

**TRIBAL CODE**

**CHAPTER 75:**

**CRIME VICTIMS RIGHTS**

**CONTENTS:**

75.101 Title ..... 75-3

75.102 Definitions ..... 75-3

75.103 Initial Notice ..... 75-4

75.104 Return of Property ..... 75-5

75.105 Notice of Pretrial Release ..... 75-5

75.106 Notice of Trial Process ..... 75-5

75.107 Separate Waiting Area ..... 75-6

75.108 Confidentiality of Victim's Address ..... 75-6

75.109 Request for Speedy Trial ..... 75-7

75.110 Confer for Jury Selection ..... 75-7

75.111 Right to be Present ..... 75-7

75.112 Employment Protected ..... 75-7

75.113 Notice to Victim for Sentencing ..... 75-8

75.114 Impact Statement for Sentencing ..... 75-9

75.115 Right to Make Statement at Sentencing ..... 75-9

75.116 Restitution to Victim ..... 75-9

75.117 Factors for Restitution ..... 75-11

75.118 Restrictions Upon Publication Profits ..... 75-12

75.119 Notice of Appeal ..... 75-13

75.120 Notice by Corrections Facility ..... 75-13

75.121 Notice of Escape ..... 75-14

75.122 Right to Address Parole Board ..... 75-15

75.123 Notice of Final Disposition ..... 75-15

75.124 No Cause of Action ..... 75-15

75.125 Failure to Provide Notice ..... 75-15

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## **TRIBAL CODE**

### **CHAPTER 75:**

### **CRIME VICTIMS RIGHTS**

#### **75.101 Title.**

This act shall be known and may be cited as the "Crime Victim's 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.

(2) "Defendant" means a person charged with or convicted of having committed a crime against a victim.

(3) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of sentence by the Court.

(4) "Person" means an individual, organization, partnership, corporation or governmental entity.

(5) "Prisoner" means a person who has been convicted and sentenced to imprisonment for having committed a crime against a victim.

(6) "Prosecuting attorney" means the prosecuting attorney for the Sault Ste. Marie Tribe of Chippewa Indians.

(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.

### **75.103 Initial Notice.**

(1) Within 24 hours after the initial contact between the victim of a reported crime and the law enforcement agency having the responsibility for investigating that crime, that agency shall give the victim the following information:

- (a) The availability of emergency and medical services, if applicable.
- (b) The availability of victim's compensation benefits and the address of the crime victims advocate.
- (c) The address and phone number of the prosecuting attorney whom the victim should contact to obtain information about victim's rights.
- (d) The following statement:
  - (i) "If within six months, you are not notified of an arrest in your case, you may call [the victims advocate's telephone number] for the status of the case."

(2) Law Enforcement agency shall notify the Crime Victim's Advocate.

**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.

**75.105 Notice of Pretrial Release.**

(1) Not later than 24 hours after the arraignment of the defendant for a crime, the law enforcement agency having responsibility for investigating that crime shall give to the victim notice of the availability of pretrial release for the defendant, the phone number of the sheriff, and notice that the victim may contact the sheriff to determine whether the defendant has been released from custody.

(2) Based upon the victim's affidavit asserting acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family, the prosecuting attorney may move that the bond or personal recognizance of a defendant be revoked.

**75.106 Notice of Trial Process.**

(1) Not later than seven days after the arraignment of the defendant for a crime, but not less than 24 hours before a preliminary examination, the Crime Victim's Advocate shall give to each victim a written notice in plain English of each of the following:

(a) A brief statement of the procedural steps in the processing of a criminal case.

(b) The rights and procedures under this Chapter.

(c) Details and eligibility requirements under Act No. 223 of the Public Acts of 1976, being sections 18.351 to 18.368 of the Michigan Compiled Laws.

(d) Suggested procedures if the victim is subjected to threats or intimidation.

(e) The person to contact for further information.

