



NCA 11-021

CLASSIFICATION: #14. CRIMES AND PUNISHMENTS

A LAW OF THE MUSCOGEE (CREEK) NATION ENACTING REVISIONS TO THE CRIMINAL OFFENSES CODE OF THE MUSCOGEE (CREEK) NATION AND CODIFYING SAID CODE IN TITLE 14 OF THE MUSCOGEE (CREEK) NATION CODE ANNOTATED

Be it Enacted by the National Council of the Muscogee (Creek) Nation:

SECTION ONE. AMENDMENT. This amendment shall be codified in Title 14, Chapter 2, of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said amendment and its inclusion in pocket parts of the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated consistent with the format in the Code of Laws published in 2003 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following amendment, without further National Council approval:

SECTION TWO. REPEALER. MCNCA Title 14, §§2-311, 2-314, 2-315, 2-316 are hereby repealed.

SECTION THREE. AMENDMENT. MCNCA Title 14, §2-113 is hereby amended to read as follows:

§2-113 Definitions; General. In this Code, unless a different meaning is specified in reference to a particular crime the following words and phrases shall have the following meanings;

A. "Actor" means the person who allegedly committed or omitted the act or acts constituting the crime.

B. "Bodily injury" means a person suffers physical pain, illness or any impairment of physical condition.

C. "Carries away" means removing an article of the slightest distance. It is more than a mere change of position. It is a movement for the purpose of permanent relocation.

D. "Child," "children" or "minor" means a person or person under eighteen (18) years of age.

E. "Child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where

- 1. the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;**
- 2. such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or**
- 3. such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct**

E E. "Coercion" means a threat, however communicated, to;

- 1. Physically injure the person threatened or any other person, which by its terms will not be, or based on the circumstances cannot be, carried out at substantially the same time as its utterance or receipt;**
- 2. Physically injure the person threatened or any other person which is not made in the presence of the person threatened, but which may be capable of substantially contemporaneous execution;**
- 3. Injure the property of the person threatened or the property of one with whom such person has a family, social, business or other similar relationship;**
- 4. Accuse the person threatened of a crime or to so accuse one with whom such person has a family, social, business or other similar relationship;**
- 5. Expose the person threatened to hatred, contempt, ridicule or disgrace, or to so expose one with whom such person has a family, social, business or other similar relationship;**
- 6. Take or withhold action as a public official or employee, or to cause a public official or employee to take or withhold action; or**
- 7. Expose any secret, fact, report or information sought to be concealed by the person threatened.**

G. "Computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device;

F.H. "Court" or "Criminal TrialDistrict Court" shall mean the District Criminal Trial Court of the Muscogee (Creek) Nation.

G.I. "Criminal negligence" or "criminally negligent" means a gross deviation from the standard of care that a reasonable person would observe in the Actor's situation.

J. "Custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

H.K. "Dangerous weapon" or "deadly weapon" means any firearm, whether loaded or unloaded, or any other instrument, material or substance, whether animate or inanimate, which is likely to produce death or serious bodily injury in the manner it is used or attempted to be used.

† L. "Duty of care" means that one has a legal duty to render aide.

↓ M. "Extreme indifference to the value of human life" means that a person acts in total disregard of the consequences to others by unjustifiably creating what a reasonable person would realize in an inordinately high degree of risk of death to others.

K.N. "Force" means any touching, no matter how slight, of a person or any property on the person's body. Such touching must be known to a conscious victim at the time of the touching.

O. "Graphic", when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted; and

P. "Identifiable minor"

1. means a person

a. who was a minor at the time the visual depiction was created, adapted, or modified; or

b. whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

c. who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

2. shall not be construed to require proof of the actual identity of the identifiable minor.

LQ. "Incapacitated" means any person who by reason of mental or physical illness is disabled to the extent that the person lacks the ability to effectively engage in self-protection.

R. the term "Indistinguishable" used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

MS. "Person" means a human being who is a member of a federally recognized Indian tribe or a human being who is eligible to be a member of a federally recognized Indian tribe.

NT. "Intent" or "intentionally" means that in addition to doing the acts or failing to act which caused the harm, the Actor acted with the specific purpose of accomplishing that harm.

OU. "In the commission of" means the performance of an act which is an inseparable part of a crime or necessary for its completion, or which is performed in the process of fleeing from the immediate scene of the crime before a position of relative safety has been reached.

