



**NTCSA**  
Supporting Our Circle

# Tribal Sexual Assault Legal Advocacy Support Toolkit

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Institute

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*The information provided in this product does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available are for general informational purposes only.*

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# I. Introduction

The Tribal Law and Policy Institute (TLPI), [www.Home.TLPI.org](http://www.Home.TLPI.org), is a Native American operated non-profit dedicated to providing free publication resources, comprehensive training, and technical assistance for Native nations and Tribal justice systems in pursuit of our vision to empower Native communities to create and control their own institutions for the benefit of all community members, now, and for future generations.

TLPI's collaborative partner in creating this resource is the Minnesota Indian Women's Sexual Assault Coalition (MIWSAC), [www.miwsac.org](http://www.miwsac.org). MIWSAC's vision is creating safety and justice through the teachings of our grandmothers, and its mission is: through unity, we will strengthen our voices and build resources to create awareness and eliminate sexual violence against Indian women and children. MIWSAC will vigorously apply our efforts toward influencing social change and reclaim our traditional values that honor the sovereignty of Indian women and children. This resource is created as partners on the [National Tribal Clearinghouse on Sexual Assault](#) (NTCSA), [www.SupportingOurCircle.org](http://www.SupportingOurCircle.org).

## A. Creation of The Toolkit

The Tribal Sexual Assault Legal Advocacy Support Toolkit (Toolkit) expands on a host of TLPI resources on addressing sexual assault in Indian country and on Tribal lands.<sup>[1]</sup> Some of those resources include:

- [\*Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking\*](#) (2017)

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[1] For more information about Sexual Assault in Indian Country, please see [www.home.tlpi.org/sexual-assault-publications](http://www.home.tlpi.org/sexual-assault-publications).

- *Tribal Court Judges Bench Book: Tribal Judicial Guide for Navigating Sexual Assault Cases* (2011)
- *Sexual Assault Response Teams: Resource Guide for the Development of a Sexual Assault Response Team (SART) in Tribal Communities* (2008)
- *Pathway to Hope: Healing Child Sexual Abuse* (2007)

With this Toolkit, TLPI hopes that Tribal victim advocates will have access to information to assist them in supporting victim's navigating legal systems and processes, with a special emphasis on the prosecution process and victim rights. The Toolkit is focused on information that is accessible, ready-to-use/reference, and educational. Recent TLPI work with this focus includes: *Pocket Guide: Tribal Victim Advocacy in Criminal Cases* (2022).

## **B. What This Resource Can Do**

This Toolkit was developed particularly for community-based advocates as a quick reference guide to needed educational information on sexual assault, navigating criminal prosecution process, victim's rights, and unique education and support needs for victims of sexual assault. It was developed with the intention that community-based advocates often need tools that can better help them with accessing information quickly. While this Toolkit is designed primarily for community-based advocates, it may be useful for other professionals who work with victims.

For the purposes of this publication, a community-based advocate is an agent of social change and a biased supporter of victims of violence and their expressed interests who prioritizes victim safety and offender accountability in all aspects of advocacy. The authors recognize that there are other advocates that may be hospital-based, prosecutor-based, law enforcement based, or court-based.

The target audience is community-based advocates accompanying victims to court and assisting them with navigating the criminal legal process. All references to “advocate” or “advocacy” refer to the work of community-based advocates.

This Toolkit is not legal advice and should not take the place of any required advocate training or education.

### **C. Listening Session Report**

The creation of this Toolkit was inspired by a need identified in listening sessions held by the Minnesota Indian Women’s Sexual Assault Coalition and its partners in the launch of the National Tribal Clearinghouse on Sexual Assault (NCTSA), [www.SupportingOurCircle.org](http://www.SupportingOurCircle.org). The purpose of the listening sessions was to gather feedback that would help shape project activities, ensuring that the project activities included information pertinent to the Tribal Clearinghouse, training and technical assistance, as well as cultural and traditional practices for addressing sexual assault in Indian Country.

In November 2024, the [National Tribal Clearinghouse on Sexual Assault Listening Sessions Report](#) was released. In response to the question “What types of resources should be included in the Clearinghouse?”, participants identified that in terms of legal and advocacy support the following would be helpful:

- Guides to navigate the prosecution process
- Advocacy training for survivors going through legal systems
- Educational materials on victims rights and where they are supported in law

The Toolkit aims to meet some of these expressed needs.

**A note on Legal Advocacy from the Washington State Coalition Against Domestic Violence: In the anti-violence field, the term “legal advocate” usually refers to a person who works at a community-based program or nonprofit. This person is usually not an attorney, but rather a lay advocate with in-depth knowledge of and experience with the legal system.**

**Legal advocacy is: •advocacy •with survivors •in a legal context**

**Typically, legal advocates have two major roles: Individual Advocacy assisting and advocating on behalf of individual domestic violence survivors with legal-related issues Systems Advocacy evaluating how legal systems are responding to survivors, identifying problems and advocating for systemic changes.**

## **II. Sexual Assault Against Tribal People**

**“Any work on this topic must acknowledge that the problem of sexual violence is part of a history and continued reality of systemic violence against Indigenous Peoples.”**

– Amnesty International Interview with Yolanda Francisco-Nez, Executive Director, Restoring Ancestral Winds, May 2021

Overall, sexual assault affects Tribal people in the same way it affects all victims of sexual assault. It is violent. It is traumatic. It is devastating, and not just physically. It is life-altering.

