CB- 10-21

TO APPROVE A COUNCIL BILL ADOPTING AMENDMENTS TO THE CHOCTAW NATION OF OKLAHOMA CRIMINAL CODE

IN THE TRIBAL COUNCIL OF THE CHOCTAW NATION

RONALD PERRY INTRODUCED THE FOLLOWING COUNCIL BILL

A COUNCIL BILL

TO AMEND the Criminal Code of the Choctaw Nation of Oklahoma.

WHEREAS, Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma (the "Nation") provides that the Tribal Council (the "Council") shall enact legislation, rules and regulations not inconsistent with the Constitution for the general good of the Choctaw Nation and for the administration and regulation of the affairs of the Choctaw Nation;

WHEREAS, since the passage of the previous code, the Tribal Prosecutor's Office has reviewed the current Criminal Code and proposes the amendments shown in Exhibit A as attached to better protect the sovereignty, economic security, health, and welfare of the Choctaw Nation of Oklahoma (the "Nation"); and

WHEREAS, the Council finds it is in the best interest of the Nation to adopt the amendments to the Nation's Criminal Code as attached. (See Exhibit A).

THEREFORE BE IT ENACTED, by the Tribal Council of the Choctaw Nation of Oklahoma, that this bill be cited as approval to incorporate and adopt all proposed amendments to the Criminal Code of the Choctaw Nation of Oklahoma attached as Exhibit A.

CERTIFICATION

I, the undersigned, as speaker of the Tribal Council of the Choctaw Nation of Oklahoma, do hereby certify that the Tribal Council is composed of twelve (12) seats. Eight (8) members must be present to constitute a quorum. I further certify that eleven *(* 11*) members answered roll call and that a quorum was present at the Regular Session of the Tribal Council at Tuskahoma, Oklahoma on* October 10, 2020. *I further certify that the foregoing Council Bill CB-* 10 *-21 was adopted at such meeting by the affirmative vote of* eleven *(*11*) members,* zero *(*0 *) negative votes, and* zero *(*0 *) abstaining.*

Thomas Williston, Speaker
Choctaw Nation Tribal Council

Ronald Perry, Secretary
Choctaw Nation Tribal Council

Gary Batton, Chief
Choctaw Nation of Oklahoma

Date 10-14-20

TO APPROVE A COUNCIL BILL ADOPTING AMENDMENTS TO THE CHOCTAW NATION OF OKLAHOMA CRIMINAL CODE

Purpose/Need of Council Bill: The Choctaw Nation of Oklahoma Prosecutor's office has reviewed the existing Choctaw Nation Criminal Code and found there are several provisions that need to be amended or deleted to ensure uniformity and clarity of code provisions to better enable law enforcement, counsel, and judges to administer the code. There are also several provisions amended to allow the Nation to prosecute offenses listed in the federal Major Crimes Act and allow for broader sentencing options of defendants found guilty in Choctaw Nation District Court. Exhibit A is the full text of the amendments to the Code. Exhibit B is a list of all proposed amendments and an explanation of each amendment.

Title of Council Bill: TO APPROVE A COUNCIL BILL ADOPTING AMENDMENTS TO THE CHOCTAW NATION OF OKLAHOMA CRIMINAL CODE

Agency: Legal & Compliance

Budget: N/A

Match Required: N/A

Request by Project Director: Kara Bacon, Lead Prosecutor; Brad Mallett, SEO, Legal & Compliance

PROPOSED REVISIONS TO THE CHOCTAW NATION CRIMINAL CODE

Section 12. Uniform reporting system to be used by criminal and juvenile justice information systems 3

Section 15. Civil Damages 3

Section 51. Habitual Offenses 3

Section 266. Asking or receiving bribes 4

Section 311. Forfeiture of office—Disqualification to hold office 4

Section 341. Embezzlement by tribal officers, Tribal Council members, tribal deputies, and tribal clerks 4

Section 349. Tribal money, property, or records 5

Section 351. Coercing or Advising Employees to Contribute to Political Activities - Retaliation Against Employee – Penalty 5

Section 425. Pattern of Criminal Offenses – Definition – Penalties – Jurisdiction and Venue 6

Section 644. Assault—Assault and battery—Domestic abuse 6

Homicide 11

Section 700. Murder 11

Section 700.1. Punishment for Murder 13

Section 701. Manslaughter 13

Section 702. Excusable Homicide 13

Section 703. Justifiable Deadly Force by Officer 14

Section 704. Justifiable Homicide by Other Persons 14

Robbery 15

Section 791. Definition of Robbery 15

Section 792 - Force or Fear Requirement 15

Section 793 - Degree of Force Required Immaterial 15

Section 794 - Element of Fear 15

Section 795 - Property Value Immaterial 15

Section 796 - Taking Without Knowledge Not Robbery 15

Section 797 - Robbery - First Degree - Second Degree 15

Section 798 - First Degree Robbery – Punishment 16

Section 799 - Second Degree Robbery – Punishment 16

Section 800 - Robbery or Attempted Robbery with Dangerous Weapon or Imitation Firearm – Punishment 16

Section 1020 - Short Title 16

Section 1021 - Indecent Exposure - Indecent Exhibitions - Obscene or Indecent Writings, Pictures, Etc. - Solicitation of Minors 16

Section 1021.1 - Application of Act 17

Section 1021.2 - Minors - Obscene or Indecent Writings, Pictures, etc. 18

Section 1021.3 - Guardians - Parents - Custodians - Consent to Participation of Minors in Obscene Writings, Pictures, Etc. 18

Section 1021.4 - Duty to Report Obscene or Pornographic Material Depicting Minors - Penalty 18

Section 1022 - Authority to Arrest and Seize Obscene Materials Under Specific Section 19

Section 1023 - Delivery, Determination and Destruction of Obscene Materials Upon Examination of the Accused 19

Section 1024.1 - Definitions 19

Section 1024.2 - Purchase, Procurement, or Possession of Obscene Material - Penalty 21

Section 1024.3 - Powers to Arrest and to Seize Obscene Material and Child Pornography 21

Section 1024.4 - Destruction of Obscene Material or Child Pornography Upon Conviction 21

Section 1024.5 - Collection and Examination of Evidence Prior to Court Proceeding - Obstruction of Investigation - Penalty 21

Section 1040.8 - Publication, Distribution, or Participation in Preparation of Any Obscene Material or Child Pornography - Unsolicited Mailings - Penalty 22

Section 1040.13 - Prohibited Acts - Felony 23

Section 1040.14 - Soliciting Sexual Conduct or Communication with Minor by use of Technology - Penalty - Jurisdiction 23

