

Developing Tribal Elder Abuse Laws: Steps to Starting and Contemporary Considerations

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Agua Caliente Reservation

Sarah Deer, J.D.

Courtney Allensworth, M.A., J.D.

Overview

- Introduction
- Brief definition of the problem
- Why Tribal codes?
 - Governance
 - Jurisdictional Challenges
 - Public Policy implications
- Beginning the drafting process
- Additional Considerations



Why are you here?

- ▶ What do you hope to learn in this workshop?
- ▶ What questions do you have?



What is Elder Abuse?

National Definitions

- ▶ **Physical Abuse** – the use of physical force that may result in physical pain or injury. Physical abuse may include, but is not limited to, striking, shoving, slapping, punching, kicking, pinching, and burning. Inappropriate uses of drugs or physical restraints are also examples.

Indian Elders' Definitions

- ▶ **Physical Abuse** – “Physical mistreatment and mistreatment of live-giving sustenance.”



What is Elder Abuse?

- ▶ **Emotional Abuse** – the infliction of mental anguish, pain, or distress through verbal or nonverbal acts. Emotional abuse includes, but is not limited to, verbal assaults, insults, threats, intimidation, humiliation, harassment, infantilization, or enforced social isolation.
- ▶ **Emotional 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.”



What is Elder Abuse?

- ▶ **Neglect** – the failure by those responsible to provide food, water, shelter, health care, personal hygiene, medicine, or protection as culturally relevant.
- ▶ **Neglect** – “Not including elders in gathering; 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.”

What is Elder Abuse?

- ▶ **Exploitation** – the illegal taking, misuse, or concealment of funds, property or assets for the benefit of one who is not the elder. Exploitation includes, but is not limited to, cashing checks without authorization, stealing money, forging signatures, coercing a signature on a document, and the improper use of a guardianship, conservatorship, or power of attorney.
- ▶ **Exploitation** – “Using the elder’s income, home, and other property; excessive use as a babysitter; and taking food and medications.”


What is Elder Abuse?

- ▶ **Sexual Abuse** – non-consensual sexual contact of any kind. Sexual abuse may include, but is not limited to, unwanted touching, rape, sodomy, coerced nudity, and sexually explicit photographing.
- ▶ ***Note: There is no readily available definition from the perspective of Indian elders**
- ▶ Also included:
 - ▶ Self-Neglect
 - ▶ Abandonment



What is Elder Abuse?

- ▶ **Financial Exploitation**-- occurs when a person uses another's financial resources for the first person's benefit without the voluntary consent and understanding of the second person.
- ▶ Perpetrators include online/telephone scams, relatives living with the elder, trusted friends who influence the elder, individuals with power of attorney, or complete strangers.




Evaluating the Problem

- ▶ Limited qualitative and quantitative research
 - ▶ Especially with respect to sexual abuse and/or sexual assault of Indian elders
- ▶ Differences in definitions
 - ▶ Elder Abuse
 - ▶ Who is an Elder
- ▶ Cultural competency and community access




National Statistics

- ▶ 14% of elders report some form of abuse since age 60
- ▶ Female elders are abused at significantly higher rates than male elders
- ▶ Individuals age 80 and older experience abuse at rates two to three times their proportion of the population
- ▶ Only 28% of sexual assaults are reported (among the general population)
- ▶ Family members perpetrate anywhere from 44% (emotional abuse) to 67% (physical abuse) of elder abuse
- ▶ Studies demonstrate anywhere from 83% to 95.5% of elder abuse cases go unreported.



Indian Country Statistics

- ▶ Immediate family members perpetrate 80% of elder abuse
- ▶ Extended family perpetrates an additional 10% of elder abuse
- ▶ Poverty among reservation based Indians is endemic
- ▶ Elder abuse is highest when the elder and the caregiver live in poverty



Your Nation

- What elements of Elder Abuse are you seeing most among your people?
- What conduct occurring within your community should be recognized (and codified) as elder abuse?



Why Tribal Codes?

- Tribal Governance
 - Sovereignty
 - Drafting to address specific needs
- Address gaps in judicial systems (jurisdictional issues)
- Public Policy statement



Tribal Governance

- Exercise of Sovereign Authority
- Incorporation of Tribal values into the codes



Specificity in Code Drafting

- Tribal codes delineating traditional values and customs that *do not* constitute elder abuse:
 - The White Mountain Apache, Oglala Sioux, Yankton Sioux, and Sisseton-Wahpeton codes all state that an elder receiving treatment from a recognized traditional religious method of healing, in lieu of medical treatment, is not to be construed as abused.




