



Elder Justice & Native Nations

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Overview

- Introduction/Important Info
- What is elder abuse?
- Why do we need to address elder abuse?
- Elder Abuse in Indian Country
- Model Codes
- Court Systems
- Partnering

Introduction/Important Info.

- ***Disclaimer-I am not a licensed attorney (yet), this is for informational purposes only. Please contact a competent attorney licensed in your jurisdiction for specific issues.
- <https://www.youtube.com/watch?v=5ow63gPrXm0>

What is elder abuse?

- Physical, Sexual, Financial, Emotional/Psychological, Neglect & Self-Neglect, Exploitation, and Spiritual

Why do we
need to address
elder abuse?

- <https://www.youtube.com/watch?v=fUHxBWp4ENQ>



Issues?



Ways to address

- Education elders and public
- Removing stigma and shame, by discussing openly
- Developing elder abuse response teams
- Promote peacekeeping justice initiatives
- AND enacting codes!!

Federal Effort regarding Elder Abuse in Indian Country

- 1992 Indian Elder Abuse programs authorized in Title VII, Part B in Older American Act
- 2000 Native American Caregiver Support Programs, authorized in OAA
- 2005 Elder Abuse Resolution-National priorities at the White House Conference on Aging
- 2010 National Elder Justice Act

**Fact: All 50 states have address
Elder/Adult Protection in some form.**

How many of the 566 federally recognized
tribes have addressed elder abuse?

Less than 11%

Tribes with Elder/Adult Protection

- Alaska
- Curyung Tribe
- Tlingit & Haida Indian Tribes of Alaska
- Arizona
- Colorado River Indian Tribes
- Navajo Nation
- Pascua Yaqui Tribe
- Hopi Tribe
- Salt River Pima-Maricopa Indian Community
- Tohono O'odham Nation
- White Mountain Apache Tribe
- California
- Dry Creek Rancheria Band of Pomo Indians
- Hoop Valley Tribe
- Colorado
- Southern Ute Indian Tribe
- Connecticut
- Mohegan Tribe
- Michigan
- Bay Mills Indian Community
- Keweenaw Bay Indian Community
- Little River Band of Ottawa Indians
- Pokagon Band of Potawatomi Indians

- Montana
- Blackfeet Nation
- Confederated Salish and Kootenai Tribes
- Crow Tribe (Apsaalooke Nation)
- Fort Belknap Indian Community
- Fort Peck Assiniboine & Sioux Tribes
- Northern Cheyenne Tribe
- Nebraska
- Omaha Tribe of Nebraska
- Winnebago Tribe of Nebraska
- Nevada
- Pyramid Lake Paiute Tribe
- North Carolina
- Eastern Band of Cherokee Indians of North Carolina
- North Dakota
- Standing Rock Sioux Tribe
- Turtle Mountain Band of Chippewa Indians
- Oklahoma
- Cherokee Nation
- Muscogee Creek Nation

- Oregon
- Burns Paiute Tribe
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs
- South Dakota
- Oglala Sioux Tribe
- Rosebud Sioux Tribe
- Sisseton Wahpeton Oyate
- Yankton Sioux Tribe
- Washington
- Confederated Tribes of the Colville Reservation
- Kalispel Tribe of Indians
- Lummi Nation
- Snoqualmie Indian Tribe
- Squaxin Island Tribe
- Swinomish Indian Tribal Community
- Tulalip Tribes of Washington
- Wisconsin
- Ho-Chunk Nation
- Wyoming
- Northern Arapaho Nation

Enacting Elder Abuse Codes

What is the difference
between Elder and Adult
Protection?

Criminal v. Civil

- Criminal
- Indian Civil Rights Act of 1968 25 U.S.C. limits incarceration of Indian Defendants, and no jurisdiction over non-Indians
- Beyond a reasonable doubt
- Civil
- Jurisdiction over non-Indians
- Preponderance of the Evidence



WHAT IS AN ELDER?

- Depending on Native Nations traditions
- Most Nations have set the minimum age 55

Provisions

○ 002.0 AUTHORITY

[Cite all relevant sections of Tribe or Nation's constitution, charter or governing documents that grant the Tribe or Nation's legislature or lawmaking body the authority to enact laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Tribe or Nation]

○ 003.0 POLICY

It is the policy of the [Tribe or Nation] to continue the traditional respect the members of the [Tribe or Nation] have had for elders. Elders are a valuable resource to the [Tribe or Nation] because they are repositories and custodians of tribal history, language, culture and tradition; and, they are the best hope of the [Tribe or Nation] to pass on the tribal history, language, culture, and tradition to children of the [Tribe or Nation]. Thus, the interests of the [Tribe or Nation], now and in the future, are advanced when its Elders can be confident they are protected from abuse, neglect, and exploitation and are free to fully participate in the activities and proceedings of the [Tribe or Nation].

Definitions

- What is:
- Physical
- Sexual
- Emotional
- Exploitation
- Neglect

Caregiver

- Who is a caregiver?
- a person who is required by tribal law or custom (or state or federal law) to provide services or resources to an elder;
- a person who has voluntarily undertaken to provide care or resources to an elder;
- an institution or agency which voluntarily provides or is required by tribal law or custom (state or federal law, or tribal-state agreement) to provide services or resources to an elder; or,
- an employee of any institution or agency specified within this code.

Mandated Reporters

- Teachers, principals, and other school personnel
- Physicians, nurses, and other health-care workers
- Counselors, therapists, and other mental health professionals
- Child care providers
- Medical examiners or coroners
- Law enforcement officers
- Other persons obligated under the law
- BUT your code must require that that people report abuse!!

Duty of Care & Reporting

- What are duties of care and reporting?
- **Ex. Fort Peck:** Any person knowing or having reasonable cause to suspect that an adult is or has been abused shall report such abuse to the Adult Protection Team or to the appropriate law enforcement agency the agency shall immediately notify the APT

Criminal Codes

006.0 MANDATORY ARREST AUTHORITY

An officer shall arrest and take into custody person(s) whom the officer has probable cause to believe abused/neglected a person defined as an “elder.” No warrant is required to make an arrest. This mandatory arrest provision means that the victimized not sign a complaint for an arrest to occur. Further, an officer may arrest under probable cause even though it may be against the express wishes of the victim.

Mandatory arrest is required when:

The victim is injured;

The use of threatened use of a weapon is involved;

The violation of a valid restraining order; or

Imminent danger through abuse or neglect of a victim

Any person arrested under this provision shall be held without bail, in custody for a period of [forty-eight (48) hours] as a mandatory “cooling off” period in the best interest of the [Tribe or Nation]

Protection Orders

- 008.0 **EMERGENCY PROTECTION ORDER**
- The [tribal court] shall issue an emergency protection order authorizing protective services or protective placement on an emergency basis upon petition supported by clear and convincing evidence that:
 - the elder is at risk of immediate (physical) harm;
 - the elder is incapacitated and cannot consent to protective services;
 - the person possessing power of attorney for the elder is unavailable, or there is no one authorized by law or court order to give consent on an emergency basis; and an emergency exists.

Court Systems/Partne ring

- What venue should
preside over this hearing?
- What outside resources
are available?

- <https://www.youtube.com/watch?v=6Fdq30PBX90>

Chi-Miigwetch

- Jacob Davis & Jeff Davis for developing the model criminal and civil codes.
- Whitefishwoman for complying the Collection of Data of Elder Abuse Codes & Criteria to Consider when drafting a Model Elder Abuse Code.
- Kim Cowden, Mashanda Smith, Cassie LaBine, and Kenneth Davis, for your amazing work on this conference!!

Miigwetch bizindawiyeg!!

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