PV. "Know," "knows," "knowing," "knowingly" or "known" means in addition to doing the acts or failing to act which caused the harm, the Actor has a subjective belief that something exists. Proof of actual or direct knowledge is not required. It is sufficient if the facts and circumstances are such to cause an actual belief on the part of the Actor. Of course, ignorance of the law is not an excuse.

QW. "Law enforcement official" means any federal, state or tribal police officer, sheriff, deputy sheriff, highway patrol officer, investigator or similar public officer or official.

RX. "Legal duty to render aid" means one or more of the following is present;

1. A law imposes a duty to care for another;
2. One is in a spousal relationship to another or is the parent, guardian or other person having custody of a child;
3. One has assumed a contractual duty to care for another; or
4. One has voluntarily assumed the care of another person who acts in reliance on that care. The recipient is or becomes helpless and is in a situation where others cannot reasonably render aid.

SY. "Nation" means the Muscogee (Creek) Nation, including all of its agencies, Boards and Commissions, but not including its Communities.

FZ. "Malicious," "maliciously" or "with malice" means that, in addition to doing the acts or failing to act which caused the harm, the Actor either had specific intent to cause the harm or had a wanton disregard of the pain and strong likelihood of causing that harm.

AA. "Minor" means any person under the age of eighteen years;

UBB. "Motor vehicle" or "motor powered vehicle" means any self-propelled instrumentality in, upon, or by which a person or property may be transported.

CC. "Official detention" means

1. detention by a Lighthouse officer or employee, or under the direction of a Lighthouse 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, deportation, or exclusion; or
2. custody by a Lighthouse officer or employee, or under the direction of a Lighthouse 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;
3. 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

VDD. "Official proceeding" means a proceeding before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding.

WEE. "Omission" means a failure to act in circumstances where a legal duty to act exists.

FF. "Organization" means a person other than an individual;

XGG. "Personal property" means chattels and includes such things as money, goods, evidences of rights in action, and written instruments effecting a monetary obligation or right to title or property. The value of the property is immaterial.

HH. "Prison" means a correctional, detention, or penal facility;

II. "Producing" means producing, directing, manufacturing, issuing, publishing, or advertising;

YJJ. "Public servant" means any officer or employee of the Nation, including legislators and judges and any person performing an authorized governmental duty.

ZKK. "Serious bodily injury" means bodily injury ~~that involves which creates a substantial risk of death, or~~ unconsciousness, extreme physical pain, protracted and obvious ~~which causes serious, permanent~~ disfigurement or protracted loss or impairment of the function of any bodily member or organ, or mental faculty.

LL. "Sexual act" means

1. 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;
2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
3. 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
4. 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;

MM. "Sexual activity" means a sexual act, sexual contact, or the production of child pornography;

NN. "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;

OO. Except as provided in subparagraph I, "Sexually explicit conduct" means actual or simulated

1. sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
2. bestiality;
3. masturbation;

4. sadistic or masochistic abuse; or
5. lascivious exhibition of the genitals or pubic area of any person;

PP. For purposes of the definition of "Child pornography," "sexually explicit conduct" means

1. graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;
2. graphic or lascivious simulated:
 - a. bestiality;
 - b. masturbation; or
 - c. sadistic or masochistic abuse; or
3. graphic or simulated lascivious exhibition of the genitals or pubic area of any person;

QQ. "State" means a State of the United States, a federally recognized Indian tribe, the District of Columbia, and any commonwealth, possession, or territory of the United States.

AARR. "Unlawfully" means not authorized by law.

SS. "Visual depiction" includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;

BBTT. "Witness" means any person who;

1. Has knowledge of the existence or nonexistence of facts relating to any crime or claim or any other matter which is or may be the subject of an official proceeding or investigation;
2. Has made a statement under oath which has been or may be received as evidence in an official proceeding or investigation;
3. Has been legally served with a subpoena issued under the legal authority of the District **Criminal Trial** Court; or
4. Would be believed by a reasonable person to be a person described in this paragraph.

SECTION FOUR. AMENDMENT. MCNCA Title 14, §§2-317, 318, 319, and 321 is hereby amended to read as follows:

~~§ 2-317. Indecent Exposure. The crime of indecent exposure occurs when any person intentionally displays or exhibits that person's genitals in a lewd or lascivious manner where that person knows or should know that the conduct is likely to cause offense or alarm. Any person convicted of violating the foregoing provision shall be guilty of a felony.~~

Every person who willfully and knowingly either:

A. Lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;

B. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

shall be guilty, upon conviction, of a felony.

