

Strengthening Tribal Victim Protections: A Guide to Drafting Victim's Rights Codes

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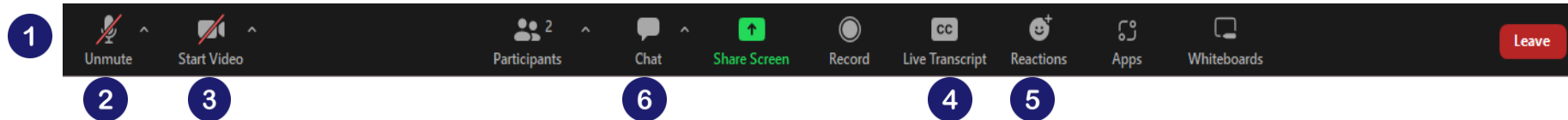
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Before We Begin..



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Strengthening Tribal Victim Protections: A Guide to Drafting Victim's Rights Codes

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Learning Objectives

Participants will gain insights into core victim rights

Presenters will discuss the importance of protecting victim safety through victim rights codes development

Presenters will discuss best practices for aligning tribal codes with community needs and cultural values.

Participants will learn steps to drafting tribal victim rights codes and implementing victim-centered legal provisions within tribal justice systems

Victim Rights Movement Officially Began 1970's

Task Force on Victims of Crime made recommendations on how federal government could improve response to crime victims.

- The creation of programs designed to assist victims of crime, such as victim compensation funds and support services.
- Increased awareness and sensitivity to the needs of crime victims.
- Greater inclusion of victims in the criminal justice process.
- The passage of laws at the local, state, and federal levels that establish specific rights for victims.

Scales of Justice Tipped for Victims of Crime



Victim Rights Law & Policies Particularly Important to Victims of DV, SA, Stalking

These crimes often cause emotional trauma in addition to physical injury

Maybe more difficult for victims to report these crimes because of on-going relationships with the offender

These victims often repeatedly victimized after reporting a crime, including during investigation if suspect has been arrested and after defendants are released from prison

Stalking can have high lethality potential

Retaliation by suspect or suspects family is strong possibility

Victim Fears

Fear for personal safety

Fear of being killed by the perpetrator

Fear of losing their children

Fear of being arrested

Fear of privacy and confidentiality violations

Fear of losing job, housing

Fear adverse treatment by criminal justice personnel

Financial instability is also often a fear, if the perpetrator is the primary income earner.

Advocates and Differences

- Grassroots victim advocate, tribal or non-tribal based, stand-alone organization
- Bureau of Indian Affairs Victim Witness Specialist
- Federal Victim Specialist
- Victim Advocate Based in Prosecutor's Office (subject to discovery, share victim information with prosecutors)

How are Victims' Rights Beneficial?

Forces the justice system to provide some protections for the victim to foster safety, prevention, and support cooperation with prosecutions.

Codification of victims' rights by your Tribe communicates to crime victims that they are an important part of the process, which can enhance victim reporting and victim participation in prosecutions.

Core Victim Rights

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;

Core Victim Rights (cont.)

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.

Restitution* – The Court shall order full amount of victim losses including costs for

- Medical services relating to physical, psychiatric care
- Physical and occupational therapy or rehabilitation
- Necessary transportation, temporary housing and child care
- Lost income
- Attorney's fees, plus any costs incurred in obtaining a protection order
- Any other losses suffered by the victim as a proximate result of the offense

Victim Centered Approach to Code Development

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 re-traumatization 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 perpetrators are brought to justice.

TLPI Philosophy

- Laws should come from the community.
- Attorneys do not necessarily have all the answers. They can be beneficial and essential to the code drafting process to ensure the code is effectuating the community's vision.
- Providing tools and examples from other tribal codes facilitates discussion for each tribal community engaging in code development work.
 - TLPI tribal legal code resources keep these notes in mind when creating resources, visit <https://www.home.tlpi.org/legal-code-development-series>

Culture is the cornerstone



Guidance



Who Should Develop Code?

