

ELDER ABUSE IN TRIBAL COMMUNITIES: A GUIDE FOR CALIFORNIA STATE JUDGES

This chapter is intended to inform California judicial officers about the unique legal, jurisdictional, factual, and cultural issues that may arise in elder abuse cases involving American Indian/Alaska Natives (AI/AN) or take place in “Indian Country.”¹ The goal is to provide the court with critical information and resources to enable California court officials to effectively handle matters and provide justice in cases of elder abuse involving this population.

This chapter is divided into three sections. Part 1 discusses legal issues such as jurisdiction and specific legal contexts in which state courts may address elder abuse involving AI/AN and/or taking place in Indian Country. Part 2 covers AI/AN identification, history, and cultural beliefs and values that may be relevant when handling an elder abuse matter in state court involving this population. Part 3 offers ideas for judicial fact finding and practices in elder abuse matters involving this population.

The chapter also includes appendices, which provide more detailed information about topics included in the chapter.

The traditional status of elders in American Indian and Alaska Native (AI/AN) cultures is one of honor and respect. Elders are respected for their age, experience, maturity, and wisdom. They are considered valuable resources to the tribe as custodians of tribal history, culture, and tradition. The term “elder abuse” describes a multifaceted phenomenon including abuse forms such as neglect, physical harm, sexual or emotional maltreatment, and exploitation.

(Davis, 2013, at p. 1.)

PART 1: LEGAL ISSUES

AI/AN communities are unique because of their legal status, heterogeneity, cultural values, and history. The state court’s effectiveness in resolving elder abuse matters arising in Indian Country or involving AI/AN may turn on the court’s understanding of those unique features and its consideration of historical approaches and practices when evaluating evidence and issuing rulings.

¹ “Indian Country” is a term that is defined in federal law at 18 U.S.C. § 1151; essentially it includes lands held in trust by the federal government for the benefit of Indian tribes or individual Indians such as reservations, rancherias, dependent Indian communities, and individual Indian trust allotments.

Each federally recognized tribe is a sovereign nation.² Every tribe has authority to enact its own laws and establish tribal courts and justice systems. State law is applicable in Indian Country in limited situations and only with congressional approval. In California, the most common source of this congressional approval is Public Law 280, discussed in more detail below. A state court's authority to issue orders, control parties, and enforce orders against tribal members is different and more limited than that exercised outside of tribal communities. At the same time, AI/AN residents of California are citizens of the state and the country entitled to the same level of services and protection as other citizens.

Currently there are some 566 federally recognized tribes in the United States; 109 federally recognized tribes are in California. An additional 81 entities are currently petitioning for federal recognition.³ Tribes are heterogeneous, not homogeneous. Each has its own history, culture, traditions, laws, language, circumstances, resources, and partnerships. Some of the AI/ANs appearing in state court may be members of federally recognized tribes. Others may not, but may be descendants of or affiliated with an AI/AN community or tribe. Some may live on or off of tribal lands. They may live with non-Indians or persons who are not members of the same tribe. These differences will challenge state courts dealing with legal issues in these populations when crafting effective solutions and providing justice and fair access to the courts.

The history of relations between American Indian tribes throughout the United States and in California and federal and state governmental entities has been contentious and disturbing.⁴ Historical governmental policies and practices have included denial of basic human rights, broken promises and treaties, and practices aimed at eradicating tribal identity and sovereignty. Each tribe's history affects its perceptions of elder abuse, trauma experience, and relationships with federal and state governments, courts, and law enforcement.

I. The Court's Jurisdiction

Jurisdiction involving Indian Country is complex. There are potentially three different systems that may have authority to act in a particular matter: tribal; federal, and state. (More information on jurisdiction may be found in Appendix A.)

² Not all tribes in California are federally recognized and not all AI/AN in California are members of federally recognized tribes or of tribes with historical roots in California. We discuss the California AI/AN population in more detail in Part 2. You can also find more information at www.courts.ca.gov/3066.htm.

³ *Id.*

⁴ There are a number of good resources on California Indian history, which can be accessed at the History section here: www.courts.ca.gov/3066.htm.

a. Criminal Jurisdiction

Historically, the state had no authority to enforce state laws in Indian Country. Tribes could establish court systems and tribal codes but until the passage of the Tribal Law and Order Act in 2010 (Public Law 111-211; TLOA), under the constraints of the Indian Civil Rights Act of 1968 (codified at 25 U.S.C §§ 1301–1304), no matter the seriousness of the crime, a tribal court could only sentence perpetrators to a maximum term of imprisonment of one year.⁵ Tribal courts were prohibited from prosecuting crimes committed by non-Indians. The federal government could prosecute but only for the specific crimes included in the General Crimes Act (18 U.S.C. § 1153) and the Major Crimes Act. (18 U.S.C. § 1152). As a result of these jurisdictional limitations, many crimes could not be prosecuted. The passage of TLOA and the 2013 reenactment of the Violence Against Women Act have closed some of these gaps.

In 1953, Congress passed Public Law 83-280 (commonly referred to as PL 280), which shifted criminal jurisdiction over offenses involving Indians in Indian Country from the federal government to certain designated states, including California. PL 280 also shifted the costs associated with enforcement of criminal laws to California.

PL 280 does not convey state jurisdiction to investigate and prosecute all criminal acts. PL 280 jurisdiction is limited to the enforcement of state criminal statutes.

- Local and county criminal ordinances and laws are not enforceable on tribal lands.
- Civil regulatory laws are not enforceable. Examples of regulatory laws include environmental control, land use, gambling, parking offenses, and licensing.⁶
- PL 280 criminal jurisdiction cannot be used to alter the status of trust lands or to restrict federally protected hunting and fishing rights.
- California cannot tax trust lands.

PL 280 did not alter the tribes' authority to create and maintain police departments with authority to enforce tribal laws. Nor did it fully eliminate federal criminal jurisdiction over certain crimes.

⁵ The Indian Civil Rights Act was codified at 25 U.S.C. § 1301 et seq.

⁶ PL 280 and case law distinguish between criminal prohibitory matters and those that are civil regulatory, however, the line between these categories can be unclear. See *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 209. The fact that something is set out in the criminal code or the nature of the punishment is not determinative. The analysis turns on whether the activity is generally permitted but subject to regulation, and on how closely its control is tied to public safety.

Judicial Checklist to Inform Decision-Making: Criminal Cases

- Did incident occur in Indian Country? (If no, no PL 280 issues.)
- If yes, is at least one of the parties AI/AN? (If no, no PL 280 issues.)
- If yes, is the conduct “criminal prohibitory” or “civil regulatory”?
 - If criminal prohibitory, state court has jurisdiction.
 - If civil regulatory, state court lacks jurisdiction.
- If yes, or if parties are AI/AN, consider incorporating culturally accepted practices and programs into case resolution and other appropriate decisions.

Summary Points Regarding Jurisdiction

- State courts may have concurrent jurisdiction with tribal courts over certain criminal matters.
- State courts are prohibited from hearing certain matters arising on tribal lands.
- State courts may be obligated to apply tribal laws and customs in certain civil disputes.

Resources

For more information about PL 280, please refer to Appendix A: Public Law 280 Jurisdiction, and to the following:

- Judicial Council of California, *Jurisdictional Issues in California Regarding Indians and Indian Country*, available at www.courts.ca.gov/.../Jurisdiction_in_California_Indian_Country.pdf
- VAWA 2013 and Tribal Jurisdiction Over Crimes of Domestic Violence, available at www.justice.gov/sites/default/files/tribal/legacy/2014/02/06/vawa-2013-tribal-jurisdiction-overnon-indian-perpetrators-domesticviolence.pdf

b. Civil Regulatory Jurisdiction

State court jurisdiction over civil regulatory matters involving tribal members and Indian Country is also delineated in PL 280. The statute was designed to open state courts as a forum to adjudicate civil and criminal actions involving Indians living on reservations, without subjecting reservations to the full range of state regulations. Some matters, viewed as central to the existence of the tribe and its sovereign status, are excluded from state court jurisdiction. Examples include tribal membership, use and ownership of trust property and assets, and treaty matters (Goldberg and Champagne, 2007).

The criminal provisions of PL-280 are codified at 18 U.S.C. § 1162. The civil provisions are codified at 28 U.S.C. § 1360. 28 U.S.C. § 1360 provides:

(a) Each of the States listed in the following table [omitted; includes California] shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State...

In California, this section covers all Indian Country within the State.

28 U.S.C. § 1360(b) prohibits California and other PL 280 states from authorizing “the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States.”

Subdivision (b) also prohibits California from:

- Regulating the use of such property in a manner inconsistent with any Federal treaty, agreement, statute or regulation; or
- Adjudicating, in probate proceedings or otherwise, the ownership or right to possession of such property or property interest.

State courts are required to apply tribal law and custom in resolving civil disputes whenever possible. 28 U.S.C. § 1360(c) states that tribal ordinances or customs adopted by an Indian tribe, band, or community in the exercise of its authority shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action.

II. Overview of Legal Issues That Arise in Cases Involving Indian Country

California courts will address elder abuse cases involving AI/AN, some of whom live on tribal lands and some who live elsewhere. State courts will be asked to enforce orders made by tribal courts, review and monitor guardianships and conservatorships established by tribal courts, and issue orders that may require enforcement in Indian Country.

A starting point whenever dealing with matters involving tribal courts and governments is that unlike states, tribes are sovereign governments with many powers of a foreign nation. The sovereignty of tribal governments predates the U.S. Constitution. Tribes are not parties to or generally bound by the Constitution, including the full faith and credit requirements. While tribal courts and governments can be asked to enforce orders, report crimes, and work with state courts, they generally cannot be compelled by the state to do so.

Key to the effective administration of state laws involving an AI/AN or Indian Country is the creation of trusted relationships and agreements between tribal courts and state courts. The goals of these relationships and agreements are to:

- Enhance inter-court communication;
- Increase awareness and understanding of practices, culture, traditions, and services available to AI/AN;
- Improve enforcement of laws and court orders; and
- Assure access to justice for AI/AN.

Over the past two decades, interest has been building in the interaction between American Indian tribal courts and state courts. Specifically, state and tribal judiciaries have devoted attention to promoting cooperation, reducing jurisdictional conflicts, expanding tribal court operations, and granting full faith and credit to each other's judgments and orders. The often unspoken but powerful underlying assumption is a genuine recognition that tribal courts play a vital role in dispensing justice in their communities and that state courts can benefit by working hand-in-hand with them.

(Stenzel, 2009, at p. 226.)

Like a number of other states, California⁷ has created a tribal-state forum to improve relationships and the delivery of justice between state and tribal courts.

In light of this history and the legal issues that arise in cases involving tribal members, California judicial officers hearing cases involving this population may benefit from building cooperative and collaborative relationships with tribal governments, tribal courts, and tribal service providers.

⁷ See California Tribal Court–State Court Forum at www.courts.ca.gov/3065.htm

III. Court Orders

a. Crafting Culturally Sensitive Orders

In crafting orders that build on values and beliefs of AI/AN, the following questions may be helpful:

- What role do older adults play in the family? In the community?
- Who, within the family, provides care to the elderly or sick family members? Is there anyone else that can help?
- Who makes decisions about how family resources are expended particularly for the elderly or sick family member? About other aspects of family life?
- Who, within the family, do members turn to in times of conflict or strife?
- How can the community, court, and tribe work with the elderly person to address what has occurred?
- What conduct would the older adult like to see change? This is culturally preferable to asking what the elderly person wants the abuser to stop doing. Most AI/AN elders will not accuse a family member of criminal acts or abuse but will describe what they would like to see changed.
- To whom will an older adult turn for help (e.g. members of the extended family, respected members of the community, tribal leaders, religious leaders, physicians)?
- What/who are the trusted sources of information in the community?

For more information about cultural values and strengths please refer to section V below.

b. Enforcement Issues

Tribal court orders issued under the domestic violence, family violence, or stalking laws of the issuing jurisdiction are fully enforceable within California (Fam. Code, § 6402) so long as:

- The order names the protected and restrained parties;
- The order is in effect;
- The issuing court had jurisdiction over the subject matter and the parties; and
- Respondent was given an opportunity to be heard. (Fam. Code, § 6401(5).)

Included are orders issued by an Indian “tribe or band.” (Fam. Code, § 6401 (7).)

The order does not need to be registered in California to be enforced. (Fam. Code, § 6403(d).)

Foreign orders, including tribal orders, may be registered in California upon request of a person in possession of the order (Fam. Code, § 6404(a)) at no charge (Fam. Code, § 6404(b)).

Relevant federal law is found at 18 U.S.C. § 2265.

The rule 5.386 of the California Rules of Court has been adopted to guide the filing of tribal court protective orders. The rule is available on the California Courts website at www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_386.

Tribal courts have jurisdiction to issue and enforce protective orders. The Violence Against Women Act provides that “a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe ... or otherwise within the authority of the Indian tribe.” (18 U.S.C. § 2265(e).)

Assuring that a seamless process for entering tribal orders into the California Restraining and Protective Order System (CARPOS) through the California Law Enforcement Telecommunications System (CLETS) is provided, implemented, and used will not only effectuate state and federal law, but it will support inter-court communication, develop trust, and enhance access to justice for litigants. Law enforcement will be better able to enforce orders as they will be able to verify tribal orders.

Not all orders issued in elder abuse matters will meet the standards for full faith and credit under state and federal statutes governing domestic violence. Orders issued in situations where the abuse is solely financial exploitation are not subject to the legal requirements listed above. Such orders are not based on laws related to domestic or family violence or stalking and are not subject to mandatory firearms relinquishment requirements and prohibitions against possession, use, or acquisition of firearms and ammunition. This does not mean the tribal court orders should not be recognized and enforced by state courts. Effective January 1, 2016, California’s version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will provide specific provisions concerning recognition and enforcement of certain adult protective proceeding orders issued by tribal courts.⁸ In addition, state courts may recognize and enforce orders under the principles of comity. State courts should consider working with tribal judges and tribes to develop agreements or other statements of understanding

⁸ See SB 940 (Stats. 2014, ch. 553) at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB940

regarding procedures to register such financial abuse protection orders so they can be verified and enforced.

Enforcement of court orders issued by state courts relating to tribal or individual Indian trust property requires collaboration with tribal courts. A state court lacks jurisdiction to “evict” someone from tribal lands. If a tribal member seeks a protective order under the Domestic Violence Prevention Act (DVPA) and indicates a need for the respondent to be excluded from a residence on tribal lands, courts will likely grant such an order. Effectuating that condition requires the assistance and support of the tribal court as only the tribal authority can force the respondent to leave. The tribe will either need to adopt the state order or use some other procedure. The existence of a collaborative relationship between the tribal and state courts is critical to the victim’s safety and access to justice.

IV. Criminal Cases

California has jurisdiction over crimes that occur in Indian Country.⁹ While there are more state prosecutions of elder abuse cases than previously, it is rare to hear of a successfully prosecuted elder abuse case involving AI/AN living in Indian Country.¹⁰

When handling a criminal elder abuse case, particularly when setting bail and at sentencing, the court should consider the centrality of the extended family among AI/ANs (Red Horse, 1983, 1997). Because members of these communities view elder abuse as a shared problem, they will expect to be engaged in addressing the problem. At the same time, the court also should consider the possibility of co-occurring child abuse and neglect and/or interpersonal violence (Jervis, 2013). If appropriate, the state court may find it helpful to engage community members and tribal services in the defendant’s recovery and related prevention efforts.

A discussion of alternatives to the existing criminal justice model, such as restorative justice, is below in section IX.

a. Handling Sacred Objects

On occasion, courts will need to order that a AI/AN be taken into custody. That person may be wearing a sacred item or have sacred item, such as a medicine pouch or eagle feather, in their possession. Absent safety or evidentiary reasons, it is preferable that such items not be handled, disturbed, or booked into evidence (See Hendrix, n.d.). Often

⁹ Subject always to the “criminal prohibitory” versus “civil regulatory” analysis discussed above.