Sexual assault is a violent crime that injures a victim’s body, mind, emotions, and spirit. The devastation caused by the crime of sexual assault affects not only the individual, but also the victim’s family and community. The crime is life-altering.

What makes things more challenging for American Indian and Alaska Native people is that the pain here is historical, which has resulted in changes to the way Tribal people and Tribal Nations respond to sexual assault. Prior to colonization, sexual assault was virtually nonexistent within Tribal communities due to traditional values and belief systems based in gender equality. Colonization requires violence, violence not just to the land but to people.<sup>[2]</sup> The effect of that type of violence reverberates in the bodies of Tribal people.<sup>[3]</sup>

In response to the violence that came with colonization, there has not been support or ability to talk about sexual assault openly and without judgement. For example, in close-knit Tribal communities, victims may be reluctant to report sexual assault crimes because of confidentiality concerns or because they fear retribution from the perpetrator or his family. Additionally, Tribal authority to address sexual assault has been diminished and attacked.

As a result of these impacts, it ultimately has become engrained in individuals that you do not talk about sexual assault. In Tribal communities, there is the added pain that the violence enacted against you has historical roots, and those roots have impacted current ways for you to seek healing and justice.

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[2] “The Colonial Roots of Violence Against Native American Women.” 2023. Columbia University Mailman School of Public Health. March 16, 2023. [Throughout the resource, the pronouns she/her will be use when referring to a victim. This is consistent with the Tribal Law and Policy Institute’s philosophy on gender-based crime and the available data that demonstrates the extremely high rates of violence against American Indian and Alaska Native women.](#)

[3] Rogers-LaVanne, Mary P., Alyssa C. Bader, Alida De Flamingh, Sana Saboowala, Chuck Smythe, Bernadine Atchison, Nathan Moulton, et al. 2023. “Association Between Gene Methylation and Experiences of Historical Trauma in Alaska Native Peoples.” *International Journal for Equity in Health* 22 (1). <https://doi.org/10.1186/s12939-023-01967-7>. And Pember, Mary Annette. 2015. “Trauma May Be Woven Into DNA of Native Americans.” *USC Center for Health Journalism*. May 28, 2015 <https://centerforhealthjournalism.org/our-work/reporting/trauma-may-be-woven-dna-native-americans#:~:text=The%20researchers%20found%20that%20Native,challenges%2C%E2%80%9D%20the%20researchers%20wrote.americans#:~:text=The%20researchers%20found%20that%20Native,challenges%2C%E2%80%9D%20the%20researchers%20wrote>.

Amnesty International identified the following factors which compound the high rates of sexual violence against American Indian and Alaska Native women:<sup>[4]</sup>

- Federal government's steady erosion of Tribal government authority
- Complex jurisdictional maze that Native survivors of sexual violence must navigate when seeking justice
- Chronic under-resourcing of the law enforcement agencies and Indigenous health services
- Inadequate response of justice systems to crimes of sexual violence

### **Amnesty International Reports and Resources:**

- *The Never-Ending Maze: Continued Failure to Protect Indigenous Women from Sexual Violence in the USA* (2022)
  - Never-Ending Maze One Pager
- *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA* (2007)

### **History of Sexual Violence - Resource List**

Here is a brief bibliography of resources regarding the history of sexual violence in the U.S. and its impacts on American Indian and Alaska Native people. Please check out these resources and you can also share them with others for educational purposes.

- "Timeline of the History of Sexual Violence in the U.S.," Tulane University (n.d.)
- Begay, Chrystal and Tinesha Zandamela, Ballard Brief: "Sexual Assault on Native American Reservations in the US," Brigham Young University Ballard Center (2018).
- Bono, Martha, "Historicizing Sexual Violence Against Native American Women: Colonization, Intracommunal Shifts, and Creative Forms of Discourse" (2019). Scripps Senior Theses. 1308.

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[4] Amnesty International. IBC. "The Never-Ending Maze: Continued Failure to Protect Indigenous Women From Sexual Violence in the USA." IBC. <https://www.amnestyusa.org/maze/>.

