



SEXUAL ABUSE OF ELDERS IN AMERICAN INDIAN/ALASKA NATIVE COMMUNITIES

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Abuse of Elders Is Not Traditional

Elder abuse is not traditional in Native American and Alaska Native communities. Indeed, sexual violence against elders was virtually unknown at the time of first contact with Europeans. Until very recently, there has been little to no discussion of sexual violence against the elderly in American Indian/Alaska Native communities.

Under custom and tradition, Native elders have been seen as repositories of knowledge and as invaluable community resources. Elders traditionally hold positions of power in their communities and are prized for their experience and wisdom. Many Tribes, Villages, Rancherias, Communities, and Pueblos continue to hold elders in high esteem as a valuable link to their past and as a resource for future generations.

The relatively recent, alarming phenomena of elder sexual abuse is frequently viewed as a symptom of the dissolution of tribal cultural values and as an indicator of serious imbalance within American Indian/Alaska Native communities.¹

Who is an Elder?

Native communities typically define elders as those persons 50 - 55 years of age or older. Nationally, non-Indian organizations and legal codes commonly define an “elder” as a person who has reached the age 60 or 65 and older.

The discrepancy between these two definitions may, at least partially, be linked to the lower life expectancy of American Indian/Alaska Native peoples. Life expectancy is lower for American Indian/Alaska Native peoples than for any other population in the United States. In a recent 15 year period, the death rate for Native American women surged by 20 percent while, in that same time period, the overall death rate for all women in the U.S. decreased by 17 percent.”

Some tribal communities utilize a more informal analysis in defining who is an elder. In those communities, a person may be designated as an “elder” once their hair has turned grey. In other tribal communities, a person may be designated as an “elder” once that person has achieved a widely recognized, objective status as a holder of traditional knowledge with accompanying desirable leadership qualities.

Tribal communities may also utilize the term “elder” informally or colloquially. In those communities, any person who has a more advanced biological age in relationship to oneself is considered an elder and, thus, is provided with certain honors and privileges. These may include such things as the provision of preferable seating, service of food before others at a gathering, being consulted before major decisions are made, discounted or free admission to events that have an entrance fee, etc..

In General, What is Elder Abuse?

The National Center on Elder Abuse identifies seven different forms of elder abuse: physical abuse, sexual abuse, emotional or psychological abuse, financial or material exploitation, neglect, abandonment, and self-neglect.

The following definitions have been adapted from excellent materials contained on the NCEA website (www.elderabusecenter.org):

- 1.) Physical abuse:** the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to, such acts of violence as striking (with or without an object), hitting, beating, pushing, shoving, shaking, slapping, kicking, pinching, and burning. Inappropriate use of drugs and physical restraints, force-feeding, and physical punishment of any kind are also examples of physical abuse.

Physical abuse is the form of elder abuse that is most commonly prosecuted. Photographs of injuries, medical reports, eyewitness statements (including the victim's), careful crime scene investigation, and proper evidence handling can greatly increase the likelihood of conviction in Tribal, state, and federal courts. Allegations of physical abuse can also trigger Adult Protective Services investigations in the small number of American Indian/Alaska Native communities supporting their own Adult Protective Services agencies or to state Adult Protective Services agencies that maintain a duty to provide services to all state citizens, including those residing on tribal lands.

- 2.) Emotional or Psychological Abuse:** the infliction of anguish, pain, or distress through verbal or nonverbal acts. Emotional/psychological abuse includes, but is not limited to, verbal assaults, insults, threats, intimidation, humiliation, harassment, treating an older person like an infant, isolating an elderly person from his/her family or friends or regular activities, giving an older person the "silent treatment," and enforced social isolation.

Emotional and psychological abuse clearly constitute abusive, harmful behaviors. However, in and of themselves, they may not always rise to the level of a prosecutable crime unless they are accompanied by credible threats of bodily harm. Emotional and psychological abuse are very real factors in the analysis of elder abuse and play an important role in the determination of the safest living arrangement for an elder.

3.) Neglect: the refusal or failure to fulfill any part of a person's obligations or duties to an elder. Neglect may also include failure of a person who has fiduciary responsibilities to provide care for an elder (e.g., pay for necessary home care services) or the failure on the part of an in-home service provider to provide necessary care. Neglect typically means the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to an elder.

