



ELDER ABUSE ISSUES IN INDIAN COUNTRY

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A D M I N I S T R A T I O N O N A G I N G

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**OFFICE FOR AMERICAN INDIAN, ALASKAN NATIVE AND NATIVE
HAWAIIAN PROGRAMS**

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FOREWORD

The Administration on Aging's (AoA) mission is to promote the dignity and independence of older people and to help society prepare for an aging population.

AoA carries out its mission with and through a national network of public and private organizations, including Tribal Organizations funded through Title VI of the Older Americans Act (OAA). AoA is charged, under the OAA, with the responsibility to serve as the advocate for older people at the national level, and to oversee the development of a comprehensive and coordinated system of services to enable older individuals to remain at home and participate fully in the community life. Toward that end, the Aging Services Network has, for over 30 years, played a leadership role in services innovation and in developing citizen-centered programs at the state, tribal, and local level.

Ensuring the rights of older people and preventing their abuse, neglect, and exploitation are among the priorities I have established for AoA and the Aging Services Network. Although a considerable amount of information about elder abuse is available today, little is known about elder abuse issues specific to American Indian and Alaska Native elders. To help us understand these issues, Tribal Judges, Title VI Program Directors, and Tribal Elders were asked about elder abuse in their communities and the traditional and legal avenues Tribes are using to address elder abuse issues.

I believe this report will be a useful tool for developing collaborative efforts between the Tribes and the Federal agencies to further elder abuse education and prevention efforts.

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INTRODUCTION

The traditional status of elders in American Indian and Alaska Native (AI/AN) cultures is one of honor and respect. Elders are respected for their age, experience, maturity, and wisdom. They are considered valuable resources to the Tribe as custodians of Tribal history, culture, and tradition.

This respect is affirmed in policy statements for many Tribal Elder Abuse Codes and Acts. For example, the Dineh Elder Protection Act states: "It is the policy of the Navajo Nation to continue the traditional respect which members of the Navajo Nation have for Dineh elders. Elders are valuable resources to the Nation because they are repositories and custodians of Navajo history, culture, language, and tradition; vested in Dineh elders is the hope of the Navajo Nation to retain its tribal history, culture, language, and tradition. Navajo elders provide stability by being role models for their children and grandchildren to whom they demonstrate long-lasting commitment to family, marriage, employment, profession and other social institutions" (1). Similarly, the purpose of the White Mountain Apache Elderly and Incapacitated Adult Protection Ordinance states: "It is the tradition and custom of the White Mountain Apache people to honor and protect their elderly as they are the possessors of the spiritual and collective wisdom and traditions of the White Mountain Apache

Tribe of the Fort Apache Indian Reservation which are passed on from generation to generation" (2).

Unfortunately for many elders, AI/AN traditions are confronting contemporary realities that increase the risk of elder abuse and neglect. As one Tribal elder commented, "family members are busy working and taking care of their own lives so they have no time left to care for their elders." Service providers note that

many elders use their monthly checks to pay their family's bills instead of their own bills, or that family members ask for a "loan" and never repay the money.

"OUR ELDERS, preserving OUR PAST in their memories, influencing OUR PRESENT when we dare to listen, aiming us toward OUR FUTURE, rooted in their wisdom, they deserve our respect, not our abuse."

Pueblo of Laguna Elderly Code

Tribal leaders are increasingly concerned about the safety of their communities and the rising number of crimes resulting in some type of victimization. A 1999 report on American Indians and Crime prepared by the Bureau of Justice Statistics (BJS), U.S. Department of Justice (DOJ), provided the following statistics (3):

- American Indians are victimized by violent crime at a rate more than twice that of the general U.S. population.
- Violence against Indian women is particularly severe — nearly 50% higher than that reported by African-American males.

- American Indians suffered seven rapes or sexual assaults per 1,000 compared to three per 1,000 among African-Americans, two per 1,000 among white Americans, and one per 1,000 among Asian-Americans.
- In 55% of violent crimes against American Indians, the victims reported the offender was under the influence of alcohol, drugs, or both.
- Annually, 41.9 violent crime victimizations per 1,000 persons over the age 50 for American Indians, 16.6 for whites, 15.4 for blacks, and 7.4 for Asians were reported.

In 2002, the National Research Council convened a panel to review the risks and prevalence of elder abuse and neglect. The panel concluded that the magnitude of elder abuse in this country is unknown because no surveys to provide national estimates on the occurrence of any form of elder mistreatment exist. They also report that there is no sound understanding of the nature, causes, and consequences of elder mistreatment, and the effectiveness and cost of current interventions or measures that could successfully be taken to prevent it or ameliorate its effects (4). This also describes the situation concerning elder abuse in Indian Country — there are no national studies, and only a few Tribal specific studies. Consequently, the understanding of the nature, cause and consequence, and assessment of current interventions or preventive measures are incomplete.

Since cultural values, beliefs, and practices affect family life, they play significant roles in defining what is considered elder abuse and how both victims and perpetrators are treated. Several recent studies have looked at how different racial and ethnic groups in the U.S. define elder abuse and what services

victims are willing to accept (5-9). Although the study by Hudson and Carlson on perceptions of elder abuse only included two Tribes in North Carolina, they found that American Indians differed from African-Americans and Caucasians in their perception of elder abuse (7). Of the three groups, American Indians rated more items as abusive on the measurements used by the researchers. Possible explanations given by the researchers are that American Indians may continue to hold onto their views of respect and caring for their elders and may be more sensitive to the abuse of power through their experiences with racism.

The National Elder Abuse Incidence Study, released in 1998, reported that nearly half a million elders, aged 60 and over, had experienced abuse and/or

neglect. The study also estimated that for every reported case of elder abuse, five additional cases went unreported (10). Data on elder abuse in Tribal communities is extremely limited. The Dineh Elder Protection Program reported that about 800 cases of elder

abuse were referred to their agency in 2003 and about half of the cases were substantiated (11).

Criminal investigation and prosecution of elder abuse are relatively new. Traditionally, most elder abuse has been viewed a social service issue, except for the most violent assaults, major thefts, and fraud (12-14). New information on the extent, forms, and consequences of elder abuse has led to significant changes in both awareness of the issues and responses to dealing with both victims and perpetrators. Although there have been criminal prosecutions for murder, manslaughter, sexual assault, theft, and other crimes, some states and Tribes have recognized the unique needs and

"The growth in case law related to elder abuse reflects a significant change in our approach to the problem. Rather than viewing elder abuse as a social problem to be addressed by human-service agencies . . . we now view elder abuse as a social and legal problem that is best addressed by an array of services and legal actions."

Lori Stiegel
American Bar Association
Commission on Law and Aging

challenges faced by elder-abuse victims and have enacted legislation to address these needs including elder abuse codes.

Senators John Breaux and Orrin Hatch have introduced the Elder Justice Act (15). In introducing the Act, they stated that they wanted to ensure federal leadership to provide resources for services, prevention, and enforcement efforts and elevate elder abuse, neglect, and exploitation to the national stage in a lasting way.

Although American Indian Tribes have always used various peacekeeping methods, the Indian Reorganization Act of 1934 encouraged Tribes to enact their own laws and establish their own justice systems. About 275 American Indian Tribes and Alaska Native villages have established formal court systems and 23 Code of Federal Regulations (CFR) Courts are operated by the Bureau of Indian Affairs (BIA) in Indian Country. According to the National Tribal Justice Resource Center, *“there is widespread variety in the types of forums and the law applied in each is distinctly unique to each tribe. Some tribal courts resemble Western-style judiciaries where written laws and rules of court procedure are applied. An increasing number of tribes are returning to their traditional means of resolving disputes through the use of peacemaking, elders’ councils and sentencing circles”* (16).

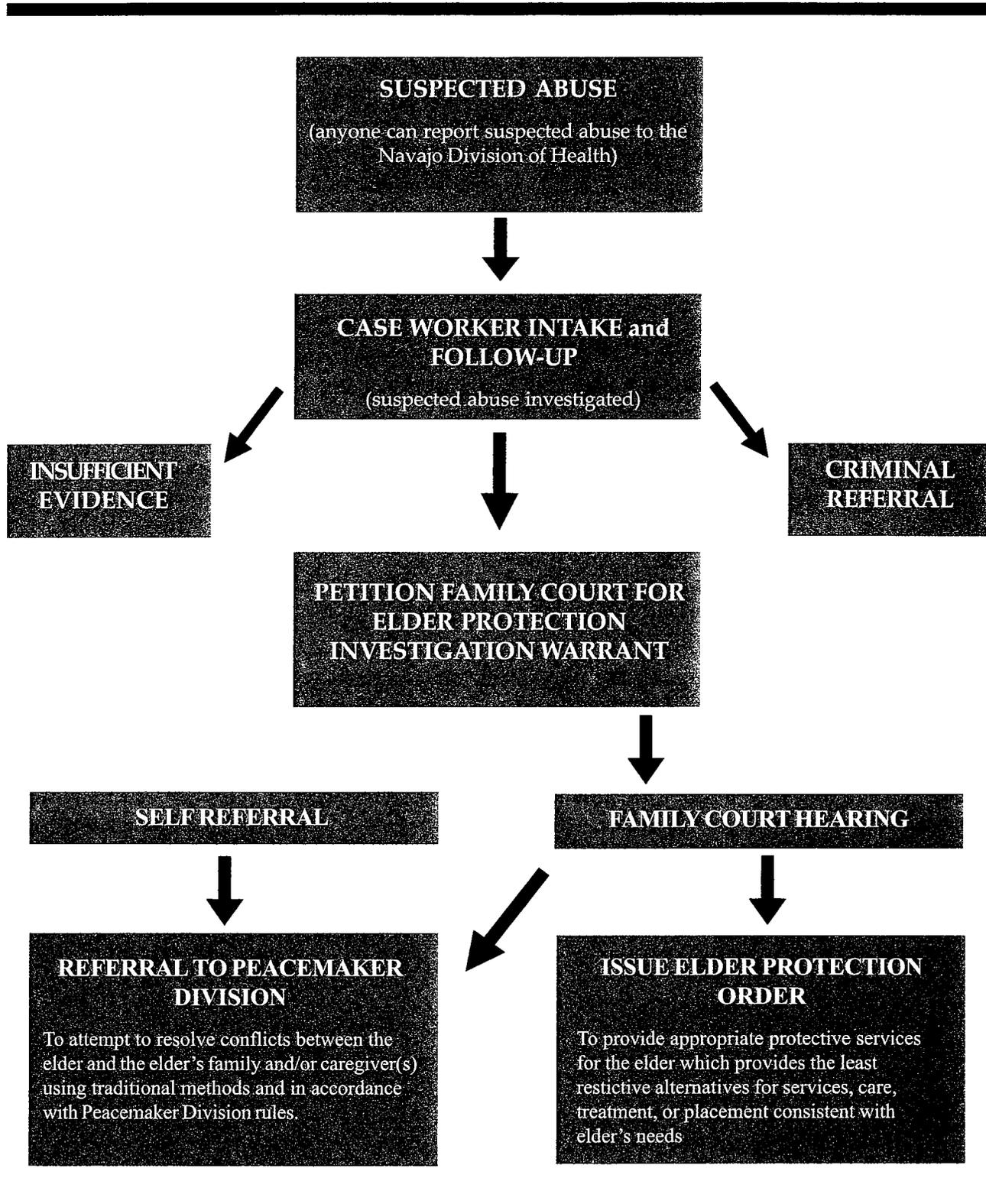
Judge Joseph Flies-Away, an enrolled member of the Hualapai Nation, explains that a tribal justice system is more than a tribal court. *“A court is only one, though critical, component of a justice system. Other usual components include the police, the prosecutor,*

corrections, probation, and parole. Some tribes, however, include much more in their justice systems: ancillary services such as education, health and social support. This kind of an all-embracing justice system is comprised of many human services programs that address deeper issues and not just the immediate legal matter or charge. An all-embracing justice system and tribal court pursues peace” (17).