- Deer, Sarah. *The Beginning and End of Rape: Confronting Sexual Violence in Native America*. University of Minnesota Press, 2015. <https://www.upress.umn.edu/9780816696338/the-beginning-and-end-of-rape/>.
- Deer, Sarah. "Decolonizing Rape Law: A Native Feminist Synthesis of Safety and Sovereignty," *Wicazo Sa Review* (2009): 149.
- Deer, Sarah. "Toward an Indigenous Jurisprudence of Rape," *Kansas Journal of Law and Public Policy* 14 (2004): 121.
- Elser, Katherine E., "Sexual Violence as a Tool of Indigenous Genocide" (2022). Student Publications. 979.
- Hamby, S. (2004, May). *Sexual Victimization in Indian Country*. Harrisburg, PA: VAWnet, a project of the National Resource Center on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Retrieved April 28, 2025, from: <https://www.niwrc.org/sites/default/files/images/resource/Sexual-Victimization-in-Indian-Country.pdf>
- National Indigenous Women's Resource Center, Advocacy Information Packet (2020).
- Osman, Jamila, "What is Colonialism? A History of Violence, Control and Exploitation," *Teen Vogue* (2020).

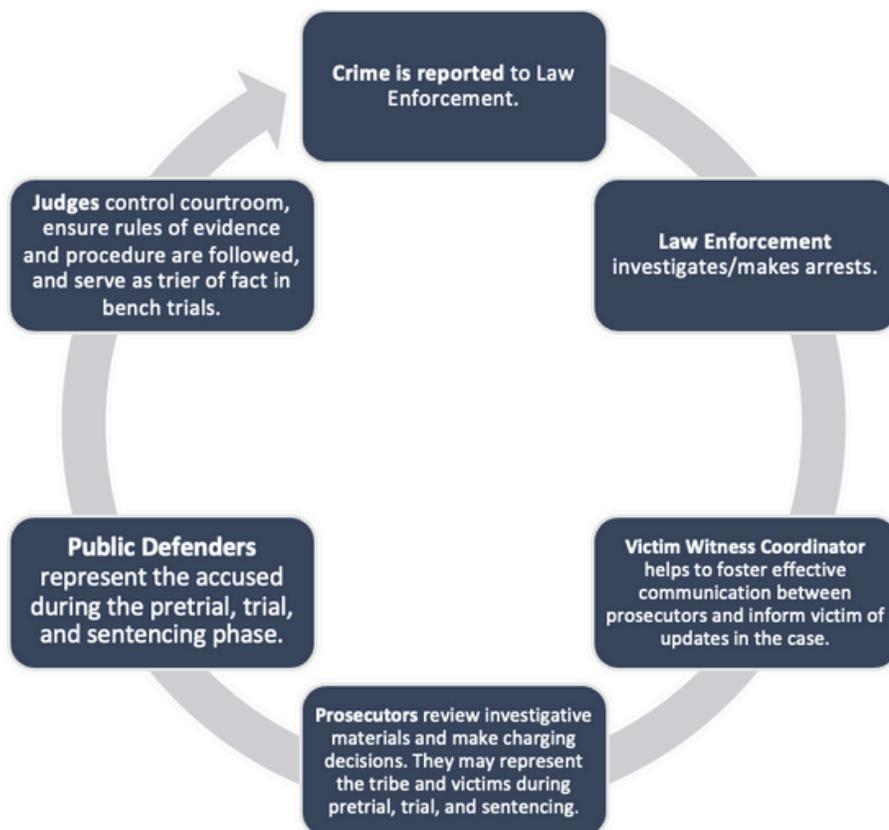
## III. Legal Navigation

### A. Navigating Criminal Prosecution

Once a crime is alleged to have occurred, there are generally five stages within most tribal criminal justice systems:

A. Crime Reported by Victim or Witness <sup>5</sup>	B. Investigation & Arrest	C. Prosecution & Pretrial Services	D. Adjudication	E. Sentencing	F. Post adjudication & Corrections
	<ul style="list-style-type: none"> <li>▪ Interviews</li> <li>▪ Investigations</li> <li>▪ Arrest</li> </ul>	<ul style="list-style-type: none"> <li>▪ Charges Filed/Complaints</li> <li>▪ Appearance in Court</li> <li>▪ Preliminary Hearings</li> <li>▪ Bail/Defendant Hearing</li> <li>▪ Grand Jury</li> </ul>	<ul style="list-style-type: none"> <li>▪ Arraignment</li> <li>▪ Guilty/Not Guilty Plea</li> <li>▪ Trial</li> <li>▪ Conviction</li> </ul>	<ul style="list-style-type: none"> <li>▪ Sentencing</li> <li>▪ Sanctions</li> </ul>	<ul style="list-style-type: none"> <li>▪ Probation</li> <li>▪ Detention/Prison</li> </ul>

From the time that a crime is reported, there are a number of criminal justice system professionals that will have specific responsibilities related to the investigation, prosecution, and adjudication of the crime. Note that every criminal legal system will vary.



[5] Adapted from “Resources: A Brief Description of the Federal Criminal Justice Process.” FBI.gov, accessed April 15, 2025.

**ACTION STEP:** *Consider developing a chart that reflects the roles and responsibilities of criminal justice system professionals in your Tribal jurisdiction or any jurisdiction that you may assist a victim in navigating.*

For a detailed discussion of each step of the criminal process outlined above with suggested advocacy steps during each phase, we encourage you to 1) view and 2) print TLPI's [Pocket Guide: Tribal Victim Advocacy in Criminal Cases](#) (2022). The print instructions for the Pocket Guide are meant for victim advocates to print and carry in their bag for quick reference!

