

Crime Victims' Rights in Tribal Courts

Jane Larrington, J.D.
Staff Attorney
Southwest Center for Law and Policy

Review of Federal Victim Rights Legislation

- **1982 Victim and Witness Protection Act (VWPA)**
 - Requires rights and services be accorded to crime victims "where possible."
- **1983 Office for Victims of Crime (OVC)**
 - Created by the U.S. Department of Justice to implement recommendations from the President's Task Force on Victims of Crime
- **1984 Victims of Crime Act (VOCA)**
 - Establishes the Crime Victims Fund, made up of federal criminal fines, penalties and bond forfeitures, to support state victim compensation and local victim service programs

Review continued

- **1990 Crime Control Act**
 - Requires officials of the Department of Justice and other federal agencies engaged in the detection, investigation or prosecution of crime to make their "best efforts" to ensure that innocent victims of all crimes have their rights upheld, their dignity and privacy respected and are treated with fairness.
 - Requires that those rights and services "*shall*" be provided, thereby creating a federal crime victims bill of rights
- **1990 Victims Rights and Restitution Act**
 - Provides victims of federal crimes a "right to restitution."
 - Federal prosecutors, in addition to their other responsibilities, *shall* advocate fully for the victim's rights, including child victims, on the issue of restitution.
- **1990 Victims of Child Abuse Act**
 - Provides child victims and witnesses with a wide range of rights and protections in the investigation and prosecution process of the federal criminal justice system.

Review continued

- **1994 Violent Crime Control and Law Enforcement Act**
 - encourages the formation of partnerships among federal, state and local communities to establish important new victim services and rights, including:
 - notice and payment for testing and counseling for sexually transmitted diseases for sexual assault victims;
 - the right of a domestic violence victim to be heard at a prerelease hearing of a defendant;
 - allocution at sentencing for victims of crimes of violence and sexual abuse;
 - and mandatory restitution for 1) domestic violence victims, 2) sexual assault victims, 3) sexually-exploited and other abused children, and 4) telemarketing fraud victims.

Review continued

- **1996 Mandatory Victims Restitution Act**
 - requires the court to order full restitution for each defendant, regardless of economic status in certain cases: crimes of violence, offenses against property, tampering with consumer products, victims who suffer physical injury, and victims who suffer financial loss.
 - Full restitution was already required by the Violence Against Women Act in crimes of sexual abuse, sexual exploitation and other abuses of children, and domestic violence.
- **1997 Victim Rights Clarification Act**
 - Provides for the right of victims not to be excluded by the court to attend the trial of a defendant accused of the offense even though the victim may testify, or may, during sentencing hearing, make a statement as to the effect of this crime on the victim or victim's family.

Crime Victims' Rights Act 18 U.S.C. § 3771

- After years of efforts to pass a Constitutional Amendment granting crime victim rights, efforts shifted to passing a federal statute extending and clarifying crime victim rights
- The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act (part of the Justice for All Act of 2004 which also includes several other acts regarding DNA evidence) mirrors the language used in the proposed Constitutional Amendment
- The Justice for All Act of 2004 was passed by overwhelming majorities in the House and the Senate and signed into law on October 30, 2004

Crime Victims' Rights Act: Specific 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.

Crime Victims' Rights Act: Other Provisions

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

Crime Victims' Rights Act: Procedure for Asserting Rights

- First, assert rights in the district court where defendant is being prosecuted (if no prosecution is underway, in the district court in the district in which the crime occurred).
- District court shall take up and decide any motion "forthwith"
- If the district court denies the relief sought, 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.
- In no event shall proceedings be stayed or subject to a continuance of more than five days
- 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.
- Failure to afford a right shall not provide grounds for a new trial, and may only be used to re-open and plea or sentence in limited circumstances.

Crime Victims' Rights Act: Definition of Crime Victim

- For the purposes of this chapter, 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.
- 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.

Crime Victims' Rights Act: Regulations

- The Attorney General must promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials within one year.
- Those regulations must:
 - Designate an authority to receive and investigate complaints
 - Require a training course for employees and offices that fail to comply
 - Contain disciplinary sanctions, including suspension and termination, for those who “willfully or wantonly” fail to comply
 - Provide that the Attorney General (or designee) is final arbiter of complaints (no judicial review)

Tribal Code Protection of Crime Victim Rights

- Several approaches taken by tribal communities to protect crime victims
- Depends on your community, your tribal law and courts which will best protect crime victims in your area

Statutory Rights for All Crime Victims

Sault Ste. Marie Tribe of Chippewa Indians

- Crime Victim's Rights Act
- Codified at Chapter 75 of the Tribal Code
- Available online at:
http://www.tribalresourcecenter.org/ccfolder1/sault_stmarie_tribalcode.htm#75
- Very detailed procedures for respective agencies to follow

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Initial Notice

- Within 24 hours, the law enforcement agency receiving a report of a crime must notify a crime victim of:
 - (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: "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."
- Law enforcement agency must also notify the Crime Victim's Advocate

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Pretrial Release

- Within 24 hours of arraignment, the investigating agency must 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

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Notice of Trial Process

- Within 7 days of arraignment (and at least 24 hours before preliminary hearing), the Crime Victim's Advocate must give written notice in plain English of the following:
 - Outline of criminal procedural process
 - Victim's rights under this Chapter
 - Suggested procedures if the victim experiences threat or intimidation
 - Person to contact with further questions
- Upon request, the Crime Victim's Advocate must give notice of scheduled court dates and changes thereto (victim must keep the Advocate, prosecutor, and correctional facility if applicable informed of current address and phone number)
- 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.