Tribal judicial systems are increasing their use of traditional restorative justice. For example, two systems of justice operate within the Judicial Branch of the Navajo Nation (Figure 1). One is based on the western system of lawyers and trials and the other is the Peacemaker system based on Navajo cultural traditions. The Peacemaker system concentrates on finding resolutions through community-affirming, problem-solving, and consensus-building under the guidance of a Peacemaker (18).

In assessing Navajo Peacemaking, Eric Gross reported that: 1) Family Court Judges refer cases to Peacemaking when it appears there is the opportunity for the disputants to reconcile; 2) participants in Navajo Peacemaking are very satisfied with the process; and 3) Navajo Peacemaking is highly effective in dealing with a broad range of problems (19). Mr. Gross describes a Peacemaker session involving an adult son who, under the influence of alcohol, has battered his mother. The entire family is included in the session, including the mother, father, brother and his wife, and the son’s girlfriend. After much discussion and soul searching, the son promises not to hit his mother again and not to use alcohol.

FIGURE 1: DINEH ELDER PROTECTION CODE SUSPECTED ABUSE FLOW CHART*



* Used by permission for Navajo Area Agency on Aging (adapted from original)

ADMINISTRATION ON AGING

Although the nature and extent of elder abuse in Indian Country are largely unknown, the loss of traditional lifestyles, changes to the traditional family unit, overall poor social and economic conditions, and high rates of violence, are indicators that AI/AN elders are at risk for abuse or are being abused at a rate that is similar or higher than in the general population. The Administration on Aging (AoA), U.S. Department of Health and Human Service (DHHS), has been working with Tribes addressing elder abuse issues for several years. In passing the Older Americans Act (OAA) in 1965, Congress declared that: "it is the joint and several duty and responsibility of the government of the United States, of the several states and their political subdivisions, and of Indian Tribes to assist older people to secure equal opportunity to the full and free enjoyment" of the following "protection against abuse, neglect, and exploitation" (20). The amendments of the OAA in 1992 added a provision in Title VII - Allotments for Vulnerable Elder Rights Protection Activities, to fund Tribes and nonprofit organizations serving AI/AN elders to carry out elder rights protection activities. Unfortunately, this provision has never been funded.

Since the late 1980s, AoA has funded the National Center on Elder Abuse (NCEA) to be a resource for social service providers, law enforcement and legal professionals, public policy leaders, researchers, and the public. In 1995, NCEA convened a teleconference with Tribal and state representatives to discuss issues that state programs might face as they try to work with Tribes in addressing elder abuse (21). In 2002, NCEA, through funding from AoA, contracted with the National Indian Council on Aging (NICOA), to

explore issues of elder abuse in Indian Country. The reports from their literature review and focus group meetings were published in 2004 (22-23).

The American Indian Law Center, Inc. received a grant from AoA in 1989 to develop a Model Tribal Elder Protection Code (Appendix A). The American Indian Law Center cautioned those using Elder Protection Codes that: "*Elder protective laws are not a solution to what is, essentially, a human relations problem. Tribal governments should not assume that by enacting an elder protection code the problems of abuse and neglect will be solved, first and obviously, because law cannot take care of every problem. People acting in the heat of great emotion, whether it be love, anger, or despair, rarely think about consequences. Secondly, human relationships are too complex to be governed completely by law. The challenge to tribal governments is to continue working on solutions to the problems once laws are in place.*"

In the early 1990s, AoA funded national training and technical assistance conferences for Indian Tribal Organizations receiving OAA Title VI grants. Workshops on elder rights and elder protection were included in this training. Title VI program directors received training on defining elder abuse, factors that increase the risk of elder abuse, indicators of abuse, neglect, and exploitation, and elder abuse prevention. AoA developed a Title VI Resource Manual and provided it to all Title VI programs in 1999. A chapter on Elder and Adult Protection is included in this Resource Manual and is included in trainings offered for new Title VI program directors.

Mr. Charles Mendonca, Public Relations Officer for

the Elderly, Pascua Yaqui Tribe of Arizona Law Enforcement Services described their elder abuse program that started in 1999. Obstacles they encountered in establishing their program included: denial that elder abuse exists; the feeling of many Tribal elders that they are being neglected by the Tribal government; and withholding of information to law enforcement by staff due to a lack of understanding about immunity from prosecution. He appealed to state and federal policy makers not to *'forget the people in Indian Country. We have the same problems as everyone else. We just want to be part of the solution'* (25).

Ms. Myra Magee-Red Fox, of the Blackfeet Tribe reported that the State of Montana contracts with

the Blackfeet Tribe to fund child protective services, but does not provide or fund for adult protective services on the reservation. The Blackfeet Tribe has an informal group that meets two times per month to review cases that are referred by family, individuals, or other concerned persons. Ms. Magee-Red Fox stated, *"our elderly protection team is very motivated. Because we represent different agencies within the Tribal system, we have been effective in many cases"* (26). The volunteer group consists of BIA Social Services, Blackfeet Housing, Indian Health Service, Title VI Senior Services, and the Personal Care Provider Program. Since they are volunteers, there is limited financial support for adequate investigations, law enforcement training, or community outreach and prevention.

ELDER ABUSE SURVEY AND REVIEW OF TRIBAL ELDER ABUSE CODES

The AoA is committed to listening and responding to its customers, especially older citizens and their families, to ensure that AoA understands their needs. Additionally, one of the priorities of AoA is to support the rights of older people and prevent their abuse, neglect, and exploitation. During 2000 to 2004, AoA held Tribal Listening Sessions, town-hall meetings, and training conferences to hear about the issues in Indian Country. Because of the increasing reports of elder abuse in Indian Country during these AoA meetings and the AoA priority of elder rights protections, AoA asked Tribal Judges, Title VI Program Directors, and Tribal Elders about their perceptions of elder abuse issues in Indian Country. Information was collected in early 2004 using two methods: 1) Tribal Elder Abuse Codes available on the Internet and those provided by Tribal programs were reviewed; and 2) information was collected, using an Elder Abuse Information Questionnaire, from Tribal Judges/Magistrates, Title VI Program Directors, and Tribal Elders.

Questionnaires were mailed to 123 Tribal Judges in February 2004 and distributed to 60 Title VI Program Directors and 33 Tribal Elders attending the AoA Training and Technical Assistance Conferences held in Phoenix, AZ in February 2004 and Rapid City, SD in April 2004. A total of 34 (28%) questionnaires were returned by Tribal Judges, 56 (93%) questionnaires were completed by Title VI Program Directors, and 30 (91%) questionnaires were completed by Tribal Elders.

The core questions asked of each group included:

- 1) Define elder abuse and neglect.
- 2) What are the elder abuse issues in your community?
- 3) Share an example of elder abuse or neglect.

In addition to the core questions, Tribal Judges were asked to:

- 1) Identify current legal practice in the community to address elder abuse and neglect.
- 2) Identify any cultural/customary law practices concerning elder abuse and neglect being used.
- 3) Identify possible prevention and intervention systems for your community.

In addition to the core questions, Title VI Program Directors and Tribal Elders were asked:

- 1) What traditional cultural practices are used to resolve elder abuse?
- 2) What can you do to work with the Tribal judicial system to resolve elder abuse?
- 3) How can this survey information and the AoA help you reduce elder abuse in your community?

ELDER ABUSE SURVEY AND TRIBAL CODE REVIEW RESULTS

WHAT IS ELDER ABUSE IN INDIAN COUNTRY?

About half of the AI/AN elderly population live in Indian Country. Indian Country is defined in the U.S. Code as “*all land within the limits of any Indian reservation under the jurisdiction of the United States Government . . . all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same*” (27). Practically speaking, Indian Country includes the Indian reservations throughout the U.S. and historical Indian land in Oklahoma.

Since no uniform definitions for elder abuse and neglect are available, the definitions of elder abuse and neglect in the Tribal codes were compared to the definitions in the Model Code. These Model Code definitions are:

- Physical abuse is the intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of an elder with resulting physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the elder such as a spouse, a child, or other relative recognized by tribal law and custom, or a caretaker.
- Sexual abuse is any physical contact with an elder intended for sexual gratification of the

person making such contact and which is not consented to by the elder or for which the consent is obtained by intimidation or fraud.

- Emotional abuse is intentional infliction of threats, humiliation, or intimidation.
- Exploitation is the unauthorized or improper use of funds, property, or other resources of an elder; or the unauthorized or improper use of the elder by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an elder for the elder’s benefit or according to the elder’s desires.
- Neglect is the failure of a caretaker to provide for the basic needs of an elder by not supplying resources, services, or supervision necessary to maintain an elder’s (minimum) physical and mental health and includes the inability of an elder to supply such basic needs for self. Neglect is also interfering with delivery of necessary services and resources, failing to report abuse or neglect of an elder by any person, or failing to provide services or resources essential to the elder’s practice of his customs, traditions, or religion.

Twenty-two Tribal Codes were reviewed (Figure 2). The title of the codes varied, including Elder Abuse Code; Family Code; Adult Protection Code; Family Relations Code; Children, Family, and Elder Welfare Code; and others. Most of the codes contain all the information included in the Model Code. The definition of abuse in the Tribal Codes reviewed

FIGURE 2: TRIBAL CODES REVIEWED

Bay Mills Indian Community Laws and Codes: Chapter XV - Tribal Elder and Adult Protection Code
Blackfeet Tribe Law and Order Code: The Family Code Chapter 10 - Elder Abuse
Cheyenne River Sioux Ordinance: Number 58 - Elderly and Disabled Adult Abuse
Colville Tribal Code: Chapter 5-4, Abuse of Elders and Vulnerable Adults
Confederated Salish and Kootenai Tribal Code: Chapter 3 - Adult Protection
Duckwater Shoshone Tribe Law and Order Code: Title IV - Criminal Procedure, Chapter 2, Sec. 215: Abuse, Neglect and Exploitation of Older Persons
Eastern Cherokee Code: Chapter 14: Criminal Law; Sec. 14-40.13 - Domestic Abuse, Neglect, and Exploitation of Disabled or Elder Adults
Fort Peck Tribal Comprehensive Code of Justice: Title XXIX - Elderly Abuse
Hannahville Indian Community Code: Chapter 5 - Adult Protection Code
Ho-Chunk Nation Code: Title 4 -Children, Family, and Elder Welfare Code, Section 1, Elder Protection Act of 2001
Hopi Family Relations Ordinance
Laguna Pueblo Elderly Code
Makah Tribal Law and Order Code: Title II - Domestic Violence Code
Muscogee (Creek) Nation Elder and Adult Protection Code
Navajo - Dineh Elder Protection Act
Oglala Sioux Tribal Law and Order Code: Chapter 6 - Elder Abuse Code
Sisseton-Wahpeton Sioux Tribal Code: Chapter 56 - Provisions for Elders
Poarch Band of Creek Indians Code: 8A - Domestic Violence Code
Warm Springs Tribal Code: Chapter 10 Tribal Elder and Adult Protection Code
White Mountain Apache Ordinance: No. 186 - Elderly and Incapacitated Adult Protection
Winnebago Tribal Council: Title 3, Article 12 - Adult and Elderly Protective Service Act
Yankton Sioux Tribal Code: Title XIV - Yankton Sioux Tribal Elder Abuse Code

included physical, mental, emotional, and financial abuse. Each of the 22 Tribal Elder Abuse Codes included physical abuse, mental/emotional abuse, and exploitation in their definition of abuse. However, three codes did not include sexual abuse in the definition of elder abuse. One code included babysitting for an extended time in the definition of exploitation and another code included denial of grandparents' rights in the definition of emotional abuse.

A few Tribal Codes included additional definitions as follows:

- Infliction of emotional or mental harm to an elder denied or restrained from exercising their grandparents' rights as recognized by Tribal custom.
- Attempting to cause or causing harm, bodily injury, or assault on an elder or the elder's family or caretaker. The definition of self-neglect excludes a situation in which a mentally competent person, who understands the consequences of his/her decision, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.
- No person shall be deemed to be abused for the sole reason that they are being furnished traditional remedial treatment by spiritual means.
- Exploitation includes the unreasonable imposition on the elder's time resources, such as leaving children or other persons in the care of the elder for extended periods or under circumstances in which the elder cannot adequately care for such children or other persons.

