

PROPOSED CRIMINAL VIOLATIONS ORDINANCE

CHAPTER D--CRIMES AGAINST CHILDREN

ARTICLE 400: DESERTION OR ABANDONMENT OF A MINOR

1 (A) Desertion or abandonment of a minor: Any parent, legal custodian, or guardian, who intentionally deserts or abandons a minor child under the age of eighteen (18), or removes the minor from the jurisdiction of the Kickapoo Tribe of Oklahoma to desert or abandon the minor, shall be guilty of desertion or abandonment.

(B) Desertion or abandonment shall include neglect, refusal or failure by the parent, custodian, or guardian to provide food, shelter, clothing, and/or medical attention to a minor.

(C) If the minor flees the home or residence, refuses to cooperate with the parent, custodian, or guardian then there is no desertion or abandonment.

(D) Under this Ordinance, there shall be no Article or Section that prevents any Judge or Justice of the Kickapoo Tribe of Oklahoma to assume immediate custody of a minor as to protect the best interests of the health and welfare of the minor.

(E) Punishment: Any parent, custodian, or guardian of minor that is guilty of desertion or abandonment of a minor shall be punished of a fine at not more than One Thousand Dollars (\$1,000.00) and/or no more than one (1) year jail.

(F) At the discretion of the Tribal Attorney General, if the desertion or abandonment is serious in nature, the Office of the Attorney General can forward such information to the appropriate State or Federal authorities.

ARTICLE 401: CHILD ABUSE

1 (A) Child Abuse: Any parent, or person, who intentionally threatened to harm, sell or exploit, or who in fact neglected, sold or exploited, sexually abused, or who intentionally inflicted by unreasonable force or violence the beating, torture, maiming, or the causing of physical or mental injury to a minor shall be guilty of child abuse.

(B) Under this Ordinance, there shall be no Article or Section shall prevent any Judge or Justice of the Judicial system of the Kickapoo Tribe of Oklahoma to remove immediately any minor, on a temporary or permanent basis, or to terminate parental rights due to an act of child abuse.

(C) Under this Ordinance, the parent, custodian, or guardian may use reasonable and ordinary force as to maintain proper discipline and control over a minor.

(D) Punishment: Any parent, or person, guilty of child abuse shall be punished of a fine at not more than Five Thousand Dollars (\$5,000.00) and\or no more than one (1) year jail.

(E) At the discretion of the Tribal Attorney General, a serious act or acts of child abuse can be reported to the proper State and\or Federal authorities.

**Proposed Amendments Criminal Violations Ordinance
Chapter D - Crimes Against Children**

Article 401.1. Omission to Provide for a Child

(A) **Omission to Provide for a Child.** Unless otherwise provided for by law, any parent, guardian, or person having custody or control of a child who willfully neglects, refuses or omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, medical attendance, payment of court-ordered day care or payment of court-ordered medical insurance costs for such child which is imposed by law, upon conviction, is guilty of a crime. Provided, any person obligated to make child support payments who willfully and without lawful excuse becomes delinquent in said child support payments after February 28th, 2011, and such delinquent child support accrues without payment by the obligor for a period of one (1) year, or exceeds Five Thousand Dollars (\$5,000.00) shall be guilty of this section.

Any conviction pursuant to this section shall be punishable by imprisonment for not more than six (6) months in the Tribal Jail or by the imposition of a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment. As used in this section, the duty to furnish medical attendance shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted.

(B) **Fleeing Jurisdiction to Avoid Provision of Necessities.** Any person who leaves the tribal jurisdiction to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, shall be guilty of a crime punishable by imprisonment for not more than four (4) months in the tribal jail or by the imposition of a fine of not more than Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment.

(C) Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the health or welfare of the child.

(E) Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

(F) If any parent of a child in cases in which the Indian Child Welfare Department or the Tribal Child Support Department/Agency is providing services to or regarding the parent's child and the parent is determined by the Department(s) to be willfully violating the provisions of this section, the Department(s) may refer the case to the Kickapoo Attorney General for prosecution. The Department(s) shall provide assistance to the Attorney General in such prosecutions. Any

child support or arrears payments made pursuant to this section shall be made payable to the Department(s) and paid through the Tribal Court or a Centralized Support Registry if such exists.

(G) Alcohol or Drug-dependent Child. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, to provide for the treatment of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a crime. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

Violation of this sub-section shall be guilty of a crime punishable by imprisonment for not more than Three (3) months in the tribal jail or by the imposition of a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00), or by both such fine and imprisonment.

Article 401.2 Child Endangerment - Knowingly Permitting Physical or Sexual Abuse - Penalties

(A) Child Endangerment. A person who is the parent, guardian, or person having custody or control over a child, commits child endangerment when the person:

(1) Knowingly permits physical or sexual abuse of a child;

(2) Knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in Federal, Tribal or Section 2-101 of Title 63 of the Oklahoma Statutes (as may be amended), or knowingly consumes or uses a controlled dangerous substance in the presence of a child;

(3) Knowingly permits a child to be present in a vehicle when the person knows or should have known that the operator of the vehicle is impaired by or is under the influence of alcohol or another intoxicating substance; or

(4) Is the driver, operator, or person in physical control of a vehicle in violation of Tribal law while transporting or having in the vehicle such child or children.