¹⁰ See U.S. Department of the Interior, Bureau of Indian Affairs. (2013). *Adult Protective Services Handbook*, at p. 8, available at www.bia.gov/cs/groups/webteam/documents/document/idc1-026637.pdf.

cultural and religious rules govern who may touch such objects and how they should be dealt with. While mindful of the need for courtroom and jail security, the court should consider if the item really needs to be taken, handled, or searched. If the item does not need to be booked or handled, it may be helpful to determine if it can be turned over to someone designated by the defendant who understands the proper handling and maintenance of such objects.

If there is a need to handle the object, the court and its staff should consider if the intrusion can be minimized. The court and or police may want to consider consulting a tribal leader or elder for advice on the proper treatment of the item. The court can honor tribal traditions by anticipating such situations and working with the tribal court or tribal leadership to develop a respectful process.

V. Conservatorship and Guardianship Cases

Tribes have the inherent sovereign authority to enact laws governing their lands and their members and to establish tribal courts to enforce those laws, including those addressing civil and criminal aspects of elder abuse, such as laws creating and supervising guardianships and conservatorships.

Depending on tribal law, tribal courts may exercise jurisdiction to protect and govern members living outside of Indian Country—for example, when elders for whom tribal courts have established conservatorships (or guardianships) move outside of Indian Country borders to state lands. Historically it has been difficult to register or transfer those conservatorships and guardianships between state and tribal courts so courts could monitor and oversee them. Monitoring is an important way to prevent and detect abuse by court-appointed conservators and guardians.

Senate Bill 940, effective January 1, 2016, establishes the California Conservatorship Jurisdiction Act (CCJA), a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The CCJA defines standards and procedures for jurisdiction in a proceeding to appoint a conservator of a person, estate, or both. The CCJA establishes conditions for registering or transferring a conservatorship from or to California and from or to another state or a federally recognized Indian tribe. Provisions, codified in the California Probate Code, include the following:

Probate Code, § 1821(k) requires that a petition for conservatorship state whether the proposed conservatee is a member of a federally recognized Indian tribe. If so, the petition shall state the name of the tribe, the state in which the tribe is located, and whether the proposed conservatee resides on tribal land and/or is known to own property

on tribal land. Probate Code, § 1982(m) includes in its definition of the term “state” a federally recognized Indian tribe.

Probate Code, § 1984 permits a California court to communicate with a court in another state concerning a proceeding arising under the act. The court may allow the parties to participate in the communication.

Probate Code, § 1985 authorizes a California court to request that an appropriate court in another state conduct an evidentiary hearing; order a person in that state to produce evidence or give testimony, order an evaluation or assessment of a proposed conservatee; order any appropriate investigation of a person involved in a proceeding, forward a certified copy of the transcript or other record of a hearing, evidence, or assessment to the California court; and issue orders authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information.

Section 1985(b) authorizes a court in another state to make similar requests of a California court.

Probate Code, § 1993(b) authorizes a California court to permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A California court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

Special provisions apply if the proposed conservatee is a member of a federally recognized Indian tribe.

Probate Code, § 2031 provides as follows:

- (a) “California tribe” means an Indian tribe with jurisdiction that has tribal land located in California.
- (b) “Indian tribe with jurisdiction” means a federally recognized Indian tribe that has a court system that exercises jurisdiction over proceedings that are substantially equivalent to conservatorship proceedings.
- (c) “Tribal land” means land that is, with respect to a specific Indian tribe and the members of that tribe, “Indian country” as defined in Section 1151 of Title 18 of the United States Code.

Probate Code, § 2033(a) states: “If a petition for the appointment of a conservator has been filed in a court of this state and a conservator has not yet been appointed, any

person entitled to notice of a hearing on the petition may move to dismiss the petition on the grounds that the proposed conservatee is a member of an Indian tribe with jurisdiction. The petition shall state the name of the Indian tribe.”

Section 2033(b) states: “If, after communicating with the named tribe, the court of this state finds that the proposed conservatee is a member of an Indian tribe with jurisdiction, it may grant the motion to dismiss if it finds that there is good cause to do so. If the motion is granted, the court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a conservator be filed promptly in the tribal court.”

Section 2033(c) states:

In determining whether there is good cause to grant the motion, the court may consider all relevant factors, including, but not limited to, the following:

- (1) Any expressed preference of the proposed conservatee.
- (2) Whether abuse, neglect, or exploitation of the proposed conservatee has occurred or is likely to occur and which state could best protect the proposed conservatee from the abuse, neglect, or exploitation.
- (3) The length of time the proposed conservatee was physically present in or was a legal resident of this or another state.

These new provisions create a need for tribal courts and state courts to develop cooperative and collaborative relationships to protect conservatees and wards. Because many tribal members live off of tribal lands and may return to the tribe for medical and other services, it is likely that that there will be frequent movement between jurisdictions.

VI. Tribal Money Judgments

Beginning January 1, 2015, and lasting until December 31, 2017, unless reauthorized, Indian tribal court money judgments are exempted from the Uniform Foreign Country Money Judgments Recognition Act (Cal. Code Civ. Proc., § 1713 et seq.). Instead, recognition and entry of tribal money judgments are controlled by the Tribal Court Civil Money Judgment Act (Code Civ. Proc., § 1730 et seq.).

These provisions do not apply to taxes, fines, or other penalties or to child and family support orders subject to full faith and credit; nor do they affect other state or federal laws granting recognition to tribal court orders; nor do they apply to probate matters

such as guardianships, conservatorships, trusts, powers of attorney, and matters involving estates of deceased persons.

Tribal courts and tribal justice systems include all courts or administrative bodies established under the law or custom of federally recognized Indian nations, tribes, pueblos, bands, or Alaska Native villages.¹¹ A tribal court money judgment refers to any written judgment, decree, or order of a tribal court for a specified amount of money issued in a civil action or proceeding that is final, conclusive, and enforceable by the issuing tribal court and is authenticated in accordance with the tribe or tribal court's laws and procedures.

Jurisdiction for filing the application is the county in which respondent lives or owns property; or if respondent is not a resident of California, in any county in the state where he or she does reside.

Applications are filed in superior court and executed under penalty of perjury (Code Civ. Proc., § 1734). Required statements and attachments appear in the same section. Notice and service requirements are detailed in section 1735.

The superior court judgment must include the terms and provisions of the tribal court money judgment and shall be entered in the same manner, have the same effect, and be enforceable in the same manner as any civil judgment, order, or decree of a state court (Code Civ. Proc., § 1736(b)).

For reasons specified in statute a state court may refuse to recognize a tribal court money judgment (see Code Civ. Proc., § 1737(b) and (c)).

The Judicial Council must prescribe appropriate application forms for recognition of tribal court money judgments.

VII. Discovery Issues

When matters are pending in state court, sometimes records or information in the possession of the tribal government may be sought. Examples include Adult Protective Services (APS) records prepared by tribal APS, video footage from a tribal business or casino showing an assault, and victim medical records from a tribal health clinic. Such records may especially relevant in a probate or criminal matter.

As sovereign governments, tribes, tribal governments, and tribal enterprises that are deemed arms of the tribal government may claim tribal sovereign immunity from state

¹¹ 25 U.S.C. § 1301; 25 U.S.C. § 1903(12); 25 U.S.C. § 1306(8).

court process, including subpoenas or summonses. Instead, state and tribal courts will need to develop agreements and procedures to review such requests and respond to them.

PART 2: IDENTIFICATION, HISTORY, AND CULTURAL BELIEFS AND VALUES OF AMERICAN INDIAN AND ALASKA NATIVE TRIBAL MEMBERS

I. Tribal Definitions and Demographics

In this segment the legal definition of who is an Indian, what is Indian Country, the number and nature of tribes and tribal membership, and information about California's tribal population are discussed. It is important to acknowledge that the legal definitions and categories established by federal and state law may not correspond to the way these terms and categories are understood by AI/AN and tribal governments.

II. Identification as an American Indian/Alaska Native (AI/AN)

There is no single definition of the term "Indian." The term "Indian" may be used to refer to a cultural, historical, racial, or legal category depending on the context and who is using the term and for what purpose. For the most part, the categories reflect a colonial worldview that has been imposed upon indigenous peoples and does not reflect their own historic beliefs and practices. Nevertheless it is important to understand the various meanings of the term Indian when attempting to determine the court's jurisdiction and mandates.

The determination of who falls under the legal definition of Indian continues to evolve.¹² For example, in *United States v. Rogers* (1846) 45 U.S. 567, the court defined the term "Indian" to mean "those who by the usages and customs of the Indians are regarded as belonging to their race. It does not speak of members of a tribe, but of the race generally, of the family of Indians . . ." (at p. 573). When Congress has not provided a definition courts have developed a two-prong test: "(1) the degree of Indian blood; and (2) tribal or governmental recognition as an Indian." *United States v. Broncheau* (9th Cir. 1979) 597 F.2d 1260, 1263. Actual tribal membership is not dispositive. *Ex parte Pero* (7th Cir. 1938) 99 F.2d 28, 31; *United States v. Bruce* (9th Cir. 2005) 394 F.3d 1215, 1224.

Each government—tribal and federal—determines who is an Indian for purposes of *that* government's laws and programs. As a result someone may be designated an Indian under tribal law but not under federal law or vice versa. (Administration for Native Americans, 2014b.) When used in relation to tribal membership, Indian is a political classification, not a racial one.

¹² Felix S. Cohen, *Handbook of Federal Indian Law* (2005 ed.) § 3.03[1], at page 171.

The term “Indian” has been used by the federal government to define the limits of tribal communities for the purposes of federal statutes and distribution of assets pursuant to treaties and other agreements. Federal recognition of a particular group as constituting a tribe for federal purposes has historically occurred through treaties, acts of Congress, presidential executive orders or other federal administrative actions, and federal court decisions. (Administration for Native Americans, 2014b.) Tribes seeking federal recognition may request it (see 25 C.F.R. Part 83).

Federal recognition by the U.S. Department of the Interior largely guarantees that an Indian tribe will qualify to participate in federal Indian programs. That said, the denial of federal recognition does not necessarily disqualify a tribe or its individual members from all federal programs as eligibility may be extended to state-recognized tribes, particular individuals of Indian ancestry or identification,¹³ nonprofit organizations, and programs not specifically limited to federally recognized tribes. (Administration for Native Americans, 2014b.)

For criminal jurisdiction under federal law, members of federally recognized tribes are “Indians” (25 U.S.C. § 1301(2)) even if the alleged act occurred on some other federally recognized tribe’s lands. Enrolled members of tribes recognized by a state (but not by the federal government) and indigenous people from Canada, Mexico, and other foreign nations do not meet the legal definition of “Indian” for criminal jurisdictional purposes because they do not have a special legal and political relationship with the United States government. (*Morton v. Mancari* (1974) 417 U.S. 535; *United States v. Antelope* (1977) 430 U.S. 641.)

California does not appear to have any formalized process to provide state recognition for a tribe.

Even if an individual or a group may not fit within a legal definition of “Indian” or “tribe,” they may be culturally and historically Indian by ancestry and affiliation.

¹³ 25 U.S.C. section 651 defines the “Indians of California as follows: “the Indians of California shall be defined to be all Indians who were residing in the State of California on June 1, 1852, and their descendants now living in said State.”

Summary Points Regarding Identity as an Indian

- There is no single definition or procedure for determining who is an Indian.
- The definition will be based on the defining authority, context, and purpose for the designation.
- The court may need to determine a litigant’s status when evaluating its jurisdiction, location of the incident before the court, and applicable procedures.

Resources

Map of “Indian Country” in California at
www.bia.gov/cs/groups/xregpacific/documents/document/idc1-028537.pdf

For more about the AI/AN population in California see
www.courts.ca.gov/3066.htm

III. “Indian Country”

Under federal law, “Indian country” is defined as:

- (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation,
- (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and
- (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(18 U.S.C. § 1115.)

IV. The American Indian/Alaska Native (AI/AN) Population

The AI/AN community is highly heterogeneous, diverse, and growing (Hendrix, n.d.). Each of the 566 federally recognized tribes, as well as bands and clans, has its own

distinct history, culture, and often separate language (U.S. Department of Justice, Dec. 2004; U.S. Department of the Interior, Jan. 2014). There are many more tribes that are not federally recognized.

In California, there are currently 109 federally recognized Indian tribes (U.S. Department of the Interior, Jan. 2014) and 81 entities petitioning for recognition (Bureau of Indian Affairs, 2013). In addition, there are several rancherias, tribal communities, and federally recognized tribes comprised of multiple historical tribal entities that were put on the same reservation by the federal government. (For example, see the history of the Shoshone Bannock tribes at www.shoshonebannocktribes.com/shoshone-bannock-history.html.)

California is home to the largest number of AI/AN residents in the United States. There are approximately 150 distinct tribes that are native to California (California Native American Heritage Commission, www.nahc.ca.gov/cna.html). In addition to the indigenous California Natives, there are many American Indian and Alaska Natives living in California from tribes across the United States and the Americas. For example, California is home to many Cherokee, Navajo (also known as Dine), Lakota (also known as Sioux), Mayan, and so on.” (Satter et al., 2010, at p. 50.)

While an estimated 14% of AI/ANs living in California are members of California indigenous tribes, the majority are members of tribes outside of the state. In addition, the majority of California AI/ANs do not live on reservations but live in other urban and rural areas. (Satter et al., 2010.) Many AI/AN members have left tribal lands because of their small size, remoteness, and, in many cases, lack of economic opportunities. In California, about 60% of AI/AN elders live in urban areas. Los Angeles County is home to the largest urban AI/AN population in the country. (Satter et al., 2010.)

Those tribal members who do live on tribal lands often live with non-Indians and non-member Indians.

For more information about the California AI/AN population and where members live, please review Appendix B. See also “Native American Statistical Abstract: Population Characteristics,” *CFCC Research Update* (March 2012), available at www.courts.ca.gov/documents/Tribal-ResearchUpdate-NAStats.pdf; and “Native American Research Series: Tribal Justice Systems,” *CFCC Research Update* (June 2012), available at www.courts.ca.gov/documents/TribalJusticeSystemRU.pdf.

Summary of Section and Application to the State Court

- Understanding where older AI/AN individuals live may provide context to some of the jurisdictional issues courts may face. For example, if the person lives in Los Angeles but is the victim of financial exploitation of his or her per capita distribution by family members who live on tribal lands, it may be difficult to locate the perpetrator, issue warrants, and obtain critical tribal records.
- Local law enforcement may be in geographically distinct areas from where the theft occurred and may lack information about their authority to investigate crimes on tribal lands. Tribal and local authorities may not cooperate with one another and courts may be without authority to issue certain orders for persons on tribal lands or may be unable to obtain compliance with their orders.

Resources

For more information on the AI/AN elderly population, please refer to Appendix B: The AI/AN and AI/AN Elderly Population: Growth and Residence

V. The AI/AN Elderly Population

There is no single legal definition of the age at which a person becomes “elderly.” In California, a person is an elder for purposes of an elder abuse restraining order under Welfare and Institutions Code, § 15657.03, victim designation under Penal Code, § 368, and subject of a mandatory elder abuse report under Welfare and Institutions Code, § 15630 et seq. at age 65. Federal laws incorporate a variety of age-based definitions. For example, the Older Americans Act (42 U.S.C. § 3057 (2006)) uses age 60; Medicare uses age 65; and the Department of Justice Late Life Grants program uses age 50. Federal data sources use a variety of ages as well.

When describing the AI/AN population, many tribes consider 50 or 55 as elderly (Hendrix, n.d.; White, 2004). This younger age may be due to the reality that impairments associated with aging in AI/ANs may occur 20 years earlier than in the general population (National Indian Council on Aging, 1981) and to the recognition that AI/AN persons have historically lived shorter lives than other racial and cultural groups living in the United States. American Indians and Alaska Natives born today have a life

expectancy more than 4 years less than all other races in the U.S. population (73.7 years vs. 78.17 years) (Indian Health Service, 2015).

