

**RESOLUTION OF THE
NAVAJO NATION COUNCIL**

Approving the Dine' Elder Protection Act of the Navajo Nation

WHEREAS:

1. Pursuant to 2 N.N.C. §102 (A), the Navajo Nation Council is the governing body of the Navajo Nation; and
2. Elder abuse is occurring on the Navajo Nation in epidemic proportions. Many Navajo elders are harassed, threatened, beaten or otherwise subjected to abuse, neglect and exploitation within the Navajo Nation boundaries; and
3. Elder abuse has a lasting effect on the seniors who directly experience the abuse, neglect and exploitation and who carry such memories throughout the rest of their lives; and
4. Elder abuse in all its forms poses a major health and law enforcement problem to the people of the Navajo Nation. Elder abuse can be prevented, reduced and deterred through the intervention of law; and
5. It is the policy of the Navajo Nation to continue the traditional respect which members of the Navajo Nation have for their tribal elders to protect senior members from abuse, neglect and exploitation. The integrity of the Navajo family will be protected and maintained by legislation which addresses and advocates against Navajo elder abuse, neglect and exploitation; and
6. The Health and Social Services Committee of the Navajo Nation Council by Resolution HSSCO-111-96 reviewed, discussed and recommended the Navajo Nation Council enact the Dine' Elder Protection Act; said resolution is attached as Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT:

The Navajo Nation Council recognizes the detrimental effects that elder abuse, neglect and exploitation has on Navajo society and hereby enacts the Dine' Elder Protection Act (attached as Exhibit "B") in order to address the problem and to protect Navajo senior citizens from abuse, neglect and exploitation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 49 in favor, 0 opposed and 0 abstained, this 25th day of October 1996.


Kelsey A. Beaye, Speaker
Navajo Nation Council

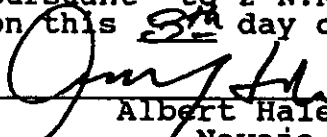
OCT 29 1996

Date Signed

Motion: Larry Noble
 Second: Elmer Milford

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby ^{SIGN INTO LAW} ~~give notice that I will not~~
~~veto~~ the foregoing legislation,
 pursuant to 2 N.N.C. §1005 (C)(10),
 on this 31st day of November 1996.



 Albert Hale, President
 Navajo Nation

2. I hereby veto the foregoing legis-
 lation, pursuant to 2 N.N.C. §1005
 (C)(10), this ___ day of _____,
 1996 for the reason(s) expressed in
 the attached letter to the Speaker.

 Albert Hale, President
 Navajo Nation

RESOLUTION OF THE
HEALTH AND SOCIAL SERVICES COMMITTEE
OF THE NAVAJO NATION COUNCIL

Approving and Recommending that the Navajo Nation Council Approve
the Dine Elder Protection Act

WHEREAS:

1. Pursuant to 2 N.N.C. §§451 and 454 (B)(1), the Health and Social Services Committee is established and continued as a standing committee of the Navajo Nation Council in matters relating to health, social services and environmental health; and

2. Pursuant to 2 N.N.C. §454 (B)(6), the Health and Social Services Committee has been authorized by the Navajo Nation Council to review and recommend legislation to ensure the health and safety of the Navajo people; and

3. Elder Abuse in all its forms presents a major health and law enforcement problem to the people of the Navajo Nation. Elder Abuse can be prevented, alleviated and deterred through the intervention of law; and

4. Navajo Area Agency on Aging held six public hearings across the Navajo Nation and the Navajo Nation Council on Aging has made its review, commented and approved the proposed Dine Elder Protection Act, which is attached as Exhibit "A" and incorporated herein by reference; and

5. Navajo Area Agency on Aging with the consultation of Department of Justice has produced the final revision of the Dine Protection Act for consideration and enactment; and

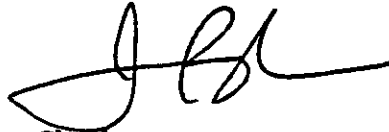
6. The Health and Social Services Committee of the Navajo Nation Council has determined that it is in the best interest of the Navajo Nation to enact the Dine Elder Protection Act in order to address the problem of Elder Abuse, Neglect and Exploitation and to protect Dine Elder citizens; and

NOW THEREFORE BE IT RESOLVED THAT:

The Health and Social Services Committee of the Navajo Nation Council hereby approves and recommends that the Navajo Nation Council enact the Dine Elder Protection Act.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Health and Social Services Committee of the Navajo Nation Council at a duly called meeting at Tuba City, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 4 in favor, 0 opposed and 0 abstained, this 18th day of October, 1996.



