



INTERNATIONAL ASSOCIATION FOR  
INDIGENOUS AGING

# A Fact Sheet and Resource Guide for Tribal Nations and Collaborative Partners



## Tribal Nations and Collaborative Partners

Elder abuse is a complex topic. It can be especially sensitive for tribes because it impacts deeply on tribal history and culture. Often, there is a jurisdiction decision to be made about which court is best for an elder abuse matter, Jurisdictional challenges are some of the most complex and challenging problems facing those who want to find solutions for the problem of abuse of tribal elders. There are six types of elder abuse: physical, sexual, psychological, spiritual, financial, neglect and self-neglect. How to investigate these matters and how to find a resolution of them includes several different choices.

The response can be tribal, based on tribal codes, resolutions or traditions; state based applying state laws; or federally based using federal laws. There can also be a multi-jurisdictional response based on MOUs or other cooperative agreements between tribes, counties and states.

## Jurisdictional Issues Concerning Elder Abuse in Tribes

### Tribal Response

The Tribal Code is the law of the tribe and gives cultural and legal guidance about how to form the response to an elder abuse matter.

Tribal Codes usually include a definition of an elder, which varies among tribes. Each tribal code is specific to the history and cultural norms of that tribe and codes often differ from tribe to tribe. The definition of a vulnerable person, may also come under the protection of the tribal code. Those definitions also differ among tribes. In some cases, tribes that may not have an elder code, will have a tribal resolution that covers some of the same topics.

Tribes may seek to protect information about elders through tribal sovereignty and data privacy concerns. Often, there is confidentiality between tribes on issues of elder abuse.

#### CITATIONS:

NICOA, Elder Abuse ( Nov. 24, 2023).

For a state-by-state breakdown of Elder Protection Codes, see International Association of Indigenous Aging, Elder Abuse Codes ( 2024)

### Non-Contiguous Tribes

For some tribes, like those in Alaska, the challenges can be daunting. Alaska has 231 Native Alaska tribal entities, the largest number of any state. Alaska Natives also comprise nearly 20% of the state's population.

Because of extraordinary geographic, terrain and seasonal challenges, as well as land ownership questions, there are unique and complex jurisdictional challenges in addressing elder abuse among Alaska native elders.

Although Hawaii has a large population of native Hawaiians, nearly, 680,000 there are no federally recognized tribes there.

#### CITATION

U.S. Census Bureau, Ana I. Sánchez-Rivera et al., Detailed Data for Hundreds of American Indian and Alaska Native Tribes (Oct. 3, 2023); U.S. Dep't of Health and Human Servs., Office of Minority Health, American Indian/Alaska Native Health (Sept. 20, 2024). 6 45 C.F.R

### Tribal Response to Elder Abuse Can Take Several Forms

The decisional process includes considering what is the best result for the person harmed, the person doing the harm and the best result to keep the tribal family and community intact and preserve the culture and integrity of the tribe. Often, the tribal response is one of restorative justice and keeps the matter within the tribe.

**Restorative justice approaches seek to restore both the person harmed, the person causing the harm and the family units and the tribal community.**

**Each tribe determines how to address these issues in some of these ways:**

Tribal Leadership Response

Tribal Community Response

Tribal Legal Response and/or a Restorative Justice response

**What response works best for the tribe under the circumstances presented?**

Some tribes under PL280 use cross-jurisdictional collaborations to address justice system needs and in some cases this may apply to matters of elder abuse. This would include MOUs or collaborative arrangements with county or state agencies and officials.

#### CITATION:

Tribal Law and Policy Institute, Publications on Public Law 280 and collaborative agreements; Walking on Common Ground

### State and Local Legal Response

States and counties often work with tribal courts and social and law enforcement systems to help resolve elder abuse matters. In matters of elder abuse it is important to know the tribal code and the state statute or statutes.

Find out if MOUs or collaborative court agreements exist. If this a PL 280 tribe what current collaborations with the state exist in matters of law enforcement, including elder abuse? Are there cooperative agreements for substance abuse and mental health solutions flexible enough to be used with restorative justice approaches for the tribe and the state?

The state response can be a civil response to the person causing harm. A stay away order, a freeze of assets, with access to assets by court order. It can include substance addiction rehabilitation, mental health treatment or medical attention





# Federal Legal Response

There is no specific federal statute to address elder abuse. Instead, federal agents and prosecutors will look to use other statutes to address those issues. Federal jurisdiction and Tribal jurisdiction can exist with the same weight in some circumstances regarding some aspects of elder abuse cases and deference may be appropriate in either forum.

In drafting tribal elder codes, it is important to incorporate language that describes tribal history and cultural norms that honor elders. This language can help build a bridge between those causing the harm and those harmed and responding to the abuse. By building the cultural norms into the response and into the resolution, it helps to bind the tribal community together and move forward.

Recent U S Supreme Court cases have found that Tribal Courts and U.S. Courts can be considered co-equal in some circumstances.



