



LEGAL ISSUES IN INDIAN COUNTRY

ELDER ABUSE AND NEGLECT:

- Elder abuse and neglect refer to any of the following types of mistreatment committed by someone with whom the Elder has a special relationship, such as a spouse, sibling, child, friend, or caregiver.
- Types of elder abuse:
 - o Physical
 - o Emotional or psychological
 - o Sexual
 - o Financial or material exploitation
 - o Neglect
 - o Self-neglect
 - o Abandonment
 - o Soul-wounding or spiritual abuse²⁻³

WHAT IS DIFFERENT ABOUT ELDER ABUSE FOR INDIGENOUS PEOPLE?

- Indigenous Elders are held in high regard, as guardians of history, culture, and traditions and are to be honored and respected.
- Becoming an Elder in many Indigenous communities is not a set age but a distinct status earned from wisdom, knowledge, and responsibility.
- Being an Elder is different than being elderly; elderly is associated with age and ability.
- Out of respect, we will use the term Elder.
- An Elder experiencing abuse may not report it because of shame, fear of retaliation, increased vulnerability, or fear of getting a loved one in trouble.

ELDER ABUSE IN INDIAN COUNTRY:

- The extent of Elder abuse in Indian Country is unknown due to underreporting.
- Elder abuse is common. National rates estimate that 1 in 10 Americans over the age of 60 have experienced abuse, neglect, and exploitation.⁴
- Some tribes have adopted an elder abuse code or ordinance to protect elders from abuse and neglect.
- Tribal Elder abuse programs are limited, and little incidence data exists.
- Elders may not view themselves as victims or want to perceive themselves as victims.
- Some elders may be unable to report due to diminished mental capacity, isolation, or physical limitations.
- Fear of retaliation in the form of physical harm, initialization, or abandonment for disclosing abuse.

IS ELDER ABUSE A CRIME?

- All states and tribes criminalize acts that violate particular laws (e.g., sexual assault, battery, theft, or fraud) related to Elder abuse instances.
- Many states and tribes have laws, codes, or resolutions that criminalize elder abuse.
- Every criminal offense is comprised of elements that must be proven by prosecutors beyond a reasonable doubt.
- These elements vary depending on the state or tribal laws and whether the charge is a misdemeanor offense or a felony offense.

RISK FACTORS FOR ELDERS INCLUDE:

- Living in poverty
- Suddenly depend on others for care
- Reside alone with primary caregivers
- Suffer from mental health problems
- Lack of social support or live in isolation
- Live in an area where services are limited or unavailable
- Receive substantial income from allotted lands or mineral rights

RISK FACTORS FOR PERPETRATION

- There are risk factors that may contribute to becoming a perpetrator of elder abuse.
- The contributing factors may or may not be direct causes for abuse, but understanding the factors can help prevent it.
- Perpetrators can be family members, friends, neighbors, home care aides, and workers in institutional settings.

Assumed caregiver roles at an early age

Poor or inadequate coping skills

Inadequate training to take on caregiver responsibilities

Exposed to abuse as a child

High financial and emotional dependence upon an elder

Coordinated services among community agencies that serve elders and their caregivers

Living in a community with a high degree of functionality



Family members are expected to care for elders without seeking help from others

Current abuse of alcohol or other substances

Current diagnosis of mental illness

High levels of hostility

Lack of social support and formal support

Elders and caregivers who may have many strong relationships with others in the family and community

Living in a tribal community where there is strong tribal code and Elder Protection Team⁵



Living in an area that portrays a strong sense of community identity

Protective factors for Elder abuse are not well studied and there is not much research or data. ⁵

TRIBAL COURTS AND JURISDICTION

Tribal laws often differ from state or federal laws, determining jurisdiction is complicated is based on where the crime is committed, whether or not the offender and/or the victim are tribal members. Law enforcement and attorneys are vital in protecting victims and communities from Elder abuse, and the court system provides remedies and relief to victims.⁶ The table below is an overview, to learn more about the jurisdiction please watch the online module.⁷

OFFENDER	VICTIM	JURISDICTION
INDIAN	INDIAN	Federal jurisdiction for felonies listed in the Major Crimes Act 18 U.S.C 1153; All remaining crimes contained in Tribal code are subject to Tribal jurisdiction.
INDIAN	NON-INDIAN	Federal jurisdiction for felonies listed in 1153; felonies and misdemeanors not listed in 1153 (including assimilative crimes) unless the tribe has already punished the defendant; Tribal jurisdiction for misdemeanors are felonies under the Tribal Law and Order Act.
NON-INDIAN	INDIAN	Federal jurisdiction for felonies and misdemeanors, including assimilative crimes. Concurrent Federal and Tribal jurisdiction for Violence Against Women Prosecutions.
NON-INDIAN	NON-INDIAN	State jurisdiction applies for both felonies and misdemeanors.
INDIAN	VICTIMLESS CRIME	Tribal jurisdiction applies in most cases; Federal jurisdiction applies in some cases where the Tribe has not prosecuted.
NON-INDIAN	VICTIMLESS CRIME	State jurisdiction applies in most cases; Federal jurisdiction applies in some cases where State has not prosecuted or State interest not strong under Petite policy.

INVESTIGATION TIPS

When investigating Elder abuse, it is important to look for various forms of abuse.

Types of abuse

- Look for any obvious signs of abuse, neglect, or financial exploitation.
- Cultural factors may affect perceptions of Elder abuse and approaches to problem-solving.
- Elder abuse may also include property of the Elder adult which is missing, broken, or damaged.