§2-318. False Imprisonment. It shall be unlawful for any person to confine a person, or cause a person to be confined, without his or her valid consent and without lawful authority or justification. Such unlawful confinement shall result from:

A. Any unlawful exercise or show of force by which a person is compelled to remain in any place where they do not wish to remain;

B.C. Any unlawful arrest, detention or imprisonment of another person or persons; or

BC. Any unlawful restriction of any person's freedom by means of causing that person to be in any place without that person's consent and without a reasonable means of escape; or

Any person convicted of violating the foregoing provision shall be guilty of a misdemeanor.

§3-319 Kidnapping/Abduction.

~~It shall be unlawful for any person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:~~

~~A. To cause such other person to be confined or imprisoned in this state against the will of the other person;~~

~~B. To cause such other person to be sent out of this state against the will of the other person; or~~

C. To cause such person to be sold as a slave, or in any way held to service against the will of such person.

Any person convicted of violating the foregoing provision shall be guilty of a felony.

A. Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds, for ransom or reward or otherwise, any person, except in the case of a minor by the parent thereof, with intent, either:

1. To cause such other person to be confined or imprisoned in this Nation against the will of the other person; or
2. To cause such other person to be sent out of this Nation against the will of the other person; or
3. To cause such person to be sold as a slave, or in any way held to service against the will of such person,

shall be guilty of a felony.

B. Upon any trial for a violation of this section, the consent thereof of the person kidnapped or confined, shall not be a defense, unless it appears satisfactorily to the jury, that such person was above the age of 12 years, and that such consent was not extorted by threat, or by duress.

C. Whoever attempts to violate subsection A. shall be guilty of a felony.

D. Special rule for certain offenses involving children. If:

1. the victim of an offense under this section has not attained the age of 18 years; and
2. the offender has attained the age of 18 years; and
3. is not
 - a. a parent;
 - b. a grandparent;
 - c. a brother;
 - d. a sister;
 - e. an aunt;
 - f. an uncle; or
 - g. an individual having legal custody of the victim;

the sentence under this section for such offense shall include imprisonment for not less than 3 years.

E. As used in this Chapter, the term "parent" does not include a person whose parental rights with respect to the victim of an offense under this section have been terminated by a final court order.

§2-321. ~~Sexual Abuse of a Person Under the Age of Sixteen~~ Video voyeurism. It shall be unlawful for a person to knowingly and intentionally:

A. ~~Make any oral, written or electronically or computer-generated word or indecent proposal to any child under sixteen (16) years of age for the child to have unlawful sexual relations or sexual intercourse with any person;~~

B. ~~Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law;~~

C. ~~Ask, invite, entice, or persuade any child under sixteen (16) years of age to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child;~~

D. ~~In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or~~

E. ~~In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen (16) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person.~~

Any person convicted of violating the foregoing provision shall be guilty of a felony;

A. Whoever has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be guilty of a felony.

B. In this section:

1. "capture" with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;
2. "broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person or persons;
3. "a private area of the individual" means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;

4. "female breast" means any portion of the female breast below the top of the areola; and
5. "under circumstances in which that individual has a reasonable expectation of privacy" means;
 - a. circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or
 - b. circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

C. This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.

SECTION FIVE. NEW LAW. The following new Law is hereby enacted:

§2-323. Sex trafficking of children or by force, fraud, or coercion

A. Whoever knowingly;

1. recruits, entices, harbors, transports, provides, obtains, or maintains 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, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion as described in subsection (e)(2), or any combination of such means 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 punished as provided in subsection (b).

B. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.

D. Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be guilty of a felony.

E. In this section:

- 1. The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.**
- 2. The term "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. The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.**
- 4. The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.**
- 5. The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.**

§2-324. Aggravated sexual abuse

A. By force or threat. Whoever, knowingly causes another person to engage in a sexual act

- 1. by using force against that other person; or**
- 2. threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;**

or attempts to do so, shall be guilty of a felony.

B. By other means. Whoever knowingly

1. renders another person unconscious and thereby engages in a sexual act with that other person;
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. causes a pregnancy by sexual abuse under § 3-110.

or attempts to do so, shall be guilty of a felony.

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 subsections (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 attempts to do so, shall be guilty of a felony.

D. State of mind proof requirement. In a prosecution under subsection (c) of this section, 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.

§2-325 Sexual abuse. Whoever knowingly

A. causes 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 engages in a sexual act with another person if that other person is

1. incapable of appraising the nature of the conduct; or
2. physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;

or attempts to do so, shall be shall be guilty of a felony.

§2-326 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 guilty of a felony.

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 guilty of a felony.

