

# **CONDENSED GUIDE FOR DRAFTING TRIBAL VICTIM'S RIGHTS CODES**



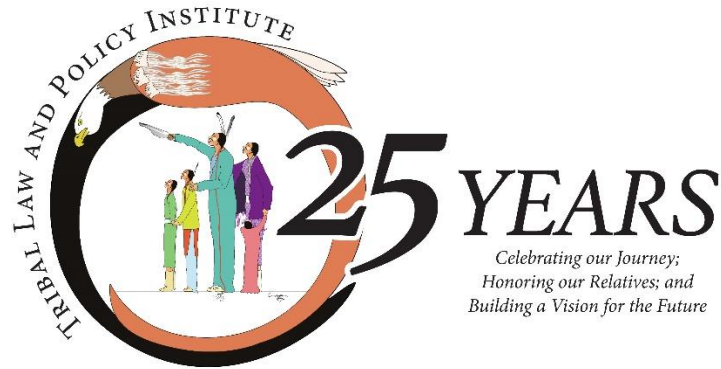
**November 2022**

**Main Office: 8229 Santa Monica Blvd, Suite 201 West Hollywood, CA 90046  
P: 323.650.5467 - F: 888.233-7383**

**Tribal Law and Policy Institute: [www.Home.TLPI.org](http://www.Home.TLPI.org)**

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Telephone: (323) 650-5467

Fax: (888) 233-7383

Email: [Info@TLPI.org](mailto:Info@TLPI.org)

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### **Primary Authors**

Bonnie Clairmont (*Ho-Chunk*)  
Victim Advocacy Specialist, Tribal Law and Policy Institute

Michelle Rivard Parks  
Associate Director, Tribal Judicial Institute

Kelly Gaines Stoner (*Cherokee*)  
Victim Advocacy Legal Specialist, Tribal Law and Policy Institute

Heather Torres (*San Ildefonso Pueblo, Diné*)  
Program Director, Tribal Law and Policy Institute

### **Special Thanks**

Lynette Morin (*Turtle Mountain Band of Chippewa Indians*)  
Project Coordinator, Tribal Judicial Institute

Chloë Freeman (*Lenni Lenape, Cherokee, Shawnee*)  
Legal Extern, Tribal Law and Policy Institute

### **Formatting Assistance**

Marlon Footracer (*Diné*)  
Publication Specialist, Tribal Law and Policy Institute

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# **How to Use This Guide**

## **What This Resource Can Do**

This resource was designed to assist tribal governments with the development of victim right's codes. This resource was written with the belief that tribal governments have the ability to draft victim right's laws centered on their tribal beliefs that convey compassion for those harmed by crime and the importance of protecting the rights of victims, and to prevent revictimization. The information provided does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.

Although attorneys may be beneficial in the process of tribal code development, tribal leaders and community members are usually the best people to decide what is needed in the laws particularly as the laws incorporate tribal beliefs and traditions as guiding principles. It may prove to be beneficial to utilize a core group/team to do some initial drafting, individuals who are knowledgeable on the impact that crime victimization has on a person and the devastating effects that necessitates ensuring victim rights and victim safety. It may also be beneficial to utilize a team coordinator or facilitator who is knowledgeable about domestic violence, dating violence, sexual assault, and stalking to ensure the law has a victim-centered, trauma-informed focus.

## **What This Resource Cannot Do**

This resource does not take the place of training for professionals on the dynamics of crime victimization, the needs of crime victims—particularly the need for safety—as they navigate the criminal justice system, and the importance of a victim-centered response by all professionals. All criminal justice agency professionals including victim witness coordinators, law enforcement, prosecution, judicial officers, and probation should receive training on the trauma experienced by victims and the importance of safeguarding victims to prevent further traumatization. Only when there is a good understanding of the impact of crime on the victim, on the victim's family, and community can criminal justice professionals truly address the needs and rights of crime victims.

## **A Word About Victim Safety and an Advocate's Perspective**

There are many potential risks to victim safety from the moment they enter the criminal justice system including fear for their personal safety, fear of being killed by the perpetrator, fear of losing their children, fear of being arrested, or fears of privacy and confidentiality violations. Consequently, these fears may prevent them from fully participating in the criminal justice process.

All professionals must be aware of the dangers a victim faces by disclosing their abuse and reporting the crime they have experienced. When possible, all professionals should work collaboratively to promote a victim-centered response. The fears for safety must always be taken seriously and there must be safety plans in place to prevent further traumatization to the victim and to enable the victim's full participation in the proceedings.

Victim advocates<sup>1</sup> have a good sense and knowledge regarding the needs of victims, but also will work to ensure the victims are accorded the rights contained in the law at every juncture in the criminal justice response. They are trained to work in collaboration with all criminal justice personnel to convey what the victim wants and what the victim may be concerned about, and can be a voice of the victim at the victim's request.

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<sup>1</sup> This Condensed Guide will use the term "victim advocate" or "community-based advocate" interchangeably. For the purposes of this publication, a victim advocate is a community-based agent of social change, a biased supporter of victims of violence and their expressed interests who prioritizes victim safety and offender accountability in all aspects of advocacy. The authors recognize that there are other advocates that may be hospital-based, prosecutor-based, law enforcement-based, or court-based. All uses of the verb "advocate" or noun "advocacy" refer to the work of community-based advocates.

## Part 1: Introduction

The victim's rights movement of the 1970s and 1980s resulted in the creation of many programs designed to assist victims of crime and the establishment of victim's rights through the passage of laws at the local, tribal, state, and federal level. Victim's rights may vary from jurisdiction to jurisdiction, but generally focus on providing the victim an opportunity to participate in the criminal justice process and providing protection to the victim. Until recently, criminal justice systems often focused only on the defendant's rights and were seemingly indifferent to the victim's needs as a criminal case progressed through the legal process. Historically, victims were often excluded from the courtrooms and denied the chance to speak at the sentencing hearing. The criminal justice system usually left the victim on their own to attempt to reclaim their health, security, and dignity. Over the past thirty years, tribal, state, and federal jurisdictions have made sweeping changes to this paradigm. Although victim's rights may vary from jurisdiction to jurisdiction, victims may now have statutory (legislative) and sometimes constitutional authority to assert basic victim's rights when the offender has been charged with a crime.

Access to victim's rights laws is important because it ensures that the victims are informed of and allowed to participate in the criminal process. Having a victim's rights code or chapter within your tribal code encourages your criminal justice system to focus on victim safety throughout the criminal process. Additionally, the focus communicates to crime victims that they are an important part of the process, which can enhance victim reporting and victim participation in prosecutions. Victim's rights most often come into play in criminal cases, but your community can decide if there are aspects of civil cases that should include provisions for victim's rights and safety. For purposes of this Condensed Guide, only criminal cases with adult victims will be addressed.

Victim's rights should be victim-centered. A victim-centered approach allows the victim's wishes, safety, and well-being to take priority. This approach is grounded in the philosophy that the services and protections offered to the victim are complementary, not mandatory, and the victim is the decision maker regarding services and protections needed. Statutes may contain language such as "at the victim's discretion." The following is a definition used by the Office for Victims of Crime (OVC) in the context of human trafficking:

This approach is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner.

A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers, empowering survivors as engaged participants in the process,



and providing survivors an opportunity to play a role in seeing their traffickers brought to justice.<sup>2</sup>

A tribe can incorporate victim's rights either as a standalone section or chapter within your code, or as victim's rights provisions throughout the code. A standalone comprehensive victim's rights code or chapter demonstrates the tribe's dedication to protecting victims' rights and may help ensure that everyone is aware of the rights.

## **Core Victim's Rights**

The following are understood to be among the core rights for victims of crime:<sup>3</sup>

- The right to be treated with fairness, dignity, sensitivity, and respect;
- The right to attend and be present at criminal justice proceedings;
- The right to be heard in the criminal justice process, including the right to confer with the prosecutor and submit a victim impact statement at sentencing, parole, and other similar proceedings;
- The right to be informed of proceedings and events in the criminal justice process, including the release or escape of the offender, legal rights and remedies, available benefits and services, and access to records, referrals, and other information;
- The right to protection from intimidation and harassment;
- The right to restitution from the offender;
- The right to privacy;
- The right to apply for crime victim compensation;
- The right to the expeditious return of personal property seized as evidence whenever possible;
- The right to a speedy trial and other proceedings free from unreasonable delay; and
- The right to enforcement of these rights and access to other available remedies.

These core victim's rights are instrumental to providing some foundational protections for victims in any criminal legal process. Importantly though, tribes are sovereigns and possess the power to draft legislation that best protects victims in their tribal community.

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<sup>2</sup> Office for Victims of Crime Training and Technical Assistance Center, Human Trafficking Task Force E-Guide, "Victim-Centered Approach," accessed June 17, 2021, <https://www.ovcttac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach>.

<sup>3</sup> "About Victims' Rights," VictimLaw.org, accessed March 18, 2021, <https://victimlaw.org/victimlaw/pages/victimsRight.jsp>.

## Remaining Parts of This Resource

To round out the introductory material, a basic overview of criminal jurisdiction and the criminal legal process is outlined. These considerations are foundational information to consider when drafting victim's rights statutes. The criminal legal process is of particular importance because tribal victim's rights will impact a victim's experience and safety while navigating your tribal criminal justice system. The following parts follow the introductory material:

- **[Part 2: Code Drafting:](#)** Outlines a team approach to drafting tribal code and provides some drafting tips.
- **[Part 3: Codifying Victim's Rights:](#)** Discusses each of the core victim's rights, provides examples of tribal victim's rights statutes, and offers other considerations for tribal drafting efforts.
- **[Part 4: Discipline-Specific Responsibilities Regarding Enforcement of Victim's Rights:](#)** Discusses some of the discipline-specific responsibilities pertaining to the enforcement of victim's rights within a criminal legal process including charts with potential steps to enforcement.
- **[Part 5: Additional Resources:](#)** Provides additional information regarding topics discussed in this resource for further education and understanding.

## A. Criminal Jurisdiction in Indian Country

Being a victim of crime and navigating the criminal justice system can be a frightening and confusing experience. Because victim's rights typically apply only in the criminal justice system, being familiar with the general aspects of criminal jurisdiction in Indian country is beneficial. Although this guide will provide a brief introduction to tribal criminal jurisdiction, a complete analysis of tribal criminal jurisdiction is outside the scope of this resource.

Criminal jurisdiction refers to the power of a court to hear and decide cases of a criminal nature and authority to provide a law enforcement response to criminal matters. Criminal cases are usually prosecuted by governments: tribes, states, or the federal government. The burden of proof in a criminal case requires the prosecutor to prove that the defendant committed a crime beyond a reasonable doubt. This is the highest burden of proof in American jurisprudence as a defendant's freedom may be at issue. If a person is found guilty of a crime, the penalty may be incarceration and/or fines.

Tribes retain all inherent rights of self-governance that have not been divested, including the right to exercise criminal jurisdiction within Indian country. This inherent power has been limited by the United States through Supreme Court decisions and legislation.<sup>4</sup> Thus, three sovereigns may be asserting criminal jurisdiction over crimes committed in Indian country: tribes, states, and the federal government. In the analysis of which sovereign may exercise criminal jurisdiction, you have to consider the crime committed, the status of the territory where the crime was committed, and the Indian or non-Indian status of the perpetrator and the victim. Additionally, tribal criminal jurisdiction may run concurrently (at the same time) with federal and/or state criminal jurisdiction. A combination of federal statutes and federal court decisions have created this complex maze of laws and regulations that make it difficult for tribes to address crime committed in Indian country.<sup>5</sup>

Reviewing treaties, the tribal constitution, code, ordinances, and other law-making material to determine over who, what, and where your tribe has criminal jurisdiction will be an important exercise to complete before drafting victim's rights codes.

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<sup>4</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (exercise of tribal criminal jurisdiction over non-Indians was inconsistent with the domestic dependent status of tribes). See also Public Law 280, 67 Stat. 588 (1953) (Congress gives six states extensive criminal and civil jurisdiction over matters arising in Indian country). See also Major Crimes Act, 18 U.S.C. § 1153 (federal prosecution of major crimes committed by Indians) and see General Crimes Act 18 U.S.C. § 1152 (provides for the federal prosecution of crimes by non-Indians against Indians and of nonmajor crimes by Indians against non-Indians with certain exceptions).

<sup>5</sup> "General Guide to Criminal Jurisdiction in Indian Country," Tribal Law and Policy Institute, accessed March 9, 2021, <http://www.tribal-institute.org/lists/jurisdiction.htm>.

## B. Criminal Legal Process

Each tribe will include various disciplines to work within their criminal justice system. Additionally, each tribe will have their own unique procedural policies, rules, and laws that will guide their tribal justice system responses to crime. This section provides a general introduction to criminal legal systems and procedures while also highlighting opportunities for tribes to develop and incorporate victim's rights statutes into their laws in an effort to create specific and legally enforceable rights for victims while reinforcing a victim-centered approach to justice. Because each tribe will vary in terms of justice system infrastructure, laws, and procedures, it is important to consult your tribal laws.

Tribal laws are reflected in constitutions, codes, statutes, ordinances, and resolutions. Generally, the term *code* refers to an organized listing of all laws for a given subject matter, while a specific subsection may be entitled a *statute* or *ordinance*. In this Condensed Guide, the terms will be used interchangeably to be relevant to a wide variety of audiences. Tribal governments use a variety of legal and cultural terms within tribal laws, including terms from within their own tribal languages. In criminal trials, various legal terms will be used in reference to specific legal actions, procedures, and documents. It is helpful to understand these commonly used legal terms before drafting or amending victim's rights statutes to ensure that the victim's rights laws drafted refer to legal terms in a manner that is consistent with definitions found in other tribal laws. See the Glossary of Common Legal Terms in [Appendix A](#). With an understanding of the need to prioritize victim safety and a glossary to assist in reading legal terms, the next paragraphs follow the criminal legal process chart provided and offer more detail regarding each stage of a typical criminal legal process.

Most criminal legal systems consist of victim witness coordinator, law enforcement, prosecutors, public defenders, judges, and corrections. Each of these disciplines plays an important role in responding to crimes. Some of the discipline-specific responsibilities regarding the enforcement of victim's rights are discussed further in [Part 4](#).

The public defender or hired defense counsel will represent the defendant while the prosecutor will represent the tribe.<sup>6</sup> Victim's rights statutes can be helpful for tribes seeking to implement a victim-centered criminal justice system. Victim's rights statutes clarify the rights of the victim within the various stages of the criminal justice process while also identifying specific enforcement mechanisms for those rights. Issues that can be specifically addressed within your victim's rights statutes might include identifying whether a victim is entitled to a legal representative, the process for assignment of a legal representative (if applicable), and the stage of proceeding during which a right or legal representation might be needed. During the criminal justice system response, victims may have the option to:

- File a police report;

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<sup>6</sup> In some instances, a nonattorney may be providing legal representation. Lay legal advocates should consult tribal code to ensure any tribal licensing requirements are met. Tribes may draft victim's rights statutes that authorize a representative in a criminal case to assist the victim in asserting and enforcing victim's rights.

- Submit a witness statement;
- Testify at pretrial hearing, bond hearing, or a criminal protection order hearing;
- Testify at trial;
- Meet with the prosecutor; and
- Submit a victim impact statement.