Section 1040.15 - Nonconsensual Dissemination of Private Sexual Images - Penalties - Remedies 24

ection 1081. Offense—Punishment—Fines 26

Sex Offenses and Abduction 27

Section 1100. Definitions 27

Section 1101. Rape by Instrumentation – Consent 28

Section 1102. Age Limitations on Convictions for Rape 29

Section 1103. Slight Penetration is Sufficient to Complete Crime 29

Section 1104. Classification of Rape 29

Section 1105. Punishment for Rape 30

Section 1107. Sexual battery 30

Section 1247. Public Intoxication 31

Section 12. Uniform reporting system to be used by criminal and juvenile justice information systems

For purposes of any crime specified by the criminal code or any provision of the law in the Choctaw Nation of Oklahoma, all criminal and juvenile justice information systems shall adopt a uniform reporting system. The uniform reporting standard shall ensure the accurate reporting of all criminal and juvenile delinquency information relating to arrests, charges, custody records, dispositions, and any other information record purporting to identify a criminal or juvenile delinquency history record or information to be maintained by any criminal or juvenile justice information system within the Choctaw Nation of Oklahoma. The Choctaw Nation District Court, criminal justice agency, and juvenile delinquency agency of the Choctaw Nation of Oklahoma is hereby directed to comply with and use the uniform reporting standard for reporting and maintaining all criminal justice information systems as set forth in this section.

Section 15. Civil Damages

A. Any person subject to the civil jurisdiction of the Choctaw Nation of Oklahoma, but not subject to the criminal jurisdiction of the Choctaw Nation, who engages in conduct within the jurisdictional boundaries of the Choctaw Nation of Oklahoma, that constitutes a violation of this Code shall be liable to the Choctaw Nation for the following civil damages:

1. Civil damages not to exceed Fifteen Thousand Dollars ($15,000.00) upon a finding by the Court that the person engaged in conduct constituting an offense defined in this Code as a "felony;"

2. Civil damages not to exceed Five Thousand Dollars ($5,000.00) upon a finding by the Court that the person engaged in conduct constituting an offense defined in this Code as a "misdemeanor";

B. The Tribal Prosecutor is authorized to file civil actions on behalf of the Choctaw Nation of Oklahoma against any person who may be liable to the Choctaw Nation for civil damages pursuant to subsection A of this Section.

Section 51. Habitual Offenses

A. Every person who, having been convicted of any felony, commits any crime after such conviction, within ten (10) years of the date following the completion of the execution of the sentence, and against whom the Tribal Prosecutor seeks to enhance punishment pursuant to this section of law, is punishable therefor as follows:

1. Every person who, having been convicted on one (1) felony offense, commits a subsequent felony offense shall be ineligible for a deferred sentence as defined in Section 991c of the Choctaw Nation Criminal Procedure Code, without the approval of the Tribal Prosecutor.

2. Every person who, having been convicted of two (2) or more felony offenses, commits a subsequent felony offense shall be ineligible for a deferred or suspended sentence as defined in Sections 991c and 991a-1 of the Choctaw Nation Code of Criminal Procedure, without the

approval of the Tribal Prosecutor.

B. For purposes of this section, any plea of guilty or finding of guilt shall constitute a conviction of the offense for the purpose of this section.

Section 266. Asking or receiving bribes

Any executive officer or person elected or appointed to executive office who uses his or her office to influence others and receives any benefit thereof or who asks, receives or agrees to receive any bribe upon any agreement or understanding that his or her vote, opinion or action upon any matter then pending, or which may by law be brought before him or her in his or her official capacity, shall be influenced thereby, shall be guilty of a felony punishable by imprisonment not exceeding three (3) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or both; and in addition thereto, any person convicted thereof shall forfeit any tribal office held and be forever disqualified from holding any elective or appointed office under the laws of the Choctaw Nation of Oklahoma.

Section 311. Forfeiture of office—Disqualification to hold office

The conviction of a member of the Tribal Council of any of the crimes defined in section 301 through section 420 this title, involves as a consequence, in addition to the punishment prescribed by this code, the forfeiture of his or her elective office, and disqualifies him or her from ever afterwards holding any elected or appointed office under the Choctaw Nation of Oklahoma.

Section 341. Embezzlement by tribal officers, Tribal Council members, tribal deputies, and tribal clerks

A. Every tribal officer or member or officer of the Tribal Council, and any deputy or clerk of any such officer, and any other person receiving any money or other thing of value on behalf of or for account of the Choctaw Nation of Oklahoma or any department of the government of the Choctaw Nation of Oklahoma or any bureau or fund created by law and in which the Choctaw Nation of Oklahoma or the people thereof, are directly or indirectly interested, to either:

1. Receive, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of tribal funds in the officer's or person's hands or money to be raised through an agency for tribal purposes; or

2. Knowingly keep any false account, or makes any false entry or erasure in any account of or relating to any moneys so received; or

3. Fraudulently alter, falsify, cancel, destroy or obliterate any such account.

B. Any person convicted of an offense described in this Section shall be punished by a fine of not to exceed Five Thousand Dollars ($5,000.00), and by imprisonment for a term of not more than three (3) years and, in addition thereto, the person so convicted shall forfeit his or her elected or appointed office and forever be disqualified to hold any elected or appointed office in the Choctaw Nation of Oklahoma, and the court shall issue an order of such forfeiture, and

should appeal be taken from the judgment of the court, the defendant may, in the discretion of the court, stand suspended from such office until such cause is finally determined.

Section 349. Tribal money, property, or records

A. Any tribal officer or deputy or employee of said officer who embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of:

1. any record, voucher, money, or thing of value of the Choctaw Nation of Oklahoma or of any department or agency thereof, or

2. any property made or being made under contract for the Choctaw Nation of Oklahoma or any department or agency thereof; or

3. Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted

B. Any tribal officer or deputy or employee of said officer, violating any provision of this section, upon conviction thereof shall be punished as follows:

1. If the value of the property is less than One Thousand Dollars ($1,000.00), the person shall be punished by imprisonment not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such imprisonment or fine;

2. If the value of the property One Thousand Dollars ($1,000.00) or more, the person shall be punished by imprisonment not to exceed three (3) years, or by a fine not to exceed Five Thousand Dollars ($5,000.00), or by both such imprisonment or fine.

C. As used in this section:

1. "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

Section 351. Coercing or Advising Employees to Contribute to Political Activities - Retaliation Against Employee – Penalty

No tribal officer or member or officer of the Tribal Council, and any deputy or clerk of any such officer, shall directly or indirectly coerce, attempt to coerce, command, advise or direct any Associate to pay, lend or contribute any part of his or her salary or compensation, time, effort or anything else of value to any party, committee, organization, agency or person for political purposes. No tribal officer or member or officer of the Tribal Council, and any deputy or clerk of any such officer, shall retaliate against any Associate for exercising his or her rights or for not participating in political activities. Any person convicted of willfully violating the provisions of this section shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment for not longer than one (1) years, or by both said fine and imprisonment.

