

**Lac Vieux Desert Band of Lake Superior Chippewa Indians
Victim's Rights Code**

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Chapter 1
Title, Jurisdiction

Sec. 1.1 Title.

- A. This Code shall be known and may be cited as the "Victim's Right's Code" or "Code."

Sec. 1.2 Jurisdiction.

- A. Generally. This Code applies to a victim of a violation of the criminal laws or the Civil Infraction Code of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

Sec. 1.3 Applicability.

- A. The provisions of this Code shall control when determining the responsibility and timing of carrying out notice and services to Victims of crime. For the avoidance of doubt, this includes any responsibility created under laws enacted by the Tribe unless they postdate the enactment of this Code.

Chapter 2 Definitions

Sec. 2.1 Definitions.

- A. For the purpose of this Code, certain items are defined in this section. When not inconsistent with the context, words in the present tense include the future, words in the singular number include the plural number, words in the plural include words in the singular, and words in the masculine gender include the feminine gender. The word "shall" is always mandatory and not merely directory.
1. "Civil Infraction" means a non-criminal violation that has been charged and punishable in accordance with applicable provisions of the Lac Vieux Desert Civil Infraction Ordinances or laws of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. Neither incarceration nor probation are authorized as punishment for a civil infraction.
 2. "Crime" means a violation of the criminal laws of the Lac Vieux Desert Band of Lake Superior Chippewa Indians that has been charged by the Prosecutor against the Defendant, which upon conviction, may be punished by imprisonment or fine.
 3. "Defendant" means a person charged with or convicted of having committed a crime or civil infraction.
 4. "Final disposition" means the ultimate termination of the criminal prosecution of a defendant including, but not limited to, dismissal, acquittal or imposition of sentence by the Court.
 5. "Prosecuting Attorney" or "Prosecutor" means the prosecuting attorney for the Lac Vieux Desert Band of Lake Superior Chippewa Indians.
 6. "Tribe" or "Tribal" means the Lac Vieux Desert Band of Lake Superior Chippewa Indians.
 7. "Victim" means any of the following:
 - a. An individual who suffers direct or threatened physical, financial or emotional harm because of the commission of a Crime or Civil Infraction involving that individual's person or finances directly, except as provided in subparagraph (b), (c), (d). For avoidance of doubt, Victim does not include the individual's immediate or extended family.
 - b. The following relations of a deceased Victim if the relation is not the Defendant:

- i. The spouse.
 - ii. A child 15 years of age or older if subsection 7(b)(i) does not apply.
 - iii. A parent if subsections 7(b)(i) and (ii) do not apply.
 - iv. A sibling if subsections 7(b)(i), (ii), and (iii) do not apply.
 - v. A grandparent if subsections (i), (ii), (iii) and (iv) do not apply.
- c. A parent, guardian or custodian of a Victim who is less than 18 years of age.
 - d. A parent, guardian or custodian of a Victim who is mentally incapacitated to such an extent that he or she cannot meaningfully understand or participate in the legal process.
 - e. Business, corporation, or non-profit organization.

Chapter 3
Victim Advocate Role and Duties, Rights to Assistance of Victim Advocate
And General Rights of Victim

Sec. 3.1 Victim Advocate Role and Duties.

- A. The Victim Advocate employed by the Tribe is responsible for providing direct support, information, and advocacy to victims of crimes and civil infractions in the aftermath of an offense, during criminal and civil infraction investigations, and while the case goes through the court system.
- B. Key responsibilities include crisis intervention, emotional support, case management, safety planning, and referrals to community resources such as counseling, legal aid, and shelter. The Victim Advocate is also responsible for informing Victims about their rights under this Code, explaining the criminal justice process and court procedure to the Victim, and the progress of investigations, and may escort them to court proceedings.
- C. Unless otherwise indicated, the Victim Advocate is responsible for ensuring the rights outlined within this Code are met.

Sec. 3.2 Right to Victim Advocate.

- A. Victims have the right to the services of a Victim Advocate to provide support and crisis intervention.

Sec. 3.3 General Rights of Victim.