Neglect may not rise to the level of a prosecutable crime unless there is a legally imposed duty to care for an elder. In the dominant culture, adult children normally do not have legally imposed duties to care for their elder parents. Although there are few elder abuse codes in Indian Country, under tribal custom and tradition there may be a legally enforceable duty to care for American Indian/Alaska Native elderly parents.

4.) Abandonment: the desertion of an elderly person by an individual who has assumed responsibility for providing care for an elder, or by a person with physical custody of an elder.

In many jurisdictions, once a person has assumed responsibility for care of an elder, that person can be criminally prosecuted for abandoning that elder and failing to provide care.

5.) Financial or Material Exploitation: the illegal or improper use of an elder's funds, property, or assets. Examples include, but are not limited to, cashing an elderly person's checks without authorization or permission, forging an older person's signature, misusing or stealing an older person's money or possessions, coercing or deceiving an older person into signing any document (e.g., contracts, loans, or a will), and the improper use of conservatorship, guardianship, or power of attorney.

Financial or material exploitation often take the form of coercing an elder to co-sign a loan, taking the elder's social security check, and/or pawning or selling an elder's possessions. One form of material exploitation with potentially deadly consequences can occur when a caretaker or member of the elder's family steals pain medication. Sudden discontinuance of pain medication can result in stroke or heart attack for an elder who has become physically dependent on the medication.

Perpetrators can frequently be prosecuted for theft, fraud schemes, and other crimes related to the financial or material exploitation of an elder.

It is important to note that in many American Indian/Alaska Native communities, families pool their resources. An elder's social security check may serve as the sole or primary source of income for an extended family. A Native elder may or may not view this as financial exploitation under their traditional culture and world view.

6.) Self-neglect: the behavior of an elderly person that threatens his/her own health or safety. Self-neglect generally manifests itself in an older person as a refusal or failure to provide himself/herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions. The definition of self-neglect excludes a situation in which a mentally competent older person, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.

Although self-neglect may not rise to the level of a prosecutable crime, the presence of self-neglect should be factored in to placement decisions and in to the formulation of service plans for elderly American Indians/Alaska Natives.

7.) Sexual Abuse: non-consensual sexual contact of any kind with an elderly person. Sexual contact with any person incapable of giving consent is also considered sexual abuse. Sexual abuse includes, but is not limited to, unwanted touching, all types of sexual assault or battery (such as rape, sodomy, coerced nudity, and sexually explicit photographing).

In many American Indian/Alaska Native languages there is no word for "rape." Virtually unthinkable a century ago, communities must now be vigilant to identify and care for elderly victims of sexual abuse. All elders with unexplained sexually transmitted infections (such as gonorrhea, chlamydia, and syphilis) should be screened for sexual abuse. Elderly care facilities and nursing homes should likewise take care to ensure that staff, family, and other residents treat elders with care and respect. An elder with dementia, in a coma, or who suffers from severe cognitive impairment cannot legally give consent to engage in sexual activities, even with a spouse.

Finally, as sovereign nations, some American Indian/Alaska Native nations may choose to employ even broader definitions of elder abuse. These broader definitions may include forcing an elder to care for small children against their wishes, ritual abuse, publicly shaming an elder, and other forms of abuse as defined by culture and tradition.

Who are the Perpetrators and What are the Causes of Elder Sexual Abuse?

Adult children are most likely to be the perpetrators of elder abuse. Spouses, other relatives, and grandchildren are also likely to be the perpetrators. Tribal social service providers have estimated that close to 80% of those abusing Native elders are immediate family members and that 10% of the abusers are extended family members.

Elder abuse, like intimate partner violence, can arise from an abuse of power and a sense of entitlement by the abuser. Some researchers have found that caregivers who are unhappy, frustrated, easily angered, and who feel entitled to lash out at others who are perceived as having less power may be more likely to commit some extreme forms of elder abuse.

Other researchers have found a strong correlation between poverty and elder abuse in Native communities. A study of elder abuse on the Navajo Nation revealed poverty, unemployment, and family caretakers feeling overwhelmed by their responsibilities as primary causes of elder abuse and neglect. A study of elder abuse in two Plains tribes similarly found that abuse was highest when the elder and their caregiver lived in poverty.

Native people have also self-identified alcohol abuse, substance abuse, and a turning away from traditional cultural values as the causes of elder abuse and neglect. Historical trauma and the horrors (including significant sexual and physical abuse) of the boarding school experience may also play a role in the rise of sexual abuse of elders.

Female elders are abused at a significantly higher rate than male elders. The oldest of the elderly are also at a higher risk for abuse. Those 80 years of age or older are abused and neglected at two to three times their proportion of the elderly population.

