



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION CODE (HCC)

TITLE 9 – CRIMINAL CODE

SECTION 950 – RIGHTS OF VICTIMS AND WITNESSES OF CRIME

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950.01 Legislative intent. In recognition of the civic and moral duty of victims and witnesses of crime to fully and voluntarily cooperate with law enforcement and prosecutorial agencies, and in further recognition of the continuing importance of such citizen cooperation to Nation, state and local law enforcement efforts and the general effectiveness and well-being of the criminal justice system of this Nation, the legislature declares its intent, in this chapter, to ensure that all victims and witnesses of crime are treated with dignity, respect, courtesy and sensitivity; and that the rights extended in this chapter to victims and witnesses of crime are honored and protected by law enforcement agencies, prosecutors and judges in a manner no less vigorous than the protections afforded criminal defendants. This chapter does not prohibit a public official, employee, or agency from sharing information with victim service organizations that are eligible to receive grants. Nothing in this chapter shall be construed to impair the exercise of prosecutorial discretion.

950.02 Definitions. In this chapter:

(1) Except in sub. (3), “child” means a person who is less than 18 years of age.

(1m) “Crime” means an act committed in this Nation which, if committed by a competent adult, would constitute a crime, as defined in s. 939.12.

(1t) “Custodial agency” means any person authorized to arrest or take into actual physical custody an individual who is alleged to have committed a crime. “Custodial agency” includes a law enforcement agency, a sheriff, superintendent or other keeper of a jail and a person

authorized to take custody of a juvenile.

(2) “Prosecutor’s Office” means the Office of the Prosecutor.

(2m) “Prosecutor” means any of the following:

- (a) The prosecutor or other person authorized to prosecute a criminal case or a delinquency proceeding.
- (b) A person designated by a person specified in par. (a) to perform the prosecutor’s duties under this chapter.

(3) “Family member” means spouse, minor child, adult child, sibling, parent, or legal guardian.

(3m) “Law enforcement agency” means a governmental unit of one or more persons employed full time by the Nation, state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(a) “Victim” means any of the following:

1. A person against whom a crime has been committed.
2. If the person specified in subd. 1. is a child, a parent, guardian or legal custodian of the child.
3. If a person specified in subd. 1. is physically or emotionally unable to exercise the rights granted under s. 950.04, a person designated by the person specified in subd. 1. or a family member of the person specified in subd. 1.
4. If a person specified in subd. 1. is deceased, any of the following:
 - a. A family member of the person who is deceased.
 - b. A person who resided with the person who is deceased.
5. If a person specified in subd. 1. has been adjudicated incompetent in this Nation or by a state, the guardian of the person appointed for him or her.

(b) “Victim” does not include the person charged with or alleged to have committed the crime.

(4m) “Victim and witness office” means an organization or program that provides services for which the county receives reimbursement under this chapter.

(5) “Witness” means any person who has been or is expected to be summoned 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.

950.03 Eligibility of victims. A victim has the rights and is eligible for the services under this chapter only if the crime has been reported to law enforcement authorities.

950.04 Basic bill of rights for victims and witnesses.

(1v) RIGHTS OF VICTIMS. Victims of crimes have the following rights:

- (ag) To be treated with fairness, dignity, and respect for his or her privacy by public officials, employees, or agencies. This paragraph does not impair the right or duty of a public official or employee to conduct his or her official duties reasonably and in good faith.
- (ar) To have his or her interest considered when the court is deciding whether to grant a continuance in the case.
- (b) To attend court proceedings in the case, subject to witness exclusion and closed hearings. The court may require the victim to exercise his or her right under this paragraph using telephone or live audiovisual means, if available, if the victim is under arrest, incarcerated, imprisoned or otherwise detained by any law enforcement agency or is admitted or committed on an inpatient

basis to a treatment facility, and the victim does not have a person specified in s. 950.02 (4) (a) 3. to exercise the victim's right under this paragraph.

(bm) To be provided with appropriate intercession services to ensure that employers of victims will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

(c) To be accompanied by a service representative, defined an individual member of an organization or victim assistance program who provides counseling or support services to complainants or petitioners and charges no fee for services provided to a complainant.

(d) To request an order for, and to be given the results of, testing to determine the presence of a communicable disease, as provided under s. 968.38.

(dl) To not be the subject of a law enforcement officer's or prosecutor's order, request, or suggestion that he or she submit to a test using a lie detector, if he or she claims to have been the victim of a sexual assault under s. 940.22 (2), 940.225, 948.02 (1) or (2), or 948.085, except as permitted under s. 968.265.