### **Prioritizing Victim Safety as Part of the Criminal Justice System Response**

While individuals may enter the criminal justice system because they have been the victim of a crime, there may be instances for an individual charged with a crime to also be a victim such as cases involving sex trafficking, human trafficking, and drug trafficking. In these cases, victims may be forced or coerced into the commission of crimes but may be reluctant to report for fear of arrest, criminal prosecution, or further abuse at the hands of the individuals who are forcing them to commit criminal acts. Because of the complexities that can arise in any number of criminal cases, it is important that:

- Criminal legal systems and statutes be victim-centered;
- Professionals within criminal justice systems have a firm understanding of victimization; and
- Victim's rights statutes clearly establish the rights of victims within a criminal justice system.

### **Criminal Justice Process**

Once a crime is alleged to have occurred and is reported to law enforcement, there are typically five stages to a criminal justice response:

- Investigation and arrest;
- Pretrial and prosecution;
- Adjudication;
- Sentencing; and
- Postadjudication/corrections.

Please see each stage displayed in the chart that follows, progressing from left to right. A discussion of each stage and what typically happens in that stage follows. The subheaders match each phase after a crime is reported by a victim or witness. Victim safety and victim right's code drafting tips are included at each stage.

Crime Reported by Victim or Witness <sup>7</sup>	Investigation & Arrest	Pretrial & Prosecution	Adjudication	Sentencing	Post adjudication/ Corrections
	<ul style="list-style-type: none"> <li>• Interviews</li> <li>• Investigations</li> <li>• Arrest</li> </ul>	<ul style="list-style-type: none"> <li>• Charges Filed/ Complaints</li> <li>• Appearance in Court</li> <li>• Preliminary Hearings</li> <li>• Bail/Defendant Hearing</li> <li>• Grand Jury</li> </ul>	<ul style="list-style-type: none"> <li>• Arraignment</li> <li>• Guilty/Not Guilty Plea</li> <li>• Trial</li> <li>• Conviction</li> </ul>	<ul style="list-style-type: none"> <li>• Sentencing</li> <li>• Sanctions</li> </ul>	<ul style="list-style-type: none"> <li>• Probation</li> <li>• Detention/ Prison</li> </ul>

### ***Investigation and Arrest***

When a crime occurs and a report has been made by a victim or a witness, there will be an initial response by law enforcement that may include interviews, investigations, and arrest. However, the filing of the report may be fraught with fear and anxiety for the victim. Possible fears and anxieties can include:

- Loss of custody of children, loss of home, and loss of income if the perpetrator is arrested;
- Additional violence perpetrated by the perpetrator or perpetrator's family/ friends;
- Belief that the incident was not serious enough to report especially if no physical injuries occurred; and
- Belief that law enforcement or the prosecutor will not take any action even if a crime is reported.

These fears and anxieties are justified. The criminal justice system is designed to protect the rights of the accused (due process) while also being a forum for a victim to seek "justice." These focuses can feel imbalanced at various points while navigating the criminal justice system. That imbalance can cause victims to feel unprotected in a system that is supposed to bring them "justice." Victim's rights legislation strives to balance the focus on the rights of the accused by solidifying rights of a victim of crime. Victim's rights statutes may contain various rights that

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<sup>7</sup>Adapted from "Resources: A Brief Description of the Federal Criminal Justice Process," FBI.gov, accessed March 20, 2021, <https://www.fbi.gov/resources/victim-services/a-brief-description-of-the-federal-criminal-justice-process#The-Trial>; Also note: Defendants have specific rights within each stage of a tribal criminal justice response. Victims may also have specific rights at each stage.

provide protection to the victim during the journey through the criminal justice process thereby lessening some of the victim's fears and anxieties set forth in the preceding text.

If an arrest is made, the next phase of the criminal justice response will be to file charges in the tribal court to initiate the adjudicatory process. The filing of those charges moves the parties further along in the criminal justice process.

**Victim Safety Advocate Tip:** Be sure to safety plan with the victim with every contact as actions such as filing a police report can be triggers for defendant aggression.

**Victim's Rights Drafting Tip:** Statutes should clearly provide protections for the victim and include officials responsible for the protection such as law enforcement and/or prosecutors. Each agency should be required to inform the victim of statutory rights.

### ***Pretrial and Prosecution***

Once the adjudicatory process is initiated with the filing of charges, the parties enter what is referred to as the pretrial phase. During the pretrial phase of the criminal justice process, charges will be filed against the defendant in the tribal court. Charges are typically initiated when the tribal prosecutor files a charging document, commonly referred to as a complaint. In some tribal jurisdictions, the grand jury process may be used to decide whether or not the defendant will be formally indicted and whether the case will proceed to trial, although the grand jury process is more common in federal court than it is in tribal court.

After the criminal complaint or indictment has been filed, the defendant will make an appearance before the tribal court. During the pretrial phase, there may also be a need for preliminary hearings to address evidentiary matters, and pretrial release terms and conditions. During this phase of the criminal justice system process, plea agreements may be negotiated between the defendant and the prosecutor. The victim may be given an opportunity to provide a statement in writing or in person during the court hearing prior to release. The purpose of involving the victim at this stage of the proceeding is to draw any safety concerns to the attention of the judge and to better inform the terms and conditions that the judge puts in place.

#### ***i. Pretrial Release***

The pretrial release hearing will focus on whether the defendant is entitled to be released pending the outcome of the trial. During this phase of the adjudicatory process, the judge will consider whether bond must be posted, the amount of bond, and the terms and conditions the defendant must comply with to remain out of jail pending the outcome of the trial.

**Victim Safety Advocate Tip:** Be sure to safety plan with the victim with every contact. Explain criminal no-contact orders to the victim. If the victim requests a criminal no-contact order or if a criminal no-contact order is mandatory per tribal statute, consider suggesting the no-contact order be drafted to invoke the Violence Against Women Act's full faith and credit clause and the federal firearms prohibitions. See [www.TribalProtectionOrder.org](http://www.TribalProtectionOrder.org) for additional information on drafting protection orders.

**Victim's Rights Drafting Tip:** When drafting a victim's rights statute, it is important to draft the statute to specifically cover each of the possible pretrial, trial, and posttrial proceedings. Each criminal justice agency should be required to inform the victim of statutory rights.

## ***Adjudication***

### ***i. Arraignment and Guilty/Not Guilty Plea***

Arraignment is a proceeding in which a criminal defendant is brought into court, told of the charges in an indictment, and asked to plead guilty or not guilty. The defendant will make an appearance before the tribal court to enter a plea of guilty or not guilty and to inform the tribal court regarding their choice for a jury trial or a bench trial.

### ***ii. Plea Agreements***

Plea agreements are generally initiated by the tribal prosecutor and involve a formal offer being made to the defendant wherein the defendant would agree to plead guilty to the crime in exchange for a specific sentence. The victim should be contacted by the prosecutor before a plea agreement is offered to the offender to ensure that the victim is informed and can express any issues of concerns they may have to the prosecutor before a plea is offered to the defendant. When drafting a victim's rights statute, the law may provide a specific right for the victim to be involved at this phase.

### ***iii. Trial***

#### ***a. Jury trial***

During a jury trial, the judge will maintain control of the courtroom, make evidentiary decisions, and provide instructions to the jury once selected. The jury will be tasked with determining the guilt or innocence of the defendant based upon the evidence that is presented during the trial. If the defendant chooses to be tried by a jury of their peers, the tribal court will summons in prospective jurors and schedule a pretrial hearing for the purpose of selecting a specific number of jurors. During the jury selection process, both the prosecution and defense can make objections to prospective jurors and make requests to have jurors eliminated from the jury pool.



#### *b. Bench trial*

If the defendant requests a trial before a judge, rather than a jury, it is referred to as a bench trial. In a bench trial, the judge will maintain control of the courtroom, make evidentiary decisions, and serve as the ultimate trier of fact in the case.

#### *iv. Acquittal or Conviction*

At the conclusion of the bench or jury trial, the defendant will either be acquitted of the offense or convicted of the offense. Acquittal means that the trier of fact did not find sufficient evidence that the defendant perpetrated the crime and they will therefore be deemed not guilty. If acquitted, the case concludes and will not move to the sentencing phase. Conversely, conviction means that the trier of fact did find sufficient evidence existed to support the complaint. Conviction means the defendant has been deemed guilty and the case will proceed to the sentencing phase.

**Victim Safety Advocate Tip:** Be sure to safety plan with the victim after every contact. Safety planning should be ongoing, revisited, and adjusted based upon every civil or criminal legal maneuver by any attorney, which includes but is not limited to the filing of documents in court, issuance of subpoenas, utilizing discovery tools such as interrogatories or depositions, and negotiating defendant release.

**Victim's Rights Drafting Tip:** Draft the statute to clearly indicate the victim shall be notified of the defendant's release or demise and designate the official responsible to inform the victim of the release.

### ***Sentencing***

The sentencing phase of the criminal justice system process will occur after the trial if the defendant has been found guilty, or after arraignment, if the defendant pleads guilty. During the sentencing phase, the judge may be bound by tribal law in assessing a minimum mandatory sentence, considering specific factors before determining a sentence, or the sentence may fall within the complete discretion of the judge. It is common for a judge to consider the impact of the crime on the victim, however, it is helpful to incorporate a specific right within victim's rights statutes to guarantee that the victim will be afforded the opportunity to provide or submit a victim impact statement to the court prior to a sentence being imposed. Additionally, the victim should have a right to be notified in the event of the defendant's release from custody. [Appendix A. Glossary](#) contains useful terms related to sentencing including concurrent sentence, consecutive sentence, deferred sentence, suspended sentence, and sanction.

**Victim Safety Advocate Tip:** Be sure to safety plan with the victim with every contact including delivering a victim impact statement. Victim impact statements are one way a victim of crime may present information about the effects of the crime on the victim's emotional, physical, financial, and/or social well-being. These statements may be written or oral. Guidelines on how to write a victim impact statement are available in the OVC report, [Promising Victim-Related Practices in Probation and Parole - A Compendium of Promising Practices](#). See [Chapter 2: Impact, Notification, and Informational Services](#) for information related to victim impact statements and [Appendix B](#) for a sample form. Explain the right to submit a victim impact statement during the sentencing phase.

**Victim's Rights Drafting Tip:** Statute should be clear about the victim's right to provide an impact statement before any sentencing, including plea agreements, and note the official responsible for ensuring this right is executed according to the victim's wishes.

### ***Postadjudication/Corrections***

As part of a sentence, the judge may impose time in jail as well as supervision of the defendant after they are released from jail. Alternatively, a judge may impose a period of supervision in lieu of jail. It is important to become familiar with your tribal criminal code to see what sentencing alternatives are available in criminal cases. It is helpful to incorporate a specific right, such as a right to notice or the right to be informed, within victim's rights statutes to guarantee that the victim will be notified when an individual is being released from jail. If probation was made part of the sentence, it is also important that the victim be made aware of the terms and conditions of probation. This is especially important for victim safety planning.

#### ***i. Corrections***

Corrections commonly refers to jail, however there are also any number of community-based corrections programs that might be included within this phase of the criminal justice process including: reentry program, probation, and house arrest (typically monitored with an electronic monitoring device). Victim's rights statutes should consider this phase of the criminal justice process to ensure that victims are timely informed of issues that may have implications for the victim's safety as well as other issues such as victim's compensation or restitution.<sup>8</sup>

**Victim's Rights Drafting Tip:** Detail the responsibility of the prosecutor or probation/parole official to ensure that restitution orders are complied with. All too often enforcement is weak and the defendant ends up not being held accountable to pay the restitution causing revictimization. Note the duty to inform victim of statutory rights.

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<sup>8</sup> VictimLaw.org, "[About Victims' Rights - Right to Restitution](#)" ("The term 'restitution' generally refers to restoration of the harm caused by the defendant, most commonly in the form of payment for damages. It can also

## *ii. Probation*

Probation refers to a period of time postadjudication where the defendant is required to follow specific directives of the court such as finding employment, securing housing, abstaining from alcohol or substance abuse, refraining from further criminal activities, and possibly having no contact with a victim. Probation is generally ordered for a specific period and failure to meet the terms and conditions of probation may result in further sanctions by the court or a revocation of probation at which point the defendant may be remanded to custody and ordered to serve some or all of the jail time that was previously suspended by the tribal court. Probationary terms may be supervised<sup>9</sup> or unsupervised.<sup>10</sup>

**Victim Safety Advocate Tip:** Be sure to safety plan with the victim with every contact including period and terms of defendant's sentence. Victim advocates should be mindful that any victim information shared within the confines of a detention facility is most likely recorded, including phone calls coming in and out of the facility.

**Victim's Rights Drafting Tip:** Statute should be clear about the protections available to the victim, the responsibility of probation/parole in reporting violations to the prosecutor, and the victim's discretion to report violations. Detail that probation/parole should continue to inform victim of statutory rights.

## **No-Contact Orders within the Criminal Justice System Process**

No-contact orders (criminal protection orders) can be put in place at two different points in the criminal justice system process: (1) during the pretrial phase as a condition of release; and (2) as part of the sentence imposed by the court (including as part of the terms and conditions of probation). In a criminal process, the prosecution may request a no-contact order on behalf of the victim. It is important that the prosecutor communicate with the victim before seeking a no-contact order (so long as tribal law dictates that such an order is discretionary). The right to be informed and to meet with the prosecutor to discuss such issues can be included within a victim's rights statute.

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refer to the return or repair of property stolen or damaged in the course of the crime.") Restitution is distinct from victim's compensation programs.

<sup>9</sup> Supervised probation refers to a probationary term that is fulfilled under the supervision of a probation officer. Supervised probation oftentimes requires regular contact with the probation officer whose job it is to track the progress or regress of a defendant in meeting the terms and conditions of the court. The probation officer reports directly to the tribal court.

<sup>10</sup> Unsupervised probation refers to a probationary term that is fulfilled without the supervision of a probation officer. Unsupervised probation often requires the defendant to meet the terms and conditions of probation on their own volition and it is common that terms of probation are limited to refraining from further criminal activities, although no-contact orders may also be included. If a violation of unsupervised probation occurs, it is usually brought forward by the tribal prosecutor when it is reported that the defendant has engaged in further criminal activity and/or violated a no-contact order if one is in place.

It is also important that a criminal no contact order meet the requirements of 18 U.S.C. § 2265 (a) and (b) and fall within the definition of a protection order at 18. U.S.C. § 2266 to trigger the federal full faith and credit clause for enforceability purposes. Note that criminal no-contact orders run concurrently with the criminal case that may expire as set out in the tribal code. See [www.TribalProtectionOrder.org](http://www.TribalProtectionOrder.org) for more information.

*i. Mandatory*

Some tribal laws require the judge to issue a no-contact order when specific crimes are charged. This is common in domestic violence cases as both a pretrial order and as a probationary term.

*ii. Discretionary*

Some tribal laws place the decision of whether to issue a no-contact order within the discretion of the judge. Oftentimes when a no-contact order is discretionary, the prosecutor will need to make the request during the pretrial phase or during the sentencing phase of the criminal justice system process.

### C. Discussion Questions

These discussion points may assist the drafting team to determine the type of victim's rights needed in the tribal community and in the tribe's criminal legal process.

- Review and discuss the “[core rights](#)” listed in the preceding text. Rank each right of importance to victims in your tribal community. Are there additional rights needed for victims in the tribal community?
- Review and discuss the criminal justice process listed in the preceding text. Outline the tribal criminal justice process utilizing tribal laws and processes in your tribal community. Be sure to include any probationary processes.