- A. The right to be treated with fairness and respect.
- B. The right to refuse an interview, deposition, or discovery request by the Defendant, the Defendant's attorney, or any other person acting on behalf of the Defendant, and to set reasonable conditions on the conduct of any such interview to which the Victim consents.
- C. The right to appoint a lawful representative should the Victim be physically or emotionally unable to exercise any right listed in this Code. The representative must not be a witness in the case. The Victim may revoke this designation at any time.
- D. With respect to Victims of violent crimes or sex crimes, the Victim has a right to have a Victim Advocate from a crime victim/witness program, or any other support person of the Victim's choosing, present at any prosecutorial or defense interviews with the Victim, and at any judicial proceedings related to criminal acts committed against the Victim. This section applies if practical and if the presence of the Victim Advocate or support person does not cause any unnecessary delay or disruption in the investigation or prosecution of the case. The role of the Victim Advocate is to strictly provide emotional support and available services to the Victim.

Chapter 4
Reported Victim, Investigation and Notice Requirements

Sec. 4.1 Potential Victim Identification.

- A. Initial Contact. Within 24 hours after the reported crime or civil infraction an officer from the Lac Vieux Desert Police Department or an assisting law enforcement agency, the Lac Vieux Desert Police Department shall provide any potential victim with the address and phone number of the Victim Advocate.
- B. During the same shift in which the Lac Vieux Desert Police Department or an assisting law enforcement agency has contact with a potential victim, the Lac Vieux Desert Police Department shall notify the Victim Advocate of the potential victim's name, home address, current location if other than his or her home address, telephone number, and the relevant details of the reported incident.

Sec. 4.2 Right to Timely Notice of Charges.

- A. The Victim Advocate shall notify the Victim or potential victim when:
 - 1. The Prosecuting Attorney files charges against the Defendant; or
 - 2. The Prosecuting Attorney makes the final determination to decline to file charges against the subject of the investigation.

Sec. 4.3 Manner of Service.

- A. Notice given to the Victim or potential victim must be given by any means reasonably calculated to give prompt and actual notice.

Sec. 4.4 Notice of Scheduled Hearings.

- A. The Victim Advocate shall give the Victim at least 72 hours' notice of any scheduled Court proceedings related to the Victim's case and notice of any changes in that schedule, unless the hearing occurs less than 72 hours after notice of the hearing is issued. In such cases, Victim's Advocate shall provide notice immediately.
- B. The Victim Advocate shall keep the following persons informed of the Victim's current address and phone number:
1. The Prosecuting Attorney, until final disposition or completion of the appellate process, whichever occurs later.
 2. The Court.
 3. The Lac Vieux Desert Police Department.

Sec. 4.5 Notice of Pretrial Release.

- A. A Victim shall be notified by the Victim Advocate of the Defendant's eligibility for pre-trial release.
- A. If the Victim did not attend the arraignment, immediately following the arraignment of the Defendant, the Victim Advocate shall notify the Victim whether the Defendant was released on pre-trial bond or whether the Defendant was detained pending further proceedings.

Chapter 5

Victim Notice of Court Process, Case Information and Right to Participate

Sec. 5.1 Notice of Trial Process.

- A. Not later than 48 hours following the arraignment of the defendant the Victim Advocate shall give to each Victim a written notice in plain English of each of the following:
1. A brief statement of the procedural steps in the processing of a criminal or civil infraction case.

2. The rights and procedures under this Code.
3. Suggested procedures if the victim is subjected to threats or intimidation.
4. The person to contact for further information.
5. Information regarding upcoming court dates, if available.

Sec. 5.2 Separate Waiting Area.

- A. Upon request from the Victim or the Victim Advocate, 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.

Sec. 5.3 Presence at Court Proceedings.

- A. The Victim has the following rights during any court proceeding involving his or her case:
1. 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.

Sec. 5.4

- A. 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.

Chapter 6
Victim Rights Related to Plea Negotiations,
Sentencing Proceedings, and Notice of Appeal

Sec. 6.1 Plea Negotiations.

- A. The Victim shall be given an opportunity to provide input regarding the disposition of his or her case, including the Victim's views regarding any plea or sentence negotiations. The Victim's position is not determinative, and the Prosecuting Attorney retains his or her discretion regarding any plea/sentence negotiations.

- B. The Victim has the right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.

Sec. 6.2 Notice of Sentencing.

- A. The Victim Advocate shall give the Victim notice of the following:
1. The current crimes or civil infractions for which the defendant was charged, convicted of, or pled guilty or no contest;
 2. 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;
 3. The Victim's right to give an impact statement at the sentencing hearing; and
 4. The time and place of the sentencing hearing.

Sec. 6.3 Impact Statement for Sentencing.

