

TITLE 33
CRIME VICTIM RIGHTS CODE

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Chapter 33.01 – Purpose and Definitions

33.01.01 Purpose

The Port Gamble S’Klallam Tribe recognizes that all persons have the right to safety, security, and self-determination. When those rights are threatened or infringed by another through criminal acts, the effects on the victim can be profound and far-reaching. The purpose of this title is to recognize and support victims of crimes, and to ensure that their voices are heard and rights are respected by the criminal justice system. This victim rights code is also built around giving as much autonomy to victims as possible. The process of healing the community after a traumatic event begins with healing the individuals affected and allowing them to choose the path they feel is best suited for their needs.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.01.02 Definitions

As used in this code, the following terms shall have the meanings given below:

Accused: A person who has been accused of committing a criminal offense.

Arrest: The actual custodial restraint of a person or the person’s submission to custody.

Court: The Port Gamble S’Klallam Tribal Court.

Criminal Proceeding: Any hearing, argument, or other matter that is scheduled by and held before the court but does not include any deposition, lineup, or other matter that does not occur in the presence of the court.

Final Disposition: The ultimate termination of the criminal prosecution of a defendant, including dismissal, acquittal, or conviction and imposition of sentence, after any appeals or other post-conviction review has occurred or the time for such review has lapsed.

Minor: Any person under eighteen years of age.

Police Department: The police department of the Port Gamble S’Klallam Tribe.

Release: A release from the custody of a custodial agency (including any law enforcement, tribal agency, department of corrections, or secure mental health facility), including the transfer from one custodial agency to another.

The Tribe: The Port Gamble S’Klallam Tribe.

Victim: A person directly and proximately harmed by a criminal offense.

Victim Advocate: A person who is employed or authorized by the Port Gamble S'Klallam Tribe to provide counseling or other supportive assistance to crime victims.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

Chapter 33.02 – Victim Rights

33.02.01 Crime Victims Bill of Rights

A victim of crime has the right:

- A. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse throughout the criminal justice process.

INFORMATION AND NOTICE

- B. To receive notice when the accused is arrested.
- C. To be promptly informed of all criminal proceedings where the defendant has the right to be present, and of the cancellation of such hearings or proceedings.
- D. To be informed of sentencing recommendations relating to the crime against the victim when they are available.
- E. To be informed when the accused or convicted person is released from custody or has escaped.
- F. To be informed by the prosecutor's office of the final disposition of the case.
- G. To be informed that they may be eligible for available victim compensation or victim support programs.
- H. To be informed of victims' rights under this title.

PARTICIPATION

- I. To confer with the prosecution before trial and before any disposition of the case.
- J. To be heard, or at the victim's choice, to present a recorded or written statement, at any proceeding involving a post-arrest release decision, a negotiated plea, sentencing, or post-conviction release from confinement.
- K. To refuse to answer or respond to any questions at any pretrial interviews with the prosecution or defense that are meant to harass, intimidate, or gain information that could be used to harm the victim.
- L. To be present at all criminal proceedings, except the trial if the victim has not yet testified. Crime victim testimony should be scheduled in such a way that allows the victim to be present for as much of the hearing as possible without disrupting the effective prosecution of the case.
- M. To have a crime victim advocate or any other support person present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim, if such presence is practical and does not cause unnecessary delay. The role of any such

support person is to provide emotional support, not to testify on behalf of the victim or intercede in the proceedings.

SAFETY

- N. To be reasonably protected from the accused, and to be provided with information as to the level of protection available.
- O. To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants.
- P. To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered.

RESTITUTION

- Q. To receive full and timely restitution upon order of the court from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
- R. To have stolen or other personal property promptly returned when no longer needed as evidence.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.02.02 Implementation of Rights

- A. If a defendant's conviction is reversed and the case is returned to the trial court for further proceedings, the victim has the same rights that were applicable to the criminal proceedings that led to the appeal or other post-conviction relief proceedings.
- B. It is at the victim's discretion to exercise the rights enumerated above. A victim's absence at any particular hearing or decision not to exercise any particular right does not waive any other rights.
- C. Any notices that are to be provided to a victim pursuant to this title shall be provided to the victim or victim's designee in any reasonable form requested by the victim.
- D. The rights to information and participation apply to criminal offenses and proceedings within the jurisdiction of the Tribe.
- E. It shall be unlawful to discriminate or retaliate against any person based on that person's status as a victim of a crime, or that person's decision to waive or exercise any rights contained in this title.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.02.03 Victim Representative

- A. A victim representative must act in the best interests of the victim and may exercise all of the rights of this chapter on behalf of the victim.

