

Cherokee Nation Code Annotated

Title 21: Crimes and Punishments

Part III. Crimes Against the Person

Chapter 30: Miscellaneous Offenses Against the Person

§ 843.1. Caretaker—Abuse, neglect or financial exploitation of charge

Cite as: 21 CNCA § 843.1

A. No caretaker or other person as defined in 43A O.S. § 10-103 shall abuse, commit financial neglect of, commit neglect of, commit sexual abuse upon, or financially exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting or knowingly cause, secure, or permit any of said acts to be done.

B. Any person convicted of violating the provisions of this section shall be guilty of a felony, punishable by imprisonment for a period of not more than three (3) years, or by a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or by both such fine and imprisonment, provided that when such conviction involves sexual abuse or sexual exploitation, such sentence must include a term of imprisonment.

C. Consent shall not be a defense for any violation of this section.

D. Any person convicted of violating the provisions of this section by committing sexual abuse or sexual exploitation shall be required to register as a sex offender pursuant to 57 CNCA § 1 et seq. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of this section and 21 CNCA §§ 843.2 through 843.4:

1. **"Abuse"** means causing or permitting:

a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or

b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

2. **"Caretaker"** shall be defined as a person who has:

a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship;

b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship; or

c. been appointed a guardian, limited guardian, or conservator.

3. **"Exploitation"** or **"exploit"** means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

4. **"Financial neglect"** means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;

b. refusing to pay for necessities or utilities in a timely manner; or

c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

5. **"Incapacitated person"** means:

a. any person eighteen (18) years of age or older:

i. who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause; and

ii. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others; or

b. a person for whom a guardian, limited guardian, or conservator has been appointed.

6. **"Indecent exposure"** means forcing or requiring a vulnerable adult to:

a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

b. touch or feel the body or private parts of another.

7. **"Neglect"** means:

a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest; or

b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing; or

c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services.

8. **"Self-neglect"** means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

9. **"Sexual abuse"** means:

a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object; or

b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

c. indecent exposure by a caretaker or other person providing services to the vulnerable adult.

10. **"Sexual exploitation"** includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by the Nation's laws.

11. **"Verbal abuse"** means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

12. **"Vulnerable adult"** means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

F. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

Historical Data

LA 10–90, eff. November 13, 1990. Amended LA 20–08, eff. January 12, 2009. Amended LA 09–12, eff. May 23, 2012. Amended LA 28-20, eff. December 14, 2020.