VI. Illness, Dementia, Depression, and Death in AI/AN Communities

The Indian Health Service (2014) reports that AI/AN people “have long experienced lower health status when compared with other Americans. Lower life expectancy and the disproportionate disease burden exist perhaps because of inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences. These are broad quality of life issues rooted in economic adversity and poor social conditions...” (Indian Health Service, 2015).

Physical complaints are normalized as part of life, and memory loss and dementia are minimized by family members and the tribal community. The diagnostic criteria of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)* may not be applicable to members of the AI/AN community due to differences in tribal beliefs about mental illness, cultural labeling of different emotions, and conceptual language differences (Hendrix, n.d.). These differences carry over to medical and mental health screenings and assessments. Unless the testing includes culturally applicable elements, the person may appear less capable than he or she actually is.

Depression is generally not discussed so its prevalence among older tribal members is unknown. If questions about depression need to be asked, the interviewer will be more effective if the questions are framed in terms of having a heavy heart or feeling out of balance or out of harmony with the earth, which are emotions that are more culturally acceptable to express. (Hendrix, n.d.)

Little is known about the extent or nature of dementia in AI/AN communities. There is no prevalence data on various causes or types of dementia in the AI/AN population. While Alzheimer’s disease is thought to be rare, vascular dementia is believed to be more common due to high rates of diabetes. (Hendrix, n.d.)

Dementia may be described in cultural terms rather than as an illness, e.g., as part of learning, the outcome of violating a cultural taboo, communicating with the next world, or the conflict and stress of living in two worlds at the same time.

Courts should be aware that some AI/AN cultures do not speak of death, dying, or negative consequences in the belief that thought and speech can cause the negative outcome to occur. Many AI/AN traditions teach there will be a joining with the ancestors and that death is a natural part of the life cycle.

Some believe that dementia and illness are caused by an imbalance in the patient’s spiritual, emotional, and social environment. Speaking of negative consequences

(prognosis) of an illness can bring those events to pass as thought and language have the power to shape reality.

In some traditions, speaking the name of the deceased person may hold that person's spirit in limbo and delay their journey to the next world. As an example, in one tribe therapy groups had to address grief from the loss of a number of young people in a single accident. Within this tribe, the names of the deceased were not to be spoken because it would have pulled the individuals back from the spirit world and would not have let the individuals move forward in their journey.

(Gray and Rose, 2012; Hendrix, n.d.)

Summary Points About Health Conditions and Death in the AI/AN Elderly

- Courts should carefully weigh the results of mental-status and functional evaluations if the evaluation does not incorporate cultural elements. In particular, courts should view with caution the results of testing and assessment tools if commonly used activities of daily living (ADL) and instrumental activities of daily living (IADL) scales were used. These tests typically evaluate tasks such as the older adult's ability to manage a checkbook and use a telephone. These tasks may have never been done by an elderly tribal member whose life revolved around chopping wood, carrying water, leather working, bead working, and weaving. (Hendrix, n.d.) Courts should be aware that there are concerns about the validity of the Western measures of depression with the AI/AN populations. Courts are urged be cautious if presented with findings based on evaluations that use scales other than the Indian Depression Scale (IDS). The IDS was developed to incorporate the cultural context of AI/AN life. Other scales may yield results that indicate that a person is more depressed or incapacitated than she or he really is. (Hendrix, n.d.)
- Evaluators and courts should frame questions about depression in terms of having a heavy heart or feeling out of balance or out of harmony with the earth as these are more culturally acceptable emotions (Hendrix, n.d.).
- Court officials—whether conducting an investigation as part of a conservatorship proceeding, questioning an older AI/AN as part of a restraining order application, or evaluating testimony regarding possible neglect or a threat of death—may find it difficult to get the relevant information. The older tribal member may be unwilling to speak of death or a fear of death from the actions of another in the belief that by talking of death it will come to pass or if the person has already died, then mentioning the person's name will delay his or her meeting with the ancestors. Family members may be unwilling to describe behaviors or capacities associated with dementia fearing doing so will worsen the condition.
- Courts interceding in situations in which a family is neglecting an elderly AI/AN may need to recognize and consider that the family may resist court interventions because of a cultural belief that it is their responsibility to provide care or that the condition is one they should be able to manage.
- Court officials may want to consider modifying their form of questioning to incorporate an understanding of relevant cultural views. They may find it helpful to ask about cultural attitudes, values, and beliefs in order to offer more culturally acceptable ways to accept services or to ask about illnesses in ways that provide the court with needed information without raising concerns about hastening death or slowing the reunion with ancestors.

Resources

For more information on AI/AN beliefs please see Appendix G: History and Historical Trauma

VII. Cultural Values Relevant to Elder Abuse in AI/AN Communities: Overview

This section summarizes what is known about elder abuse in AI/AN communities. The traditional roles of “elder” members in tribal communities, as well as cultural values relevant to an understanding of elder abuse, are examined. That said, traditional values vary from tribe to tribe and region to region. (Gray and Rose, 2012.)

a. The Traditional Role of Elders; “Elder” vs. Elderly

Outside of AI/AN communities, the terms “elder” and “elderly” are used interchangeably. In tribal communities these terms have distinct and different meanings. The term “elder” denotes a position of leadership based on experience, spirituality, and community service, rather than age. In short, “elder” is not the same as an older Indian. (Hendrix, n.d.)

The traditional status of elders in American Indian and Alaska Native cultures is one of honor and respect. Elders are respected for their age, experience, maturity, and wisdom. They are considered valuable resources to the Tribe as custodians of Tribal history, culture and tradition.

(Jackson, and Sappier, 2005, at p. 1.)

Elders have been seen as repositories of knowledge, valued for their experience and wisdom, and as an important link to the past and a resource for the future (White, 2004). For example:

It is the tradition and custom of the White Mountain Apache people to honor and protect their elderly as they are the possessors of the spiritual and collective wisdom and traditions of the White Mountain Apache Tribe of the Fort Apache Indian Reservation which are passed from generation to generation.

(White Mountain Apache Tribe, Elderly and Incapacitated Adult Protection Ordinance, 1998.)

Elders are valuable resources to the Nation because they are repositories and custodians of Navajo history, culture, language, and tradition. Navajo elders provide stability by being role models for their children and grandchildren to whom they demonstrate long-lasting commitment to family, marriage, employment, profession and other social institutions.

(Navajo Nation, Dineh Elder Protection Act, 1998.)

Respect for elders, both tribal and familial, is instilled in children from a young age...[t]ribal elders today still perform many important spiritual, political, and tribal functions.

(Carson and Hand, 1999, at p. 170.)

Summary Points About Term “Elder”

- California court officers should distinguish between “elders” and “elderly” AI/AN when addressing older litigants for whom it may be preferable to use terms such as “elderly” or “older person.”
- When statutory requirements do not require the use of the term “elder abuse” consider using other terms such as “abuse in later or late life” or “abuse of an older adult.”

b. Cultural Values Relevant to an Understanding of Abuse in Late Life

Native Americans generally share a set of cultural values and norms regarding their social goals and relationships, particularly within their families that tend to be very different from and even in conflict with those found among White Americans... . The dominant values of Native Americans in general have the effect of creating and sustaining a sense of community and belonging... . It begins with a spiritual base, and religious observances are a vital part of their social lives... For many, their basic religious belief is that they come from and continue to be part of the earth. It follows from that, then, that they must live in harmony generally with nature and specifically with their fellow tribesmen. Consequently, they tend to interact with each other primarily on the basis of cooperation and family/clan interdependency... . Traditionally, Native Americans have tended to deliberately avoid the kind of intense individual competition that prevails throughout the modern Western world. (Cites removed.)

(Brown, 1999, at p. 150.)

These shared values have contributed to individual, family, and tribal “survival and resiliency” and include, in addition to what has already been highlighted, community conscience and responsibility; group participation and success; reciprocity; “optimism and contentment that comes from a cosmic identity; a deep sense of spirituality... and a priority of living in harmony with all creation...” (Carson and Hand, 1999, at p. 170).

Tribes represent “communities of relatedness” (relationships that endure from generation to generation) (Carson and Hand, 1997, at p. 88).

Cultural values that may act as protective factors in elder abuse and neglect in Native American communities include:

1. Strong emphasis on family and tribal interdependence and support, community.
2. Conscience and responsibility, group participation, cooperation and non-competition except in playful, ceremonial, or athletic activities, values rooted in Tribal culture, spirituality, ritualistic practice, and living in harmony.
3. Extended family and kinship networks.
4. Trans-generational transmission of history, customs, and beliefs.
5. Respect for tribal and familial elders and older family members.
6. Interest in preserving tribal culture and languages.
7. Belief in broad dispute resolution in which “each person is an integral part of the community as a whole; each person’s actions reflects a distinctive life path that should not be judged by others; and the goodness or harm one shows to others will eventually return to the life of the sender”
 - (Carson and Hand, 1997, at p. 88.)

Courts can integrate these cultural values when resolving legal matters. For example, in criminal cases, these values may be relevant when making pretrial release and any conditions, considering the likelihood of the offender obeying court orders, determining links to the community, and evaluating counseling programs at sentencing.

When issuing court orders, the existence of these values may be helpful in determining the likelihood that the restrained party will honor the order and the protected party will be supported by the family and others as they seek protection.

In probate matters, these values may be helpful when deciding who to appoint as a conservator, whether the caregiver is an appropriate choice and capable of providing proper care, and if the caregiver will be supported by others when providing care. A discussion of their use in crafting orders was described previously in section III.a of Part I.

Cultural Values About Dementia and Death

Summary Points Regarding Shared Cultural Values

- Courts should be aware of cultural values and beliefs and protective factors in local tribal communities.
- Court practices and rulings that incorporate those values and protective factors are more likely to be effective.
- State court judges should build relationships with their tribal counterparts and tribal governments.

c. Historical Trauma and Tribal History

The history of AI/AN tribes and government interactions is a lengthy and sad one marked by policies and practices designed to destroy tribal communities, assimilate members into the European-American culture, “civilize” tribal members, and end cultural practices and tribal identification (Trusty et al., 2002). AI/AN who lived through the centuries of such practices suffered a variety of traumatic consequences that are often labeled as “historical trauma” in which the trauma is transferred to subsequent generations through biological, psychological, environmental, and social means, resulting in a cross-generational cycle of trauma (Brown-Rice, 2013). Historical trauma has led to changes in tribal beliefs and culture.

Historical trauma has resulted in social-environmental, psychological, and physiological disparities. Examples are described in the following table:

Type of Stressor	Manifestations
Social-environmental	<ul style="list-style-type: none"> • Higher domestic violence, physical and sexual assault rates (3.5 times higher than national average and may be higher due to underreporting) (Sue and Sue, 2012). • Higher poverty rates (U.S. Census Bureau, 2006; Denny, et al., 2005; Brown-Rice, 2013). <ul style="list-style-type: none"> ○ 28.4% of AI/AN lived in poverty in 2010 (compared to 15.3% of the nation as a whole). (U.S. Census Bureau, 2010c.) ○ AI/AN elders age 55 and over are nearly three times more likely (49% vs. 17%) to be poor or near poor (less than 200% of the federal poverty level (FPL)), than non-Latino whites. (Satter et al., 2010.) • Lowest income, least education, and highest poverty level of any group in the U.S. (Denny, et al., 2005; Brown-Rice, 2013). • Higher unemployment rates than rest of U.S. population (U.S. Census Bureau, 2006).
Psychological	<ul style="list-style-type: none"> • Highest rate of weekly consumption of alcohol of any ethnic group (Chartier and Caetano, 2010; Myhra, 2011). • High rates of mood disorders and PTSD (Centers for Disease Control and Prevention (CDC), 2007; Dickerson and Johnson, 2012). • Suicide rates are 3.2 times higher than the national average (CDC, 2007). • Compared with all other racial groups, non-Hispanic Native American adults are at greater risk of experiencing feelings of psychological distress and more likely to have poorer overall physical and mental health and unmet medical and psychological needs (Barnes, et al., 2010; Brown-Rice, 2013).
Physiological	<ul style="list-style-type: none"> • The life expectancy at birth for the Native American population is 2.4 years less than that of all U.S. populations combined (CDC, 2010). • The lowest life expectancy of any population group in the United States (CDC, 2010). • Higher rates of heart disease, tuberculosis, sexually transmitted diseases, and injuries (Barnes et al., 2010). • Diabetes prevalence is significantly higher than any other racial or ethnic group in the United States (Barnes et al., 2010).

Resources

For more information on historical trauma, please refer to Appendix G: History and Historical Trauma

- See also Evans-Campbell, T. (2008). Historical trauma in American Indian/Native Alaska communities: A multilevel framework for exploring impacts on individuals, families, and communities, *Journal of Interpersonal Violence* 23, 316, available at <http://jiv.sagepub.com/content/23/3/316>.
- For an example of a culturally based curriculum for use in domestic violence matters, see: The Northern California Tribal Court Coalition (2010), Native Identity-Based Cultural Intervention and Healing Curriculum.

Significance of Historical Trauma for California Judicial Officials

The boarding school experience continued well into the 1960s and, in some places, even longer. As a result, courts will be dealing with actual survivors of the boarding school experience or their children or grandchildren. The boarding school experience left many AI/AN distrustful of governmental officials, including courts, and unwilling to seek help from non-tribal professionals and systems.

JUDICIAL CHECKLIST

Courts working with older AI/AN and/or their families may want to explore:

- Are the parties—all or some—“traditional” in their beliefs and practices, “acculturated,” or somewhere in between?
- Are the parties—all or some—familiar with, and accepting of, state laws and practices? (Note: this is not to suggest that if parties are not accepting of state practices and laws, the court cannot or should not act, but rather to gain information whether a party is more or less likely to understand state and local services, court orders, duties of a conservator, bail conditions, etc.)
- How can the court improve its communication with the victim and offender?
- Are there situations in which the court could use less adversarial procedures and employ procedures that are more in keeping with how tribal communities address conflict and unacceptable behavior, if agreeable to the victim?
- Are there services available through the tribe that would be helpful and incorporate an understanding of the tribe’s and the individual person’s historical experiences?
- Can the court incorporate traditional practices into the court’s response?
- Would it be helpful and appropriate to share supervision and monitoring of a court order or offender’s sentence terms with a local tribal court or tribal entity? Would the tribal court welcome such a request?
- What kinds of agreements or understandings exist between a state court and tribal court?
- Would the victim be assisted by and amenable to counseling, healing practices and ceremonies, and support through the tribe?

Summary Points About Historical Trauma

- AI/AN litigants may well have personally experienced governmental practices that eroded trust in the U.S. government, undermined tribal identity, and left deep personal scars. Even if litigants did not, they know others who had these experiences.
- State court officials should become knowledgeable about the local tribes and their historical experiences with state and federal governments.
- Developing collaborative and cooperative relationships with tribal court officials and tribal governments may be helpful in overcoming distrust about the state government and courts.
- Integrating traditional practices and tribal programs into state court rulings may increase trust and participation by AI/AN.

VIII. Defining Elder Abuse in Tribal Communities

The elder abuse prevention field has long struggled to create a single universally accepted definition of elder abuse. In the absence of such a definition, a framework has been offered. The federal Roadmap Project funded by the U.S. Departments of Justice and Health and Human Services, drawing on the expertise of some 750 researchers, practitioners, and other experts in the field, described elder abuse as physical, sexual, and psychological/emotional abuse; financial exploitation; abandonment, and neglect of an older adult by another person or entity that occurs in any setting “*either in a relationship where there is an expectation of trust and/or when an older person is targeted based on age or disability*” (Connelly, Brandl, and Breckman, 2014). While this framework is helpful, it does not fully encompass elder abuse as experienced by elderly AI/AN.

Because of the diversity of AI/AN tribes and communities, there will be “differences in perceptions of elder abuse among persons of the same race in different areas of the state who may have different cultural backgrounds and values. This finding is a reminder of the heterogeneity of persons who are seemingly of the same race and that race does not equal culture.” (Hudson et al., 1998, at 548; U.S. Department of the Interior, 2013.)