The three groups in the study were asked to define elder abuse and neglect. All three groups defined elder abuse in four areas: 1) physical abuse; 2) emotional abuse; 3) neglect; and 4) exploitation. However, only the Tribal Judges and Title VI

Program Directors included sexual abuse in their definitions (Table 1). As expected, many of the definitions from Tribal Judges were more legal in nature than the descriptions offered by the Title VI Program Directors and Tribal Elders. The Title VI Program Directors' comments seem to relate to the types of services that elders expect to receive.

The Tribal Elders' definitions were more specific to their everyday lives such as not including elders in gatherings, failure to show family love, and the community not listening to the concerns of the elder. In most AI/AN communities, elders are included in cultural and traditional gatherings due to their status. It is customary for elders to lead ceremonies and share traditional teachings through stories. Not to be included is an insult to the elder and a loss for the Tribe.

In addition to defining elder abuse, Tribal Judges, Title VI Program Directors, and Tribal Elders were asked to give examples of elder abuse that they had seen or heard about in their community. Examples provided by each group are included in Appendix B.

Tribal Judges and Title VI Program Directors provided examples of physical abuse of elders by grandchildren, children, and spouses. None of the Tribal Elders gave an example of physical abuse. Many of the emotional abuse examples provided by the Tribal Judges and Title VI Program Directors involved alcohol and drug use and threatening an elder. These included threats of physical abuse and threats of putting the elder in a nursing home. The Tribal Elders' examples of emotional abuse related more to their role in the family, such as family members "treating them as if they didn't matter anymore" and "not listening when elders speak." All three groups provided several examples of neglect and exploitation. Many examples related to family member using an elder's money, car, food, and medications. One Title VI Program Director stated that the elder blamed herself for her grandchildren taking her money because she "can't say no to her grandson." Many Tribal Elders gave examples of grandchildren being left for long periods of time with the elder. One Tribal Elder gave an example of an

TABLE 1: SURVEY DEFINITIONS OF ELDER ABUSE AND NEGLECT

Tribal Judges and Magistrates		Title VI Program Directors		Tribal Elders	
Physical Abuse	Inflicting bodily harm or pain such as striking with an object, hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, or burning; inappropriate use of drugs; unreasonable confinement; physical restraining; forced feeding; and cruel punishment.	Getting physical; hurting an elder; assault; negative actions against the welfare of an elder; and health or physical mistreatment.	Physical mistreatment and mistreatment of life-giving sustenance.		
Emotional Abuse	Intimidation; coercion; mental anguish and injury; threats; humiliation; harassment; insults; verbal abuse; yelling and hollering; name-calling; terrifying the elder; annoying the elder; and unwanted emotional contact.	Making the elder feel uncomfortable; taking advantage of the elder; not giving the elder privacy; mental abuse; and verbal abuse,	Leaving children or grandchildren; yelling; insults; disrespect; ignoring; making fun of elders; not recognizing when elders are not receiving love and care; and community not listening to elder concerns.		
Exploitation	Stealing; breach of fiduciary duty; unauthorized/improper use of funds, property, and resources; use of resources for personal gain; and failure to use funds, property, and other resources for the elder's benefit.	Using the elder's money or property without permission; family only visiting on pension pay day of 551 check day; and leaving the elder alone.	Using the elder's income, home, and other property; excessive use as a baby-sitter; and taking food and medications.		
Neglect	Failure to provide the basic needs, i.e., food, shelter, clothing, and medications necessary to maintain physical and mental health; failure to report abuse; refusal or failure to fulfill obligations to an elder; ignoring or disregarding an elder; failure to provide for practice of customs, traditions, or religion; and preventing or interfering with services and resources.	Abandoning or ignoring the elder; not assisting with health, emotional, and physical support and services; failing to see to the elder's best interest; not providing for basic needs, i.e., food, water, shelter, medications, proper clothing, and heating; and self neglect.	Not including elders in gatherings; not visiting the elder; failure to report abuse; failure to take care of basic needs, i.e., emotional, physical, and mental; failure to show family love; and not listening to the elder.		
Sexual Abuse	Aggravated sexual abuse.	Sexual abuse.			

elder financially exploiting another elder because of gambling debts. Only Title VI Program Directors gave examples of sexual abuse.

ELDER ABUSE ISSUES IN TRIBAL COMMUNITIES

The responses to the question on the elder abuse issues in the community are shown in Table 2. These issues parallel the examples given of elder abuse. Exploitation, neglect, and physical abuse represented nearly 75% of all elder abuse issues identified by the three groups. Although exploitation was most frequently identified as a community issue, there were differences among the groups on the type of exploitation issues identified. While issues of financial exploitation were identified by the majority of the respondents, babysitting represented 30% of the exploitation issues identified by Tribal Elders, but only 17% of the exploitation issues identified by the Program Directors, and 12% by the Tribal Judges. At least for the Tribal Elders participating in this survey, babysitting, which includes the elder financially supporting grandchildren, is an issue.

Only a few issues related to alcohol and drugs, and no issues related to gambling, were identified as community elder abuse issues. However, several examples given of elder abuse were related to alcohol and drug use and gambling. Some of the community issues relating to babysitting may actually be alcohol, drug and gambling issues since some examples given were that, due to alcohol and drug use, grandchildren were left with their grandparents.

There was fairly consistent identification of neglect and physical abuse as community issues among the three groups with 18% of the issues identified related to neglect, and 11% of the issues identified related to physical abuse. Although some Tribal Elders recognized physical abuse as an elder abuse issue in their community, no examples of physical abuse were given by the Tribal Elders. It is interesting to note that two Tribal Judges reported that they did not perceive any elder abuse issues in their community.

CURRENT LEGAL PRACTICES REGARDING ELDER ABUSE

Most federally recognized Tribes have some system of civil dispute resolution and a criminal court system. In most of Indian Country, federal law provides for shared federal-tribe-state authority to combat crime and promote public safety. Tribes have exclusive jurisdiction to prosecute crimes by Indians against other Indians that are not listed in the Major Crimes Act (28). The Federal government and Tribes share jurisdiction to prosecute crimes by Indians against non-Indians, although the Federal government may not punish any offender whom the Tribe has punished (29). States have exclusive jurisdiction to prosecute most offenses by non-Indians against other non-Indians that occur in Indian Country. Tribal court jurisdiction is generally exclusive of state jurisdiction, except to the extent that the state has been granted jurisdiction by Federal law or Tribal-state agreements. In 1953, Congress enacted Public Law 83-280, giving six states the authority to assume criminal jurisdiction of reservation Indians in Alaska, California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin. The law also allowed other states to assume full or partial state jurisdiction. These states include Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington. The U.S. Supreme Court has interpreted Public Law 83-280 as a statute designed to open state courts to civil and criminal actions involving reservation Indians, not to subject reservations to the full range of state regulation (30).

In regard to adult protective services, some states have established special considerations during investigations. For example, the Oklahoma Adult Protective Services (APS) policy for referrals regarding members of Indian Tribes states that as soon as Tribal affiliation is known for the alleged victim, the APS specialist determines if the Tribe has an APS program. If the Tribe has an APS program, the referral is made to the Tribal authorities and the state does not become involved. If there is no Tribal APS program, the local Oklahoma Department of Human Services (OKDHS) investigates the referral

TABLE 2: ELDER ABUSE ISSUES IN TRIBAL COMMUNITIES

Issue	Total Responses		Tribal Judges		Title VI Program Directors		Tribal Elders	
	n	(%)	n	(%)	n	(%)	n	(%)
Exploitation (money/property/babysitting)	70	(45)	25	(46)	23	(45)	22	(44)
Neglect	28	(18)	9	(17)	11	(22)	8	(16)
Physical abuse	17	(11)	5	(9)	6	(12)	6	(12)
Alcohol and drug related issues	9	(6)	3	(6)	2	(4)	4	(8)
Emotional abuse	8	(5)	3	(6)	2	(4)	3	(6)
Elders not reporting abuse	8	(5)	1	(2)	3	(6)	4	(8)
No one enforces elder abuse code	4	(3)	0	(0)	3	(6)	1	(2)
Inadequate community resources	3	(2)	2	(4)	1	(2)	0	(0)
Inadequate safe housing	3	(2)	2	(4)	0	(0)	1	(2)
No elder abuse issues in our community	2	(1)	2	(4)	0	(0)	0	(0)
No law or reporting agency with the Tribal structure	2	(1)	2	(4)	0	(0)	0	(0)
No caregivers	0	(0)	0	(0)	0	(0)	1	(2)

and voluntary services may be provided, whether or not the elder resides on Tribal land. If involuntary services are required and the elder resides on Tribal land, the OKDHS cannot petition the district court for an order to provide emergency protective services since the district court has no jurisdiction over Tribal land. If involuntary services are in the best interest of the elder, a referral is made to the nearest Bureau of Indian Affairs Office, or the federal marshal with jurisdiction in the area, if no other resource can assist (31).

For this survey, Tribal Judges were asked to describe the current tribal legal practices regarding elder abuse. Four judges reported that there was nothing in Tribal code addressing elder abuse, two reported that there were none "to our knowledge," and four others did not answer the question. Seven judges responded that they had an Elder Protection Code in place. However, one of the seven reported that the code was inadequate and another responded that the code was ignored and elder abuse was not reported. Other responses from these seven Tribal Judges included:

- Abusers can be and frequently are charged and prosecuted in criminal court.
- Abused persons may file for a protection order that is treated as a domestic violence protection order.
- The Adult Protection Code is civil in nature. However, should any assault or battery or other criminal violation happen, the criminal code covering a specific behavior would be charged.
- Jail time; no contact provisions; setting up Elderly Protection Teams as the financial guardian/protective payee; use of civil restraining orders; domestic violence protection orders and guardianships.
- On September 9, 2003, the Nation adopted the Adult Protection Ordinance, which has a mandatory minimum term of 6 months incarceration, a minimum \$1000 fine, and

the defendant is not eligible for suspension or commutation of sentence, probation, pardon, parole, or release. The Nation at the present time is looking at circle sentencing in these matters.

- Our Code has one law regarding elderly abuse and another is presently pending before the Tribal governing body.

Responses from Tribal Judges in communities without Elder Abuse Codes included:

- The abuse would be reported to the Tribal Family and Youth Services, who would investigate. If the charges seemed substantiated, it would go to Tribal court and steps would be taken to get the elder in a safe situation.
- Currently, we have no elder abuse code in place. If the elder has been abused, the elder must go through the domestic violence code.
- Tribal Council adopted the Family Court Act, which has a section on elder abuse that includes the usual statutes and social service policies, to ensure protection and investigation of abuse.
- Although law enforcement is astute in filing criminal complaints when warranted, communication issues often prevent an elder from following through with prosecution.
- Traditional court more than modern court deals with elder abuse cases. It does not guarantee safety or prevent recidivism.

- All reports of elder abuse are mandated to be reported through the county agency. The county does the investigations to determine substantiation. The county then refers substantiated cases to Tribal prosecutor (respondent from a P.L. 83-280 state.)
- Referred to Adult Protective Services, State Office (respondent from a P.L. 83-280 state.)
- This would be handled by appropriate local/state communities (respondent from a P.L. 83-280 state.)
- None except for state laws but most elders will not report abuse (respondent from a P.L. 83-280 state.)

TRADITIONAL CULTURAL PRACTICES AND IMPACT OF THESE PRACTICES ON ELDER ABUSE

Title VI Program Directors and Tribal Elders were asked to describe traditional cultural practices that deal with elder abuse and what are the impacts of the practices on elder abuse (Appendix C). About

half of the respondents did not answer these two questions or provide additional examples of elder abuse. Some reasons may be that they did not know of any traditional cultural practices, traditional practices are no longer used in their community, or that there are no traditional practices

that deal with elder abuse. One Title VI Program Director stated that traditional practices were no longer used and another one stated that there were no traditional practices dealing with elder abuse.