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## **Part 2: Code Drafting**

A key piece of responding to crimes committed in tribal communities is to draft or revise tribal laws. This Condensed Guide was developed to provide a starting point for drafting or revising tribal laws addressing victim's rights. It is written with a philosophy that tribal laws should reflect tribal values. In addition, writing a tribal law usually requires careful consideration of how state and/or federal laws might apply in the community. The Condensed Guide takes a team approach to the code development process—though individuals taking on this task can use this resource as well. The main goal of this Condensed Guide is to offer foundational information on victim's rights and provide considerations for how tribal laws can be drafted in a way that provides safety and support for victims navigating your tribe's criminal legal process. When drafting tribal laws, it is important to utilize tribal language when possible and relevant customs, traditions, and beliefs with respect to safety, healing, and accountability.

## A. Team Approach

Teamwork is a cornerstone to effectively utilizing this resource. The resource provides information on assembling a code drafting team with suggestions regarding various disciplines that would provide useful, if not critical, input during the drafting process. Team discussion will enrich any discussion and assist in identifying gaps or barriers in the current tribal code relative to victim's rights. The code drafting team will draft tribal statutes that address the needs and customs of the tribe. The team may spend several days in a row working through this resource or may choose to meet regularly at designated days of the month at a given time. While meeting in person usually provides the greatest opportunity to exchange information, teams may choose to meet virtually by phone, video conference, or e-mail.

Team members should work through the introductory material and discussion questions in this resource together. The team should gather any requested information for future use in the drafting process. Once the information is assembled, the team will discuss various responses. You may choose to record group consensus responses for easy reference.

The makeup of the code drafting team should be unique to the needs of your community. Team members/stakeholders in the realm of victim's rights might include:

- Community-based victim advocate;
- Survivors of crimes;
- Tribal court judge;
- Tribal prosecutor;
- Representative(s) of appropriate law enforcement department;
- Tribal court personnel;
- Healthcare personnel (Indian Health Service and other);
- Tribal government, tribal leaders;
- Corrections and probation personnel;
- Tribal elders or spiritual leaders; and
- Other types of victim advocates (such as those advocates located in law enforcement offices or hospital settings).

The code drafting team will work collaboratively throughout its review of the resource; welcoming involvement from various disciplines with an interest in protecting victims creates a comprehensive and broad base of support. It also encourages the community to take ownership of the problem and the solutions. However, keep in mind that selecting a team that is too large may increase the chance of having personality conflicts, pushing personal agendas, and straying from relevant tasks. A small team may work just as well as a large team depending on the tribe's size and resources.

A facilitator can be helpful in scheduling code drafting team meeting dates/times, keeping the team focused and on task while working through the discussion questions in this Condensed Guide. The facilitator may also serve as a repository of information and/or research the team has gathered. They can also keep notes on topics that may require additional research. The

facilitator may also assist the planning team in scheduling focus groups and/or community forums on selected topics. However, a facilitator is not mandatory and one of the team members may serve in the role.

As the code drafting team sits down together to begin the process of reviewing, amending, and drafting tribal codes, consider writing down the team's ultimate goal and reviewing the goal at the beginning of each meeting. The goal might include keeping victim's safe and/or providing victim-centered rights for victims of crime. The goal might also include some beliefs on victim healing, peace, and dignity. The goal can be viewed as aspirational, providing a description of what the team would aspire to achieve in effectively honoring victims' needs and safety in your community criminal process.

Take the time to go through and review your current codes relevant to victim's rights for relevance to your particular tribal community and situation. When customs or beliefs are being discussed, the team should consider bringing in elders or others wise in these ways to educate and guide the team on any current statutes that conflict with these concepts and how to incorporate these concepts into the tribal code. An example from the [Oglala Lakota Sioux Domestic Violence code](#), as available on the Native American Rights Fund website, incorporating tribal concepts is provided in the following text:

## Chapter 1 – GENERAL PROVISIONS

### SECTION 101. Purpose

The OST Domestic violence Code is construed to promote the following:

1. That violence against family members is not in keeping with traditional Lakota values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The purpose of this code is to provide victims of domestic violence with safety and protection.
2. It is also the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Lakota values and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Lakota values that hold women and children as sacred. These consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior and understand "wolakota".
3. the prevention of future violence in all families through prevention and public education programs that promote cultural teachings and traditional Lakota values so as to nurture non-violence within Lakota families and respect for Lakota women.



## B. Drafting Tips

Tribal codes are drafted partly through instruction and partly from experience. Oftentimes, existing tribal laws may have originated from the laws of another tribe, state, or federal system. Take the time to go through and review your current codes relevant to victim's rights for relevance to your particular tribal community. When customs or beliefs are being discussed, the team should consider bringing in elders or others wise in these ways to educate and guide the drafting team on any current statutes that conflict with these concepts and how to incorporate concepts into the tribal code. Be sure to review the discussion of the [Criminal Legal Process](#) in [Part 1](#) for tips specific to victim's rights and the criminal process. The following tips for drafting tribal statutes generally may also be helpful.

Tips for drafting tribal statutes:<sup>11</sup>

1. Write simply and carefully. Be deliberate, intentional, and clear. Punctuation matters and affects statutory interpretation.
2. Write purposefully. Word choice can be critical and powerful. For example, the words *may* and *shall* will have very different meanings in law.
3. Research efficiently. Familiarize yourself with a basic understanding of the topic.
4. Familiarize yourself with a basic understanding of relevant tribal customs and traditions that may be woven into your tribal statute or code. Consider adding tribal language when possible.
5. Do not rush to recreate the wheel. Utilize examples of other tribal codes and/or federal laws that reach your intended target population and have the result you are seeking.
6. Masterful legislation requires teamwork.
7. Develop your drafting style. Review other drafts of statutes that you feel are well written and work well.
8. Be patient. Drafting can be tedious and frustrating. Reach out to team members or team lead when needed.
9. Draft the statute first then move to the sentencing language.
10. Be mindful of limitations on a tribe's criminal jurisdiction.
11. Be sure to include a date or event that the statute will take effect. For instance, on a certain date like August 20, 2022, or such as "upon the signing of the resolution approving the statute by the tribal council."

Be mindful to add a savings clause/severability clause to ensure that if any provisions in the code are deemed unconstitutional (according to your tribal constitution) or vague then the remaining statutes will still be valid.

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<sup>11</sup> Adapted and taken in part from Deborah Beth Medows, "[A Beginner's Guide to Legislation Drafting](#)," *Harvard Journal on Legislation* 58, no. 1 (2016).

### C. Discussion Questions

These discussion points may assist in assembling the drafting team and determining the drafting process that best meets the needs of the tribal community.

- *Review the list of possible members of the drafting team and discuss the team members that would best meet the needs of the tribal community. Be certain to include at least one tribal/community-based victim advocate or tribal coalition member. For a [list of Tribal Coalitions](#), visit [www.TribalTrafficking.org](http://www.TribalTrafficking.org).*
- *Review the drafting tips mentioned in the preceding text. Discuss and outline the drafting process and code adoption process in your tribal community. Discuss the process for inviting members to be a part of the drafting team.*

[illegible]

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## Part 3: Codifying Victim's Rights

Part 3 will first focus on the general victim's rights in most jurisdictions including a brief description of each victim's right. The Part begins with general information on defining the term "victim" and specifying the crimes that will trigger application of the victim's rights statutory protections. Followed by a discussion of each core right and some useful code examples; both tribal codes and federal codes (when possible) are provided. These codes are included for illustrative purposes. Their inclusion in this resource is not an indication of the code's fit for a specific tribe, but they do provide a starting place for tribal code drafters.

Please note that while all the victim's rights listed in the following text are critical to empower and protect victim's during the criminal process, *child victims of crime may need additional rights that can be placed into a tribe's victim's rights statutes*.<sup>12</sup> For example, appointing a dedicated attorney to litigate and advance the child's voice, utilizing statutes to protect the child's privacy, seeking courtroom accommodations such as closed-circuit television or testifying behind a screen for providing testimony, providing access to support persons or animals, and using an expert to explain what might be perceived as oppositional or noncooperating behavior that may result from trauma. This resource will focus on adult victims of crime in a tribal criminal justice system.

Generally, core victim's rights<sup>13</sup> include the following:

- Right to be Treated with Fairness, Dignity, Sensitivity, and Respect
- Right to Attend Hearings
- Right to Compensation
- Right to Be Heard
- Right to Be Informed
- Right to Privacy
- Right to Protection
- Right to Restitution
- Right to Return of Property
- Right to a Speedy Trial
- Right to Enforcement/Remedies of Victim

In addition to these "core" rights, tribes as sovereigns may want to add and/or tailor victim's rights statutes to address issues victims face in their tribal community. Tribal victim's rights should be based on the specific tribal community's customs, traditions, and belief systems regarding victim safety and healing as well as batterer accountability. A tribal judge should look to the codified victim's rights to provide context regarding a victim's opportunities to engage in

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<sup>12</sup> For more information on this topic, review other legal code resource publications by the Tribal Law and Policy Institute, <https://www.home.tlpi.org/legal-code-development-series>.

<sup>13</sup> *Supra* note 3, "About Victims' Rights," VictimLaw.org.

the criminal process. A few examples of potential tribal victim's rights for tribes to consider, in addition to the "core victim's rights," can include the following:

- The right to protection from intimidation and harassment or harm by defendant, defendant's family, friends, or any third party.

Victims may distrust the criminal justice system and experience fear on many levels. One such fear may include retaliation by the defendant or friends and family of the defendant. The right to protection from intimidation provides encouragement for the victim that when requested, law enforcement and the courts will provide protection and put a stop to any intimidation, harassment, or harm caused by the defendant or by any third party (including family members) on the defendant's behalf. This protection may include law enforcement investigations, prosecution of harassers, and/or court issuance of protection orders (both civil or criminal no contact orders) to provide protections to the victim.

- The right to receive a referral to an advocacy program for support services at point of first contact with the criminal justice system.

This type of right could provide maximum attention to victim safety and support at a time when the victim is likely experiencing heightened trauma. Providing access to victim advocate services to provide culturally appropriate advocacy may include services or referrals to address safety planning and court accompaniment for the victim as well as long-term service referrals to address victim needs such as housing, employment, substance abuse treatment, and counseling. Community-based victim advocates may also be instrumental in providing support services that include assisting with filing a police report, accessing protection orders, addressing child welfare matters, and accessing victim compensation and public assistance. Upon a plea or verdict of guilty, victim advocates may also assist the victim in assembling a victim impact statement to provide to the court outlining how the crime has impacted the victim's life. Given the amount of assistance a community-based advocate can provide to a victim; your tribe may consider codifying a victim's right to a referral to an advocacy program early on in the tribe's criminal legal process.

- The right to have victim information shared with the victim advocate protected.

Protecting victim information is the cornerstone of victim safety. When a victim discloses information to an advocate, the victim usually expects the information will not be shared with others. Protecting victim information shared with the victim advocate encourages the victim to freely disclose the full story with the assurance that the victim's information will not be shared without the victim's consent. Some tribes enact this right by creating a victim-advocate privilege.<sup>14</sup>

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<sup>14</sup> For example, see [Oglala Sioux Tribe Domestic Violence Code](#), Chapter 2, Section 224 - Victim-advocate Privilege Applicable in Cases Involving Domestic Violence.

It is important to note that there are four basic types of advocates, each with certain roles to play and with certain ethical or legal duties regarding victim information:

1. Community-based;
2. Hospital-based;
3. Prosecutor-based; and
4. Law enforcement-based.

Community-based victim advocates have an ethical duty to protect victim information. However, victim information may or may not be protected by tribal law. Providing a victim's rights statute that protects the victim information shared with the community-based advocate is an ideal way to ensure victim safety by protecting victim information. Note that hospital-based advocates and prosecutor-based advocates may be required to disclose victim information without the victim's consent in certain situations.

- The right to receive a referral to a traditional healer and access to traditional healing resources.

This type of right could focus on victim healing. The victim advocate likely recognizes that for many victims to heal, accessing a traditional healer and/or traditional healing resources in the tribal community is critical. Victims could be informed of this right early on and if requested, a referral to a traditional healer could be made.

- The right to receive information on the grievance process if codified rights are violated.

This right focuses on enforcement of the victim's rights. Without information and a grievance process to ensure enforcement, it is likely the rights of the victim become only words on paper. Enforcement of the enumerated rights not only focuses on the victim's voice and safety but also promotes system change in that regard.

A great source for obtaining additional information on tailoring rights to meet the needs of victims in a particular tribal community is the tribal victim advocate and/or the tribal coalition that provides technical assistance and support to the tribal victim advocates in your area. A list of tribal coalitions and relevant service areas can be found at [www.TribalTrafficking.org](http://www.TribalTrafficking.org). Finally, there are national efforts to advance victim's rights that tribes can consider when drafting victim's rights statutes. The [\*National Crime Victims Agenda 2021: A Plan to Address the Needs of Our Diverse Victims of Crime\*](#) calls for the expansion of victims' rights, particularly increased legal protections for victims to prevent job and housing loss while victims are recovering from a crime, expanded victims' civil legal services to help victims stabilize, and ensured dignity, respect, and support for the victims of unsolved crimes.

Accessing victim's rights laws are important because they ensure that victims are informed of and allowed to participate in the criminal justice process. Providing tailored victim's rights in addition to the "core" rights listed in the preceding text sends a strong message to the community that victims of crime matter. Enumerating what victim's rights will be provided

during the tribal criminal legal process will send a message of respect, concern, and support to victims of crime. It is also important to think about how you will communicate these rights to a victim of crime. Make sure your law enforcement officers, advocates, prosecutors, and judges are all familiar with the victim's rights your nation protects and that they have protocols or policies in place to fulfill their duties to victims of crime.

In addition, certain definitions will also need to be tailored to meet the needs of the tribal community. Defining the term "victim" sets the parameters around which individuals will be eligible to assert tribal victim rights and specifying what type of crimes trigger the victim's rights are both critical in providing a voice to victims in the criminal justice process.

## A. Defining the Victim

This section will generally address various issues relative to the team's definition of the term "victim." Note that the definition of "victim" may be different for different purposes. For example, who qualifies as a victim for purposes of state victim compensation benefits may be different from the individual who qualifies as a "victim" for purposes of receiving victim services or victim's rights in a jurisdiction. While the choice of the term lies squarely with the tribe, note that the term "victim" is utilized by most states as well as the federal jurisdiction. Therefore, if victims/survivors are navigating various jurisdictions using the term "victim" may be helpful.

The drafting team may want to consider whether the term "victim" should include adults and/or child victims of crime and whether the term will encompass certain groups of individuals who have unique needs such as victims of domestic violence, sexual assault, stalking, or sex trafficking. Certain groups with unique needs that may need victim's rights protection include elders, children, and/or victims with disabilities. Additionally, if the victim is unable to participate in the criminal process, will the term "victim" be drafted broadly enough to allow an individual such as a spouse, next-of-kin, or other family member to assert the victim's rights on behalf of the victim.

### Code Examples

#### Sault Ste. Marie Tribe of Chippewa

##### Tribal Code

##### [Chapter 75 Crime Victims Rights](#)

#### 75.102 Definitions

For the purpose of this Chapter, certain items are defined in this section. When not inconsistent with the context, words in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word "shall" is always mandatory and not merely directory.