AI/AN perceptions of elder abuse include:

- AI/AN older adult respondents ranked more items as abusive and 22 items at a higher level of abuse severity than did African American and Caucasian respondents. In comparison to African Americans and Caucasians, Native Americans felt more strongly that “verbally forcing” (term used in the survey) an elder is elder abuse and that some elder abuse is committed by relatives. They were also more likely to disagree that yelling and swearing at an elder needs to occur more than once to constitute elder abuse and that the use of “verbal force,” including yelling or swearing at or belittling an elder, is not a form of elder abuse. American Indian/Alaska Native older adults were less likely than other groups to agree that elders are at risk for elder abuse because they are seen as physically weaker than when they were younger; healthy elders can be abused; and elder abuse is mistreatment because the behavior harms the elderly adult. (Hudson and Carlson, 1999, at pp. 197–199; Hudson et al., 1998.)
- Distinguishing financial exploitation from culturally acceptable conduct is difficult. Elderly Navajo tribal members who admitted that their money went to someone else all explained that it had been a matter of an elderly person voluntarily sharing their money with needy family members. They were not

being exploited, but were themselves living up to an important cultural value (Brown, 1998). The interplay of cultural values and elder abuse are not evident just in financial exploitation.

- Exploitive child care may be difficult to distinguish from culturally normative and esteemed child care (Jervis, 2013).
- Older AI/AN who are asked about abuse are likely to characterize it in terms of being treated well or poorly by family. The term “family” has cultural significance and often includes individuals who are not biological relatives. In the Shielding American Indian Elders (SAIE) project, older tribal members were asked about their beliefs. Good treatment included being taken care of, having one’s needs met, and being respected. In contrast, poor treatment included financial exploitation, neglect, and lack of respect (Jervis, 2013). Respect was a crucial component of what it meant to be treated well, while disrespect was largely equated with abuse (Jervis, 2013, at p. 76).
- Tribal members describe certain conduct as “ritual abuse” in which the older adult is denied access to traditional activities such as attendance at the powwow, not permitted to join in community ceremonies, not provided or allowed to eat traditional foods associated with certain observances, as well as other actions that are defined by the tribe’s culture and tradition (National Indian Council on Aging, 2012).
- Tribal communities may not conceptualize abuse of older members in the same way as the dominant culture. In particular, they may not conceptualize it as criminal conduct (Heisler, 2000, 2013) in which wrongful acts take place in a context where there are clear perpetrators and clear victims and distinctions fail to address problems related to informal care giving (Manataka American Indian Council, 2000).
- Relatively few tribes have developed elder abuse codes (National Indigenous Elder Justice Initiative, 2013) though the numbers of tribes with or who are developing elder abuse codes is increasing. In California, for example, the Dry Creek Rancheria Band of Pomo Indians has enacted a Tribal Elder Code as part of its Judicial Code (see <http://drycreekrancheria.com/wp-content/uploads/2013/08/5-DCR-Elders-Code-FINAL1.pdf>) The Bishop Tribe has a Tribal Adult Guardianship Ordinance, available at www.bishoppaiutetribe.com/assets/ordinances/Tribal%20Adult%20Guardianshi

[p%20Ordinance.pdf](#), as does the Yurok Tribe, available at www.narf.org/nill/Codes/yurokcode/elder_vulnerable_adult_protection.html.

- Some AI/AN elders have extremely valuable and culturally significant or sacred artifacts, including traditional regalia, baskets, and beadwork, which are highly sought after by collectors. In many AI/AN communities sacred objects are not “owned” by any individual and cannot be sold or encumbered by the person who possesses them. They are considered sacred rather than mere property. When such artifacts are taken and sold, the loss is both financial and spiritual as tribal members may not believe these items should be sold to outsiders. (Baldrige et al., 2004.) In addition, selling/misappropriation of sacred objects assumes that someone “owns” these objects.

Summary Points for Defining Elder Abuse in Tribal Communities

- Older AI/AN (like other older adults) may not understand or conceptualize what has happened to them as “elder abuse.”
- Some acts may be considered elder abuse by AI/AN older adults but may not fit within state statutory definitions. State remedies may not be available for such conduct.
- Older AI/AN may not recognize conduct as elder abuse and may hesitate to use state remedies and services that could improve their health and safety.
- Older AI/AN may recognize conduct as abuse but not see the state court as providing an adequate and culturally appropriate remedy or see it as imposing a remedy that is unwanted, such as a jail term.
- Questions that incorporate terms such as “respect,” “being listened to,” and “being able to participate in tribal ceremonies, traditions, and observances” will be better understood by tribal elders and may lead to improved fact finding and decision making.
- An understanding of abuse in culturally accepted terms will allow the court to craft better terms and conditions in its orders.
- Understanding the cultural significance of certain objects will help the court understand the degree of loss and the need for the return of the actual item rather than a monetary order of restitution.

Resources

For more information about the prevalence and incidence of elder abuse, please refer to Appendix D: Prevalence and Incidence of Elder Abuse in the General Population and AI/AN Communities

IX. Extent of the Problem: What Is Known About the Prevalence and Incidence of Elder Abuse in California

While elder mistreatment is anathema to the traditional cultural norm of respect for older members of the tribe, elder abuse is a frequently cited concern of older adults living on reservations across the United States. The actual extent of elder abuse in AI/AN communities is unknown although “the existing literature and accounts by Indian elders and their families, tribes and advocates suggest that it is a serious and pervasive problem.” (Seigler, 2012, at pp. 423–424.) Elder abuse is a “concern for AI/AN tribal leaders though it is not well-characterized.” (Sapra et al., 2014, at p. 1.) There are few studies or surveys of the prevalence or incidence of elder abuse in AI/AN communities. There are no national studies and only a few tribal-specific studies (Jackson and Sappier, 2005, at p. 2).

The National Indian Council on Aging indicates that neglect is the most common form reported among AI/AN elders, accounting for nearly half of reported cases. Material exploitation and psychological abuse are the next most common types, occurring with about equal frequency. (Hall and Weiss, 2010.)

Elder abuse in AI/AN populations is underreported. Buchwald et al. (2000) found that only 31% of definite cases of abuse of elderly AI/AN were reported to authorities.

The extent of AI/AN elder abuse and neglect in California has not been studied.

X. Characteristics of Victims

Studies have consistently found that in all forms of abuse AI/AN victims are usually women. In cases of physical abuse, Buchwald found that women were 9.4 times more likely to be physically abused than men.

Victim characteristics associated with abuse include:

- Being very old
- Being socially isolated
- Perceived by family members as burdens
- Living with the abuser
- Being in poor health

Higher risk for abuse and neglect is associated with suddenly becoming dependent on

others and having mental impairments, including confusion (National Indian Council on Aging, 2004). Victims who were younger than non-victims were 4.4 times more likely to be depressed and 2.7 times more likely to depend on others for food (Buchwald et al., 2000; U.S. Department of the Interior, 2013).

XI. Characteristics of Perpetrators

AI/AN victims of late life abuse are most often abused by people they know, love, and trust rather than strangers. Some tribal service providers estimate that nearly 80% of those abusing Native elders are immediate family members; 10% are extended family members. (Brown et al., 1990.) Adult children are the most common perpetrators, followed by spouses, other relatives, and grandchildren. (National Center on Elder Abuse, 1995; Hudson et al., 1998.) Brown (1989) conducted interviews on the Navajo reservation and randomly interviewed 37 of the 110 older adults between ages 59 and 90. Those who admitted having been neglected or abused almost universally identified family members (spouses and direct descendants) as the perpetrator.

Caregiver perpetrator characteristics are:

- Alcohol/drug use
- Mental illness in the home/caregiver residence
- Marital conflict/domestic violence
- Financial dependence on the elders
- Multiple caregivers
- Medication noncompliance.

(Buchwald et al., 2000.)

Physically abusive caregivers tended to be younger and unemployed, have more personal problems, live with victims, have other responsibilities, and are less likely to receive help from others. (Jervis, 2013, citing the Buchwald study.) Non-caregiver perpetrators were overwhelming male (over 88%). (Buchwald et al., 2000.)

XII. Risk Factors

Risk factors are neither actuarial tools nor proof that abuse has occurred. Nevertheless, knowledge of risk factors can inform the court's evaluation of information when issuing court orders and deciding appropriate terms and conditions, when setting bail or conditions of release, at sentencing, and when deciding who should be appointed to serve as an older tribal member's conservator.

Risk factors associated with abuse of older AI/AN members include social, health, economic, and historical conditions. Some relate to the lessening of family bonds, historical poverty, weakening of kinship systems, historical trauma, acculturation stress, and the changing roles and status of older and younger tribal members.

Resources

For a more complete discussion of risk factors please refer to Appendix E:
Risk Factors for Abuse and Neglect in AI/AN Communities

Risk Factors by Type of Abuse

Form of Abuse	Associated Risk Factors
Neglect	(1) The number of hours of care per day that families provide their older members; (2) The mental conditions (confusion) of the older care recipient; (3) How suddenly the elderly person became dependent and in need of care; (4) Families trying to share the caregiver responsibilities; (5) Extent that having to provide care created a family crisis; and (6) Older adult’s level of income. (Manataka American Indian Council, 2000.)
Emotional/Psychological Abuse	(1) Extent of family crisis due to caregiver responsibilities; (2) Mental condition of the elder; and (3) Suddenness of the elder becoming dependent. (Manataka American Indian Council, 2000.)
Physical Abuse	(1) Most strongly associated with mental condition of the elder; and (2) Less strongly associated with families trying to share the caregiver responsibilities. (Manataka American Indian Council, 2000.) (3) Marital conflict/domestic violence (4) Dependence on others for food, and (5) Fewer caregivers at home. (Buchwald et al., 2000.)
Financial Exploitation	(1) Families trying to share the caregiver responsibilities; (2) Suddenness of the elder becoming dependent; (3) Number of hours of care per day that the elder said they needed; and (4) Number of hours of care per day that families were providing. (Manataka American Indian Council, 2000.)

Summary Points on Victims, Perpetrators, and Risk Factors

- Court rulings that address perpetrator substance abuse, mental health, and economic dependency on the victim can reduce risk of continuing abuse.
- Incorporating tribal historical practices and traditions in rulings will increase victim safety and reduce offender risk of reoffending.
- Developing cooperative and collaborative efforts with tribal courts and governments will enhance compliance with court rulings and orders.

PART 3: COURT PROCEEDINGS INVOLVING TRIBAL MEMBERS— INTERACTIONS, FACT FINDING, AND PRACTICES

I. AI/AN Older Adults in State Court

There are a variety of issues that arise in court proceedings in which an older tribal member may appear seeking assistance with an elder abuse matter. This section will describe court settings in which elder abuse matters may arise, as well as barriers to participation including communication and reporting, and suggest considerations and practices to enhance participation in the state court process.

II. Court Settings in Which Abuse of an Older AI/AN May Appear

Abuse cases involving elderly victims may appear in multiple court settings and may be seen across court departments. For example:

Court Setting	Type of Matter
Criminal	<ul style="list-style-type: none">• Prosecutions for crimes against elderly AI/AN members• Probation revocation
Probate	<ul style="list-style-type: none">• Probate conservatorships• Lanterman-Petris-Short (LPS) conservatorships• Will contests• Guardianships of

	juveniles
Civil	<ul style="list-style-type: none"> • Restraining orders • Elder abuse civil actions • Civil actions for conversion, breach of contract, etc.
Family	<ul style="list-style-type: none"> • Child custody
Juvenile	<ul style="list-style-type: none"> • Dependency • Delinquency

Some matters will be readily identifiable as elder abuse; in others, the elder abuse may be part of something else or not identified at all.

<p>Summary Points Regarding Court Settings</p> <ul style="list-style-type: none"> • Elder abuse matters involving tribal members may appear in virtually any court or calendar. • Courts may wish to identify and assign to a single judge related elder abuse matters involving tribal members. • Court staff will be essential in identifying elder abuse matters involving AI/AN and assuring that cases are assigned to a single judge.

III. Court Interactions With AI/AN Older Adults

California courts interacting with AI/AN, especially elderly parties, may encounter language obstacles and unfamiliar speech patterns.

a. Language Obstacles

- Some AI/AN are monolingual non-English speaking. Since tribal members may have moved to California and left their ancestral tribes and cultures, the court should assure that translators are available.
- Translator issues:
 - It is culturally preferable to use translators of the same gender as the victim or witness.
 - Not all words can be translated into the witness's language and some Native language terms do not translate into English.

- Language Line interpretation may not be proficient in all of the 150 or more spoken AI/AN Languages (Hendrix, n.d.).
- When asking questions:
 - Probability statements do not translate in some tribal languages and may be misinterpreted.
 - It is preferable to ask questions indirectly (e.g., what would someone else in the older person's same situation want to have happen?) rather than directly (what do you want to happen?).
 - In some AI/AN cultures it may be culturally inappropriate to ask about or provide negative information (e.g., death and dying) as there may be a belief that thought and word may give reality to negative conditions or may prevent or delay a person's passage to the next life.

b. Speech Patterns

- Some older AI/AN litigants will speak "Reservation Dialect English." The person will be understandable but may, for example, use the present tense when describing past events.
- Socially, AI/AN tend to speak in a soft, slow, deliberate manner, stressing the emotions more than the content.
- AI/AN may be very emotionally expressive but can be very reserved when speaking with persons perceived as hostile or distrusted. Speech is usually a secondary expression to behavior.
- Silence is especially valued, and most Native Americans are comfortable with silence.
- Some AI/AN litigants will speak slowly and will pause between phrases. It is common for there to be long pauses between the end of a question and the beginning of the response. The court should not assume that the person did not understand the question or does not know the answer. Do not fill the silence with another question or repeat one already asked. It is considered rude to interrupt someone who is speaking (or about to speak). The person being questioned may be offended or may believe that you do not want the question answered. Alternatively, the tribal member may feel they have interrupted you and offended you.
- Many AI/AN will not look another person, particularly someone in a position of authority, in the eye due to their tribe's cultural traditions. To do so may be considered disrespectful. It is not a sign of evasion or deceit.
- Some older AI/AN have difficulty describing what happened in a linear or temporal way (and then what happened?). Instead they may use a traditional method of describing events, such as storytelling in which a story describes events. This is an accepted way of communicating and is part of an oral tradition

and a way to pass down traditions and beliefs. It also allows the person to explain what occurred without accusing or confronting someone for their conduct, another traditional cultural belief.

(See Gray and Rose, 2012; Satter et al., 2005.)

IV. Barriers to Reporting, Seeking, and Pursuing Court Remedies

The contentious and violent history of interactions between the U.S. and state governments and tribes and their members and the lack of consensus about what constitutes elder abuse have contributed to the underreporting of abuse against elderly tribal members. Elder abuse even outside of tribal communities has always been underreported (Lachs and Berman, 2011) but the cumulative effect of historical experiences has magnified the problem.

Realities of local policing may act as additional barriers.

Victims of violence may feel the police or judicial system cannot help them, and therefore may be reluctant to seek help. Tribal police forces are often stretched thin in terms of economic resources and personnel, often with a small number of officers covering large reservations and rural areas (Wakeling et al., 2001). A 2007 report found that fully one-half of all California reservations had total populations under 100, making it unlikely that most would have their own police agencies. Because their gaming facilities draw in large numbers of outside customers, some of these tribes do operate police agencies (Goldberg and Champagne, 2007).

Resources

For more information about tribal police forces please see Appendix H:
Tribal Law Enforcement Agencies

Other barriers to older AI/AN members seeking help for relief from abuse include:

- Fear and distrust, including of law enforcement authorities (Wakeling et al., 2001). Fears of retaliation are heightened by geographic isolation from police and non-tribal social services. In smaller communities, it is likely that the elder will come into contact with the perpetrator or his or her family after abuse is reported.
- Some victims do not seek help because they have little confidence in the services offered to them. Their confidence may be increased by the support of advocates able to deliver culturally sensitive, trauma-informed services. Some tribes are able to provide victim advocacy service. Other victims, for reasons of privacy and confidentiality, personal preference, and/or safety, may prefer to receive

services not provided by the tribe. In this instance the victim should be eligible for programs available to non-tribal members.

