

Committee: Rules

Author: Sara Hill – Attorney General

Date: 12/03/2020

Committee Date: 12/15/2020

Sponsor:: Joe Deere, Canaan Duncan

An Act

Legislative Act 03-21

AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act amends Title 21 of the Cherokee Nation Code Annotated and shall be codified at the sections referenced herein of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purposes of this Act are to establish the Wilma P. Mankiller Victim's Rights Act.

Section 3. Legislative History

LA-10-90	LA-32-03	LA-20-08
LA-13-91	LA-36-03	LA-22-08
LA-24-02	LA-08-06	LA-08-12
LA-25-02	LA-10-06	LA-09-12
LA-39-02	LA-18-06	LA-35-12
LA-40-02	LA-29-06	LA-10-13
LA-41-02	LA-31-06	LA-09-16
LA-42-02	LA-34-06	LA-12-18
LA-31-03	LA-09-07	LA-28-20

Section 4. Amendments

Title 21 shall be amended as follows:

§ 142.1. Intent of Cherokee Nation Tribal Council

It is the intent of the Cherokee Nation Council to provide a method of compensating and assisting those persons within the Nation who are victims of criminal acts and who suffer ~~bodily injury or death~~physical or psychological injury or death. To this end, it is the further intent of the Council to provide compensation in the amount of expenses actually incurred as a direct result of the criminal acts of other persons.

§§ 142.2-142.11. Reserved

§ 142.12. Authority to authorize payments

The Principal Chief shall have the authority to create any process deemed necessary through which victim compensation payments may be expended.

§§ 142.13-142.17. Reserved

§ 142.18. Victim compensation assessments

A. In addition to the imposition of any costs, penalties, or fines imposed pursuant to law, any person convicted ~~of, or~~ pleading guilty to, or agreeing to a deferred judgment procedure for a crime involving criminally injurious conduct, be it a felony or misdemeanor offense, shall be ordered to pay a victim compensation assessment of at least Five Dollars (\$5.00), but not to exceed Five Fifteen Thousand Dollars (\$~~155~~,000.00), for each crime for which the person was convicted, pled guilty to, or agreed to a deferred judgement procedure for. In imposing this penalty, the Court shall consider factors such as the severity of the crime, the prior criminal record, the expenses of the victim of the crime, and the ability of the defendant to pay, as well as the economic impact of the victim compensation assessment on the dependents of the defendant.

~~B. When a cash bond is posted for any offense included in this subsection, the bond shall also include a sufficient amount to cover the victim compensation assessment.~~

~~BE.~~ All monies collected pursuant to this section shall be deposited in the Victims Compensation Revolving Fund.

§ 143.1 Intent of Cherokee Nation Tribal Council

It is the intent of the Cherokee Nation Tribal Council to secure justice and due process for victims throughout the criminal and juvenile justice systems. To this end, the Council provides that victims of crime shall have rights, which shall be protected by law in a manner no less vigorous than the rights afforded to the accused.

§ 143.2. Short Title

This act shall be known and may be cited as the “Wilma P. Mankiller Victim’s Rights Act.”

§ 143.3 Victim’s Rights—Generally

A. Victims of crime shall have the following rights:

1. To be treated with fairness and respect for the victim's safety, dignity, and privacy;

2. Upon request and whenever possible, to reasonable and timely notice of and to be present at all proceedings involving the criminal or delinquent conduct;
 3. To be heard in any proceeding involving release, plea, sentencing, or disposition;
 4. To refuse an interview or other request made by the accused or any person acting on behalf of the accused, other than a refusal to appear if subpoenaed by defense counsel;
 5. Upon request and whenever possible, to full and timely restitution;
 6. To proceedings free from unreasonable delay, and a prompt conclusion of the case;
 7. Upon request, to confer with the attorney for the Nation; and
 8. To be informed of all rights enumerated in this section.
- B. The victim, or the attorney for the Cherokee Nation Attorney General's Office, may assert in any jurisdiction the rights enumerated in this act and any other right afforded to the victim by law. The court shall act promptly on such a request.
- C. This act shall not be construed as a waiver of sovereign immunity and shall not create any cause of action for compensation or damages against the Cherokee Nation, any officer, employee, or agent of the nation, or any officer or employee of the court.
- D. As used in this section, the term "victim" includes any person against whom a criminal offense or delinquent act is committed, or any person who is directly and proximately harmed by the commission of such offense or act. The term "victim" shall not include the accused or any person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