Section 425. Pattern of Criminal Offenses – Definition – Penalties – Jurisdiction and Venue

A. Any person who engages in a pattern of criminal offenses in two or more counties in this state or who attempts or conspires with others to engage in a pattern of criminal offenses shall, upon conviction, be punishable by imprisonment for a term not exceeding two (2) years, or by a fine in an amount not more than Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Such punishment shall be in addition to any penalty imposed for any offense involved in the pattern of criminal offenses. Double jeopardy shall attach upon conviction.

B. For purposes of this act, "pattern of criminal offenses" means:

1. Two or more criminal offenses are committed that are part of the same plan, scheme, or adventure; or

2. A sequence of two or more of the same criminal offenses are committed and are not separated by an interval of more than thirty (30) days between the first and second offense, the second and third, and so on; or

3. Two or more criminal offenses are committed, each proceeding from or having as an antecedent element a single prior incident or pattern of fraud, robbery, burglary, theft, identity theft, receipt of stolen property, false personation, false pretenses, obtaining property by trick or deception, taking a credit or debit card without consent, or the making, transferring or receiving of a false or fraudulent identification card.

Section 644. Assault—Assault and battery—Domestic abuse

A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

C. Any person who commits any assault and battery against a current or former intimate partner or a family or household member as defined by Section 60.2 of the Choctaw Nation Criminal Procedure Code shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail for 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. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment in the custody of the Department of Corrections for not more than three (3) years, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense.

1. "Intimate partner" means: current or former spouses, persons who are or were in a dating relationship, persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, and persons who currently or

formerly lived together in an intimate way, primarily characterized by affectionate or sexual involvement. A sexual relationship may be an indicator that a person is an intimate partner, but is never a necessary condition;

2. "Family or household members" means: parents, including grandparents, stepparents, adoptive parents and foster parents, children, including grandchildren, stepchildren, adopted children and foster children, and persons otherwise related by blood or marriage living in the same household;

D. 1. Any person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon an intimate partner or a family or household member as defined in subsection C with any sharp or dangerous weapon, upon conviction, is guilty of domestic assault or domestic assault and battery with a dangerous weapon which shall be a felony and punishable by imprisonment not exceeding three (3) years. The provisions of Section 51 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

2. Any person who, without such cause, shoots an intimate partner or a family or household member as defined in subsection C by means of any deadly weapon that is likely to produce death shall, upon conviction, be guilty of domestic assault and battery with a deadly weapon which shall be a felony punishable by imprisonment in the custody of the Department of Corrections not three (3) years. The provisions of Section 51 of this title shall apply to any second or subsequent conviction for a violation of this paragraph.

E. 1. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy shall be guilty of a misdemeanor, punishable by imprisonment for not more than one (1) year.

2. Any person convicted of a second or subsequent offense of domestic abuse against a pregnant woman with knowledge of the pregnancy shall be guilty of a felony, punishable by imprisonment for not more than three (3) years.

3. Any person convicted of domestic abuse committed against a pregnant woman with knowledge of the pregnancy and a miscarriage occurs or injury to the unborn child occurs shall be guilty of a felony, punishable by imprisonment for not more than three (3) years.

F. Any person convicted of domestic abuse as defined in subsection C of this section that results in great bodily injury to the victim shall be guilty of a felony and punished by imprisonment in the custody of the Department of Corrections for not less than two (2) years. The provisions of Section 51 of this title shall apply to any second or subsequent conviction of a violation of this subsection.

G. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars ($5,000.00), or by both such fine and imprisonment. Any person convicted of a second or

subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment for not less than one (1) year nor more than three (3) years, or by a fine not exceeding Seven Thousand Dollars ($7,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent offense. For every conviction of a domestic abuse crime in violation of any provision of this section committed against an intimate partner or a family or household member, the court shall:

1. Specifically order as a condition of a suspended or deferred sentence that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2. a. The court shall require the defendant to complete an assessment and follow the recommendations of a certified batterers' intervention program. If the defendant is ordered to participate in a batterers' intervention program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by program staff. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered batterers' intervention program shall be prima facie evidence of the violation of the conditions of probation for the Tribal Prosecutor to seek acceleration or revocation of any probation entered by the court.

   b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3. a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a certified domestic abuse treatment program and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by

subparagraphs a and b of this paragraph and paragraphs 4 and 5 of this subsection. Three unexcused absences in succession or seven unexcused absences in a period of fifty-two (52) weeks from any court-ordered domestic abuse counseling or treatment program shall be prima facie evidence of the violation of the conditions of probation for the district attorney to seek acceleration or revocation of any probation entered by the court.

b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of the Choctaw Nation Criminal Procedure Code and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

H. As used in subsection G of this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and G of this section, "child" may be any child whether or not related to the victim or the defendant.

I. For the purposes of subsections C and G of this section, any conviction for assault and battery against an intimate partner or a family or household member shall constitute a sufficient basis for a felony charge:

1. If that conviction is rendered in any tribal, state, county, municipal, or parish court of record of this or any other tribe or state.

J. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against an intimate partner or a family or household

member shall, upon conviction, be guilty of domestic abuse by strangulation and shall be punished by imprisonment for a period of not less than one (1) year nor more than three (3) years, or by a fine of not more than Three Thousand Dollars ($3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction for a violation of this section, the defendant shall be punished by imprisonment for a period of not less than two (2) years nor more than three (3) years, or by a fine of not more than Twenty Thousand Dollars ($20,000.00), or by both such fine and imprisonment. The provisions of Section 51 of this title shall apply to any second or subsequent conviction of a violation of this subsection. As used in this subsection, "strangulation" means any form of asphyxia; including, but not limited to, asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck or the closure of the nostrils or mouth as a result of external pressure on the head.

K. The Choctaw Nation District Court and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a certified treatment program for domestic abusers;

2. Attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation; and

3. Attend, complete, and be evaluated before and after attendance by a certified treatment program for domestic abusers.

L. There shall be no charge of fees or costs to any victim of domestic violence, stalking, or sexual assault in connection with the prosecution of a domestic violence, stalking, or sexual assault offense.

M. In the course of prosecuting any charge of domestic abuse, stalking, harassment, rape, or violation of a protective order, the prosecutor shall provide the court, prior to sentencing or any plea agreement, a local history and any other available history of past convictions of the defendant within the last ten (10) years relating to domestic abuse, stalking, harassment, rape, violation of a protective order, or any other violent misdemeanor or felony convictions.

N. Any plea of guilty or finding of guilt for a violation of subsection C, F, G, I or J of this section shall constitute a conviction of the offense for the purpose of this act or any other criminal statute under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any court imposed probationary term; provided, the person has not, in the meantime, been convicted of a misdemeanor involving moral turpitude or a felony.