- Some victims believe that state court remedies are not meaningful and acceptable within the tribal community (Bassett et al., 2012).
- Lack of systemic responses that are helpful for older adults and are culturally grounded in the experiences and needs of AI/AN persons and culturally sensitive. A recent study of over 18,000 tribal elderly conducted by the National Resource Center on Native American Aging found that only 1% of older AI/AN persons currently use elder abuse prevention programs such as mental health services, counseling, legal assistance and support services to help an elder live more independently, reducing the need and stresses on caregivers. More than 13 % would use caregiver, financial assistance, legal assistance, personal care, and transportation programs if offered by their respective tribes. (Davis, 2013.)
- Lack of Protective Services response. Many tribes have no Adult Protective Services (APS) programs of their own, necessitating that cases be investigated by California APS staff. In California, tribes rely on state adult protective services programs, even though the available assistance they can offer may be minimal (Department of the Interior, 2013). APS in California is a county-based program whose workers may not be familiar with the culture, traditions, or experience of the tribe or individual members. They may not have relationships with the tribes they serve and, unless a matter rises to the level of a criminal action, they may lack jurisdiction to enter tribal lands in order to conduct investigations or offer services because this could be seen as “civil regulatory” activity unless there are memoranda of understanding or other agreements between the APS program and the tribe. Nevertheless, tribal members are entitled to the same services that are provided to other residents.

Some tribes with APS programs may staff them with volunteers who may not be able to devote their full attention to the cases they encounter. “These factors may contribute to the sense that the risks of reporting mistreatment are not worth the possible benefits. Elders and family members may be additionally motivated by the desire to maintain a sense of privacy around their family’s ‘business’ or to keep the kin group together; concern about losing grandchildren; the fear of ending up in a nursing home; and/or a sense of responsibility for the abuser, for whom the elder may be a caregiver. When considered as a whole, it is not surprising that Native elder mistreatment so often goes unreported.” (Jervis, 2013, at 78.)

Tribal members, whether they live on or off tribal lands, are eligible for the same services as non-tribal members. They may also have access to a range of additional services provided specifically for Native Americans. If they live near their tribe's lands, the tribe may provide a range of programs and services. Typically, those residing in most metropolitan centers have the most services available. APS services vary considerably from county to county. Many Californian APS programs are understaffed and underfunded. There is considerable variability among counties about the availability of culturally sensitive services and counseling.

If the AI/AN abuse victim is from another state or country (most commonly Canada or Mexico), the home tribe located outside of California may be able to provide services and resources to that victim such as per capita distribution or victim assistance. Other states may also have an interest through a state-tribal compact if the victimization involves an out-of-state per capita distribution. (Personal communication, Raquelle Myers, Attorney National Indian Justice Center.)

Summary Points on Barriers to Reporting, Seeking, and Pursuing Court Remedies

- Courts can educate themselves whether local tribes and local Native agencies, such as the Indian Health Service clinics, offer culturally appropriate elder abuse services to AI/AN and, if so, the nature of those services.
- Courts can determine if local tribes operate Adult Protective Services programs and, if not, the nature of county responses by APS programs to AI/AN both on and off of tribal lands. When evaluating information from APS, courts may wish to consider the nature of the evaluation and whether validated, culturally specific testing was conducted. (See page 21, Summary Points re Health Conditions and Death in AI/AN Elderly” for more information.)
- Courts can support and encourage local tribal and county law enforcement collaborations and joint efforts to improve enforcement of the laws and access to justice.
- Court can inquire if local court-based advocacy services, victim witness program, community-based domestic violence and/or sexual assault program, aging services organizations, or others have advocates on staff from tribal communities or have culturally competent training for staff to assist AI/AN.
- Courts should support the use of advocates who can deliver victim-centered, trauma-informed culturally appropriate services.
 - **Courts can assure that court staff is aware of culturally appropriate services and includes such programs and providers in referral information provided to AI/AN.**
 - **Courts can foster and participate in state court-tribal court collaborations and initiatives to improve access to justice.**
 - **Courts can encourage the development and use of culturally appropriate services and practices for AI/AN whether victims or perpetrators, including victim services and advocacy, and counseling and healing programs.**
 - **Courts should allow AI/AN abuse victims to be accompanied by support persons. For statutory requirements regarding support persons please refer to Appendix H.**
 - **Courts should employ relevant accommodations and innovative practices in handling elder abuse matters involving AI/AN. For examples please refer to Appendix I.**

V. Innovative and Restorative Justice Models

In addition to drawing on state court experiences with elder abuse cases, state courts can learn from the restorative justice practices used by tribal courts. In a restorative justice framework, the case is not addressed simply as a violation of criminal law. Instead the matter is viewed as a violation of intra-tribal relationships. Generally everyone affected by the abuse—victims, abusers, their respective families, and other members of the tribal community—participates in the case resolution (Seigler, 2012). At least one state, Michigan, is attempting to create a court modeled on tribal practices (National Center for State Courts, 2014).

In describing tribal courts, Judge B. J. Jones, Tribal Court Judge and Director of the Tribal Judicial Institute at the University of North Dakota School of Law, stated:

I think non-tribal systems rely too heavily upon solutions by others: judges, lawyers. In tribal court we're trying to emphasize that the solutions lie within the community and lie within the persons who engage in conflict. In tribal courts, the lawyers and the judges are really secondary. It's the people who are involved in conflict that have to find their own manner of resolving it because the community is going to rely upon them to make it a healthy community in the future.

(Center for Court Innovation, 2009, at p. 370.)

One example of restorative justice is the use of “sentencing circles” in which a criminal court judge refers a case to a group of tribal members—victims, offenders, family members, community members, and sometimes the parties’ attorneys and the judge. Participants make sentencing recommendations. Agreements may be enforced as a binding sentence or may be presented to the court for approval. This process, like all restorative justice approaches, focuses on the causes of abuse and aims to reach an agreement by which all members of the circle agree on a just sentence. (Seigler, 2012.)

Tribal courts and state courts have other models of collaboration. For example, the Leech Lake Band of Ojibwe Tribal Court and the state courts for Cass and Itasca Counties in Minnesota, and the Shingle Springs Band of Miwok Indians and the Superior Court of Eldorado County in California, have formed joint jurisdiction state-tribal courts in which the judges from the two systems share the bench, collaborate over interactive television, and occasionally preside in the other’s courtroom (Stenzel, 2009, at p. 245). The model of cooperation is one that could be considered for elder abuse cases in which the tribe and county courts share an interest in the matter and the participants.

For more information, please see Center for Court Innovation (2012) “Can Peacemaking Work Outside of Tribal Communities?,” available at www.courtinnovation.org/research/can-peacemaking-work-outside-tribal-communities and www.wellnesscourts.org/files/Shingle%20Springs%20Joint%20Jurisdiction%20Presentation.pdf

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**APPENDIX A:
PUBLIC LAW 280 JURISDICTION**

In 1953, largely as a way to save federal money (Goldberg and Champagne, 2007), Congress passed Public Law 280 (hereinafter PL 280). PL 280, or more accurately PL 83-280, dramatically changed criminal jurisdiction by shifting criminal jurisdiction over offenses involving Indians in Indian Country from the federal government to certain states. In six states, including California, the transfer was mandatory, unless a specific tribe in one of these states was excluded from the change. There were no tribes excluded in California. In other states, adoption of PL 280 was optional (Goldberg and Singleton, 2005).

Mandatory transfers of jurisdiction under PL 280 could not be opposed by the state and did not require the consent of the tribes until the enactment of amendments in 1968 (Goldberg and Champagne, 2007). No funding was provided for the additional duties transferred to local law enforcement (Goldberg and Singleton, 2005).

The enactment of PL 280 meant that the costs of enforcement of criminal laws fell to local government. Because reservation trust lands are exempt from state and local property taxes, and tribal members living and earning income on reservations are exempt from paying state income and sales taxes, these important sources of funding for local law enforcement and criminal justice on reservations have been unavailable (Goldberg and Champagne, 2007).

The history of law enforcement action under PL 280 has been criticized. A 1995 survey of California tribes indicated that the most prevalent concerns among the tribes surveyed were jurisdictional confusion and inadequate law enforcement responses to complaints (U.S. Department of Justice (DOJ), 2005). There were also findings that officers did not act because of their “unfamiliarity with tribal communities.” (U.S. DOJ, 2005.) Inconsistency of response has led to complaints of “insensitive or discriminatory treatment” by state and local law enforcement and has fostered mistrust and hostility between state and tribal officials and communities.

PL 280 has created a number of legal complexities which may help explain why state responses have been inconsistent and at times, inadequate:

- Only statewide, not local, criminal laws are enforceable. PL 280 only authorizes enforcement of statewide criminal laws. Local and county ordinances and laws are not enforceable on tribal lands.
- PL 280 only authorizes enforcement of criminal (prohibitory) laws. Civil Regulatory laws are not enforceable. PL 280 and case law, including *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, 209, have drawn a distinction between

prohibitory crimes and those that are regulatory. State law enforcement is directed to act in response to prohibitory crimes but lacks jurisdiction to act if the conduct is regulatory. This has meant that California may not enforce its laws related to such matters as environmental control, land use, gambling, and licenses. The line between these categories can be unclear.

- PL 280 criminal jurisdiction cannot be used to alter the status of trust lands or to restrict federally protected hunting and fishing rights. PL 280 prohibited California from legislating about property held in trust by the United States and federally guaranteed hunting, trapping, and fishing rights. The state cannot tax on the reservations. These limitations have been especially problematic when there are state criminal laws relating to hunting and fishing, when excluding disruptive persons from tribal lands pursuant to a state court order, or enforcing bans on polluting trust lands through illegal dumping (Goldberg and Champagne, 2007).
- PL 280 did not change the tribe’s authority to create and maintain police departments with authority to enforce tribal laws. In addition, federal law enforcement agencies retain criminal jurisdiction over certain crimes, though their authority is greatly reduced under PL 280.
- The lack of funding, confusion over the authority conveyed to local (state-level) law enforcement—what can be enforced and what cannot, lack of training and relationships with tribal officials and police, and overlapping jurisdiction have all contributed to the inconsistent response to crimes on tribal lands. In addition, state and local agency practices have created additional barriers to response to crimes in Indian Country. For example, existing databases may not permit searches for elder abuse and other crimes. Until recently, tribal courts could not enter orders into state and federal protective order systems so state officers could not verify the orders in order to enforce them.

California Indian Tribes and Territory

California currently has approximately 110 federally recognized tribes,¹ with nearly 100 separate reservations or rancherias.² In addition there are currently 81 groups petitioning for federal recognition.³ In the 2010 census roughly 725,000 California citizens identified as American Indian or Alaska Native either alone or in combination with other ethnicities.⁴ This

¹ See <http://www.bia.gov/cs/groups/public/documents/text/idc006989.pdf>

² Note that some tribes remain “landless” meaning they have no land in trust for their members, while other tribes may have more than one reservation or rancheria.

³ As of November 12, 2013. See <http://www.bia.gov/cs/groups/xofa/documents/text/idc1-024418.pdf>

⁴ See <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>

represents roughly 14% of the entire American Indian/Alaska Native population of the United States.

General Rules (these rules apply in California unless modified by PL 280)

Tribes are sovereign and have exclusive inherent jurisdiction over their territory and members, but **not** necessarily with jurisdiction over non-Indians even within tribal territory.

Tribes are under the exclusive and plenary jurisdiction of the federal Congress, which may restrict or abolish jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit tribal jurisdiction, assume federal jurisdiction over a number of areas, and delegate that jurisdiction to some states. Congress has granted limited jurisdictional authority to the federal courts (under the General Crimes Act, 18 U.S.C. § 1153 and the Major Crimes Act, 18 U.S.C. § 1152) and to state courts (for example under Public Law 280). Congress has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA, 25 U.S.C. § 1301–1303).

Public Law 280

The general jurisdictional scheme was altered in California by Public Law 280 enacted by Congress in 1953. PL 280 transferred federal criminal jurisdiction and conferred some civil jurisdiction on states and state courts in the six mandatory Public Law 280 states, which includes California. Public Law 280 is now codified in federal law as 28 U.S.C. § 1360 regarding civil jurisdiction and 18 U.S.C. § 1162 regarding criminal jurisdiction.⁵

Per the U.S. Supreme Court in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, Public Law 280 had the following effect on California's civil and criminal jurisdiction in Indian Country:

In Pub.L. 280, Congress expressly granted six States, including California, jurisdiction over specified areas of Indian country within the States and provided for the assumption of jurisdiction by other States. In § 2 [i.e. 18 U.S.C. § 1162], California was granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State. Section 4's [i.e. 28 U.S.C. § 1360's] grant of civil jurisdiction was more limited. In *Bryan v. Itasca County*, 426 U.S. 373 (1976), we interpreted § 4 to grant States jurisdiction over private civil litigation involving reservation Indians in state court, but not to grant general civil regulatory authority. *Id.*, at 385, 388–390. Accordingly, when a State seeks to enforce a law within an Indian reservation under the authority of Pub.L. 280 it must be determined whether the law is criminal in nature, and thus fully applicable to the

⁵ See included statutes.

reservation under § 2, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court.

(*Id.* at pp. 207–208.)

The “criminal/prohibitory” versus “civil/regulatory” distinction was set out by the Court in *Cabazon* as follows:

[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub.L. 280’s grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub.L. 280 does not authorize its enforcement on an Indian reservation.

(*Id.* at p. 209.)

So, in terms of civil jurisdiction, the effect of PL 280 was merely to grant Indians access to state court forums to resolve disputes. It did not give the state jurisdiction to impose civil/regulatory laws on the tribes or tribal territory. Note that the fact that there are misdemeanor criminal penalties for infraction of a law is not sufficient in and of itself to convert it from civil/regulatory into criminal/prohibitory for the purposes of PL 280. Further, PL 280 applies only to STATE laws of general application; local ordinances do not apply.

The term “Indian Country” is defined in 18 U.S.C. § 1151:

Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

California Criminal Jurisdiction in Indian Country Under Public Law 280

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction unless certain specific federal laws apply.
Non-Indian	Indian	Generally, state has jurisdiction exclusive of federal and tribal jurisdiction. (However, under VAWA ⁶ can have concurrent tribal, and federal if interstate provisions (18 U.S.C. §§ 2261A, 2262 or 922(g)(8) or (9)) apply.) Under VAWA tribe may opt to exercise some jurisdiction over non-Indians for offenses.
Indian	Non-Indian	State has jurisdiction exclusive of federal government (unless federal government has reassumed jurisdiction under the Tribal Law and Order Act) but tribe may exercise concurrent jurisdiction. Federal for certain federal offenses including interstate DV.
Indian	Indian	Generally, state has jurisdiction exclusive of federal government (unless federal government has reassumed jurisdiction under Tribal Law and Order Act, or unless specific federal crime involved) but tribe may exercise concurrent jurisdiction.
Non-Indian	Victimless	State jurisdiction is exclusive unless federal jurisdiction has reassumed under Tribal Law and Order Act.
Indian	Victimless	There may be concurrent state, tribal, and federal jurisdiction or reassumption under Tribal Law and Order Act. There is no regulatory jurisdiction.

Full Faith and Credit

While tribes are recognized as sovereign, they are not “states” for the purposes of the full faith and credit requirements of article IV of the U.S. Constitution. There is general consensus (but no Supreme Court authority on point) that tribes are not encompassed by the

⁶ Violence Against Women Act (federal).

federal full faith and credit statute (28 U.S.C. § 1738). There are, however, a number of relevant federal and state provisions that mandate full faith and credit for and between tribal courts:

- ❑ Indian Child Welfare Act (25 U.S.C. § 1911(d))
- ❑ Violence Against Women Act (18 U.S.C. § 2265)
- ❑ Child Support Enforcement Act (28 U.S.C. § 1738B)
- ❑ Uniform Child Custody Jurisdiction and Enforcement Act (Cal. Fam. Code, § 3404)

Where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity.