"Among the Indians there have been no written laws. Customs handed down from generation to generation have been the only laws to guide them. Every one might act different from what was considered right did [sic] he choose to do so, but such acts would bring upon him the censure of the Nation . . . This fear of the Nation's censure acted as a mighty band, binding all in one social, honorable compact."

George Copway (Kah-ge-ga-bowh)
Ojibwa Chief 1818-1863

Although a few respondents commented that there were no traditional practices left, most others reported that there was the traditional practice of respect and caring for elders. Others commented that elders are not willing to discuss abuse issues outside the home or with people outside their family. However, some reported that this is either being ignored or not practiced in some AI/AN communities. Some traditional practices identified by both Title VI Program Directors and Tribal Elders are banishment, family counseling, prayers, and sweats.

ELDER ABUSE PREVENTION AND INTERVENTION

Tribal Judges were asked what elder abuse prevention and intervention systems they would plan and Title VI Program Directors and Tribal Elders were asked how they could work with the Tribal judicial system to resolve elder abuse (Table 3). Generally, all three groups commented that there needs to be community awareness, education, and training in all aspects of elder abuse — from what constitutes elder abuse to enforcing laws and prosecution of abusers. They also noted that everyone should be more watchful of elders, particularly those who need services, have health problems, or have adult children with alcohol and drug problems.

Some Tribal Judges provided specific plans for a prevention/intervention system. Examples of these are:

- Criminal Code and Civil Code would be simple and separate in the matters of elder abuse for the best interest of the elder not to revictimize the elder. Have support services to assist and support the elder and have case management and an elder protection team to handle issues.
- The Elderly Protection Team (EPT) would be readily available to take referrals/complaints/concerns. An EPT staff person would be assigned to investigate and provide written reports to EPT. If case warranted emergency action, an EPT staff person

would have authority to take the action as deemed appropriate — including filing petitions with the court. An effective prevention and intervention system would have access to community resources such as a food bank, emergency fuel assistance, emergency shelter, assisted living facility with security, protective payees, etc. A court advocate for the elderly would also be part of the system.

- Ultimately, we would like to fully fund an elder abuse services office for elder abuse that would have an attorney, an investigator, a counselor, and secretarial staff. We also have a vision to be able to provide residential services to victims of elder abuse, but at this time various obstacles prevent us from obtaining these goals. We will continue to work on and adopt the Vulnerable Adult's Act and work on attaining the other services to complete a comprehensive prevention and intervention system.
- Provide education to the communities and have advocates and investigators to work with the elder. Assist social services and the courts in finding appropriate caregivers and guardians. Provide training in care and maintenance of elders. Provide support to caregivers such as respite providers and legal advocates to help with the preparation of living wills, probate, and wills. Assess the social and medical and financial needs of the elder. Promote socialization and activities for the elders.
- Distribute information on elder abuse to all schools, senior citizen centers, churches, etc. Select a committee to draft an elder abuse code that specifically addresses the issues. Present the proposed elder abuse code to the Tribal government to pass into law.

Other specific actions recommended by Tribal Judges included:

- Surveys and interviews with Tribal elders to develop an appropriate intervention system.

TABLE 3: ELDER ABUSE PREVENTION AND INTERVENTION

Action	Tribal Judges	Title VI Program Directors	Tribal Elders
<p>Community Awareness, Education, and Training</p>	<ul style="list-style-type: none"> • Community Assessments • Caregiver Seminars • Community training on the signs of elder abuse and reporting abuse • Community awareness on issues of elder abuse prevention • Distribute information where elders and Tribal leaders meet 	<ul style="list-style-type: none"> • Keep watch for elder abuse • Be aware and report abuse • Provide education on prevention and intervention techniques, including education on the Tribal laws and codes • Provide more training on procedures for investigating suspected elder abuse • Let the elders know what is considered elder abuse 	<ul style="list-style-type: none"> • Do a survey to find out how many elders are actually being neglected • Work with younger generation to recognize the traditional practice of respect for elders • Assist elders in voicing their opinions • Social services and other elders programs need to keep a closer watch on elders at home
<p>Community Involvement and Development</p>	<ul style="list-style-type: none"> • Create Community Elder Abuse Task Force or other teams to deal with issues • Establish respite programs for families caring for their elders • Assist in finding appropriate caregivers and guardians • Elder and youth culture/traditions programs • Create Adult Protection Services 	<ul style="list-style-type: none"> • Refer families for counseling and Peacemaking courts • Refer clients to elder abuse programs • Include the entire community in educational classes 	<ul style="list-style-type: none"> • All work together • Encourage people to step forward and report what they see in their communities
<p>Legal</p>	<ul style="list-style-type: none"> • Create simple elder abuse criminal and civil codes • Establish guardian ad litem or court advocates for the elderly • Establish legal advocates for wills, probate, living wills, etc. 	<ul style="list-style-type: none"> • Encourage Tribal Council to approve Tribal elder abuse codes and strengthen existing codes to protect elders • Work with police department and adult protection services 	<ul style="list-style-type: none"> • Work with Tribal courts for stricter sentencing • Encourage elders and other to report elder abuse

- Meetings with family and relatives to explain what abuse is.
- Public education on what elder abuse would look like so more could be reported.
- Establish an educational program where Indian values and customs are reinforced and practiced.
- Family conferences with mediator or counselor.
- Educate elders in their language about elder abuse and how they can receive help.
- Support group for elders.
- Establish an Adult Protection Team with regular home visits to all elders.

Agreement occurred among the three groups that the entire community should work together on elder abuse prevention and intervention efforts. Tribal Judges commented on the need for increased socialization activities with elders to reduce loneliness and isolation and promote their traditional roles in the community, including elder and youth programs. Tribal Elders indicated they would work with social services and the elder program to promote awareness and reporting of abuse. Title VI Program Directors were most interested in working with families to prevent abuse and referring families to counseling and Peacekeeping as interventions. All groups were interested in laws and adult protective services for keeping elders safe.

HOW CAN AOA HELP YOU REDUCE ELDER ABUSE IN YOUR COMMUNITY

To conclude the survey, Title VI Program Directors and Tribal Elders were asked how can AoA help you reduce elder abuse in your community. Specific suggestions included:

- Additional written material on elder abuse in Indian Country.
- Dissemination of best practices.
- Training for elder abuse coordinators.
- Funding to support elder abuse prevention and community awareness training.
- Gathering and dissemination of Tribal Law and Order Codes to use as examples.
- Write to Tribal leaders and let them know that something needs to be done about elder abuse.
- Assist in preparing materials for use in community education, traditional gatherings, health fairs, and Older American's Month activities.
- Funding to support elder abuse awareness.
- Assistance in identifying the problem locally as well as nationally.

CONCLUSION

Experts estimate for every case of elder abuse and neglect that is reported to authorities, there may be as many as five cases of abuse that have not been reported. This may also be true in AI/AN communities. Tribal Judges, Title VI Program Directors, and Tribal Elders responding to this survey believe that many cases of elder abuse

go unreported due to fear of repercussions from the family or caregiver.

As described in this report, many Tribes are struggling with appropriate ways to address elder abuse in their communities. While some Tribes have developed Elder Protections Codes, the enforcement of the codes may be limited. Interest was expressed for developing codes by all the Tribes, increased enforcement of the codes, and development of comprehensive prevention and intervention systems.

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APPENDIX A:

MODEL TRIBAL ELDER PROTECTION CODE, American Indian Law Center, Inc.

MODEL TRIBAL ELDER PROTECTION CODE

001. TITLE

This code shall be known and cited as the "Tribal Elder Protection Code."

002. POLICY

It is the policy of the (_____) Tribe to continue the traditional respect the members of the Tribe have had for tribal elders. Elders are valuable resources to the Tribe because they are repositories and custodians of tribal history, culture, and tradition and they are the best hope of the Tribe to pass on the tribal history, culture, and tradition to children of the Tribe. Thus, it is in the interest of and services the welfare of the Tribe to protect tribal elders.

003. PURPOSE

The purpose of this code is to protect elders within the jurisdiction of the (_____) Tribe from abuse and neglect as defined in this code. The code shall be liberally interpreted in order to achieve its purpose. The code provides for:

- A. Reporting abuse or neglect to the proper agency;
- B. Receiving reports of and investigating suspected abuse or neglect;
- C. Delivering elder protection services.

004. CIVIL NATURE OF CODE

This code is civil and does not affect any applicable provisions of (the law and order code) (criminal code or title) unless they are modified specifically by this code.

005. DEFINITIONS

A. ABUSE is:

- (1) intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of an elder with resulting physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the elder such as a spouse, a child, or other relative recognized by tribal law and custom, or a caretaker;
- (2) sexual abuse is any physical contact with an elder intended for sexual gratification of the person making such contact and which is not consented to by the elder or for which the consent is obtained by intimidation or fraud;
- (3) emotional abuse is intentional infliction of threats, humiliation, or intimidation; or
- (4) exploitation is the unauthorized or improper use of funds property, or other resources of an elder; or the unauthorized or improper use of the person of the elder by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an elder to the elder's benefit or according to the elder's desires.

B. CARETAKER is:

- (1) a person who is required by tribal law or custom (or state law) to provide services or resources to an elder;
- (2) a person who has voluntarily undertaken to provide care or resources to an elder;
- (3) 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, including the

- duty to follow-up on placements, and any such institution or agency which receives anything of value in return for providing services or resources; or,
- (4) an employee of any institution or agency specified in paragraph 005.B.(3) of this code.
- C. ELDER is a person subject to the jurisdiction of the tribe who is at least (____) years of age
- D. EMERGENCY is a situation in which an elder is immediately at risk of death or injury and is unable to consent to services which would remove the risk.
- E. FAMILY is (determined by tribal law and custom).
- F. GOOD FAITH is an honest belief or purpose and the lack of intent to defraud.
- G. INCAPACITY is the current inability (functional inability) of a person to sufficiently understand, make, and communicate responsible decisions about himself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.
- H. LEAST RESTRICTIVE ALTERNATIVE is an approach which allows an elder independence and freedom from intrusion consistent with the elder's needs by requiring that the least drastic method of intervention be used when intervention is necessary to protect the elder from harm
- I. NEGLECT is the failure of a caretaker to provide for the basic needs of an elder by not supplying resources, services, or supervision necessary to maintain an elder's (minimum) physical and mental health and includes the inability of an elder to supply such basic needs for himself Neglect also is:
- (1) interfering with delivery of necessary services and resources;
 - (2) failing to report abuse or neglect of an elder by any person; or
 - (3) failing to provide services or resources essential to the elder's practice of his customs, traditions, or religion.
- J. PROTECTIVE PLACEMENT is placement of an elder in a hospital, nursing home, residential care facility, or transfer of the elder from one such institution to another with the elder's consent or appropriate legal authority.
- K. PROTECTIVE SERVICES are services provided to an elder with the elder's consent or with appropriate legal authority and include, but are not limited to: social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship and other services consistent with this code. It does not include protective placement.
- L. RETALIATION is threatening a reporter of elder abuse or the reporter's family in any way; causing bodily harm to the reporter or the reporter's family; causing the reporter or any of the reporter's family to be terminated, suspended from employment or reprimanded by an employer or damaging the reporter's or the reporter's family's real or personal property in any way.

006. DUTY TO REPORT ABUSE OR NEGLECT OF AN ELDER

Suspected abuse or neglect of an elder shall be reported to (____) by:

- A. the elder's family or caretaker;
- B. any Tribal employee;
- C. any tribal elected official;
- D. any employee of a tribally-owned business, even if not managed by the Tribe;
- E. Indian Health Service personnel;
- F. Bureau of Indian Affairs personnel;
- G. any medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aide, human services worker, elder's service provider, nursing home provider, or any other health and elder or human service provider, or its employees who deliver services to tribal elders;
- H. any person or agency or employee of such agency with a fiduciary duty to the elder such as a lawyer, accountant, financial institution or property manager.
- I. (Any person who has good reason to suspect that an elder has been or is being abused or neglected.)

006.1 IMMUNITY FOR REPORTING

A person who in good faith reports suspected abuse or neglect of an elder is immune from any civil or criminal suit based on that person's report.

