

**TITLE 4 – CRIMINAL CODE  
CHAPTER 5 – VICTIM RIGHTS**

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**SUBCHAPTER A       GENERAL PROVISIONS**

**Section 10       Definitions (4 PYTC § 5-10)**

- (A) "Accused" means a person who has been arrested for committing a criminal offense and who is held for an initial appearance or other proceeding before trial.
- (B) "Appellate proceeding" means a contested oral argument that is held in open court before the tribal court of appeals.
- (C) "Arrest" means the actual custodial restraint of a person or the person's submission to custody.
- (D) "Court" means any court within the Pascua Yaqui Reservation.
- (E) "Criminal offense" means conduct that gives a peace officer or prosecutor probable cause to believe that a crime involving physical injury or the threat of physical injury, a sexual offense or a crime against property has occurred.
- (F) "Criminal proceeding" means any hearing, argument or other matter that is scheduled by and held before tribal court but does not include any deposition, lineup, proceeding or other matter that is not held in the presence of the court.
- (G) "Custodial agency" means any law enforcement or detention officer or tribal agency, department of corrections or a secure mental health facility that has custody of a person who is arrested or in custody for a criminal offense.
- (H) "Defendant" means a person or entity that is formally charged by complaint, indictment or information with committing a criminal offense.
- (I) "Final disposition" means the ultimate termination of the criminal prosecution of a defendant by a trial court, including dismissal, acquittal or imposition of a sentence.
- (J) "Immediate family" means a victim's spouse, parent, child, sibling, grandparent or lawful representative.
- (K) "Lawful representative" means a person who is designated by the victim or appointed by the court and who acts in the best interests of the victim.
- (L) "Post-arrest release" means the discharge of the accused from confinement on recognizance, bond or other condition.
- (M) "Post-conviction release" means work furlough, community supervision, probation if the court waived community supervision, home arrest or any other permanent, conditional or temporary discharge from confinement in the custody of the department of probation or a detention officer or a secure mental health facility.

- (N) "Post-conviction relief proceeding" means a contested argument or evidentiary hearing that is held in open court and that involves a request for relief from a conviction or sentence.
- (O) "Prisoner" means a person who has been convicted of a criminal offense and who has been sentenced to the custody of a correction facility, a jail or a secure mental health facility.
- (P) "Release" means no longer in the custody of a custodial agency and includes transfer from one custodial agency to another custodial agency.
- (Q) "Rights" means any right that is granted to the victim by the laws and customs of the Pascua Yaqui Tribe.
- (R) "Victim" means a person against whom a criminal offense has been committed, or if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for the offense or is the accused. A person ceases to be a victim upon the acquittal of the defendant or upon the dismissal of the charges against the defendant as a final disposition.
- (S) "Victim advocate" means a person who is employed or authorized primarily to provide counseling or other supportive assistance to crime victims.
- (T) "Vulnerable adult" means an individual who is 18 years of age or older and who is unable to protect him/herself from abuse, neglect or exploitation by others because he/she is elderly, or has a mental or physical impairment.

**Section 20        Victims' Rights (4 PYTC § 5-20)**

- (A) These rules shall be construed to preserve and protect victims' rights to justice and due process; a victim of crime has a right:
  - (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, upon request, at any proceeding involving a post-arrest release decision, a negotiated plea, or sentencing.
  - (5) To refuse a pretrial interview or deposition request by the defendant, the defendant's attorney or any other person acting on behalf of the defendant.
  - (6) To confer with the prosecution, upon request, before or 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.
  - (7) To read sentencing recommendations relating to the crime against the victim when they are available.
  - (8) To read police reports related to the crime involving the victim when they are available.

- (9) To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- (10) To be heard, upon request, at any proceeding when any post-conviction release from confinement is being considered.
- (11) To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
- (12) To have rules of criminal procedure and rules of evidence that protect victims' rights and that are subject to Tribal Council amendment or appeal.
- (13) To be informed of victims rights.

**Section 30 Implementation of Rights and Duties (4 PYTC § 5-30)**

- (A) Except as provided in Section 40, the rights and duties that are established by the Victims' Rights Ordinance and enumerated in this chapter arise on the arrest or formal charging of the person or persons who is alleged to be responsible for a criminal offense against a victim. The rights and duties continue to be enforceable pursuant to this chapter until the final disposition of the charges, including acquittal or dismissal of the charges, all post-conviction release and relief proceedings and the discharge of all criminal proceedings relating to restitution. If a defendant is ordered to pay restitution to a victim, the rights and duties continue to be enforceable until restitution is paid or a criminal restitution order is entered in favor of the victim.
- (B) If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceedings.
- (C) After the final termination of a criminal prosecution by dismissal with prejudice or acquittal, a person who has received notice and the right to be present and heard pursuant to the victims' rights stated in this chapter is no longer entitled to such rights.
- (D) It is at the victim's discretion to exercise his/her rights to be present and heard at a court proceeding, and the absence of the victim does not preclude the court from proceeding with the hearing or trial.

