



The Grand Traverse Band of Ottawa and Chippewa Indians

Legal Department

2605 N. West Bay Shore Drive • Peshawbestown, MI 49682-9275 • (231) 534-7601 • FAX 231-534-7600

MANDATORY 30-DAY POSTING

MEMORANDUM

TO: Tribal Membership
FROM: GTB Legal Department
RE: Amendments to 9 GTBC Criminal Code
DATE: August 16, 2018

Please post the attached proposed amendments to the above referenced ordinance that was approved for posting by Tribal Council at a Tribal Council Regular Session on August 15, 2018. Please post the above referenced ordinance in an area where GTB tribal members can review it for 30 days. This is an opportunity for tribal members to provide comments, if any, about this proposed ordinance. Your comments will be provided to Tribal Council prior to the adoption of this ordinance. This posting will end on September 14, 2018 and can be removed at that time.

Any comments regarding the above referenced should be directed to the GTB Legal Department either by writing to the GTB Legal Department, 2605 N.W. Bayshore Dr., Peshawbestown, MI 49682, or by telephone (231) 534-7601, or by e-mail, to Mary.Kelley@gtbindians.com.

Posting Sites:

| | |
|---|--|
| Administration Building | EDC Building |
| Accounting Department Annex | |
| Annex II – Human Resources Building | Leelanau Sands Casino – |
| Benodjehn Child Care Center | Employees/Supervisors’ Break-room |
| Clinic | |
| Elder’s Complex | |
| Housing | |
| SBR Plant | Leelanau Sands “The Lodge” – |
| Natural Resources/Conservation | Employees/Supervisors’ Break-room |
| Maintenance Department | |
| Benzie Satellite Office – via e-mail | Turtle Creek Casino – Employees/Supervisors’ |
| Charlevoix Satellite Office – via e-mail | Break-room |
| Traverse City Satellite Office - via e-mail | |
| Strongheart Center | |
| Library/You Building/Youth Center | |
| Tribal Court | |

Attachments



The Grand Traverse Band of Ottawa and Chippewa Indians

2605 N. West Bay Shore Drive • Peshawbestown, MI 49682-9275 • (231) 534-7750

Certification of Tribal Council Action Regular Session of August 15, 2018

I hereby certify as the Tribal Council Secretary that the foregoing Motion was Approved and Adopted at the Regular Session of the Grand Traverse Band of Ottawa & Chippewa Indians Tribal Council

30-day Posting for Proposed Amendments to the Criminal Code

Motion made by Tribal Council Treasurer Rohl and Supported by Tribal Council Vice Chair Vargo to post for public comment: (1) an amendment increasing the statute of limitations in Title 9, Section 103 (d); and (2) a Victim's Rights Ordinance to protect the rights of victims and child witnesses.

5-FOR; 0-AGAINST; 1-ABSENT (Arroyo); 0-ABSTAINING
Motion Carries

Tina A. Frankenberger, GTB Tribal Council Secretary

CC: Sean Cahill, AGC

Title 9 CRIMINAL OFFENSES

§ 103 – Requirements for Conviction

(d) Statute of Limitations. No persons shall be prosecuted, tried, or punished for any criminal offense unless the prosecution is initiated within ~~one (1) year~~ three (3) years after both of the following conditions have been met:

- (1) discovery that an offense has been committed; and
- (2) discovery of the identity of the person who committed the offense.

Title 9 CRIMINAL OFFENSES

§ 103 – Requirements for Conviction

(d) Statute of Limitations. ~~No persons shall be prosecuted, tried, or punished for any criminal offense unless the prosecution is initiated within one (1) year after both of the following conditions have been met:~~

~~(1) discovery that an offense has been committed; and~~

~~(2) discovery of the identity of the person who committed the offense.~~

(1) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(2) No time during which prosecution of the same person for the same conduct is pending in the Tribal Court or a federal court is a part of a limitation of time prescribed in this chapter.

(3) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered or could have reasonably been discovered.

(4) If the defendant is out of GTB's jurisdiction after the offense is committed, the limitations of time prescribed by this chapter to commence prosecution may be extended up to a maximum of three years.

(5) No person shall be prosecuted, tried, or punished for any criminal offense unless the prosecution commences within the following time periods:

(A) One year for a crime punishable by a maximum sentence of 30 days of incarceration;

(B) Two years for a crime punishable by a maximum sentence of 60 days of incarceration;

(C) Three years for a crime punishable by a maximum sentence of 93 days of incarceration;

(D) Four years for a crime punishable by a maximum sentence of 180 days of incarceration;

(E) Five years for a crime punishable by a maximum sentence of 270 days of incarceration;

(F) Six years for a crime punishable by a maximum sentence of greater than 270 days of incarceration.

