

[Title III]

CHAPTER 10. CHITIMACHA VICTIM'S RIGHTS CODE

Sec. 1001 Definitions

- (a) "Critical stage" means any judicial proceeding at which there is a disposition of the charged offense or a lesser offense, or a sentence imposed pursuant to that offense.
- (b) "Designated family member" means a duly appointed family member or legal guardian of a minor, homicide, or legally incompetent victim.
- (c) "Judicial proceeding" means any adversarial or contradictory proceeding held in open court.
- (d) "Registration" means the completion and submission of a Tribal Victim and Notification Form with the law enforcement agency investigating the offense of which the person is a victim, which shall include an address and telephone number at which the victim or designated family member may be notified. Such forms shall be promulgated by the Chitimacha Police Department, which may adopt the form specified in La. R.S. 46:1844(T) and issued by the Louisiana Commission on Law Enforcement in accordance with La. R.S. 46:1844(R), as those state may be amended over time. A form completed and submitted to a state law enforcement agency also constitutes Registration.
- (e) "Victim" means a person against whom any of the following offenses is allegedly committed:

(A) Title III, Chapter 3. Crimes Against Persons

- (i) Section 301 Murder
- (ii) Section 302 Manslaughter
- (iii) Section 303 Negligent Homicide
- (iv) Section 305 Kidnapping
- (v) Section 307 Rape
- (vi) Section 308 Sexual Assault

- (vii) Section 309 Statutory Rape
 - (viii) Section 310 Indecent Exposure
 - (ix) Section 313 Indecent Behavior with a Juvenile
 - (x) Section 314 Solicitation of Minor to Engage in Sexual Activity
 - (xi) Section 316 Pornography Involving Juveniles
 - (xii) Section 317 Computer-Aided Solicitation of a Minor
 - (xiii) Section 319 Simple Assault
 - (xiv) Section 320 Aggravated Assault – Severe Bodily Harm
 - (xv) Section 321 Aggravated Assault – Dangerous Weapon
 - (xvi) Section 322 Aggravated Assault – Great Bodily Harm
 - (xvii) Section 323 Aggravated Assault – Public Official
 - (xviii) Section 324 Harassment
 - (xix) Section 325 Abuse of a Vulnerable Adult
- (B) Title III, Chapter 4. Crimes Against Private Property
- (i) Section 401 Arson
 - (ii) Section 405 Robbery
- (C) Title III, Chapter 5. Crimes Against the Public Order
- (i) Section 531 Child Abuse
 - (ii) Section 532 Abandonment of a Child
 - (iii) Section 533 Neglect of a Child
 - (iv) Section 534 Cruelty to Juveniles
- (D) Title III, Chapter 6. Domestic Violence
- (i) Section 610 Domestic Violence
 - (ii) Section 611 Violation of a No Contact Order
 - (iii) Section 612 Violation of a Domestic Violence Protection Order
- (E) Title XV, Chapter 4, Penalties (for violation of Title XV), Section 401,
subject to the limitation that the offense involves a dog bite.

- (f) “Victim Assistance Coordinator” means a person employed by the Tribe or an agency or department of the Tribe to fulfill the duties and obligations imposed on a Victim Assistance Coordinator under the provisions of this Title.
- (g) “Victim's family” includes a spouse, parent, child, stepchild, sibling, or legal representative of the victim, except when the person is in custody for an offense or is the defendant.
- (h) “Witness” means any person who has been or is expected to testify for the prosecution, or who, by reason of having relevant information, is subject to call or likely to be called as a witness for the prosecution, whether or not any action or proceeding has yet been commenced.

Sec. 1002 Services and Information Available to Victims and Witnesses.

- (a) Chitimacha Tribal Police shall ensure that victims and witnesses receive emergency and medical services as soon as possible, and shall offer social services and victim advocacy services as soon as possible. Chitimacha Tribal Police shall distribute the Tribal Victim and Notification Form when applicable.
- (b) A Victim Assistance Coordinator will be assigned to assist the victims and/or witness throughout the court process and until services are no longer required. The Victim Assistance Coordinator’s duties include coordinating services between the Chitimacha Police Department, Tribal Prosecutor, and officers of the Tribal Court, and the victim and/or designated family member. The Victim Assistance Coordinator’s duties are to not only facilitate the Tribe’s and Tribal officials’ compliance with the duties to victims provided herein, but also to ensure that the victim is aware of and may exercise those rights provided herein. Specific duties include providing:
 - (1) Assistance at the scene of the crime, if practicable and consented to by the victim, to ensure that the victim and victim’s household receive medical treatment and are safe.