Specificity in Code Drafting

- Tribal codes incorporating traditional values and customs:
 - The Ho-Chunk Nation's elder abuse code includes as emotional harm the denial of customary grandparents' rights
 - The Hannahville Indian Community (Band of Potawatomi) adult protection code includes as neglect imposition on the elder's time resources, such as leaving children in the care of the elder for extended periods of time
 - The Yakama Nation code defers criminal prosecution to a panel charged with helping the parties resolve the conflict based on tribal customs or traditions.



Your Community

- What specific values, traditions, or customs need to be reflected in your Tribe's code?



Why not adopt State/Federal Codes?

- Outright adoption of State codes is problematic
 - Concerns over replacement of traditional thinking
 - Importing non-Indian concepts of justice that are alien to tribal customary principles
 - State codes barely function



Civil, Criminal, or Both?

- Civil laws generally involve some type of compensation for injuries or damages as well as disposition of property and other disputes.
- Criminal laws generally result in incarceration and/or assignment of fines
- Having both allows for the widest reach in enforcement and protection for elders.



Criminal Codes

- ▶ Jurisdictional challenges when non-Indian is perpetrator
- ▶ Exercise of concurrent jurisdiction as to misdemeanor and gross misdemeanor crimes
- ▶ Why promulgate a code that may be harder to enforce?
 - ▶ Demographics of perpetrators
 - ▶ Legitimacy
- ▶ Sanctions can reflect traditional tribal remedies



Civil Codes

- ▶ Broader enforcement
- ▶ Different sanctions
- ▶ Institute programming for survivors

Remedies

- ▶ Do not have to be punitive (i.e. fines or jail/prison time)
- ▶ Allows for incorporation of traditional healing methods
- ▶ What does traditional healing mean for your tribe?
 - ▶ Specific by gender? Or Age?
 - ▶ Certain Ceremonies
 - ▶ Healing circles
 - ▶ Expectations of service


VAWA 2013: Special Criminal Jurisdiction

- ▶ Pascua Yaqui Tribe, Tulalip Tribes, and the Umatilla Tribes currently exercise special criminal jurisdiction. Special jurisdiction is scheduled to be available to all nations on March 7, 2015
- ▶ Does it make more sense to charge crimes against elders, committed by non-Indian offenders, as domestic violence than elder abuse under special jurisdiction provisions?
- ▶ This is *not* to say that a tribe should forgo a criminal elder abuse code if not exercising criminal jurisdiction




Public Policy

- Demonstrates to Elders the government's in protecting them
- Puts potential offenders on notice
- Sets models for other Tribes (and States)
- Extends Tribal Courts work



Developing Your Tribal Code

- Key Players
 - Tribal Elders
 - Advocates
 - Tribal Attorney
 - Tribal Council/Tribal Legislators
 - Tribal Court personnel
 - Law Enforcement
 - Guardians
 - Tribal Social Services
 - Medical professionals
 - Spiritual leaders
 - Others?



Considerations

- Reporting system
 - Requirement for reporting—who?
 - Where to report
 - Contents of report
- Enforcement
 - Law Enforcement needs
 - Training
 - Staffing
 - Legal process needs
 - Tribal Attorneys
 - Public Defenders (compliance with TLOA)
 - Court Administration
 - Forms created (Elder Protection Order, etc.)s



Considerations

- Response System
 - Direct Services
 - Current social services?
 - Additional Staff?
 - Problems with APS systems
- Funding
 - Tribal Council?
 - Federal grants?
 - Existing monies?
 - Other sources?



Contact Information

Sarah Deer, J.D.

Associate Professor
William Mitchell College of Law
875 Summit Avenue
Saint Paul, MN 55105
651-290-6309
sarah.deer@wmitchell.edu

Courtney Allensworth, M.A., J.D.

Tribal Attorney
Lac Courte Oreilles Band of
Lake Superior Chippewa
13394 W. Trepania Road
Hayward, WI 54843
715-558-7401
courtney.allensworth@lco-nsn.gov