When navigating criminal justice systems with victims of sexual assault, there are some considerations with respect to appearing in court for victim advocates providing legal advocacy in Tribal court. On the following page is a non-exhaustive list of "Court Appearance and Decorum Tips."

## ***Court Appearance & Decorum Tips***

- Learn the location of and tour any Tribal court and/or detention facilities.
- Bring a copy of statutes you may need to reference including those that mandate relief for the victim or prescribe victim rights. Take additional copies in case attorneys need a copy.
- Being on time for court and urge the victim to be on time, which usually means being in the courthouse at least thirty minutes prior to the hearing.
- If victim is providing testimony, assist in practicing direct and cross examination. Coordinate with victim's attorney if they have one.
- Making sure the victim has a safe and private place to wait for the case to be called (you might call ahead and ask the court clerk for such a space).
- NOT bringing confidential information with you to court unless court ordered (through a subpoena duces tecum) to do so. This is critical as any documentation that is brought to court is subject to discovery.
- Dressing respectfully and advising your client to do the same. This would include conservative dress for the tribal community.
- Standing when speaking to the judge.
- Speaking clearly and loudly enough so the recorder will capture your words. Usually sitting on the side of the courtroom as the victim's attorney.
- If the victim has been served with a subpoena, appearing at the time and place commanded. Do not disrespect the Tribal court by not appearing.
- If the victim has been served with a subpoena duces tecum, appearing at the time and place commanded and bringing the documents listed in the subpoena duces tecum. (The victim may need to seek assistance of legal counsel to object to the disclosure of records.)
- NOT discussing the case while on the courthouse grounds. It is amazing how many ears are in very private places on the courthouse grounds.
- Be prepared to assist victim in preparing/delivering a victim impact statement during sentencing.
- Accompany the victim to any post sentencing hearings. Safety plan accordingly.

## B. Victim's Rights

Generally, core victim's rights<sup>[6]</sup> include the following:

- Right to be Treated with Fairness, Dignity, Sensitivity, and Respect
- Right to Attend Hearings
- Right to Compensation
- Right to Be Heard
- Right to Be Informed
- Right to Privacy
- Right to Protection
- Right to Restitution
- Right to Return of Property
- Right to a Speedy Trial
- Right to Enforcement/Remedies of Victim

In addition to these “core” rights, Tribes as sovereigns may want to add and/or tailor victim's rights statutes to address issues victims face in their tribal community. Please note that while all the victim's rights listed above are critical to empower and protect victim's during the criminal process, child victims of crime may need additional rights that can be placed into a Tribe's victim's rights statutes.<sup>[7]</sup> For example, appointing a dedicated attorney to litigate and advance the child's voice, utilizing statutes to protect the child's privacy, seeking courtroom accommodations such as closed-circuit television or testifying behind a screen for providing testimony, providing access to support persons or animals, and using an expert to explain what might be perceived as oppositional or noncooperating behavior that may result from trauma.

For more discussion on this topic, be sure to check out: [Condensed Guide for Drafting Tribal Victim's Rights Codes \(2022\)](#) from TLPI.

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[6] “About Victims' Rights,” VictimLaw.org.

[7] For more information on this topic, review other legal code resource publications by the Tribal Law and Policy Institute, <https://www.home.tlpi.org/legal-code-development-series>.

**ACTION STEP:** Consider reviewing your Tribe's codes to see if any victim's rights are outlined in Tribal code and develop a quick reference sheet of those rights.

## **Quick Reference - State and Federal Victim's Rights**

### **State Legislation**

- National Crime Victim Law Institute, "[Victim Law Library – Rights by Jurisdiction](#)," Law.lclark.edu, accessed April 28, 2025.

Available state links provided below. Visit the Victim Law Library to see more jurisdiction specific laws on privacy, confidentiality, privilege and much more.

[Alabama](#)

[Alaska](#)

[Arizona](#)

[Arkansas](#)

[California](#)

[Colorado](#)

[Florida](#)

[Georgia](#)

[Idaho](#)

- [Select Victims' Rights](#)

- [Victims' Rights Guide](#)

[Illinois](#)

[Indiana](#)

[Iowa](#)

[Kansas](#)

[Kentucky](#)

[Louisiana](#)

[Maryland](#)

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## ***Federal Legislation***

### **Crime Victims' Rights Act** **18 U.S.C. § 3771 – Crime victims' rights**

(a) Rights of Crime Victims.—A crime victim has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- (3) 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.
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (5) The reasonable right to confer with the attorney for the Government in the case.
- (6) The right to full and timely restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (9) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- (10) The right to be informed of the rights under this section and the services described in section 503(c) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(c)) [1] and provided contact information for the Office of the Victims' Rights Ombudsman of the Department of Justice.

(b) Rights Afforded.—

(1) In general.— In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.

(2) Habeas corpus proceedings.—

(A) In general.— In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).

(B) Enforcement.—

(i) In general.— These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).

(ii) Multiple victims.— In a case involving multiple victims, subsection (d)(2) shall also apply.

