

SB412 IMPLEMENTATION CODE

CONFEDERATED TRIBES
OF THE
UMATILLA INDIAN RESERVATION

SB412 IMPLEMENTATION CODE

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CHAPTER 1. SB412 IMPLEMENTATION POLICY

SECTION 1.01. LIMITED TO EXERCISE OF STATE LAW ENFORCEMENT POWERS

This code was enacted to ensure tribal law enforcement can exercise the powers of law enforcement officers for the State of Oregon, as permitted in Chapter 644, Oregon Laws 2011 (hereafter “SB 412”). Among the requirements of that act is to adopt a record retention policy substantially similar to ORS 192.005 to 192.170; a disclosure policy substantially similar to ORS 192.410 to 192.505; a deadly physical force plan approved under ORS 135.805 to 135.873; and a biological evidence preservation policy substantially similar to sections 2 to 6, Chapter 275, Oregon Laws 2011.

Tort claims issues are addressed in the Tort Claims Code.

This code is to be interpreted narrowly to meet the minimal requirements of SB 412 and only applies to matters involving the exercise of state law enforcement powers under SB 412.

SECTION 1.02. DEFINITIONS

- A. “Archivist” and “Custodian” mean the Director of the Department of Public Safety, or others as designated by the Director.
- B. “Biological evidence” means an individual’s blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identified biological material and includes the contents of a sexual assault forensic evidence kit.
- C. “Convicted” includes a finding of guilty or responsible except for insanity and a finding that a person is within the jurisdiction of the Oregon juvenile court under ORS 419C.005.
- D. “Covered offense” means any of the following offenses that are defined by the laws of the State of Oregon and subject to state jurisdiction: aggravated murder, murder, manslaughter in the first degree, manslaughter in the second degree, aggravated vehicular homicide, rape in the first degree, sodomy in the first degree, or unlawful sexual penetration.
- E. “DNA” means deoxyribonucleic acid.
- F. “DNA profile” means the unique identifier of an individual that is derived from DNA.
- G. “Photocopy” includes a photograph, microphotograph and any other reproduction on paper or film in any scale.
- H. “Photocopying” means the process of reproducing, in the form of a photocopy, a public record or writing.
- I. “Police Department” means the Umatilla Tribal Police Department.
- J. “Public record” is limited to matters involving the exercise of powers granted to tribal law enforcement under SB 412 and includes, but is not limited to, a document, book, paper, photograph, file, sound recording or machine readable electronic record, regardless of physical form or characteristics, made, received, filed or recorded in pursuance of law or in connection with the transaction of public business, whether or not confidential or restricted in use. “Public record” does not include: records of the Board of Trustees, its committees, agents, attorneys, consultants, officers and employees; extra copies of a document, preserved only for convenience of reference; a stock of publications; messages

on voice mail or on other telephone message storage and retrieval systems; information revealing the identity, contact information, or address of victims of crime; or material associated with an open investigation of the Police Department.

- K. "Sentence" means a term of incarceration in a correctional or juvenile detention facility, a period of probation, parole or post-prison supervision and the period of time during which a person is under the jurisdiction of the State of Oregon's Psychiatric Security Review Board.
- L. "Supervisory authority" has the meaning given that term in ORS 131.007.
- M. "Victim" has the meaning given that term in ORS 137.007.

CHAPTER 2. ARCHIVING OF PUBLIC RECORDS

SECTION 2.01. DIRECTOR OF PUBLIC SAFETY AS SB412 RECORDS ADMINISTRATOR

The Director of Public Safety is the public records administrator for purposes of this code, and it is the responsibility of the Director of Public Safety to obtain and maintain uniformity in the application, operation and interpretation of the public records laws. The Director of Public Safety may consult the Office of Legal Counsel as necessary to ensure the uniform implementation of this Code.

SECTION 2.02. MAKING, FILING AND RECORDING RECORDS BY PHOTOCOPYING

The Department of Public Safety, in making public records or receiving and filing or recording public records, may do such making or receiving and filing or recording by means of photocopying. Such photocopying shall, except for records which are treated as confidential, be made, assembled and indexed, in lieu of any other method, in such manner as the Archivist considers appropriate.