- B. If a victim is physically or emotionally unable to exercise any right but is able to designate a victim representative, the designated representative may exercise the victim's rights. The victim shall promptly provide written notice to the prosecutor's office of the designation of a victim representative.
- C. If a victim is incompetent, deceased, or otherwise incapable of designating a lawful representative to act in the victim's place, a third party may request the court's permission to act as a designated representative, or the court may appoint a designated representative. If at any time the victim is no longer incompetent, incapacitated, or otherwise incapable of acting, the victim may personally exercise the victim's rights or appoint a new designee.
- D. If the victim is a minor or other person with a legal guardian, the legal guardian may act as the victim's representative on behalf of the victim after notifying the prosecutor's office.
- E. No person may exercise the rights on behalf of a victim if that person is accused of the crime against the victim.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

Chapter 33.03 – Rights to Information

33.03.01 Victim Rights Form

For each victim of a criminal offense, a victim rights form will be created and kept as part of the file for the crime with both the police department and prosecutor's office. A copy will also be given to the victim. The victim rights form shall contain:

- A. A listing of all the rights enumerated in section 33.02.01 of this title.
- B. A statement that by default, the victim will receive all of the rights enumerated in this title.
- C. A notification that the victim may waive applicable rights to which the victim is entitled under this title. The form shall contain a checklist of the applicable rights and for each right there must be a marking to indicate whether the victim would like to waive the right. These rights include:
 1. The right to be informed when the accused is arrested.
 2. The right to be informed when the accused is charged.
 3. The right to be promptly informed of all criminal proceedings (including, but not limited to, arraignment, trial, and negotiated plea hearings) where the defendant has the right to be present, and to be promptly informed of any cancellation or rescheduling of those proceedings.
 4. The right to notice of conviction, acquittal, or dismissal.
 5. The right to be informed of sentencing recommendations relating to the crime against the victim when they are available.
 6. The right to be informed of any sentence imposed.
 7. The right to be informed of any post-conviction or appellate proceedings.
 8. The right to be informed of the final disposition of the case.

9. The right to be informed of any probation or parole proceedings and the terms or conditions of any probation or parole.
 10. The right to be informed when the accused or convicted person is released from custody, has died in custody, or has escaped, and the terms and conditions of any release.
 11. The right to confer with the prosecutor before trial.
 12. The right to confer with the prosecutor before final disposition of the case, including a plea, dismissal, sentence negotiations, or a pretrial diversion program.
- D. Contact information for the victim, including preferred methods and times of communicating information, and methods and times of communication that are not acceptable to the victim.
 - E. Notice of the availability of crisis intervention services and emergency and medical services.
 - F. Notice of the procedures and resources available for the protection of victims, including protection orders, leave under tribal law or policy, and leave available under Washington law for victims of domestic violence, sexual assault, or stalking.
 - G. Contact information for the Tribe's victim advocate's office, and notice that the office may be able to provide additional support and financial resources to victims.
 - H. Contact information and program requirements and restrictions for the Washington State Crime Victim Benefits program.
 - I. Names and contact information for other tribal and local programs providing counseling, treatment, and other support services.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.02 Victim Rights Form Processing and Responsibilities

- A. The police department will contact any victims of any criminal offense as soon as administratively feasible, without interfering in the investigation or arrest, to give the victim a copy of the victim rights form.
- B. If requested, the victim advocate's office will assist victims with filling out a victim rights form.
- C. The victim rights form can be submitted to the clerk of the court, the victim advocate's office, the police department, or the prosecutor's office.
- D. A copy of the completed form will be given to the victim and a copy will be given to the prosecutor's office and police department. The police department will retain the original in the law enforcement file.
- E. The police department will notify the victim of the arrest, arraignment, release, or escape of the accused, and the prosecutor's office will provide all other information not waived by the victim rights form.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.03 Pretrial Notice

The prosecutor's office shall promptly give the victim a pretrial notice after the prosecutor's office charges a criminal offense by complaint, information, or indictment whether the accused is in custody or has been served a summons. This notice shall contain:

- A. The charge or charges against the defendant and a clear and concise written statement of the procedural steps involved in a criminal prosecution.
- B. The procedures a victim shall follow to invoke the victim's right to confer with the prosecutor pursuant to this title.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.04 Notice of Criminal Proceedings

The prosecutor's office shall give as much notice as is feasible to the victim of any scheduled proceedings related to the defendant and of any changes in that schedule.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.05 Notice of Conviction, Acquittal, or Dismissal

The prosecutor's office shall give notice of any acquittal or dismissal to the victim.