(C) Limitation.— This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.

(D) Definition.— For purposes of this paragraph, the term “crime victim” means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(c) Best Efforts To Accord Rights.—

(1) Government.— Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime

shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).

(2) Advice of attorney.—The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).

(3) Notice.— Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

(d) Enforcement and Limitations.—

(1) Rights.— The crime victim or the crime victim’s lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.

(2) Multiple crime victims.— In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

(3) Motion for relief and writ of mandamus.—The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim’s right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed, unless the litigants, with the approval of the court, have stipulated to a different time period for consideration. In deciding such application, the court of appeals shall apply ordinary standards of appellate review. In no event shall proceedings be

stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

(4) Error.— In any appeal in a criminal case, the Government may assert as error the district court’s denial of any crime victim’s right in the proceeding to which the appeal relates.

(5) Limitation on relief.—In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—

(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;

(B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and

(C) in the case of a plea, the accused has not pled to the highest offense charged.

This paragraph does not affect the victim’s right to restitution as provided in title 18, United States Code.

(6) No cause of action.— Nothing in this chapter 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 United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

(e) Definitions.—For the purposes of this chapter:

(1) Court of appeals.—The term “court of appeals” means—

(A) the United States court of appeals for the judicial district in which a defendant is being prosecuted; or

(B) for a prosecution in the Superior Court of the District of Columbia, the District of Columbia Court of Appeals.

(2) Crime victim.—

(A) In general.— The term “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.

(B) Minors and certain other victims.— In the case of a crime victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardians of the crime victim or the representatives of the crime victim’s estate, family members, or any other persons appointed as suitable by the court, may assume the crime victim’s rights under this chapter, but in no event shall the defendant be named as such guardian or representative.

(3) District court; court.— The terms “district court” and “court” include the Superior Court of the District of Columbia.

(f) Procedures To Promote Compliance.—

(1) Regulations.— Not later than 1 year after the date of enactment of this chapter, the Attorney General of the United States shall promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials with the obligations described in law respecting crime victims.

(2) Contents.—The regulations promulgated under paragraph (1) shall—

(A) designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim;

(B) require a course of training for employees and offices of the Department of Justice that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims;

(C) contain disciplinary sanctions, including suspension or termination from employment, for employees of the Department of Justice who willfully or wantonly fail to comply with provisions of Federal law pertaining to the treatment of crime victims; and

(D) provide that the Attorney General, or the designee of the Attorney General, shall be the final arbiter of the complaint, and that there shall be no judicial review of the final decision of the Attorney General by a complainant.

**Victims' Rights and Restitution Act**  
**34 U.S.C. § 20141 – Services to victims**

(a) Designation of responsible officials

The head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime shall designate by names and office titles the persons who will be responsible for identifying the victims of crime and performing the services described in subsection (c) at each stage of a criminal case.

(b) Identification of victims At the earliest opportunity after the detection of a crime at which it may be done without interfering with an investigation, a responsible official shall—

- (1) identify the victim or victims of a crime;
- (2) inform the victims of their right to receive, on request, the services described in subsection (c); and
- (3) inform each victim of the name, title, and business address and telephone number of the responsible official to whom the victim should address a request for each of the services described in subsection (c).

(c) Description of services

- (1) A responsible official shall—
  - (A) inform a victim of the place where the victim may receive emergency medical and social services;
  - (B) inform a victim of any restitution or other relief to which the victim may be entitled under this or any other law and [1] manner in which such relief may be obtained;
  - (C) inform a victim of public and private programs that are available to provide counseling, treatment, and other support to the victim; and

(D) assist a victim in contacting the persons who are responsible for providing the services and relief described in subparagraphs (A), (B), and (C).

(2) A responsible official shall arrange for a victim to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender.

(3) During the investigation and prosecution of a crime, a responsible official shall provide a victim the earliest possible notice of—

(A) the status of the investigation of the crime, to the extent it is appropriate to inform the victim and to the extent that it will not interfere with the investigation;

(B) the arrest of a suspected offender;

(C) the filing of charges against a suspected offender;

(D) the scheduling of each court proceeding that the witness is either required to attend or, under section 10606(b)(4) [2] of title 42, is entitled to attend;

(E) the release or detention status of an offender or suspected offender;

(F) the acceptance of a plea of guilty or nolo contendere or the rendering of a verdict after trial; and

(G) the sentence imposed on an offender, including the date on which the offender will be eligible for parole.

(4) During court proceedings, a responsible official shall ensure that a victim is provided a waiting area removed from and out of the sight and hearing of the defendant and defense witnesses.

(5) After trial, a responsible official shall provide a victim the earliest possible notice of—

(A) the scheduling of a parole hearing for the offender;

(B) the escape, work release, furlough, or any other form of release from custody of the offender; and

(C) the death of the offender, if the offender dies while in custody.

(6) At all times, a responsible official shall ensure that any property of a victim that is being held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed for evidentiary purposes.