SECTION 2.03. COPYING RECORDS; EVIDENTIARY EFFECT

The Archivist may cause any public records in their official custody to be photocopied or captured by digital imaging system as in the case of original filings or recordings or recorded by means of analog or digital audio and video tape technology. Every such reproduction shall be deemed an original; and a transcript, exemplification or certified copy of any such reproduction shall be deemed a transcript, exemplification or certified copy, as the case may be, of the original.

SECTION 2.04. INDEXING AND FILING COPIED RECORDS

All photocopies, digital images and analog or digital audio and video tapes made under this code shall be properly indexed and placed in files conveniently accessible to the Archivist.

SECTION 2.05. DISPOSAL OF RECORDS

- A. Only the Archivist is authorized to destroy public records.
- B. A public record shall not be disposed of prior to the running of the statute of limitations in the Tort Claims Code or 3 years has passed since the record was created, whichever is longer.
- C. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the Finance Director. If federal funds are involved, records retention requirements of the United States Government must be observed.

- D. The Archivist in its discretion, and in consideration of the value of the public records for legal, administrative or research purposes, may retain public records for a longer period of time than that identified in paragraph B, above. Any public record selected for permanent retention may be forwarded to the Tamástsiłkt Cultural Institute for such retention.

CHAPTER 3. INSPECTION OF PUBLIC RECORDS

SECTION 3.01. RIGHT TO INSPECT PUBLIC RECORDS AND NOTICE REQUIREMENTS

- A. Every person has a right to inspect any public record except as otherwise expressly provided in this code.
- B. If a person who is a party to a civil judicial proceeding in tribal court to which the Confederated Tribes is a party asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the person must submit the request in writing to the custodian and, at the same time, to the Lead Attorney for the Office of Legal Counsel.

SECTION 3.02. CONDENSATION OF PUBLIC RECORD SUBJECT TO DISCLOSURE; PETITION TO REVIEW DENIAL OF RIGHT TO INSPECT PUBLIC RECORD; ADEQUACY OF CONDENSATION

- A. When a public record is subject to disclosure under this code, in lieu of making the public record available for inspection by providing a copy of the record, the custodian may prepare and release a condensation from the record of the significant facts that are not otherwise exempt from disclosure under this code.
- B. The person seeking to inspect or receive a copy of any public record for which a condensation of facts has been provided under this section may petition for review of the denial to inspect or receive a copy of the records. In such a review, the Office of Legal Counsel shall, in addition to reviewing the records to which access was denied, compare those records to the condensation to determine whether the condensation adequately describes the significant facts contained in the records.

SECTION 3.03. FUNCTIONS OF CUSTODIAN OF PUBLIC RECORDS; RULES

The custodian of any public records, including public records maintained in machine readable or electronic form, unless otherwise expressly provided by law, shall furnish proper and reasonable opportunities for inspection and examination of the records in the office of the custodian and reasonable facilities for making memoranda or abstracts there from, during the usual business hours, to all persons having occasion to make examination of them. If the public record is maintained in machine readable or electronic form, the custodian shall furnish proper and reasonable opportunity to assure access. The custodian of the records may adopt reasonable procedures necessary for the protection of the records and to prevent interference with the regular discharge of duties of the custodian.

SECTION 3.04. COPIES OR INSPECTION OF PUBLIC RECORDS; WRITTEN RESPONSE; FEES; WAIVER OR REDUCTION

- A. The custodian of any public record that a person has a right to inspect shall give the person, upon request:
1. A copy of the public record if the public record is of a nature permitting copying; or
 2. A reasonable opportunity to inspect or copy the public record.