- A. The Victim has the right to submit a written or present an oral impact statement to the Court.
- B. Any statement of the Victim shall be made available to the defendant unless exempted from disclosure by the Court.
- C. The Victim Advocate shall provide notice in writing to the Victim that his or her impact statement may include but shall not be limited to the following:
1. An explanation of the nature and 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. The Victim's sentencing recommendation.

Sec. 6.4 Right to Make Statement at Sentencing.

- A. Regardless of whether the Victim submitted a written impact statement, the Victim shall have the right to appear and make an oral impact statement at the sentencing of the defendant.

Sec. 6.5 Notice of Appeal.

- A. Notice of Appeal. The Victim Advocate shall notify the Victim of the following:

1. That the defendant has filed an appeal of his or her conviction or sentence;
 2. A brief explanation of the appeal process, including the possible dispositions;
 3. Whether the defendant has been released pending the disposition of the appeal;
 4. The time and place of any appellate court proceeding and the time or place of those proceedings; and
 5. The result of the appeal.
- B. If the defendant's conviction is reversed and the case is returned to the trial court for further proceedings or the sentence is overturned and the case is returned to the trial court for resentencing, the Victim shall have the same rights previously outlined in this Code.

Sec. 6.6 Notice of Final Disposition.

- A. The Victim Advocate shall, within 48 hours of the final disposition of the case, notify the Victim in writing of the final disposition of the case.

Chapter 7
Victim Right to Notice of Defendant's Absconson, Escape, or Completion of Term of Incarceration and Probation

Sec. 7.1 Right to Victim Notice of Absconson and Escape.

- A. A Victim has the right to be given notice of a defendant who has absconded from pre-trial bond, probation, or has escaped from detention.

Sec. 7.2 Right to Victim Notice of Completion of Term of Incarceration and Probation.

- A. A Victim has the right to be given notice of a defendant's release due to completion of a jail or prison term.
- B. A Victim has the right to be given notice of a defendant's discharge from probation.

Sec. 7.2 Timeframe and Responsibility to Provide Notice.

- B. A Victim Advocate shall monitor the status of each defendant sentenced by the Court and:

1. As soon as possible, but not more than 24 hours from an occurrence described in Section (A) above, notify the victim of the defendant's absconion or escape.
2. Notify the Victim seven (7) days before the defendant's planned release from incarceration or discharge from probation.

Chapter 8 Victim Right to Restitution

Sec. 8.1 Restitution to Victim.

- A. The Court, when sentencing a defendant convicted of a crime or civil infraction, may order, in addition to or in lieu of any other penalty authorized by law or in addition to any other penalty required by law, that the defendant make restitution to the Victim.
- B. If the Court does not order restitution, or orders only partial restitution under this section, the Court shall state on the record the reasons for that action.
- C. If a crime or civil infraction involved the theft of, damage to, or destruction of property of a victim of the offense, the order of restitution shall:

Theft or Destruction of Property. Order return of the property to the owner of the property or to a person designated by the owner. If return of the property is impossible, impractical or inadequate, pay an amount equal to the greater of subparagraphs (i) or (ii), less the value, determined as of the date the property is returned, of that property or any part of the property that is returned:

- a. The value of the property on the date of the damage, loss or destruction.
 - b. The value of the property on the date of sentencing.
 2. Damage to Property. Order restitution in an amount equal to the cost of replacing or repairing the damaged property.
- D. If a crime or civil infraction involved 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:
 1. Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.
 2. Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.

3. Reimburse the victim or the Victim's estate for after-tax income loss suffered by the victim because of the offense.
- E. If a crime or civil infraction involving bodily injury also resulted in the 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 services.
 - F. If the Court orders restitution under this section, the Court shall, if the Victim is deceased, order that the restitution be made to the Victim's estate.
 - G. Any order of restitution shall be as fair as possible to the Victim or Victim's estate without unduly complicating or prolonging the sentencing process.
 - H. The Court shall not order restitution with respect to a loss for which the Victim or Victim's estate has received or is to receive compensation, including insurance, except that the Court may, in the interest of justice, order restitution to any individuals, organizations, partnerships, corporations or governmental entities that have compensated the Victim or Victim's estate for such loss to the extent of the compensation paid. An order of restitution shall require that all restitution to a Victim or Victim's estate under the order be made before any restitution to any other person under that order is made.
 - I. Any amount paid to a Victim or Victim's estate under an order of restitution shall be set off against any amount later recovered as compensatory damages by the Victim or the Victim's estate in any federal, state or Tribal civil proceeding.
 - J. If not otherwise provided by the Court under this subsection, restitution shall be made immediately. However, the Court may require that the defendant make restitution under this section within a specified period or in specified installments. The end of the period or the last installment shall not be later than the following:
 1. The end of the period of probation, if probation is ordered.
 2. Two (2) years after the end of imprisonment, if the Court does not order probation.
 3. In all other cases, six months after the date of sentencing, unless good cause exists to extend the period.
 - K. If the defendant is placed on probation or supervision following a term of imprisonment, any restitution ordered under this section shall be a condition of that probation or supervision. The Court may revoke probation or supervision 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 or supervision, the Court shall 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.