O. For purposes of subsection F of this section, "great bodily injury" means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

P. Any pleas of guilty or nolo contendere or finding of guilt to a violation of any provision of this section shall constitute a conviction of the offense for the purpose of any subsection of this

section under which the existence of a prior conviction is relevant for a period of ten (10) years following the completion of any sentence or court imposed probationary term.

Q. Any person who commits domestic abuse, as defined by subsection C of this section, and has a prior pattern of physical abuse shall be guilty of a felony, upon conviction, punishable by for a term of not more than three (3) years or by a fine not exceeding Five Thousand Dollars ($5,000.00) or by both such fine and imprisonment.

1. For purposes of this section, "prior pattern of physical abuse" means two or more separate incidences, including the current incident, occurring on different days and each incident relates to an act constituting assault and battery or domestic abuse committed by the defendant against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, a person living in the same household as the defendant, a current intimate partner or former intimate partner, or any combination of such persons, where proof of each incident prior to the present incident is established by the sworn testimony of a third party who was a witness to the alleged physical abuse or by other admissible direct evidence that is independent of the testimony of the victim.

Homicide

Section 700. Murder

A. A person commits murder in the first degree when that person unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree, regardless of malice, when that person or any other person takes the life of a human being during, or if the death of a human being results from, the commission or attempted commission of murder of another person, shooting or discharge of a firearm or crossbow with intent to kill, intentional discharge of a firearm or other deadly weapon into any dwelling or building as provided in Section 1289.17A of this title, forcible rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, eluding an officer, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances or synthetic controlled substances, trafficking in illegal drugs, or manufacturing or attempting to manufacture a controlled dangerous substance.

1. Except as provided in paragraph 3 of this subsection, the term "synthetic controlled substance" means a substance:

a. the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II,

b. which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that

is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II, or

c. with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

2. The designation of gamma butyrolactone does not preclude a finding pursuant to paragraph 1 of this subsection that the chemical is a synthetic controlled substance.

3. Such term does not include:

a. a controlled substance,

b. any substance for which there is an approved new drug application,

c. with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption, or

d. any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to Section 843.5 of this title. It is sufficient for the crime of murder in the first degree that the person either willfully tortured or used unreasonable force upon the child or maliciously injured or maimed the child.

D. A person commits murder in the first degree when that person unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Dangerous Substances Act, unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

E. A person commits murder in the first degree when that person intentionally causes the death of a law enforcement officer, correctional officer, or corrections employee while the officer or employee is in the performance of official duties.

F. Homicide is murder in the second degree in the following cases:

1. When perpetrated by an act imminently dangerous to another person and evincing a depraved mind, regardless of human life, although without any premeditated design to effect the death

of any particular individual; or

2. When perpetrated by a person engaged in the commission of any felony other than the unlawful acts set out in Section 1, subsection B, of this act.

Section 700.1. Punishment for Murder

A. A person who is convicted of or pleads guilty to murder in the first degree shall be punished by imprisonment for not less than two (2) nor more than three (3) years and by a fine not exceeding Fifteen Thousand Dollars ($15,000.00).

B. A person who is convicted of or pleads guilty to murder in the second degree shall be punished by imprisonment for not more than three (3) years and by a fine of not exceeding Fifteen Thousand Dollars ($15,000.00).

Section 701. Manslaughter

A. Homicide is manslaughter in the first degree in the following cases:

1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor.

2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide.

3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed.

   Any person guilty of manslaughter in the first degree shall be guilty of a felony punishable by imprisonment for not less than two (2) nor more than three (3) years.

B. Every killing of one human being by the act, procurement or culpable negligence of another, which, under the provisions of this chapter, is not murder, nor manslaughter in the first degree, nor excusable nor justifiable homicide, is manslaughter in the second degree.

   Any person guilty of manslaughter in the second degree shall be guilty of a felony punishable by imprisonment for not more than three (3) years.

Section 702. Excusable Homicide

Homicide is excusable in the following cases:

1. When committed by accident and misfortune in doing any lawful act, by lawful means, with usual and ordinary caution, and without any unlawful intent.

2. When committed by accident and misfortune in the heat of passion, upon any sudden and

sufficient provocation, or upon a sudden combat provided that no undue advantage is taken, nor any dangerous weapon used, and that the killing is not done in a cruel or unusual manner.

Section 703. Justifiable Deadly Force by Officer

A peace officer, correctional officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

1. The officer is acting in obedience to and in accordance with any judgment of a competent court in executing a penalty of death; or

2. In effecting an arrest or preventing an escape from custody following arrest and the officer reasonably believes both that:

a. such force is necessary to prevent the arrest from being defeated by resistance or escape, and

b. there is probable cause to believe that the person to be arrested has committed a crime involving the infliction or threatened infliction of serious bodily harm, or the person to be arrested is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay; or

3. The officer is in the performance of his legal duty or the execution of legal process and reasonably believes the use of the force is necessary to protect himself or others from the infliction of serious bodily harm; or

4. The force is necessary to prevent an escape from a penal institution or other place of confinement used primarily for the custody of persons convicted of felonies or from custody while in transit thereto or therefrom unless the officer has reason to know:

a. the person escaping is not a person who has committed a felony involving violence, and

b. the person escaping is not likely to endanger human life or to inflict serious bodily harm if not apprehended.

Section 704. Justifiable Homicide by Other Persons

A. Homicide is also justifiable when committed by any person in any of the following cases:

1. When resisting any attempt to murder such person, or to commit any felony upon him, or upon or in any dwelling house in which such person is;

2. When committed in the lawful defense of such person or of another, when the person using force reasonably believes such force is necessary to prevent death or great bodily harm to himself or herself or another or to terminate or prevent the commission of a forcible felony; or

3. When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed; or in lawfully suppressing any riot; or in lawfully keeping

and preserving the peace.

B. As used in this section, "forcible felony" means any felony which involves the use or threat of physical force or violence against any person.

Robbery

Section 791. Definition of Robbery

Robbery is a wrongful taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.

Section 792 - Force or Fear Requirement

To constitute robbery, the force or fear must be employed either to obtain or retain possession of the property, or to prevent or overcome resistance to the taking. If employed merely as a means of escape, it does not constitute robbery.

Section 793 - Degree of Force Required Immaterial

When force is employed in either of the ways specified in the last section, the degree of force employed is immaterial.

Section 794 - Element of Fear

The fear which constitutes robbery may be either:

1. The fear of an unlawful injury, immediate or future, to the person or property of the person robbed or of any relative of his, or member of his family; or,

2. The fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed, at the time of the robbery.

Section 795 - Property Value Immaterial

When property is taken under the circumstances, required to constitute robbery, the fact that the property was of trifling value does not qualify the offense.