(7) The Attorney General or the head of another department or agency that conducts an investigation of a sexual assault shall pay, either directly or by reimbursement of payment by the victim, the cost of a physical examination of the victim which an investigating officer determines was necessary or useful for evidentiary purposes. The Attorney General shall provide for the payment of the cost of up to 2 anonymous and confidential tests of the victim for sexually transmitted diseases, including HIV, gonorrhea, herpes, chlamydia, and syphilis, during the 12 months following sexual assaults that pose a risk of transmission, and the cost of a counseling session by a medically trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. A victim may waive anonymity and confidentiality of any tests paid for under this section.

(8) A responsible official shall provide the victim with general information regarding the corrections process, including information about work release, furlough, probation, and eligibility for each.

(d) No cause of action or defense

This section does not create a cause of action or defense in favor of any person arising out of the failure of a responsible person to provide information as required by subsection (b) or (c).

(e) Definitions

For the purposes of this section—

(1) the term “responsible official” means a person designated pursuant to subsection (a) to perform the functions of a responsible official under that section; and

(2) the term “victim” means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime, including—

(A) in the case of a victim that is an institutional entity, an authorized representative of the entity; and

(B) in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, one of the following (in order of preference):

(i) a spouse;

(ii) a legal guardian;

(iii) a parent;

(iv) a child;

(v) a sibling;

(vi) another family member; or

(vii) another person designated by the court.

## IV. Advocacy Support

***“When victims are unable to get the exams, or do not get the exams in a culturally competent and appropriate manner, everyone loses: victims are not helped, perpetrators’ crimes remain unaddressed, and public safety is not improved.”<sup>[8]</sup>***

### A. Unique Needs of Sexual Assault Victims

Sexual assault victims’ needs can vary from person to person. A victim advocate must keep a victim-centered and trauma-informed approach throughout their time supporting a victim. However, there are some unique needs for sexual assault victims, particularly American Indian and Alaska Native victims.

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[8] Zweig, Janine M., Lisa Newmark, George Mason University, Darakshan Raja, Urban Institute, and Megan Denver. 2014. “Evaluating Sexual Assault Forensic Exam Payment.” Urban Institute, p.iii., <https://www.urban.org/sites/default/files/publication/22101/413118%20-%20Sexual-Assault-Medical-Forensic-Exams-and-VAWA--Payment-Practices-Successes-and-Directions-for-the-Future.pdf>.

Researchers from the Urban Institute, a nonprofit research organization, identified the following:

- Tribal jurisdictions may not have access to trained Sexual Assault Nurse Examiners
- Some victims do not seek services due to past experiences with racism
- Cultural barriers prevent some victims from seeking services and using the justice system
- American Indian communities may distrust justice and service systems due to historical trauma and mistreatment<sup>[9]</sup>

Other challenges for Tribal sexual assault victims include:

- Geographic isolation
  - Lack of accessible services and resources including transportation, sexual assault medical forensic exams and payment for those exams
- Lack of education or knowledge around sexual assault – what it is, where to seek help
- Lack of cultural competency from nearest service providers and first responders
- Protecting children/dependents
  - May choose to compromise their own needs and safety to protect others
- Competent facilities and trained providers
- Shame, stigma, and fear of retaliation
  - Some notions of shame and stigma may come from cultural norms
  - Perpetrators may threaten the safety of the victim's family, children, pets etc.

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[9] Raja, Darakshan. 2014. "The Barriers American Indian Women Face in Accessing Sexual Assault Exams and Services." Urban Institute. May 30, 2014. [https://www.urban.org/urban-wire/barriers-american-indian-women-face-accessing-sexual-assault-exams-and-services#:~:text=Here's%20what%20our%20research%20revealed,Assault%20Nurse%20Examiners%20\(SANEs\).](https://www.urban.org/urban-wire/barriers-american-indian-women-face-accessing-sexual-assault-exams-and-services#:~:text=Here's%20what%20our%20research%20revealed,Assault%20Nurse%20Examiners%20(SANEs).)

- Jurisdictional maze which results in lack of offender accountability by any system – federal, state, Tribal
- Distrust of systems due to historical trauma – federal, state, or even Tribal
- Lack of understanding of legal rights and options
  - Victim's Rights, Victim Compensation Funds

## **B. Educating Victims on Legal Processes**

Empowering the victim with information regarding legal processes is a crucial responsibility in providing legal advocacy. However, providing information to the victim is not solely a victim advocate's responsibility. That responsibility is on every discipline within a criminal justice response. For more discussion on this topic, be sure to read: *Condensed Guide for Drafting Tribal Victim's Rights Codes (2022)* from TLPI. Below are some tips on educating victims on legal processes.

### ***Educational Empowerment Tips***

- Take a hands-on approach
  - Before walking into a courtroom with a victim, physically draw or map out the layout of the court and who may be present.
  - Allow the space for the victim to visualize what they will be walking into.
  - Take the victims into a courtroom and explain the facilities and the different people that may be present.
    - Who will be seated where, Who can see me?
    - Example – reassure where you will be seated while a victim gives testimony.
  - Role play different scenarios or typical processes so the victim has a better sense of what is going to happen in the courtroom.
- Stress the importance of safety at every juncture.
  - Be sure to ask and respect victim knowledge of their perpetrator(s) behaviors, motivations, and capabilities.

