

## **TITLE 7 – CRIMES**

### **CHAPTER 4 – VICTIMS’ RIGHTS**

*Legislative History: “Victims’ Rights” was enacted and codified as Title 7 T.O.C. Chapter 4 by Resolution No. 11-142 effective April 13, 2011.*

**TOHONO O'ODHAM CODE**

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**Section 4101 Definitions; No grounds for dismissal**

- (A) "Victim" means a person against whom a criminal offense has been alleged to have been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person's spouse, parent, child or other lawful representative is in custody for an offense or is the accused.
- (B) A victim's decision to exercise or not exercise any right granted by this chapter shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- (C) The list of certain rights for victims in this chapter shall not be construed to deny additional victims' rights granted by law or procedure.

**Section 4102 Victims' Rights**

To preserve and protect victims' rights to justice and due process, a victim has a right:

- (A) To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
- (B) To name an appropriate support person, including a victim's advocate.
- (C) To be informed by the Department of Public Safety in coordination with the Prosecutor's Office, and upon request, when the accused or convicted person is released from custody or has escaped.
- (D) To be present at and, upon request, to be given reasonable advance notice of the date, time, and place of all criminal proceedings where the defendant has the right to be present; provided that the victim may choose the form of notice.
- (E) The right to terminate the interview or deposition if it is not conducted in a dignified and professional matter.
- (F) To be accompanied at any interview, deposition, or judicial proceeding by an advocate, a parent, or other relative, except persons whose testimony is required in the case. If the court finds that a party's claim that a person is a prospective witness is not made in good faith, it may impose any sanction it finds just, including holding counsel in contempt.
- (G) To require the prosecutor to withhold, during discovery and other proceedings, the home address and any telephone number of the victim, the address and telephone number of the

victim's place of employment, and the name of the victim's employer, provided, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel, on defense counsel's assurance that the information shall not be disclosed by counsel to any person other than counsel's staff and designated investigator and shall not be conveyed to the defendant.

(H) 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.

(I) To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.

(J) To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.

(K) To be heard at any proceeding when any post-conviction release from confinement is being considered.

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

(M) To have all applicable rules governing criminal procedure and the admissibility of evidence in all criminal proceedings interpreted for the maximum protection of victims' rights.

(N) To be given written notice of this chapter and other victims' rights under the Nation's laws and court rules.

### **Section 4103 Duty of Prosecutor's Office**

(A) The victim shall also have the right to the assistance of the prosecutor in the assertion of the rights provided in this chapter or rights that are otherwise provided by law or court rule. The prosecutor shall inform the victim, as defined by this chapter, of his or her rights, and shall provide the victim with the notices and information that the prosecutor is required to provide to the victim.

(B) The prosecutor shall have standing in any judicial proceeding, upon the victim's request, to assert any of the rights that the victim is entitled to under the Nation's laws or court rules.

(C) In any event of any conflict of interest between the prosecutor and the wishes of the victim, the prosecutor shall direct the victim to the appropriate legal referral, legal assistance, or legal aid agency.

(D) In asserting any of the rights enumerated in this chapter or provided for in any other provision of the law, the victim shall also have the right to be represented by personal counsel.

#### **Section 4104 Court Enforcement of Victim Notice Requirements**

(A) At the commencement of any proceeding which takes place more than seven days after the charges are filed and at which the victim has a right to be heard, the court shall ask the prosecutor or otherwise determine if the victim has requested notice and has been notified of the proceeding.

(B) If the victim has been notified as requested, the prosecutor shall advise the court whether the victim is present. If the victim is present and the prosecutor advises the court that the victim wishes to be addressed by the court, the court shall ask if the victim has been advised by the prosecutor of the rights conferred by this chapter. If the victim has not been advised, the court may recess the hearing and the prosecutor shall notify the victim of his or her rights as provided by this chapter. The court shall also provide the victim with a written list of the victims' rights enumerated in this chapter if the victim has not already received a copy.

(C) If the victim has not been notified as requested, the court should not proceed unless public policy, the specific provisions of a Nation's law, or the interests of due process otherwise require. In the absence of such considerations, the court shall have discretion to reconsider any ruling made at a proceeding of which the victim did not receive notice as requested.

#### **Section 4105 Victim's Duty to Implement Rights**

Any victim desiring to claim the notification rights and privileges provided by this chapter must provide his or her full name, address, and contact information to the prosecutor's office and to any other entity from which notice is requested by the victim. If the victim is the Nation, an enterprise, association or other legal entity and has requested notice of the hearings to which it is entitled by law, that legal entity shall promptly provide written notice of its designated representative, including the representative's address and contact information, to the prosecutor and to any other entity from which notice is requested by the victim. Upon receipt of such notice, the prosecutor shall provide the representative's information to the defendant and the court.

#### **Section 4106 Waiver**

The rights and privileges provided by this chapter may be waived by any victim. Failure to keep the address and contact information current or to designate such representative of a legal entity shall be considered a waiver of notification rights under this chapter.