Section 796 - Taking Without Knowledge Not Robbery

The taking of property from the person of another is not robbery, when it clearly appears that the taking was fully completed without his knowledge.

Section 797 - Robbery - First Degree - Second Degree

Robbery in the first degree is when, in the course of committing the theft, the defendant:

1. inflicts serious bodily injury upon the person;

2. threatens a person with immediate serious bodily injury;

3. intentionally puts a person in fear of immediate serious bodily injury; or

4. commits or threatens to commit a felony upon the person.

When accomplished in any other manner, it is robbery in the second degree.

Section 798 - First Degree Robbery – Punishment

Any person guilty of robbery in the first degree shall be guilty of a felony punishable by imprisonment for not less than two (2) nor more than three (3) years.

Section 799 - Second Degree Robbery – Punishment

Any person guilty of robbery in the second degree shall be guilty of a felony punishable by imprisonment not exceeding three (3) years.

Section 800 - Robbery or Attempted Robbery with Dangerous Weapon or Imitation Firearm – Punishment

Any person or persons who, with the use of any firearms or any other dangerous weapons, whether the firearm is loaded or not, or who uses a blank or imitation firearm capable of raising in the mind of the one threatened with such device a fear that it is a real firearm, attempts to rob or robs any person or persons, or who robs or attempts to rob any place of business, residence or banking institution or any other place inhabited or attended by any person or persons at any time, either day or night, shall be guilty of a felony and, upon conviction therefor, shall suffer punishment by imprisonment for not less than two (2) nor more than three (3) years, at the discretion of the court, or the jury trying the same.

Section 1020 - Short Title

Sections 1020 through 1040.15 of this title shall be known as the "Choctaw Nation Law on Obscenity and Child Pornography" and may be referred to by that designation.

Section 1021 - Indecent Exposure - Indecent Exhibitions - Obscene or Indecent Writings, Pictures, Etc. - Solicitation of Minors

A. Every person who willfully and knowingly either:

1. Lewdly exposes his or her person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby; provided, however, for purposes of this section, a person alleged to have committed an act of public urination shall be prosecuted pursuant to Section 22 of this code unless such act was accompanied with another act that violates paragraphs 2 through 4 of this subsection and shall not be subject to registration under the Sex Offenders Registration Act;

2. 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;

3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any obscene material or child pornography; or

4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or child pornography,

B. shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than Five Hundred Dollars ($500.00) nor more than Twenty Thousand Dollars ($20,000.00) or by imprisonment for not more than three (3) years, or by both such fine and imprisonment.

C. Every person who:

1. Willfully solicits or aids a minor child to perform; or

2. Shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in,

D. any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty of a felony, upon conviction, and shall be punished by imprisonment for not less than three (3) years.

E. Persons convicted under this section shall not be eligible for a deferred sentence.

F. For purposes of this section, "downloading on a computer" means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

Section 1021.1 - Application of Act

A. Sections 1021 through 1024.4 of this title shall not apply to persons who may possess or distribute obscene matter or child pornography or participate in conduct otherwise prescribed by this act, when such possession, distribution, or conduct occurs in the course of law enforcement activities.

B. The criminal provisions of this title shall not prohibit the Tribal Prosecutor from seeking civil or injunctive relief to enjoin the production, publication, dissemination, distribution, sale of or participation in any obscene material or child pornography, or the dissemination to minors of material harmful to minors, or the possession of child pornography.

Section 1021.2 - Minors - Obscene or Indecent Writings, Pictures, etc.

A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment for not more than three (3) years or by the imposition of a fine of not more than Twenty-five Thousand Dollars ($25,000.00) or by both said fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence.

B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

Section 1021.3 - Guardians - Parents - Custodians - Consent to Participation of Minors in Obscene Writings, Pictures, Etc.

A. Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a felony and, upon conviction, shall be imprisoned for a period of not more than three (3) years or a fine of not more than Twenty-five Thousand Dollars ($25,000.00) or by both such fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence.

B. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

Section 1021.4 - Duty to Report Obscene or Pornographic Material Depicting Minors - Penalty

A. Any commercial film and photographic print processor or commercial computer technician who has knowledge of or observes, within the scope of such person's professional capacity or employment, any film, photograph, video tape, negative, or slide, or any computer file, recording, CD-Rom, magnetic disk memory, magnetic tape memory, picture, graphic or image that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CDs, DVDs and thumbdrives, whether digital, analog or other means and whether directly viewable, compressed or encoded depicting a child under the age of eighteen (18) years engaged in an act of sexual conduct as defined in Section 1024.1 of this title shall immediately or as soon as possible report by telephone such instance of suspected child abuse or child pornography to the law enforcement agency having jurisdiction over the case and shall prepare and send a written report of the incident with an attached copy of such material, within thirty-six (36) hours after receiving the information concerning the incident.

B. For the purposes of this section:

1. "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides, for compensation. The term shall also include any employee of such a person but shall not include a person who develops film or makes prints for a public agency; and

2. "Commercial computer technician" means any person who repairs, installs, or otherwise services any computer including, but not limited to, any component part, device, memory storage or recording mechanism, auxiliary storage, recording or memory capacity, or any other materials relating to operation and maintenance of a computer or computer network or system, for compensation. The term shall also include any employee of such person.

C. Any person who violates the provisions of this section, upon conviction, shall be guilty of a misdemeanor and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment not to exceed one (1) year, or both such fine and imprisonment.

D. Nothing in this section shall be construed to require or authorize any person to act outside the scope of such person's professional capacity or employment by searching for prohibited materials or media.

Section 1022 - Authority to Arrest and Seize Obscene Materials Under Specific Section

Every person who is authorized or enjoined to arrest any person for a violation of paragraph 3 of subsection A of Section 1021 of this title is equally authorized and enjoined to seize one copy of the obscene material, or all copies of explicit child pornography, found in possession of or under the control of the person so arrested, and to deliver the same to the magistrate before whom the person so arrested is required to be taken.

Section 1023 - Delivery, Determination and Destruction of Obscene Materials Upon Examination of the Accused

The District Court Judge to whom any child pornography, or any obscene material, is delivered pursuant to Section 1022 of this title, shall, upon the examination of the accused, or if the examination is delayed or prevented, without awaiting such examination, determine the character of such child pornography or obscene material, and if the magistrate finds it to be obscene material or child pornography, the magistrate shall cause the same to be delivered to the Tribal Prosecutor. The magistrate shall issue in writing the factual and legal basis for the determination by the District Judge of the character of the child pornography or obscene material.