Physical frailty and inability to care for oneself are also risk factors. Close to half of substantiated incidents of abuse and neglect involve elderly persons who are unable to care for themselves. Approximately 28% of substantiated incidents of abuse and neglect involve elderly persons who are able to only marginally care for themselves.

Reporting of Elder Sexual Abuse

More than 79% of all elder abuse cases go unreported. Physicians and health care providers are the persons most likely to make reports of sexual abuse, abuse, or neglect. Other persons in tribal communities who are likely to report sexual abuse, abuse and neglect include law enforcement officers, friends, clergy, neighbors, and other community members. Family members and relatives report abuse and neglect in only 1 of 6 reported cases.

Adult Protective Services and tribal law enforcement should be notified immediately in cases where elder sexual abuse is suspected. Adult Protective Services and tribal

police are often the first points of entry in to tribal justice systems, social services, and other resources for abused elders.

Tribal Responses to Elder Abuse:

The majority of federally recognized tribes in the United States currently lack formal code provisions prohibiting rape, sexual abuse, or sexual assault against any person. It is rare for Tribes to maintain formal elder abuse codes and/or their own Adult Protective Services agencies.

Many Tribes rely upon neighboring state jurisdictions to provide services to elderly victims. While state Adult Protective Services generally do not have formal jurisdiction over vulnerable American Indian/Alaska Native elders residing on tribal lands, states do have a legal obligation to provide services for all state residents. American Indian/Alaska Native elderly victims of sexual abuse are also entitled to access state victim compensation funds (for crimes reported to law enforcement that are not federally prosecuted when that crime was reported within a specified amount of time determined by each state) as well as services available through their Tribe and the Indian Health Service.

Coordination of care and services can often be challenging between tribal and state agencies. The development of protocols between Tribes and states as well as the delivery of training on cultural mores can improve the delivery of services by state agencies to tribal citizens.

When abuse is reported, Adult Protective Services may be able to place an elder in temporary shelter and/or create a plan of care to ensure continued safety and well-being. Unfortunately, domestic violence shelters are often not equipped with the resources or training necessary to respond to the safety and healthcare needs of elderly victims.

Some communities have found it necessary to develop safe home networks for elderly victims. Others have adopted strategies for short term, emergency placement of the elder in an adult care facility when a domestic violence shelter is not a practical option. Several Tribes maintain their own adult care facilities. However, the majority of Tribes in the United States send elders in need of care (who cannot be cared for in-home) to off-reservation facilities. It is important to note that some elder victims may feel re-victimized or penalized by placement in an adult care facility. Staff at off-reservation care facilities may not speak the language of the elder, food and customs may differ greatly, and language and cultural differences may interfere with the identification of emerging or new healthcare issues for the elder. Some of these challenges can be mitigated by regularly scheduling an advocate or Tribal ombudsman to visit an elder placed in an off-reservation adult care facility to monitor care and to look for signs of any continuing abuse and neglect.

Some elders may be able to remain in their own homes with significant safety, health, and social services planning. A home health care and safety plan can include assistance ranging from screened, live-in aides to the provision of frequent welfare checks, transportation to medical appointments, light housekeeping, shopping, and assistance with other household needs.

Tribal or Indian Health Service healthcare clinics are at the front line of identifying elder sexual abuse and initiating a holistic response to the elders' needs. A recent trend in Indian Country is to uniformly screen elder patients for domestic and sexual violence by asking "Is anyone hurting you?" or "Are you afraid of anyone who is harming you?" Elders who present with unexplained pelvic pain or bleeding or who test positive for chlamydia, syphilis, and gonorrhea should always be screened for sexual abuse.

Civil and Criminal Proceedings

A report of sexual abuse to tribal Adult Protective Services or law enforcement may trigger both criminal and civil proceedings in tribal courts. Civil proceedings in elder sexual abuse cases may include protective orders, guardianship proceedings, and conservator proceedings.

Tribal courts have the power to appoint a guardian for a person who is incapacitated or who otherwise is unable to care for their daily needs. Once a person accepts an appointment as a guardian, that person has a legal obligation to ensure that the elder has adequate shelter, clothing, health care and social interaction. Oftentimes, family members agree to be appointed as a guardian for an elderly relative.

An appointed guardian makes many of the legal decisions for the elder or incapacitated person. The guardian can sign contracts on behalf of the elder and can make medical decisions on their behalf. The guardian also makes decisions affecting the everyday life of the elder including where the elder will live, the types of social services programs the elder will access, and other everyday life decisions.