006.2. FAILURE TO REPORT; CIVIL PENALTY; DAMAGES; CRIMINAL LIABILITY

Any person who is required by this code to report suspected elder abuse and fails to do so is subject to a civil penalty of up to \$(). The (tribal court) shall assess the penalty only after petition, notice, an opportunity for hearing, and a determination that the person had a mandated duty to report, had good reason to suspect elder abuse or neglect, and failed to report it as required by this code. Further, the person failing to report is subject to any civil suit brought by or on behalf of the elder for damages suffered as a result of the failure to report and to any penalties set out in the Tribe's (criminal code) or as allowed by this code.

006.3. BAD FAITH REPORT; CIVIL PENALTY; DAMAGES; CRIMINAL LIABILITY

Any person who makes a report of suspected elder abuse knowing it is to be false is subject to a civil penalty of up to \$(____). The (tribal court) shall assess the penalty only after petition, notice, and opportunity for hearing, and a determination that the reporter made the report knowing it to be false. Further, the reporter is subject to any civil suit brought by or on behalf of the person(s) named as suspected abusers in the false report for damages suffered as a result of the false report and to any criminal penalties set out in the Tribe's (criminal code) or as allowed by this code.

0006.4. INVESTIGATION

- A. (____) shall receive reports of elder abuse or neglect [shall refer such report to (____) for investigation as required by paragraph B of this section.]
- B. The () shall investigate the report within (____) (hours) (days) and prepare a written report of the investigation which shall include the information set out in paragraph C of this section as well as the results of interviews, observations, and assessments and other fact finding. The investigator shall conduct in-person interviews with the elder, elder's family and caretaker, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder's circumstances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse and neglect shall be ascertained. The investigator personally shall assess the elder's living conditions including

the elder's sleeping quarters. (The investigator shall use tribal standards of housing care in the assessment.)

- C. The report may be oral or in writing and shall contain:
- (1) the elder's name, address or location, telephone number;
 - (2) name, address or location, telephone number of the person(s) or agency who is suspected of abusing or neglecting the elder;
 - (3) the nature and degree of incapacity of the elder;
 - (4) the name, address or location, telephone number of witnesses;
 - (5) the name, address or location, telephone number of the elder's caretaker;
 - (6) a description of the acts which are complained of as abusive or neglectful; and
 - (7) any other information that the reporter believes might be helpful in establishing abuse or neglect.

The reporter and the person taking the report shall sign the report. The person taking an oral report immediately shall complete a written report, indicating on the report the name of the reporter, and, if possible, the reporter shall sign the written report. A report may be made anon and it shall be investigated as required by this code.

- D. The investigation report shall be filed with (____) and remain on file and not be destroyed [a period of(____) years], even if it is determined that there is insufficient evidence to pursue any legal action. (However, if the investigating agency determines that the investigation report was made in bad faith, it shall be destroyed immediately after the investigation is completed if the evidence is insufficient to show abuse or neglect.)

006.5. INTERFERENCE WITH INVESTIGATION AND RETALIATION PROHIBITED; CIVIL PENALTY

- A. No person shall interfere intentionally with a lawful investigation of suspected elder abuse.
- B. No person shall retaliate by any means against any person who has made a good faith report of suspected elder abuse or who cooperates with an investigation of suspected elder abuse.
- C. Any person who violates paragraphs A or B of this section shall be enjoined from such activity and shall be subject to a civil penalty of up to \$(____) per occurrence (and, if a tribal employee, to appropriate disciplinary action as allowed by the tribal personnel policies and procedures). The penalty shall be assessed by the (tribal court) only after petition, notice, and opportunity to be heard, and a determination that either interference or retaliation as set out in this Section occurred. Further, notice of such determination shall be provided to the person's tribal employer and appropriate licensing agencies.

006.6 PRIVILEGED COMMUNICATION

No evidentiary privilege except for the attorney-client or priest-penitent privilege may be raised as a justifiable defense or reason for failing to report suspected elder abuse or neglect or for testifying as required by this code.

006.7. (Alternative #1) REFERRAL FOR CRIMINAL INVESTIGATION

A report of suspected elder abuse or neglect shall be referred to (law enforcement) if the investigation indicates that a criminal act has been committed. The investigation and other procedures allowed by this code shall continue thereafter if the circumstances so warrant.

006.7. (Alternative #2) CRIMINAL INVESTIGATION

The investigation and other procedures allowed by this code may continue even if an investigation for the purpose of filing criminal charges is undertaken.

007. ELDER PROTECTIVE SERVICES AND ELDER PROTECTIVE PLACEMENT; OTHER SERVICES; EVALUATION PROCEDURE; DUTY TO PAY

- A. Protective services or protective placement are provided either on a voluntary or involuntary basis. Such services or placement may be provided on a voluntary basis by the (tribal human services agency) when requested by any abused or neglected elder and the elder is found by the (agency) to be in need of such services or placement. Such services or placement shall be provided on an involuntary basis by the (agency) only if the (tribal court) determines they are necessary. Such services or placement may be provided on an emergency basis (or, if necessary, on a permanent basis through a guardian appointed pursuant to tribal law) and shall be provided in a manner least restrictive of the elder's liberty and rights consistent with the elder's welfare and needs. The (tribal court's) determination of the degree of incapacity, if any, as well as whether elder abuse or neglect has occurred is the standard the (tribal human services department) shall use to develop a plan for the delivery of elder protection services.
- B. Voluntary protective services or protective placement are provided subject to available appropriations and resources and only as determined necessary by the (tribal human services agency). If the elder's consent to such services or placement is withdrawn, they shall cease. Such protective services or protective placement shall be provided for a period of no more than (____) (days) (months) at a time. At the end of each period, the (agency) shall reassess the elder's needs before agreeing to continue providing services and placement. Voluntary placement shall not be continued without a (court) order permitting continued voluntary placement after the elder has been in such placement for () (months).
- C. Involuntary protective services or protective placement shall be provided to any elder who is incapacitated or who is abused or neglected and incapacitated and only upon (tribal court) order as required by this code.
- D. Services as determined necessary by the (tribal human services agency) may be delivered to the elder's family or caretaker in order to protect the elder.
- E. The (tribal human services agency) shall establish a process for conducting a comprehensive, physical, mental and social (assessment) (evaluation) (study) of an elder when a petition for a protection order has been filed.
- F. The elder, and, where appropriate, the elder's family and caretaker shall be informed by (the tribal human services agency) of rights as allowed under this code and other tribal law, including the right to refuse voluntary services and placement and the right to have the (tribal court) determine the necessity of involuntary services and placement.
- G. The elder (and where appropriate, the elder's family and caretaker), if able to do so, shall pay for all or part of the costs of services or placement provided to the elder. [the case of voluntary services or placement, the elder (and where appropriate, the elder's family and caretaker) shall ay the cost.]

008. EMERGENCY

- A. 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 an elder:
 - 1. is at risk of immediate (physical) harm;
 - 2. is incapacitated and cannot consent to protective services;
 - 3. no one is authorized by law or court order to give consent on an emergency basis; and
 - 4. an emergency exists.
- B. The emergency protection order shall:
 - 1. set out the specific emergency services to be provided to the elder to remove the conditions creating the emergency;

2. provide only those services which will remove the emergency;
 3. allow protective placement only if the evidence shows that it is necessary;
 4. designate the (agency) required to implement the order;
 5. be issued for a maximum of (9) hours and may be renewed only once for a maximum of (____) hours provided the evidence shows that the emergency is continuing.
- C. The (tribal court) may authorize forcible entry by law enforcement to enforce the emergency protection order after it has been shown that attempts to gain voluntary access to the elder have failed.
- D. The petition for an emergency protection order shall contain the name (address) (location), and interest of the petitioner; the name (address) (location), and condition of the elder; the nature of the emergency; the nature of the elder's incapacity; the proposed protective services, and where applicable, protective placement; the attempts, if any to secure the elder's consent to services; any other facts the petitioner believes will assist the court.
- E. The emergency protection order shall be issued only after notice accompanied by a copy of the petition has been given to the elder, his family, and caretaker at least (____) hours before a hearing on the petition is scheduled and the (tribal court) has had the opportunity to hear all parties and the evidence. The (tribal court) may waive the waiting period if (the emergency is such that the elder will suffer immediate and irreparable harm or reasonable attempts have been made to notify the parties.)
- F. The (tribal court) shall hold a hearing on a petition to provide protective services or placement to an elder within (____) hours after an emergency protection order is issued.
- G. An emergency protection order can be set aside by the (tribal court) upon a petition of any party showing good cause.
- H. If there is good cause to believe that an emergency exists and that an elder is at risk of immediate and irreparable (physical) harm and, based on personal observation, (an investigator) (a law enforcement officer), believes that the elder will be irreparably harmed during the time an emergency protection order is secured, the (investigator) (law enforcement officer) shall immediately protect the elder, including, where necessary, transporting the elder for medical treatment or to an appropriate facility. Immediately after the elder is protected, a petition for an emergency protection order shall be filed and the procedures set out in this section followed.
- I. Any person who acts in good faith pursuant to this section is immune from any civil or criminal suit based on that person's actions.

009. RIGHTS OF ELDERS, THEIR FAMILIES AND CARETAKERS

- A. An elder, the elder's family and caretaker shall be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they shall be informed as soon as possible, but no later than (____) hours after the investigation begins.
- B. An elder may refuse to accept elder protection services (even if there is good cause to believe that the elder has been or is being abused) provided that he is able to care for himself (and) (or) has the capacity to understand the nature of the services offered.
- C. The elder's family or caretaker may refuse for themselves, but not for the elder, elder protection services offered pursuant to this code.
- D. An elder, the elder's family or caretaker may refuse to allow an investigator into their home and the investigator shall so inform the elder, the elder's family and caretaker of this right (and the right of the investigator to seek a warrant) before seeking entry.
- E. The investigator shall inform the elder's family and caretaker of their rights as allowed by the Indian Civil Rights Act, whenever it appears that the investigation may lead to criminal charges being filled under the Tribe's (criminal code).

- F. The elder, elder's family and caretaker shall be served personally with a petition filed pursuant to this code.
- G. The elder, elder's family and caretaker have the right to attend any proceeding pertaining to the determination of the elder's capacity and the elder shall be present at all proceedings unless the (tribal court) determines the elder's health would be at risk at such proceeding.
- H. The elder, elder's family and caretaker have the right to be represented by counsel at all proceedings (at tribal expense).
- I. The elder, elder's family and caretaker have the right to seek independent medical, psychological, or psychiatric evaluation of the elder (at _____'s expense).

010. PROCEDURES FOR DETERMINING INCAPACITY, ABUSE OR NEGLECT

The (tribal court) shall determine whether an elder is incapacitated and the degree of incapacity, and, where necessary, whether elder abuse or neglect has occurred. The determination shall be made only after petition, notice, hearing, and proof that is (clear and convincing) (beyond a reasonable doubt).

011. CONFIDENTIALITY OF REPORTER, RECORDS, HEARINGS; PENALTY FOR NOT COMPLYING WITH CONFIDENTIALITY

- A. The name of a reporter who reports abuse or neglect as required by this code is confidential and shall not be released to any person unless the reporter consents to the release or release is ordered by the (tribal court.) The (tribal court) may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the need to protect the elder is found to be greater than the reporter's right to confidentiality. The reporter's name shall be released only to the extent determined necessary to protect the elder.
- B. Records of an investigation of elder abuse or of a (tribal court) hearing regarding elder abuse are confidential. Such records shall be open only to the elder and the elder's family and caretaker (unless the family or caretaker is the suspected abuser), employees of the (tribal human services agency), law enforcement officers, (tribal court) officials, coroner or medical examiner who has reason to believe that an elder died as the result of abuse or neglect, and any other person who the tribal court determines has reasonable cause to have access to such record.
- C. A proceeding held pursuant to this code shall be closed and confidential. Persons who may attend are the elder, the elder's family and caretaker, (the person or representative of an institution or agency accused of elder abuse), the representative of the (tribal human services agency), necessary (tribal court) officials and attorneys for the parties. Other persons may appear only to testify. No one attending or testifying at such a proceeding shall reveal information about the proceeding unless ordered to do so by (tribal court) order.
- D. Any person who violates any paragraph of this section shall be subject to a civil penalty of up to \$(_____) per occurrence (and, if a tribal employee, to appropriate disciplinary action as allowed by the tribal personnel policies and procedures.) The penalty shall be assessed by the (tribal court) after petition, notice, opportunity to be heard, and a determination that a violation occurred.