[omitted]

(7) "Victim", except for purpose of '75.116, means any of the following:

(a) An individual who suffers direct or threatened physical, financial or emotional harm as a result of the commission of a crime, except as provided in subparagraph (b), (c), (d).

(b) The following relations of a deceased victim if the relation is not the defendant:

(i) The spouse.

(ii) A child 15 years of age or older if (i) does not apply.

(iii) A parent if subparagraphs (i) and (ii) do not apply.

(iv) A sibling if subparagraphs (i) and (ii) do not apply.

(v) A grandparent if subparagraphs (i) and (ii) do not apply.

(c) A parent, guardian or custodian of a victim who is less than 18 years of age if



the parent, guardian or custodian so chooses.

(d) A parent, guardian or custodian of a victim who is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process.

If a victim as defined in '75.102(7) is physically unable to exercise the privileges and rights under this Chapter, the victim may designate his or her spouse or a child 15 years of age or older, parent, sibling or grandparent of the victim to act in place of the victim during the duration of the physical disability. During the physical disability, notices to be provided under this Chapter to the victim shall continue to be sent only to the victim.

#### **Pascua Yaqui Tribe**

#### **Title 4. Criminal Code**

#### **Chapter 5. Victims Rights**

#### **Subchapter A General Provisions**

#### **Section 10 Definitions (4 PYTC § 5-10)**

[omitted]

(R) "Victim" means a person against whom a criminal offense has been committed, or if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for the offense or is the accused. A person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition.

[omitted]

#### **Federal: 18 U.S.C. § 3771(e) Crime victims' rights**

(e) Definitions.—For the purposes of this chapter:

[omitted]

(2) Crime Victim. —

(A) In general — the term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

(B) Minors and other victims. — In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative

[omitted]

#### **Federal: 34 U.S.C. § 20141(e) Services to victims**

#### **(e) Definitions**

For the purposes of this section—

[omitted]

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of

the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court.

## B. Crimes Implicating Victim's Rights

The drafting team should discuss and determine the types of crimes that will trigger application of the victim's rights statutes. The type of crimes that trigger the application of the victim's rights statutes will vary from jurisdiction to jurisdiction. The types of crimes may include particular felonies, all felonies, specific misdemeanors, or all misdemeanors. Some jurisdictions require the crimes to have been committed by an adult while other jurisdictions include violent crimes committed by juveniles. The drafting team should carefully consider the customs, beliefs, and needs of the tribal community when making the determination of what crimes will engage the victim's rights.

The parameters of what types of crimes will trigger the victim's rights statutes should include the individuals that the drafting team has included as a "victim." For instance, if the drafting team defines the term "victim" to include individuals suffering harm from the commission of the crime of domestic violence, then the type of crime selected to activate the application of the victim's rights statutes should also include the category of the crime of domestic violence that may be a misdemeanor or a felony depending on applicable tribal law. It may be necessary to review the crimes listed in the tribal code for each type of individual included in the term "victim" to ensure the team has included the crimes necessary to provide coverage to all individuals the team has defined as a "victim."

### Code Examples

#### **Sault Ste. Marie Tribe of Chippewa**

##### **Tribal Code**

##### **[Chapter 75 Crime Victims Rights](#)**

##### **75.102 Definitions.**

For the purpose of this Chapter, certain items are defined in this section. When not inconsistent with the context, words in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word "shall" is always mandatory and not merely directory.

(1) "Crime" means a violation of the Tribal code of the Sault Ste. Marie Tribe of Chippewa Indians for which the offender, upon conviction, may be punished by imprisonment or fine.  
[omitted]

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### **[Chapter 5. Victims Rights](#)**

##### **Subchapter A General Provisions**

[omitted]

(R) "Victim" means a person against whom a criminal offense has been committed, or if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for the offense or is the accused. A person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition.

[omitted]

#### Section 30 Implementation of Rights and Duties (4 PYTC § 5-30)

(A) Except as provided in Section 40, the rights and duties that are established by the Victims' Rights Ordinance and enumerated in this chapter arise on the arrest or formal charging of the person or persons who is alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a criminal restitution order is entered in favor of the victim.

(B) If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceedings.

(C) After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the victims' rights stated in this chapter is no longer entitled to such rights. (D) It is at the victim's discretion to exercise his/her rights to be present and heard at a court proceeding, and the absence of the victim does not preclude the court from proceeding with the hearing or trial.

#### **Federal: 18 U.S.C. § 3771(e) Crime victims' rights**

(e) Definitions.—For the purposes of this chapter:

[omitted]

(2) Crime Victim. —

(A) In general — the term 'crime victim' means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

(B) Minors and other victims. — In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

[omitted]

#### **Federal: 34 U.S.C. § 20141(e) Services to victims**

##### **(e) Definitions**

For the purposes of this section—

[omitted]

(2) the term "victim" means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

- (i) a spouse;
- (ii) a legal guardian;
- (iii) a parent;
- (iv) a child;
- (v) a sibling;
- (vi) another family member; or
- (vii) another person designated by the court.

## C. Right to Be Treated with Fairness, Dignity, Sensitivity, and Respect

The right to fairness, dignity, sensitivity, and respect is the right to have one's rights considered within the criminal justice system including due process during the criminal proceedings.<sup>15</sup> This right also encompasses the victim's right to protect personal information from public disclosure. In addition, tribes could consider language inclusive of needs resulting from a disability, sexual orientation, or gender identity.

### Code Examples

#### Pascua Yaqui Tribe

##### Title 4. Criminal Code

##### Chapter 5. Victims Rights

##### Subchapter A General Provisions

##### Section 20 Victims' Rights (4 PYTC § 5-20)

(A) These rules shall be construed to preserve and protect victims' rights to justice and due process; a

victim of crime has a right:

(1) To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.

[omitted].

#### Nottawasepi Huron Band of Potawatomi

##### Title VII: Family

##### Chapter 7.4 Domestic Violence

##### Article IX Criminal Actions and Remedies

§ 7.4-44. Victim rights. Notwithstanding other provisions of the Domestic Violence Code, a victim of a crime under this chapter shall have the following rights:

[omitted]

H. The right to be treated with fairness and with respect for the victim's dignity and privacy;

[omitted].

#### Federal: 18 U.S.C. § 3771(a) Crime victims' rights

(a) Rights of Crime Victims.—A crime victim has the following rights:

[omitted]

(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

[omitted].

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<sup>15</sup> National Crime Victim Law Institute, "[Fundamentals of Victims' Rights: A Summary of 12 Common Victims' Rights](#)," Victim Law Bulletin, November 2011.

## D. Right to Attend Hearings

Victims may have the right to attend proceedings during the criminal or juvenile justice process. The proceedings that victims may attend, such as bail hearings, trials, or parole hearings, are outlined in federal, state, or tribal law. Some laws may limit the trial attendance of victims who are scheduled to testify as witnesses.

### Code Examples

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### **Chapter 5. Victims Rights**

###### Subchapter A General Provisions

###### Section 20 Victims' Rights (4 PYTC § 5-20)

(A) These rules shall be construed to preserve and protect victims' rights to justice and due process; a

victim of crime has a right:

[omitted]

(3) To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.

[omitted]

###### Subchapter C Victim's Right to Participate

###### Section 180 Criminal Proceedings; Right to be Present (4 PYTC § 5-180)

The victim has the right to be present throughout all criminal proceedings in which the defendant has the right to be present.

#### **Kenaitze Indian Tribe**

##### **Domestic Relations Code**

##### **Chapter 6 Domestic Violence**

##### **Section 10. Rights of Victims of Domestic Violence**

###### Section 10. Rights of Victims of Domestic Violence

A victim of domestic violence is entitled to but not limited to the right to:

[omitted]

2. Be present at all hearings of the Tribal Court on the matter, either in person or telephonically;

[omitted]

**Federal: 18 U.S.C. § 3771(a) Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

[omitted]

(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

[omitted]

**Federal: 34 U.S.C. § 20141(c) Services to victims**

(c) Description of services

[omitted]

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

[omitted]

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4) [2] of title 42, is entitled to attend;

[omitted]

*Note that 10606 (b) (4) has been repealed and replaced by 18 U.S.C. §3771 (Crime Victims' Rights Act discussed directly above).*



## E. Right to Compensation

Victims may have the right to be financially compensated for certain injuries or damage caused by the crime. States operate victim compensation programs. Victims of federal crime or crime on tribal lands may apply for compensation in the state in which they live. Victims must file an application with the relevant compensation program and meet certain eligibility requirements.

### Code Examples

#### **Confederated Tribes of Colville**

##### **TITLE 5. DOMESTIC RELATIONS**

##### **CHAPTER 5-5. DOMESTIC AND FAMILY VIOLENCE CODE**

##### **TRIBAL PROSECUTOR'S RESPONSE, DUTIES, ETC.**

##### **5-5-40 Duty of Prosecutor to Inform Victim of Rights—Victim's Rights in Legal Proceedings**

(a) Any person prosecuting a crime involving domestic violence shall make reasonable efforts to notify the victim of his or her rights as set forth below.

(b) A victim of a crime involving domestic violence is entitled to all rights granted to victims of crime including, but not limited to, the right to:

[omitted]

(6) Be informed of how to apply for victims' compensation, and to apply for such funds;  
and

[omitted]

#### **Oglala Sioux Tribe**

##### **Criminal Offenses Code**

##### **Domestic Violence Code**

##### **Chapter 2 – Criminal Penalties and Procedures**

Section 221. Rights of victims of domestic violence; duty of prosecutor to inform victim of rights.

1. A victim of domestic violence is entitled to all rights granted to victims of crime, including but not limited to the right to:

[omitted]

(f) Apply for any available victims' compensation and to be informed of procedures for applying; and

[omitted]

2. The prosecutor shall notify any victim of domestic violence of his/her rights set forth in this section, in writing. For notice to be meaningful, it should be actual, timely and written in a language in which the victim is competent.

## F. Right to Be Heard

Victims may have the right to make written or oral statements during the criminal or juvenile justice process. Every state gives victims the right to submit a “victim impact statement” at sentencing. Many states also allow victims to make a statement at bail or parole hearings or to meet with the prosecutor to discuss a plea bargain.

### Code Examples

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### **Chapter 5. Victims Rights**

###### Subchapter A General Provisions

###### Section 20 Victims' Rights (4 PYTC § 5-20)

(A) These rules shall be construed to preserve and protect victims’ rights to justice and due process; a

victim of crime has a right:

[omitted]

(4) To be heard, upon request, at any proceeding involving a post-arrest release decision, a negotiated plea, or sentencing.

[omitted]

(6) To confer with the prosecution, upon request, before or after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.

[omitted]

(10) To be heard, upon request, at any proceeding when any post-conviction release from confinement is being considered.

[omitted]

#### **Confederated Tribes of Colville**

##### **TITLE 5. DOMESTIC RELATIONS**

##### **CHAPTER 5-5. DOMESTIC AND FAMILY VIOLENCE CODE**

##### **TRIBAL PROSECUTOR’S RESPONSE, DUTIES, ETC.**

###### 5-5-40 Duty of Prosecutor to Inform Victim of Rights—Victim’s Rights in Legal Proceedings

(a) Any person prosecuting a crime involving domestic violence shall make reasonable efforts to notify the victim of his or her rights as set forth below.

(b) A victim of a crime involving domestic violence is entitled to all rights granted to victims of crime including, but not limited to, the right to:

[omitted]

(2) Not be required to testify in person at any proceedings related to the incident, however, the victim may be present at sentencing and address the court, either in person or by a written statement;

(3) Provide the Court with a statement either in person or in writing, on the impact that the incident or crime has had on the victim's health, welfare and the emotional impact of the incident or crime, a statement on the victim's opinion regarding the frequency of domestic violence which involved the perpetrator, and the perceived risk of further harm;

(4) Advise the Court on appropriate counseling and any other conditions of probation and parole that the victim believes should be required of the perpetrator in order to insure the safety and welfare of the victim and other family and household members;

[omitted]

**Federal: 18 U.S.C. § 3771(a) Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

[omitted]

(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

[omitted]

## G. Right to Be Informed

Victims may have the right to be informed of events and proceedings in the justice process, such as trial or release of an offender from custody. Victims may also have the right to information about support services, the criminal or juvenile justice process, how to contact officials or agencies, or other matters.

### Code Examples

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### **Chapter 5. Victims Rights**

##### **Subchapter A General Provisions**

##### **Section 20 Victims' Rights (4 PYTC § 5-20)**

(A) These rules shall be construed to preserve and protect victims' rights to justice and due process; a

victim of crime has a right:

[omitted]

(2) To be informed, upon request, when the accused or convicted person is released from custody or has escaped.

(3) To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.

[omitted]

(7) To read sentencing recommendations relating to the crime against the victim when they are available.

(8) To read police reports related to the crime involving the victim when they are available.

[omitted]

#### **Colorado River Indian Tribes**

##### **Domestic and Family Violence Code**

##### **Article IV**

##### **Chapter 4. Criminal Procedures, Penalties,**

Section 1-412. Rights of Victims of Domestic or Family Violence; Duty of Prosecutor to Inform Victim of Rights.

(1) A victim of domestic or family violence is entitled to:

(A) be informed of all hearing dates and continuances;

(B) receive a copy of the arresting officer's report at no cost;

[omitted]

(2) The prosecutor must notify in writing the victim of domestic or family violence of the victim's rights set forth in this section.

**Federal: 18 U.S.C. § 3771(a) Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

[omitted]

(9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

(10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) [1] and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

**Federal: 34 U.S.C. § 20141 Services to victims**

[omitted]

(b) Identification of victims

At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection

(c); and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) Description of services

(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and [1] manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

[omitted]

[(2) omitted]

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to

attend or, under section 10606(b)(4) [2] of title 42, is entitled to attend;  
(E) the release or detention status of an offender or suspected offender;  
(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and  
(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

[omitted]

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

- (A) the scheduling of a parole hearing for the offender;
- (B) the escape, work release, furlough, or any other form of release from custody of the offender; and
- (C) the death of the offender, if the offender dies while in custody.

[omitted]

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

[omitted]

## H. Right to Privacy

Victims may have the right to protect the privacy of personal information, such as their name or identity, address, and phone number contained in criminal/juvenile justice documents, compensation records, and court testimony, as well as contact information provided for notification purposes. Certain victim populations, including children, victims of sexual assault, domestic violence, stalking, or trafficking, the elderly, and other vulnerable populations may need further protections.

### Code Examples

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### **[Chapter 5. Victims Rights](#)**

##### **Section 280 Victim's Right to Privacy (4 PYTC § 5-280)**

The victim has the right at any court proceeding not to testify regarding the victim's addresses, telephone numbers, place of employment or other locating information unless the victim consents or the court orders disclosure after a finding that a compelling need for the information exists. Any court proceeding where such information might be disclosed shall be in chambers.

