

THE NAVAJO NATION
LEGISLATIVE BRANCH
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LEGISLATION NO: _0053-23_

SPONSOR: Amber Kanazbah Crotty

TITLE: An Action Relating to Law and Order and Naabik'iyáti' Committees and the Navajo Nation Council; Enacting the "Navajo Nation Victim's Rights Act of 2023"; Amending Title 17 of the Navajo Nation Code

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0053-23

DATE: April 4, 2023

TITLE OF RESOLUTION: AN ACT RELATING TO THE LAW AND ORDER AND NAA'BIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; ENACTING THE "NAVAJO NATION VICTIM'S RIGHTS ACT OF 2023 "; AMENDING TITLE 17 OF THE NAVAJO NATION CODE

PURPOSE: The purpose of this legislation is to enact the Navajo Nation Victim's Rights Act of 2023 to provide protections and support to victims of crime.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

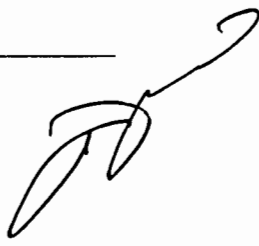
5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 04-09-23
Eligible for Action: 04-10-23

Law & Order Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

1 PROPOSED NAVAJO NATION COUNCIL RESOLUTION
2 25TH NAVAJO NATION COUNCIL - First Year, 2023

3 INTRODUCED BY

4
5 _____
6 (Prime Sponsor)

7
8 TRACKING NO. 0053-23 

9
10 AN ACT

11 RELATING TO THE LAW AND ORDER AND NAA'BIK'ÍYÁTI'
12 COMMITTEES, AND THE NAVAJO NATION COUNCIL; ENACTING THE
13 "NAVAJO NATION VICTIM'S RIGHTS ACT OF 2023"; AMENDING TITLE 17
14 OF THE NAVAJO NATION CODE

15
16 BE IT ENACTED:

17
18 SECTION ONE. AUTHORITY

- 19 A. The Law and Order Committee was established as a standing committee of the Navajo
20 Nation Council with the delegated responsibilities to "[t]o protect the rights and
21 interests of the Navajo People by improving the quality and effectiveness of the justice
22 system within the Navajo Nation" and to review and make recommendations to the
23 Navajo Nation Council on proposed Navajo Nation Code amendments and enactments.
24 2 N.N.C. §§ 600(A), 600(C)(2) and 601(B)(14).
- 25 B. The Naa'bik'iyáti' Committee was established as a standing committee of the Navajo
26 Nation Council with the delegated responsibility to hear and act on proposed legislation
27 that requires final action by the Navajo Nation Council. 2 N.N.C. §§ 164(A)(9) and
28 700(A)(2).

1 C. The Navajo Nation Council is the governing body of the Navajo Nation and must
2 review and approve enactments or amendments of positive law, i.e., changes to the
3 Navajo Nation Code. 2 N.N.C. § 102(A) and § 164(A).
4

5 **SECTION TWO. PURPOSE**

6 The Navajo Nation Victim's Rights Act of 2023 ("2023 Act") is established to provide
7 awareness to victims of crimes of their rights and the protections and support available to
8 them. The rights and protections set forth in the 2023 Act extend beyond basic emergency
9 needs by providing victims safety and support through statutory requirements and awareness.
10 Through advocacy and awareness, victims are provided healing throughout the legal process
11 as they move towards restoring Ké.
12

13 **SECTION THREE. FINDINGS**

- 14 A. The most common criminal offenses reported on the Navajo Nation are violent assaults
15 involving weapons and/or serious bodily injury, including sexual assault and rape.
- 16 B. While the Navajo Nation's criminal statutes reference "victim" within the description
17 of offenses, the Navajo Nation Code does not include supporting victim's rights. The
18 2023 Act set forth herein adopt specific provisions directly supporting and expanding
19 victim's rights.
- 20 C. The 2023 Act's amendments, to the Navajo Nation's criminal statutes were developed
21 during the 24th Navajo Nation Council through Work Groups led by the Law and Order
22 Committee and the Chief Prosecutor. The amendments developed by former President
23 Russell Begay's Executive Branch Work Group during the 23rd Navajo Nation Council
24 were incorporated, fully or in part, into the 2023 Act. .
- 25 D. In addition, the Naa'bik'íyáti' Committee Sexual Assault and Prevention Workgroup
26 took a holistic approach by including concerns and suggestions from advocates,
27 officers, and the community in their recommendations to the 2023 Act's Victim's
28 Rights and Advocacy Services section.
29
30

1 G. The Navajo Nation Department of Justice reviewed the proposed amendments
2 developed during the 24th Navajo Nation Council that are included in the 2023 Act and
3 deemed them to be legally sufficient.

4 H. The 25th Navajo Nation Council determines that the Navajo Nation Victim’s Rights
5 Act of 2023’s amendments to Title 17 of the Navajo Nation Code are necessary and
6 vital to prioritize victim’s rights and enhance protections for all crime victims and their
7 families as they await justice, as well as to ensure adequate deterrence and punishment
8 for violent acts that threaten Navajo families and Navajo communities. These
9 amendments also

10
11 **SECTION FOUR. ENACTMENT**

12 The Navajo Nation Council hereby enacts the “Navajo Nation Victim’s Rights Act of
13 2023” and amends Title 17 of the Navajo Nation Code as follows:

14 _____
15 **Title 17. Law and Order**
16 **Chapter 1. Enforcement of Criminal Code**

17 *****

18 **§ 209. General definitions**

19

20 C. “Advocate” means a person who is employed or volunteers to provide information,
21 referrals, resources, and direct support to the victim. This can include community-based
22 advocates or systems-based advocates;