C. Defenses.

1. In a prosecution under subsection (a) of this section, 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 section, 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 subsection (a) of this section, the Government 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.

§2-327 Abusive sexual contact

A. Sexual conduct in circumstances where sexual acts are punished by this chapter. Whoever knowingly engages in or causes sexual contact with or by another person, if so to do would violate:

1. subsection (a) or (b) of §2-324 (aggravated sexual abuse) of this title had the sexual contact been a sexual act, shall be guilty as a felony.
2. § 2-325 (sexual abuse) of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

3. subsection (a) of § 2-326 (sexual abuse of a minor 12-16) of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both;
4. subsection (b) of § 2-326 (sexual abuse of a ward) of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or
5. subsection (c) of § 2-324 (aggravated sexual abuse <12) of this title had the sexual contact been a sexual act, shall be guilty as a felony.

B. In other circumstances. Whoever knowingly engages in sexual contact with another person without that other person's permission shall be guilty of a felony.

C. Offenses involving young children. If the sexual contact that violates this section (other than subsection (a)(5)) 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 three years.

§2-328 Offenses resulting in death.

In general. A person who in the course of an offense under this chapter murders an individual shall be guilty of a felony.

§ 2-329 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 section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (3).
2. Enforcement. An order of restitution under this section shall be issued and enforced in accordance with Title 14, § 1-606.
3. Definition. For purposes of this subsection, 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.

C. Order mandatory. The issuance of a restitution order under this section is mandatory.

D. A court may not decline to issue an order under this section because of

- 1. the economic circumstances of the defendant; or
- 2. 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.

E. Definition. For purposes of this section, the term "victim" means the individual harmed as a result of a commission of a crime under this 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.

§ 2-330 Sexual exploitation of children

A. Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection E.

B. Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection E of this section.

C. reserved

D. Any person who knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering

1. to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or
2. participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection E.

E. Any individual who violates, or attempts or conspires to violate, this section shall be guilty of a felony.

§ 2-331. Selling or buying of children

A. Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either

1. with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
2. with intent to promote either
 - a. the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
 - b. the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be guilty of a felony.

B. Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either

1. with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or
2. with intent to promote either

- a. the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or
- b. the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be guilty of a felony.

§ 2-332. Certain activities relating to material involving the sexual exploitation of minors.

A. Any person who knowingly possesses, receives, distributes transports or ships by any means including by computer or mails, any visual depiction, or accesses with intent to view, one or more books, magazines, periodicals, films, video tapes, electronic images, or other matter which contain any visual depiction, shall be guilty of a felony if

1. the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and
2. such visual depiction is of such conduct;

B. Affirmative Defense. It shall be an affirmative defense to a charge of violating subsection A that the defendant

1. possessed less than three matters containing any visual depiction proscribed by that paragraph; and
2. promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof;
3. took reasonable steps to destroy each such visual depiction;
or
4. reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

§ 2-333. Certain activities relating to material constituting or containing child pornography

A. Any person who

1. knowingly mails, or transports or ships using any means or facility, including by computer, any child pornography;
2. knowingly receives or distributes

- a. any child pornography by any means, including by computer; or
 - b. any material that contains child pornography by any means, including by computer;
3. knowingly
- a. reproduces any child pornography for distribution; or
 - b. advertises, promotes, presents, distributes, or solicits any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains
 - i. an obscene visual depiction of a minor engaging in sexually explicit conduct; or
 - ii. visual depiction of an actual minor engaging in sexually explicit conduct;
4. knowingly sells or possesses with the intent to sell any child pornography; or
5. knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography.
6. knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct for purposes of inducing or persuading a minor to participate in any activity that is illegal; or
7. knowingly produces with intent to distribute, or distributes, by any means, including a computer, child pornography that is an adapted or modified depiction of an identifiable minor,

shall be guilty of a felony.

B. It shall be an affirmative defense to a charge of violating paragraph 1, 2, 3.a., 4, or 5 of subsection A. that

- 1. the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and
- 2. each such person was an adult at the time the material was produced; or
- 3. the alleged child pornography was not produced using any actual minor or minors.

C. No affirmative defense under subsection B.2, shall be available in any prosecution that involves child pornography as defined in this Chapter. A defendant may not assert an affirmative defense to a charge of violating paragraph 1, 2, 3.a, 4, or 6 of subsection A unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 14 days before the commencement of the trial, the defendant provides the court and the prosecutor with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph 1, 2, 3.a, 4, or 5 of subsection A or presenting any evidence for which the defendant has failed to provide proper and timely notice.