(2) If requested by the victim, the Crime Victim's Advocate shall give to the victim notice of any scheduled Court proceedings and notice of any changes in that schedule.

(3) The prosecuting attorney shall offer the victim the opportunity to consult with the prosecuting attorney to obtain the views of the victim about the disposition of a crime, including the victim's views about dismissal, plea or sentence negotiations, and pretrial diversion programs.

(4) A victim who receives a notice under subsection (2) and who chooses to receive any other notice or notices under this Chapter shall keep the following persons informed of the victim's current address and phone number:

(a) The prosecuting attorney, until final disposition or completion of the appellate process, whichever occurs later.

(b) The department of corrections or the sheriff as directed by the prosecuting attorney if the defendant is imprisoned.

(c) Crime Victims Advocate.

#### **75.107 Separate Waiting Area.**

The Court shall provide a waiting area for the victim separate from the defendant, defendant's relatives and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the Court shall provide other safeguards to minimize the victim's contact with defendant, defendant's relatives and defense witnesses during Court proceedings.

#### **75.108 Confidentiality of Victim's Address.**

(1) Based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendant or at the defendant's direction against the victim or the victim's immediate family, the prosecutor may move that the victim or any other witness not be compelled to testify at pretrial proceedings or at trial for purposes of identifying the victim as to the victim's address, place of employment or other personal identification without the victim's consent. A hearing on the motion shall be *in camera*.

(2) The address of the victim shall not be in the Court file or ordinary Court documents unless contained in a transcript of the trial or it is used to identify the place of the crime. The phone number of the victim shall not be in the Court file or ordinary Court documents except as contained in the transcript of the trial.

**75.109 Request for Speedy Trial.**

(1) A speedy trial may be scheduled for any case in which the victim is averred by the prosecuting attorney to be either of the following:

(a) A victim of child abuse, including sexual abuse or any other assaultive crime.

(b) A victim of criminal sexual conduct in the first, second, or third degree or of a assault with intent to commit sexual conduct involving penetration or to commit criminal sexual conduct in the second degree.

(2) The chief judge, upon motion of the prosecuting attorney for a speedy trial for a case described in subsection (1), shall set a hearing date within ten days of the date of the motion. Notice shall be made pursuant to the Tribal Court rules. If the motion is granted, the trial shall not be scheduled earlier than 20 days from the date of the hearing.

**75.110 Confer for Jury Selection.**

Upon request of the victim, the prosecuting attorney shall confer with the victim prior to the selection of the jury and prior to the trial of the defendant.

**75.111 Right to be Present.**

The victim has the right to be present throughout the entire trial of the defendant, including juvenile hearings, unless the victim is going to be called as a witness. If the victim is going to be called as a witness, the Court may, for good cause shown, order the victim to be sequestered until the victim first testifies.

**75.112 Employment Protected.**

An employer or the employer's agent, who threatens to discharge or discipline or who discharges, disciplines, or causes to be discharged from employment or to be disciplined a victim because that victim is subpoenaed or request by the prosecuting attorney to attend Court for the purpose of giving testimony, is guilty of a misdemeanor, and may be punished for contempt of court.

**75.113 Notice to Victim for Sentencing.**

(1) The Crime Victim's Advocate, upon and in accordance with the request of the victim, shall give to the victim notice of the following:

(a) The defendant's conviction.

(b) The crimes for which the defendant was convicted.

(c) The victim's right to make a written or oral impact statement for use in the preparation of a presentence investigation report concerning the defendant.

(d) The address and telephone number of the probation office which is to prepare the presentence investigation report.

(e) That a presentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the Court.

(f) The victim's right to make an impact statement at sentencing.

(g) The time and place of the sentencing proceeding.

(2) The notice given by the prosecuting attorney to the victim must be given by any means reasonably calculated to give prompt actual notice.

(3) A notice given under subsection (2) shall inform the victim that his or her impact statement may include but shall not be limited to the following:

(a) An explanation of the nature and extent of any physical, psychological, or emotional harm or trauma suffered by the victim.