Tribal courts can appoint a conservator to manage the financial and other assets of an elder or incapacitated person. The conservator is legally responsible to manage the elder's finances by paying the elder's debts, collecting money owed to an elder, and paying for the reasonable care of the elder out of the elder's own funds. Sometimes the tribal court will appoint the same person to be both the legal guardian and the conservator of an elder.

A legal guardian can protect an elder by obtaining an order of protection on their behalf. Under many tribal codes, a guardian can obtain an injunctive or protection order against any person who has committed or attempted to commit domestic violence, sexual assault, or abuse against the elder. Injunctive or protection orders against abusers can include a "stay away" provision as well as provisions for support, restitution, payment of debts, and other remedies.

It is important to remember that many forms of elder abuse, including sexual abuse, are also criminal acts. Tribes are beginning to adopt specific criminal statutes designating elder abuse as a separate crime. Often these codes contain enhanced penalty provisions for criminal acts where the victim is over the age of 55. Even in tribal jurisdictions where there is no specific elder abuse code in place, criminal charges can be brought against the abuser for assault, sexual assault, domestic violence, and other criminal acts.

The federal government also maintains the responsibility to prosecute crimes of sexual abuse and assault committed against American Indian/Alaska Native elders. Those Tribes subject to Public Law 280 jurisdiction may be able to access state criminal justice systems in seeking safety and justice for their elderly victims of sexual violence.

Elder Abuse Prevention

Community outreach and education are key components of elder sexual abuse prevention. Elder centers can be ideal settings to provide that outreach and can also serve as locations for the provision of on-site, direct services to the elderly.

Tribal elder centers and programming designed specifically for elders greatly reduce social isolation (a major risk factor for sexual assault, abuse and neglect) and assist elders in accessing basic social services. Some elder centers serve low cost or free hot meals to ensure that elders maintain proper nutrition. Outreach and programming during these events can be quite effective in disseminating information for this vulnerable population.

Elder centers can also provide important respite care for family caregivers. Adult daycare programs can allow family caregivers to maintain employment and can provide an important break from the stress of 24 hour a day care for an aged or infirm elder.

Some Tribes have stationed a tribal law enforcement officer dedicated to the enforcement of elder abuse and neglect laws at elder centers. Elders may be more open to reporting sexual abuse, neglect or abuse to an officer who has gained their trust through daily contact. A designated elder abuse officer can educate elders on their rights, teach the signs and indicators of abuse or neglect, and assist elders in safety planning.

Tribes have also reported tremendous success utilizing an ombudsman or advocate for the elderly. Often the ombudsman maintains an office at an elder center or in some other easily accessible location. An ombudsman can be an important voice for elders who are experiencing sexual violence, abuse or neglect. They can also assist in safety planning and in linking elders to social services and public welfare programs.

Elder centers are a valuable resource for the community. The gathering of elders in a safe, relaxed environment can also be a valuable resource in the preservation of culture and language and can provide leadership and strength for the community as a whole.

Challenges and Resources for Tribal Communities Combating Elder Abuse

There is growing recognition and awareness of the problem of elder abuse and neglect in Indian Country. Tribal leaders from across the country have identified three major challenges in addressing elder abuse and neglect issues on reservations:

- 1.) A lack of codes addressing elder sexual abuse issues.
- 2.) A lack of policies and procedures for tribal agencies handling elder sexual abuse and neglect issues.
- 3.) A need for increased training on elder sexual abuse, abuse, and neglect.

Tribes in the process of developing elder abuse and neglect codes may find it helpful to refer to the Model Tribal Elder Protection Code developed by the American Indian Law Center, Inc. Copies of the code are available for a small copying fee by contacting:

American Indian Law Center, Inc.
P.O. Box 4456 – Station A
Albuquerque, New Mexico
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505-277-5462
Fax: 505-277-1035
ailc@law.unm.edu

The National Indian Council on Aging can be an important resource for Tribes addressing the need for training, grant funding, and the implementation of protocols and procedures. NICOA can be reached at:

National Indian Council on Aging
10501 Montgomery Blvd. N.E. Suite 210
Albuquerque, New Mexico
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505-292-2001
www.nicoa.org

The National Center on Elder Abuse maintains an excellent website with links to useful information and organizations: www.elderabusecenter.org The National Center on Elder Abuse can be contacted at:

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