§ 143.4. Duty of the Office of Attorney General to Victims

- A. The Office of the Attorney General is directed to inform the victims and witnesses of crimes of their rights under this Act. The following rights shall be included:
1. Upon request, to be notified and to be present at all proceedings involving the criminal or delinquent conduct; to be heard in any proceeding involving release, plea, sentencing, disposition, and parole; to be notified that a court proceeding to which a victim or witness has been subpoenaed will or will not go on as scheduled in order to save the person an unnecessary trip to court;
 2. To be treated with fairness and respect for the safety, dignity and privacy of the victim;

3. To be informed of financial assistance and other social services available to witnesses and/or victims, including information on how to apply for any applicable assistance and services;
 4. To be informed of the procedure for applying to receive any restitution to which the victim is entitled;
 5. To be provided, whenever possible, a secure waiting area during court proceedings that does not require close proximity to defendants and families and friends of defendants;
 6. 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;
 7. To have the family members of any homicide victims afforded any applicable services under this section, whether or not the person is to be a witness in any criminal proceeding;
 8. To be informed of any plea bargain negotiations and, upon request, to confer with the attorney for the nation;
 9. To have victim impact statements filed with the court;
 10. To a speedy disposition of the charges free from unwarranted delay caused by or at the behest of the defendant or minor. In determining a date for any criminal trial or other important criminal or juvenile justice hearing, the court shall consider the interests of the victim of a crime to a speedy resolution of the charges under the same standards that govern the right to a speedy trial for a defendant or a minor. In ruling on any motion presented on behalf of a defendant or minor to continue a previously established trial or other important criminal or juvenile justice hearing, the court shall inquire into the circumstances requiring the delay and consider the interests of the victim of a crime to a speedy resolution of the case. If a continuance is granted, the court shall enter into the record the specific reason for the continuance and the procedures that have been taken to avoid further delays.
- B. The Attorney General's office shall provide all victims with an official request for restitution form. The form is to be completed and signed by the victim, and shall include all invoices, bills, receipts, and other evidence of injury, loss of earnings, and out-of-pocket loss. The victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this Nation, any other nation or tribal government, any state, or the federal government received as a direct result of the crime for injury, loss of earnings, or out-of-pocket loss. The unexcused failure or refusal

of the victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information.

§143.5. Duty of Law Enforcement to Victims

Upon the preliminary investigation of a crime, it shall be the duty of the officer who interviews the victim of such crime to inform the victim, or a responsible adult if the victim is a minor child or an incompetent person, or the family member who receives death notification in the case of a homicide, in writing, of their rights as a crime victim. Written notification shall consist of handing the victim a preprinted card or brochure that, at a minimum, includes the following information:

1. A statement that reads, "As a victim of crime, you have certain rights";
2. Telephone and address information for the Office of the Attorney General; and
3. The website address where victims can access a full list of their rights, additional information, and how to apply for victim compensation assistance.