OBSERVATIONAL CONSIDERATIONS

- Pay attention to the interactions between the suspect and the potential victim.
- Take note of the living conditions of the older adult. (e.g. Is there food in the home? Do they have the appropriate assistive devices?)
- Look for visible signs, such as bruises, bedsores, or broken bones.
- Ask questions about if anything has been taken from them, such as money or property.
- Notice hygiene to determine if they are receiving proper care.

ACCESSING THREATS

- Find out if the witnesses are likely to be threatened for providing testimony.
- Take a statement from the suspected abuser immediately.

FOLLOW-UP

- Gather information from people who live near the victim.
- Contact agencies such as the BIA or other entities that manage the assets of the Elder

CONDUCTING INTERVIEWS

- Inform the victim about what to expect during the investigation.
- Minimize the number of interviews and the number of people present.
- Allow victims to describe the incident in their own words.
- Be patient and reassuring.
- Keep questions clear, simple, and short.
- Do not discount a complaint because the victim is not cooperating.
- Conclude interview in a way that helps the victim to feel comfortable contacting the investigator again.

CULTURAL CONSIDERATIONS

- AIAN Elders require special care and patience.
- Always treat the person with respect.
- Ask permission to enter the home and to be seated.
- Ask if they are fluent in English or would like a translator.
- Address the victim by their surname; it is considered disrespectful by many Elders to use their first name.
- Speak slowly, clearly, and be patient for a response.

LANGUAGE CONSIDERATIONS

- AIAN Elders may not respond if they are asked if they have been abused, but will respond if asked if they have been disrespected or bothered.
- Tell me about who you visit or go see
- Is anyone responsible for taking care of you? If, so how long have they taken care of you?
- What kinds of things do you need help with?
- Who helps you prepare your meals, paying bills, cleaning your home?
- Tell about anyone you feel uncomfortable around.
- Are you being disrespected or bothered? If so, in what ways?
- Has anyone tried to harm you recently? If yes, did you have any injuries?

RESTORATIVE JUSTICE

- The restorative justice approach for elder abuse focuses on repairing individual, familial, and community relationships that have been damaged.
- This process allows community inclusion and healing of the parties after a crime has occurred.
- Restorative justice concepts are central to the worldview of many Indigenous tribes.
- Restorative justice includes values of:
 - Speaking the truth
 - Allowing victims and perpetrators to have a voice
 - Restoring broken relationships
 - Respecting the wishes of individuals involved
 - Preventing harm in the future
- The approaches include:
 - Family Group/Community Conferencing
 - Family Reunification/Family Preservation Services
 - Sentencing Circles
 - Elder Councils⁹

Recommendations for Improving the Handling of Elder Abuse Cases of the American Bar Association

1. Setting up special elder abuse units/special prosecutors.
2. Training prosecutors on the types of elder abuse and the impact on elderly persons.
3. Improving victim aid services.
4. Educating the public and professionals.
5. Utilizing Multidisciplinary Teams or Tribal Elder Protection Teams.

REPORTING ELDER ABUSE AND NEGLECT

If you suspect elder abuse or neglect, report it to your state or tribal APS office or local police department. If you need help locating a number to call to report elder abuse please visit: <https://www.nieji.org/hotlines>.

For more information about legal issues in Indian Country please watch the online educational module at: www.nieji.org/training/legal/

REFERENCES

- 1 National Center on Elder Abuse (NCEA). (2014). What is Financial Exploitation. Retrieved from https://ncea.acl.gov/resources/docs/Consumer-FS-Fin-Exploit_ALF-2014.pdf
- 2 Duran, E.F. & Duran, B.M. (1995). Native American postcolonial psychology. Albany, NY: State of University of New York Press.
- 3 Gray, J.S., Labore, K.B., & Carter, P. (2018) Protecting the scared tree: Conceptualizing spiritual abuse against Native American Elders. *Psychology of Religion and Spirituality*.
- 4 National Council on Aging. (2018). Elder Abuse Facts. Retrieved from <https://nacoa.org/public-policy-action/elder-justice-abuse-facts/>
- 5 Center for Disease Control and Prevention (2017). Elder Abuse: Risk and Protective Factors. Retrieved from <http://www.cdc.gov/violenceprevention/elderabuse/riskprotectivefactors.html>
- 6 Stiegel, L.A. (2014). Legal issues related to elder abuse: A pocket guide for law enforcement. Retrieved from <https://www.bja.gov/Publications/ABA-ElderAbuseGuide.pdf>
- 7 U.S. Department of Interior, Bureau of Indian Affairs. (2013). Retrieved from <https://www.bia.gov/bia/ojs>
- 8 Baker-Demaray, T.B. (2005). Perceptions of elder abuse among Native American seniors (unpublished doctoral dissertation). University of North Dakota, Grand Forks, ND.
- 9 Johnstone, G. & Van Ness, D.W. (2007). *Handbook of Restorative Justice*. Wilan Publishing: Portland, Oregon.



**NATIONAL INDIGENOUS ELDER JUSTICE INITIATIVE • CENTER FOR RURAL HEALTH
UNIVERSITY OF NORTH DAKOTA • SCHOOL OF MEDICINE & HEALTH SCIENCES**

1301 North Columbia Road Suite E231 • Grand Forks, ND 58202-9037 • Phone: (701) 777-6084 • Fax: (701) 777-6779 • Email: info@nieji.org