Effect on Dependency and Delinquency Jurisdiction

Under the jurisdictional regime of PL 280, state courts in California generally have jurisdiction over dependency and delinquency cases involving Indians and Indian children, even if the events occur in Indian Country. However, this jurisdiction is affected by the requirements of the Indian Child Welfare Act (ICWA) and the fact that tribes may also exercise jurisdiction over these matters. Pursuant to ICWA (25 U.S.C. § 1911) even in PL 280 states, tribal jurisdiction is exclusive where a child is already the ward of a tribal court. Further, ICWA recognizes presumptive tribal jurisdiction over cases involving Indian children who are not already wards of a tribal court.

Effect on Jurisdiction in DV Cases and Ability to Enforce Protective Orders

If events take place in Indian Country and either the victim or perpetrator or both are Indian, then a tribal court may exercise concurrent jurisdiction with the state court. (Note that there may also be federal jurisdiction over some federally defined crimes.) Tribal jurisdiction and remedies are subject to limitations under the Indian Civil Rights Act and Major Crimes Act.

Civil state protective or restraining orders may be considered civil/regulatory and therefore be unenforceable in Indian Country unless registered with the tribe/tribal court. Some county police departments take the position that they have no authority to enforce protective orders in Indian Country. Restraining orders issued in a criminal case should be enforced/enforceable on tribal lands.

Few California tribes have tribal courts or tribal police departments.

Laws Governing Federal Jurisdiction in Indian Country

General Crimes Act:

“18 U.S.C. § 1152. Laws governing

“Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

“This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.”

Major Crimes Act:

“18 U.S.C. § 1153. Offenses committed within Indian country

“(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

“(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.”

Embezzlement:

“18 U.S.C. § 1163. Embezzlement and theft from Indian tribal organizations

“Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

“Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his use or the use of another—

“Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of \$1,000, he shall be fined under this title, or imprisoned not more than one year, or both.

“As used in this section, the term “Indian tribal organization” means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.”

Public Law 280

Public Law 280 (Criminal Provision):

“18 U.S.C. § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

“(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended
California	Indian country within the State
Minnesota	Indian country within the State, except the Red Lake Reservation
Nebraska	Indian country within the State
Oregon	Indian country within the State, except the Warm Springs

Reservation

Wisconsin	Indian country within the State
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“(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

“(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

“(d) Notwithstanding subsection (c), at the request of an Indian tribe, and after consultation with and consent by the Attorney General--

“(1) sections 1152 and 1153 shall apply in the areas of the Indian country of the Indian tribe; and

“(2) jurisdiction over those areas shall be concurrent among the Federal Government, State governments, and, where applicable, tribal governments.”

Public Law 280 (Civil Provisions):

“28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties

“(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
Alaska	Indian country within the State

California	Indian country within the State
Minnesota	Indian country within the State, except the Red Lake Reservation
Nebraska	Indian country within the State
Oregon	Indian country within the State, except the Warm Springs Reservation
Wisconsin	Indian country within the State

“(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

“(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.”

Federal Laws Requiring Full Faith and Credit

“18 U.S.C. § 2265. Full faith and credit given to protection orders

“(a) **Full faith and credit.**—Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.

“(b) **Protection order.**—A protection order issued by a State, tribal, or territorial court is consistent with this subsection if--

“(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

“(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

“(c) **Cross or counter petition.**—A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if—

“(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

“(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

“(d) **Notification and registration.**—

“(1) **Notification.**—A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

“(2) **No prior registration or filing as prerequisite for enforcement.**—Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

“(3) **Limits on Internet publication of registration information.**—A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

“(e) **Tribal court jurisdiction.**—For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person,

including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

“25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings

“(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

“The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

“§ 1738B. Full faith and credit for child support orders

“(a) General rule.—The appropriate authorities of each State—

“(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

“(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

“(b) Definitions.—In this section:

“child” means—

“(A) a person under 18 years of age; and

“(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

“child’s State” means the State in which a child resides.

“child’s home State” means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

“child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

“child support order”—

“(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

“(B) includes—

“(i) a permanent or temporary order; and

“(ii) an initial order or a modification of an order.

“contestant” means—

“(A) a person (including a parent) who--

“(i) claims a right to receive child support;

“(ii) is a party to a proceeding that may result in the issuance of a child support order; or

“(iii) is under a child support order; and

“(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

“court” means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

“modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

“(c) **Requirements of child support orders.**--A child support order made by a court of a State is made consistently with this section if--

“(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)—

“(A) has subject matter jurisdiction to hear the matter and enter such an order; and

“(B) has personal jurisdiction over the contestants; and

“(2) reasonable notice and opportunity to be heard is given to the contestants.

“(d) **Continuing jurisdiction.**—A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

“(e) **Authority to modify orders.**—A court of a State may modify a child support order issued by a court of another State if—

“(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

“(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

“(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

“(f) **Recognition of child support orders.**—If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

“(1) If only 1 court has issued a child support order, the order of that court must be recognized.

“(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

“(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

“(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

“(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

“(g) **Enforcement of modified orders.**--A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

“(h) **Choice of law.**--

“(1) **In general.**—In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

“(2) **Law of State of issuance of order.**—In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

“(3) **Period of limitation.**—In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

“(i) **Registration for modification.**—If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.”

California State Laws Concerning Recognition and Enforcement of Tribal Court Orders

Under the Uniform Child Custody Jurisdiction and Enforcement Act:

“Family Code § 3404. Native American children

“(a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) is not subject to this part to the extent that it is governed by the Indian Child Welfare Act.

“(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this chapter and Chapter 2 (commencing with Section 3421).

“(c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under Chapter 3 (commencing with Section 3441).”

Under the Uniform Interstate Family Support Act:

Family Code § 4901

“The following definitions apply to this chapter:

“(s) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term “state” also includes both of the following:

- (1) An Indian tribe”

Under the Uniform Interstate Enforcement of Domestic Violence Protection Orders:

Family Code § 6401

“In this part:

“(1) “Foreign protection order” means a protection order issued by a tribunal of another state.

“(2) “Issuing state” means the state whose tribunal issues a protection order.

“(3) “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

“(4) “Protected individual” means an individual protected by a protection order.

“(5) “Protection order” means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or antistalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

“(6) “Respondent” means the individual against whom enforcement of a protection order is sought.

“(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or any branch of the United States military, that has jurisdiction to issue protection orders.

“(8) ‘‘Tribunal’’ means a court, agency, or other entity authorized by law to issue or modify a protection order.’’

Under the Foreign Country Money Judgments Act:

Code of Civil Procedure § 1714. Definitions

‘‘As used in this chapter:

‘‘(a) ‘‘Foreign country’’ means a government other than any of the following:

‘‘(1) The United States.

‘‘(2) A state, district, commonwealth, territory, or insular possession of the United States.

‘‘(3) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government’s courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

‘‘(b) ‘‘Foreign-country judgment’’ means a judgment of a court of a foreign country. ‘‘Foreign-country judgment’’ includes a judgment by any Indian tribe recognized by the government of the United States.’’

Under the Interstate and International Depositions and Discovery Act

Code of Civil Procedure § 2029.200

‘‘In this article:

‘‘(a) ‘‘Foreign jurisdiction’’ means either of the following:

‘‘(1) A state other than this state.

‘‘(2) A foreign nation.

‘‘(b) ‘‘Foreign subpoena’’ means a subpoena issued under authority of a court of record of a foreign jurisdiction.

‘‘(c) ‘‘Person’’ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

‘‘(d) ‘‘State’’ means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

“(e) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to do any of the following:

“(1) Attend and give testimony at a deposition.

“(2) Produce and permit inspection, copying, testing, or sampling of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person.

“(3) Permit inspection of premises under the control of the person.”

Indian Civil Rights Act

25 U.S.C. § 1301. Definitions

“For purposes of this subchapter, the term--

“(1) “Indian tribe” means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

“(2) “powers of self-government” means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

“(3) “Indian court” means any Indian tribal court or court of Indian offense; and

“(4) “Indian” means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, Title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.”

25 U.S.C. § 1302. Constitutional rights

“(a) In general

“No Indian tribe in exercising powers of self-government shall—

“(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

“(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

“(3) subject any person for the same offense to be twice put in jeopardy;

“(4) compel any person in any criminal case to be a witness against himself;

“(5) take any private property for a public use without just compensation;

“(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

“(7)(A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

“(B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

“(C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

“(D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

“(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

“(9) pass any bill of attainder or ex post facto law; or

“(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

“(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

“A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who--

“(1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

“(2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

“(c) Rights of defendants

“In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

“(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

“(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

“(3) require that the judge presiding over the criminal proceeding—

“(A) has sufficient legal training to preside over criminal proceedings; and

“(B) is licensed to practice law by any jurisdiction in the United States;

“(4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

“(5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

“(d) Sentences

“In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant--

“(1) to serve the sentence—

“(A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

“(B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) of the Tribal Law and Order Act of 2010;

“(C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

“(D) in an alternative rehabilitation center of an Indian tribe; or

“(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

“(e) Definition of offense

“In this section, the term “offense” means a violation of a criminal law.

“(f) Effect of section

“Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.”

25 U.S.C. § 1303. Habeas corpus

“The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.”

Legislation Affecting Jurisdiction Over Domestic Violence Cases

25 U.S.C. § 1304. Tribal jurisdiction over crimes of domestic violence

“(a) Definitions

“In this section:

“(1) Dating violence

“The term “dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

“(2) Domestic violence

“The term “domestic violence” means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

“(3) Indian country

“The term “Indian country” has the meaning given the term in section 1151 of Title 18.

“(4) Participating tribe

“The term “participating tribe” means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

“(5) Protection order

“The term “protection order”—

“(A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

“(B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

“(6) Special domestic violence criminal jurisdiction

The term “special domestic violence criminal jurisdiction” means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

“(7) Spouse or intimate partner

“The term “spouse or intimate partner” has the meaning given the term in section 2266 of Title 18.

“(b) Nature of the criminal jurisdiction

“(1) In general

“Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 1301 and 1303 of this title, the powers of self-

government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

“(2) Concurrent jurisdiction

“The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

“(3) Applicability

“Nothing in this section—

“(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

“(B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

“(4) Exceptions

“(A) Victim and defendant are both non-Indians

“(i) In general

“A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.

“(ii) Definition of victim

“In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term “victim” means a person specifically protected by a protection order that the defendant allegedly violated.

“(B) Defendant lacks ties to the Indian tribe

“A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant--

“(i) resides in the Indian country of the participating tribe;

“(ii) is employed in the Indian country of the participating tribe; or

“(iii) is a spouse, intimate partner, or dating partner of—

“(I) a member of the participating tribe; or

“(II) an Indian who resides in the Indian country of the participating tribe.

“(c) Criminal conduct

“A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

“(1) Domestic violence and dating violence

“An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

“(2) Violations of protection orders

“An act that—

“(A) occurs in the Indian country of the participating tribe; and

“(B) violates the portion of a protection order that--

“(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

“(ii) was issued against the defendant;

“(iii) is enforceable by the participating tribe; and

“(iv) is consistent with section 2265(b) of Title 18.

“(d) Rights of defendants

“In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant—

“(1) all applicable rights under this Act;

“(2) if a term of imprisonment of any length may be imposed, all rights described in section 1302(c) of this title;

“(3) the right to a trial by an impartial jury that is drawn from sources that--

“(A) reflect a fair cross section of the community; and

“(B) do not systematically exclude any distinctive group in the community, including non-Indians; and

“(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

“(e) Petitions to stay detention

“(1) In general

“A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 1303 of this title may petition that court to stay further detention of that person by the participating tribe.

“(2) Grant of stay

“A court shall grant a stay described in paragraph (1) if the court—

“(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

“(B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

“(3) Notice

“An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section 1303 of this title.

“(f) Grants to tribal governments

“The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments)—

“(1) to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction, including—

“(A) law enforcement (including the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases);

“(B) prosecution;

“(C) trial and appellate courts;

“(D) probation systems;

“(E) detention and correctional facilities;

“(F) alternative rehabilitation centers;

“(G) culturally appropriate services and assistance for victims and their families; and

“(H) criminal codes and rules of criminal procedure, appellate procedure, and evidence;

“(2) to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;

“(3) to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

“(4) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of Title 18, consistent with tribal law and custom.

“(g) Supplement, not supplant

“Amounts made available under this section shall supplement and not supplant any other Federal, State, tribal, or local government amounts made available to carry out activities described in this section.

“(h) Authorization of appropriations

“There are authorized to be appropriated \$5,000,000 for each of fiscal years 2014 through 2018 to carry out subsection (f) and to provide training, technical assistance, data collection, and evaluation of the criminal justice systems of participating tribes.”

18 U.S.C. § 2261. Interstate domestic violence

“(a) **Offenses.--**

“(1) **Travel or conduct of offender.**—A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

“(2) **Causing travel of victim.**—A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such

conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

“(b) Penalties.—A person who violates this section or section 2261A shall be fined under this title, imprisoned—

“(1) for life or any term of years, if death of the victim results;

“(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

“(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

“(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

“(5) for not more than 5 years, in any other case,

or both fined and imprisoned.

“(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.”

18 U.S.C. § 2261A. Stalking

“Whoever—

“(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that—

“(A) places that person in reasonable fear of the death of, or serious bodily injury to—

“(i) that person;

“(ii) an immediate family member (as defined in section 115) of that person; or

“(iii) a spouse or intimate partner of that person; or

“(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

“(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that—

“(A) places that person in reasonable fear of the death of or serious bodily injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or

“(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A),

“shall be punished as provided in section 2261(b) of this title.”

18 U.S.C. § 2262. Interstate violation of protection order

“(a) **Offenses.**—

“(1) **Travel or conduct of offender.**—A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

“(2) **Causing travel of victim.**—A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

“(b) **Penalties.**—A person who violates this section shall be fined under this title, imprisoned--

“(1) for life or any term of years, if death of the victim results;

“(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

“(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

“(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

“(5) for not more than 5 years, in any other case,

“or both fined and imprisoned.”

18 U.S.C. § 922. Unlawful acts

“(g) It shall be unlawful for any person—

“(8) who is subject to a court order that—

“(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

“(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

“(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

“(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

“(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

“to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.”

APPENDIX B:
THE AI/AN AND AI/AN ELDERLY POPULATION: GROWTH AND RESIDENCE

The AI/AN Population

The AI/AN population is growing. Between the 2000 Census and 2010 Census the AI/AN population increased by 1.1 million persons, an increase of 26.7% (compared with the overall population growth of 9.7%). (U.S. Census Bureau, 2001; U.S. Census Bureau, 2010a.)

As of the 2010 Census, the nation's population of American Indians and Alaska Natives, including those of more than one race, numbered 5.2 million. They made up 1.7 percent of the total population. Of this total, 2.9 million were American Indian and Alaska Native only, and 2.3 million were American Indian and Alaska Native in combination with one or more other races. (U.S. Census Bureau, 2010a; Centers for Disease Control, 2012). *The AI/AN population is projected to increase to 8.6 million, or approximately 2% of the U.S. population by 2050.* (U.S. Census Bureau, 2012; Centers for Disease Control and Prevention, 2012).

California has the largest number of American Indian residents (about 1% of the total population of those reporting one race; and 2% of those reporting two or more races. (U.S. Department of Justice, 2004). In 2010 the California AI/AN in California numbered 723,225; followed by Oklahoma (482,760) and Arizona (353,386). (U.S. Census Bureau, 2010b.)