#### **Yurok Tribe**

##### **Tribal Code**

##### **Title 10, Offenses**

##### **[Chapter 10.15, Special Domestic Violence Jurisdiction](#)**

##### **[Article III, Rights and Sentencing](#)**

##### **10.15.150 Rights of victims.**

[omitted]

(b) Generally, any victim of a crime that has been filed in Court that directly or indirectly involves domestic abuse, sexual assault, stalking, or dating violence, has the following rights:

[omitted]

(7) The right to be treated with fairness and with respect for the victim's dignity and privacy;

(8) The right to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are

otherwise privileged or confidential by law;

[omitted]

(12) The right to have access to a domestic violence advocate, and for that access to be strictly confidential; and

[omitted]

**Federal: 34 U.S.C. § 20141(c) Services to victims**

(c) Description of services

[omitted]

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

[omitted]

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

[omitted].



## I. Right to Protection

Victims may have the right to be protected from intimidation or harassment by the offender or others involved in the criminal or juvenile justice process. Protection may include providing a separate waiting area in court for the victim, allowing victims to seek a court order preventing the offender from contacting the victim, or prohibiting improper questioning by a lawyer.

### Code Examples

**Colorado River Indian Tribes**  
**Domestic and Family Violence Code**  
**Article IV**  
[Chapter 4. Criminal Procedures, Penalties,](#)

Section 1-411. Victims Assistance; Duty of Law Enforcement Officer

(1) A law enforcement officer who responds to an incident involving family violence shall use all reasonable means to protect the victim, hold the perpetrator accountable and prevent further violence, including but not limited to:

- (A) Taking the action necessary to provide for the safety of the victim and any family or household member.
- (B) Confiscating any weapon involved in the alleged domestic or family violence.
- (C) Transporting or obtaining transportation for the victim and any child to a shelter or place of safety.
- (D) Assisting the victim in removing essential personal effects.
- (E) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.
- (F) Giving the victim immediate and adequate notice of the rights of victims, as contained in the laws of Colorado River Indian Tribes, and of the remedies and services available to victims of family violence.

(2) As part of the notice required by paragraph (F) of Subsection (1), the law enforcement officer shall give a written notice to the adult victim substantially as follows:

- (A) "If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request and the officer shall assist you in providing for your safety, including facilitating the obtaining of an order of protection when courts are closed. You may also request and the officer shall assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request and the officer shall assist you in obtaining medical treatment. A Victims' Rights Advocate, Shelter Advocate, Behavioral Health Service Counselor, Child Support Services Case Worker or a Social

Services Case Worker may be called on your behalf. The officer shall provide you with a copy of the report at no cost from the law enforcement department.”

(B) “You may ask the prosecuting attorney to file a criminal complaint. However, the decision whether or not to prosecute ultimately lies with the prosecutor. You also have the right to file a petition in Tribal Court of the Colorado River Indian Tribes requesting an order for protection from domestic or family violence.

(C) “Any full or ex parte order of protection granted pursuant to Article 4, Chapter 4 of the Domestic Relations Code shall be to protect the petitioner from abuse or stalking and may include all the terms under Article IV, Chapter 5 of the Domestic Relations Code”

(D) “The forms you need to obtain an order for protection are available from the Tribal Court of the Colorado River Indian Tribes. The resources available in this community for information relating to family violence, treatment of injuries, and places of safety and shelters are available from the Police Department, the Department of Behavioral Health Services, the Department of Child Protective Services, and the Department of Social Services. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property.”

(3) The written notice must not include the addresses of shelters, unless the location is public knowledge.

## **Yurok Tribe**

### **Tribal Code**

#### **Title 10, Offenses**

#### **Chapter 10.15, Special Domestic Violence Jurisdiction**

#### **Article III, Rights and Sentencing**

##### **10.15.150 Rights of victims.**

(a) If you are the victim of a crime of domestic violence you have the right to go to the Tribal Court and file a petition requesting any of the following orders for relief:

- (1) An order restraining your attacker from contacting you or your children;
- (2) An order directing your attacker to leave your household;
- (3) An order preventing your attacker from entering your residence, school, business or place of employment;
- (4) An order awarding you or the other parent temporary custody of a minor child or children;
- (5) An order directing the party not granted custody to pay support of minor children. You can obtain a copy of the officer’s report at no cost to you. You also have the right to obtain a protection order in state court. The forms you need to obtain an order for protection can be obtained from the Clerk of the Court; or
- (6) An order to restrain the defendant from contacting the victim with any and all electronic communication via social media, cell phone voice, voicemail, text, and other

related technology.

(b) Generally, any victim of a crime that has been filed in Court that directly or indirectly involves domestic abuse, sexual assault, stalking, or dating violence, has the following rights:

(1) The right to be reasonably protected from intimidation, harassment, and abuse, throughout the criminal justice process;

[omitted]

(9) The right to refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents;

[omitted].

**Federal: 18 U.S.C. § 3771(a) Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

(1) The right to be reasonably protected from the accused.

[omitted].

**Federal: 34 U.S.C. § 20141(c) Services to victims**

(c) Description of services

[omitted]

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

[omitted].

## J. Right to Restitution

Victims may have the right to obtain restitution, or court-ordered reimbursement from offenders who have caused financial harm. Depending on the state and type of crime, restitution may be mandatory or optional. Remember, restitution is distinct from victim's compensation programs.

### Code Examples

#### **Colorado River Indian Tribes**

##### **Domestic and Family Violence Code**

#### **Article IV**

#### **Chapter 4 Criminal Procedures, Penalties**

Section 1-412. Rights of Victims of Domestic or Family Violence; Duty of Prosecutor to Inform Victim of Rights.

(1) A victim of domestic or family violence is entitled to:

[omitted]

(F) receive restitution for losses sustained as a direct consequence of any criminal conduct.

[omitted].

#### **Muskogee (Creek) Nation**

#### **TITLE 6. CHILDREN AND FAMILY RELATIONS (Hopuetake Hvtvm Cukohvmecvlke Empvlsvlke)**

#### **CHAPTER 3 PROTECTION FROM DOMESTIC AND FAMILY VIOLENCE ACT**

#### **SUBCHAPTER 3. LAW ENFORCEMENT PROCEDURES AND CRIMINAL PENALTIES**

##### **Sec. 3-310. Rights of victim; duty of Prosecutor to inform victims of rights**

A. Rights of victims. A victim of a crime involving domestic and family violence is entitled to all rights granted to victims of crime including but not limited to the right to:

[omitted]

4. Receive restitution for losses sustained as a direct consequence of any criminal conduct.

#### **Federal: 18 U.S.C. § 3771(a) Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

[omitted]

(6) The right to full and timely restitution as provided in law.

[omitted]

**Federal: 34 U.S.C. § 20141(c) Services to victims**

(c) Description of services

(1) A responsible official shall

[omitted]

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained;

[omitted].

## K. Right to Return of Property

Victims may have the right to the return of their personal property being held as evidence. Return of personal property can occur when the property is no longer needed as evidence.

### Code Examples

#### **Sault Ste. Marie Tribe of Chippewa**

##### **Tribal Code**

##### **[Chapter 75 Crime Victims Rights](#)**

##### **75.104 Return of Property**

- (1) The law enforcement agency having responsibility for investigating a reported crime shall promptly return to the victim property belonging to that victim which is taken in the course of the investigation, except as provided in subsections '75.401(2) to (4).
- (2) The agency shall not return property which is contraband.
- (3) The agency shall not return property if the ownership of the property is disputed until the dispute is resolved.
- (4) The agency shall retain as evidence any weapon used in the commission of the crime and any other evidence if the prosecuting attorney certifies that there is a need to retain that evidence in lieu of a photograph or other means of memorializing its possession by the agency.

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### **[Chapter 5. Victims Rights](#)**

##### **Subchapter C Victim's Right to Participate**

##### **Section 240 Return of Victim's Property; Release of Evidence (4 PYTC § 5-240)**

- (A) Upon the request of the victim and after consultation with the prosecutor, law enforcement shall return to the victim any property belonging to the victim that was taken during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. Law enforcement shall make reasonable efforts to return the property to the victim as soon as possible.
- (B) If the victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the defendant if pro se or the defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.

**Federal: 34 U.S.C. § 20141(c) Services to victims**

(c) Description of services

[omitted]

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

[omitted]

## L. Right to a Speedy Trial

Victims may have the right to have the case resolved within a reasonable amount of time. Some states require that courts consider the interests of the victim when ruling on a request to delay, or “continue,” a trial.

### Code Examples

#### **Yurok Tribe**

##### **Title 10, Offenses**

##### [Chapter 10.15, Special Domestic Violence Jurisdiction](#)

##### [Article III, Rights and Sentencing](#)

10.15.150 Rights of victims.

[omitted]

(b) Generally, any victim of a crime that has been filed in Court that directly or indirectly involves domestic abuse, sexual assault, stalking, or dating violence, has the following rights:

[omitted]

(6) The right to proceedings free from unreasonable delay;

[omitted]

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### [Chapter 5. Victims Rights](#)

Subchapter A General Provisions

Section 20 Victims' Rights (4 PYTC § 5-20)

(A) These rules shall be construed to preserve and protect victims’ rights to justice and due process; a

victim of crime has a right:

[omitted]

(11) To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

[omitted]

#### **Federal: 18 U.S.C. § 3771(a) Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

[omitted]

(7) The right to proceedings free from unreasonable delay.

[omitted]



## M. Right to Have These Rights Enforced

A few states give victims a way to have their rights enforced. In some states, victims may be able to file a complaint with a state agency. In others, victims may have the right to file a limited legal action to enforce the victim's rights.

### Code Examples

#### **Little Traverse Bay Band of Odawa Indians**

##### [Waganakising Odawa Tribal Code of Laws](#)

#### **Chapter 9: Victim's Rights**

##### **Section 9.605 (J)**

##### **J. Right to Enforcement.**

The right to enforcement of these rights and access to other available remedies under the laws of LTBB. Upon request of a victim, the Prosecutor must ask the Court to enforce the rights of the victim.

#### **Pascua Yaqui Tribe**

##### **Title 4. Criminal Code**

##### [Chapter 5. Victims Rights](#)

##### **Subchapter C Victim's Right to Participate**

##### **Section 290 Standing to Invoke Rights (4 PYTC § 5-290)**

At the request of the victim, the prosecutor may assert in the victim's behalf any right to which the victim is entitled.

#### **Federal: 18 U.S.C. § 3771 (d) Crime victims' rights**

##### **(d) Enforcement and Limitations. —**

##### **(1) Rights. —**

The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

##### **(2) [omitted]**

##### **(3) Motion for relief and writ of mandamus. —**

The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ

on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error. — In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.

(5) Limitation on relief. — In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) No cause of action.— Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

#### **Federal: 34 U.S.C. § 20141 Services to victims**

(a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

[omitted]

(d) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

[omitted].

## Why Enforcement Is Critical

Victim's rights without an enforcement mechanism may be just empty words on paper. The drafting team should consider an enforcement statute that clearly defines the process for enforcing victim's rights and the process should be clearly conveyed to the victims.

The enforcement mechanism may designate an individual agency responsible for asserting the rights such as a prosecutor, law enforcement, or the court. Some jurisdictions create a special committee to address allegations of a violation of victim's rights.

Having a clear process for enforcing victim's rights may lead to positive system change in the criminal justice process. For instance, if the agency or system responsible for asserting victim's rights fails to do so and the victim utilizes the enforcement mechanism, a clear pattern of failing to follow the victim's rights statutes may emerge. Identifying agency or system weaknesses in the area of upholding victim's rights may result in overall improved focus on victim safety and offender accountability.

Note that your nation may want to limit the available remedies. "Many victims' bills of rights state that violation of a right does not create a civil cause of action against any government agency or official. Also, most specifically provide that a failure to provide a right to a victim cannot be raised by a defendant as a ground for appeal."<sup>16</sup>

Because the enforcement of victim's rights is paramount to providing protections to victims navigating the criminal legal process, the next Part will discuss the responsibilities of common players in a criminal justice system. Thinking about what individuals are present in your justice system, and what responsibilities you want them to have, can inform your victim's rights code drafting process in addition to any related policies and protocols that may be developed.

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<sup>16</sup> *Supra* note 3, "About Victims' Rights," VictimLaw.org.

## N. Discussion Questions

These discussion points may assist the drafting team when drafting the victim's rights statutes.

- *Review the list of additional victim's rights outlined in this Part and discuss whether additional rights would best meet the needs of victims of crime in your tribal community. Be certain to include at least one tribal victim advocate or tribal coalition member in the discussions.*
- *Discuss how the tribal statutes will define the term "victim" and which crimes will trigger application of the victim's rights being drafted.*
- *Discuss any application of tribal customs, beliefs, or traditions that may be relevant.*
- *Review the information on enforcement of victim's rights and discuss the process that a victim of crime will utilize when seeking enforcement of the tribal victim's rights the team is drafting.*

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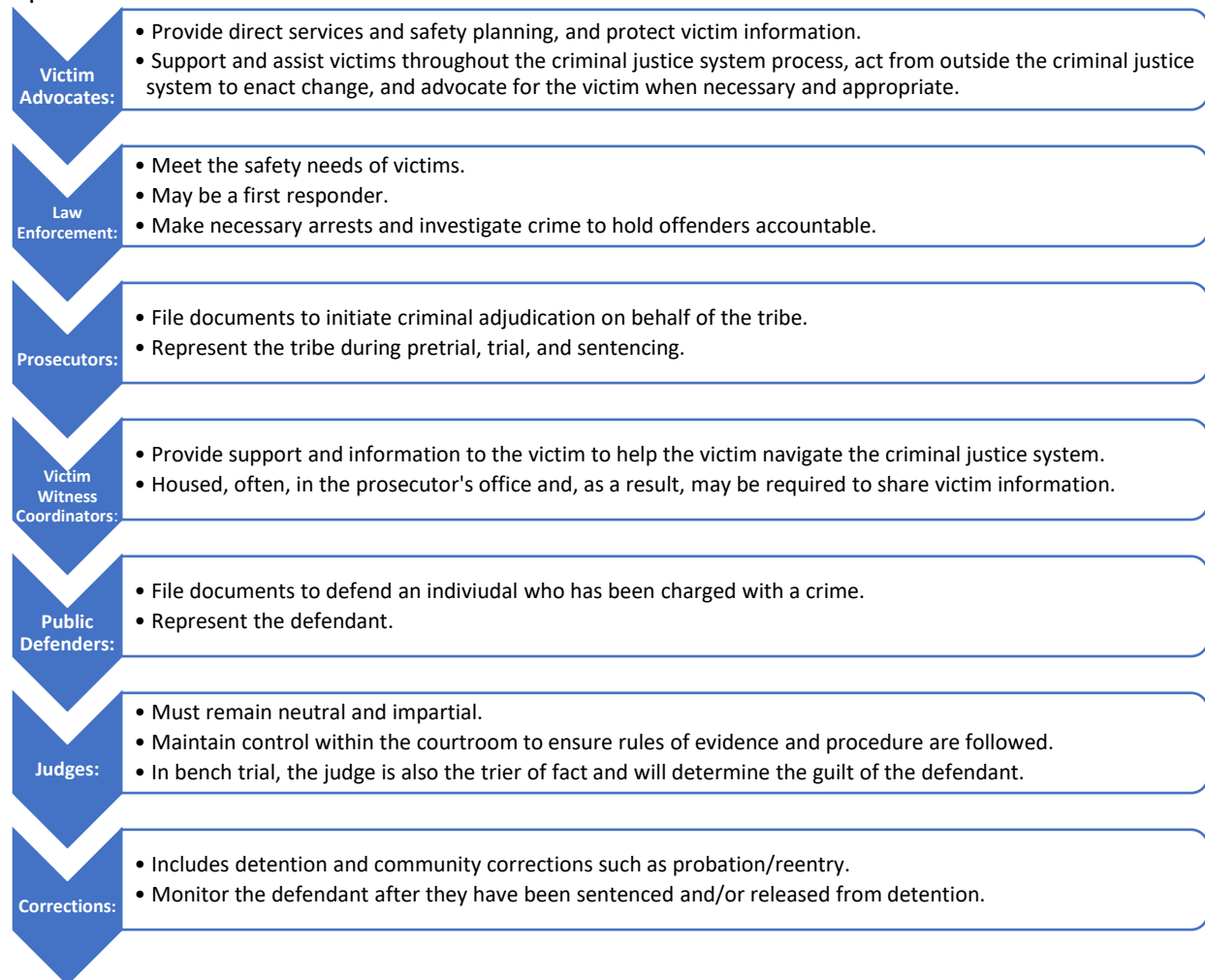
## Part 4: Discipline-Specific Responsibilities Regarding Enforcement of Victim's Rights

Victims of crime should be informed of their rights as soon as they enter the criminal justice process. Victims may enter the tribal criminal justice system by making initial contact with a variety of disciplines including community-based victim advocates, law enforcement, and tribal courts. To inform victims of their rights, it is necessary that all first responders, service providers, and court personnel are fully aware and trained on tribal victim right's codes. Ultimately, the majority of disciplines in a criminal justice system have responsibilities to enforce the victim's rights and work collaboratively when possible to promote delivery of victim-centered services. Though not agents of the criminal justice system, community-based victim advocates are critical to assisting victims in navigating criminal legal processes and working with criminal justice systems professionals to protect victims; thus, they are included in this Part.