012. ELDER PROTECTION ORDER; TIME LIMITS

- A. If the (tribal court) determines that an elder is incapacitated or incapacitated and abuse or neglected, the (court) shall issue an elder protection order which provides appropriate protection for the elder. Such protection may include, but is not limited, to the following:
 - (1) Removing the elder from the place where the abuse or neglect has taken or is taking place for no longer than (____) days;
 - (2) Removing the person who has abused or neglected an elder from the elder's home;
 - (3) Restraining the person who has abused or neglect an elder from continuing such acts;

- (4) Requiring an elder's family or caretaker or any other person with a fiduciary duty to the elder to account for the elder's funds and property;
 - (5) Requiring any person who has abused or neglected an elder to pay restitution to the elder for damages resulting from that person's wrongdoing;
 - (6) Appointing a (representative), (guardian ad litem) for the elder;
 - (7) Recommending that a representative payee be named; and,
 - (8) Ordering the (tribal human services agency) to prepare a plan for and deliver elder protection services which provide the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.
- B. No protection order shall be issued until (____) days after the petition is served on all parties, except for an emergency protection order.
 - C. An elder protection order shall be issued for a period not to exceed (____).
 - D. The order may be extended as many times as necessary to protect the elder, but only after petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on (clear and convincing proof) (proof beyond a reasonable doubt) that such an extension is necessary for the protection of the elder. Each extension shall be for a period not to exceed (____)

013. DEFERRING CRIMINAL PROSECUTION (Optional)

Criminal prosecution of any person accused of elder abuse or neglect may be deferred or dismissed [allowed by the provisions of the tribal (criminal code) provided that, in addition to those provisions]:

- A. The elder, the elders family and caretaker, (and the accused, if not a family member or caretaker) agree to resolve conflicts either through counseling, mediation or other tribally recognized dispute resolution process;
- B. All parties concerned agree to accept services determined by (____) to be necessary for the situation;
- C. The crime is not of a serious nature involving significant intentional bodily injury or intentional property damage (in excess of \$____);
- D. The accused person does not have prior record of related criminal offenses; and,
- E. Essential witnesses will likely be available if prosecution is undertaken within 6 months.

014. PETITION; HEARING

- A. (_____) shall file petitions and present facts on behalf of the (petitioner) (tribe) for legal proceedings authorized or required by this code.
- B. A hearing on a petition authorized or required by this code shall be conducted with the purpose of protecting the elder only where necessary and only to the extent shown by the facts and using the least restrictive alternatives. All rights as set out specifically in this code and in the Indian Civil Rights Act shall be enforced strictly during proceedings. No hearing shall be held unless notice has been given to the elder and other interested parties, including the elder's family and caretaker. The elder and all other interested parties shall have the right and opportunity to be heard fully and to present evidence. The (tribal court) shall issue a written statement of its findings in support of any order allowed by this code.

015. REGULATIONS

The (tribal human services agency) shall adopt and issue regulations establishing criteria and procedures which comply with the policy and requirements of this code.

APPENDIX B:

**EXAMPLES OF ELDER ABUSE IN TRIBAL
COMMUNITIES**

EXAMPLES OF ELDER ABUSE IN TRIBAL COMMUNITIES

Action	Tribal Judges	Title VI Program Directors	Tribal Elders
Physical Abuse	<ul style="list-style-type: none"> • An intoxicated son hits his elderly parent. • Elder being hit by adult child in a domestic situation with spouse. • Assault and battery on a grandpa because he wouldn't give his grandson the keys to his truck. • Elderly man with dementia hitting his wife. Family is in denial. 	<ul style="list-style-type: none"> • A daughter hit the elder because of his personal needs and health limitations. • Granddaughter slapping an elder. • Drug taking and alcohol use leads to yelling and sometimes hitting other family members, including elders. 	<ul style="list-style-type: none"> • Verbal abuse to elderly parents. • Treating them as if they didn't matter anymore. • Not listening when elders speak.
Emotional Abuse	<ul style="list-style-type: none"> • Drunk and mad adult children and grandchildren go into the home of an elder, yelling and scaring the elder. • Grown children and grandchildren moving in with an elder, drinking, fighting, taking their money, and chasing caregivers away from the home. The elder is afraid to report or complain. • In a family violence situation, an elderly victim is afraid and embarrassed to testify. • An adult child terrorized an elder with threats of physical abuse to gain access to the elder's money. • Confining the elder to one room of the house and not letting them interact with the family. • Elderly mother having to continuously contact police to remove adult intoxicated sons from her home. 	<ul style="list-style-type: none"> • Children abuse alcohol in the elder's home. • Verbal abuse by young family members. • Yelling and saying mean things to their parents. • Adult grandchildren threatened to put their grandmother in a nursing home, if she didn't let them live with her. 	

Action

Tribal Judges

Title VI Program Directors

Tribal Elders

- An elder was confined to her home and asked for services because her family did not provide the necessary support.
- After complaining of loneliness, an elder was left alone.
- Family members not checking on elders who are not able to take care of themselves.
- Family members going away for the weekend and leaving the elder without food.
- Failing to obtain proper medical treatment for the elder.

- Family was withholding needed medications.
- A blind elder was left alone all day dressed only in his undershirt and diaper.
- Leaving an elder home alone without food and water.
- Family neglects the elder's health and leaves him alone for long periods of time.
- Not bathing and dressing the elder.
- Self-neglect and hoarding. Family is in denial and won't accept help.
- Younger family members not helping the elder so she can live in her own home.
- Family failed to check on elder and he was found lying on the floor from a fall.

- Family locked elder in her home.
- An elder stays at home by herself just about all the time.
- Lack family care and attention.
- Not visiting or including elders in gatherings.
- Family members are employed or are too busy taking care of their business to take care of the elders.

Neglect

Sexual Abuse

Exploitation

- A granddaughter, the caretaker, wiped out her grandfather's bank account.
- Misusing an elder's monthly check and not buying food or paying bills.

- Grandma was raped by her nephew. She would not talk about it because she was ashamed because it was her own nephew.
- An elder was raped and killed.

- Family gambled away elder's only income.
- Families take the elder's personal items, medication, property, and money.
- Family took the elder's check to get a pay day loan.

- Grandchild took elder's car and destroyed it.
- Grandchildren pressured elder for money.
- Family cashed elder's checks and locked the elders in their home.

Action

Tribal Judges

Title VI Program Directors

Tribal Elders

- Grandchildren moving into the elder's home without permission and using the elder's money.
- Adult children and grandchildren moving into the elder's home to take control of the elder's money under false pretenses.
- Using intimidation and threats, a son steals money from his elderly parents.
- An adult child moved into the elder's home and forced the elder to live somewhere else.
- An adult child moved in with elderly parent and used elder's income to purchase alcohol and drugs.
- Family members taking the elder's food and medications.
- Adult grandchildren leaving their young children with the elder.

- A granddaughter wrote checks from her grandfather's check account.
- Family members used an elder's check to pay their bills.
- An adult child asked payment from her elderly parent for doing household tasks.
- A granddaughter stole money from her grandmother's purse, stole her car, and wrecked it.
- Elders are left alone until the beginning of the month when their Social Security check arrives.
- Elder was coerced by family to be included in his will to receive money and property.
- Elders using their monthly checks to pay their family's bill and not their own.
- Financial abuse but the elder said it is her own fault because she can't say no to her grandson.
- Adult children leaving their young children with the elder.
- Grandma dumping.

- Family borrowed money and food and did not pay the elder back.
- An elder took advantage of another elder because of gambling debts.
- My siblings abuse our mother by using her car and destroying it.
- A granddaughter and her boyfriend moved in with grandma and the grandma is now supporting them.
- A grandmother raised two girls who are now adults and drug abusers. They moved back in with her and she is supporting them.
- Taking soap, toilet paper, shampoo, etc.
- Drug addicted adult child left her children with their grandparents. The children are skipping school and the grandparents are threatened with jail time if the kids do not go to school.
- Families using alcohol and drugs leave their children with the elder.
- Taking advantage by relatives – using their homes to park their grandchildren to feed, clothe, baby sit, etc.

Exploitation continued

APPENDIX C:

**TRADITIONAL CULTURAL PRACTICES AND
IMPACT**

TRADITIONAL CULTURAL PRACTICES AND IMPACT

TITLE VI PROGRAM DIRECTORS	
Traditional Practice	Impact
Respect, by assisting elders in any way possible.	When practiced, the elder feels included, accepted.
I believe some traditional ceremonies are only performed by elders since the younger generation does not understand their cultural practices.	Elders benefit from strong traditional practices by being appreciated and respected for their wisdom.
Counseling, banishment from the family.	Banishment is not feasible anymore.
Family counseling.	Community or family decision, not judicial.
Offer prayers and sweats.	This has a very big impact; they are made aware of service offered.
Men societies to deal with the abuser, i.e. talk to, punishment by whipping, destroying personal property, banishment.	Some places are just now beginning to practice traditional methods and other places do not know traditional concepts.
TRIBAL ELDERS	
Traditional Practice	Impact
Reminding them to respect elders since they have earned it.	Because many do not know traditions, they do not respect the elders.
Abusers were ostracized and reprimands were enforced.	It was very effective when used.
Elders told us at an early age what goes on in our home was not to be talked about anywhere to anyone. Don't cause embarrassment to our families.	Elders don't report abuse.
Honor/respect for our elders.	Helps to curtail more cases of abuse.
We used to care for our elders and families lived near by.	Elders do not want to leave home to be cared for in nursing homes.
Elders are a respected part of the family.	Elders are not accepted and they are told that they are a problem to the family.
The chief will step in and council with the family.	Not much impact since most traditional leaders are also involved in a dysfunctional family.
The extreme was banishment from the Tribe.	It would serve to completely eliminate elder abuse.
Making sure proper needs are provided and teaching our young to respect and listen to our elders.	Our young are more aware of the special treatment of our elders.

APPENDIX D:

TRIBAL ELDER ABUSE CODES

ELDER ABUSE DEFINITIONS IN TRIBAL CODES

MODEL ELDER ABUSE CODE	Elder	Abuse (Physical, Sexual, Mental)	Neglect/Self-Neglect	Caretaker
	<p>Is the person subject to the jurisdiction of the tribe who is at least () years of age.</p>	<p>Abuse is:</p> <ol style="list-style-type: none"> 1) Intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, or cruel punishment of an elder with resulting physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the elder such as a spouse, a child, or other relative recognized by tribal law and custom, or a caretaker. 2) Sexual abuse which is any physical contact with an elder intended for sexual gratification of the person making such contact and which is not consented to by the elder or for which the consent is obtained by intimidation or fraud. 3) Emotional abuse which is intentional infliction of threats, humiliation, or intimidation. 4) Exploitation is the unauthorized or improper use of funds, property, or other resources of an elder; or the unauthorized or improper use of the person of the elder by a caretaker or by any other person for personal gain or profit; or the failure to use the funds, property, or other resources of an elder to the elder's benefit or according to the elder's desires. 	<p>Neglect is the failure of a caretaker to provide for the basic needs of an elder by not supplying resources, services, or supervision necessary to maintain an elder's (minimum) physical and mental health and includes the inability of an elder to supply such basic needs for him. Neglect is also interfering with delivery of necessary services and resources; failing to report abuse or neglect of an elder by any person; failing to provide services or resources essential to the elder's practice of his customs, traditions, or religion,</p>	<p>Caretaker is:</p> <ol style="list-style-type: none"> 1) A person who is required by tribal law or custom (or state law) to provide services or resources to an elder. 2) A person who has voluntarily undertaken to provide care or resources to an elder. 3) 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, including the duty to follow-up on placements, and an such institution or agency which receives anything of value in return for providing services or resources. 4) An employee of any institution or agency specified in such institution or agency.