Recommend a team approach when possible - The makeup of the code drafting team should be unique to the needs of your community.

- Tribal leaders
- Community members
- Advocates
- Survivors of crime



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General Tips - Assessing

- Consider drafting a vision statement
- Review your Tribe's foundational legal documents such as:
 - Tribal Constitution (governing document) and by-laws
- Review current relevant codes to identify:
 - Gaps
 - Conflicts
 - Borrowed language
 - Inclusion of tribal culture
- Review any federal law that may be applicable



Drafting Tribal Victim Rights Codes And Implementing Victim-centered Legal Provisions Within Tribal Justice Systems

Victim
Advocates:

- Provide direct services and safety planning, and protect victim information.
- Support and assist victims throughout the criminal justice system process, act from outside the criminal justice system to enact change, and advocate for the victim when necessary and appropriate.

Law
Enforcement:

- Meet the safety needs of victims.
- May be a first responder.
- Make necessary arrests and investigate crime to hold offenders accountable.

Prosecutors:

- File documents to initiate criminal adjudication on behalf of the tribe.
- Represent the tribe during pretrial, trial, and sentencing.

Victim
Witness
Coordinators:

- Provide support and information to the victim to help the victim navigate the criminal justice system.
- Housed, often, in the prosecutor's office and, as a result, may be required to share victim information.

Public
Defenders:

- File documents to defend an individual who has been charged with a crime.
- Represent the defendant.

Judges:

- Must remain neutral and impartial.
- Maintain control within the courtroom to ensure rules of evidence and procedure are followed.
- In bench trial, the judge is also the trier of fact and will determine the guilt of the defendant.

Corrections:

- Includes detention and community corrections such as probation/reentry.
- Monitor the defendant after they have been sentenced and/or released from detention.

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 Options and Participation in Criminal Justice Response

File a Report

Submit a Witness Statement

Testify at Pretrial Hearing, Bond Hearing, Criminal Protection Order Hearing

Testify at Trial

Meet with Prosecutor

Submit a Victim Impact Statement

Importance of Codes Protecting Victim Information

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.

Consider for Example – Victim Advocate and Victim Privilege

Tribal Code Drafting – Exercise of Sovereignty

In addition to “core” victims’ rights, Tribes can consider going farther with their protections and tailoring protections based on Tribal values.

- The right to receive a referral to an advocacy program for support services at point of first contact with the criminal justice system.
- The right to have victim information shared with the victim advocate protected.
- The right to protection from intimidation and harassment or harm by defendant, defendant’s family, friends, or any third party.
- The right to receive a referral to a traditional healer and access to traditional healing resources.
- The right to receive information on the grievance process if codified rights are violated.

State, Federal, and Tribal Victim's Rights - Awareness

- National Crime Victim Law Institute, "[Victims' Rights Laws by State](http://www.lclark.edu/victims-rights-laws-by-state)," Law.lclark.edu
- Crime Victims' Rights Act [18 U.S.C. § 3771 – Crime victims' rights](http://www.law.cornell.edu/uccr/18usc3771.htm)
- Victims' Rights and Restitution Act [34 U.S.C. § 20141 – Services to victims](http://www.law.cornell.edu/uccr/34usc20141.htm)
- Office for Victims of Crime Training and Technical Assistance Center, Office of Justice Programs, VictimLaw. www.VictimLaw.org
 - Victim Law is a searchable database of victims' rights legal provisions including federal, state, and territorial statutes, Tribal laws, state constitutional amendments, court rules, administrative code provisions, and summaries of related court decisions and attorney general opinions.

Tribal Legal Code Resource: Victim's Rights, Condensed Guide For Drafting Tribal Victim's Rights Codes

[Tribal Legal Code Resource: Victim's Rights, Condensed Guide for Drafting Tribal Victim's Rights Codes](#) is 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.

Tribal Legal Code Resource: Victim's Rights

CONDENSED GUIDE FOR DRAFTING TRIBAL VICTIM'S RIGHTS CODES



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QUESTIONS?

Please email us at WOCG@TLPI.org if you have more questions

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