D. Affirmative Defense. It shall be an affirmative defense to a charge of violating subsection A.5 that the defendant

- 1. possessed less than three images of child pornography; and**
- 2. promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof**
 - a. took reasonable steps to destroy each such image; or**
 - b. reported the matter to a law enforcement agency and afforded that agency access to each such image.**

E. Admissibility of Evidence. On motion of the government, in any prosecution under this chapter or section 2-333A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

F. Civil Remedies.

- 1. In general. Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 2-333A, may commence a civil action for the relief set forth in paragraph (2).**
- 2. Relief. In any action commenced in accordance with paragraph 1, the court may award appropriate relief, including**
 - a. temporary, preliminary, or permanent injunctive relief;**
 - b. compensatory and punitive damages; and**
 - c. the costs of the civil action and reasonable fees for**

attorneys and expert witnesses.

G. Child Exploitation Enterprises.

1. Whoever engages in a child exploitation enterprise shall be guilty of a felony.
2. A person engages in a child exploitation enterprise for the purposes of this section if the person violates §2-313 (Sex trafficking), §2-319 (kidnapping) if the victim is a minor, or §2-324 (aggravated sex abuse)(involving a minor victim), §2-330 (Sexual Exploitation), or §2-339 (Transportation of a minor), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

§ 2-334. Engaging in the business of selling or transferring obscene matter

A. Whoever is engaged in the business of producing with intent to distribute or sell, or selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, shall be guilty of a felony.

B. As used in this section, the term "engaged in the business" means that the person who produces, sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the production, selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is "engaged in the business" as defined in this subsection.

§ 2-335. Misleading domain names on the Internet

A. Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be guilty of a felony.

B. Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be guilty of a felony.

C. For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as "sex" or "porn", is not misleading.

D. For the purposes of this section, the term "material that is harmful to minors" means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context

1. predominantly appeals to a prurient interest of minors;
2. is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
3. lacks serious literary, artistic, political, or scientific value for minors.

E. For the purposes of subsection D, the term "sex" means acts of masturbation, sexual intercourse, or physical contact with a person's genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

§ 2-336. Misleading words or digital images on the Internet

A. In General. Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be guilty of a felony.

B. Minors. Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall be guilty of a felony.

C. Construction. For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as "sex" or "porn", is not misleading.

D. Definitions. As used in this section

1. the terms "material that is harmful to minors" and "sex" have the meaning given such terms in § 3-121; and
2. the term "source code" means the combination of text and other characters comprising the content, both viewable and non-viewable, of a web page, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

§ 2-337. Obscene visual representations of the sexual abuse of children

A. In general. Any person who knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that

- 1.a. depicts a minor engaging in sexually explicit conduct; and
- b. is obscene; or
- 2.a. depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and
- b. lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be guilty of a felony.

B. Additional offenses. Any person who, in a circumstance described in subsection D, knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that

- 1.a. depicts a minor engaging in sexually explicit conduct; and
- b. is obscene; or
- 2.a. depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and
- b. lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be guilty of a felony.

C. Non-required element of offense. It is not a required element of any offense under this section that the minor depicted actually exist.

D. reserved.

E. Affirmative defense. It shall be an affirmative defense to a charge of violating subsection B that the defendant

- 1. possessed less than 3 such visual depictions; and
- 2. promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any such visual depiction
 - a. took reasonable steps to destroy each such visual depiction; or

- b. reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

F. Definitions. For purposes of this section

1. the term "visual depiction" includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;
2. the term "sexually explicit conduct" has the meaning given the term in § 2-113; and
3. the term "graphic", when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

§ 2-338. Penalties for registered sex offenders

Whoever, being required by any law to register as a sex offender, commits an offense involving a minor under this chapter shall be guilty of a felony in addition to the imprisonment imposed for the offense under that provision. The sentence imposed under this section shall be consecutive to any sentence imposed for the offense under that provision.

§ 2-339. Transportation of a minor for illegal sexual activity

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 into Muscogee (Creek) Nation jurisdiction, 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 guilty of a felony.

B. Travel with intent to engage in illicit sexual conduct. A person who travels into Muscogee (Creek) Nation jurisdiction for the purpose of engaging in any illicit sexual conduct with another person shall be guilty of a felony.

C. Attempt and conspiracy. Whoever attempts or conspires to violate subsection (a) or (b), shall be punishable in the same manner as a completed violation of that subsection.