- (2) Notice, as soon as is practicable, of the victim's right to refuse to speak with the defendant's attorney or the attorney's representatives.
 - (3) Information regarding the alleged or convicted offender's dates of possible release from physical custody, escape, apprehension or otherwise.
 - (4) A process for the victim to provide a reentry statement to request that the inmate/suspect be subject to proximity or contact restrictions as part of the release of the inmate/suspect.
 - (5) Notification concerning an alleged or convicted offender's arrest, release on recognizance, posting of bond, release pending charges being filed, release due to rejection of charges by the Tribal Prosecutor, escape or re-apprehension.
 - (6) How to enroll in, access, and receive reports on the status of their offender's case from LAVNS. In addition, inform the victim about their right to request and receive notice of pre-judgment and post-judgment proceedings from the Tribal Prosecutor and Clerk of Court.
 - (7) Providing additional information on rights that a victim or designated family member have under this victim's rights policy, as well as the ways that those rights may be exercised.
 - (8) Acting on behalf of the victim or a designated family member, subject to the consent required and further limitations provided in Section 1002(c).
- (c) Upon the express written consent of the victim or a designated family member, the assigned Victim Assistance Coordinator may stand in for the victim or designated family member. Such written consent may be broad and encompass any act relevant to a proceeding or narrowly tailored to individual acts relevant to a proceeding. Upon receipt of such consent, the Victim Assistance Coordinator shall submit the consent to the Tribal Court, the Tribal Prosecutor, the Public Defender or defense attorney, and any other necessary party. Accordingly, subject to the scope of such express written consent, the Victim Assistance Coordinator may perform any act that the victim or designated family member may perform,

must receive any notice or information that the victim or designated family member is entitled to receive, and is otherwise entitled to exercise those rights afforded to the victim or designated family member under this Chapter; provided, however, that the Victim Assistance Coordinator's authority to act hereunder is subject to the following:

- (1) The Victim Assistance Coordinator may not speak on behalf of any witness that the defendant has the right to confront pursuant to the Indian Civil Rights Act, and in any other instance where the Victim Assistance Coordinator provides sworn testimony on behalf of a victim or designated family member, he or she may only speak to those facts that the victim or designated family member attests to in writing;
 - (2) In acting on behalf of the victim, the Victim Assistance Coordinator must act in the best interests of the victim and not any other entity, including the Tribe, Tribal Prosecutor, or Chitimacha Police Department.
 - (3) Nothing under this Section 1002(c) relieves a Tribal official or entity of any obligation to the Victim Rights Coordinator, as provided under this Chapter, that is not expressly contingent on the victim or designated family member's consent.
 - (4) The victim or a designated family member has the right to revoke, whether orally or in writing, any consent provided to the Victim Rights Coordinator to act on the victim or designated family member's behalf, which the Victim Rights Coordinator shall honor immediately. Further, the victim or a designated family member has the right to enroll in or discontinue the use of the Victim Rights Coordinator at any time during the court process.
- (d) The victim or designated family member, and the victim's attorney or assigned Victim Assistance Coordinator, if applicable, shall receive advance notification of judicial proceedings relating to the victim's case.
- (1) To appropriately carry out this task, the Tribal Prosecutor and the Clerk of Court must ensure that the required records are entered into the Louisiana

Automated Victim Notification System (LAVNS) pursuant to La. R.S. 15:1229, so that the victim and their family may initiate and receive the latest status report on an offender's case.

- (2) If LAVNS is not available, the Tribal Prosecutor and Clerk of Court must ensure that a victim can stay up to date on the status of their offender's case. Accordingly, if the victim or designated family member requests notification, the Tribal Prosecutor and Clerk of Court must provide reasonable notice to the victim or designated family member of any judicial proceeding or post-sentencing action (including hearing dates, continuances, conditions of probation, or conditions of release) that implicates the victim's interests. The notice required pursuant to this subsection may be made by any method reasonably calculated to notify the victim or designated family member of the judicial proceeding in a timely manner.