- Ask questions throughout providing legal advocacy that help the victims vocalize their fears.
  - Address what you can and then be honest with victims about what you do not know or what you can address.
  - If another person may be able to address the concern, the victim advocate can help the victim engage that person and help build trust with them.
- Help the victim make lists along the way to address their concerns.
  - Questions that could be answered by someone other than the victim advocate presents an opportunity for the victim advocate to facilitate a connection and build trust between the victim and others.
  - Example – list of questions for the prosecutor, list of question for the investigator.
- Develop reference materials.
  - List of common legal terms.
  - List common terminology used in court.
  - Sheet of applicable Victim's Rights.
  - Flow chart of your Tribal court process.

### **C. Victim Advocates and Victim's Rights Enforcement**

The following chart is taken from TLPI's publication, *Condensed Guide for Drafting Tribal Victim's Rights Codes* (2022). For additional suggested victim's rights enforcement steps by other disciplines within a criminal justice response, please review Part 4 of the Condensed Guide.

## **Possible Victim's Rights Enforcement Steps - Victim Advocate**

<b>Right of a Victim</b>	<b>Steps that a VICTIM ADVOCATE can take to help with enforcement of the right</b>
<b>Right to Attend Hearings</b>	<ul style="list-style-type: none"> <li>• Provide information to victim regarding hearing dates, times, etc.</li> <li>• Assist with locating transportation for the victim to attend.</li> <li>• Accompany victim to hearings.</li> <li>• Assist with developing an ongoing safety plan for the victim to attend hearings.</li> </ul>
<b>Right to Compensation</b>	<ul style="list-style-type: none"> <li>• Assist with completing forms to secure victim compensation.</li> <li>• Accompany victim to compensation related processes.</li> </ul>
<b>Right to Be Heard</b>	<ul style="list-style-type: none"> <li>• Assist the victim with a victim impact statement.</li> <li>• Utilize relevant victim right's statutes to be meaningfully heard by the prosecutor, in addition to the court.</li> </ul>
<b>Right to Be Informed</b>	<ul style="list-style-type: none"> <li>• Provide information to victim about victim's rights.</li> <li>• Provide information to victim about hearing.</li> <li>• Assist in obtaining and providing information to victim if the defendant is released at any point.</li> </ul>
<b>Right to Privacy</b>	<ul style="list-style-type: none"> <li>• Utilize relevant statutory protections to protect victim information (identity, address, contact information).</li> <li>• Utilize relevant statutory protections to protect client/victim information shared with the advocate (e.g., victim-advocate privilege).</li> </ul>

<b>Right of a Victim</b>	<b>Steps that a VICTIM ADVOCATE can take to help with enforcement of the right</b>
<b>Right to Protection</b>	<ul style="list-style-type: none"> <li>• Work with victim to secure emergency shelter and other services.</li> <li>• Work with victim on safety planning, including law enforcement protection when needed.</li> <li>• Identify secure meeting rooms at the courthouse.</li> <li>• Protect from intrusive or misuses of legal processes.</li> </ul>
<b>Right to Restitution</b>	<ul style="list-style-type: none"> <li>• Provide information to victim relevant to documenting and keeping a record of damages (loss of wages, medical costs) or injury to person or property.</li> <li>• Assist and utilize legal processes to promote enforcement of court-ordered restitution.</li> </ul>
<b>Right to Return of Property</b>	<ul style="list-style-type: none"> <li>• Accompany victim to retrieve personal property in a safe manner.</li> <li>• Assist the victim in ensuring the timely return victim's property from law enforcement and/or the court subsequent to investigation.</li> </ul>
<b>Right to Speedy Trial</b>	<ul style="list-style-type: none"> <li>• Assist the victim in asserting relevant statutory avenues for a speedy trial including meeting with the prosecutor or making objections to continuances before the court.</li> <li>• Help ensure victim is informed of any potential delays.</li> </ul>
<b>Right to Enforcement/Remedies</b>	<ul style="list-style-type: none"> <li>• Assist the victim in lodging any enforcement complaints and attend any enforcement hearings or meetings with the victim.</li> </ul>

## V. Action Plan

The Action Plan included in this Toolkit focuses on assisting victim advocates in identifying action steps to take to improve their legal advocacy support skills. A cover page is provided to help identify an overall goal and possible stakeholders that may need to be engaged. The cover page is followed by a fillable chart to list action steps to be taken. We suggest reviewing the suggested Action Steps below before filling out the template. Remember, if using the Action Plan in individual cases, your action steps will be guided by the victim's wishes and choices.

For more discussion of Tribal sexual assault and related code development, please reference the following resources:

- [\*Condensed Guide for Drafting Tribal Victim's Rights Codes\* \(2022\)](#)
- [\*Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking\* \(2017\) \[note – not yet updated to address “sexual violence” as defined in the Violence Against Women Act of 2022\]](#)

### ***Possible Initial Action Steps***

1) Review your program's current policies and procedures.