Section 1024.1 - Definitions

A. As used in Sections 1021, 1021.1 through 1021.4, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this title, "child pornography" means and includes any visual depiction or individual image stored or contained in any format on any medium including, but not limited to, film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, play or performance wherein a minor under the age of eighteen (18) years is engaged in any act with a person, other than his or her spouse, of sexual intercourse which is normal or perverted, in any act of anal sodomy, in any act of sexual activity with an animal, in any act of sadomasochistic abuse including, but not limited to, flagellation or torture, or the condition of being fettered, bound or otherwise physically restrained in the context of sexual conduct, in any act of fellatio or cunnilingus, in

any act of excretion in the context of sexual conduct, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual conduct, or where the lewd exhibition of the uncovered genitals, buttocks or, if such minor is a female, the breast, has the purpose of sexual stimulation of the viewer, or wherein a person under the age of eighteen (18) years observes such acts or exhibitions. Each visual depiction or individual image shall constitute a separate item and multiple copies of the same identical material shall each be counted as a separate item.

B. As used in Sections 1021 through 1024.4 and Sections 1040.8 through 1040.24 of this title:

1. "Obscene material" means and includes any representation, performance, depiction or description of sexual conduct, whether in any form or on any medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, optical, magnetic or solid-state storage, CD or DVD, or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication or electronic or photo-optical format, if said items contain the following elements:

a. depictions or descriptions of sexual conduct which are patently offensive as found by the average person applying contemporary community standards,

b. taken as a whole, have as the dominant theme an appeal to prurient interest in sex as found by the average person applying contemporary community standards, and

c. a reasonable person would find the material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.

C. The standard for obscenity applied in this section shall not apply to child pornography;

1. "Performance" means and includes any display, live or recorded, in any form or medium;

2. "Sexual conduct" means and includes any of the following:

a. acts of sexual intercourse including any intercourse which is normal or perverted, actual or simulated,

b. acts of deviate sexual conduct, including oral and anal sodomy,

c. acts of masturbation,

d. acts of sadomasochistic abuse including but not limited to:

3. flagellation or torture by or upon any person who is nude or clad in undergarments or in a costume which is of a revealing nature, or

4. the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed,

a. acts of excretion in a sexual context, or

b. acts of exhibiting human genitals or pubic areas; and

5. "Explicit child pornography" means material which a law enforcement officer can immediately identify upon first viewing without hesitation as child pornography.

D. The types of sexual conduct described in paragraph 3 of this subsection are intended to include situations when, if appropriate to the type of conduct, the conduct is performed alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

Section 1024.2 - Purchase, Procurement, or Possession of Obscene Material - Penalty

It shall be unlawful for any person to buy, procure or possess child pornography in violation of Sections 1024.1 through 1024.4 of this title. Such person shall, upon conviction, be guilty of a felony and shall be imprisoned for a period of not more than three (3) years or a fine up to, but not exceeding, Twenty-five Thousand Dollars ($25,000.00) or by both such fine and imprisonment.

Section 1024.3 - Powers to Arrest and to Seize Obscene Material and Child Pornography

Every person who is authorized or enjoined to arrest any person for a violation of this act is equally authorized or enjoined to seize an evidentiary copy of any obscene material or child pornography or all copies of explicit child pornography found in the possession of or under the control of the person so arrested and to deliver the obscene material or child pornography to the District Judge before whom the person so arrested is required to be taken.

Section 1024.4 - Destruction of Obscene Material or Child Pornography Upon Conviction

Upon final conviction of the accused and any codefendant, the District Judge or law enforcement agency shall, with the consent of the district attorney, cause any obscene material or child pornography, in respect whereof the accused and any codefendant stands convicted and which remains in the possession or control of such District Judge, law enforcement agency or Tribal Prosecutor, to be destroyed including, but not limited to, the destruction of any computer, hard drive or other electronic storage media of the accused or codefendant on which such obscene material or child pornography was located. For purposes of this section, "final conviction" includes the exhaustion of or failure to timely pursue post-conviction and state and federal habeas corpus review.

Section 1024.5 - Collection and Examination of Evidence Prior to Court Proceeding - Obstruction of Investigation - Penalty

A. When any person has engaged in, is engaged in, or is attempting or conspiring to engage in any conduct constituting a violation of any of the provisions of Section 1024.2 of the Choctaw Nation Criminal Code, the Tribal Prosecutor may conduct an investigation of the activity. On approval of the District Judge, the Tribal Prosecutor, in accordance with the provisions of Section 258 of the Choctaw Nation Criminal Procedure Code, is authorized before the

commencement of any civil or criminal proceeding to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any business papers or records by subpoena duces tecum. Evidence collected pursuant to this section shall not be admissible in any civil proceeding.

B. Any business papers and records subpoenaed by the Tribal Prosecutor shall be available for examination by the person who produced the material or by any duly authorized representative of the person. Transcripts of oral testimony shall be available for examination by the person who produced such testimony and their counsel.

   Except as otherwise provided for in this section, no business papers, records, or transcripts or oral testimony, or copies of it, subpoenaed by the Tribal Prosecutor shall be available for examination by an individual other than another law enforcement official without the consent of the person who produced the business papers, records or transcript.

C. All persons served with a subpoena by the Tribal Prosecutor shall be paid the same fees and mileage as paid witnesses in the courts of the Choctaw Nation.

D. No person shall, with intent to avoid, evade, prevent, or obstruct compliance in whole or in part by any person with any duly served subpoena of the Tribal Prosecutor pursuant to the provisions of this section, knowingly remove from any place, conceal, withhold, destroy, mutilate, alter, or by any other means falsify any business papers or records that are the subject of the subpoena duces tecum.

E. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, or by a fine of not more than Five Hundred Dollars ($500.00), or by both such fine and imprisonment.

Section 1040.8 - Publication, Distribution, or Participation in Preparation of Any Obscene Material or Child Pornography - Unsolicited Mailings - Penalty

A. No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, give away, exhibit, publish, offer to publish, or otherwise distribute, display, or exhibit any book, magazine, story, pamphlet, paper, writing, card, advertisement, circular, print, picture, photograph, motion picture film, electronic video game or recording, image, cast, slide, figure, instrument, statue, drawing, presentation, or other article which is obscene material or child pornography, as defined in Section 1024.1 of this title. In the case of any unsolicited mailing of any of the material listed in this section, the offense is deemed complete from the time such material is deposited in any post office or delivered to any person with intent that it shall be forwarded. Also, unless preempted by federal law, no unsolicited mail which is harmful to minors shall be mailed to any person. The party mailing the materials specified in this section may be indicted and tried in the Choctaw Nation District court when such material is deposited, delivered, or received within the jurisdictional boundaries of the Choctaw Nation of Oklahoma.

B. Any person who violates any provision of this section involving obscene materials, upon conviction, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one (1) year, or by a fine of not less than Two Thousand Dollars ($2,000.00), or by

both such fine and imprisonment.