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As Amended through Resolution No. 11-100 (December 19, 2011)*

- B. If a person makes a written request of the custodian to inspect a public record or to receive a copy of a public record, the custodian shall respond as soon as practicable and without unreasonable delay. The custodian may request additional information or clarification from the requester for the purpose of expediting the custodian's response to the request. Any reply within 45 days of receipt by the custodian of a written request for a public record shall be deemed reasonable. The response of the custodian must acknowledge receipt of the request and must include one of the following:
1. A statement that the custodian does not possess, or is not the custodian of, the public record.
 2. Copies of all requested public records for which the public body does not claim an exemption from disclosure under this code.
 3. A statement that the custodian possesses at least some of the requested public records, an estimate of the time the required before the public records may be inspected or copies of the records will be provided and an estimate of the fees that the requester must pay under this code as a condition of receiving the public records.
 4. A statement that the custodian possesses at least some of the requested public records and that an estimate of the time and fees for disclosure of the public records will be provided within a reasonable time.
 5. A statement that the custodian is uncertain whether it possesses the public record and that the public body will search for the record and make an appropriate response as soon as practicable.
 6. A statement that tribal or federal law prohibits the custodian from acknowledging whether the record exists or that acknowledging whether the record exists would result in the loss of federal benefits or other sanction. A statement under this paragraph must include a citation to the tribal or federal law relied upon by the public body.
- C. If the public record is maintained in a machine readable or electronic form, the custodian shall provide a copy of the public record in the form requested, if available. If the public record is not available in the form requested, the custodian shall make the public record available in the form in which the custodian maintains the public record.
- D. The custodian may establish fees reasonably calculated to reimburse the actual cost of making public records available to meet the person's request. Such costs may include:
1. Costs for summarizing, compiling or tailoring the public records, either in organization or media;
 2. The cost of time spent by an attorney in reviewing the public records, redacting material from the public records or segregating the public records into exempt and nonexempt records.
 3. To assess a fee greater than \$25, the custodian must first provide the requestor a written notice of the estimated fee and the requestor must confirm that they want the custodian to proceed with making the public record available.
- E. The custodian may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

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- F. A person who believes that there has been an unreasonable denial of a fee waiver or fee reduction may petition the Office of Legal Counsel in the same manner as a person petitions when inspection of a public record is denied. The Office of Legal Counsel and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

SECTION 3.05. PROCEDURE FOR REQUESTS

A person seeking a public record shall mail a written request to the Director of the Department of Public Safety for the Confederated Tribes of the Umatilla Indian Reservation and contain, at a minimum, the following:

- A. The requestor's name;
- B. The date of the request;
- C. The complete mailing address of the requestor along with email and telephone contact information;
- D. The reason for the request;
- E. A thorough description of the record being sought;
- F. For police reports: the case number, officer(s) involved, date and time of incident, location of incident, type of incident or description of event, persons involved, and if appropriate, vehicle make/model/year/color/style/etc. and license number and state; and
- G. Other information that could narrow the search, such as dates and names.

SECTION 3.06. NONDISCLOSURE ON REQUEST OF HOME ADDRESS, HOME TELEPHONE NUMBER AND ELECTRONIC MAIL ADDRESS; RULES OF PROCEDURE; DURATION OF EFFECT OF REQUEST; LIABILITY; WHEN NOT APPLICABLE

- A. An individual may submit a written request to the custodian not to disclose a specified public record indicating the home address, personal telephone number or electronic mail address of the individual. The custodian shall not disclose the specified public record if the individual demonstrates to the satisfaction of the custodian that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or electronic mail address remains available for public inspection.
 - 1. Any person may make a request as described above by submitting a written letter to the Director of Public Safety and the Lead Attorney for the Office of Legal Counsel.
 - 2. The letter should indicate why the request is being made including whether the individual is a victim of domestic violence, has an existing protection or restraining order in place, has previously contacted law enforcement regarding an incident involving domestic violence or physical abuse, whether the individual has obtained or is seeking to obtain a temporary restraining order or other no contact order to protect them from abuse, and whether a criminal or civil legal proceeding has been filed regarding the physical protection of the individual.
- B. In any public disclosure request, the custodian shall redact all information relating to the identity, location, or contact information of an individual who is currently under the protection of a domestic violence related protection order, a person who is currently an

alleged victim of a pending domestic violence related crime, or a person under a witness protection program.

- C. A request described in paragraph A, above, remains effective until the custodian receives a written request for termination but no later than five years after the date that custodian receives the request.
- D. The custodian may disclose a home address, personal telephone number or electronic mail address of an individual exempt from disclosure under paragraph A, above, upon order of the tribal court, on request from any law enforcement agency or with the consent of the individual.
- E. Neither the Confederated Tribes nor the custodian may be held liable for granting or denying an exemption from disclosure under this code or for any other unauthorized release of a home address, personal telephone number or electronic mail address.

SECTION 3.07. PETITION TO REVIEW DENIAL OF RIGHT TO INSPECT PUBLIC RECORD; APPEAL FROM DECISION OF OLC DENYING INSPECTION

- A. Any person denied the right to inspect or to receive a copy of any public record may petition the Office of Legal Counsel to review the public record to determine if it may be withheld from public inspection. The burden is on the custodian to sustain its action. The Office of Legal Counsel shall issue an order denying or granting the petition, or denying it in part and granting it in part, within 14 days from the day the Office of Legal Counsel receives the petition.
- B. If the Office of Legal Counsel grants the petition and orders the custodian to disclose the record, or if the Office of Legal Counsel grants the petition in part and orders the custodian to disclose a portion of the record, the custodian shall comply with the order in full within 14 days after issuance of the order, unless within the 14-day period it issues a notice of its intention to institute proceedings for injunctive or declaratory relief in tribal court. Copies of the notice shall be sent to the Lead Attorney for the Office of Legal Counsel by certified mail and to the petitioner at the address shown on the petition. The custodian shall institute the proceedings within 14 days after it issues its notice of intention to do so. If the Lead Attorney for the Office of Legal Counsel denies the petition in whole or in part, or if the custodian continues to withhold the record or a part of it notwithstanding an order to disclose by the Office of Legal Counsel, the person seeking disclosure may institute such proceedings.
- C. The Office of Legal Counsel shall serve as counsel for the custodian in a suit filed under paragraph B, above, if the suit arises out of a determination by the Office of Legal Counsel that the public record should not be disclosed, or that a part of the public record should not be disclosed if the custodian has fully complied with the order of the Office of Legal Counsel requiring disclosure of another part or parts of the public record, and in no other case. In any case in which the Office of Legal Counsel is prohibited from serving as counsel for the custodian, the agency may retain special counsel to include contract attorneys for the Confederated Tribes.

SECTION 3.08. EFFECT OF FAILURE OF OLC TO TAKE TIMELY ACTION ON INSPECTION PETITION

The failure of the Office of Legal Counsel to issue an order under Section 3.07 denying, granting, or denying in part and granting in part a petition to require disclosure within 14 days from the day of receipt of the petition shall be treated as an order denying the petition for the purpose of determining whether a person may institute proceedings for injunctive or declaratory relief.

SECTION 3.09. PETITION FORM; PROCEDURE WHEN PETITION RECEIVED

- A. A petition to the Office of Legal Counsel requesting it to order a public record to be made available for inspection or to be produced shall be in substantially the following form, or in a form containing the same information:

(date)

I (we), _____ (name(s)), the undersigned, request the Office of Legal Counsel to order the custodian to (make available for inspection) (produce a copy or copies of) the following records:

1. _____
(Name or description of record)
2. _____
(Name or description of record)

I (we) asked to inspect and/or copy these records on _____ (date) at _____ (address). The request was denied by the following person:

1. _____
(Name of public officer or employee;
title or position, if known)

(Signature(s))

This form should be delivered or mailed to the Office of Legal Counsel.

- B. Promptly upon receipt of such a petition, the Office of Legal Counsel shall notify the custodian. The custodian shall thereupon transmit the public record disclosure of which is sought, or a copy, to the Office of Legal Counsel, together with a statement of its reasons for believing that the public record should not be disclosed. In an appropriate case, with the consent of the Office of Legal Counsel, the custodian may instead disclose the nature or substance of the public record to the Office of Legal Counsel.

SECTION 3.10. COURT AUTHORITY IN REVIEWING ACTION DENYING RIGHT TO INSPECT PUBLIC RECORDS; DOCKETING; COSTS

- A. In any suit filed under this code, the court has jurisdiction to enjoin the custodian from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the custodian to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any noncompliance with the order of the court may be punished as contempt of court.
- B. Except as to causes the court considers of greater importance, proceedings arising under this code shall take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.
- C. If a person seeking the right to inspect or to receive a copy of a public record prevails in the suit, the person shall be awarded costs and disbursements. If the person prevails in part, the court may in its discretion award the person costs and disbursements or an

appropriate portion thereof. If the custodian failed to comply with the Lead Attorney's or Office of Legal Counsel's order in full and did not issue a notice of intention to institute proceedings in tribal court within 14 days after issuance of the order, or did not institute the proceedings within 14 days after issuance of the notice, the petitioner shall be awarded costs of suit at the trial level and reasonable attorney fees regardless of which party instituted the suit and regardless of which party prevailed therein.

SECTION 3.11. PUBLIC RECORDS EXEMPT FROM DISCLOSURE

The following public records are exempt from disclosure:

- A. Any record or part thereof pertaining to a matter outside of the scope of a law enforcement officer's, the Department of Public Safety's, or the Confederated Tribes' exercise of authority under SB 412.
- B. Any health or medical record.
- C. Any record sealed in compliance with law or by court order. Such records may be disclosed upon order of the tribal court or as otherwise provided by law.
- D. Records of a person who is or has been in the custody or under the lawful supervision of the Confederated Tribes are exempt from disclosure after termination of such custody or supervision to the extent that disclosure thereof would interfere with the rehabilitation of the person if the public interest in confidentiality clearly outweighs the public interest in disclosure. Nothing, however, shall be construed as prohibiting disclosure of the fact that a person is in custody.
- E. Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.
- F. Attorney-client privileged information.
- G. Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.
- H. Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services.
- I. Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.
- J. Any information, the disclosure of which, would interfere with the rehabilitation of a person in custody or substantially prejudice or prevent the carrying out of the functions of the Department of Public Safety or Court, if the public interest in confidentiality clearly outweighs the public interest in disclosure.
- K. Any public records or information the disclosure of which is prohibited by federal law or regulations.

- L. Reports of unclaimed property filed by the holders of such property.
- M. All information supplied by a person for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person.
- N. Workers' compensation or Tribal Workers benefits claim records except in any of the following circumstances:
 - 1. When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.
 - 2. When necessary for governmental agencies to carry out their duties, functions or powers.
 - 3. When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.
 - 4. When a worker or the worker's representative requests review of the worker's claim record.

SECTION 3.12. PUBLIC RECORDS CONDITIONALLY EXEMPT FROM DISCLOSURE

The following public records are exempt from disclosure unless the public interest requires disclosure in the particular instance:

- A. Records of the Confederated Tribes pertaining to litigation to which it is a party if the complaint has been filed, or if the complaint has not been filed, if the Confederated Tribes shows that such litigation is reasonably likely to occur. This exemption does not apply to litigation which has been concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery or deposition under the laws of the Confederated Tribes to a party to litigation or potential litigation.
- B. Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within an organization and which is used in a business it conducts, having actual or potential commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it. This includes cultural property of the Confederated Tribes, such as oral histories and traditional knowledge.
- C. Investigatory information compiled for criminal law purposes. The record of an arrest or the report of a crime shall be disclosed unless and only for so long as there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim. Nothing in this subsection shall limit any right guaranteed by the Indian Civil Rights Act, or granted by other tribal law, to disclosure or discovery in criminal cases. For purposes of this subsection, the record of an arrest or the report of a crime includes, but is not limited to:
 - 1. The arrested person's name, age, residence, employment, marital status and similar biographical information;
 - 2. The offense with which the arrested person is charged;
 - 3. The conditions of release;
 - 4. The identity of and biographical information concerning both complaining party and victim;

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5. The identity of the investigating and arresting agency and the length of the investigation;
 6. The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
 7. Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.
- D. Test questions, scoring keys, and other data used to administer a licensing examination, employment, academic or other examination or testing procedure before the examination is given and if the examination is to be used again. Records establishing procedures for and instructing persons administering, grading or evaluating an examination or testing procedure are included in this exemption, to the extent that disclosure would create a risk that the result might be affected.
- E. Information consisting of production records, sale or purchase records or catch records, or similar business records of a private concern or enterprise, required by law to be submitted to or inspected by a governmental body to allow it to determine fees or assessments payable or to establish production quotas, and the amounts of such fees or assessments payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise.
- F. A personnel discipline action, or materials or documents supporting that action.
- G. Information developed regarding the habitat, location or population of any threatened species or endangered species.
- H. Data and information provided by participants to mediation.
- I. Specific operational plans in connection with an anticipated threat to individual or public safety for deployment and use of personnel and equipment, prepared or used by a public body, if public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a law enforcement activity.
- J. Audits or audit reports and financial statements.
- K. Records or information that, if disclosed, would allow a person to gain unauthorized access to buildings or other property; identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, services; or disrupt, interfere with or gain unauthorized access to public funds or to information processing, communication or telecommunication systems, including the information contained in the systems, that are used or operated by a public body.
- L. Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect: an individual; buildings or other property; or information processing, communication or telecommunication systems, including the information contained in the systems.
- M. Information provided to, obtained by or used by a public body to authorize, originate, receive or authenticate a transfer of funds, including but not limited to a credit card number, payment card expiration date, password, financial institution account number and financial institution routing number.
- N. Social Security numbers.
- O. The name, home address and home telephone number of a public safety officer.

- P. Sensitive business records or financial or commercial information.
- Q. Records of the Department of Public Safety relating to investigations of law enforcement officers or other personnel, until the department issues a final report.
- R. A medical examiner's report, autopsy report or laboratory test report ordered by a medical examiner.

SECTION 3.13. EXEMPT AND NONEXEMPT PUBLIC RECORD TO BE SEPARATED

If any public record contains material which is not exempt, as well as material which is exempt from disclosure, the custodian shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

CHAPTER 4. DEADLY PHYSICAL FORCE PLAN

SECTION 4.01. UMATILLA COUNTY PLAN ADOPTED

The use of deadly physical force by law enforcement is a matter of critical concern to the Confederated Tribes. To provide a framework for a consistent response to the use of deadly physical force that treats the law enforcement officer fairly while promoting public confidence in the use of such force, and to ensure compliance with SB412, the Deadly Physical Force Plan drafted and adopted by the Umatilla County Use of Deadly Physical Force Planning Authority in compliance with ORS 181.781 to 181.796 is hereby adopted as the deadly physical force plan of the Confederated Tribes for exercise of such force under the specific powers granted to tribal officers in SB 412. This does not preclude the Umatilla Tribal Police Department from adopting a policy more comprehensive than that required under SB 412 for use of force in matters pertaining to powers not granted under SB412.

CHAPTER 5. BIOLOGICAL EVIDENCE PRESERVATION

SECTION 5.01. SCOPE AND INTERPRETATION

This Chapter outlines the duties of the Umatilla Tribal Police Department in preserving biological evidence in cases involving the exercise of State police powers granted under SB 412 and is intended to substantially implement sections 2 to 6 of Chapter 275, Oregon Laws 2011. As such, the provisions under this Chapter are to be interpreted to give full effect to compliance with SB 412.

While SB 412 requires the adoption of a policy substantially similar to section 2 to 6 of Chapter 275, Oregon Laws 2011, those sections primarily govern the conduct, rights, and obligations of State district attorneys, defendants, victims, and courts. The Confederated Tribes does not have jurisdiction over such individuals, courts, or cases. For this reason, this Chapter is limited to regulating the conduct of the Police Department to ensure it abides by, and gives full effect to, Chapter 275, Oregon Laws 2011 as the custodian of relevant biological evidence under State law.

This Chapter does not waive the Confederated Tribes' sovereign immunity from suit.