However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any action to stop the physical or sexual abuse or deny permission for the child to be in the vehicle with an intoxicated person would result in substantial bodily harm to the person or the child. Provided, such reasonable apprehension shall not relieve the person of a duty to report the physical or sexual abuse of the child. Failure to report sexual or physical abuse, in addition to any possible criminal penalties, shall result in a civil fine of not more than

\$1000.00.

B. Any person convicted of violating any provision of this section shall be guilty of a Crime punishable by imprisonment in the Tribal jail for a term of not more than One (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

Article 408. Proof of Marriage - Wife as Competent Witness

No other evidence shall be required to prove the marriage of a husband and wife, or that such person is the lawful father or mother of a child or children than is or shall be required to prove such fact in a civil action, and such wife shall be a competent witness to testify in any case brought under this Chapter, and to any and all matters relevant thereto, including the fact of the parentage of such child or children.

ARTICLE 402: CONTRIBUTING TO THE DELINQUENCY OF A MINOR

1 (A) Contributing to the Delinquency of a Minor: No person, or parent, shall intentionally aid, assist, solicit, contribute, or encourage a minor to commit any criminal act.

(B) Under this Ordinance, a minor shall be any child that is under the age of eighteen and it is presumed that the person who contributed to the delinquency of the minor was aware or had knowledge that the minor was not of age.

(C) Punishment: Any person found guilty of Contributing to the Delinquency of a Minor shall be punished at a fine of not more than Five Hundred Dollars (\$500.00) and\or no more than three (3) months jail.

ARTICLE 403: A MINOR IN POSSESSION OF AN ALCOHOLIC BEVERAGE, ILLEGAL DRUG, OR INHALANT MATERIAL

1 (A) A Minor in Possession of an Alcoholic Beverage, Illegal Drug, or Inhalant material: No minor under the age of eighteen (18) shall be permitted to have in their possession, or shall use, distribute, or solicit an alcoholic beverage(s), illegal drug(s), or inhalant material(s).

(B) Punishment: A minor who is found guilty of possession of a alcoholic beverage, an illegal drug, or inhalant materials, will be placed under the custody of the Court, and the Court will determine appropriate remedy.

ARTICLE 404: FURNISHING TOBACCO PRODUCTS OR PAPER TO A MINOR:

1 (A) Furnishing Tobacco Products or Paper To A Minor: Any person who intentionally furnishes, sells, provides access, contributes, or gives any tobacco product or tobacco paper to a minor under the age of eighteen (18) years shall be guilty of furnishing tobacco products or paper to a minor.

(B) Punishment: Any person found guilty of furnishing a tobacco product or tobacco paper to a minor shall be fined no more than Twenty-Five Dollars (\$25.00). On every offense thereafter, the Court can impose a punishment of no more than Fifty Dollars (\$50.00) and\or no more than five (5) days jail.

ARTICLE 405: ABANDONMENT OF DANGEROUS PROPERTY ACCESSIBLE TO A MINOR

1 (A) Abandonment of Dangerous Property Accessible To A Minor: Any person, business or corporation, that intentionally discards, abandons, or disposes of property such as an icebox, refrigerator, container, or ice chest with a capacity of more than one and one-half cubic feet without removing the attached door, lid, or latch, in an area or vicinity in which children have access to, shall be guilty of abandonment of dangerous property accessible to children.

(B) Punishment: Any person found guilty of abandonment of dangerous property accessible to a minor shall be imposed a fine of not more than Fifty Dollars (\$50.00) and/or no more than five (5) days jail.

ARTICLE 406: CHILD STEALING

1 (A) Child Stealing: Any person, who intentionally by fear, intimidation, threat, violence, force, or who deliberately entices or abducts a minor, without permission from the legally recognized parent, custodian, or guardian shall be guilty of child stealing.

(B) Punishment: Any person found guilty of child stealing shall be imposed a fine of not more than Five Thousand Dollars (\$5,000.00) dollars and/or no more than one (1) year jail.

(C) At the discretion of the Tribal Attorney General, information regarding a child stealing matter can forward to the appropriate Federal authorities.

ARTICLE 407: CURFEW VIOLATION

1 (A) Curfew violation: No parent, guardian, or other person having physical custody or charge of a minor will allow the minor, under the age of eighteen (18) to be away from his/her place of residence in a public place, or a private place, other than the place where he/she intends to spend the night with the permission of the owner of such place; nor shall a minor be in a vehicle driving about, after the hour of midnight (12:00 a.m.) local time, unless accompanied by a parent, guardian, or other person having physical charge or custody of the minor, otherwise the parent, guardian, or person having physical custody of the minor shall be guilty of a curfew violation.

(B) Under this Ordinance, if the minor is returning from a school, religious activity, public or Tribal function there is no curfew violation..

(C) Punishment: Any parent, guardian, or other person found to be guilty of an curfew violation shall be fined in amount not to exceed One Hundred Dollars (\$100.00) and/or not more than one (1) month jail.