

LAW AND ORDER – VICTIM’S BILL OF RIGHTS ORDINANCE
Ordinance #18-400-12

Article I. Purpose.

1.01. *Purpose.* The purpose of this Ordinance is to protect the rights of crime victims.

Article II. Findings.

2.01. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

- a. The Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to “...exercise the inherent powers of the Little River Band of Ottawa Indians by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:
 1. to govern the conduct of members of the Little River Band of Ottawa Indians and other persons within its jurisdiction; and
 2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band of Ottawa Indians and its members[.]”
Article IV, Section 7(a).

Article III. Adoption; Amendment; Repeal; Severability.

3.01. *Adoption.* This Ordinance is adopted by Resolution #18-0718-221.

3.02. *Amendment.* This Ordinance may be amended by Tribal Council in accordance with the laws of the Tribe.

3.03. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

3.04. *Effective Date.* This Ordinance shall take immediate effect. The provisions of this Ordinance shall apply to any offense committed on or after the date of enactment.

Article IV. Definitions.

4.01. *Definitions.* For the purpose of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

- a. “*Court*” means the Little River Band of Ottawa Indians Tribal Court.

- b. “*Crime*” means an act or omission prohibited by Tribal law which is punishable upon conviction by imprisonment, fine not designated as civil, or other penalty.
- c. “*Defendant*” means an individual prosecuted for committing a crime or infraction including prosecutions that end in dismissal, acquittal, conviction, plea of guilty or no contest, or imposition of a sentence by the Court.
- d. “*Final Disposition*” means the ultimate resolution of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of a sentence by the Court.
- e. “*Prisoner*” means a person legally held in a correctional facility such as jail, prison, or other place of incarceration, as a punishment for crimes they have committed or while awaiting trial.
- f. “*Prosecutor*” means the Prosecutor as defined by the Office of the Prosecutor’s Ordinance #11-400-09 or a special prosecutor appointed thereunder.
- g. “*Victim*” includes any of the following:
 - 1. Any individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime;
 - 2. A parent, guardian, or custodian of a victim who is less than eighteen (18) years of age if the parent, guardian, or custodian so chooses;
 - 3. A parent, guardian, conservator, or custodian of a victim who is mentally incapacitated and unable to meaningfully understand or participate in the legal process; or
 - 4. In Domestic Violence cases, family or household member(s) who has been subjected to domestic violence.

Article V. Jurisdiction.

5.01. *Generally.* This Ordinance applies to a victim of a violation of the laws of the LRBOI or any other law that may apply and is prosecuted by the Prosecutor, including but not limited to violations listed under the Law and Order Criminal Offense Ordinance, #11-400-03, Domestic Violence Ordinance, #04-400-05, Juvenile Code Ordinance, #99-900-02, Law and Order Natural Resources Criminal Offense and Penalty Act, #06-400-07, and the Sex Offender Registration Act Ordinance, #11-400-11.

Article VI. Victim’s Rights.

6.01. *Rights of Victims.* A victim has the following rights:

- a. *The Right to Be Reasonably Protected from The Accused.* The following measures shall be taken to protect victims:
 1. A Public Safety escort depending on circumstances of the situation and as determined by the Department of Public Safety;
 2. The services of a victim advocate to provide support and crisis intervention;
 3. A secure waiting area separate from those of the accused and his/her family, witnesses, and friends during court proceedings;
 4. If the victim requests it, a no contact order imposed against the accused during the pendency of court proceedings and as an order in the final disposition of the case regardless of the disposition of the case if the Court determines such order is necessary to protect the victim;
 5. To have the victim's address, place of employment, and other personally identifying information kept confidential from the defendant based upon the victim's reasonable apprehension of acts or threats of physical violence or intimidation by the defendants or the defendant's direction against the victim or the victim's immediate family; and
 6. Any other action deemed necessary by the Court to protect the victim from the accused.

- b. *The Right to Reasonable, Accurate, And Timely Notice.* Notice given to the victim must be given by any means reasonably calculated to give prompt and actual notice.
 1. *Initial Notification.* Within twenty-four (24) hours after the initial contact between the victim of a reported crime and law enforcement. Law Enforcement shall provide the victim with information about the availability of emergency and medical services as well as a copy of the Victim Bill of Rights.
 2. *Notice of Charges.* A victim has a right to be notified by the Prosecutor when:
 - i. The Prosecutor files charges against the defendant;
 - ii. The Prosecutor makes the final determination to decline to file charges against the defendant; and
 - iii. The Court dismisses charges against the defendant.
 3. *Notice of Release.* A victim has a right to be notified by the Department of Public Safety when:

- i. The defendant is eligible for pretrial release; and
 - ii. The defendant is released from custody.
4. *Notice of Trial Process.* The victim has the following rights during any court proceedings regarding the crime:
- i. 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.
 - ii. The right to be reasonably heard at any court proceeding involving release, plea, or sentencing.
 - iii. The right to full and timely restitution as provided in law.
 - iv. The right to proceedings free from unreasonable delay. If the Court is ruling on a continuance or other delay in the proceedings, the Court must consider the impact, of the delay on the victim. Victims who are children, elders, or otherwise vulnerable must be given preference in setting the Court docket.
 - v. The right to be treated with fairness and respect.
 - vi. The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
5. *Notice of Sentencing.* The victim shall be given notice of the following:
- i. The current crimes for which the defendant was charged, convicted of, or pled guilty or no contest to;
 - ii. The victim's right to make a written or oral impact statement for use in the preparation of the pre-sentence investigation report concerning the defendant;
 - iii. The business address and telephone number of the probation office, if any, which is to prepare the pre-sentence investigation report;
 - iv. That a pre-sentence 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;
 - v. The victim's right to make an impact statement at sentencing; and

- vi. The time and place of the sentencing proceeding.
6. *Notice of Appeal.* The Court shall notify the victim of the following:
- i. That the defendant has filed an appeal of his or her conviction;
 - ii. A brief explanation of the appeal process, including the possible dispositions;
 - iii. Whether the defendant has been released on bail or other recognizance pending the disposition of the appeal;
 - iv. The time and place of any Appellate Court proceedings and any changes in the time or place of those proceedings; and
 - v. The result of the appeal.
- c. *Right to Restitution.* A victim has the right to full and timely restitution as provided by law.
- 1. Consistent with applicable laws, the Court may order that the defendant make restitution to any victim of the defendant's course of conduct that gives rise to the conviction or the victim's estate.
 - 2. If the Court does not order restitution, or orders, only partial restitution when allowed by law, the Court must state on the record the reasons for that action.
 - 3. 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:
 - i. Return the property to its owner or to another person designated by the owner; or
 - ii. If return of the property is impossible, impractical or inadequate, pay an amount equal to the value of the property on the date of the damage, loss or destruction.
 - 4. 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:
 - i. Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care;

- ii. Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation;
 - iii. Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the offense; or
 - iv. Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the offense.
5. 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 expenses.
 6. Instead of restitution, and if the victim or the victim's estate consents, the order of restitution may require the defendant make restitution in services in lieu of money, or make restitution to a person designation by the victim or victim's estate if that person provided services to the victim as a result of the crime.
 7. If the Court orders restitution, the Court must, if the victim is deceased, order that the restitution be made to the victim's estate.
 8. Any order of restitution must be as fair as possible to the victim or victim's estate without unduly complicating or prolonging the sentencing process.
 9. If the defendant is placed on probation, any restitution ordered under this section may be a condition of that probation. The Court may revoke probation 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, the Court must 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.
- d. *Advice of Attorney.* The Prosecutor shall advise the victim that he/she may seek the advice of an attorney with respect to the rights described in this Ordinance.

Article VII. Best Efforts to Accord Rights.

7.01. *Best Efforts.* All responsible parties must use their best effort to ensure the victim received all rights accorded to them.

- a. *Law Enforcement and Prosecutor.* Law enforcement officers and the Prosecutor engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims are notified of, and accorded, the rights described in this Ordinance.

- b. *Obligation of the Court to Ensure the Rights of the Victim Are Protected.* 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 Ordinance shall be clearly stated on the record.

Article VIII. Enforcement and Limitations.

8.01. Further explanation of the enforcement and limitations of this Ordinance are as follows:

- a. *Rights.* The victim, the victim’s lawful representative, or Prosecutor may assert the rights described in this Ordinance. A person accused of the crime may not obtain any form of relief under this chapter.
- b. *Multiple Victims.* In a case where the Court finds that the number of victims makes it impracticable to accord all of the victims the rights described in this Ordinance, the Court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.
- c. *Error.* In any appeal in a criminal case, the Prosecutor may assert as error the Court’s denial of any victim’s right in the proceeding to which the appeal relates.
- d. *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 when:
 - 1. The victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;
 - 2. The Prosecutor has filed a notice of appeal in a timely manner; and
 - 3. In the case of a plea, the accused has not pled to the highest offense charged.
- e. *No Cause of Action, No Waiver of Sovereign Immunity.* 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 Tribe 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 Prosecutor. Nothing in this Ordinance shall be construed as a waiver of sovereign immunity.

CERTIFICATION

I, Sandra Lewis, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Law and Order – Victim’s Bill of Rights Ordinance, Ordinance #18-400-12, adopted by Tribal Council on July 18, 2018.



Sandra Lewis, Tribal Council Recorder

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