(do) To be informed about the process by which he or she may file a complaint under s. 968.02 or 968.26 (2) and about the process of an inquest if he or she is the victim of an officer-involved death.

(dr) To not have his or her personal identifiers, including name, social security number, telephone number, street address, post-office box number or 9-digit extended zip code, tribal identification number and electronic mail address, used or disclosed by a public official, employee, or agency for a purpose that is unrelated to the official responsibilities of the official, employee, or agency.

(e) To be provided a waiting area.

(em) To have his or her interests considered by the court in determining whether to exclude persons from a preliminary hearing.

(er) To not be compelled to submit to a pretrial interview or deposition by a defendant or his or her attorney.

(f) To have the parole commission make a reasonable attempt to notify the victim of applications for parole.

(g) To have reasonable attempts made to notify the victim of hearings or court proceedings.

(gm) To have reasonable attempts made to notify the victim of petitions for sentence adjustment.

(i) To have, at his or her request, the opportunity to consult with intake workers and prosecutors in juvenile delinquency cases.

(j) To have, at his or her request, the opportunity to consult with the prosecution in a case brought in a court of criminal jurisdiction.

(k) To a speedy disposition of the case in which they are involved as a victim in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

(l) To have the prosecutor make a reasonable attempt to contact the victim concerning the victim's right to make a statement.

(m) To provide statements concerning sentencing, disposition, or parole.

(n) To have direct input in the parole decision making process.

(nn) To attend parole interviews or hearings and make statements.

(nt) To attend a hearing on a petition for modification of a bifurcated sentence and provide a statement concerning modification of the bifurcated sentence.

(nx) To attend a hearing on a petition for modification of a term of probation under s. 973.09 (3)

- (d) and provide a statement to the court concerning modification of the term of probation as provided under s. 973.09 (3m).
- (o) To have information concerning the impact of a delinquent act on the victim included in a court report and to have the person preparing the court report attempt to contact the victim.
- (p) To have the person preparing a presentence investigation make a reasonable attempt to contact the victim, and to view the sentence recommendation and any victim information included on the presentence investigation report.
- (pd) To view portions of a presentence investigation report that relate to the crime upon the victim.
- (pm) To have the court provided with information pertaining to the economic, physical and psychological effect of the crime upon the victim and have the information considered by the court.
- (q) To restitution, 943.212, 943.23 (6), 943.245, 943.51 and 973.20.
- (qm) To recompense.
- (r) To a judgment for unpaid restitution, as provided and 973.09 (3) (b).
- (rm) To compensation, as provided under subch. I of ch. 949.
- (s) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence, subject to s. 968.205. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, property subject to preservation under s. 968.205, and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.
- (t) To receive information from law enforcement agencies, as provided under s. 950.08 (2g).
- (u) To receive information from prosecutors, as provided under s. 950.08 (2r).
- (um) To have prosecutors make a reasonable attempt to notify the victim regarding conditional releases.
- (v) To have the probation and parole office make a reasonable attempt to notify the victim regarding community residential confinements, regarding participation in the intensive sanctions program, regarding escapes from a Type 1 prison, regarding persons registered as a sex offender, regarding release upon expiration of a sentence for a violation of s. 940.01, 940.03, 940.05, 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.06, 948.07, or 948.085, regarding extended supervision and parole releases, and regarding release or escape of a juvenile from correctional custody.
- (vm) To have the appropriate clerk of court send the victim a copy of an inmate's petition for extended supervision and notification of the hearing on that petition.
- (w) To have the probation and parole make a reasonable attempt to notify the victim regarding leave granted to qualified inmates.
- (x) To have the department of health services make a reasonable attempt to notify the victim regarding termination or discharge and regarding home visits of offenders that are placed in a mental health facility due to incompetency.
- (xm) To have the department of health make a reasonable attempt to notify the victim regarding supervised release and discharge of civilly committed sex offenders.
- (y) To have reasonable attempts made to notify the victim concerning actions taken in a juvenile proceeding.
- (yd) To have the appropriate clerk of court make a reasonable attempt to send the victim a copy of a motion made for post-conviction deoxyribonucleic acid testing of certain evidence and

notification of any hearing on that motion.

(ym) To have the President make a reasonable attempt to notify the victim of a pardon application, once the Nation adopts a pardon law.

(z) To make a written statement concerning pardon applications.

(zm) To request information from a prosecutor concerning the disposition of a case involving a crime of which he or she was a victim.