If the defendant is convicted, the victim shall be notified of (if applicable):

- A. The victim's right to view the sentence recommendations.
- B. The place, date, and time of the sentencing proceeding.
- C. The right to submit a written or oral impact statement pursuant to 33.04.01 prior to or during the sentencing proceeding.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.06 Notice of Post-Conviction Review and Appellate Proceedings

- A. The prosecutor's office shall notify the victim of any post-conviction review or appellate proceedings related to the case, including a brief description of what the outcomes of those reviews could be.
- B. In cases of violent crimes and sex crimes, the prosecutor's office shall provide the victim with the contact information of the probation officer who is monitoring the case, if applicable.
- C. If the post-conviction review or appellate proceedings results in the conviction being overturned, the prosecutor's office shall notify the victim. If there are further proceedings, such as a new trial, notice shall be provided in accordance with the victim rights form.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.07 Notice of Escape

The police department shall immediately give notice to the prosecutor's office and the victim of any escape from custody by the accused, as well as any subsequent re-arrest.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.08 Notice of Final Disposition

Upon the conclusion of any appellate or other post-conviction review proceedings, if any, and the conviction of the accused, the prosecutor's office shall notify the victim of the conclusion of the proceedings and the earliest release date of the accused.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.03.09 Notice of Release and Probation/Parole Modification, Termination, or Revocation

- A. The police department will provide any information regarding the release of the accused 15 days before release. If the accused dies in custody, the police department will provide notice of the accused's death within 15 days of the death.
- B. The victim advocate or prosecutor shall notify the victim of any probation or parole proceedings, as well as informing the victim of any right to participate or contribute information to those proceedings.
- C. The probation office will provide the victim advocate, and the victim advocate will provide the victim, with information about the terms of any probation or parole that is granted to the accused. The prosecutor will update the victim if there are any changes to the terms that affect the accused's contact with or the safety of the victim, or if there are any changes to restitution or incarceration status.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

Chapter 33.04 – Rights to Participation

33.04.01 Victim Impact Statements

A victim impact statement may be delivered in-person, telephonically, or by any other means reasonably feasible for the court, and may be oral, written, or recorded in any other form that can be readily accessed by the court. Victim impact statements may be submitted confidentially, but the court shall consider the fact that the defendant has not had an opportunity to review or respond to the statement when determining the statement's weight. The victim may also submit the statement non-confidentially to be read in court but may request that a physical copy may not be shared with the defendant. A crime victim has the right to submit or present a victim impact statement at any hearing at which a negotiated plea will be presented to the court and any sentencing hearing. The

impact statement may include the following, which may be accompanied by supporting documentation:

- A. An explanation of the nature and the extent of any physical, psychological, or emotional harm or trauma suffered by the victim.
- B. An explanation of the extent of any economic loss or property damage suffered by the victim.
- C. An explanation of the need for and extent of restitution.
- D. A disclosure that the victim has applied for or received other compensation for the loss or damage.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.04.02 Victim Conferences with Prosecutor and Victim Advocate

- A. The prosecutor will confer with the victim and the victim advocate, if applicable, prior to trial, and prior to any final disposition of the case, including a plea, dismissal, sentence negotiations, or a pretrial diversion program.
- B. The right of the victim to confer with the prosecutor and victim advocate does not include the authority to direct the on-going prosecution or dismissal of the case.
- C. The inability to arrange a conference with the victim does not preclude the prosecutor from taking any otherwise lawful action, as long as reasonable efforts were made to confer with the victim as required by this title.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.04.03 Victim Rights to Be Free of Harassment

- A. In accordance with section 33.05.03, the victim's contact information will not be available to the accused. In order to request a pre-trial interview or deposition, the accused or accused's attorney must contact the prosecutor's office who will forward the request to the victim. If the victim consents to an interview or it is required by tribal law or rules of procedure, the prosecutor's office shall inform the defendant, or the defendant's attorney or agent, of the time, place, and conditions of the interview. The prosecutor's office shall not be required to forward any correspondence from the defendant, the defendant's attorney, or an agent of the defendant to the victim.
- B. The victim has the right to select reasonable conditions, including time and place, for any pre-trial interviews. The victim has the right to refuse to answer questions during the interview that are meant to harass, intimidate, or gain information that could be used to harm the victim.
- C. The prosecutor has standing at the request of the victim to protect the victim from harassment, intimidation, or abuse and may seek any appropriate protective court order against the defendant or any other person. This section does not limit in any way a victim's rights to seek protective orders or other legal protection on their own behalf against the defendant or any other person.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

