

CHAPTER 3-5 CRIME VICTIM COMPENSATION

3-5-1

Name

This Chapter shall be known as the Crime Victim Compensation Chapter.

3-5-2

Definitions

(a) "Business Council" means the Colville Business Council, the governing body of the Colville Indian Reservation.

(b) "Criminal Act" means an act committed or attempted within tribal jurisdiction which is punishable as a felony, gross misdemeanor under the laws of Federal Government, state or tribe. Provided, that the operation of a motor vehicle, motorcycle, train, boat or aircraft in violation of law does not constitute a criminal act unless the injury, damage or death was intentionally inflicted or the operation thereof was part of the commission of another criminal act as defined in this section, Provided further:

(1) That neither an acquittal in a criminal prosecution nor the absence of any such prosecution is admissible in any claim or proceeding under this Chapter as evidence of the noncriminal character of the acts giving rise to such claim or proceeding;

(2) That evidence of a criminal conviction arising from acts which are the basis for a claim or proceeding under this Chapter is admissible in such claim or proceeding for the limited purpose of providing the criminal character of the acts; and

(3) That acts which, but for the insanity or mental irresponsibility of the perpetrator, would constitute criminal conduct are deemed to be criminal conduct within the meaning of this Chapter.

(c) "Chapter" means the Crime Victim Compensation Chapter.

(c) "Reservation" means any land within the exterior boundaries of the Colville Indian Reservation and any lands outside of the exterior boundaries where tribal jurisdiction exists.

(e) "Tribal Court" means the Colville Tribal Court created by the subchapter on Establishment of Court under Chapter 1-1 of the Law and Order Code.

(f) "Tribal Prosecuting Attorney" means the attorney appointed by the Business Council to represent the Tribes in civil and criminal proceedings before the Tribal Court.

(g) "Tribes" mean the Confederated Tribes of the Colville Indian Reservation.

(h) "Victim" means a person who suffers bodily injury, property damage or death as a proximate result of a criminal act of another person, the victim's own good faith and reasonable effort to prevent a criminal act, or his good faith effort to apprehend a person reasonably suspected of engaging in a criminal act. Victim shall also include his parent, guardian, dependent, heir or beneficiary.

3-5-3

Authority

This Crime Victim Compensation Chapter was adopted by tribal resolution number 1982-43 of the Colville Business Council pursuant to authority granted by the Constitution and By-Laws of the Tribes approved on February 26, 1938, by the Commissioner of Indian Affairs.

This Chapter shall apply to all lands and persons within the exterior boundaries of the Colville Indian Reservation and lands where tribal jurisdiction exists and shall become immediately effective upon the approval of this Chapter by the Business Council.

- 3-5-4** **Intent**
It is the intent of the Business Council of the Tribes to provide a method of compensating and assisting innocent victims of criminal acts who suffer bodily injury, property damage, or death as a consequence thereof.
- 3-5-5** **Duties of Tribal Prosecuting Attorney**
It shall be the duty of the tribal prosecuting attorney to establish and administer a program of compensation to victims of criminal acts within the terms and limitations of this Chapter. In so doing, the tribal prosecuting attorney shall adopt rules and regulations necessary to the administration of this Chapter, not inconsistent with any judicial rule or regulation of the Tribal Court.
- 3-5-6** **Civil Actions Authorized**
The tribal prosecuting attorney shall be authorized to file civil actions in Tribal Court in the name of the Tribes on behalf of victims of criminal acts. Such civil actions shall be filed against the perpetrators of said criminal acts for compensation for bodily injury, property damage, or death in accordance with this Chapter. Such civil actions shall be filed only with the written permission of the victim. The Tribes shall bear the expense of the litigation.
- 3-5-7** **Right of Action for Damages**
(a) The victim may elect to have the Tribes, as parents Patriae, to seek damages in Tribal Court from the person or persons liable for the claimed injury, damage or death resulting from criminal acts under this Chapter.

(b) No right of action at law for damages incurred as a consequence of criminal act shall be lost as a consequence of an election under this Chapter.

(c) Such a right of action shall not include the Tribes and this Chapter shall not be deemed a waiver of the Tribe's sovereign immunity.
- 3-5-8** **Complaints**
A complaint arising under this Chapter filed in the Tribal Court shall state the nature and facts from which the action arise.
- 3-5-9** **No Right to Jury Trial**
Civil actions arising under this Chapter shall be tried by the judges of the Tribal Court. There shall be no right to a jury trial.
- 3-5-10** **Standard of Proof**
The Tribe in civil actions arising under this Chapter shall have the burden to prove its case by preponderance of the evidence.
- 3-5-11** **Statute of Limitations**
No complaint shall be filed in a civil action arising under this Chapter unless the events shall have occurred within a one (1) year period prior to the date of filing of the complaint.
- 3-5-12** **Notice and Service**
Civil actions arising under this Chapter may be instituted either by voluntary appearance and agreement of the parties or by service upon the defendant of a true copy of the filed complaint and notice either personally by a person not a party in the action or as provided herein. The notice shall be attached to the copy of the complaint, and cite the defendant to be and appear before the Tribal Court at the time and place therein specified, which shall not be less than ten (10) days from the date of service of the complaint and notice. The service may be made by means of certified mail, return receipt requested. Evidence of the receipt of notice shall be kept as part of the record in the case.