(zx) To complain to the Prosecutor's Office concerning the treatment of crime victims, as provided under s. 950.08 (3), and to request review by the crime victims' rights board of the complaint, as provided under s. 950.09 (2).

(2w) RIGHTS OF WITNESSES. Witnesses of crimes have the following rights:

(a) To request information from the prosecutor about the final disposition of the case.

(b) To be notified that a court proceeding to which they have been subpoenaed will not go on as scheduled, in order to save the person an unnecessary trip to court.

(c) To receive protection from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available.

(d) To be informed of financial assistance and other social services available as a result of being a witness of a crime, including information on how to apply for the assistance and services.

(dm) To not have his or her personal identifiers, including name, social security number, telephone number, street address, post-office box number or 9-digit extended zip code tribal identification number and electronic mail address, used or disclosed by a public official, employee, or agency for a purpose that is unrelated to the official responsibilities of the official, employee, or agency.

(e) To be informed of the procedure to be followed in order to apply for and receive any witness fee to which they are entitled.

(f) To be provided a waiting area.

(fm) To have any stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, shall be returned to the person within 10 days of being taken.

(g) To be provided with appropriate intercession services to ensure that employers of witnesses will cooperate with the criminal justice process and the juvenile justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances.

(h) To be entitled to a speedy disposition of the case in which they are involved as a witness in order to minimize the length of time they must endure the stress of their responsibilities in connection with the matter.

950.055 Child victims and witnesses; rights and services.

(1) LEGISLATIVE INTENT. The legislature finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually afforded to adults. The legislature intends, in this section, to provide these children with additional rights and protections during their involvement with the criminal justice or juvenile justice system. The legislature urges the news media to use restraint in revealing the identity of child victims or witnesses, especially in sensitive cases.

(2) ADDITIONAL SERVICES. In addition to all rights afforded to victims and witnesses under s.

950.04 and services provided under 950.06 (1m), departments are encouraged to provide the following additional services on behalf of children who are involved in criminal or delinquency proceedings as victims or witnesses:

(a) Explanations, in language understood by the child, of all legal proceedings in which the child will be involved.

(b) Advice to the judge, when appropriate and as a friend of the court, regarding the child's ability to understand proceedings and questions. The services may include providing assistance in determinations concerning the taking of depositions by audiovisual means and the duty to expedite.

(c) Advice to the prosecutor concerning the ability of a child witness to cooperate with the prosecution and the potential effects of the proceedings on the child.

(d) Information about and referrals to appropriate social services programs to assist the child and the child's family in coping with the emotional impact of the crime and the subsequent proceedings in which the child is involved.

(3) **PROGRAM RESPONSIBILITY.** The Nation, the departments is responsible for the provision of services under this section. A department may seek reimbursement for services provided under this section as part of its program plan submitted to the Prosecutor's Office under s. 950.06. To the extent possible, departments shall utilize volunteers and existing public resources for the provision of these services.

950.07 Intergovernmental cooperation. The Nation, prosecutor, local law enforcement agencies, local social service agencies, victim and witness offices and courts shall all cooperate with each other to ensure that victims and witnesses of crimes receive the rights and services to which they are entitled under this chapter.

950.08 Information and mediation services.

(1) **DUTIES OF PROSECUTOR'S OFFICE; TOLL-FREE TELEPHONE NUMBER.** The Prosecutor's Office shall maintain a toll-free telephone number to provide crime victims and witnesses with all of the following services:

(a) Information and referral to available services.

(b) Crisis counseling and emotional support.

(c) Assistance in securing resources and protection.

(2) **DUTIES OF PROSECUTOR'S OFFICE; GENERAL INFORMATIONAL PROGRAM.** The Prosecutor's Office shall provide an informational program to inform crime victims, the general public, criminal justice officials and related professionals about crime victim rights and services.

(2g) **INFORMATION TO BE PROVIDED BY LAW ENFORCEMENT AGENCIES.** No later than 24 hours after a law enforcement agency has initial contact with a victim of a crime that the law enforcement agency is responsible for investigating, the law enforcement agency shall make a reasonable attempt to provide to the victim written information on all of the following:

(a) A list of the rights of victims under s. 950.04 (1v).

(b) The availability of compensation under subch. I of ch. 949 and the address and telephone number at which to contact the Prosecutor's Office for information concerning compensation under subch. I of ch. 949.

(c) The address and telephone number of the intake worker, corporation counsel or prosecutor

whom the victim may contact to obtain information concerning the rights of victims and to request notice of court proceedings for juvenile delinquencies, and to request the opportunity to confer.