**Section 40 Inability to Exercise Rights; Lawful Representatives; Notice; Definition (4 PYTC § 5-40)**

- (A) If a victim is physically or emotionally unable to exercise any right but is able to designate a lawful representative who is not a bona fide witness, the designated representative may exercise the victim's rights. The victim may revoke this designation at any time and exercise the victim's rights.
- (B) If a victim is incompetent, deceased or otherwise incapable of designating a representative to act in the victim's place, a third party may ask the court to act as a designated representative, or the court may appoint a designated representative, but such representative may not be a witness. If at any time the victim is no longer incompetent, incapacitated or otherwise incapable of acting, the victim may personally exercise the victims' rights.
- (C) If the victim is a minor or vulnerable adult the victim's parent, child or other immediate family member may exercise all of the victim's rights on behalf of the victim. If the criminal offense is alleged against a member of the minor's or vulnerable adult's immediate family, the victim's rights may not be exercised by that person but may be exercised by another member of the immediate family.

- (D) Any notices that are to be provided to a victim pursuant to this chapter shall be sent only to the victim or the victim's lawful representative.

## **SUBCHAPTER B INFORMATION; NOTICE REQUIREMENTS**

### **Section 50 Information Provided to Victim by Law Enforcement (4 PYTC § 5-50)**

- (A) Law enforcement shall contact the victim as soon as administratively possible, without interfering with an investigation or arrest, and shall complete the Victim's Rights Form. A copy of the completed form shall be given to the victim, and a copy distributed to the Prosecutor's Office. The original will be retained in the law enforcement file. The Victim's Rights form shall contain the following information:
- (1) That the victims may request or waive applicable rights to which the victim is entitled under this chapter. The law enforcement officer shall indicate in the appropriate box on the reporting form whether a victim has invoked/waived the rights and the form shall include the victims' address and phone number with an alternate contact number. The law enforcement officer will explain to the victim that the victim must advise the Prosecutor's Office and law enforcement officer of changes of address.
  - (2) That the victim may designate a representative pursuant to Section 40.
  - (3) That the victim may receive the following information and assistance:
    - (a) Notice of the victim's right under the Victims' Rights Ordinance to be treated with fairness, respect, and dignity and to be free of intimidation, harassment or abuse throughout the criminal or juvenile justice process.
    - (b) Notice of the availability, of crisis intervention services and emergency and medical services.
    - (c) In cases of domestic violence, notice of the procedures and resources available for the protection of the victim.
    - (d) Notice of the names and telephone numbers of victim assistance programs, including the victim compensation program and programs that provide counseling, treatment and other support services.
    - (e) Notice of the police report number, copy of the police report when available, and other identifying case information.
    - (f) Notice that if within 30 days of the incident the victim is not notified of an arrest in the case, the victim may call law enforcement to inquire about the status of the case.
    - (g) A notice that the victim will be notified by law enforcement at the earliest opportunity after the arrest of a suspect.
    - (h) Notice of a right to request information about a suspect's release and information about the next court proceeding for the suspect's initial appearance and of the victim's right to be heard at that initial appearance.
    - (i) If the victim chooses to exercise the right, submit a written statement, how that statement may be submitted to the court.

- (B) If the suspected offender is cited and released, the Prosecutor's Office shall inform the victim of the court date and how to obtain additional information about the subsequent criminal proceedings.
- (C) If a suspect has not been arrested at the time of the law enforcement officer's contact with the victim as required by Subsection (A) of this section, the law enforcement officer shall notify the victim of the arrest of a suspect at the earliest opportunity after the arrest and provide the time, place and date for the initial appearance.

**Section 60 Execution of Arrest Warrants (4 PYTC § 5-60)**

Upon receiving notice that the warrant was executed, the Prosecutor Office will attempt to inform the victim of the arrest and of the time, place and date for the initial appearance. If the warrant was executed after business hours, or a holiday or a weekend, law enforcement shall attempt to notify the victim.