As mentioned in [Part 1](#), most criminal legal systems consist of victim witness coordinators, law enforcement, prosecutors, public defenders, judges, and corrections. Each of these disciplines play an important role in the enforcement of victim's rights at each phase of the criminal legal process. A victim, and those supporting them in navigating criminal legal systems, with knowledge of each players' responsibilities can be empowered throughout an otherwise disempowering and possibly retraumatizing experience. The following is a brief chart reviewing the typical players a victim may encounter navigating in a criminal legal system (including the

community-based advocate assisting the victim) and their general responsibilities. When possible, agencies should work collaboratively to promote victim-centered services. A discussion follows, excluding the public defender as the public defender's responsibilities are to represent the interests of the defendant.



*Note that every criminal legal system will look different. The federal system will look different from a state's system and may look different to your tribe's system. Consider making a similar flow chart for your tribal criminal legal process.*

**Victim Safety Advocacy Tip:** Victim advocates can invoke system change in a variety of ways including but not limited to (1) educating community, law enforcement, prosecutors, judges and tribal governments on the needs and barriers victims face when seeking justice and services; (2) participating on victim's rights code development projects; and (3) developing strong working relationships with law enforcement (tribal, federal and state), prosecutors (tribal, federal and state), victim advocacy programs (tribal, federal and state), social services agencies, tribal leadership, and tribal courts. System change (if needed) should be an ongoing priority for victim advocates.

**Victim's Rights Drafting Tip:** There are various challenges to keeping victim information confidential when information is shared across disciplines. Consider drafting a statute that emphasizes the importance of collaboration between victim service providers and criminal justice officials including the need to cross-share information *safely* to promote victim safety and to ensure access to all available services. A statute that protects victim information for collaboration between disciplines is very important. See the [Yurok Tribal Code 10.15.150](#) focused on protecting victim information in criminal cases. For more information on protecting victim information, see **Part 3: Codifying Victim's Rights**, the right to have victim information shared with the victim advocate protected. For useful information on cross-discipline sharing of victim information, see Tribal Law and Policy Institute, [Tribal Domestic Violence Courts and Tribal Domestic Violence Dockets](#), Feb. 2019, at [D. Victim Privacy, Confidentiality, and Privilege in a Tribal Domestic Violence Court or Docket-A Victim Safety Issue](#).



## **A. Victim Advocate**

As soon as the victim comes into contact with the criminal justice system, the victim should be referred to an advocacy program and have an advocate secured at the request of the victim. Community-based advocates are trained to be biased supporters to victims and are able to provide support, accompaniment, information, and referral, and to address safety concerns.

The work of protecting and ensuring victim's rights and victim safety is the responsibility of everyone from tribal leadership to professionals working with crime victims. This work is guided and informed by a community's commitments to incorporating a victim-centered, culturally appropriate response to victims of crime.

Once a tribal nation has victim's rights codes, there needs to be a process to periodically review policies and practices related to crime victim rights and make any necessary changes to ensure continued compliance with the statutory rights of victims. There must be ongoing work with all those who work with victims within law enforcement agencies, advocacy programs, prosecution, probation, and judiciary personnel to ensure they understand their statutory obligations to crime victims.

Victims should continue to be included and informed in every phase of the criminal justice process. As a best practice, victims should be provided a written copy of their statutory rights as a victim of crime. They should also be informed of their right to file a complaint or grievance if their rights have been violated, if that right exists in that jurisdiction. Lastly, victims should be given resources for ongoing support for justice and healing such as resources for safe housing, shelter, social services, and counseling.

The following is a list of possible steps a victim advocate can take to assist victims navigating the criminal justice system and to help ensure victim's rights are provided to the victim. It is critical to provide victim-centered services, underscoring the right of victims to accept or reject any of these options.

***Possible Victim's Rights Enforcement Steps – Victim Advocate***

<b>Right of Victim</b>	<b>Steps that a VICTIM ADVOCATE can take to help with enforcement of the right</b>
<b>Right to Attend Hearings</b>	<ul style="list-style-type: none"> <li>• Provide information to victim regarding hearing dates, times, etc.</li> <li>• Assist with locating transportation for the victim to attend.</li> <li>• Accompany victim to hearings.</li> <li>• Assist with developing an ongoing safety plan for the victim to attend hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Assist with completing forms to secure victim compensation.</li> <li>• Accompany victim to compensation related processes.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Assist the victim with a victim impact statement.</li> <li>• Utilize relevant victim right's statutes to be meaningfully heard by the prosecutor, in addition to the court.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Provide information to victim about victim's rights.</li> <li>• Provide information to victim about hearing.</li> <li>• Assist in obtaining and providing information to victim if the defendant is released at any point.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Utilize relevant statutory protections to protect victim information (identity, address, contact information).</li> <li>• Utilize relevant statutory protections to protect client/victim information shared with the advocate (e.g., victim-advocate privilege).</li> </ul>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Work with victim to secure emergency shelter and other services.</li> <li>• Work with victim on safety planning, including law enforcement protection when needed.</li> <li>• Identify secure meeting rooms at the courthouse.</li> <li>• Protect from intrusive or misuses of legal processes.</li> </ul>
<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Provide information to victim relevant to documenting and keeping a record of damages (loss of wages, medical costs) or injury to person or property.</li> <li>• Assist and utilize legal processes to promote enforcement of court-ordered restitution.</li> </ul>

<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Accompany victim to retrieve personal property in a safe manner.</li> <li>• Assist the victim in ensuring the <i>timely</i> return victim's property from law enforcement and/or the court subsequent to investigation.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Assist the victim in asserting relevant statutory avenues for a speedy trial including meeting with the prosecutor or making objections to continuances before the court.</li> <li>• Help ensure victim is informed of any potential delays.</li> </ul>
<b>Right to Enforcement/ Remedies</b>	<ul style="list-style-type: none"> <li>• Assist the victim in lodging any enforcement complaints and attend any enforcement hearings or meetings with the victim.</li> </ul>

## **B. Law Enforcement**

Tribal, Bureau of Indian Affairs, or state law enforcement officers are oftentimes the first people that the victim will encounter once a crime has been discovered or reported. Which of these law enforcement agencies will respond depends upon the location of the crime, the political status of the offender and victim (Indian or non-Indian), and the nature of the crime alleged to have been committed. Despite their direct contact with victims, especially at such a vulnerable and integral point in the criminal justice system process, law enforcement officers are not always provided legal guidance to ensure that they are responding in a manner that is victim-centered and cognizant of victim's rights.

Tribal codes can mandate that responding officers perform certain duties and can provide an immunity clause. An immunity clause can hold officers harmless for the good-faith performance of those duties. This means that if the officer acts faithfully in their duty or obligation, they will not be held liable for performing those duties. Many tribal codes contain a "mandatory arrest" section. The goal of a "mandatory arrest" law is to require law enforcement to make an arrest for specific crimes.

Law enforcement departments often have internal policies, procedures, and protocols that they follow when responding to alleged criminal activity. These policies, procedures, and protocols generally reflect best practices in the field and may reflect a victim-centered approach to first response and investigation. These law enforcement policies provide an opportunity to cross-reference victim's rights statutes to ensure that law enforcement is aware of specific rights and further ensure that those rights are considered during the criminal justice system response. Additionally, it is recommended that law enforcement incorporate a trauma-informed approach when responding to alleged criminal activity and particularly when engaging crime victims. A trauma-informed approach encourages law enforcement to understand and acknowledge that trauma impacts individuals and groups, including the way they experience or react to traumatic events. Trauma-informed approaches stress the importance of taking steps necessary to avoid causing further trauma to the victim. Training for staff on trauma and trauma-informed approaches is important. Such training should stress the importance of providing safety, empowering victims through choice, and understanding unique trauma experiences based upon history, culture, and gender.

The following is a list of possible steps that law enforcement can take to assist victims navigating the criminal justice system and ensuring victim's rights are provided to the victim. It is critical to provide victim-centered services, underscoring the right of victims to accept or reject any of these options.

***Possible Victim's Rights Enforcement Steps – Law Enforcement***

<b>Right of Victim</b>	<b>Steps that LAW ENFORCEMENT can take to help with enforcement of the right</b>
<b>Right to Attend Hearings</b>	<ul style="list-style-type: none"> <li>• Provide protective services to ensure safe entry and departure from hearings.</li> <li>• Provide protective services to ensure safety of victim during hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Preserve evidence proving damages or injury to person or property and share that evidence with the victim as requested and permitted by law.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Conduct victim interviews and/or collect statement from victim in a victim-centered and compassionate manner.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Inform victim of rights.</li> <li>• Inform victim of victim advocacy services.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Protect victim information (identity, address, contact information) as required by law or process.</li> </ul>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Work with Victim Advocate to secure emergency shelter.</li> <li>• Work with Victim Advocate on safety planning.</li> <li>• Provide necessary law enforcement protective services as needed to protect victim's safety (e.g., drive-bys when followed)</li> <li>• Maintain proper chain of custody for evidence gathered.</li> </ul>
<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Preserve and share evidence proving damages or injury to person or property that may support a claim to restitution.</li> <li>• Assist in the execution of court orders related to restitution.</li> </ul>
<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Accompany victim to retrieve personal property in safe manner.</li> <li>• Assist in return of the victim's property in a timely manner.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Assist with a speedy trial process as required by law or procedure.</li> </ul>
<b>Right to Enforcement/ Remedies</b>	<ul style="list-style-type: none"> <li>• Assist with the enforcement of victim's rights as required by law or procedure.</li> </ul>

## C. Prosecutor

The role of the prosecutor is to enforce tribal laws relevant to alleged crimes in an effort to effectuate community safety. Prosecutors have a tremendous amount of discretion in deciding whether or not to file a criminal complaint to initiate a criminal adjudication. Additionally, prosecutors may establish internal policies or protocols to provide additional guidance relevant to charging decisions, the disposition of pretrial matters, and the approach to sentencing recommendations.

Evidence-based prosecution practices provide a prosecutorial approach that diminishes reliance on victim testimony to advance a prosecution. Evidence-based prosecution principles refer to the use of corroborating evidence to prove the elements of the crime at trial. Some examples of corroborative evidence include the use of 911 reports, physical evidence obtained from the crime scene such as damaged property, medical evidence such as proof of injury or statements made to medical providers, and testimony of witnesses who may have witnessed the crime. Some criminal codes include a “no-drop” policy for prosecutors (meaning that the prosecutor must pursue criminal charges in all specified cases to which the no-drop policy applies). Some people believe this kind of provision is necessary because victims often ask for the charges to be dropped, recant their previous statements, or refuse to testify. Requiring prosecutors to prosecute every case to which the no-drop policy applies may lessen the burden on victims who may otherwise be pressured to “drop the case.” Some people believe that the victim should have the final say as to whether the case is prosecuted.<sup>17</sup>

The following is a list of possible steps a prosecutor can take to assist victims navigating the criminal justice system and ensuring victim’s rights are provided to the victim. It is critical to provide victim-centered services underscoring the right of victims to accept or deny any of these options. It is also important to provide the victim with information regarding limitations to protecting victim information.

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<sup>17</sup> In considering a “no-drop” policy, it is important to consider that if a victim refuses to testify or is uncooperative if forced to testify by a subpoena, previous statements made by the victim may not be admissible. The U.S. Supreme Court decision in *Crawford v. Washington*, 541 U.S. 36 (2004), has created barriers for prosecutors in domestic violence cases, especially cases in which the victim cannot or chooses not to testify. In *Crawford*, the U.S. Supreme Court held that the Sixth Amendment Confrontation Clause renders testimonial, out-of-court statements inadmissible unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. The Court in *Crawford* did not provide a comprehensive definition of the word *testimonial*, nor did it furnish an exhaustive list of what types of out-of-court statements are considered testimonial. *Crawford*, due to its broad impact and vague boundaries, left many questions unanswered. The question of the applicability of *Crawford* to tribal courts is an unsettled question. Some tribal jurists view *Crawford* only as binding on state courts. Others consider *Crawford* applicable to tribal court proceedings.

***Possible Victim's Rights Enforcement Steps – Prosecutor***

<b>Right of Victim</b>	<b>Steps that a PROSECUTOR can take to help with enforcement of the right</b>
<b>Right to Attend Hearing</b>	<ul style="list-style-type: none"> <li>• Provide notice of dates, times, and places of hearings.</li> <li>• Provide accommodations necessary to ensure safe entry and departure from hearings.</li> <li>• Provide accommodations necessary to ensure safety of victim immediately before, during, and after hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Preserve evidence proving damages or injury to person or property and share that evidence with the victim as requested and permitted by law.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Conduct victim interviews and/or collect statement from victim in a trauma-informed, victim-centered, and compassionate manner.</li> <li>• Meet with victim in advance of trial if victim will be called to testify to adequately prepare the victim.</li> <li>• Ensure that victims are allowed to be heard at all critical stages of the prosecution such as pretrial release hearings, presentation of plea agreements, trial, and sentencing including the right to offer a victim impact statement presentencing.</li> <li>• Meet with and consider victim input in any plea negotiations.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Inform the victim of rights.</li> <li>• Inform the victim of any proposed plea deals or negotiations.</li> <li>• Inform the victim of any finalized plea deals.</li> <li>• Inform the victim of defendant release as required by law.</li> <li>• Inform the victim of any sentencing hearings and ability to make a victim impact statement.</li> <li>• Inform the victim of results of any motion hearings, appeals, or rulings of the court.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Protect victim information (identity, address, contact information) as required by law or procedure.</li> </ul>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Seek a criminal no-contact order of protection at the victim's request.</li> <li>• Work with Victim Advocate to provide information that will support safety planning, including securing emergency shelter.</li> <li>• Assist with obtaining law enforcement protective services to ensure victim safety.</li> </ul>

<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Preserve and share evidence proving damages or injury to person or property that may support a claim to restitution.</li> <li>• Assist in the execution of court orders related to restitution including an action to revoke parole or probation for violation of court ordered restitution.</li> </ul>
<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Seek any necessary tribal court orders that may be needed to ensure the timely return of victim's property.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Discuss the timeline in which the criminal case will proceed and should make efforts to avoid unnecessary continuances or delays.</li> <li>• Make appropriate objections to unnecessary delays.</li> </ul>
<b>Right to Enforcement/ Remedies</b>	<ul style="list-style-type: none"> <li>• Assist with the enforcement of victim's rights as required by law or procedure.</li> </ul>



## **D. Victim Witness Coordinator**

The victim witness coordinator is generally employed by the tribal government and works with crime victims during the investigative and adjudicatory process. The victim witness coordinator often serves as a liaison between the tribal prosecutor and the victim. The victim witness coordinator may:

- Meet with the victim in advance of court hearings or trials to explain the process and answer questions the victim may have relevant to upcoming court proceedings;
- Assist the victim with travel arrangements if they need to travel to provide testimony;
- Assist the victim with submission of victim impact statements;
- Assist the victim with the submission of documents relevant to claims for restitution or other compensatory claims such as medical expenses or lost wages; and
- Provide victims with referrals to other services such as counseling, treatment, or other supportive services that the victim may need.