(b) An explanation of the extent of any economic loss or property damage suffered by the victim.

(c) An opinion of the need for and extent of restitution and whether the victim has applied for or received compensation for loss or damage.

(d) The victim's recommendation for an appropriate sentence.

**75.114 Impact Statement for Sentencing.**

The victim has the right to submit or make a written or oral impact statement to the probation officer for use by that officer in preparing a presentence investigation report concerning the defendant. A victim's written statement shall, upon the victim's request, be included in the presentence investigation report.

**75.115 Right to Make Statement at Sentencing.**

The victim shall have the right to appear and make an oral impact statement at the sentencing of the defendant.

**75.116 Restitution to Victim.**

(1) For purposes of this section only, "victim" means an individual who suffers direct or threatened physical, financial or emotional harm as a result of the commission of a crime; and for purposes of §75.116, "victim" includes a sole proprietorship, or corporation.

(2) The Court, when sentencing a defendant convicted of a crime, may order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make restitution to any victim of the defendant's course of conduct which gives rise to the conviction, or to the victim's estate.

(3) If the Court does not order restitution, or orders only partial restitution under this section, the Court shall state on the record the reasons for that action.

(4) If a crime results in damage to or loss or destruction of property of a victim of the offense, the order of restitution may require that the defendant do either of the following:

(a) Return the property to the owner of the property or to a person designated by the owner.

(b) If return of the property under §75.116(4)(a) is impossible, impractical or inadequate, pay an amount equal to the greater of subparagraphs (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

(i) The value of the property on the date of the damage, loss or destruction.

(ii) The value of the property on the date of sentencing.

(5) If a crime results in physical or psychological injury to a victim, the order of restitution

may require that the defendant do one or more of the following: as applicable:

- (a) Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.
  - (b) Pay an amount equal to the cost of actual physical and occupational therapy **d** rehabilitation.
  - (c) Reimburse the victim or the victim's estate for after-tax income loss suffered **b** the victim as a result of the offense.
  - (d) Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family which has been incurred as a result of the offense.
- (6) If a crime resulting in bodily injury also results in death of a victim, the order of restitution may require that the defendant pay an amount equal to the cost of actual funeral and related services.
- (7) Instead of restitution under 116(4), (5), (6) if the victim or victim's estate consents, the order of restitution may require that the defendant make restitution in services in lieu of money, or make restitution to a person designated by the victim or victim's estate if that person provided services to the victim as a result of the crime.
- (8) If the Court orders restitution under this section, the Court shall, if the victim is deceased, order that the restitution be made to the victim's estate.
- (9) Any order of restitution shall be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the sentencing process.
- (10) The Court shall not order restitution with respect to a loss for which the victim or victim's estate has received or is to receive compensation, including insurance, except that the Court may, in the interest of justice, order restitution to the Crime Victim's Advocacy Program or to any individuals, organizations, partnerships, corporations or governmental entities that have compensated the victim or victim's estate for such loss to the extent of the compensation paid. An order of restitution shall require that all restitution to a victim or victim's estate under the order be made before any restitution to any other person under that order is made.
- (11) Any amount paid to a victim or victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim or the victim's estate in any federal, state or Tribal civil proceeding and shall reduce the amount payable to a victim or victim's estate by an award from the crime victims compensation board made after an order of restitution under this section.
- (12) If not otherwise provided by the Court under this subsection, restitution shall be made immediately. However, the Court may require that the defendant make restitution under this section

within a specified period or in specified installments. The end of the period or the last installment shall not be later than the following:

(a) The end of the period of probation, if probation is ordered.

(b) Two years after the end of imprisonment or discharge from parole, whichever occurs later, if the Court does not order probation.

(c) Three years after the date of sentencing in any other case.