**Section 70 Notice of Initial Appearance (4 PYTC § 5-70)**

Upon becoming aware of the date, time and place of the initial appearance of the accused, law enforcement or the Prosecutor's Office shall inform the victim of such information, unless the accused appeared in response to a summons. In that case, the Prosecutor Office shall, on receiving such information, provide the notice to the victim.

**Section 80 Notice of Terms and Conditions of Release (4 PYTC § 5-80)**

Upon request, the Prosecutor Office shall provide a copy of the terms and conditions of release to the victim.

**Section 90 Pretrial Notice (4 PYTC § 5-90)**

- (A) Within seven days after the Prosecutor's Office charges a criminal offense by complaint, information or indictment and the accused is in custody or has been served a summons, the Prosecutor Office shall give the victim notice of the following:
  - (1) The victim's rights under the Victims' Rights Ordinance.
  - (2) The charge or charges against the defendant and a clear and concise statement of the procedural steps involved in a criminal prosecution.
  - (3) The procedures a victim shall follow to invoke his right to confer with the prosecutor pursuant to Section 170.
  - (4) The name and phone number of the victim lay advocate within the Prosecutor Office's to contact for more information.

**Section 100 Notice of Criminal Proceedings (4 PYTC § 5-100)**

On receiving the notice from the court, the Prosecutor's Office shall, on request, give timely notice to the victim, of scheduled proceedings and of any changes in that schedule.

**Section 110 Notice of Conviction Acquittal or Dismissal; Impact Statement (4 PYTC § 5-110)**

- (A) Within 15 days after the conviction or acquittal or dismissal of the charges against the defendant, the Prosecutor Office's shall, on request, give to the victim notice of the conviction, acquittal, or dismissal.

- (B) If the defendant is convicted and the victim has requested notice, the victim shall be notified, if applicable, of:
- (1) The function of the pre-sentence report.
  - (2) The name and telephone number of the probation department that is preparing the pre-sentence report.
  - (3) The right to make a statement as provided in Section 210.
  - (4) The defendant's right to view the pre-sentence report.
  - (5) The victim's right to view the sentence recommendations.
  - (6) The right to be present and be heard at any pre-sentence or sentencing proceeding pursuant to Victims' Rights Ordinance.
  - (7) The time, place and date of the sentencing proceeding.
  - (8) If the court orders restitution, the right to file a restitution lien.
- (C) The victim shall be informed that the victim's impact statement may include the following:
- (1) An explanation of the nature and the extent of any physical, psychological or emotional harm or trauma suffered by the victim.
  - (2) An explanation of the extent of any economic loss or property damage suffered by the victim.
  - (3) An explanation of the need for and extent of restitution.
  - (4) A disclosure that the victim has applied for or received other compensation for the loss or damage.

**Section 120 Notice of Post-Conviction Review and Appellate Proceedings (4 PYTC § 5-120)**

- (A) Within 15 days after sentencing the Prosecutor Office shall, on request, notify the victim of the sentence imposed on the defendant.
- (B) The Prosecutor Office shall provide the victim with a form that allows the victim to request post-conviction notice of all post-conviction review and appellate proceedings, of all post-conviction release proceedings, of all probation modification proceedings that impact the victim, of all probation revocation or termination proceedings, of any decisions that arise out of these proceedings, and of all releases and escapes.
- (C) On request of the victim, the Prosecutor Office that is responsible for handling any post-conviction or appellate proceedings shall notify the victim of the proceedings and of any decisions that arise out of the proceedings.
- (D) In cases of violent crimes and sex crimes, the Prosecutor Office shall provide the victim with the name, and telephone number of the probation officer who is monitoring the case and who the victim can contact.

**Section 130 Notice of Escape (4 PYTC § 5-130)**

Law enforcement shall immediately give notice to a victim and to the Prosecutor's Office of the accused's escape and notice of a subsequent re-arrest of the accused. Law enforcement shall give notice by any reasonable means.

**Section 140 Notice of Prisoner's Status (4 PYTC § 5-140)**

- (A) If the victim has made a request for post-conviction notice, law enforcement shall mail to the victim the following information about a prisoner in custody:
  - (1) Within 30 days after a request, notice of the earliest release date of the prisoner, if his sentence exceeds six months.
  - (2) At least 15 days before the prisoner's release, notice of the release.
  - (3) Within 15 days after the prisoner's death, notice of the death.