D. Definition. As used in this section, the term "illicit sexual conduct" means (1) a sexual act with a person under 18 years of age that would be in violation of §2-324 thru §2-327; or (2) any commercial sex act (as defined in §2-323) with a person under 18 years of age.

E. Defense. In a prosecution under this section based on illicit sexual conduct, it is a defense, which the defendant must establish by a preponderance of the evidence that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

§ 2-340. 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 guilty of a felony.

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 guilty of a felony.

§ 2-341. Transportation for criminal sexual activity

Whoever knowingly transports any individual into Muscogee (Creek) Nation jurisdiction, with intent that such individual 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 guilty of a felony.

§ 2-342. Transmitting information about a minor

Whoever, using the mail or any facility or communication means, knowingly initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be guilty of a felony.

§ 2-343. Reserved

§ 2-344. Forfeitures

A. In general. The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of other law that such person shall forfeit to the Muscogee (Creek) Nation:

- 1. such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and**
- 2. any property, real or personal, constituting or derived from any proceeds that such person obtained, directly or indirectly, as a result of such violation.**

B. Property subject to forfeiture.

- 1. In general. The following shall be subject to forfeiture to the Muscogee (Creek) Nation and no property right shall exist in them:**
 - a. Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.**
 - b. Any property, real or personal, that constitutes or is derived from proceeds traceable to any violation of this chapter.**
- 2. Applicable law. The provisions of Title 14, §11-107 relating to forfeitures shall apply to any seizure or forfeiture under this subsection.**

SECTION SIX. AMENDMENT. MCNCA Title 14, §2-908 is hereby amended to read as follows:

§2-908 Failure to Report Abuse.

A. Abuse of a Child. The crime of failure to report child abuse occurs when a person who is required under provisions of MCNCA, Title 6 to report suspected instances of child abuse knowingly fails to make that report. Any person convicted of violating the foregoing provision shall be guilty of a felony.

B. Abuse of a Vulnerable Person. A person who, while engaged in a professional capacity or activity described in subsection C. of this section, learns of facts that give reason to suspect that a vulnerable person has suffered an incident of abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection D. of this section. Any person convicted of violating the foregoing provision shall be guilty of a felony.

C. Covered professionals. Persons engaged in the following professions and activities are subject to the requirements of subsection B, of this section:

1. Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and persons performing a healing role or practicing the healing arts.
2. Psychologists, psychiatrists, and mental health professionals.
3. Social workers, licensed or unlicensed marriage, family, and individual counselors.
4. Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.
5. Child care workers and other workers aiding vulnerable persons, and administrators.
6. Law enforcement personnel, probation officers, criminal prosecutors, and juvenile rehabilitation or detention facility employees.
7. Foster parents.
8. Commercial film and photo processors.

D. Definitions. For the purposes of this section

1. "abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child. "Abuse" shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty;
2. "physical injury" includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;
3. "mental injury" means harm to a person's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;
4. "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a person to engage in, or assist another person to engage in, sexually explicit

- conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;
5. "exploitation" means child pornography or prostitution of any person;
 6. "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the person; and
 7. "vulnerable person" means any child, or an adult who is legally disabled or handicapped, incompetent, or who, by reason of advanced age or other physical or mental condition is vulnerable to abuse, neglect or misappropriation of property.

E. Agency designated to receive report and action to be taken. The Lighthouse, Children & Family Services, and Attorney General's office are designated to receive and investigate the reports described in subsection B of this section. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to the Lighthouse and Attorney General. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by the designated agencies, with a goal of avoiding unnecessary multiple interviews with the child.


F. Reporting form. A standard written reporting form, with instructions, shall be prepared by the Attorney General and disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of reports by other means when circumstances dictate.

G. Immunity for good faith reporting and associated actions. All persons who, acting in good faith, make a report by subsection B. of this section, or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the above functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

SECTION SEVEN. EFFECTIVE DATE. This Act shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

ENACTED by the Muscogee (Creek) National Council on this 29th day of January 2011.

IN WITNESS WHEREOF, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



Roger Barnett, Speaker
National Council
Muscogee (Creek) Nation

CERTIFICATION

I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Twenty-six members with Twenty-Three members attending this meeting on the 29th day of January, 2011 and that the above is in conformity with the provisions therein adopted by a vote of 22 in favor, 0 against, 0 abstentions, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



Terry A. Fish, Recording Secretary
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature this 11 day of Feb, 2011, to the above Law, NCA 11-021 authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.



A. D. Ellis, Principal Chief
Muscogee (Creek) Nation

