

**KICKAPOO CRIMINAL ORDINANCE
SUB-CHAPTER B(2) SEXUAL ABUSE**

Article 230. Definitions for Sub-chapter B(2)

As used in this sub-chapter:

(1) “commercial sex act” means any sex act, on account of which anything of value is given to or received by any person.

(2) “coercion” means -

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
or

(C) the abuse or threatened abuse of law or the legal process.

(3) “illicit sexual conduct” means

(A) a sexual act with a person under 18 years of age that would be in violation of KTO Criminal Ordinance, Sub-chapter B(2) (Sex Crimes); or

(B) any commercial sex act with a person under 18 years of age.

(4) “prison” means a correctional, detention, penal or jail facility;

(5) “prior sex offense conviction” means a conviction for an offense—

(A) under this sub-chapter; or

(B) under Federal, another Indian Tribal or State law for an offense consisting of conduct that would have been an offense under this sub-chapter if the conduct had occurred within the jurisdiction of the Kickapoo Tribe of Oklahoma;

(6) “sexual act” means -

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the

mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(7) “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(8) “serious bodily injury” means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(9) “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(10) “official detention” means -

(A) detention by a Kickapoo officer or employee, or under the direction of a Kickapoo officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, or banishment; or

(B) custody by a Kickapoo officer or employee, or under the direction of a Kickapoo officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency; and

(11) “venture” means any group of two or more individuals associated in fact, whether or not a legal entity.

Article 231. Aggravated Sexual Abuse

It shall be unlawful for another to knowingly cause another to engage in a sexual act:

(a) By force or threat

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or

(b) By other means. To knowingly

(1) render another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person; or

(c) With children.-Whoever knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in sub-articles (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or

(d) Attempts to do any acts listed in sub-articles (a), (b) or (c).

(e) Aggravated sexual abuse shall be punishable by a fine of not more than \$5,000.00, imprisonment for not less than Six (6) months nor more than One (1) year, or banishment from the jurisdiction for a period of not more than Fifteen (15) years or a combination of fines, imprisonment or banishment. If the defendant has previously been convicted of another offense under this sub-article, or of a Federal, Tribal or State offense that would have been an offense under this Sub-chapter had the offense occurred in the tribal jurisdiction, the defendant shall have a sentence that includes mandatory banishment of not less than Seven (7) years.

(f) State of mind proof requirement. In a prosecution under sub-article (c) of this Article, the Nation need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

Article 232. Sexual Abuse

It shall be unlawful to knowingly

(1) cause another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping) or attempt to do so; or

(2) engage in a sexual act with another person if that other person is

(A) incapable of appraising the nature of the conduct; or

(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

(C) or attempts to do any acts listed in sub-articles (a) or (b).

(3) Sexual abuse shall be punishable by a fine of not more than \$5,000.00, imprisonment for not less than Three (3) months nor more than One (1) year, or banishment from the jurisdiction for a period of not more than Ten (10) years or a combination of fines, imprisonment or banishment.

Article 233. Sexual Abuse of a Minor or Ward

(a) Of a minor.--Whoever knowingly engages in a sexual act with another person who--

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined not more than \$5,000.00, imprisoned for not less than Four (4) months nor more than One (1) year, or banished for not more than Ten (10) years, or a combination of fines, imprisonment or banishment.

(b) Of a ward.--Whoever knowingly engages in a sexual act with another person who is--

(1) in official detention; and

(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined not more than \$5,000.00, imprisoned not more than

one (1) year, banished for not more than 10 years, or a combination of fines, imprisonment and banishment.

(c) Defenses. (1) In a prosecution under sub-article (a) of this Article, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this Article, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) State of mind proof requirement.--In a prosecution under sub-article (a) of this Article, the Nation need not prove that the defendant knew--

(1) the age of the other person engaging in the sexual act; or

(2) that the requisite age difference existed between the persons so engaging.

Article 234. Abusive Sexual Contact

(a) Sexual conduct. Whoever knowingly engages in or causes sexual contact with or by another person, if so to do would violate--

(1) Sub-article (a) or (b) of Article 231 of this title had the sexual contact been a sexual act, shall be fined not more than \$5000, imprisoned not more than one (1) year, banished for a period of not more than Seven (7) years or a combination thereof;

(2) Sub-article (c) of Article 231 of this title had the sexual contact been a sexual act, shall be fined not more than \$5000, imprisoned not more than one (1) year, banished for a period of not more than Seven (7) years or a combination thereof.

(3) Article 232 of this title had the sexual contact been a sexual act, shall be fined not more than \$5000, imprisoned not more than one (1) year, banished for a period of not more than Seven (7) years or a combination thereof;

(4) Sub-article (a) or (b) of Article 233 of this title had the sexual contact been a sexual act, shall be fined not more than \$5000, imprisoned not more than one (1) year, banished for a period of not more than Seven (7) years or a combination thereof;

(b) In other circumstances. Whoever knowingly engages in sexual contact with another person without that other person's permission shall be fined not more than \$5000, imprisoned not more than one (1) year, banished for a period of not more than Seven (7) years or a combination thereof.

(c) Offenses involving young children.--If the sexual contact that violates this Article (other than sub-article (a)(2)) is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this Article.

Article 235. Sex Trafficking of Children or by Force, Fraud, or Coercion

(a) Whoever knowingly

(1) within the jurisdiction of the Kickapoo Tribe of Oklahoma, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing that force, fraud, or coercion will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be guilty of a crime.

(b) Sex trafficking of children or by force, fraud, or coercion shall be punishable by

(1) if the offense was effected by force, fraud, or coercion or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine of not more than \$5000.00, imprisonment for not more than One (1) year or banishment for a period of not more than Fifteen (15) years, or a combination thereof; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine of not more than \$5000.00, imprisonment for not more than One (1) year, or banishment for a period of not more than Ten (10) years, or a combination thereof.

Article 236. Coercion and Enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be punished by a fine of not more than \$5000.00, imprisonment for not more than One (1) year, or banishment for a period of not more than Five (5) years, or a combination thereof; or

(b) Whoever, knowingly persuades, induces, entices, or coerces any individual who has

not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be punished by a fine of not more than \$5000.00, imprisonment for not more than One (1) year or banishment for a period of not more than Ten (10) years, or a combination thereof.

Article 237. Transportation of Minors

(a) Transportation with intent to engage in criminal sexual activity. A person who knowingly transports an individual who has not attained the age of 18 years, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be punished by a fine of not more than \$5000.00, imprisonment for not more than One (1) year or banishment for a period of not more than Ten (10) years, or a combination thereof.

(b) Travel with intent to engage in illicit sexual conduct. A person who travels, for the purpose of engaging in any illicit sexual conduct with another person shall be punished by a fine of not more than \$5000.00, imprisonment for not more than One (1) year or banishment for a period of not more than Ten (10) years, or a combination thereof.

(c) Attempt and conspiracy. Whoever attempts or conspires to violate sub-article (a) or (b) shall be punishable in the same manner as a completed violation of that sub-article.

(d) Defense. In a prosecution under this Article based on illicit sexual conduct it is a defense, which the defendant must establish by a preponderance of the evidence, that the person with whom the defendant engaged in the commercial sex act was over the age of Fourteen (14) and the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

Article 238. Indecent Proposal to a Minor

(a) It shall be unlawful for any person to knowingly and intentionally:

(1) Make any oral or written proposal to any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, for the child to perform a sexual act, have sexual contact or sexual relations with any person; or

(2) Ask, invite, entice, or persuade any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, to go with any person to a secluded, remote, secret or private place, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire, or perform a sexual act or have sexual contact with or of any person;

(b) The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this Article shall not constitute a defense to a prosecution under this Article.

(c)(1) Any person convicted of any violation of this sub-article shall be punished by a fine in an amount not to exceed Five Thousand Dollars (\$5,000.00), imprisonment for not less than Three (3) months nor more than one (1) year or by banishment for a period of not more than Five (5) years or by a combination of such fine, imprisonment and banishment, except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by a fine in an amount not to exceed Five Thousand Dollars (\$5,000.00), imprisonment for not less than Six (6) months nor more than One (1) year or by banishment for a period of not more than Ten (10) years or by a combination of such fine, imprisonment and banishment. The provisions of this sub-article shall not apply unless the accused is at least three (3) years older than the victim.

(2) Any person convicted of a second or subsequent violation of this sub-article shall be punished as provided in this sub-article and shall not be eligible for probation, suspended or deferred sentence and shall receive a mandatory minimum banishment of Five (5) years and not more than Ten (10) years.

Article 239. Sexual Communication with a Minor

(a) It is unlawful for any person to facilitate, encourage, offer or solicit illicit sexual conduct, sexual act(s) or sexual contact(s) with a minor, or other individual the person believes to be a minor, by use of any technology, or to engage in any communication for sexual or prurient interest with any minor, or other individual the person believes to be a minor, by use of any technology. For purposes of this sub-article, "by use of any technology" means the use of any telephone or cell phone, computer disk (CD), digital video disk (DVD), recording or sound device, CD-ROM, VHS, computer, computer network or system, Internet or World Wide Web address including any blog site or personal web address, e-mail address, Internet Protocol address (IP), text messaging or paging device, any video, audio, photographic or camera device of any computer, computer network or system, cell phone, any other electrical, electronic, computer or mechanical device, or any other device capable of any transmission of any written or text message, audio or sound message, photographic, video, movie, digital or computer-generated image, or any other communication of any kind by use of an electronic device.

(b) A person is guilty of violating the provisions of this Article if the person knowingly transmits any prohibited communication by use of any technology defined herein, or knowingly prints, publishes or reproduces by use of any technology described herein any prohibited communication, or knowingly buys, sells, receives, exchanges, or disseminates any prohibited communication or any information, notice, statement, website, or advertisement for prohibited

communication with a minor or access to any name, telephone number, cell phone number, e-mail address, Internet address, text message address, place of residence, physical characteristics or other descriptive or identifying information of a minor, or other individual the person believes to be a minor for purposes of illicit sexual conduct, sexual act(s) or sexual contact(s).

(c) Provided, that if the person violating this Article is under the age of eighteen (18) and less than three (3) years older than minor victim, the alleged perpetrator shall be treated as a juvenile in need of supervision or juvenile delinquent pursuant to the Juvenile Procedure Code unless the Attorney General certifies them as an adult for good cause due to the alleged action's seriousness, having been done maliciously, for profit or if the suspect has a prior juvenile or criminal conviction for a violation of this sub-chapter or of a Federal, Tribal or State offense that would have been an offense under this sub-chapter had the offense occurred in the tribal jurisdiction.

(d) The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this Article shall not constitute a defense to a prosecution under this Article.

(e) For purposes of any criminal prosecution pursuant to any violation of this Article, the person violating the provisions of this Article shall be deemed to be within the jurisdiction of this Nation by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device within the Kickapoo Tribe of Oklahoma, regardless of the where the violator resides.

(f) Sexual communication with a minor shall be punishable by a fine in an amount not to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment for a term of not more than one (1) year, or by banishment for a period of not more than seven (7) years or by a combination of such fine, imprisonment and banishment. For purposes of this Article, each communication shall constitute a separate offense.

Article 240. Sexual Battery of a Minor

(a) It shall be unlawful for any person to knowingly and with an intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desire of any person to:

(1) urinate or defecate upon a child under sixteen (16) years of age,

(2) ejaculate upon or in the presence of a child,

(3) cause, expose, force or require a child to look upon the body or private parts of another person,

(4) force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene or pornographic materials,

(5) cause, intentionally expose, force or require a child to look upon sexual acts performed in the presence of the child, or

(6) force or require a child to touch or feel the body or private parts of said child or another person.

(b) The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this Article shall not constitute a defense to a prosecution under this Article.

(c)(1) Any person convicted of any violation of this sub-article shall be punished by a fine in an amount not to exceed Five Thousand Dollars (\$5,000.00), imprisonment for not less than Three (3) months nor more than one (1) year or by banishment for a period of not more than Five (5) years or by a combination of such fine, imprisonment and banishment, except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by a fine in an amount not to exceed Five Thousand Dollars (\$5,000.00), imprisonment for not less than Six (6) months nor more than One (1) year or by banishment for a period of not more than Ten (10) years or by a combination of such fine, imprisonment and banishment. The provisions of this sub-article shall not apply unless the accused is at least three (3) years older than the victim.

(2) Any person convicted of a second or subsequent violation of this sub-article shall be punished as provided in this sub-article and shall not be eligible for probation, suspended or deferred sentence and shall receive a mandatory minimum banishment of Five (5) years.

Article 241. Deviate Sexual Intercourse

(a) It shall be unlawful to engage in any form of sexual act with an animal.

(b) Deviate sexual intercourse shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00), or by a term of imprisonment in the Tribal jail not to exceed six months; or by banishment for a period of not more than three years; or a combination of the above.

Article 242. Mandatory Restitution

(a) In general. In addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) Scope and nature of order.

(1) Directions. The order of restitution under this Article shall direct the defendant to pay to the victim the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) For purposes of this sub-article, the term “full amount of the victim's losses” includes any costs incurred by the victim for

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, plus any costs incurred in obtaining a civil protection order; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(3) The issuance of a restitution order under this Article is mandatory and the Court may not decline to issue an order under this Article because of the economic circumstances of the defendant; or the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) For purposes of this Article, “victim” means the individual harmed as a result of a commission of a crime under this sub-chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.