**Section 150 Notice of Probation Modification, Termination or Revocation Disposition Matter or Notice of Arrest (4 PYTC § 5-150)**

- (A) Upon request of the victim, the prosecutor shall notify the victim of any probation revocation disposition proceeding or any proceeding in which the court is asked to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.
- (B) Upon request of the victim, the prosecutors shall notify the victim of a modification of the terms of probation or intensive probation of a person but only if the modification will substantially affect the person's contact with or the safety of the victim or if the modification affects restitution or incarceration status.

**Section 160 Request for Notice; Notice System (4 PYTC § 5-160)**

- (A) The victim shall provide to and maintain with law enforcement and the Prosecutor's Office a request for notice on a form that is provided by that agency. The form shall include the victim's telephone number and address. If the victim fails to keep the victim's telephone number and address current, the presumption is that the victim's request for notice has been withdrawn. At any time the victim may request notice of subsequent proceedings by filing a new request form provided by the agency.
- (B) All notices provided to a victim pursuant to this chapter shall be on forms developed by the Prosecutor's Office.
- (C) All agencies that are responsible for providing notice to the victim shall establish and maintain a system for the receipt of victim requests for notice.

**SUBCHAPTER C VICTIM'S RIGHT TO PARTICIPATE**

**Section 170 Victim Conference with Prosecutor and/or Victim Advocate (4 PYTC § 5-170)**

- (A) Upon request of the victim, the prosecutor or victim advocate shall confer with the victim about the disposition of a criminal offense, including the victim's views about a decision not to proceed with a criminal prosecution, a dismissal, a plea or sentence negotiations and a pretrial diversion program.

- (B) Upon request of the victim, the prosecutor or the victim advocate shall confer with the victim before the commencement of the trial.
- (C) The right of the victim to confer with the prosecutor or victim advocate does not include the authority to direct the prosecution of the case.

**Section 180 Criminal Proceedings; Right to be Present (4 PYTC § 5-180)**

The victim has the right to be present throughout all criminal proceedings in which the defendant has the right to be present.

**Section 190 Initial Appearance/Post-Arrest Custody Decisions (4 PYTC § 5-190)**

The victim has the right to be heard at initial appearance and any proceeding thereafter during which the court considers the post-arrest release of the person accused of committing a criminal offense against the victim or the conditions of that release.

The absence of the victim at the court proceedings does not preclude the court from going forth with the proceedings.

**Section 200 Plea Negotiation Proceedings (4 PYTC § 5-200)**

- (A) Upon request of the victim, the victim has the right to be present and be heard at any proceeding in which a negotiated plea for the person accused of committing the criminal offense against the victim will be presented to the court.
- (B) The Prosecutor's Office shall advise the court that before negotiating a plea, the Prosecutor's Office made reasonable efforts to confer with the victim.
- (C) The Prosecutor's Office shall make reasonable efforts to give the victim notice of a plea proceeding pursuant to Section 100 and to inform the victim that the victim has the right to be present and, if present, to be heard.
- (D) The Prosecutor's Office shall advise the court that to the best of the prosecutor's knowledge the Prosecutor's Office has complied with the notice requirements of this chapter and the prosecutor shall inform the court of the victim's position, if known, regarding the negotiated plea.

**Section 210 Sentencing (4 PYTC § 5-210)**

- (A) The victim may present evidence, information and opinions that concern the criminal offense, the defendant, the sentence and the need for restitution.
- (B) At any disposition proceeding, the victim has the right to be present and to address the Court.

**Section 220 Probation Modification, Revocation Disposition or Termination Proceedings (4 PYTC § 5-220)**

- (A) The victim has the right to be present and heard at any probation revocation proceeding or any proceeding in which the court is requested to terminate the probation or intensive probation of a person who is convicted of committing a criminal offense against the victim.
- (B) The victim has the right to be heard at any proceeding in which the court is requested to modify the terms of probation or intensive probation of a person, if the modification will substantially affect the person's contact with or the safety of the victim or if the modification involves restitution or incarceration status.

**Section 230 Victim's Discretion; Form of Statement (4 PYTC § 5-230)**

- (A) The victim shall have discretion to exercise rights under this chapter to be present and heard at a court proceeding, and the absence of the victim at the court proceeding does not preclude the court from going forward with the proceeding.
- (B) Except as provided in Subsection (C), a victim's right to be heard may be exercised, at the victim's discretion, through an oral statement or submission of a written statement.
- (C) If a person against whom a criminal offense has been committed is in custody for an offense, that person may be heard by submitting a written statement to the court.