C. Any person who violates any provision of this section involving child pornography, upon conviction, shall be guilty of a felony and shall be punished by imprisonment for not more than three (3) years, or by a fine of not less than Ten Thousand Dollars ($10,000.00), or by both such fine and imprisonment. The violator, upon conviction, shall be required to register as a sex offender under the Sex Offenders Registration Act.

D. "Harmful to minors" means:

1. that quality of any description, exhibition, presentation or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

a. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest in sex to minors, and

b. the average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and

c. the material or performance lacks serious literary, scientific, medical, artistic, or political value for minors, or

2. any description, exhibition, presentation or representation, in whatever form, of inappropriate violence;

Section 1040.13 - Prohibited Acts - Felony

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this state for sale or commercial distribution, or within the jurisdictional boundaries of the Choctaw Nation of Oklahoma prepares, sells, exhibits, commercially distributes, gives away, offers to give away, or has in his possession with intent to sell, to commercially distribute, to exhibit, to give away, or to offer to give away any obscene material or child pornography or gives information stating when, where, how, or from whom, or by what means obscene material or child pornography can be purchased or obtained, upon conviction, is guilty of a felony and shall be punished by imprisonment for not more than three (3) years in prison or by a fine of not more than Ten Thousand Dollars ($10,000.00), or by both such imprisonment and fine.

Section 1040.14 - Soliciting Sexual Conduct or Communication with Minor by use of Technology - Penalty - Jurisdiction

A. It is unlawful for any person to facilitate, encourage, offer or solicit sexual conduct 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 subsection, "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 section 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 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.

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

D. Any violation of the provisions of this section shall be a felony, punishable by a fine in an amount not to exceed Ten Thousand Dollars ($10,000.00), or by imprisonment for a term of not more than three (3) years, or by both such fine and imprisonment. For purposes of this section, each communication shall constitute a separate offense.

E. For purposes of any criminal prosecution pursuant to any violation of this section, the person violating the provisions of this section shall be deemed to be within the jurisdiction of this Choctaw Nation of Oklahoma by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device within the jurisdictional boundaries of the Choctaw Nation of Oklahoma, regardless of the actual jurisdiction where the violator resides.

Section 1040.15 - Nonconsensual Dissemination of Private Sexual Images - Penalties - Remedies

A. As used in this section:

1. "Image" includes a photograph, film, videotape, digital recording or other depiction or portrayal of an object, including a human body;

2. "Intimate parts" means the fully unclothed, partially unclothed or transparently clothed genitals, pubic area or female adult nipple; and

3. "Sexual act" means sexual intercourse including genital, anal or oral sex.

B. A person commits nonconsensual dissemination of private sexual images when he or she:

1. Intentionally disseminates an image of another person:

a. who is at least eighteen (18) years of age,

b. who is identifiable from the image itself or information displayed in connection with the image, and

c. who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part;

2. Disseminates the image with the intent to harass, intimidate or coerce the person, or under circumstances in which a reasonable person would know or understand that dissemination of the image would harass, intimidate or coerce the person;

3. Obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and

4. Knows or a reasonable person should have known that the person in the image has not consented to the dissemination.

C. The provisions of this section shall not apply to the intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed when:

1. The dissemination is made for the purpose of a criminal investigation that is otherwise lawful;

2. The dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct;

3. The images involve voluntary exposure in public or commercial settings; or

4. The dissemination serves a lawful purpose.

D. Nothing in this section shall be construed to impose liability upon the following entities solely as a result of content or information provided by another person:

1. An interactive computer service, as defined in 47 U.S.C., Section 230(f)(2);

2. A wireless service provider, as defined in Section 332(d) of the Telecommunications Act of 1996, 47 U.S.C., Section 151 et seq., Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66; or

3. A telecommunications network or broadband provider.

E. A person convicted under this section is subject to the forfeiture provisions in Section 1040.54 of this title.

F. Any person who violates the provisions of this section shall be guilty of a misdemeanor punishable by imprisonment for not more than one (1) year or by a fine of not more than One Thousand Dollars ($1,000.00), or both such fine and imprisonment.

G. Any person who violates the provisions of this section and who gains or attempts to gain financially or who gains or attempts to gain anything of value as a result of the nonconsensual dissemination of private sexual images shall be guilty of a felony punishable by imprisonment for not more than three (3) years.

   The offender shall be required to register as a sex offender under the Sex Offenders Registration Act, for a second or subsequent violation of this subsection.

H. The Tribal Prosecutor shall not have the discretion to file a misdemeanor charge, pursuant to Section 234 of the Choctaw Nation Criminal Procedure Code, for a violation pursuant to subsection G of this section.

I. The court shall have the authority to order the defendant to remove the disseminated image should the court find it is in the power of the defendant to do so.

Section 1081. Offense—Punishment—Fines

Any person who shall procure any other person for prostitution, or who, by promise, threats, violence or by any device or scheme shall cause, induce, persuade or encourage another person to become a prostitute; or shall procure a place as inmate in a house of prostitution for another person; or who shall, by promise, threats, violence, or by any device or scheme cause, induce, persuade or encourage an inmate of a house of prostitution to remain therein as such inmate; or who shall, by fraud, or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any other person to become a prostitute, or to enter any place in which prostitution is encouraged or allowed within the Choctaw Nation of Oklahoma, or to come into the Choctaw Nation of Oklahoma or leave the Choctaw Nation of Oklahoma for the purpose of prostitution, or who shall procure any other person, who has not previously practiced prostitution to become a prostitute within the Choctaw Nation of Oklahoma, or to come into the Choctaw Nation of Oklahoma or leave the Choctaw Nation of Oklahoma for the purpose of prostitution; or shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any other person to become an inmate of a house of prostitution within the Choctaw Nation of Oklahoma, or to come into the Choctaw Nation of Oklahoma or leave the Choctaw Nation of Oklahoma for the purpose of prostitution, shall be guilty of pandering, and upon conviction for any offense of Section 1081 through Section 1086 of this code shall be guilty of a felony and shall be punished by imprisonment for a period of not more than three (3) years and by fines as follows: a fine of not less than One Thousand Dollars ($1,000.00) and not more than Five Thousand Dollars ($5,000.00).

Sex Offenses and Abduction

Section 1100. Definitions

A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;

2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;

3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;

4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;

5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;

6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;

7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, or the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim;

8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system;

9. Where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant; or

10. Where the victim is at least sixteen (16) years of age but less than eighteen (18) years of age

and the perpetrator of the crime is a person responsible for the child's health, safety or welfare. "Person responsible for a child's health, safety or welfare" shall include, but not be limited to:

a. a parent,

b. a legal guardian,

c. custodian,

d. a foster parent,

e. a person eighteen (18) years of age or older with whom the child's parent cohabitates,

f. any other adult residing in the home of the child,

g. an agent or employee of a public or private residential home, institution, facility or day treatment program, or

h. an owner, operator or employee of a child care facility.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

C. "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;

D. "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.

Section 1101. Rape by Instrumentation – Consent

A. Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in

the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person.