Reviewing your current policies and procedures is always a good refresher. Fresh eyes can help identify gaps and ensure that policies and procedures are not overburdensome. Policies that are too rigid may feel insurmountable or unfair to victims. There must be a clear understanding of why each policy exists (such as to keep people safe) so the question must be asked “Is this policy necessary to keep people safe?” in the review and development process.

Map out the criminal prosecution processes for the jurisdictions your victims often navigate.

2) Map out the criminal prosecution processes for the jurisdictions your victims often navigate.

- a. Tribal?
- b. State?
- c. Federal?

It may be helpful to have notes on the location of local courts and contact information for court staff. To map out a Tribal criminal prosecution process, you may need to review applicable rules of court or relevant Tribal codes.

3) List the potential players involved in the justice system you help victims navigate. You may want to make jurisdictionally specific lists.

- a. Tribal?
- b. State?
- c. Federal?

Creating this list can assist you in recognizing who may be working with and working toward building strong and healthy working relationships and possibly systems change.

4) Reflect on your past experiences helping victims navigate the criminal justice system. Take note of the following:

- a. Was victim safety compromised at any point?
- b. Where were there barriers to victim empowerment?
- c. Were there processes or approaches that were not victim-centered or trauma-informed?

When finished reflecting on the following questions, ask yourself how you would have protected victim safety, empowered the victim through the process, and adjusted the process or approach to be more victim-centered or trauma-informed. These can help you create action steps to

address each area of concern. For example, action steps from that reflection might include:

- a. Educating Tribal leadership on the importance of addressing sexual assault
- b. Educating law enforcement regarding trauma-informed interviewing and reporting
- c. Empowering the victim with knowledge of victim's rights laws
- d. Approaching Tribal leadership regarding the development of victim's rights codes
- e. Revising your program's current policies and procedures

***Further, steps in your Action Plan*** should be identified by your specific program and informed by your community conditions. Below is a draft chart to tailor for your use, and to use continuous as you improve your legal advocacy skills for victims of sexual assault.

## Cover Page for Tribal Action Plan Legal Advocacy in Sexual Assault Cases

**This cover page is designed for you to identify both your overall goal and the overall stakeholders involved. In addition to the Cover Page, this Tribal Action Plan template includes a separate worksheet page for you to customize:**

**Overall goal:** This can be a simple statement (such as “Be prepared to assist victims of sexual assault in navigating various justice systems”). Or, it can be more detailed and incorporate more specific information concerning the who, what, why, where, when, and how involved in the overall goal.

**Stakeholders:** Teamwork is a cornerstone to effectively create positive change in our Tribal communities. The makeup of a stakeholders task force/team should be unique to the needs of your community. Who are the stakeholders? Please list the entire range of Stakeholders that should be included when thinking about your action steps to improve legal advocacy efforts for sexual assault victims. Think about how to engage Stakeholders. Team members/stakeholders would likely include: Victim Advocates, Victims, Judges, Prosecutors, Public Defenders, Probation, Court Personnel, Child Welfare, Guardian ad litem, Behavioral Health, Correctional Facility Staff, Community Coordinated Response Team and Sexual Assault Response Team.

**REMINDER:** In individual cases, a victim's wishes and choices should guide your steps. Action steps identified in a particular case may need to be adjusted or not taken based on the victim's input.

### Overall Goal

### Stakeholders

## Tribal Action Plan Legal Advocacy in Sexual Assault Cases - How to Better Support Victims

This Tribal Action Plan is provided to assist victim advocates in thinking about what steps need to be taken to assist them in improving their legal advocacy skills for sexual assault victims. This Action Plan can be adapted for other purposes as identified by the victim advocate. If using this template in an individual case, remember victim input is essential to guiding any steps you take in providing legal advocacy.

Key Tasks/Activities	Person/Agency Responsible	Additional Agencies to Involve	Completion Date	T/A Needs	Budget Considerations	Issue/Challenges

# Guidance for the Overall Tribal Action Plan - Legal Advocacy in Sexual Assault Cases

## Key Tasks/Activities:

List each step that you need to provide improved legal advocacy to victims of sexual assault.

## Person or agency responsible:

List the person or agency responsible for each specific action step.

## Additional agencies to involve:

Who are the additional community partners/stakeholders (if any)?

Examples could include Victim Advocates, Victims, Judges, Prosecutors, Public Defenders, Probation, Court Personnel, Community Coordinated Response Team and Sexual Assault Response Team. Who are the agencies outside the Tribe that you may need to work? (Such as a state court, etc.)

## Completion date:

List the date that you intend to complete each action step.

## Technical Assistance (TA) Needs:

What assistance do you need from any TA providers (MIWSAC, TLPI, etc.)?

## Budget Considerations/Related Costs:

What costs are associated with this step?

What options do you have for supporting these costs?

Do you have an existing grant that might support a portion of these costs?

# NTCSA Project Partners



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