Of the more than 4.3 million individuals who identified themselves as either partly or solely American Indian or Alaska Native in the 2000 U.S. Census, 61% do not live on reservations or Native lands. While many live in rural western states, most live in metropolitan areas. The decision to live in cities may be based on educational and employment opportunities, access to services other than health care, or forced relocation related to past government policies. Many have lived in metropolitan areas for generations and may move back and forth between cities and reservations to use local Indian Health Service or tribal health care. (American College of Obstetricians and Gynecologists, 2012 and 2013). "Compared with those living in rural reservation areas who may share common tribal origins, American Indian and Alaska Native populations living in cities tend to be heterogeneous. There is no standard definition of an urban American Indian or Alaska Native. Individuals may self-identify as an urban American Indian or Alaska Native based on ancestry, shared culture, appearance, or participation in events organized by a local American Indian or Alaska Native community." (*Id.*, at p. 2).

The AI/AN Elderly Population

Nearly 37.9 million Americans were aged 65 and over in 2007; some 60% are women. Over the next 40 years, the number of people aged 65 and older is expected to double and the number of people aged 85 and older is expected to triple. Consistent with trends for

America's population, the American Indian and Alaskan Native population is living longer. (Administration on Aging, 2008.) The AI/AN older population, which in 2009 numbered 232,042, is projected to grow to almost 918,000 by 2050. In 2009, American Indian and Native Alaskan older persons made up 0.6 percent of the population. By 2050 that percentage will increase to 1% of the older population. (*Ibid.*)

The AI/AN population age 55 and over is projected to increase from 13% of the total U.S. AI/AN population in 2000 to 26% in 2050 (Satter et al., 2010). In 2009, 50% of American Indian and Alaskan Native elderly lived in just six states: California (14.0%), Oklahoma (10.7%), Arizona (9.2%), New Mexico (6.2%), Texas (6.0%), and North Carolina (4.3%) (Administration on Aging, 2008).

APPENDIX C: DEFINITIONS OF ELDER ABUSE IN TRIBAL COMMUNITIES

There is no single definition across tribal communities for abuse of older adults. Some tribes and their members identify elder abuse behaviors differently from state and federal statutes and from one another. Because of the diversity of AI/AN tribes and communities, there will be “differences in perceptions of elder abuse among persons of the same race in different areas of the state who may have different cultural backgrounds and values. This finding is a reminder of the heterogeneity of persons who are seemingly of the same race and that race does not equal culture.” (Hudson et al., 1998, at p. 548.)

While there are differences in what constitutes elder abuse across tribes, there are some commonalities. Hudson and Carlson (1999) studied perceptions of elder abuse in AI, African American, and Caucasian populations. AI older adults’ perceptions of what constitutes elder abuse differed from African Americans and Caucasians. AI responders ranked more items as abusive and 22 items at a higher level of abuse severity than did African Americans and Caucasians responders. In comparison to African Americans and Caucasians, Native Americans felt more strongly that “verbally forcing” (term used in the survey) an elder is elder abuse and that some elder abuse is committed by relatives. They were also more likely to disagree that yelling and swearing at an elder needs to occur more than once to constitute elder abuse, and the use of “verbal force,” including yelling, swearing or belittling an elder, is not a form of elder abuse. AI study participants were less likely than other groups to agree that elders are at risk for elder abuse because they are seen as physically weaker than when they were younger; healthy elders can be abused; and elder abuse is mistreatment because the behavior harms the elderly adult. (Hudson and Carlson, 1999, at pp. 197–199; Hudson et al., 1998.)

Some widely held cultural views shape whether certain conduct is considered abusive. For example, sharing of hospital food or medications is common within clan groups and extended families. (Hendrix, n.d.) so a person’s use of an older tribal member’s prescribed medication may not be considered elder abuse by the tribal group even if it is detrimental to the older member’s health.

Defining what constitutes financial exploitation can be equally confounding. For example, in an effort to determine if they had been exploited, elderly Navajo tribal members were asked if their money had gone to someone else. Of those who admitted that it had, all explained that it had been a matter of elderly person voluntarily sharing their money with needy family members. They were not being exploited, but were themselves living up to an important cultural value (Brown, 1998). Members of 17 different tribes had similar explanations for how and why their money was used to benefit others (Manataka American Indian Council, 2000).

The interplay of cultural values and elder abuse are not just evident in financial exploitation. Exploitive childcare may be difficult to distinguish from culturally normative and esteemed childcare (Jervis 2013). Close grandparent-grandchild relationships that include childcare (and where children may provide eldercare) are common among AIs/ANs (Schweitzer, 1999; Jervis et al., 2010), as are cultural values that emphasize familial (and financial) interdependence (Red Horse, 1983). “Yet, in situations of pervasive poverty, dislocation, diminished health, and overcrowded tribal housing, traditional values and norms may be altered in such a way that they act to the detriment of elders....” (Jervis, 2013, at p. 77.)

Older tribal members who are asked about abuse are likely to characterize it in terms of being treated well or poorly by family. The term “family” has cultural significance and often includes individuals who are not biological relatives. In the Shielding American Indian Elders (SAIE) project, older tribal members were asked about their beliefs. Good treatment included being taken care of, having one’s needs met, and being respected. In contrast, poor treatment included financial exploitation, neglect, and lack of respect (Jervis 2013). Respect was a crucial component of what it meant to be treated well, while disrespect was largely equated with abuse (*Ibid.*, at p. 76).

Tribal members may include within elder abuse forcing an elder to care for small children against his or her wishes or making excessive use of the older adult as a babysitter, having little time for older family members, treating older adults as though they no longer matter, and not listening when the older person speaks (White, 2004).

Tribal members have identified certain conduct as “ritual abuse” in which the older adult is denied access to traditional activities such as attendance at the powwow, not permitted to join in community ceremonies, not provided or allowed to eat traditional foods associated with certain observances, and other actions that are defined by the tribe’s culture and tradition (National Indian Council on Aging, 2012).

Elders and tribal judges include in their view of neglect and financial abuse family members using an elder’s money, car, gasoline, food, and medications. Financial abuse may include the extended family’s use of the elder’s social security check, even to the personal detriment of the elder, as well as their per capita distribution and non-gaming funds distribution in California. (White, 2004, at p. 3; Personal communication, Raquelle Myers, attorney with the National Indian Justice Center.) Neglect may include denying tribal elders access to sufficient food or clothing, ignoring their difficulties in sustaining their homes and finances, and preventing them from obtaining needed medical or social services (National Indian Council on Aging, 2012).

Older tribal adults also include as abuse the failure to report abuse and having little time to care for elders. (White, 2004; Jackson, 2010.)

While AI/AN communities and members may agree that elder abuse occurs and have a shared view of the forms it may take, they may not conceptualize abuse of the elderly and the response to it in the same way as the dominant culture. Across the United States there has been a clear trend toward criminalizing the conduct (Heisler, 2000; 2013). Some tribal communities have criticized the creation of elder abuse laws because such laws imply that wrongful acts take place in which some are perpetrators and certain others are victims (Manataka American Indian Council, 2000). Such statutes are criticized for not addressing the enormous problems related to informal caregiving (*ibid*). Relatively few tribes have developed elder abuse codes (NIEJI, 2013) though the numbers of tribes with or who are developing elder abuse codes is increasing. In California, for example, the Dry Creek Rancheria Band of Pomo Indians has enacted a Tribal Elder Code as part of its Judicial Code (see <http://drycreekrancheria.com/judicial-code>). The Bishop Tribe has a Tribal Adult Guardianship Ordinance, available at www.bishoppaiutetribe.com/assets/ordinances/Tribal%20Adult%20Guardianship%20Ordinance.pdf, as does the Yurok Tribe, available at www.narf.org/nill/Codes/yurokcode/elder_vulnerable_adult_protection.html.

Sacred and Cultural Objects

Some AI/AN elders have extremely valuable and culturally significant or sacred artifacts, including traditional regalia, baskets, and beadwork, which are highly sought after by collectors. These assets may be taken and sold by family members or others with access to the homes of elderly tribal members. The loss is both financial and spiritual as tribal members often do not believe these items should be sold to outsiders. (Baldrige et al., 2004.) In addition, selling/misappropriation of sacred objects assumes that someone “owns” these objects. In many AI/AN communities sacred objects are not “owned” by any individual and cannot be sold or encumbered by the person who possesses them. They are considered sacred rather than mere property.

It may also be worth noting that their possession, sale, and transfer to others may violate various federal laws including the Archeological Resources Protection Act (ARPA); the Native American Graves Protection and Repatriation Act (NAGPRA); and to a lesser extent, the American Antiquities Act. Feathers and animal parts may also be covered by such laws as the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act; the Marine Mammal Protection Act; and the Endangered Species Act. A fuller discussion of these laws is located at the Antique Tribal Art Dealers Association website, www.atada.org/Art_and_the_Law.html#intro.

**APPENDIX D:
PREVALENCE AND INCIDENCE OF ELDER ABUSE IN THE
GENERAL POPULATION AND AI/AN COMMUNITIES**

Elder abuse studies historically have suffered from a variety of weaknesses including: lack of common definitions and research methodologies, and adequate funding. The result has been an inconsistent and widely varied understanding of the extent of elder abuse. Quantifying elder abuse in tribal communities has suffered from these same limitations with even fewer studies undertaken.

National Studies of the Elderly Population

More recently newer studies of elder abuse have begun to clarify the picture. Some leading findings include:

- Acierno and colleagues conducted a telephonic survey of 5,777 persons over age 60 in the continental United States who were all cognitively capable and found a prevalence rate of 11.4 % percent in the year prior to the study. Types and rates of abuse are: physical abuse 1.6%; verbal abuse 4.6%; sexual abuse 0.6%; neglect 5.1 %; and financial abuse committed by a family members 5.2%. (Acierno et al., 2010; Acierno et al., 2009.)
- The National Social Life, Health and Aging Project (NSHAP) conducted by Laumann et al. (2008) sampled 3,005 persons aged 57 to 85 and found rates of: verbal abuse, 9% (defined differently from Acierno's verbal abuse); financial abuse 3.5%; and physical abuse 0.2%. These were the only forms studied.
- A statewide study of 4,156 New York residents aged 60 and older living in the community and a survey of programs serving victims of elder abuse and older victims of domestic violence in New York's 62 counties. The study found a one-year incidence rate of 7.6% per thousand older residents for any form of elder abuse, and a significant gap between the rate of elder abuse reported by older persons and that referred to agencies with the capacity and/or responsibility to assist older victims of abuse. For every case of elder abuse that is reported, 23 to 24 remain unreported and undetected. (Lachs and Berman, 2011.)
- A study of 1,795 elderly residents of Chicago at least 60 years of age for whom crime victimization data was available found prevalence rates for: physical abuse 0.5%; financial abuse 2.2%; emotional abuse 4.51%; and neglect 1.33% (Amendola et al., 2010).

AI/AN Studies

There are few studies or surveys of the prevalence or incidence of elder abuse in AI/AN communities. There are no national studies and only a few tribal-specific studies. (Jackson and Sappier, 2005, at p. 2.)

Tribal leadership, service providers, and older members are aware of the issue of elder abuse. A 1998 survey of the attitudes of Native American elders from 17 different tribes revealed that elderly American Indians themselves are aware and knowledgeable about elder abuse on tribal lands. Most of those who had directly observed actual abuse cases were especially sensitive to the problems that caregivers encountered in their duties (Brown, 1998). A survey of 152 service providers on the Navajo Indian Reservation (including those in social services, health care, law enforcement, volunteer work, and tribal officials) found that over 90% of those service providers were aware of the seriousness of elder abuse and had encountered clients who had been mistreated. How seriously they judged each type of elder abuse on the reservation closely matched the findings from the survey of Navajo elders. (Brown et al., 1990.)

Surveys and studies have demonstrated a higher prevalence of interpersonal violence against AI/AN members than in the general U.S. population. Incidence rates are unknown due to a lack of longitudinal studies. (Sapra et al., 2014, at p. 1.) The few studies that have been conducted yielded widely variable prevalence rates. Drawing on diverse studies of AI/AN populations, Buchwald et al. (2000) found prevalence estimates of abuse ranging from 2% to 46% among AI/AN populations (*ibid.*, at pp. 5, 8).

A study of abuse in the Navajo Nation, the Dineh Elder Protection Program, reported about 800 cases of elder abuse were referred to their agency in 2003; about half the cases were substantiated. (Nez, 2004, referenced in Jackson and Sappier, 2005.) The only study researching abuse of AI/AN in urban settings was conducted by Buchwald et al. (2000). The retrospective study of 550 medical charts of urban Native Americans and Native Alaskans served by the Seattle Indian Health Board examined rates of physical abuse. The study found that in 10% of files there was definite abuse. This was similar to rates of physical abuse found in other studies of AI/AN elders: 11% of Alaska Natives (Minton and Soule, 1990), 16% of Navajos (Brown, 1989), and 19% of Northern Cheyenne (cited in Buchwald et al., 2000).

Hudson et al. (1998) conducted a cross-cultural study of the occurrence of elder abuse among seven different cultural groups and also compared two AI tribal groups living in different locations in North Carolina. One finding is that 4% of AI/AN who were surveyed reported

abuse occurring after age 65. This rate was lower than for other racial groups, although the experience of abuse over the lifetime was highest for AI/AN (26%). (Sapra et al., 2014.)

While all forms of elder abuse found in other populations also occur in AI/AN populations, data reported by National Indian Council on Aging indicate that neglect is the most common form reported among Native American elders, accounting for nearly half of reported cases. Material exploitation and psychological abuse are the next most common types, occurring with about equal frequency. (Hall and Weiss, 2010.)

In a survey conducted by the Office of Aging Americans of Tribal Title VI directors, 48% perceived that elder neglect occurred often and 39% that psychological or verbal abuse occurred often. This abuse was perceived to occur most often at the hand of spouses/partners and other family members (Jackson and Sappier, 2005).

These studies also show that elder abuse in AI/AN populations is underreported. Buchwald et al. (2000) found that only 31% of definite cases of abuse of elderly AI/AN were reported to authorities.

In California, there are no known studies of abuse and neglect within California—AI tribes or urban communities. A comprehensive state-specific study is needed to study California tribes and non-California Indians living in this state. It should incorporate data from tribal law enforcement and tribal and federal Indian health services, both of which may have data not reflected in state data sources.

APPENDIX E:
RISK FACTORS FOR ABUSE AND NEGLECT IN AI/AN COMMUNITIES

Risk factors associated with abuse of older AI/AN members can be categorized as social, health, economic, and historical conditions. These categories often overlap.

Social risk factors include loosening of family ties, changing role and status of older adults with resultant loss of status, intergenerational conflict and transmission of violent family patterns, and social and geographical isolation.

Other risk factors include: poverty, the weakening of kinship systems, acculturation stress, financial dependency of adult children on their elderly parents, the poor health of many Native American elders, the negative effects of technology and progress, a value switch from the wisdom of elders to the abilities and ambitions of youth, young people's lack of interest in elder adults, and a change in tribal leadership from elders to younger adults."(Carson, 1995, cited in Hudson et al., 1998.)

Health factors include older adult and abuser poor health practices, presence of multiple health problems that place unexpected and unplanned stressors on the family caregiver and family, the older adult's underutilization of social services, and the presence of abuser mental health and substance abuse problems. (*Ibid.*)

Economic factors include poverty, high levels of unemployment and lack of employment opportunities, an economic dependency relationship between the older adult and abuser, and reliance on adult children for information about services and transportation. A study of risk factors among two different groups of Plains Indians found that higher levels of abuse were found on the more isolated and impoverished reservations. (Maxwell and Maxwell, 1992.) A study of elder abuse on the Navajo Nation identified poverty, unemployment, and family caretakers who feel overwhelmed by their responsibilities as primary causes (Brown et al., 1990). Although it is not yet clear how economic conditions and elder mistreatment intersect, the poverty within many Native communities may increase risk by fostering economic dependency of the young on the relatively stable elderly. (Brown, 1989; Jervis, 2013.)

Even when younger tribal members are not impoverished, the use of drugs and alcohol may drain their resources causing them to look for other sources of money. Family members who may be physically frail or confused may be selected for abuse because of the likelihood the abuse will not be recognized, or if it is, will not be reported. Having any kind of income is a risk factor for physical and psychological abuse, as are shared caregiving arrangements and mental confusion. (Brown, 1989.)