**Section 240 Return of Victim's Property; Release of Evidence (4 PYTC § 5-240)**

- (A) Upon the request of the victim and after consultation with the prosecutor, law enforcement shall return to the victim any property belonging to the victim that was taken during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. Law enforcement shall make reasonable efforts to return the property to the victim as soon as possible.
- (B) If the victim's property has been admitted as evidence during a trial or hearing, the court may order its release to the victim if a photograph can be substituted. If evidence is released pursuant to this subsection, the defendant if *pro se* or the defendant's attorney or investigator may inspect and independently photograph the evidence before it is released.

**Section 250 Consultation between Victim Advocate and Victim; Privileged Information Exception (4 PYTC § 5-250)**

- (A) A victim advocate shall not be disclosed as a witness or otherwise disclose any communication, except compensation or restitution information, between himself and the victim, unless the victim consents in writing to the disclosure.
- (B) Unless the victim consents in writing to the disclosure, a victim advocate shall not disclose records, notes, documents, correspondence, reports or memoranda, except compensation or restitution information, that contain opinions, theories or other information made while advising, counseling or assisting the victim or that are based on the communication between the victim and the advocate.
- (C) The communication is not privileged if the victim advocate knows that the victim will give or has given perjured testimony or if the communication contains exculpatory material. The victim advocate must disclose such information to the prosecutor.
- (D) Upon motion of either party, or where the court finds there is reasonable cause to believe the material is exculpatory, the court shall hold a hearing in chambers. Material that the court finds is exculpatory shall be disclosed to the defendant.
- (E) The victim advocate shall disclose to the prosecutor or a law enforcement agency any communication between the victim and the advocate or any records, notes, documents, correspondence, reports or memoranda; the prosecutor shall disclose such material to the defendant's attorney only if such information is otherwise discoverable.

**Section 260 Minimizing Victim's Contacts (4 PYTC § 5-260)**

Before, during and immediately after any court proceeding, the court shall provide appropriate safeguards to ensure the safety and comfort of the victim and all parties involved.

**Section 270 Victim's Right to Refuse an Interview (4 PYTC § 5-270)**

- (A) Unless the victim consents, the victim shall not be compelled to submit to a pre-trial interview that is conducted by the defendant, the defendant's attorney or an agent of the defendant.
- (B) The defendant, the defendant's attorney or an agent of the defendant shall only initiate contact with the victim through the Prosecutor Office. The Prosecutor Office shall promptly inform the victim of the defendant's request for an interview and shall advise the victim of the victim's right to refuse the interview.
- (C) The prosecutor shall not be required to forward any correspondence from the defendant, the defendant's attorney or an agent of the defendant to the victim or the victim's representative.
- (D) If the victim consents to an interview, the Prosecutor Office shall inform the defendant, the defendant's attorney or an agent of the defendant of the time and place the victim has selected for the interview. If the victim wishes to impose other conditions on the interview, the Prosecutor Office shall inform the defendant, the defendant's attorney or an agent of the defendant of the conditions. The victim has the right to terminate the interview at any time and to refuse to answer any question during the interview. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation or abuse and may seek any appropriate protective court order.
- (E) Unless otherwise directed by the victim, the prosecutor may attend all interviews. If a transcript or tape-recording of the interview is made and on request of the prosecutor, the prosecutor shall receive a copy of the transcript or tape recording at the prosecutor's expense.
- (F) If the defendant or the defendant's attorney comments at trial on the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview.
- (G) For the purposes of this section, a Law Enforcement Officer shall not be considered a victim if the act that would have made the officer a victim occurs while the Law Enforcement Officer is acting in the course and scope of the officer official duties.

**Section 280 Victim's Right to Privacy (4 PYTC § 5-280)**

The victim has the right at any court proceeding not to testify regarding the victim's addresses, telephone numbers, place of employment or other locating information unless the victim consents or the court orders disclosure after a finding that a compelling need for the information exists. Any court proceeding where such information might be disclosed shall be in chambers.

**Section 290 Standing to Invoke Rights (4 PYTC § 5-290)**

At the request of the victim, the prosecutor may assert in the victim's behalf any right to which the victim is entitled.

**Section 300 Victims Compensation Fund (4 PYTC § 5-300)**

The victim or immediate family member, who suffers direct or threatened physical, emotional or financial harm as the result of the commission of a crime, may apply for compensation. To receive compensation a victim must meet the established eligibility requirements. The term "victim" also includes the spouse, legal, guardian, parent, child, sibling, or another family member for any victim who is under 18 years of age, incompetent, incapacitated or deceased. A person who is culpable for the crime being investigated is not considered a victim.

**DISPOSITION TABLE**

<b>Former Section</b>	<b>New Section</b>
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