

ELDER ABUSE IN TRIBAL COMMUNITIES¹

by Hallie Bongar White

Elder Abuse Is Not A Traditional Value

Elder abuse is not a traditional value in Native American and Alaska Native communities. Many tribal people view the alarming, recent trend of elder abuse and neglect as a symptom of the dissolution of tribal cultural values and as an indicator of serious imbalance within their communities.¹

Under custom and tradition, native elders were seen as repositories of knowledge and as invaluable community resources. Elders traditionally held positions of power in their communities and were prized for their experience and wisdom. Many tribes, villages, and pueblos continue to hold elders in high esteem as a valuable link to their past and as a resource for future generations.

The Rise Of Elder Abuse Nationally And In Tribal Communities

Unfortunately, abuse and neglect of native elders now occurs with alarming frequency in tribal communities.

Nationally, neglect is the most frequent form of elder abuse. Emotional and psychological abuse, physical abuse, financial and material exploitation, and abandonment are the next most common forms of abuse.²

Adult children are most likely to be the perpetrators of abuse. Spouses, other relatives, and grandchildren are also likely to be the perpetrators of abuse.³ Some 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.⁴

What is Elder Abuse?

Many Native communities define elders as those persons 55 years of age or older. Nationally, non-Indian organizations often define an "elder" as a person age 60 or 65 and older.

¹ © 2004 Southwest Center for Law and Policy & Office on Violence Against Women, U.S. Department of Justice.

The website for the National Center on Elder Abuse is an excellent resource for information on elder abuse. NCEA defines elder abuse and neglect as physical abuse, sexual abuse, emotional or psychological abuse, financial or material exploitation, neglect, abandonment, and self-neglect. The following has been adapted from their 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.

2.) 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.

3.) 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.

4.) 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.

5.) 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.

6.) 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 or will), and the improper use of conservatorship, guardianship, or power of attorney.

7.) 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.

Some tribes may have broader or different definitions of elder abuse. These broader definitions may include forcing an elder to care for small children against their wishes, ritual abuse, and other forms of abuse as defined by the culture and tradition of a tribe. In some tribes 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 culture and world view.

The Causes Of Elder Abuse

Elder abuse, like intimate partner domestic 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 with less power may be more likely to commit some extreme forms of elder abuse.⁵

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.⁶ A study of elder abuse in two Plains tribes similarly found that abuse was highest when the elder and their caregiver lived in poverty.⁷

Native people have also listed alcohol abuse, substance abuse, and a turning away from traditional cultural values as the cause of elder abuse and neglect.

Risk Factors for Abuse

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.⁸

Researchers have found that poverty is a leading risk factor for elder abuse in native communities.⁹ Rates of abuse of native elders are highest in families where income levels for the elder and for the abuser/caregiver are extremely low. Caregiver unemployment also appears to be a risk factor for abuse in Indian communities.¹⁰

Physical frailty and inability to care for oneself are also risk factors. Three out of four victims of elder abuse suffer from physical frailty.¹¹ Close to half of substantiated incidents of abuse and neglect involve elderly persons who are unable to care for themselves. About 28% of substantiated incidents of abuse and neglect involve elderly persons who are able to only marginally care for themselves. Social isolation is another significant risk factor for abuse.

Abuse rates are higher when the elder lives in the same home as the primary caregiver. Caregivers who feel overwhelmed by their duties also present a higher risk for abuse. Respite care or short-term interim relief for caregivers can be an important tool to prevent caregiver burnout and may reduce the risk of abuse.¹²

Reporting of Elder Abuse

More than 79% of elder abuse cases go unreported. Physicians and health care providers are most likely to make reports of abuse or neglect. Other persons in tribal communities who are likely to report 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.¹³

Adult Protective Services and tribal law enforcement should be notified immediately in cases where elder abuse is suspected. APS and tribal police are often the first points of entry into tribal courts and social services for abused elders. 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.

Civil and Criminal Proceedings

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

Tribal courts can 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 elder 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 a protection order against any person who has committed or attempted to commit domestic violence or elder abuse against the elder. 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 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 jurisdictions where there is no specific elder abuse code in place, criminal charges can be brought against the

abuser for assault, sexual assault, reckless endangerment, theft, and other criminal acts.

Elder Abuse Prevention

Community outreach and education are key components of abuse and neglect prevention. Elder centers are an important tool for community outreach and education, as well as for direct services to the elderly.

Elder centers reduce social isolation (a major risk factor for 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.

Elder centers 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.

Tribes are beginning to station 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 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 had 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 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 be a valuable resource in the preservation of culture and language and can provide leadership and strength for the community as a whole.

Crisis Care

Domestic violence shelters are often not equipped with the resources or training necessary to respond to the safety and health 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 send elders in need of care to off-reservation facilities. It is important for 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 house keeping, shopping, and assistance with other household needs.

Challenges And Resources for Tribal Communities Combating Elder Abuse

There is widespread recognition and awareness of the problem of elder abuse and neglect on reservations. 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 abuse issues.
- 2.) A lack of policies and procedures for tribal agencies handling elder abuse and neglect issues.
- 3.) A need for increased training on elder abuse and neglect.¹⁴

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
87196
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
87111
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:

National Center on Elder Abuse
1201 15th Street N.W. Suite 350
Washington, D.C.
20005-2842
202-898-2586
fax: 202-898-2583

¹ See National Center on Elder Abuse, *Addressing Elder Abuse with American Indian Tribes*, A National Teleconference, (Sept. 24, 1995); Hudson, Margaret F. et al., *Elder Abuse: Two Native American Views*, THE GERONTOLOGIST (Oct. 1998).

² See id.

³ See id.

⁴ Brown, A.S., Fernandez, R. & Griffin, T.M., SERVICE PROVIDER PERCEPTIONS OF ELDER ABUSE AMONG THE NAVAJO (RESEARCH REP. RR-90-3) (1990).

⁵ *An Interview About Elder Sexual Assault with Holly Ransey-Klawnsnik*, 4(1) Nexus (Apr. 1998).

⁶ See *supra* note 4.

⁷ See Maxwell, E.K. & Maxwell, R.J., *Insults to the Body Civil: Mistreatment of Elderly in Two Plains Indian Tribes*, 7 J. CROSS-CULTURAL GERONTOLOGY 3-23.

⁸ See National Assn. of Adult Protective Services Administrators, *1996 Study of the National Center on Elder Abuse*.

⁹ See *supra* note 7.

¹⁰ See *supra* note 4.

¹¹ See National Center on Elder Abuse, NATIONAL ELDER ABUSE INCIDENCE STUDY: FINAL REPORT (Sept. 1998) published by the U.S. Dep't of Health & Human Svcs., Admin. For Children & Families & Admin. on Aging.

¹² See id.

¹³ See id.

¹⁴ See The Center on Child Abuse & Neglect, NATIVE AMERICAN ELDER ABUSE (Mar. 2000).