(13) If the defendant is placed on probation or paroled, any restitution ordered under this section shall be a condition of that probation or parole. The Court may revoke probation and the parole board may revoke parole if the defendant fails to comply with the order and if the defendant has not made a good faith effort to comply with the order. In determining whether to revoke probation or parole, the Court or parole board shall consider the defendant's employment status, earning ability, financial resources, and the willfulness of the defendant's failure to pay and any other special circumstances that may have a bearing on the defendant's ability to pay.

(14) A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution, at any time, may petition the sentencing judge or his or her successor for a cancellation of any unpaid portion of restitution. If it appears to the satisfaction of the Court that payment of the amount due will impose a manifest hardship on the defendant or his or her immediate family, the Court may cancel all or part of the amount due in restitution or modify the method of payment.

(15) An order of restitution may be enforced by the prosecuting attorney or a victim or victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.

(16) Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, or incarcerated for a violation of parole or probation, or otherwise, for failure to pay restitution as ordered under this section unless the Court determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.

#### **75.117 Factors for Restitution.**

(1) The Court, in determining whether to order restitution under §75.116 and the amount of that restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources and earning ability of the defendant, the financial need of the defendant and the defendant's dependents, and such other factors as the Court considers appropriate.

(2) The Court may order the probation officer to obtain information pertaining to the factors set forth in §75.117(1). The probation officer shall include the information collected in the presentence investigation report or in a separate report, as the Court directs.

(3) The Court shall disclose to both the defendant and the prosecuting attorney all portions of the presentence or other report pertaining to the matter described in §75.117(2).

(4) Any dispute as to the proper amount or type of restitution shall be resolved by the Court by a preponderance of the evidence. The burden of demonstrating the earning ability of the defendant and the amount of the loss sustained by a victim as a result of the offense shall be on the Crime Victim's Advocate. The burden of demonstrating the financial resources of the defendant and the financial need of the defendant and the defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the Court deems appropriate shall be upon the party designated by the Court as justice requires.

#### **75.118 Restrictions Upon Publication Profits.**

(1) A person convicted of a crime shall not derive any profit from the sale of his or her recollections, thoughts and feelings with regard to the offense committed by that person until the victim receives any restitution or compensation ordered for him or her against the defendant and expenses of incarceration are recovered as provided in §75.118(3) and until the escrow account created under §75.118(2) is terminated under §75.118(4).

(2) Upon the conviction of a defendant for a crime involving a victim, and after notice to any interested party, an attorney for the Tribe in which the conviction occurred may petition the Court in which the conviction occurred to order that defendant forfeit all or any part of proceeds received or to be received by the defendant, or the defendant's representatives or assignees, from contracts relating to the depiction of the crime or the defendant's recollections, thoughts or feelings about the crime, in books, magazines, media entertainment or live entertainment. The proceeds shall be held in escrow for a period of not more than five years.

(3) During the existence of the escrow account, proceeds in the account shall be distributed in the following priority for the following purposes.

- (a) To satisfy an order of restitution entered under §75.116 and §75.117.
- (b) To satisfy any civil judgment in favor of the victim against that defendant.
- (c) To satisfy any fines ordered.

(4) Fifty percent of the balance remaining in the escrow account at the end of the escrow period shall be payable to the defendant and the remaining 50% of the balance shall be payable to the Crime Victim's Advocacy Program to pay compensation claims.

#### **75.119 Notice of Appeal.**

(1) Upon the request of the victim, the Crime Victim's Advocate shall notify the victim of the following:

- (a) That the defendant has filed an appeal of his or her conviction.
- (b) A brief explanation in plain English of the appeal process, including the possible dispositions.
- (c) Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal.
- (d) The time and place of any appellate court proceedings and any changes in the time or place of those proceedings.
- (e) The result of the appeal.

(2) In the event the defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim shall have the same rights previously requested during the proceedings which led to the appeal.