B. Provided, further, that at least one of the circumstances specified in Section 1100 of this title has been met; further, where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section of law with a person who is eighteen (18) years of age or older and is an employee of the same school system, or where the victim is under the legal custody or supervision of a state or federal agency, county, municipal or a political subdivision and engages in conduct prohibited by this section of law with a federal, state, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, consent shall not be an element of the crime.

C. Provided, further, that at least one of the circumstances specified in Section 1100 of this title has been met; further, where the victim is nineteen (19) years of age or younger and in the legal custody of a state agency, federal agency or tribal court and engages in conduct prohibited by this section of law with a foster parent or foster parent applicant.

Section 1102. Age Limitations on Convictions for Rape

No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone over the age of fourteen (14) years, with his or her consent, unless such person was over the age of eighteen (18) years at the time of such act.

Section 1103. Slight Penetration is Sufficient to Complete Crime

The essential guilt of rape or rape by instrumentation, except with the consent of a male or female over fourteen (14) years of age, consists in the outrage to the person and feelings of the victim. Any sexual penetration, however slight, is sufficient to complete the crime.

Section 1104. Classification of Rape

A. Rape or rape by instrumentation in the first degree shall include:

1. Rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age;

2. Rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime;

3. Rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;

4. Rape accomplished where the victim is at the time unconscious of the nature of the act and this

fact is known to the accused;

5. Rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or

6. Rape by instrumentation regardless of the age of the victim or the age of the person committing the crime.

B. In all other cases, rape is rape in the second degree.

Section 1105. Punishment for Rape

A. A person who is convicted of or pleads guilty or nolo contendere to any offense defined in subparagraph A of Section 1104 of this act shall be punished by imprisonment for not less than two (2) nor more than three (3) years, by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), and shall be required to register as a sex offender pursuant to the Sex Offenders Registration Act.

B. A person who is convicted of or pleads guilty or nolo contendere to any offense defined in subparagraph B of Section 1104 of this act shall be punished by imprisonment for not more than three (3) years, by a fine not to exceed Fifteen Thousand Dollars ($15,000.00), and shall be required to register as a sex offender pursuant to the Sex Offenders Registration Act.

Section 1107. Sexual battery

A. It is a felony for any person to knowingly and intentionally commit sexual battery on any other person or, by force or fear to cause another person to engage in a sexual act. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner:

1. Without the consent of that person;

2. When committed by a Choctaw Nation employee or a contractor or an employee of a contractor of the Choctaw Nation of Oklahoma upon a person who is under the legal custody, supervision or authority of the Choctaw Nation of Oklahoma; or

3. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or in the legal custody or supervision of any public or private elementary or secondary school, or technology center school, by a person who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends.

B. As used in this subsection, "employee of the same school system" means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.

C. No person shall in any manner lewdly or lasciviously:

1. Look upon, touch, maul, or feel the body or private parts of any human corpse in any indecent manner relating to sexual matters or sexual interest; or

2. Urinate, defecate or ejaculate upon any human corpse.

D. It shall be a felony for any person to:

1. Engage in sexual contact with another person without that other person's permission nor shall; or

2. to cause another person to engage in sexual contact by threatening or placing that person in fear.

E. Any person convicted of a violation of subsections A, C, or D of this section shall be deemed guilty of a felony and shall be punished by imprisonment for not more than three (3) years, or by a fine of up to Five Thousand Dollars ($5,000.00), or both.

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

Section 1247. Public Intoxication

A. Any person who shall, in any public place, or in any tribal facility or enterprise, or in or upon any passenger coach, streetcar, or in or upon any other vehicle commonly used for the transportation of passengers, or in or about any depot, platform, waiting station or room, drink or otherwise consume any intoxicating liquor unless authorized by the Oklahoma Alcoholic Beverage Control Act or the Choctaw Nation of Oklahoma's Alcohol Ordinance (Council Bill CB-64-2010 enacted March 13, 2010), intoxicating substance, or intoxicating compound of any kind, or inhale glue, paint or other intoxicating substance, or if any person shall be drunk or intoxicated in any public or private road, or in any passenger coach, streetcar, or any public place or building, or at any public gathering, from drinking or consuming such intoxicating liquor, intoxicating substance or intoxicating compound or from inhalation of glue, paint or other intoxicating substance, or if any person shall be drunk or intoxicated from any cause and shall disturb the peace of any person, he or she shall be punished:

1. For a first offense by a fine of not more than One Hundred Dollars ($100.00), or by imprisonment for not more than thirty (30) days, or by both such fine and imprisonment.

2. For a second or subsequent offense by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

Any pleas of guilty or nolo contendere or finding of guilt to a violation of any provision of this section shall constitute a conviction of the offense for the purpose of this section under which the existence of a prior conviction is relevant for a period of one (1) year following the completion of any sentence or court imposed probationary term.

EXHIBIT B
PROPOSED AMENDMENTS TO CRIMINAL CODE

SECTION 12. Uniform reporting system to be used by criminal and juvenile justice information systems

- Changes were made to this section because the Choctaw nation does not use the reporting standards set forth in Title 22 of the Oklahoma Statutes.

SECTION 15. Civil Damages

- This provision is modeled after a similar provision located in the Hopi Nation's codes.
- This will allow the Tribal Prosecutor to prosecute civil citation on behalf of the Nation, against non-Indians, that violate the criminal code. This will cover crimes such as, property damage, shoplifting, embezzlement, etc.
- While civil citations will not result in criminal convictions, we will be able to seek restitution for damage caused by these individuals.

SECTION 51. Habitual Offenses

- The entirety of the original provision was deleted. The revision of this section was necessary because the original provision violated double jeopardy.
- The revised section will allow the tribal Prosecutor to file a second page to an Information, alleging prior convictions, to prevent habitual offenders from receiving certain probationary sentences.

SECTION 160. Public Foreign Ministers Exempted

- This provision is not needed.

SECTION 266. Asking or Receiving Bribes

- The added language makes the statute more specific.

SECTION 311. Forfeiture of office – Disqualification to hold office

- This is amended to include all offenses against the Choctaw Nation.

SECTION 341. Embezzlement by tribal officers, Tribal Council members, tribal deputies, and tribal clerks

- This section is being amended to provide clarity and to remove typos.

SECTION 349. Tribal money, property, or records

- This section is being added to ensure protection of the Choctaw Nation's property.

SECTION 351. Coercing or Advising Employees to Contribute to Political Activities – Retaliation Against Employee – Penalty

- This section is being added to maintain the integrity of the Choctaw Nation. This provision is modeled after the State code and is common in other government codes.

SECTION 425. Pattern of Criminal Offenses – Definition – Penalties – