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'íyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
25TH NAVAJO NATION COUNCIL - First Year, 2023
INTRODUCED BY

_____
(Prime Sponsor)

TRACKING NO. 0053-23

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

BE IT ENACTED:

SECTION ONE. AUTHORITY

A. The Law and Order Committee was established as a standing committee of the Navajo Nation Council with the delegated responsibilities to "[t]o protect the rights and interests of the Navajo People by improving the quality and effectiveness of the justice system within the Navajo Nation" and to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments. 2 N.N.C. §§ 600(A), 600(C)(2) and 601(B)(14).

B. The Naa'bik´íyáti´ Committee was established as a standing committee of the Navajo Nation Council with the delegated responsibility to hear and act on proposed legislation that requires final action by the Navajo Nation Council. 2 N.N.C. §§ 164(A)(9) and 700(A)(2).

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

SECTION TWO. PURPOSE

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

SECTION THREE. FINDINGS

A. The most common criminal offenses reported on the Navajo Nation are violent assaults involving weapons and/or serious bodily injury, including sexual assault and rape.

B. While the Navajo Nation's criminal statutes reference "victim" within the description of offenses, the Navajo Nation Code does not include supporting victim's rights. The 2023 Act set forth herein adopt specific provisions directly supporting and expanding victim's rights.

C. The 2023 Act's amendments, to the Navajo Nation's criminal statutes were developed during the 24th Navajo Nation Council through Work Groups led by the Law and Order Committee and the Chief Prosecutor. The amendments developed by former President Russell Begay's Executive Branch Work Group during the 23rd Navajo Nation Council were incorporated, fully or in part, into the 2023 Act. .

D. In addition, the Naa'bik'íyáti' Committee Sexual Assault and Prevention Workgroup took a holistic approach by including concerns and suggestions from advocates, officers, and the community in their recommendations to the 2023 Act's Victim's Rights and Advocacy Services section.

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

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

SECTION FOUR. ENACTMENT

The Navajo Nation Council hereby enacts the "Navajo Nation Victim's Rights Act of 2023" and amends Title 17 of the Navajo Nation Code as follows:

Title 17. Law and Order

Chapter 1. Enforcement of Criminal Code

*****

§ 209. General definitions

.....

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

.....

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

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;

~~A~~2. To h~~H~~ave 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

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

~~3.~~4. To p~~P~~articipate in the criminal justice system by being present and heard, which includes proceedings involving release, plea, sentencing, or any parole proceeding;

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

~~4.~~6. To confer with the prosecution, after the crime against the victim(s) has been charged, before the trial or before any disposition of the case and to be informed of the disposition;

~~6.~~7. To b~~B~~e provided information about the sentencing and imprisonment of the accused perpetrator, and to read pre-sentence reports relating to the crime against the victims at the time such reports are available to the defendant(s);

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

9. To b~~B~~e notified of a perpetrator's or the accused's release not less than 24 hours prior to such release;

10. To b~~B~~e notified of a perpetrator's or the accused's escape within 24 hours after the escape;

11. To b~~B~~e timely notified of court proceedings;

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

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

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

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

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

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

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

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

D. Victims/Advocate Privilege

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

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

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

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

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

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

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

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).

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576

Honorable Crystalyne Curley
Speaker
25th Navajo Nation Council

MEMORANDUM

To : Hon. Amber Crotty
25th Navajo Nation Council

From : Loya Henderson, Attorney
Office of Legislative Counsel

Date : April 4, 2023

Re : **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**

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. The resolution drafted is legally sufficient, although, as with all legislation, challenges are possible in the courts. You are advised and encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction. If you are satisfied with the proposed resolution, please sign it as "sponsor" and submit it to the Office of Legislative Services where it will be given a tracking number and sent to the Office of the Speaker for assignment. As you may be aware, the Speaker is authorized to refer this proposed resolution to other committees than those stated in the title.

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution. Ahéhee'.

OLC No. 23-002-1