Sec. 1003 Interviewing the Victim or Witness to a Crime.

- (a) The Tribal Prosecutor shall make reasonable efforts to interview the victim or a designated family member to determine the facts of the case, the facts supporting a claim for restitution (e.g., costs and losses sustained as a result of the defendant's conduct), and whether the victim or the family is requesting restitution. The time and manner of this interview is subject to the Tribal Prosecutor's sole discretion, provided that an interview is conducted before trial. Any evidence or statements gathered during the interview shall remain in the Tribal Prosecutor's custody and shall only be disclosed, in the discretion of the Tribal Prosecutor, to the extent necessary to support a criminal complaint.
- (b) The Chitimacha Tribal Police or, at the request of the Tribal Prosecutor, the Chitimacha Tribal Court, shall provide a private setting for all interviewing of victims of crime. Only those persons directly and immediately related to the interviewing of the victim, such as a social worker, psychologist, or other

professional, the victim advocate, or the employee of a victim service organization working in coordination with the victim advocate, may be present, unless the victim requests the exclusion of such persons from the interview, and, when appropriate, the parent or parent(s) of the victim.

- (c) The victim and the victim's family may refuse any requests for interviews with the attorney for the defendant or any employee or agent working for the attorney for the defendant or any representative of the defendant. If the victim is a minor, the parent or guardian of the victim may refuse to permit the victim to be interviewed by the attorney for the defendant or any employee or agent working for the attorney for the defendant. Before any victim may be subpoenaed to testify on behalf of a defendant at any pretrial hearing, the defendant shall show good cause at a hearing before the Tribal Court as to why the subpoena should be issued. Willful disregard of the rights of victims and witnesses as enumerated in this paragraph may be punishable in accordance with the laws of the Chitimacha Tribe or the inherent authority of the Tribal Court.

Sec. 1004 Victim's Involvement and Rights During Court Proceedings.

- (a) The Tribal Court shall provide, whenever possible, a secure waiting area during court proceedings which does not require victims, witnesses, or the victim's family members to be in close proximity to the defendant, or the defendant's family members or friends, and shall provide a secure waiting area in cases involving violent crimes. Upon request of the victim, victim's family, or witness, the Tribal Court shall also provide, whenever possible, designated seating in the courtroom for victims, victims' family and witnesses separate from the defendant, the defendant's family or witnesses for the defendant.
- (b) Speedy Disposition.
- (1) The victim's interest in a speedy disposition and prompt and final conclusion of a case after conviction and sentencing is critical. To this end, the Tribal Prosecutor will expedite proceedings with a minimum of continuances and

- shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off the Chitimacha Reservation for safety.
- (2) When ruling on a defense motion for continuance, the Tribal Court will consider the impact on the victim.
- (c) The victim and/or designated family member shall have the right to be present and heard at all critical stages of the proceedings.
- (1) At all critical stages of the prosecution, if the victim or designated family member completed registration and is present during the relevant proceeding, the Tribal Court must determine if the victim, designated family member, and/or counsel or advocate wishes to make a victim impact statement and shall permit such statement. If the victim is not present, the Tribal Court shall ascertain whether the victim or designated family member, in accordance with the predetermined rules, was notified of the hearing. If the notice was not made, the Tribal Court shall continue the proceedings until proper notification is issued.
- (2) The victim and victim's family members shall have the right to make written and oral impact statements as follows:
- (A) Any written statement by a victim shall be made available to the Tribal Prosecutor and defendant and shall be made part of the record. The statement may be submitted by the Tribal Prosecutor upon request of the victim or designated family member. Upon request of the victim or designated family member, any such written statement may be sealed by the Tribal Court after review by the parties.
- (B) If the victim offers an oral statement, the hearing at which the oral statement is provided to the Tribal Court shall be subject to the limitations of relevance. In any case where the number of victim's family members exceeds three, the Tribal Court may in its discretion limit the number of in-court statements that exceed three. The Tribal Court may otherwise reasonably restrict the oral statement in order to

maintain courtroom decorum. The defendant must be present for the victim impact statement. Upon motion of the Tribal Prosecutor, the Tribal Court may hear such statement by camera or video conferencing.