## Approaches to Addressing Jurisdiction in Elder Abuse Cases Within Tribal Nations

### First Steps: Creating a Tribal response

Recognize that harming an elder represents a breakdown of cultural norms.

What are the cultural norms in the Tribe? Is the elder or the person causing harm a tribal member? What tribe are they members of?

**Know your Tribal Code.** Is there a Tribal Elder (Protection) Code or Resolution? Tribal Codes may or may not include elder abuse specifically, but may discuss causing harm to an elder or disrespecting an elder.

**Restorative justice** resolutions within the Tribe can offer intergenerational solutions for the person harmed, the person causing the harm, and their families.

**Know your state statutes on Elder Abuse and reporting requirements, if any** There is no specific federal law concerning elder abuse.

### Federal Jurisdiction

Supersedes other laws but is equal to Tribal Law in some circumstances.

Applies to actions involving multiple states and the crossing of state lines

Has multiple investigative resources available

Can work parallel criminal and civil cases, especially involving multiple actors. These can be worked simultaneously with states and tribes

There are restitution and asset forfeiture laws and procedures

Each federal judicial district has an Elder Justice Coordinator in its U.S. Attorney's Office; some districts have special tribal responses

### Jurisdiction outside of the Tribe: Local and State Jurisdiction

#### Local and County Jurisdiction

Local jurisdictions follow state law but often have specific local or county laws which are followed. They have limited geographic reach.

Local jurisdictions may have local ordinances or licensing procedures reflecting a specific community and are specific to that particular geographic location; these may also come under state statutes.

#### State Jurisdiction

State jurisdiction is statewide, but that may not apply to some circumstances related to matters occurring on tribal lands. Tribal laws or federal laws may apply in that matter depending on the circumstances.

Most states have restitution agreements but only a few states have forfeiture powers. States may have cooperative agreements with other states for certain matters

States may participate in multistate task forces and have cooperative charging agreements

#### Local and state resources and cooperation

Local and state law enforcement may have access to social or mental health supports for tribal assistance or to strengthen tribal programs. Local and state governments often have restitution provisions for certain violations of law. Tribes subject to PL280 and must navigate jurisdictional collaborations with local counties and states in the administration of criminal justice

## Additional Resources

### Civil Jurisdiction

- The burden of proof is preponderance of the evidence.
- There is no incarceration. Court supervised rehabilitations can be ordered.
- Fines and restitution can be ordered.
- There are social and/or mental health supports available.
- Victim services supports are available.

There may be jurisdictional challenges to bringing tribal elder abuse matters to resolution. Many of these matters remain within the tribe where a restorative justice solution can be discussed and implemented for the benefit of the elder and the tribe.

### Criminal Jurisdiction

- Burden of proof is proof beyond a reasonable doubt.
- Sentences can include incarceration, alternative programs, probation or court ordered rehabilitation.
- Sentences can include community service, fines, restitution and possible asset forfeiture.
- Social and mental health supports are available.
- Victim services supports are available.

### Resource Guide for Jurisdictional Challenges for Tribes in Caring for Elders

American Indian Law Center - <https://www.aclc-inc.org/>  
Includes a list of law schools by state with classes, programs or clinics in Indian law Alaska Legal Services Corporation - [www.alsc.org](http://www.alsc.org)  
Alaska Native Justice Center - <https://anjc.org/>  
HHS/ACL - Title VI Weekly Call with Tribes - includes topics of elder abuse [www.hhs.acl.gov](http://www.hhs.acl.gov)  
Legal Services Corporation - [www.lsc.org](http://www.lsc.org)  
Legal services available in every state; Some offices have an expertise in Indian Law.  
National Center for Law and Elder Rights (NCLER) - Justice in Aging [www.justiceinaging.org](http://www.justiceinaging.org)  
Policy statements on legal issues for older adults; referrals to experts in tribal law.  
National Center for State Courts - [www.ncsc.org](http://www.ncsc.org)  
Native American Elder Justice Initiative - <http://www.naeji.org>  
Technical assistance is drafting Tribal elder codes; tribal elder abuse issues; working with Adult Protective Services; building toolkits and resources

International Association for Indigenous Aging - <http://www.iasquared.org>  
NICOA - National Indian Council on Aging - <http://www.nicoa.org>  
Native American Rights Fund - [www.narf.org](http://www.narf.org) Boulder, CO, Washington, DC and Anchorage  
NCALL - National Clearing House for Abuse in Later Life - <http://www.ncall.us>  
Resource guides, videos; webinars; toolkits on elder abuse.  
Tribal Access to Justice Innovation - <https://tribaljustice.org/resources/>  
Resource guides to tribal justice organizations; publications, toolkits and training  
Tribal Law and Policy Institute - <https://www.home.tpi.org/>  
Policy and legal reports; samples of tribal codes, toolkits and webinar  
National Tribal Justice Resource Center (part of the National American Indian Court Judges Association) - USDOJ Office of Tribal Justice - [www.justice.gov/otj](http://www.justice.gov/otj)  
Publications, webinars, resource guides and toolkits

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