(d) The address and telephone number of the custodial agency that the victim may contact to obtain information concerning the taking into custody or arrest of a suspect in connection with the crime of which he or she is a victim.

(e) The address and telephone number of the custodial agency that the victim may contact for information concerning release of a person arrested or taken into custody for the crime of which he or she is a victim.

(f) Suggested procedures for the victim to follow if he or she is subject to threats or intimidation arising out of his or her cooperation with law enforcement and prosecution efforts relating to a crime of which he or she is a victim.

(g) The address and telephone number at which the victim may contact the Prosecutor's Office or any local agency that provides victim assistance in order to obtain further information about services available for victims, including medical services.

(h) If the victim is a victim of an officer involved death, information about the process by which he or she may file a complaint and about the process of an inquest.

(2r) INFORMATION TO BE PROVIDED BY A PROSECUTOR IN CRIMINAL CASES.

As soon as practicable, but in no event later than 10 days after the initial appearance or 24 hours before a preliminary examination, whichever is earlier, of a person charged with a crime in a court of criminal jurisdiction, a prosecutor shall make a reasonable attempt to provide to each victim of the crime written information on all of the following:

(a) A brief statement of the procedure for prosecuting a crime.

(b) A list of the rights of victims under s. 950.04 (1v) and information about how to exercise those rights.

(c) The person or agency to notify if the victim changes his or her address and wants to continue to receive notices and services under s. 950.04.

(d) The availability of compensation under subch. I of ch. 949, including information concerning eligibility for compensation and the procedure for applying for compensation.

(e) The person to contact for further information about a case involving the prosecution of a crime of which he or she is a victim.

(2s) INFORMATION CONCERNING JUVENILE CASES. Notification of a victim of an act committed by a juvenile concerning the rights of victims shall be provided.

(2w) INFORMATION TO BE PROVIDED BY PROSECUTORS TO SCHOOLS IN CRIMINAL CASES. If a criminal complaint is issued under s. 968.02 or if a petition for waiver is granted, and the prosecutor reasonably believes the person charged is a pupil enrolled in a school district, a private school, or a charter school, the prosecutor shall make a reasonable attempt to notify the school board, governing body of the private school, or charter school governing body of the charges pending against the pupil. The prosecutor shall also notify the school board, governing body of the private school, or charter school governing body of the final disposition of the charges.

(3) DUTIES OF PROSECUTOR'S OFFICE; MEDIATION. The Prosecutor's Office may receive complaints, seek to mediate complaints and, with the consent of the involved parties, actually mediate complaints regarding the treatment of crime victims and witnesses by public officials, employees or agencies or under crime victim and witness assistance programs. The Prosecutor's

Office may act as a liaison between crime victims or witnesses and others when seeking to mediate these complaints and may request a written response regarding the complaint from the subject of a complaint. If asked by the Prosecutor's Office to provide a written response regarding a complaint, the subject of a complaint shall respond to the Prosecutor's Office's request within a reasonable time.

950.09 Crime victims rights board.

(1) In this section, "board" means the crime victims rights board. The Ho-Chunk Nation Supreme Court shall serve as the victims rights board.

(2) At the request of one of the involved parties, the board may review a complaint made to the Prosecutor's Office under s. 950.08 (3) regarding a violation of the rights of a crime victim. A party may not request the board to review a complaint under this subsection until the Prosecutor's Office has completed its action on the complaint under s. 950.08 (3). In reviewing a complaint under this subsection, the board may not begin any investigation or take any action specified in pars. (a) to (d) until the board first determines that there is probable cause to believe that the subject of the complaint violated the rights of a crime victim. Based on its review of a complaint under this subsection, the board may do any of the following:

(a) Issue private and public reprimands of public officials, employees or agencies that violate the rights of crime victims provided under this chapter.

(b) Address a violation or alleged violation by a judge of the rights of crime victims provided under this chapter.

(c) Seek appropriate equitable relief on behalf of a victim if such relief is necessary to protect the rights of the victim. The board may not seek to appeal, reverse or modify a judgment of conviction or a sentence in a criminal case.

(d) Refer to the Prosecutor to bring civil actions to assess a forfeiture under s. 950.11. An action or proposed action authorized under this paragraph may be settled for such sum as may be agreed upon between the parties. In settling actions or proposed actions, the prosecutor shall treat comparable situations in a comparable manner and shall assure that any settlement bears a reasonable relationship to the severity of the offense or alleged offense. Forfeiture actions brought by the prosecutor shall be brought in the trial court.