Vice Chairperson
Health and Social Services Committee

Motion: Jerry Freddie
Second: Jack Colorado

DINÉ ELDER PROTECTION ACT

101. TITLE. This Act will be known and cited as the "Diné Elder Protection Act."
102. POLICY. It is the policy of the Navajo Nation to continue the traditional respect which members of the Navajo Nation have for Diné elders. Elders are valuable resources to the Nation because they are repositories and custodians of Navajo history, culture, language, and tradition; vested in Diné elders is the hope of the Navajo Nation to retain its tribal 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. Based upon these premises, it is in the Nation's best interest and welfare to protect its elders from abuse, neglect, exploitation, and other mistreatment.
103. PURPOSE. The purpose of the Diné Elder Protection Act is to protect elders within the jurisdiction of the Navajo Nation from abuse and neglect. The Act will be liberally interpreted in order to achieve this purpose. This Act is not intended to abrogate any existing civil or criminal laws of the Navajo Nation.
104. DEFINITIONS. These definitions will be liberally construed so as to protect all elders. As used in this Act:
- A. "Abuse" includes:

1. Assault: an attempt to cause bodily harm to another through the use of force, or the creation in another of a reasonable fear of imminent bodily harm;
2. Battery: application of force to the person of another resulting in bodily harm or an offensive touching;
3. Threatening: words or conduct which place another in fear of physical or other harm on any person or on property;
4. Coercion: compelling an unwilling person, through force or threat of force to engage in or abstain from conduct which the person has a right to abstain from or engage in;
5. Unreasonable confinement, intimidation, or cruelty: acts which result in physical harm or pain or mental anguish of an elder by any person, particularly anyone such as a spouse, a child, other family members, caregiver(s) or other persons recognized by Navajo statutory or common law as having a special relationship with the elder.
6. Sexual abuse: any physical contact with an elder for emotional or physical gratification of the person making the contact and to which the elder does not give informed consent or for which the

- consent is obtained by intimidation or fraud.
7. Emotional Abuse: infliction of threats, humiliation, or intimidation.
 8. Intimidation: willfully placing another in fear of harm by coercion, extortion or duress.
 9. Exploitation: the use of funds, property (including grazing permits, livestock and homesites) or other resources of an elder for personal gain without the informed or true consent of the elder, or the gaining of funds, property, (including grazing permits, livestock and homesites) or other resources of an elder by threat, humiliation, intimidation, or other coercion. Exploitation is also failure to use the funds, property, or other resources of any elder for the elder's benefit or according to the elder's wish.
 10. Abandonment: desertion of an elder by the elder's family or caregiver(s), which includes refusing or neglecting to provide for an elder when there is a duty to do so.
 11. Breach of fiduciary duty: breach by a family member or caregiver of his or her fiduciary duties toward an elder.

B. "Caregiver" includes:

1. A person who is required by Navajo statutory or

common law to provide services or resources to an elder; or

2. A person who has undertaken to provide care or resources to an elder; or

3. An institution or agency or employees or agents of an institution or agency which provides or is required by Navajo statutory or common law, or state or federal law or tribal-state agreement to provide services or resources to an elder.

C. "Elder" for the purpose of this Act, is a person subject to the jurisdiction of the Navajo Nation and who is at least 55 years of age or older.

D. "Emergency" is a situation in which an elder is immediately at risk of death or injury.

E. "Family" is the immediate circle of relatives including spouse, biological/clan/adopted children, grandchildren, in-laws, siblings, aunts, uncles, nieces, nephews, first, second and third cousins, biological, clan and adopted parents.