The following is a list of possible steps a victim witness coordinator can take to assist victims navigating the criminal justice system and ensuring victim's rights are provided to the victim. It is critical to provide victim-centered services underscoring the right of victims to accept or deny any of these options. It is also important to provide the victim with information regarding limitations to protecting victim information.

***Possible Victim's Rights Enforcement Steps – Victim Witness Coordinator***

<b>Right of Victim</b>	<b>Steps that a VICTIM WITNESS COORDINATOR can take to help with enforcement of the right</b>
<b>Right to Attend Hearing</b>	<ul style="list-style-type: none"> <li>• Work directly with victim to ensure victim is notified of the date and time of all hearings.</li> <li>• Advise the victim of confidentiality parameters so victim can make an informed decision regarding sharing of victim information.</li> <li>• Work collaboratively with the victim advocate understanding that a victim advocate is committed to protecting victim information.</li> <li>• Work with victim to prepare for trial including a tour of the courtroom if possible and testimony preparations.</li> <li>• Work with victim to promote safety entering, while present in, and exiting the courthouse or prosecutor's office.</li> <li>• Work with victim to arrange travel and accommodations when necessary to ensure that the victim is able to attend all hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Inform victim of their rights to and eligibility for victim compensation.</li> <li>• Assist with completion of victim compensation forms where permitted.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Work with the prosecutor to ensure the victim understands their right to be heard at critical stages of the court proceedings.</li> <li>• Work with the victim to prepare to make courtroom statements.</li> <li>• Work with victim to prepare a victim's impact statement.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Inform victim of rights.</li> <li>• Work with prosecutor and victim advocate to ensure victim is timely informed of all court hearings and of any issues such as defendant's release from custody prior to trial or after sentencing.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Protect victim information (identity, address, contact information).</li> <li>• Inform the victim of confidentiality parameters.</li> </ul>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Work with the prosecutor and law enforcement to address any safety/protection needs of the victim that the victim has requested.</li> <li>• Note the victim's concerns in writing to the prosecutor and law enforcement.</li> </ul>

	<ul style="list-style-type: none"> <li>• Work collaboratively with the Victim Advocate to address safety planning if victim expresses the need for protection from others.</li> </ul>
<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Inform the victim about the right to restitution and go over what types of restitution can be made and how to make those requests.</li> <li>• Work with the victim to assemble the victim's request for restitution from the defendant.</li> <li>• Forward any requests for restitution to the prosecutor for presentation to the court.</li> </ul>
<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Work with the prosecutor and law enforcement to assist the victim in getting a court order to obtain property that has been taken during an investigation or property in the defendant's possession.</li> <li>• Accompany victim to retrieve personal property if safe.</li> <li>• Work with law enforcement and prosecution to ensure timely return victim's property subsequent to investigation.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Explain this right to the victim.</li> <li>• Work with the victim and prosecutor to ensure the victim's right to a speedy trial is being executed.</li> <li>• Note any objections the victim has to the defendant's request for a continuance and pass those objections on in writing to the prosecutor.</li> </ul>
<b>Right to Enforcement/ Remedies</b>	<ul style="list-style-type: none"> <li>• Explain the right regarding enforcement.</li> <li>• Explain the process to notify relevant authorities of violations of the victim's rights.</li> <li>• Inform the prosecutor of any allegations of a violation of victim's rights in writing.</li> </ul>

## **E. Judge**

The judge in tribal court is responsible for maintaining courtroom decorum and safety while also ensuring that the adjudicatory process is carried out in a manner consistent with applicable court rules and tribal rules of criminal procedure. If the criminal adjudication involves a jury, the tribal judge will defer to a jury to determine whether a defendant is guilty or not guilty based upon evidence submitted whereas in a criminal adjudication involving a bench trial, the judge will determine whether the defendant is guilty or not guilty. In both a jury trial and a bench trial, the judge will be responsible for determining whether evidence and testimony will be admitted into the court record.

During the final phase of an adjudication, the judge may be responsible for ordering a sentence that will be imposed upon the defendant. To do this, the judge will consider:

- Sentencing standards or mandates within tribal laws;
- Aggravating circumstances or mitigating circumstances underlying the criminal act;
- Recommendations made by the prosecutor;
- Responses of the defense counsel;
- Safety of the victim; and
- Victim impact statement.

Because the victim will most likely be under stress during any appearances at the hearings/trials, it is important to monitor the defendant's body language and gestures so the victim does not feel threatened or intimidated.

The following is a list of possible steps a judge can take to assist victims navigating the criminal justice system and ensuring victim's rights are provided to the victim. It is critical to provide victim-centered services underscoring the right of victims to accept or deny any of these options.

***Possible Victim's Rights Enforcement Steps – Judge***

<b>Right of Victim</b>	<b>Steps that a JUDGE can take to help with enforcement of the right</b>
<b>Right to Attend Hearing</b>	<ul style="list-style-type: none"> <li>• Check court file and note on the record whether the victim was sent notice of the hearing.</li> <li>• Note that the victim has a right to be notified and attend any hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Work within a statutory framework regarding any victim requests for copies of court documents related to application for victim compensation.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Ensure that victims are able to provide statements and/or testimony to the court as permitted by law and during various phases of the adjudicatory process.</li> <li>• Ensure that the victim's right to make a victim's impact statement is carefully regarded and enforced.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Include provisions in court orders to ensure that victims are afforded notice of hearings, rights, and opportunity to be heard as permitted by law.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Protect victim information (identity, address, contact information).</li> </ul>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Exercise control over the courtroom and monitor and protect the victim from any of the defendant's body language, gestures, or language to prevent victim intimidation.</li> <li>• Draft protection orders that trigger VAWA's full faith and credit clause.</li> <li>• Draft protection orders that contain precisely worded remedies that will support a criminal charge for violation of those remedies.</li> <li>• Draft protection orders that trigger the federal firearm prohibitions.</li> <li>• Ensure that tribal court orders, including preliminary orders, reinforce and support victim safety.</li> </ul>
<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Enforce any restitution orders as quickly as possible.</li> </ul>

<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Issue any necessary tribal court orders that will ensure the timely return of victim's property subsequent to investigation or prosecution.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Ensure that defendant's request for continuance is considered with a backdrop of the victim's right to a speedy trial.</li> </ul>
<b>Right to Enforcement/ Remedies</b>	<ul style="list-style-type: none"> <li>• Provide leadership promoting the enforcement of victim's rights.</li> <li>• Address allegations of lack of enforcement of victim's rights as soon as possible.</li> </ul>

## **F. Probation/Corrections**

The probation officers play an important role in the postadjudication phase of the criminal justice system process. Defendants may enter the probationary phase immediately after being sentenced or upon release from a period of incarceration. Probation officers can be important conduits of information to victim advocates and victims especially when notifying a victim that an offender will be released from custody or otherwise returning to the community.

Defendants who are sentenced to probation will typically be required to have regular contact with probation officers and will be required to provide information relevant to residency, employment, and education. Probation officers may also be tasked with reporting violations such as substance abuse, violations of no-contact orders, or other criminal activity to the court. In this context, the probation officer can be a criminal justice system professional to whom violations can be reported by a victim.

The following is a list of possible steps probation/parole/reentry can take to assist victims navigating the criminal justice system and ensuring victim's rights are provided to the victim. It is critical to provide victim-centered services underscoring the right of victims to accept or deny any of these options.

***Possible Victim's Rights Enforcement Steps – Probation/Parole/Reentry***

<b>Right of Victim</b>	<b>Steps that PROBATION/PAROLE/REENTRY can take to help with enforcement of the right</b>
<b>Right to Attend Hearing</b>	<ul style="list-style-type: none"> <li>• Work with victim advocates and victim witness coordinators to ensure that victims are able to attend postadjudication hearings such as probation revocations or parole hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Inform victim of their rights to and eligibility for compensation relevant to cost incurred to support attendance and participation in postadjudication hearings.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Ensure that victims are allowed to be heard at all critical stages of the postadjudication process.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Work with victim advocates to ensure that victims are informed about any postadjudication proceedings such as probation revocations or parole hearings.</li> <li>• Work with victim advocates to ensure that the victim is made aware of the defendant's release from custody.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Protect victim information (identity, address, contact information).</li> </ul>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Address any victim concerns regarding protection and safety.</li> <li>• Report any violations to the prosecutor quickly.</li> </ul>
<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Adhere to chain of custody if gathering evidence regarding restitution during probation or parole.</li> </ul>
<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Work with prosecutors to obtain a court order directing a timely return of the victim's property.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Work with prosecutors to address any probation or parole hearings in a timely manner.</li> </ul>
<b>Right to Enforcement/Remedies</b>	<ul style="list-style-type: none"> <li>• Work with prosecutors and law enforcement to safeguard the enforcement of victim's rights.</li> </ul>



## G. Discussion Questions

These discussion points may assist the drafting team in assessing responsibilities connected to the victim's rights statutes.

- *Review the possible responsibilities set out in the preceding text and discuss the responsibilities for each discipline that would best meet the needs of victims in your tribal community.*
- *Discuss whether these responsibilities should be included in the tribal statutes where it may be more difficult to make changes thereby insulating the responsibilities from events such as administration changes, or whether some or all of the responsibilities should be in written policies that can be modified more easily.*

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## Part 5: Additional Resources

### *Victim's Rights*

- Alliance for Safety and Justice, [\*National Crime Victims Agenda 2021: A Plan to Address the Needs of Our Nation's Diverse Victims of Crime\*](#), April 2021.
- Antonsdóttir, Hildur Fjóra, "[Book Review: Victimology and Victim Rights: International Comparative Perspectives](#)," International Review of Victimology, Sept. 2020.
- Davis, Robert C., Kalani Johnson, Michael J. Lebron, and Susan Howley, "[US Law Enforcement's Role in Victim Compensation Dissemination](#)," International Review of Victimology, January 2021.
- de Heer, Brooke A., Lynn C. Jones, and Bethany Larsen, "[Improving Justice for American Indian and Rural Victims of Crime through Community-Engaged Research](#)," Journal of Contemporary Criminal Justice, May 2021.
- Hagen, Leslie, "[Crime Victims in Indian Country and the Rights They Are Owed](#)." Webinar, July 29, 2019. NIWRC.org, accessed March 4, 2021.
- Holder, Robyn, Tyrone Kirchengast, and Paul Cassell, "[Transforming Crime Victims' Rights: From Myth to Reality](#)," International Journal of Comparative and Applied Criminal Justice, 2020.
- Holder, Robyn L., and Amanda L. Robinson, "[Claiming Justice: Victims of Crime and Their Perspectives of Justice](#)," International Review of Victimology, May 2021.
- National Center for Victims of Crime, [Victim Connect Resource Center](#). VictimConnect.org, accessed March 4, 2021.
- National Congress of American Indians, "[Victims' Rights](#)." Ncai.org, accessed March 4, 2021.
- National Crime Victim Law Institute, "[Protecting Children's Rights: What Practitioners Need to Know About Traumatic Stress](#)," Child-Victim's Rights Bulletin, January 2013.
- National Crime Victim Law Institute, "[Fundamentals of Victims' Rights: A Summary of 12 Common Victims' Rights](#)," Victim Law Bulletin, November 2011.
- National Indian Country Clearinghouse on Sexual Assault, Southwest Center for Law and Policy, "[Victim Rights](#)." Niccsa.org, accessed May 11, 2021.
- Offices of the U.S. Attorneys, Department of Justice, "[Crime Victims' Rights Ombudsman](#)." Justice.gov, accessed March 4, 2021.
- Office for Victims of Crime, Department of Justice, "[Victim Rights and Services](#)." Ovc.Ojp.gov, accessed March 4, 2021.
- Office for Victims of Crime Training and Technical Assistance Center, Office of Justice Programs, [VictimLaw](#). VictimLaw.org, accessed Mar. 4, 2021.
- Sattler, Patricia Lynne, "[The Crime Victims' Rights Act: Rhetoric or Reality?](#)" Greenwich Social Work Review, 2020.
- United States Sentencing Commission, [Primer: Crime Victims' Rights](#), April 2021.
- Yin, Tung, "[Learning from the Jeffrey Epstein Mess: It's Time to Add a Cause of Action for Damages to the Crime Victims' Rights Act](#)," Kansas Law Review, 2020.

## Protection Orders

*Protection orders may be known by a variety of names to include injunction, restraining order, civil restraining order, or victim protection order just to name a few. A protection order is a court-issued legal document that requires one person, the respondent (batterer), to stay away from the other person, the petitioner (victim).*

- **Battered Women’s Justice Project National Center on Protection Orders and Full Faith & Credit, [Resource Center](#).** Bwjp.org, accessed May 11, 2021.
- **Battered Women’s Justice Project National Center on Protection Orders and Full Faith & Credit and the Tribal Law and Policy Institute, [Drafting an Enforceable Tribal Protection Order Involving a Non-member](#),** September 2019.
- **Bongar White, Hallie, Kelly Gaines Stoner, and James G. White, [Creative Civil Remedies Against Non-Indian Offenders in Indian Country](#),** 44 Tulsa Law Review 427 (2008).
- **Deer, Sarah. [“Expanding the Network of Safety: Tribal Protection Orders for Survivors of Sexual Assault,”](#)** 4 Tribal Law Journal (2004).
- **Deer, Sarah, and Melissa L. Tatum, [“Tribal Efforts to Comply with VAWA’s Full Faith and Credit Requirements: A Response to Sandra Schmieder,”](#)** 39 Tulsa Law Review 403 (2003).
- **Department of Justice, U.S. Attorney’s Office, District of Oregon, [“U.S. Attorney and Oregon Attorney General Issue Joint Guidance on the Enforcement of Tribal Protection Orders.”](#)** Justice.gov, January 30, 2020, accessed May 10, 2021.
- **Judicial Council of California, [Recognition and Enforcement of Tribal Protection Orders](#),** Courts.ca.gov, 2017, accessed May 10, 2021.
- **Klein, Andrew. [Enforcing Domestic Violence Firearms Prohibitions: A Report on Promising Practices](#),** Battered Women’s Justice Project National Center on Protection Orders and Full Faith & Credit, September 2006.
- **Messing, Jill Theresa, Meredith E. Bagwell-Grey, Allison Ward-Lasher, and Alesha Durfee, [“Not bullet proof”: The Complex Choice Not to Seek a Civil Protection Order for Intimate Partner Violence](#),** International Review of Victimology, May 2021.
- **National Council of Juvenile and Family Court Judges, [Civil Protection Orders: A Guide to Improving Practice](#),** January 1, 2010.
- **Riley, Brenna P., [“Protecting All Women: Tribal Protection Orders and Required Enforcement Under VAWA,”](#)** Roger Williams University Law Review, Winter 2019.
- **Tribal Access Program, Office of the Chief Information Officer, Department of Justice, [Fact Sheet: Entering Orders of Protection into the National Crime Information Center V1](#),** December 2020.
- **Tatum, Melissa, [“Establishing Penalties for Violations of Protection Orders: What Tribal Governments Need to Know,”](#)** 13 Kansas Journal of Law and Public Policy 125 (2003).
- **Tribal Law and Policy Institute, [TribalProtectionOrder.org](#),** accessed May 10, 2021.
- **Tribal Law and Policy Institute, [“Tribal Protection Orders.”](#)** TribalResponse.org, accessed July 19, 2021.