- 3-5-13** **Publication**
Upon a showing by the plaintiff to the Tribal Court that diligent efforts were made to serve the complaint and notice on the defendant and that for sufficient reasons service could not be made, the judge may allow service to be made by posting copies of the notice and complaint in two public places on the Reservation for at least one week and by publication of a copy of the notice and complaint once a week for at least three weeks in a newspaper of general circulation in the vicinity of the Reservation. In such case, the return date shall be not less than thirty (30) days from the date of first publication.
- 3-5-14** **Applicable Law**
In all civil actions arising under this Chapter, the Tribal Court shall apply any applicable tort laws or customs, which apply to persons within the Colville Indian Reservation.
- 3-5-15** **Evidence**
The Tribal Court shall be bound by all rules of evidence which it considers to be necessary and relevant to civil actions arising under this Chapter.
- 3-5-16** **Rules of Court**
The Tribal Court is hereby authorized to promulgate and enforce any court rule necessary and proper to implement the judicial provision of this Chapter, not inconsistent with the subchapter on General Rules under Chapter 1-2 of the Law and Order Code.
- 3-5-17** **Judgment**
After the final presentation of the parties, the judge shall decide the case and render a judgment in open court or within a reasonable time after the trial.
- 3-5-18** **Damages**
In all civil actions arising under this Chapter, judgment shall consist of an order of the Tribal Court awarding money damages or compensation to the injured person or an order dismissing the civil action or any other appropriate action. The judgment shall fairly compensate the injured person for the loss he has suffered.
- 3-5-19** **Punitive Damages**
No punitive damages shall be awarded by any judgment rendered under this Chapter.
- 3-5-20** **Criminal Penalties**
No criminal penalties shall be imposed by the Tribal Court in any civil action arising under this Chapter, except as a part of concomitant or prior criminal conviction.
- 3-5-21** **Costs in Civil Actions**
The Tribal Court may assess the accruing costs of the litigation against the person against whom judgment is rendered. Such costs may include the expenses of voluntary witnesses for which either party may be responsible under this Chapter, attorney expenses, and any other incidental expenses or fees connected with the procedure required as the Tribal Court may direct.
- 3-5-22** **Status of Judgments**
A judgment rendered under this Chapter shall be considered a lawful debt owed to the Tribes. The per capita payments of Tribal members may be debited to pay any judgment arising under this Chapter. The proceeds of the judgment shall be paid to the injured person.
- 3-5-23** **Revolving Fund**
The Tribes shall create a revolving fund to pay any judgment rendered under this Chapter. Such payment shall only be made if the per capita payments of the judgment debtor are available to pay any judgment within a reasonable period of time. Reasonable interest or fees may be charged by the revolving fund on any unsatisfied judgment debt owed to the revolving fund or to the Tribes.

- 3-5-24** **Execution of Judgments**
Any judgment rendered under this Chapter may be executed using the subchapter on Execution of Judgments under Chapter 2-2 of the Law and Order Code.
- 3-5-25** **Appeals**
Any party aggrieved by the judgment or disposition of the Tribal Court shall have the right to appeal such decision as provided in the subchapter on Appellate Proceedings under Chapter 1-1 of the Law and Order Code.
- 3-5-26** **Law and Order Code Provisions**
Provisions of the Law and Order Code, as amended, shall apply to all procedure and proceedings of civil actions arising under this Chapter if such provisions are not inconsistent with this Chapter.
- 3-5-27** **Sovereign Immunity**
Except as required by Federal law, or the Constitution and By-Laws of the Tribes, or as specifically waived by a resolution or ordinance of the Business Council specifically referring to such, the Tribes shall be immune from suit in any civil action arising under this Chapter and officers and employees shall be immune from suit for any liability arising from the performance of their official duties.
- 3-5-28** **Prior Inconsistent Codes and Chapter Repealed**
Any Code or Chapter of the Tribes which conflicts in any way with the provisions of this Chapter is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this Chapter.
- 3-5-29** **Adoption by Reference not a Waiver of Sovereign Power**
The adoption of any law, Code or other document by reference into this Chapter shall in no way constitute a waiver or cession of any sovereign power of the Tribes to the jurisdiction whose law or Code is adopted or in any way diminish such sovereign power, but shall result in the law or Code thus adopted becoming the law of the Tribes.
- 3-5-30** **Severability**
If any provision of this Chapter, or its application to any person or circumstances is held invalid, the remainder of this Chapter, or the application of the provision to other circumstances is not affected.
- 3-5-31** **Effective Date**
This Chapter shall be effective from the date of its approval by the Business Council.
(Chapter 3-5 Adopted 4/14/82, Resolution 1982-43)