- L. A defendant who is required to pay restitution and who is not in willful default of the payment of the restitution, at any time, may petition the Court for suspension of the restitution obligation or extension of the deadline for payment due to financial hardship. If it appears to the satisfaction of the Court that payment of the amount due imposes a manifest hardship on the defendant or his or her immediate family, the Court may suspend the defendant's restitution obligation or extend the deadline for payment for a specified period of time. The defendant has the burden of showing manifest hardship.
- M. An order of restitution may be enforced by the Prosecuting Attorney or a Victim or Victim's estate named in the order to receive the restitution in the same manner as a judgment in a civil action.
- N. Notwithstanding any other provision of this section, a defendant shall not be imprisoned, jailed, or incarcerated for a violation of parole or probation, or otherwise, for failure to pay restitution as ordered under this section unless the Court determines that the defendant has the resources to pay the ordered restitution and has not made a good faith effort to do so.

Sec. 8.2 Factors for Restitution.

- A. The Court, in determining whether to order restitution and the amount of that restitution, shall consider the amount of the loss sustained by the Victim as a result of the offense, the financial resources and earning ability of the defendant, the financial need of the defendant and the defendant's dependents, and such other factors as the Court considers appropriate.
- B. The Court may order the probation officer to obtain information pertaining to the factors set forth above. The probation officer shall include the information collected in the presentence investigation report or in a separate report, as the Court directs.
- C. The Court shall disclose to both the defendant and the Prosecuting Attorney all portions of the presentence or other report pertaining to the matter described above.
- D. Any dispute as to the proper amount or type of restitution shall be resolved by the Court by a preponderance of the evidence. The burden of demonstrating the earning ability of the defendant and the amount of the loss sustained by a victim because of the offense shall be on the Prosecuting Attorney. The burden of demonstrating the financial resources of the defendant and the financial need of the defendant and the defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the Court deems appropriate shall be upon the party designated by the Court as justice requires.

Chapter 9
Victim Right to Safety and Return of Property

Sec. 9.1 Confidentiality of Victim's Address.

- A. 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 Prosecuting Attorney 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, 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*.
- B. The address of the Victim shall not be published on any document sent to the defendant or defense counsel issued by the Court or Prosecuting Attorney.

Sec. 9.2 Personal Protection Order.

- A. Notwithstanding any provision in this Code, a Victim has the right, with the assistance of the Victim Advocate, to seek a personal protection order in accordance with applicable law.

Sec. 9.3 Employment Protection.

- A. An employer or the employer's agent who engages in business within the exterior boundaries of the Tribe's reservation, 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 requested by the Prosecuting Attorney to attend Court for the purpose of giving testimony, is guilty of a civil infraction, punishable by a fine up to \$500.00, and may also be punished for contempt of court.

Sec. 9.4 Return of Property.

- A. The Lac Vieux Desert Police Department shall promptly return to the Victim property belonging to that Victim, which is taken in the course of the investigation, except as provided below.
1. Property that is contraband.
 2. Property whose ownership is disputed.
 3. Property that is considered evidence or possible evidence of the alleged crime or civil infraction.
- B. Property that falls under subsection (A)(3) above shall be returned in accordance with applicable law enforcement policy.

Chapter 10

Sec. 10.1 Failure to Provide Notice.

- A. The failure to provide a right, privilege or notice to a Victim under this Code shall not be grounds for the defendant to seek to have a conviction or sentence set aside.
- B. **Rights Not Enforceable.** The language in this Code is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law or equity, by any person or entity, in any matter, civil, criminal, or administrative.

Sec. 10.2 No Cause of Action, No Waiver of Sovereign Immunity.

- A. Nothing in this Code 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.
- B. Nothing in this Code shall be construed to impair the prosecutorial discretion of the Prosecuting Attorney.
- C. Nothing in this Code shall be construed as a waiver of sovereign immunity.

Legislative History