SECTION 5.02. DUTY TO PRESERVE CERTAIN BIOLOGICAL EVIDENCE; POLICE DEPARTMENT AS CUSTODIAN

The Police Department shall preserve biological evidence in accordance with this Chapter when it is collected as part of a criminal investigation into a covered offense or is otherwise in the Police Department's possession and reasonably may be used to incriminate or exculpate any person for a covered offense. The Police Department is the "custodian" for purposes of any victim or defendant notice, court order, or district attorney communication issued pursuant to, or under the authority of, Chapter 275, Oregon Laws 2011.

SECTION 5.03. STATE DISTRICT ATTORNEY REQUESTS

The Police Department shall abide by any State district attorney request involving the preservation of biological evidence identified in this Code, including any request to provide an inventory of biological evidence as contemplated by Chapter 275 §5, Oregon Laws 2011, unless such request is in clear violation of, or falls outside the scope of, Chapter 275, Oregon Laws 2011.

SECTION 5.04. EVIDENCE PRESERVATION TIMELINES; EARLY DISPOSAL

- A. Evidence preserved in accordance with Section 5.02 shall be preserved in an amount and manner sufficient to develop a DNA profile and, unless otherwise provided in this Chapter, must be preserved for 60 years except as identified in paragraph B.
- B. For aggravated vehicular homicide and manslaughter offenses, evidence shall be preserved until each person convicted of the offense has served the person's sentence. If no person is convicted of the covered offense or the criminal investigation is closed for a reason other than conviction, evidence shall be preserved until the expiration of the relevant State statute of limitations.
- C. The Police Department may seek to dispose of biological evidence before the specified times by providing written notice to the State of Oregon district attorney having jurisdiction over the prosecution of the covered offense. If the State district attorney provides the Police Department with written notice objecting to early disposal of biological evidence, the Police Department shall preserve the evidence until the time period has elapsed.

SECTION 5.05. AUTOMATIC 120 DAY DELAY FOR EARLY DISPOSAL

If the Police Department is notified by the State district attorney that early disposal is approved, or if the Police Department fails to receive a response from the State district attorney, early disposal shall not occur until the 120 day time periods in Chapter 275 §3(3), Oregon Laws 2011 has run or the matter is otherwise fully adjudicated by a State court with jurisdiction over the case as described in Chapter 275 §4, Oregon Laws 2011.

SECTION 5.06. STATE COURT ORDERS

If the Police Department receives a State court order issued pursuant to Chapter 275, Oregon Laws 2011, the Police Department shall abide by that order. Provided, however, disposal of evidence shall not occur earlier than 45 days after the date the order is entered as required by Chapter 275 §4(3), Oregon Laws 2011.

SECTION 5.07. DEFENDANT'S REQUEST TO REVIEW EVIDENCE

The Police Department shall provide a defendant or defendant's attorney with a reasonable opportunity to review biological evidence that is the subject of a written notice of intent to dispose of biological evidence early under Chapter 275 §3, Oregon Laws 2011 for the purpose of preparing a motion to preserve biological evidence. Provided, however, the Police Department shall first notify and consult with the State district attorney prior to allowing the defendant or defense attorney an opportunity to review the biological evidence.

SECTION 5.08. IMPRACTICABLE RETENTION

The Police Department is not required to preserve physical evidence solely because it contains biological evidence if the evidence is of such a size, bulk or physical character as to render retention impracticable. When retention is impracticable, the Police Department shall remove and preserve portions of the physical evidence likely to contain biological evidence in a quantity sufficient to permit future DNA testing before returning or disposing of the evidence.

SECTION 5.09. INABILITY TO PRODUCE EVIDENCE

If the Police Department is required to preserve biological evidence under this Chapter and is unable to produce the evidence in a judicial proceeding in the State of Oregon, the Police Department shall prepare, sign and file with the State court a sworn affidavit that indicates the Police Department is unable to produce the evidence and describes the efforts taken to locate the evidence. The Police Department shall cooperate and consult with the State district attorney in preparing the affidavit.

APPENDIX A

LEGISLATIVE HISTORY

SB412 IMPLEMENTATION CODE

LEGISLATIVE HISTORY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the SB 412 Implementation Code in Resolution 11-100 (December 19, 2011).