<p>Laguna Pueblo: Elderly Code</p>	<p>Not defined in code.</p>	<p>Same as Model Code with the following addition: May include striking, hitting, shoving, shaking; beating; restraining - tying to a chair or bed or keeping a person locked in a room or closet; burning; biting.</p>	<p>Same as Model Code.</p>
<p>Oglala Sioux Tribal Law and Order Code, Chapter 6: Elder Abuse Code</p>	<p>Any person years attained the age of 55 who has</p>	<p>Abuse is: 1) The willful infliction of physical injury or pain, sexual abuse, mental anguish, unreasonable confinement, intimidation, financial exploitation, willful deprivation by a caretaker of the basic necessities of life, such as clothing and personal care which are necessary to prevent physical harm, mental maltreatment. However, no person shall be deemed to be abused for the sole reason that they are being furnished traditional remedial treatment by spiritual means. 2) Mental anguish is subjecting an elder to fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior. 3) Exploitation is the act or process of using an elder or their resources for another person's profit, advantage, again, or for monetary or personal benefit without legal entitlement to do so.</p>	<p>Included in definition of abuse.</p>
<p>Yankton Sioux Tribal Code, Title XIV: Yankton Sioux Tribal Elder Abuse Code</p>			<p>Same as Model Code.</p>
<p>Sisseton- Wahpeton Sioux Tribal Code, Chapter 56: Provisions Sisseton-</p>			<p>Same as Model Code.</p>

<p>Cheyenne River Sioux Ordinance Number 58: Elderly and Disabled Adult Abuse</p>	<p>Any person who is incapacitated due to infirmities of aging as manifested by organic brain damage or advanced age, and is unable to protect his/her own interests.</p>	<p>Abuse is: 1) Physical harm, bodily injury, sexual abuse unreasonable confinement, malnutrition, or the deprivation by a caretaker of goods and services necessary to avoid physical harm, or an attempt to cause physical harm or injury, or the infliction of fear of imminent physical harm or bodily injury, 2) Exploitation - any person who having assumed the duty by written contract, by receipt of payment for care, or by order of a court to provide for the support of an elderly adult and having been entrusted with the property of that adult, with intent to defraud, appropriates such property to a use or purpose not in the due and lawful execution of his trust, is guilty of theft by exploitation.</p>	<p>Harm to an elderly adult's health or welfare without reasonable medical justification, caused by a caretaker's failure to provide adequate clothing suitable to climatic changes, or medical services, including but not limited to, necessary immunization, vitamin/mineral supplementation, blood cholesterol testing, physical examination, sight and hearing examination, and necessary medication to an elderly adult. If an elderly adult is under treatment solely by spiritual means, the court may, upon good cause shown, order that medical treatment be provided for that adult.</p>	<p>An individual or public institution who has assumed the responsibility for the care of an elderly person either voluntarily, by contract, by receipt of payment for care, or who has by legal duty of care by virtue of family relationship or by order of a court.</p>
<p>Muscogee (Creek) Nation Elder and Adult Protection</p>	<p>A Muscogee Nation citizen who is at least 55 years of age.</p>	<p>Same as Model Code.</p>	<p>Same as Model Code.</p>	<p>Same as Model Code.</p>
<p>Ho-Chunk Nation Code: Title 4 - Children, Family, and Elder Welfare Code, Section 1, Elder Protection Act of 2001</p>	<p>Any person subject to the jurisdiction of the Nation who is 60 years of age or more.</p>	<p>Same as Model Code with the following additions: 1) The infliction of emotional or mental harm to an Elder denied or restrained from Grandparents Rights as recognized by Ho-Chunk custom. 2) Attempting to cause or causing physical harm, bodily injury, or assault on an Elder or the Elder's family or caretaker.</p>	<p>Same as Model Code with the following addition: 1) The abandonment of an Elder by his or her family. 2) Self neglect means a significant danger to an Elder's physical or mental health because the Elder person is responsible for her or his own care but is unable to provide adequate food, shelter, clothing, or medical/dental care.</p>	<p>Same as Model Code.</p>

<p>Bay Mills Indian Community Laws and Codes: Chapter XV: Tribal Elder and Adult Protection Code</p>	<p>A citizen of the Bay Mills Indian Community who is 55 years of age or older.</p>	<p>Same as Model Code.</p>	<p>An improper or unauthorized use of an elder's funds, property, or other resources. A failure to use an elder or vulnerable adult's funds, property, or resources as the elder desires or for their benefit.</p>	<p>Same as Model Code.</p>
<p>Hannahville Indian Community Code: Chapter 5: Adult Protection Code</p>	<p>A person who has become at least 55 years of age or older.</p>	<p>Same as Model Code.</p>	<p>Same as Model Code with the following additions: 1) Failure to report, by a person with a duty to report, the abuse of a vulnerable adult. 2) Self-neglect is behavior on the part of a vulnerable adult which creates a significant danger to the person because the person is unable to provide for his or her own basic needs. This definition excludes a situation in which a mentally competent person, who understands the consequences of his/her decision, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.</p>	<p>Same as Model Code.</p>
	<p>Abuse is: 1) An intentional or negligent infliction of bodily injury, unreasonable confinement, intimidation, emotional or psychological abuse or cruel punish of a vulnerable person, which results in physical or mental pain or anguish. Physical abuse includes but is not limited to such acts of violence such as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, burning, the inappropriate use of drugs, physical restraints, and force-feeding. 2) Sexual abuse is unconsented to physical contact with a vulnerable adult with the intent to derive sexual gratification by the person making contact. Consent may not be obtained by threat, coercion, intimidation, or fraud. 3) Exploitation, which is the improper or unauthorized use of a vulnerable adults funds, property or other resources, a failure to use a vulnerable adults funds, property or resources as the vulnerable adult desires, for his/her benefit, or as the abuser has a legal duty to do, including, without limitation, the improper use of conservator ship, guardianship, or power of attorney.</p>	<p>Same as Model Code.</p>	<p>Same as Model Code with the following additions: 1) Failure to report, by a person with a duty to report, the abuse of a vulnerable adult. 2) Self-neglect is behavior on the part of a vulnerable adult which creates a significant danger to the person because the person is unable to provide for his or her own basic needs. This definition excludes a situation in which a mentally competent person, who understands the consequences of his/her decision, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.</p>	<p>Same as Model Code.</p>

<p>Fort Peck Tribal Comprehensive Code of Justice: Title XXIX - Elderly Abuse</p>	<p>A person 60 years or older.</p>	<p>Abuse is:</p> <ol style="list-style-type: none"> 1) Any negligent act which results in physical injury, sexual abuse, unreasonable confinement, malnutrition, or the reckless or negligent deprivation by a caretaker of goods and services necessary to maintain physical health or mental health. 2) Emotional distress is mental anguish, fear, agitation, confusion, severe depression, or other forms of emotional distress. 3) Exploitation is the illegal or improper utilization of an elderly person or of the resources of an elderly person for monetary or personal benefit, profit, or gain 	<p>The Caretaker's failure to provide adequate shelter, food, clothing, or medical services to a disabled adult. An elderly person, whose behavior indicates that he is causing himself to be in imminent physical danger as evidenced by an inability to provide for some of his basic needs, such as food, clothing, shelter, and health and safety.</p>	<p>Same as Model Code with the following additions: An individual or public institution who has assumed the responsibility for the care of an elderly person either voluntarily, by contact, by receipt of payment for care, or by order of a court. If the elderly person and a family member live in the same household, it is presumed that the family member is the caretaker. In all other situations, the EPT and Tribal Court shall ascertain whether a particular person is a caretaker.</p>
<p>Winnebago Tribal Council, Title 3, Article 12: Adult and Elderly Protective Service Act</p>	<p>Elder adult shall mean any person 55 years of age or older.</p>	<p>Abuse shall mean any knowing or intentional act or omission on the part of any person that result in physical injury, unreasonable confinement, cruel punishment, sexual abuse, exploitation, or denial of essential services to a vulnerable or elderly adult. Exploitation shall mean the taking of property of a vulnerable or elderly adult by means of undue influence, breach of a fiduciary relationship, deception, or extortion, or by any unlawful means.</p>	<p>Not defined in the Act.</p>	<p>Any person or entity that has assumed the responsibility for the care of a vulnerable or elderly adult voluntarily, be an expressed or implied contract, or by order of a court of competent jurisdiction.</p>

<p>Confederated Salish and Kootenai Tribal Code: Chapter 3: Adult Protection</p>	<p>A Tribal member or other person eligible for services residing on the Flathead Reservation who is 60 years of age or older or determined by Tribal Court or Tribal custom to be an elder.</p>	<p>Abuse is: 1)The intentional infliction of physical or mental injury, unreasonable confinement, intimidation, cruel punishment, or deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an elder. 2) Any sexual involvement with an elder that the elder does not consent to, is physically and/or mentally incapable of voluntarily consenting to, or consents to as the result of intimidation, duress, or fraud. 3) Unreasonable use of an elder or their money, property, or other resources by a caretaker or other person without the elder's consent or through fraud, misrepresentation, coercion, or duress.</p>	<p>Failure to provide for oneself or the failure of a caretaker to provide, the extent of legal responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of an elder.</p>	<p>Similar to Model Code with the following addition: it is not the intent of this code to impose responsibility on an individual if the responsibility would not otherwise exist in law.</p>
<p>Blackfeet Tribe Law and Order Code: The Family Code Chapter 10: Elder Abuse</p>	<p>A family member who has reached the age of 55 years.</p>	<p>Inflicting or causing physical or mental injury, harm or imminent danger to the physical or mental health or welfare of an Elder family member or substantial risk thereof.</p>	<p>Failure or refusal by those responsible for an Elder's welfare to provide reasonably adequate care (food, shelter, clothing), maintenance, emotional support, supervision, medical, surgical or any other care on behalf of the elder.</p>	<p>Not defined in code.</p>

<p>Navajo - Dineh Elder Protection Act</p>	<p>A person subject to the jurisdiction of the Navajo Nation and who is at least 55 years of age or older.</p>	<p>Abuse includes assault, battery, touching, threatening, coercion, unreasonable confinement, emotional abuse, and sexual abuse. Exploitation means the use of funds, property (including grazing permits, livestock and home sites) or other resources of an elder for personal gain without the informed or true consent of the elder, or the gaining of funds, property (including grazing permits, livestock and home sites), or other resources of an elder by threat, humiliation, intimidation, or other coercion. Also failure to use the fund, property, etc. for the elder.</p>	<p>Same as Model Code with the following addition: Leaving of child(ren) for indefinite periods of time by parents/legal guardians in the care of elders who may resort to using their limited resources in meeting needs of the child(ren).</p>	<p>Same as Model Code</p>
<p>Hopi Family Relations Ordinance</p>	<p>Not defined in ordinance.</p>	<p>Abuse means the infliction of any of the following acts upon a person: assault; battery; threatening; coercion; confinement; emotional abuse; sexual abuse; and other conduct that constitutes an offense or a tort under the laws of the Hopi Tribe.</p>	<p>Not defined in ordinance.</p>	<p>Not defined in ordinance.</p>
<p>White Mountain Apache Ordinance No. 186: Elderly and Incapacitated Adult Protection</p>	<p>Elderly shall mean any person who has reached the age of 60 years or older.</p>	<p>Abuse means: intentional infliction of physical and or emotional harm; injury caused by negligent acts or omissions; unreasonable confinement; and sexual abuse or sexual assault. Exploitation means the illegal or improper use of an elderly person or his resources for another's profit or advantage. Nothing in this Chapter shall be construed to mean that an adult is abused, neglected or in need of protective services for the sole reason that he relies on treatment from a recognized religious method of healing in lieu of medical treatment.</p>	<p>A pattern of conduct resulting in deprivation of necessities to maintain physical and mental health.</p>	<p>Not defined in code.</p>