F. "Good Faith" means an honest belief or purpose and the lack of intent to defraud.

G. "Incapacity" means the current functional inability of a person to sufficiently understand, make and communicate informed decisions as a result of mental illness, mental deficiency, physical illness, or disability, or chronic use of drugs or liquor, as

determined by the Navajo Nation Family Courts.
Incapacity may vary in degree and duration.

H. "Least restrictive alternative" is an approach which allows an elder the most independence and freedom from intrusion, consistent with the elder's needs, by requiring that the least drastic method of intervention is used to protect the elder from harm.

I. "Neglect" occurs when any person fails to provide basic needs, supervision, services, or resources necessary to maintain the minimum physical and mental health of an elder as required by Navajo law. Neglect also includes:

1. Preventing or interfering with delivery of necessary services and resources to an elder.
2. Failing to report abuse, neglect, or exploitation of an elder when there is reasonable suspicion.
3. Failing to provide services or resources essential to the elder's practice of customs, traditions, or religion.
4. Leaving of child(ren) for indefinite periods of time by parents/legal guardians in the care of elders who may resort to using their limited resources in meeting needs of the child(ren).

J. "Retaliation" consists of threatening, harming, or otherwise interfering with an individual reporting elder abuse, including threats or injury to a person's

family, property, and employment status of the reporter or the reporter's family in any way.

105. ELDER PROTECTION SERVICES.

- A. Consistent with available resources, the Navajo Area Agency on Aging will have a duty to provide necessary protection services to an elder who has been or is being abused, neglected or exploited. Any protection services provided shall be the least restrictive alternative available and necessary to meet the needs of the elder, the elder's family and caregiver(s). When possible, the affected elder and the elder's family and caregiver(s) shall be consulted in determining what services shall be provided.
- B. Consistent with Section 304, the Navajo Division of Health or any other interested person or party may file a petition seeking an Elder Protection Order when good cause exists to believe that an elder is abused, neglected, exploited or incapacitated and is therefore suffering harm.
- C. The elder, the elder's family or caregiver(s), if financially able to do so, will pay for some or all of the cost of services or resources provided to the elder pursuant to this Act.
- D. Before providing any services, the Navajo Division of Health will inform the elder of the protection services which will be provided and possible alternatives to

these services, if any.

106. REGULATIONS. The Navajo Division of Health may adopt and issue regulations establishing criteria and procedures which comply with the policy and requirements of this Act for:

A. Receiving reports of suspected elder abuse or neglect;

B. Investigating all reports of suspected abuse or neglect;

C. Initiating petitions for failure to report, for making bad faith reports of elder abuse and neglect, for interference or retaliation for an elder abuse or neglect investigation, and for confidentiality violations;

D. Seeking and securing elder protection warrants;

E. Determining whether an incident is an emergency and necessitating immediate removal of the elder from the home where abuse is reported;

F. Making referral for criminal investigation;

G. Establishing and providing elder protective services;

H. Initiating procedures for determining incapacity of the elder; and

I. Implementing and ensuring confidentiality requirements.

201. DUTY TO REPORT ABUSE OR NEGLECT OF AN ELDER.

Suspected abuse or neglect of an elder will be reported to the Navajo Division of Health by any person who has good reason to suspect that an elder has been or is being abused or neglected.

202. IMMUNITY FOR REPORTING. A person who in good faith makes a report pursuant to Section 201 of this Act is immune from civil or criminal liability.

203. BAD FAITH REPORT; CIVIL PENALTY; DAMAGES; CRIMINAL LIABILITY.

Any person who knowingly makes a false report of a suspected elder abuse is subject to a civil penalty of up to \$750.00. The Navajo Nation Family Court will assess the penalty after petition, notice, an opportunity for hearing, and a determination that the reporter made the report knowing it to be false. Further, the false reporter will be subject to any civil suit brought by or on behalf of the person(s) named as suspected abusers in the false report for damages suffered as a result of the false report. The person is also subject to any criminal penalties as set forth in the Navajo Nation Code or as allowed by this Act.

