan that he or she finds would not benefit the disabled adult if the Protection Team is serving as a protective payee for the disabled adult. Any person who seeks to use such income, future income, or other funds improperly may be prosecuted for abuse under this Title.

36-405 Limitation of Appointment of Tribe

The Tribe – whether through the Elderly Protection Team, the Disabled Adult Protection Team (if created), or otherwise – shall not be appointed or ordered to provide any services beyond protective payee services.