**State Victim Compensation Funds**

*All states have a crime victim compensation program. These programs reimburse victims for expenses related to certain crimes, though the programs vary from state to state. Generally, such programs will pay for medical expenses, counseling costs, funeral or burial expenses, and lost wages or support.*

- **Alvidrez, Jennifer, Martha Shumway, Alicia Boccellari, Jon Dean Green, Vanessa Kelly, and Gregory Merrill, “[Reduction of State Victim Compensation Disparities in Disadvantaged Crime Victims through Active Outreach and Assistance: A Randomized Trial](#).”** American Journal of Public Health 98(5) 882-888 (2008).
- **National Association for Crime Victim Compensation Board, “[Crime Victim Compensation: An Overview](#).”** Nacvcb.org, accessed March 11, 2021.



# APPENDIX

## A. Glossary of Common Legal Terms

*Disclaimer: Before drafting victim's rights statutes, you should look to your existing tribal laws to identify how these legal terms are defined and used within existing tribal laws.*

Definitions Adapted from <https://www.uscourts.gov/glossary>

**Acquittal:** A verdict by a jury that a criminal defendant is not guilty, or the finding of a judge that the evidence is insufficient to support conviction.

**Admissible:** A term used to describe evidence that may be considered by a jury or judge in civil and criminal cases.

**Adversarial:** A legal system where advocates representing their parties case or position is presented before an impartial judge or jury

**Affidavit:** A written or printed statement made under oath.

**Affirmed:** In the practice of a court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

**Answer:** The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

**Appeal:** A request made after a trial by a party that has lost on one or more issues that a higher court review the decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant," the other party is the "appellee."

**Arraignment:** A proceeding in which a criminal defendant is brought into court, told of the charges in an indictment or information, and asked to plead guilty or not guilty.

**Bail:** The release, prior to trial, of a person accused of a crime, under specified conditions designed to assure that person's appearance in court when required. Also, can refer to the amount of bond money posted as a financial condition of pretrial release.

**Bench trial:** A trial without a jury, in which the judge serves as the fact-finder.

**Bond:** Refer to the amount of bond money posted as a financial condition of pretrial release.

**Burden of proof:** The duty to prove disputed facts. In civil cases, a plaintiff generally has the burden of proving his or her case. In criminal cases, the government has the burden of proving the defendant's guilt (see standard of proof).

**Case law:** The law as established in previous court decisions. A synonym for legal precedent. Akin to common law, which springs from tradition and judicial decisions.

**Cause of action:** A legal claim.

**Complaint:** A document setting forth facts sufficient to allow a person to reasonably conclude that a crime was committed by the named defendant. Complaint often initiates a criminal adjudication.

**Common law:** The legal system that originated in England and is now in use in the United States, which relies on the articulation of legal principles in a historical succession of judicial decisions. Common law principles can be changed by legislation.

**Concurrent sentence:** Prison terms for two or more offenses to be served at the same time, rather than one after the other.

**Consecutive sentence:** Prison terms for two or more offenses to be served one after the other.

**Conviction:** A judgment of guilt against a criminal defendant.

**Count:** An allegation in an indictment or information, charging a defendant with a crime. An indictment or information may contain allegations that the defendant committed more than one crime. Each allegation is referred to as a count.

**Defendant:** An individual charged with a crime.

**Discovery:** Procedures used to obtain disclosure of evidence before trial.

**Docket:** A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

**Due process:** In criminal law, the constitutional or ICRA guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

**Evidence:** Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

**Exclusionary rule:** Doctrine that says evidence obtained in violation of a criminal defendant's constitutional or statutory rights is not admissible at trial.

**Exculpatory evidence:** Evidence indicating that a defendant did not commit the crime.

**Felony:** A serious crime, usually punishable by at least one year in prison.

**Grand jury:** A body of citizens who listen to evidence of criminal allegations, which is presented by the prosecutors, and determine whether there is probable cause to believe an individual committed an offense.

**Habeas corpus:** Latin, meaning "you have the body." A writ of habeas corpus generally is a judicial order forcing law enforcement authorities to produce a prisoner they are holding, and to justify the prisoner's continued confinement.

**Hearsay:** Evidence presented by a witness who did not see or hear the incident in question but heard about it from someone else. With some exceptions, hearsay generally is not admissible as evidence at trial.

**Impeachment:** The process of calling a witness's testimony into doubt.

**In camera:** Latin, meaning in a judge's chambers. Often means outside the presence of a jury and the public.

**Inculpatory:** Evidence indicating that a defendant did commit the crime.

**Indictment:** The formal charge issued by a grand jury stating that there is enough evidence that the defendant committed the crime to justify having a trial; it is used primarily for felonies.

**Jury trial:** The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact.

**Misdemeanor:** An offense punishable by one year of imprisonment or less.

**Mistrial:** An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

**Motion:** A request by a litigant to a judge for a decision on an issue relating to the case.

**Motion in limine:** A pretrial motion requesting the court to prohibit the other side from presenting, or even referring to, evidence on matters said to be so highly prejudicial that no steps taken by the judge can prevent the jury from being unduly influenced.

**Nolo contendere/no contest:** No contest. A plea of nolo contendere has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

**Objection:** A formal protest made by a litigant during trial made with respect to a procedure or made the intention of requesting that evidence or testimony not be allowed into the record.

**Parole:** The release of a prison inmate after the inmate has completed part of his or her sentence in a prison. When the parolee is released to the community, he or she is placed under the supervision of a probation officer.



**Peremptory challenge:** A district court may grant each side in a civil or criminal trial the right to exclude a certain number of prospective jurors without cause or giving a reason.

**Petty offense:** A federal misdemeanor punishable by six months or less in prison.

**Plaintiff:** A person or business that files a formal complaint with the court.

**Plea:** In a criminal case, the defendant's statement pleading "guilty" or "not guilty" in answer to the charges.

**Precedent:** A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court.

**Pretrial:** A legal proceeding held before a trial intended to address issues of law or to stipulate to certain matters that the parties can agree upon.

**Pro se:** Representing oneself. Serving as one's own lawyer.

**Probation:** Sentencing option in courts. With probation, instead of sending an individual to prison, the court releases the person to the community and orders him or her to complete a period of supervision monitored by a probation officer and to abide by certain conditions.

**Procedure:** The rules for conducting a lawsuit; there are rules of criminal procedure.

**Record:** A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

**Restitution:** Full or partial compensation for loss paid by a criminal to a victim that is ordered as part of a criminal sentence or as a condition of probation.

**Sanction:** A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

**Sentence:** The punishment ordered by a court for a defendant convicted of a crime.

**Sequester:** To separate. Sometimes juries are sequestered from outside influences during their deliberations.

**Standard of proof:** Degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt "beyond a reasonable doubt."

**Statute:** A law passed by a legislature.

**Statute of limitations:** The time within which a lawsuit must be filed or a criminal prosecution started.

**Subpoena:** A command, issued under a court's authority, to a witness to appear and give testimony.

**Subpoena duces tecum:** A command to a witness to appear and produce documents.

**Testimony:** Evidence presented orally by witnesses during trials or before grand juries.

**Toll:** To stop the running of a period, especially a period set by statute.

**Venue:** The geographic area in which a court has jurisdiction. A change of venue is a change or transfer of a case from one judicial district to another.

**Victim-centered:** An approach that allows the victim's wishes, safety, and well-being to take priority in all matters and procedures before the court. A victim-centered approach is grounded in the philosophy that the services offered to the victim are complimentary not mandatory and the victim is the decision maker regarding the services needed and accepted.

**Voir Dire:** Jury selection process of questioning prospective jurors, to ascertain their qualifications and determine any basis for challenge.

**Warrant:** Court authorization, most often for law enforcement officers, to conduct a search or make an arrest.

**Witness:** A person called upon by either side in a lawsuit to give testimony before the court or jury.

**Writ:** A written court order directing a person to take, or refrain from taking, a certain act.

## B. Yurok Victim's Rights Code

### Title 10, Offenses

#### [Chapter 10.15, Special Domestic Violence Jurisdiction](#)

#### [Article III, Rights and Sentencing](#)

##### **10.15.150 Rights of victims.**

(a) If you are the victim of a crime of domestic violence you have the right to go to the Tribal Court and file a petition requesting any of the following orders for relief:

- (1) An order restraining your attacker from contacting you or your children;
- (2) An order directing your attacker to leave your household;
- (3) An order preventing your attacker from entering your residence, school, business or place of employment;
- (4) An order awarding you or the other parent temporary custody of a minor child or children;
- (5) An order directing the party not granted custody to pay support of minor children. You can obtain a copy of the officer's report at no cost to you. You also have the right to obtain a protection order in state court. The forms you need to obtain an order for protection can be obtained from the Clerk of the Court; or
- (6) An order to restrain the defendant from contacting the victim with any and all electronic communication via social media, cell phone voice, voicemail, text, and other related technology.

(b) Generally, any victim of a crime that has been filed in Court that directly or indirectly involves domestic abuse, sexual assault, stalking, or dating violence, has the following rights:

- (1) The right to be reasonably protected from intimidation, harassment, and abuse, throughout the criminal justice process;
- (2) The right to reasonable, accurate, and timely notice of any Court proceeding, or any probation proceeding, involving the crime or of any release or escape of the accused;
- (3) The right to not be excluded from any such Court proceeding, unless the Court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
- (4) The right to be reasonably heard at any public proceeding in the Court involving release, plea, sentencing, or any probation proceeding;
- (5) The right, within reason, to confer with the prosecuting attorney in the case;
- (6) The right to proceedings free from unreasonable delay;
- (7) The right to be treated with fairness and with respect for the victim's dignity and privacy;
- (8) The right to prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law;
- (9) The right to refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents;

- (10) The right to the prompt return of property when no longer needed for the prosecution of the case;
- (11) The right to be notified whether or not criminal charges will be filed;
- (12) The right to have access to a domestic violence advocate, and for that access to be strictly confidential; and
- (13) The right to appoint a lawful representative should the victim be physically or emotionally unable to exercise any right listed in this section. The representative must not be a witness in the case. The victim may revoke this designation at any time. [Ord. 62B § 4203, amended, 11/7/2019.]

**The Yurok Tribal Code is current through Ordinance 74, passed August 26, 2021.**

Disclaimer: The Office of the Tribal Attorney has the official version of the Yurok Tribal Code. Users should contact the Office of the Tribal Attorney for ordinances passed subsequent to the ordinance cited here.

**Note:** This site does not support Internet Explorer. To view this site, Code Publishing Company recommends using one of the following browsers: Google Chrome, Firefox, or Safari.

[Tribe Website: yuroktribe.org](http://yuroktribe.org)

Tribe Telephone: (707) 482-1350

[Tribal Court: yuroktribalcourt.org](http://yuroktribalcourt.org)

[Code Publishing Company](#)

## C. State and Federal Victim's Rights

### *State Legislation (note source is from 2013)*

- National Crime Victim Law Institute, "[Victims' Rights Laws by State](#)," Law.lclark.edu, October 17, 2013, accessed August 16, 2021.

#### State of Washington - [Constitution](#)

##### Article I, Section 35

**SECTION 35 VICTIMS OF CRIMES - RIGHTS.** Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel.

#### State Statute - Crime Victim Bill of Rights

##### [Title 7, Chapter 7.69, Section 7.69.030](#)

##### **RCW 7.69.030 Rights of victims, survivors, and witnesses.**

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

- (1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;
- (2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;
- (3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

- (4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;
- (5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;
- (6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;
- (7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;
- (8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;
- (9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault, or stalking, as defined in RCW 49.76.020, shall be notified of their right to reasonable leave from employment under chapter 49.76 RCW;
- (10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;
- (11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;
- (12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;
- (13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;
- (14) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions; and

(15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment.

**Note:** Child victims and witnesses, additional rights: Chapter 7.69A RCW.

## ***Federal Legislation***

### **Crime Victims' Rights Act**

#### **18 U.S.C. § 3771 – Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- (10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) [1] and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

(b) Rights Afforded.—

(1) In general.— In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(2) Habeas corpus proceedings.—

(A) In general.— In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

(B) Enforcement.—

(i) In general.— These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

(ii) Multiple victims.— In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) Limitation.— This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction,



and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) Definition.— For purposes of this paragraph, the term “crime victim” means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person’s family member or other lawful representative.

(c) Best Efforts To Accord Rights.—

(1) Government.— Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) Advice of attorney.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) Notice.— Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) Enforcement and Limitations.—

(1) Rights.— The crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) Multiple crime victims.— In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim’s right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error.— In any appeal in a criminal case, the Government may assert as error the district court’s denial of any crime victim’s right in the proceeding to which the appeal relates.

(5) Limitation on relief.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged. This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.

(6) No cause of action.— Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) Definitions.—For the purposes of this chapter:

(1) Court of appeals.—The term “court of appeals” means—

(A) the United States court of appeals for the judicial district in which a defendant is being prosecuted; or

(B) for a prosecution in the Superior Court of the District of Columbia, the District of Columbia Court of Appeals.

(2) Crime victim.—

(A) In general.— The term “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

(B) Minors and certain other victims.— In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim's estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim's rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(3) District court; court.— The terms “district court” and “court” include the Superior Court of the District of Columbia.

(f) Procedures To Promote Compliance.—

(1) Regulations.— Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents.—The regulations promulgated under paragraph (1) shall—

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

## **Victims' Rights and Restitution Act**

### **34 U.S.C. § 20141 – Services to victims**

#### **(a) Designation of responsible officials**

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

(b) Identification of victims At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

(1) identify the victim or victims of a crime;

(2) inform the victims of their right to receive, on request, the services described in subsection (c); and

(3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

#### **(c) Description of services**

(1) A responsible official shall—

(A) inform a victim of the place where the victim may receive emergency medical and social services;

(B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and [1] manner in which such relief may be obtained;

(C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4) [2] of title 42, is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

(e) Definitions

For the purposes of this section—

(1) the term “responsible official” means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

- (vi) another family member; or
- (vii) another person designated by the court.