204. RECEIVING REPORTS; REPORT CONTENTS; RETENTION OF REPORT.

A. The Division of Health will receive all reports of elder abuse or neglect.

B. The report may be oral or in writing and to the extent possible it will contain:

1. The elder's name, address and location of home, telephone number, census (if applicable) and social security number;

2. Name, address, location, telephone number of person(s) or agency which is suspected of abusing or neglecting elder;

3. The nature and degree of incapacity of the elder, if any;
4. The name, address, location, telephone number of witnesses;
5. The name, address, location, telephone number of the elder's caregiver(s);
6. A description of the acts which are alleged to be abuse or neglect;
7. Any other information that the reporter believes might be helpful in establishing the cause of the abuse or neglect.
8. If possible, the reporter will sign the report, however, a report may be made anonymously.

C. All reports will remain on file for a period of seven (7) years, even if it is determined that there is insufficient evidence to pursue any legal action. In the event that the Navajo Division of Health determines that the report was made in bad faith, the report will so indicate.

205. INVESTIGATIONS.

A. Within the limits of available resources, the Navajo Division of Health will investigate the report within 72 hours, including weekends and holidays, and prepare a written report of the investigation which will include the information as set forth in paragraph B of Section 204, as well as the results of interviews,

observations, assessments and other fact-finding information. If possible, the investigator will conduct personal interviews with the elder, elder's family and caregiver(s), persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder's circumstances, and any other person the investigator believes has pertinent information. The existence and contents of medical records and other reports of abuse or neglect will be ascertained. The investigator personally will assess the elder's living conditions, with assistance of the Office of Environmental Health and the Navajo Department of Law Enforcement, as necessary.

- B. An elder, the elder's family and caregiver(s) will be informed about an elder abuse investigation before it begins unless an emergency exists, in which case, they will be informed as soon as possible, but not later than 48 hours after an investigation begins.
- C. An elder may refuse to accept elder protection services, even if there is good cause to believe that the elder has been or is being abused, provided that he/she is able to care for him/herself and has the capacity to understand the nature of the services offered.
- D. The elder's family or caregiver(s) may refuse for

themselves, but not for the elder, elder protection services offered pursuant to this Act, unless the elder cannot take care of him/herself or lacks the capacity to understand the nature of the services offered.

E. An elder, the elder's family or caregiver(s) may refuse to allow an investigator into their home and the investigator will so inform the elder, the elder's family and caregiver(s) of this right.

F. The investigator will inform the elder's family and caregiver(s) of their rights as allowed by the Navajo Nation Bill of Rights, whenever it appears that the investigation may lead to criminal charges being filed under Navajo Nation law.

G. The elder, elder's family and caregiver(s) will be served personally with a petition filed pursuant to this Act.

H. The elder, elder's family and caregiver(s) have the right to personally attend any hearing pertaining to the determination of the elder's capacity.

I. The elder, elder's family and caregiver(s) have the right to be represented by counsel at all hearings.

J. The elder, elder's family and caregiver(s) have the right to seek independent medical, psychological, or other evaluations at their own expense.

301. ELDER PROTECTION INVESTIGATION WARRANT.

A. The investigator may petition the Navajo Nation Family

Court for an Elder Protection Investigation Warrant.

B. The Navajo Nation Family Court may issue an Elder Protection Investigation Warrant upon a showing of probable cause by the investigator that elder abuse or neglect has occurred and that the family, caregiver(s) of the elder, or the elder has refused the investigator access. The Elder Protection Investigation Warrant is enforceable through contempt proceedings as provided under the Navajo Rules of Civil Procedure.

C. The warrant allows the investigator to assess the elder's living conditions and interview the elder without the family's, the caregiver's or the elder's consent. The purpose of the interview is to determine whether or not reasonable grounds exist to believe that the elder is incapacitated or has been subjected to abuse or neglect.

302. REFERRAL FOR CRIMINAL INVESTIGATION.

A report of suspected elder abuse or neglect will be referred to appropriate law enforcement officers if the investigation indicates that the criminal laws of the Navajo Nation or applicable federal criminal laws have been violated.