23

24 WW. “Victim” means a person directly or proximately harmed as a result of the
25 commission of a crime. In the case of a victim who is a minor, incompetent, incapacitated,
26 or deceased, the legal guardians of the victim or the representatives of the victim’s estate,
27 family members, or any other persons appointed as suitable by the court, may assume the
28 victim’s rights under this Title, but in no event shall the defendant be named as such
29 guardian or representative;

30 XX. “Without consent” means:

1. The victim does not express, through words or actions, consent to engage in a sexual act or sexual contact, or the victim withdraws consent before or during a sexual act or sexual contact that the victim previously consented to;
2. The victim clearly refuses to consent to engage in a sexual act or sexual contact and a reasonable person would have understood the victim's words or actions as a refusal of consent to the sexual act or sexual conduct;
 3. The victim is coerced by the immediate use or threatened use of force against a person or property; or
 4. The victim is incompetent to consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition unless at the time the defendant engaged in the conduct constituting the offense the defendant did not know and could not reasonably have known of the facts or conditions responsible for such incompetency to consent; or
 5. The victim is intentionally deceived as to the nature of the act;
 6. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse; or
 7. The victim is minor and thus not old enough to give valid consent

Chapter 2. General Provision
Subchapter 4. Victim's Rights

§230. Victim's Rights

A. A victim of a crime shall be provided notice of their right(s) to the following:

1. To be treated with fairness, respect, and dignity within the criminal justice system;
- A2. To have the criminal justice system respond in a prompt and effective manner;
- 1.3. To be reasonably protected from the accused perpetrator; which includes a separate waiting area or other safeguards to minimize the victim's contact with

1 defendant, defendant's relatives, and defense witness during court proceedings;

2 3.4. To participate in the criminal justice system by being present and heard,
3 which includes proceedings involving release, plea, sentencing, or any parole
4 proceeding;

5 5. To be accompanied by an advocate of their choice; meaning an advocate as
6 defined under § 209, or family member, or other individual, who provides moral
7 support to the victim;

8 4.6. To confer with the prosecution, after the crime against the victim(s) has
9 been charged, before the trial or before any disposition of the case and to be
10 informed of the disposition;

11 6.7. To be provided information about the sentencing and imprisonment of
12 the accused perpetrator, and to read pre-sentence reports relating to the crime
13 against the victims at the time such reports are available to the defendant(s);

14 8. To provide a victim impact statement to the court, which the court is required
15 to consider in making sentencing determinations and restoring Ké;

16 9. To be notified of a perpetrator's or the accused's release not less than 24
17 hours prior to such release;

18 10. To be notified of a perpetrator's or the accused's escape within 24 hours after
19 the escape;

20 11. To be timely notified of court proceedings;

21 12. To be notified within less than 48 hours of the crime being reported of their
22 rights under this Section and be provided with information relating to how the
23 case will move forward and the services that are available to the victim;

24 13. To receive prompt restitution from the person or persons convicted of the
25 criminal conduct that caused the victim's loss or injury, and have restitution
26 orders enforced;

27 14. To be free of intimidation, harassment, abuse, and uninitiated contact from the
28 accused or individuals in close relation to the accused;

29 15. To request and utilize the services of an interpreter or translator if needed; and

30 16. To the presumption of the imposition of pre-trial release conditions in favor of

1 protecting a victim, including but not limited to, a stay-away order, pursuant to
2 Rule 15 of the Navajo Rules of Criminal Procedure.

3 B. A victim's exercise of any right granted by this Section shall not be grounds for dismissing
4 any criminal proceeding, setting aside any conviction or sentence, or dismissing or denying
5 a victim's filing of a petition for domestic violence abuse protection.

6 7.C. "Victim" has the meaning set forth in Section 209 of this Code, as amended.

7 D. Victims/Advocate Privilege

8 1. In any proceeding under this code, a victim of domestic violence or sexual assault
9 may refuse to disclose, and may prevent an advocate from disclosing, confidential
10 communications between the victim and advocate and written records and reports
11 concerning the victim.

12 2. The victim/advocate privilege may be waived through writing signed by the
13 victim and must identify what information may be disclosed, to whom, and for what
14 purpose. Such a waiver is not valid after thirty (30) days or after the victim revokes
15 the waiver.

16 3. The victim/advocate privilege does not relieve a person or advocate from the
17 mandatory duty to report child abuse or neglect or from providing evidence about
18 child abuse or neglect in court pursuant to proceedings under Title 9, Chapter 11, of
19 the Navajo Nation Code.

20 4. The victim/advocate privilege shall not prevent the disclosure of information
21 compiled about incidents of domestic and family violence which protects the identity
22 of the victim and family or household members of the victim.

23 E. The Navajo Nation may enact substantive and procedural laws and/or regulations to
24 define, implement, preserve and protect the rights guaranteed to victims by this Section,
25 including the authority to extend any of these rights to juvenile proceedings.

26 F. The Office of the Prosecutor, the Department of Corrections, and the Police Department
27 shall implement protocols and policies to implement the requirements of this Section,
28 including but not limited to the notice requirements.

29 G. The enumeration in this Section of certain rights for victims shall not be construed to
30 deny or disparage other rights granted by the Navajo Nation or retained by victims.

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SECTION FIVE. CODIFICATION

The provisions of this Act that amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions into the next codification or supplement of the Navajo Nation Code.

SECTION SIX. SAVINGS CLAUSE

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

SECTION SEVEN. EFFECTIVE DATE

This Act shall become effective in accordance with 2 N.N.C. § 221(B).