Chapter 5 – Crime Victims' Rights

§ 501– Definitions

- (a) Crime Victim means a person directly and proximately harmed as a result of the commission of an offense under the laws of the Grand Traverse Band. 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.
- (b) Multidisciplinary Child Abuse Team means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse.

§ 502 – Rights of Crime Victims. A crime victim has the following rights:

- (a) The right to be reasonably protected from the accused.
- (b) 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.
- (c) 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.
- (d) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
- (e) The reasonable right to confer with the attorney for the government in the case.
- (f) The right to full and timely restitution as provided in law.
- (g) The right to proceedings free from unreasonable delay.
- (h) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (i) The right to be informed in a timely manner of any plea bargain or deferred prosecution agreement.
- (j) The right to be informed of the rights under this section and any services offered by GTB.

§ 503 – Rights Afforded. 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 section 502. Before making a determination described in section 502(c), 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.

§ 504 – Best Efforts to Accord Rights

- (a) **GOVERNMENT.** Officers and employees of the Office of the Prosecutor, Public Safety, and other GTB departments and agencies 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 section 502.
- (b) **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 section 502.
- (c) **NOTICE.** Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.

§ 505 – Enforcement and Limitations

- (a) **RIGHTS.** The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in section 502. A person accused of the crime may not obtain any form of relief under this chapter.
- (b) **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 section 502, the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.
- (c) **MOTION FOR RELIEF AND WRIT OF MANDAMUS.** The rights described in section 502 shall be asserted in the Tribal Court. The court shall immediately take up and decide any motion asserting a victim's right. If the court denies the relief sought, the movant may petition the GTB Appellate Court for a writ of mandamus. The Appellate Court may issue the writ on the order of a single judge pursuant to GTB Court Rules. The Appellate Court shall take up and decide such application within 72 hours after the petition has been filed. 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 Appellate Court denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.

- (d) ERROR. In any appeal in a criminal case, the Government may assert as error the court's denial of any crime victim's right in the proceeding to which the appeal relates.
- (e) 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—
 - (1) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied; and
 - (2) the victim petitions the Appellate Court for a writ of mandamus within 10 days.
- (f) 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 Grand Traverse Band 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 prosecutor or any officer under his direction.

§ 506 – Services for Children Who Are Victims or Witnesses

- (a) Purpose. GTB recognizes that intergenerational trauma is perpetuated when children are victims or witnesses of crimes of violence. In an effort to end the cycle of intergenerational trauma and victimization, GTB supports the nurturing and protecting of children who are victims or witnesses to the greatest extent possible.
- (b) In General. A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with GTB departments, external entities, and state and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.
- (c) Role of Multidisciplinary Child Abuse Teams. The role of the multidisciplinary child abuse team shall be to provide for a child services that the members of the team in their professional roles are capable of providing, including—
 - (1) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;
 - (2) telephone consultation services in emergencies and in other situations;
 - (3) medical evaluations related to abuse or neglect;

- (4) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;
- (5) expert medical, psychological, and related professional testimony;
- (6) case service coordination and assistance, including the location of services available from public and private agencies in the community; and
- (7) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

Title 9 CRIMINAL OFFENSES

§ 103 – Requirements for Conviction

...

(d) Statute of Limitations. No persons shall be prosecuted, tried, or punished for any criminal offense unless the prosecution is initiated within three (3) years after both of the following conditions have been met:

- (1) discovery that an offense has been committed; and
- (2) discovery of the identity of the person who committed the offense.

Title 9 CRIMINAL OFFENSES

§ 103 – Requirements for Conviction

...

(d) Statute of Limitations.

(1) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(2) No time during which prosecution of the same person for the same conduct is pending in the Tribal Court or a federal court is a part of a limitation of time prescribed in this chapter.

(3) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered or could have reasonably been discovered.

(4) If the defendant is out of GTB's jurisdiction after the offense is committed, the limitations of time prescribed by this chapter to commence prosecution may be extended up to a maximum of three years.

(5) No person shall be prosecuted, tried, or punished for any criminal offense unless the prosecution commences within the following time periods:

(A) One year for a crime punishable by a maximum sentence of 30 days of incarceration;

(B) Two years for a crime punishable by a maximum sentence of 60 days of incarceration;

(C) Three years for a crime punishable by a maximum sentence of 93 days of incarceration;

(D) Four years for a crime punishable by a maximum sentence of 180 days of incarceration;

(E) Five years for a crime punishable by a maximum sentence of 270 days of incarceration;

(F) Six years for a crime punishable by a maximum sentence of greater than 270 days of incarceration.