- (C) The statement of the victim or the victim's family may:
- (i) Identify the victim of the offense;
 - (ii) Itemize the economic loss that has been or may be reasonably suffered by the victim as a result of the offense;
 - (iii) Identify any physical injury suffered by the victim as a result of the offense, along with its severity and permanence;
 - (iv) Describe any change in the victim's personal welfare or familial relationship as a result of the offense;
 - (v) Identify any request for medical or counseling services needed by the victim or the victim's family as a result of the offense;
 - (vi) Contain any other information related to the impact of the offense upon the victim or the victim's family that the Tribal Court requires;
 - (vii) If defendant is eligible for probation, contain any information which advises the Tribal Court on conditions of probation required to assure the safety of the victim; and
 - (viii) Contain any other information that the victim or victim's family wishes to share with the Tribal Court regarding the overall effect of the crime upon the victim and the victim's family.
- (3) Prior to the sentencing hearing, the Tribal Court shall provide the defendant (or counsel to the defendant, if applicable), the victim, and the Tribal Prosecutor with notice of the maximum and minimum sentence allowed by law. The Tribal Court shall allow the victim, or designated family member, and the prosecutor the opportunity to review any presentence investigative report that have been prepared relating to the victim's case. The review of

the presentence report shall be conducted under the supervision of the Tribal Court.

- (4) At the sentencing hearing, the Tribal Court shall afford the defendant (or counsel to the defendant, if applicable), the Tribal Prosecutor, and the victim or designated family member an opportunity to comment upon matters relating to the appropriate sentence. Before imposing sentence, the Tribal Court shall verify that the victim or designated family member was notified of the sentencing hearing and address the victim or designated family member personally, if the victim or designated family member is present at the sentencing hearing, to determine if the victim or designated family member wishes to present a written or oral impact statement pursuant to this rule.
- (d) Return of property to victim or family of victim. The Chitimacha Police Department shall expeditiously return any stolen or other personal property to victims or victims' families' when no longer needed as evidence, at no cost to the victims or their families.
- (e) There shall be no filing fees or costs required by the victim or a designated family member regarding the matter involving the victim.
- (f) It shall be the requirement of the Tribal Prosecutor and the Clerk of Court, at least two months before the release date, to notify the victim or a designated family member or witness, by certified mail, of any release of the offender. This shall also apply if the offender escapes custody, and another notice will be made upon capture. In addition, the Tribal Prosecutor and the Clerk of Court shall ensure the victim is notified of any appeal filed from a judgment in the offender's case.

Sec. 1005 Designated Family Member.

A designated family member may be appointed by either a majority of the victim's family members, upon a certification or affidavit submitted to the Chitimacha Police Department or Victim Assistance Coordinator, or in the absence of such familial

appointment, by the Chitimacha Tribal Court. A designated family member shall be afforded all of the rights accruing to victims under this Chapter 10. Upon a finding of good cause, the Tribal Prosecutor may allow more than one designated family member.

Sec. 1006 Confidentiality.

Any and all documentation or statements submitted to the Victim Services Coordinator, Chitimacha Police Department, Tribal Prosecutor, Clerk of Court, and all officers of the Tribal Court are subject to strict confidentiality, except in those limited instances where the Tribal Court orders that the document or statement be a part of the public judicial record or where applicable federal, state, or Tribal law requires the disclosure of the document or statement. Accordingly, subject to the exceptions provided herein, the Victim Services Coordinator, Chitimacha Police Department, Tribal Prosecutor, Clerk of Court, and all officers of the Tribal Court shall ensure that all such documents are kept and maintained in the strictest of confidence and used only for an authorized purpose.

Sec. 1007 Right and Duties Relative Domestic Violence Victims Unaltered.

Nothing in this Chapter 10 is intended to or shall be interpreted to eliminate, diminish, or modify the rights and procedural protections afforded to victims of domestic violence-based crimes under Chapter 6 of this Title. Accordingly, such victims shall be afforded the rights and procedural protections afforded under Chapters 10 and 6 of this Title.

Sec. 1008 Limitation on Duties Imposed on the Tribe.

The duties and obligations imposed on the Victim Services Coordinator under this Title shall not be interpreted as imposing an affirmative duty on the Tribe or its agencies and departments to employ any person. This Section does not relieve any Tribal official of their duty to perform any obligation imposed under the Chitimacha Comprehensive Codes of Justice or under this Title that does not depend on a Victim Services Coordinator.