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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.

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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.

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Request for a 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 an 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.

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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.

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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.

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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.

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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.

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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.

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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.

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Restitution to Victim

- In addition or in lieu of other penalty at sentencing
- If judge does not order restitution or orders only partial restitution, the judge must state on the record reasons for that action
- Includes loss of property, costs of physical or psychological care, and funeral costs
- If the defendant is placed on probation or parole, the restitution is a condition of that release which may be revoked on failure to make a good faith effort to comply with the order
- Order to pay restitution may be enforced by the prosecuting attorney, the victim, or the victim's estate in the same manner as a civil judgment

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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.

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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:
 - (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
 - (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 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.

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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.

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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.

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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.

White Mountain Apache

- More general expression of crime victim rights, rather than specific procedures
- Available online at: http://www.tribalresourcecenter.org/ccfolder1/wht_mtn_apache_tribalcode_criminal.html#SECTION%205.1
- Grants crime victims the following rights:
 - (1) To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
 - (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.
 - (4) To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
 - (5) To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
 - (6) To confer with the prosecution 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.

White Mountain Apache cont.

- (7) To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
- (8) To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- (9) To be heard at any proceeding when any post-conviction release from confinement is being considered.
- (10) To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
- (11) To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the Tribal Council to ensure the protection of these rights.
- (12) To be informed of victims' constitutional rights.

Crime-Specific Victim Rights

Blackfeet

- Tribal Law and Order Code, Family Code, Domestic Abuse Chapter
- Available online at:
<http://www.tribalresourcecenter.org/ccfolder1/blkft1to22familyct.htm>
- When a DV arrest is made, requires law enforcement to notify victim of the availability of shelter, other services, restraining orders (including temporary possession of the residence, custody, visitation, and support)
- Officers must issue this statement: "If you are the victim of Domestic Abuse, The Family Court Presenter on behalf of the Blackfeet Nation will file criminal charges against your abuser. You will be subpoenaed as a witness in this action."

Poarch Band of Creek

- Code of Justice, Domestic Violence Code
- Available online at:
http://www.tribalresourcecenter.org/ccf/older1/poarch_codeofjustice.htm
- Language very similar to Blackfeet
- Also mentions that restraining orders can prohibit the abuser from using or possessing a firearm or other weapon specified by the Court.

Special Rights for Child Victims

Yankton Sioux and Oglala Sioux

- Available at: http://www.tribalresourcecenter.org/ccfolder1/yankton_tribalcode_5.htm
- A defendant convicted of certain crimes against a child victim may be ordered to pay the cost of any necessary medical, psychological or psychiatric treatment of the minor resulting from the act or acts for which the defendant is convicted
- In certain crimes, the child victim's testimony at the preliminary hearing may be stenographically recorded, audio recorded and preserved on videotape, and allowed to be used at trial in place of the victim's live testimony upon a finding that further testimony would cause the victim emotional trauma, or that the victim is otherwise unavailable

Ft. McDowell-Yavapai

- Available online at: http://www.tribalresourcecenter.org/ccfolder1/yavapai_ftmcdowell_lawandorder11.htm
- Requires reasonable efforts by law enforcement agencies, prosecutors and judges
- Creates substantive rights and duties, not subject to individual officer's discretion
- Child victims and witnesses have the following rights:
 - To have explained in language easily understood by the child all legal proceedings and/or police investigations in which the child may be involved.
 - To be provided, whenever possible, a secure waiting area during court proceedings and to have an advocate or support person remain with the child prior to and during any court proceedings.
 - To prevent the disclosure of the names, addresses or photographs of the living child victim or witness by any law enforcement agency, prosecutors office or state agency without the written permission of the child victim, child witness, parents or legal guardians to anyone except another law enforcement agency, prosecutor, defense counsel or tribal or private agency that provides services to the child victim or witness.
 - To allow an advocate to make recommendations to the prosecuting attorney about the ability of the child to cooperate with prosecution and the potential effect of the proceedings on the child.
 - To allow an advocate to provide information to the court concerning the child's ability to understand the nature of the proceedings.

Ft. McDowell-Yavapai cont.

- To be provided information or appropriate referrals to social service agencies to assist the child and/or the child's family with the emotional impact of the crime, the subsequent investigation and judicial proceedings in which the child is involved.
- To allow an advocate to be present in court while the child testifies in order to provide emotional support to the child.
- To provide information to the court as to the need for the presence of other supportive persons at the court proceeding while the child testifies in order to promote the child's feelings of security and safety.
- To allow law enforcement agencies the opportunity to enlist the assistance of other professional personnel such as child protection services, victim advocates or prosecutorial staff trained in the interviewing of child victims.
- To be provided with coordinated tribal services so as to decrease any duplication of services and to minimize the number of interviews with the child victim or witness.
- To be provided with the use of closed circuit television or other such similar recording device for the purposes of interviewing or court testimony when appropriate, and to have and advocate remain with the child prior to and during any recording sessions. The use of closed circuit television or other such similar recording device is appropriate when the trial court, after hearing evidence, determines this procedure is necessary to protect the particular child witness' welfare; and specifically finds the child would be traumatized, not by the courtroom generally, but by the defendant's presence and finds that the emotional distress suffered by the child in the defendant's presence is more than *de minimus*.