Historical factors are related to the imposition of rules and regulations from outside the tribe, the effects of historical trauma, and family members' acculturation stress.

For a discussion of the role of history and historical trauma please see section Part 2 VIIc.

Risk Factors by Type of Abuse

Form of Abuse	Associated Risk Factors
Neglect	<ol style="list-style-type: none">(1) The number of hours of care per day that families provide their older members;(2) The mental conditions (confusion) of the older care recipient;(3) How suddenly the elderly person became dependent and in need of care;(4) Families trying to share the caregiver responsibilities;(5) Extent that having to provide care created a family crisis; and(6) Older adult's level of income. (Manataka American Indian Council, 2000.)
Emotional/ Psychological Abuse	<ol style="list-style-type: none">(1) Extent of family crisis due to caregiver responsibilities;(2) Mental condition of the elder; and(3) Suddenness of the elder becoming dependent. (Manataka American Indian Council, 2000.)
Physical Abuse	<ol style="list-style-type: none">(1) Most strongly associated with mental condition of the elder; and(2) Less strongly associated with families trying to share the caregiver responsibilities (Manataka American Indian Council, 2000).(3) Marital conflict/domestic violence(4) Dependence on others for food, and(5) Fewer caregivers at home (Buchwald et al., 2000).
Financial Exploitation	<ol style="list-style-type: none">(1) Families trying to share the caregiver responsibilities;(2) Suddenness of the elder becoming dependent;(3) Number of hours of care per day that the elder said they needed; and(4) Number of hours of care per day that families were providing (Manataka American Indian Council, 2000).

APPENDIX F: CULTURAL VIEWS OF DEMENTIA AND DEATH

There is no single universal tribal view of dementia, depression, and death. Tribes may define these conditions in terms of cultural beliefs rather than illnesses or “problems.” For example, in describing dementia, members of the Isleta Pueblo in New Mexico believe that each person is put on the earth for a purpose. When that purpose is accomplished the person is ready to leave this world. Death and illness are not caused by others, and prolonged grieving prevents the spirit from crossing over to the next world where there is no pain, but peacefulness. (Hendrix, n.d.)

Cherokee tradition describes dementia as part of the Creator’s plan for that person’s ultimate learning and something that may not require intervention or help-seeking while Navajo tradition teaches that dementia may be caused by the breaking of a cultural taboo by the person with dementia or a family member. Treatment may require the services of traditional Indian medicine and not necessarily Western medicine. (Hendrix, n.d.)

Oklahoma Choctaw tribal members believe that dementia is a condition of the body in which the person’s spirit has already crossed over into the next world but the body remains behind as it prepares to leave. The caregiver’s job is to take care of the body until it is ready to leave, and this is sacred work. The person is communicating in the spirit world, which is why language and behavior appear to us as if overhearing one side of a telephone conversation. In some Indian communities this is a mark of an elevated spiritual status for the family. (*Ibid.*)

Urban Lakota Sioux tribal members believe there is a connection between dementia and history. They believe that dementia is caused by the stress and conflict resulting from living in two worlds at one time; the rigid Christian belief system of traditionally reservation-raised elderly and the stress over time of urban Indian living and family life. The lack of a collective consciousness in traditional Indian spiritual beliefs dilutes the power of the Indian spiritual community and allows stress to develop into illness, of which dementia is one form. (*Ibid.*)

Courts should also be aware that some AI/AN cultures do not speak of death, dying, or negative consequences because these cultures believe that thought and speech can cause the negative outcome to occur. Some believe that dementia and illness are caused by an imbalance in the patient’s spiritual, emotional, and social environment. Speaking of negative consequences (prognosis) of an illness can bring those events to pass as thought and language have the power to shape reality.

Most tribal traditions teach there will be a joining with the ancestors and that death is a natural part of the life cycle.

In some traditions, speaking the name of the deceased person may hold that person’s spirit in limbo and delay their journey to the next world. As an example, in one tribe therapy groups had to address grief from the loss of a number of young people in a single accident. Within this tribe, the names of the deceased were not to be spoken because it would have pulled the individuals back from the spirit world and would not have let the individuals move forward in their journey. (Gray and Rose, 2012; Hendrix, n.d.)

APPENDIX G HISTORY AND HISTORICAL TRAUMA

The history of AI/AN tribes and the government is a lengthy and sad one marked by policies and practices designed to destroy tribal communities, assimilate members into the European-American culture, “civilize” tribal members, and end cultural practices and tribal identification (Trusty et al., 2002). Even as tribal members died, Native people were not allowed to practice traditional rituals of mourning and healing, which included phases of grief that would have provided adjustment to cultural and other losses, ceremonial and ritual mourning, and family and community support. Brave Heart and DeBruyn (1998) stated that “Disenfranchised grief results in an intensification of normative emotional reactions such as anger, guilt, sadness, and helplessness.” This unresolved grief is a result of historical trauma that is transmitted down through each Native generation and is cumulative and compounded as more traumatic events occur. (Bassett et al., 2012.)

AI/AN who lived through the centuries of such practices suffered a variety of traumatic consequences often labeled as “historical trauma” in which the trauma is transferred to subsequent generations through biological, psychological, environmental, and social means, resulting in a cross-generational cycle of trauma (Brown-Rice, 2013).

Not all historical trauma experienced by AI/AN members is the same. Each tribe has its own history with the federal government that may influence how the government policy of assimilation has affected historical trauma and cultural identity within the specific tribe. (Gray and Rose, 2012.)

Judge Abby Abinanti, Chief Judge of the Yurok Tribe speaks of “historical trauma” as wounds passed wordlessly through generations with an accumulating grief and the urge to salve it with alcohol and drugs. It is what Yurok Tribal Chairman Thomas O’Rourke calls “the sickness of this land.” (Romney, 2014.)

The AI/AN historical trauma experience has played out in several stages. Initially, the dominant culture and government committed mass traumas on the AI/AN populations, resulting in cultural, familial, societal, and economic devastation resulting in losses of members, land, family, and culture. These traumas resulted in *symptoms* related to social-environmental and psychological functioning that persist today. (Whitbeck et al., 2004; Brown-Rice, 2013.)

An example of historical trauma with enormous consequences is the boarding school experience that disrupted family structure, destroyed personal identity, and devastated the AI tribal communities. Government and church-run boarding schools removed AI children from their families at the age of 4 or 5 and prohibited all contact with their relatives and tribe for a minimum of 8 years. (Brave Heart and DeBruyn, 1998; Garrett and Pichette, 2000.) Siblings often were sent to different schools so that children never saw their siblings again or did not see them for years or decades. Children had their hair cut and were dressed like European American children. Sacred items were taken away. They were forbidden from speaking their

Native language or practicing traditional rituals and religions (Brave Heart and DeBruyn, 1998; Garrett and Pichette, 2000.) Children who were physically and sexually abused often developed problematic coping strategies such as learned helplessness, manipulation, compulsive gambling, alcohol and drug use, suicide, and denial. (Brave Heart and DeBruyn, 1998; Garrett and Pichette, 2000.) The result was that many did not engage in traditional ways and religious practices and so lost their ethnic identity (Garrett and Pichette, 2000). The boarding school experience is viewed as a crucial precursor to many of the existing problems some AI continue to face. (Brave Heart and DeBruyn, 1998; Duran and Duran, 1995.)

“Traumatic experiences cause traumatic stress, which disrupts homeostasis” in the body (Solomon and Heide, 2005, p. 52). People who have experienced traumatic events have higher rates than the general population for cardiovascular disease, diabetes, cancer, and gastrointestinal disorders (Kendall-Tackett, 2009), and can their neurological functioning can be affected (Brown-Rice, 2013).

The historical events led to a systematic transmission of trauma to subsequent generations (Brave Heart et al., 2011; Whitbeck et al., 2004). The destruction of family, tribes, and culture means that for many AI/AN traditional cultural practices and family and tribal support systems are not available (BigFoot and Braden, 2007).

Historical trauma is not the passage of the trauma per se to the next generation but rather the passage of the psychological responses to the trauma to subsequent generations. For example, the children forced into boarding schools lost the ability to learn cultural practices, including child rearing within the context of their community. If they returned to their tribal community, they brought back with them new habits and concepts that were forced into daily practices, many of which were contrary to the traditional community practices and teachings. The traditional and “taught” practices resulted in “dichotomies” that were passed to children in their care and to those close to them. As generations passed, the practices did as well without awareness of the psychological impact of the different practices. With subsequent generations that had not experienced the original trauma directly or through parents or grandparents, the younger members have begun to question and challenge tribal language, cultural practices, and the authority of and respect for elders who survived the traumatic events. (Raquelle Myers, Attorney with the National Indian Justice Center.)

Historical trauma has resulted in social-environmental, psychological, and physiological disparities. Examples include:

Type of Stressor	Manifestations
Social-environmental	<ul style="list-style-type: none"> • Domestic violence, physical and sexual assault rates 3.5 times higher than national average and may be higher due to under-reporting (Sue and Sue, 2012). • Higher poverty rates (U.S. Census Bureau, 2006; Denny, Holtzman, Goins, and Croft, 2005; Brown-Rice, 2013). <ul style="list-style-type: none"> ○ 28.4% of American Indians and Alaska

	<p>Natives lived in poverty in 2010 (compared to 15.3% of the nation as a whole) (U.S. Census Bureau, 2010c).</p> <ul style="list-style-type: none"> ○ AI/AN elders age 55 and over are nearly three times more likely (49% vs. 17%) to be poor or near poor (less than 200% of the federal poverty level (FPL)), than non-Latino whites (Satter et al., 2010). ● Native American individuals are reported as having the lowest income, least education, and highest poverty level of any group in the U.S. (Denny, Holtzman, Goins, and Croft, 2005; Brown-Rice, 2013). ● Higher unemployment rates than rest of U.S. population (U.S. Census Bureau, 2006)
Psychological	<ul style="list-style-type: none"> ● Highest weekly rate of alcohol consumption of any ethnic group (Chartier and Caetano, 2010; Myhra, 2011) ● High rates of mood disorders and PTSD (CDC, 2007; Dickerson and Johnson, 2012) ● Suicide rates among Native Americans are 3.2 times higher than the national average (CDC, 2007) ● Compared with all other racial groups, non-Hispanic Native American adults are at greater risk of experiencing feelings of psychological distress and more likely to have poorer overall physical and mental health and unmet medical and psychological needs (Barnes, Adams, and Powell-Griner, 2010; Brown-Rice, 2013).
Physiological	<ul style="list-style-type: none"> ● The life expectancy at birth for the Native American population is 2.4 years less than that of all U.S. populations combined (CDC, 2010). ● The lowest life expectancy of any population group in the United States (CDC, 2010) ● Higher rates of heart disease, tuberculosis, sexually transmitted diseases, and injuries (Barnes et al., 2010). Diabetes prevalence is significantly higher than any other racial or ethnic group in the United States (Barnes et al., 2010).

These grim statistics may be symptomatic of a “legacy of chronic trauma and unresolved grief across generations” that has resulted from a history of domination and mistreatment perpetrated on AI/AN by the dominant culture (Brave Heart and DeBruyn, 1998, p. 60).

Historical trauma has led to changes in tribal beliefs and culture. Today, some tribal cultures are philosophically very close to their traditional past and are referred to as “traditional.” Others are closer to the dominant Western culture and are referred to as “acculturated.” Individual tribal members may be anywhere along the continuum between traditional and acculturated; some are bicultural, or “walk in two worlds,” while others may not identify with either culture. (Gray and Rose, 2012, p. 82.)

APPENDIX H TRIBAL LAW ENFORCEMENT AGENCIES

Increasingly, tribes are creating their own police agencies and reporting crime data. In 2014 in response to mandates of the 2010 Tribal Law and Order Act, the Bureau of Justice Statistics reported that the number of tribal law enforcement agencies reporting crime data to the FBI's Uniform Crime Reporting (UCR) Program increased from 143 in 2010 to 158 in 2012. Tribes across the U.S. received \$350,609 through Edward Byrne Memorial Justice Assistance Grants (JAG). One tribe in California receives funding though the amount was less than \$25,000. (Perry, 2014.)

In California, while there are a number of tribal police agencies, their powers vary. Some only exercise their powers at casinos and have no law enforcement status. Some have been cross-deputized by California law enforcement agencies and are authorized to enforce tribal and California laws. Others are certified by the Bureau of Indian Affairs as Special Law Enforcement Commissioned (SLEC) officers who can enforce tribal and federal laws. Some are tribal employees; others are federal employees. (Goldberg and Singleton, 2005.) Some tribes have well-trained and staffed law enforcement departments while others have no tribal police officers at all. Some tribal agencies have officers who have received little or no formal law enforcement training.

As new funding streams become available to AI/AN communities through the Tribal Law and Order and the Violence Against Women acts, state and federal governments and tribes will join together and collaborate in order to improve relationships, develop needed services, develop or enhance tribal policing agencies, improve data collection, create or expand tribal court systems, and create elder abuse codes.

For more information on tribal justice systems please see "Native American Research Series: Tribal Justice Systems" *CFCC Research Update* (June 2012), available at www.courts.ca.gov/documents/TribalJusticeSystemRU.pdf.

**APPENDIX I
RIGHT TO SUPPORT PERSONS**

Courts can assist elderly witnesses, including victims, to feel less intimidated and frightened in court by permitting them to be accompanied or supported by support persons and advocates. Elder abuse victims have the right the presence of support persons and advocates at criminal and restraining order proceedings.

Relevant statutes include:

Situation	Authority
Testify before a grand jury	Cal. Pen. Code, § 939.21
Testify in court, including juvenile court	Cal. Pen. Code, § 868.5
Law enforcement, prosecution, and defense interviews	Sex Crimes: Cal. Pen. Code § 679.04, 264.02 Domestic Violence: Cal. Pen. Code, § 679.05
Elder Abuse Restraining Order	Cal. Welf. & Inst. Code, § 15657.03(j)
Non-Harassment Order with a credible threat of violence or allegation of unlawful violence	Cal. Code Civ. Proc., § 527.6(l)
Family Law Order	Cal. Fam. Code, § 6303(b)

APPENDIX J

ACCOMMODATIONS AND INNOVATIVE PRACTICES FOR ELDERLY WITNESSES AND PARTIES

California has been a leader in developing specialized courts to handle elder abuse matters. The first such court was established in Alameda County and a second was established in Contra Costa County. Other courts have established an elder abuse restraining order calendar.

These courts share a commitment to creating courts that consider the special needs of older litigants. Examples of their practices include:

- Scheduling cases in the late morning or early afternoon.
- Reducing waiting time by having only such cases on calendar.
- Hearing criminal and restraining order matters in the same courtroom with the same judge, often allowing for a more comprehensive and coordinated handling of all aspects of a case.
- Conducting a telephonic hearing in civil matters if a party cannot get to court without extraordinary effort due to physical, mobility, or geographic reasons.
- Engaging community agencies in assisting parties through various means, including using a case manager connected to many different community services, allowing trained peer counselors to support and provide information to parties, and establishing a relationship with the local bar association to provide pro bono or legal service at reduced cost to unrepresented litigants.
- Making assistive devices such as amplification systems readily available. (For more information about these and other elder abuse court innovations, please see Judicial Council of California (2008) and Cram, 2014.)

While these court initiatives do not specifically address cases in which a tribal member is the victim of elder abuse, many of ideas and approaches could be further adapted to serve tribal members. For example, state courts could:

- Use telephonic hearings for court order matters when the tribal member is unable to travel to state court.
- Explore establishing a cooperative agreement with a tribal court to take the testimony at the tribal court or via teleconference or Skype-type technology from the tribal court offices.
- Set hearings at convenient times to accommodate tribal members who traveled from remote locations.
- Hear several kinds of cases involving the same parties at the same time to reduce the number of court appearances and to attempt to resolve the case and all its actions.
- Invite representatives from tribal services to address the court on programs that could assist defendants.
- Work with tribal court officials in monitoring compliance with state court orders and probation terms.

All of these efforts would make the state courts more accessible and less hostile to tribal members.