§143.6. Victim Impact Statements

- A. Each victim, or members of the immediate family of each victim, or person designated by the victim or by family members of the victim, may present a victim impact statement either in writing or orally at the sentencing proceeding. Any victim or representative who appears personally at the formal sentence proceeding shall not be cross-examined by opposing counsel; provided, however, such cross-examination shall not be prohibited in a proceeding before a jury or a judge acting as a finder of fact. A written victim impact statement introduced at a formal sentence proceeding shall not be amended by any person other than the author, nor shall the statement be excluded in whole or in part from the court record. The court shall allow the victim impact statement to be read into the record.
- B. If a presentence investigation report is prepared, the person preparing the report shall consult with each victim or members of the immediate family or a designee of members of the immediate family if the victim is deceased, incapacitated or incompetent, and include any victim impact statements in the presentence investigation report. If the individual to be consulted cannot be located or declines to cooperate, a notation to that effect shall be included.
- C. The judge shall make available to the parties copies of any victim impact statements.
- D. In any case which is plea bargained, victim impact statements shall be presented at the time of sentencing. In determining the appropriate sentence, the court shall consider among other factors any victim impact statements if submitted to the jury, or the judge in the event a jury was waived.

E. Any victim impact statements submitted to the court, judge, or jury shall be considered when deciding whether to release an individual on parole.

Section 6. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

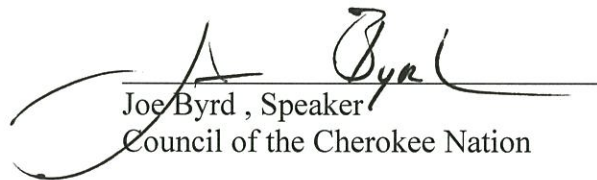
Section 8. Effective Date

The provisions of this act shall become effective thirty (30) days from and after the date of its passage and approval.


Section 9. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.


Enacted by the Council of the Cherokee Nation on the 11th day of January, 2021.


Joe Byrd, Speaker
Council of the Cherokee Nation

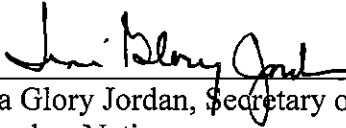
ATTEST:


James Taylor, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19th day of Jan, 2021.


Chuck Hoskin, Jr., Principal Chief
Cherokee Nation

ATTEST:



Tina Glory Jordan, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Rex Jordan	<u>Yea</u>	Harley Buzzard	<u>Yea</u>
Joe Byrd	<u>Yea</u>	Victoria Vazquez	<u>Yea</u>
Wes Nofire	<u>Yea</u>	Dora Smith Patzkowski	<u>Yea</u>
Mike Dobbins	<u>Yea</u>	Joe Deere	<u>Yea</u>
E. O. "Jr." Smith	<u>Yea</u>	Keith Austin	<u>Yea</u>
Daryl Legg	<u>Yea</u>	Janees Taylor	<u>Yea</u>
Canaan Duncan	<u>Yea</u>	Julia Coates	<u>Yea</u>
Shawn Crittenden	<u>Yea</u>	Mary Baker Shaw	<u>Yea</u>
Mike Shambaugh	<u>Yea</u>		

Cherokee Nation Act/Resolution Proposal Form

Act Resolution

<u>ADMINISTRATIVE CLEARANCE</u>	
Dept/Program:	
Signature/Initial	Date
Executive Director:	
Signature/Initial	Date
Treasurer (Required: Grants/Contracts/Budgets):	
Signature/Initial	Date
Government Relations:	
Signature/Initial	Date
Administration Approval:	
Signature/Initial	Date

TITLE:
AN ACT AMENDING TITLE 21 OF THE CHEROKEE NATION CODE ANNOTATED AND DECLARING AN EMERGENCY

DEPARTMENT CONTACT: Chuck Hoskin Jr.
 RESOLUTION PRESENTER: Sara Hill
 COUNCIL SPONSOR: Joe Deere, Canaan Duncan

NARRATIVE:
 The purposes of this Act are to establish the Wilma P. Mankiller Victim's Rights Act.

<u>LEGISLATIVE CLEARANCE:</u>	
Legal & Legislative Coordinator:	
	Date
Signature/Initial	Date
Standing Committee & Date:	
	
Chairperson:	
	Date
Signature/Initial	Date