303. EMERGENCY PROCEDURES AND PROTECTION ORDER.

If, after investigation, the investigator has reasonable cause to believe that an emergency exists, the investigator will act immediately to protect the elder, including

transporting the elder for medical treatment, placement in a group home or emergency shelter. Within 72 hours of such action, the Navajo Division of Health will petition the Navajo Nation Family Court for an Elder Protection Order as provided for in Section 304 of this Act.

304. ELDER PROTECTION ORDER.

A. The Navajo Division of Health or any other person or party may petition the Navajo Nation Family Court for an Elder Protection Order. This petition will contain allegations that elder abuse, neglect or exploitation has occurred or that the elder is incapacitated and cannot appropriately care for him or herself.

B. The Navajo Nation Family Court may issue an Elder Protection Order after affording notice to all affected parties and holding a hearing which demonstrates by clear and convincing evidence that the elder is incapacitated and that elder abuse, neglect or exploitation has occurred.

C. If the Navajo Nation Family Court determines that an elder is abused, neglected, exploited or incapacitated and cannot care for him or herself, the Family Court may issue an Elder Protection Order which provides appropriate protective services for the elder. Such protective services, subject to available resources, may include, but are not limited to, the following:

1. Removing the elder from the abusive or neglectful

situation for not longer than 14 days:

2. Removing the person or persons who have abused or neglected an elder from the elder's home;
3. Restraining the person or persons who have abused or neglected an elder from continuing such acts;
4. Requiring an elder's family or caregiver(s) or any other person(s) with a fiduciary duty to the elder to account for the elder's funds and property;
5. Requiring any person who has abused or neglected an elder to pay restitution to the elder for any damages which occurred as a result of that person's wrongdoing;
6. Appointing, pursuant to 9 N.N.C. sec. 801, et seq., a representative or guardian for the elder or the elder's estate, in the event that the Family Court determines that the elder is incapable of taking care of him or herself or managing his or her property;
7. Naming a representative payee; and
8. Ordering the Navajo Division of Health to prepare a plan to deliver elder protection services which provides the least restrictive alternatives for services, care, treatment, or placement consistent with the elder's needs.

D. An Elder Protection Order will be issued for a period

not to exceed six (6) months, unless the Family Court determines that the elder is incapacitated and as a result is incapable of taking care of him or herself, in which case the Elder Protection Order may be indefinite.

E. An Elder Protection Order may be extended as many times as necessary to protect the elder, but only after notice and opportunity for hearing is given and a determination is made based on clear and convincing evidence that such an order is necessary for the protection of the elder. Each extension will be for a period not to exceed 30 days.

F. Whenever the Family Court determines that an Elder Protection Order should be issued, it may refer the case to the Peacemaker Division, unless it makes a determination that a referral to the Peacemaker Division is infeasible, inappropriate or futile. Such referral may be part of an Elder Protection Order. Upon referral, the Peacemaker Division will attempt to resolve conflicts between the elder and the elder's family and/or caregiver(s) using traditional methods and in accordance with Peacemaker Division rules.

305. CONFIDENTIALITY OF REPORTER, RECORDS, HEARINGS.

A. The name of the person who makes a report of abuse or neglect as required by Section 201 of this Act is confidential and may not be released to any person

unless the reporter consents to the release or such release is ordered by the Navajo Nation Family Court. The Navajo Nation Family Court may release the reporter's name only after notice to the reporter is given, a closed evidentiary hearing is held, and the Navajo Nation Court finds that disclosure is needed to protect the elder. The reporter's name will be released only to the extent the Family Court determines necessary to protect the elder.

B. Any record of an investigation of elder abuse or of a Navajo Nation Court hearing regarding elder abuse will be kept confidential. Such records shall be available to the elder, the elder's family or caregiver, and others who require these records in order to provide services to the elder.

C. A hearing held pursuant to this Act will be closed and confidential. Only persons essential to the matter before the court may attend the hearing. No person who attends or testifies at such a hearing will reveal information about the hearing unless ordered to do so by the Navajo Nation Family Court.

306. SEVERABILITY.

Should any provision of this Act or its applicability be found to be invalid by the Courts of the Navajo Nation, the remaining provisions which can be implemented without the invalid provision will be given full force and effect. To

this extent, the provisions of this Act are severable.