<p>Duckwater Shoshone Tribe Law and Order Code Title IV - Criminal Procedure, Chapter 2, Sec. 215: Abuse, Neglect and Exploitation of Older Persons</p>	<p>Older person means a person who is 60 years of age or older.</p>	<p>Abuse means willful and unjustified infliction of pain, injury, or mental anguish or deprivation of food, shelter, clothing or services, which are necessary to maintain the physical or mental health of an older person. Exploitation means wrongful use of an older person or his money or property to the advantage of another</p>	<p>Neglect means the failure of a person who has assumed legal responsibility or a contractual obligation for caring for an older person or who has voluntarily assumed responsibility for his care to provide food, shelter, clothing, or services which are necessary to maintain the physical or mental health of the older person; or the failure of an older person to provide for his own needs because of inability to do so.</p>	<p>No definition in code.</p>
<p>Eastern Cherokee Code: Chapter 14: Criminal Law; Sec. 14 - 40.13 Domestic Abuse, Neglect, And Exploitation of Disabled or Elder Adults</p>	<p>A person 60 years of age or older.</p>	<p>With malice aforethought, knowingly and willfully assaults, fails to provide medical or hygienic care, or confines or restrains the disabled or elder adult in a place or under a condition that is cruel or unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury. Exploitation is knowingly, willfully and with the intent to permanently deprive the owner of property or money: makes false representation, abuses a position of trust or fiduciary duty, or coerces, commands, or threatens, and as a result of the act, the disabled or elder adult gives or loses possession and control of property or money.</p>	<p>Wantonly, recklessly, or with gross carelessness fails to provide medical or hygienic care or confines or restrains the disabled or elder adult in a place or under a condition that is unsafe, and as a result of the act or failure to act the disabled or elder adult suffers mental or physical injury.</p>	<p>A person who has the responsibility for the care of a disabled or elder adult as a result of family relationship or who has assumed the responsibility for the care of a disabled or elder adult voluntarily or by contract.</p>

<p>Colville Tribal Code, Chapter 5-4, Abuse of Elders and Vulnerable Adults</p>	<p>Any person who is 60 years of age or older.</p>	<p>Abuse means a non-accidental act of physical or mental mistreatment or injury, or sexual mistreatment, which harms a person through action or inaction by another individual. Abandonment means action or inaction by a person or entity with a duty of care for an elder that leaves the elder without the means or ability to obtain essential services. Exploitation means the illegal or improper use of an elder or that person's income or resources including trust funds, for another person's profit or advantage. Exploitation includes the unreasonable imposition on the elder's time resources, such as leaving children or other persons in the care of the elder for extended periods or under circumstances in which the elder cannot adequately care for such children or other persons.</p>	<p>A pattern of conduct or inaction by a person or entity with a duty of care for an elder that results in the deprivation of essential services to the elder.</p>	<p>Note defined in code.</p>
<p>Warm Springs Tribal Code, Chapter 10: Tribal Elder and Adult Protection Code</p>	<p>A senior citizen on the Reservation who is at least 60 years of age.</p>	<p>Same as Model Code.</p>	<p>Same as Model Code</p>	<p>"Care Provider" is a person, institution, or agency who is either (1) required by law or custom, (2) is employed, or (3) volunteers to provide care, services, or resources to an elder.</p>
<p>Poarch Band of Creek Indians Code: 8A. Domestic Violence Code</p>		<p>Domestic abuse means the infliction of any of the following acts upon a victim: assault, threatening, coercion, confinement, damage to property, emotional abuse, harassment, sexual abuse, stalking, other conduct</p>		

	Reporting Requirements	Provision of Elder Protection Services
MODEL ELDER ABUSE CODE	Suspected abuse or neglect of an elder shall be reported to () by: the elder's family or caretaker; any Tribal employee; any Tribal elected official; any employee of a Tribally-owned business, even if not managed by the Tribe; IHS personnel; BIA personnel; and a medical or osteopathic doctor, coroner or medical examiner, chiropractor, podiatrist, dentist, religious practitioner, nurse, health aid, human services worker, elder's service provider, nursing home provider, or any other health and elder or human service provider; or its employees who deliver services to Tribal elders; any person who has a good reason to suspect that an elder has been or is being abused or neglected.	Protective services or protective placement are provided on a voluntary basis or by the (Tribal human services agency) when requested by any abused or neglected elder and the elder is found by the (agency) to be in need of such services or placement. Such services or placement shall be provided on an involuntary basis by the (agency) only if the (Tribal court) determines they are necessary. Such services or placement may be provided on an emergency basis and shall be provided in a manner least restrictive of the elder's liberty and rights consistent with the elder's welfare and needs.
Laguna Pueblo: Elderly Code	Similar to model code.	Similar to model code.
Ogala Sioux Tribal Law and Order Code, Chapter 6: Elder Abuse Code Yankton Sioux Tribal Code, Title XIV: Yankton Sioux Tribal Elder Abuse Code Sisseton-Wahpeton Sioux Tribal Code, Chapter 56: Provisions for Elders	Any person or caretaker who has reasonable cause to suspect or who witnesses abuse of an elder shall report the abuse or suspected abuse to Elder Protection Team or to a prosecutor. Any person or caretaker who without good cause fails to report abuse or suspected abuse of elders shall be guilty of an offense and upon conviction for a violation shall be sentenced to imprisonment for a minimum of 30 days in jail and to a fine of not less than \$150.00.	The Tribal council creates an Elder Protection Team consisting of eight members. The Team's objective is to protect all elders from themselves if necessary and from others if need be. The services consist of evaluating the need for services and mobilization on the elder's behalf of the appropriate existing services and shall include, but shall not be limited to, arrangement for appropriate living quarters, obtaining financial benefits to which a person is entitled, securing medical services and supplies, and legal services in those situations where exploitation, prevention of injury, protection of the person and their property, and providing the basic necessities of life is at issue.
Muscogee (Creek) Nation Elder and Adult Protection Code	Same as model code.	Same as model code.

<p>Bay Mills Indian Community Laws and Codes: Chapter XV: Tribal Elder and Adult Protection Code</p>	<p>Suspected abuse or neglect shall be reported to the Bay Mills Indian Community Protective Services or social workers by: the elder or vulnerable adult's family or caretaker; or elected official of the Tribe; or all Tribal social workers, medical and dental staff, religious practitioners, or any other Tribal employees who provide services to Tribal elders or vulnerable adults; or any person or agency, including employees with fiduciary duties to elders or vulnerable adults such as attorneys, accountants, property managers, or financial institutions; or the elder or vulnerable adult abused; or any other person(s) who have reason to suspect that an elder or vulnerable adult is abused or neglected.</p>	<p>If the Tribal Court determines that there is incapacity or evidence of abuse or neglect of an elder, a protection order will be issued which may contain: removal from the place where the abuse or neglect occurs; enjoining the abuser from committing further abusive acts; requiring any party having a fiduciary duty to the elder to account for the elder adult's funds and/or property; requiring compensatory damages to be paid by an abuser or neglectful person to the elder for injuries resulting from abuser's or neglectful person's wrongful acts; appointing a representative, guardian ad litem, or recommending a representative payee for the elder; and ordering Bay Mills Protective Services to prepare a plan to deliver protective services which provides the least restrictive alternative to satisfy the elder's needs.</p>
<p>Fort Peck Tribal Comprehensive Code of Justice: Title XXIX – Elderly Abuse</p>	<p>Any person knowing or having reasonable cause to suspect that an elderly person is or has been abused shall report such abuse to the Elderly Protection Team or to the appropriate law enforcement agency. The agency shall immediately notify the Elderly Protection Team.</p>	<p>If the Elderly Protection Team determines that an elderly person has been abused and is in need of protective services, the EPT shall develop a plan for provision of such services. Where the abuse was by a member of the elderly person's family, a primary purpose of the plan shall be to restore and promote family harmony, and the plan shall contain services designated to achieve this result. Services may include: Assistance in obtaining needed counseling for the abused elderly person and/or the abuser; mediation between the abused elderly person and the abuser; assistance in locating and moving to alternative living quarters, on a temporary or permanent basis; assistance in obtaining needed medical care, food, clothing and household goods; and appointment of a guardian by order of the court only.</p>
<p>Confederated Salish and Kootenai Tribal Code: Chapter 3: Adult Protection</p>	<p>All persons within the civil jurisdiction of the Confederated Salish and Kootenai Tribes unless excepted by privilege must report to the Designated Tribal Authority if they have knowledge of or a reasonable belief that abuse, neglect, or exploitation of an elder or vulnerable adult has occurred or will occur. Such persons include but are not limited to: all human and health professionals; police officers; social workers, counselors and similar elder or vulnerable adult service providers; elected officials; tribal or federal employees involved with an individual elder's monies, real or personal property and/or well-being; employees or staff of private, tribal, or state medical, retirement, group, foster or nursing home facilities located on the Flathead Reservation; and elder advocates, home health providers, or an other person working with elders.</p>	<p>The Tribal Court is authorized to issue an Adult Protective Services Order to elders that it or a court of competent jurisdiction determines to be incapacitated and at risk of abuse, neglect, or exploitation, pending notice and hearing.</p>

<p>Blackfeet Tribe Law and Order Code: The Family Code Chapter 10: Elder Abuse</p>	<p>In all cases of elder abuse/neglect/exploitation, the officer involved shall make a written report and the numbers of such cases shall be tabulated by the Department. A quarterly report shall be made by the Police Department, setting forth the number of elder abuse/neglect/exploitation investigations and the number of arrests.</p>	<p>Whenever an officer arrests an individual for elder abuse/neglect, the victim must be given a notice that includes: The Family Court will issue an Order restraining your abuser/neglector from abusing/neglecting you; an Order directing your abuser/neglector to leave your household; and/or an Order preventing your abuser/neglector from transferring any property except in the usual course of business; and/or an Order restraining your abuser/neglector from molesting or interfering with you.</p>
<p>Hopi Family Relations Ordinance</p>	<p>The Office of the Hopi Tribal Prosecutor shall establish a central registry for the filing of civil and criminal convictions under this ordinance.</p>	<p>Any person may file a pro se petition for a temporary or permanent protection order: for herself/himself; on behalf of a person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order; on behalf of a client if the person filing the protection order represents a service provider; as a next friend of a victim.</p>
<p>Eastern Cherokee Code: Chapter 14: Criminal Law; Sec. 14-40.13 Domestic Abuse, Neglect, and Exploitation of Disabled or Elder Adults</p>	<p>None specified.</p>	<p>None specified.</p>
<p>Colville Tribal Code, Chapter 5-4, Abuse of Elders and Vulnerable Adults</p>	<p>Persons, including but not limited to, financial institutions or attorneys, having reasonable cause to believe that an elder or vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, or is otherwise in need of protective services may report such information to the agency. Professional police officer, social worker, employee of the Agency, a social service, welfare, mental health, or health agency, including IHS personnel, home health, hospice, and home care agencies located on the Colville Reservation, congregate long term care facility, adult family homes, boarding homes, nursing homes located on the Colville Reservation or assisted living services or health care providers, including but not limited to doctors, nurses, psychologists, and pharmacists having reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, shall make an immediate oral report of such information to the Agency and shall report such information in writing to the agency within ten days of receiving he information.</p>	<p>Tribal Court may issue an order of protection.</p>

<p>Warm Springs Tribal Code, Chapter 10: Tribal Elder and Adult Protection Code</p>	<p>All adults living or working on the Reservation have a duty to report suspected abuse or neglect of an elder to the Tribal Police, Tribal Senior Department, Tribal Human Services, BIA, or IHS.</p>	<p>The court shall issue an elder protection order.</p>
<p>Poarch Band of Creek Indians Code: 8A. Domestic Violence Code</p>	<p>When investigating complaints of elder abuse the complaint shall be investigated and treated the same as any other domestic violence complaint. A record of all reported cases of domestic abuse shall be kept by the police department.</p>	<p>A person may seek a protection order: for herself/himself; on behalf of any person prevented by a physical or mental incapacity, or by hospitalization, from seeking a protection order; on behalf of a client in the case of social service, housing, health, legal, or law enforcement personnel; or as a friend of the victim.</p>