(3) In addition to its powers under sub. (2), the board may issue reports and recommendations concerning the securing and provision of crime victims rights and services.

(4) Actions of the board are not subject to approval or review by the attorney general.

(5) The board shall promulgate rules establishing procedures for the exercise of its powers under this section.

950.095 Confidentiality of complaints.

(1)

(a) The records of the Prosecutor's Office relating to a complaint made under s. 950.08 (3) are confidential unless the subject of the complaint waives the right to confidentiality in writing to the Prosecutor's Office.

(am) Before a finding of probable cause under s. 950.09 (2), a complaint referred to the crime victims rights board under s. 950.09 is confidential unless the subject of the complaint waives the right to confidentiality in writing to the crime victims rights board.

(b) If a complaint becomes known to the public before the completion of action by the

Prosecutor's Office under s. 950.08 (3) or a finding of probable cause by the crime victims rights board under s. 950.09 (2), the Prosecutor's Office or the crime victims rights board, whichever is applicable, may issue statements in order to confirm that a complaint has been made or is being reviewed, to clarify the procedural aspects of actions taken under ss. 950.08 (3) and 950.09 (2), to explain the right of the subject of the complaint to respond to the complaint, to state that the subject of the complaint denies the allegations, if applicable, to state that action under ss. 950.08 (3) and 950.09 (2) has been completed and no basis for the complaint was found or to correct public misinformation.

(1m) In investigating a complaint made under s. 950.08 (3) or being reviewed under s. 950.09 (2), the Prosecutor's Office or the crime victims rights board, whichever is applicable, shall do all of the following:

- (a)** Act to avoid unnecessary embarrassment to and publicity for the subject of the complaint.
- (b)** Request any person contacted for information not to disclose that an investigation is being conducted or the nature of any inquiries made by the Prosecutor's Office or the crime victims rights board.

(2) This section does not preclude the Prosecutor's Office or the crime victims rights board from doing any of the following:

- (a)** Informing the person who made the complaint of the outcome of any action by the Prosecutor's Office or review by the crime victims rights board.
- (b)** Referring to the judicial commission information relating to alleged misconduct by or an alleged disability of a judge or court commissioner.
- (c)** Referring to an appropriate law enforcement authority information relating to possible criminal conduct or otherwise cooperating with a law enforcement authority in matters of mutual interest.
- (d)** Referring to an attorney disciplinary agency information relating to the possible misconduct or incapacity of an attorney or otherwise cooperating with an attorney disciplinary agency in matters of mutual interest.
- (e)** Disclosing to the Chief Justice of the Supreme Court or Chief Judge of the Trial Court information relating to matters affecting the administration of the courts.

950.10 Limitation on liability; grounds for appeal.

(1) No cause of action for money damages may arise against the Nation, any political subdivision of the Nation or any employee or agent of the Nation or a political subdivision of the Nation for any act or omission in the performance of any power or duty under this chapter or for any act or omission in the performance of any power or duty relating to the rights of, services for or notices to victims.

(2) A failure to provide a right, service or notice to a victim under this chapter is not a ground for an appeal of a judgment of conviction or sentence and is not grounds for any court to reverse or modify a judgment of conviction or sentence.

950.105 Standing. A crime victim has a right to assert, in a court in the jurisdiction in which the alleged violation occurred, his or her rights as a crime victim under the law. This section does not preclude a prosecutor from asserting a victim's statutory or constitutional crime victim's rights in a criminal case or in a proceeding or motion brought under this section.

950.11 Penalties. A public official, employee or agency that intentionally fails to provide a right specified under s. 950.04 (1v) to a victim of a crime may be subject to a forfeiture of not more than \$1,000 and to civil suit under the Nation's Code of Ethics.

Legislative History:

12/17/13	Legislature established the Criminal Code Workgroup through Resolution 12-17-13C.
12/11/14	The Criminal Code Workgroup presented the Criminal Code to the Administration Committee at which time it was referred to the full Legislature to be placed out for 45 Day Public Comment.
01/06/15	Legislature placed the Criminal Code out for 45 Day Public Comment by Resolution 01-06-15B.
03/17/15	Legislature placed the Criminal Code out for an additional 45 Day Public Comment by Resolution 03-17-15K.
05/05/15	Legislature enacted the Criminal Code through Resolution 05-05-15P.
05/17/16	Technical corrections made in accordance with Section 45 of the Legislative Organization Act (2 HCC § 11).