**75.120 Notice by Corrections Facility.**

(1) Upon the written request of a victim of a crime, the sheriff or the department of corrections shall mail to the victim the following, as applicable, about a prisoner who has been sentenced to imprisonment under the jurisdiction of the sheriff or the department for commission of that crime:

- (a) Within 30 days after the request, notice of the sheriff's calculation of the earliest release date of the prisoner, or the department's calculation of the earliest parole eligibility date of the prisoner, with all potential good time or disciplinary credits considered if the imprisonment exceeds 90 days. The victim may request one-time notice of the calculation described in this subdivision.
- (b) Notice of the transfer or pending transfer of the prisoner to a minimum security facility and the address of that facility.
- (c) Notice of the release or pending release of the prisoner in a community residential program, under extended furlough, or any other transfer of a prisoner to community status.
- (d) Notice of any reduction in the minimum sentence resulting under the prison overcrowding emergency powers act, Act No. 519 of the Public Acts of 1980, being sections 800.71 to 800.79 of the Michigan Compiled Laws.

(e) Notice of the escape of the person accused, convicted or imprisoned for committing a crime against the victim.

(f) Notice of the victim's right to address or submit a written statement for consideration by a parole board member or a member of any other panel having authority over the prisoner's release on parole.

(g) Notice of the decision of the parole board, or any other panel having authority over the prisoner's release on parole, after a parole review.

(h) Notice of the release of a prisoner 90 days before the date of the prisoner's discharge from prison where practical, unless the notice has been otherwise provided under this Chapter.

(i) Notice of a public hearing pursuant to section 44 of Act No. 232 of the Public Acts of 1953, being section 791.244 of the Michigan Compiled Laws, regarding a reprieve, commutation or pardon of the prisoner's sentence by the governor.

(j) Notice that a reprieve, commutation or pardon has been granted.

(2) A victim's address and telephone number maintained by a sheriff or the department of corrections pursuant to a request or notice under §75.220(1) shall be exempt from disclosure under the freedom of information act, Act. No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws.

#### **75.121 Notice of Escape.**

(1) As provided in subsection (2) or (3), a victim who requests notice of the escape and the prosecuting attorney who is prosecuting or has prosecuted the crime for which the person is detained or under sentence shall be given immediate notice of the escape of the person accused, convicted or imprisoned for committing a crime against the victim. The notice shall be given by any means reasonably calculated to give prompt actual notice.

(2) If the escape occurs before the sentence is executed or before the defendant is delivered to the department of corrections, the chief law enforcement officer of the agency in charge of the person's detention shall give notice of the escape to a victim who requested notice.

(3) If the defendant is confined pursuant to a sentence, the notice shall be given by the chief administrator of the place in which the prisoner is confined.

#### **75.122 Right to Address Parole Board.**

(1) A victim shall have the right to address or submit a written statement for consideration

by a parole board member or a member or any other panel having authority over the prisoner's release on parole.

(2) Not less than 30 days before a review of the prisoner's release, a victim who has requested notice shall be given written notice by the department of corrections informing the victim of the pending review and of the victim's rights under this section. The victim, at his or her own expense, may be represented by counsel at the review.

(3) A victim shall receive notice of the decision of the board or panel and, if applicable, notice of the date of the prisoner's release on parole. Notice shall be mailed within a reasonable time after the board or panel reaches its decision but not later than 14 days after the board or panel has reached its decision.

**75.123 Notice of Final Disposition.**

Upon the request of a victim, the Crime Victim's Advocate shall, within 30 days of the final disposition of the case, notify the victim in writing of the final disposition of the case.

**75.124 No Cause of Action.**

Nothing in this Chapter shall be construed as creating a cause of action for money damages against the state, a county, a municipality, Tribe or any of their agencies, or instrumentalities, or employees.

**75.125 Failure to Provide Notice.**

The failure to provide a right, privilege or notice to a victim under this Chapter shall not be grounds for the defendant to seek to have the conviction or sentence set aside.