Chapter 33.05 – Rights to Safety

33.05.01 Minimizing Victim's Contacts with Accused

Before, during, and after any court proceeding, the court shall provide appropriate safeguards to ensure the safety and comfort of the victim. The court will provide, whenever practical, a secure waiting area during court proceedings that does not require the victim to be in close proximity to defendants and families or friends of defendants.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.05.02 Immediate Medical Assistance

A crime victim has the right to immediate medical assistance and to not be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.05.03 Protection of Victim's Information

- A. No tribal employee or agency, including the police department and prosecutor's office, may disclose the victim's telephone number, physical, mailing, or electronic mailing addresses, place of employment, or other locating information in court, to the defendant, to any other party that is not a tribal agency or employee, or to any party within the tribal government unless that party has a legitimate, governmental interest in obtaining the information, unless the victim has consented to the disclosure, the disclosure is made by order of the court after finding that a compelling need for the information exists, or disclosure is necessary to address an emergency. The victim's name may be disclosed as necessary to prosecute or investigate the case or administer assistance under this Title, except in the case of minors, in which case only the initials shall be disclosed in court.
- B. The victim has the right at any court proceeding not to testify regarding the victim's telephone number, physical, mailing, or electronic mailing addresses, place of employment, or other locating information unless the court orders disclosure after a finding that a compelling need for the information exists.
- C. Any tribal employee intentionally disclosing information in violation of 33.05.03(A) shall be in violation of the PGST employee handbook provisions regarding confidentiality and may be terminated as an employee.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

Chapter 33.06 – Rights to Restitution

33.06.01 Return of Victim’s Property

- A. The police department shall return to the victim any stolen or other property belonging to the victim that was acquired during the course of the investigation or shall inform the victim of the reasons why the property will not be returned. The police department shall make reasonable efforts to return the property to the victim as soon as possible. Property shall not be returned if it is still needed as evidence, if it is contraband, or if the ownership of the property is disputed.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.06.02 Restitution

- A. As provided in section 2.07.04 of this code, the court may order restitution up to double the amount of the defendant’s gain or the victim’s loss from the commission of the crime. The court shall not reduce any restitution amount based on any compensation disbursed from a victim compensation fund or any other source of funds which may be subject to reimbursement by the victim receiving restitution.
- B. Even if the court has ordered restitution, a victim may still pursue a civil cause of action if the amount of the restitution does not meet the full measure of damages against the victim. Any recovery in a civil suit based on the same facts as a criminal case shall be reduced by the amount of restitution awarded, but if the amount of restitution is greater than the amount awarded in the civil action, the net payment will be reduced to \$0.00.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

Chapter 33.07 – Miscellaneous

33.07.01 Confidential and Privileged Information

- A. Communications between a victim advocate and victim shall be privileged and confidential, subject to the general limitations on privilege applicable to other types of privileged communications.
- B. A victim advocate shall not be disclosed as a witness or otherwise disclose any communication between the victim advocate and the victim, unless the victim consents in writing to the disclosure, disclosure is required by this code, or disclosure is permitted by a code of ethics adopted by the victim advocate’s office.
- C. These privilege and disclosure restrictions on disclosure apply to any records created by the victim advocate based in whole or in part on communications between the victim advocate and the victim.
- D. If the victim advocate discloses any confidential information of the victim pursuant to any mandatory reporting provisions of this code, or for any other reason, the victim advocate shall disclose only the information necessary to address the issue for which the information is disclosed. The victim advocate shall

notify the victim of the disclosure, unless doing so would create or increase the risk of harm to any person.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.07.02 Enforcement of Rights

- A. 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 this title. The court shall make every effort to permit the fullest attendance requested 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 title shall be clearly stated on the record.
- B. The court shall take up and decide any motion asserting a victim's right as soon as practicable. If the court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus.
- C. In no case shall a failure to afford a right under this title 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 10 days; and
 - c. In the case of a plea, the accused has not pled to the highest offense charged.
- D. Nothing in this title 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 Tribe or any of its officers or employees could be held liable in damages. Nothing in this title shall be construed as a waiver of the sovereign immunity of the Tribe.
- E. Nothing in this title shall be construed to impair the prosecutorial discretion of the tribal prosecutor's office or any employee thereof.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.07.04 Severability

If any part, or parts, or the application of any part of this title is held invalid, such holding shall not affect the validity of the remaining parts of this title. The Tribe hereby declares that it would have passed the remaining parts of this title even if it had known that such part, parts, or application of any part thereof would be declared invalid.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]

33.07.05 Savings

This title takes effect on the date approved by the Tribe and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this title. Previous

sections of this code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty therefrom, forfeiture, or liability.

[HIST: Source – Resolution No. 22-A-074, passed 5/23/22.]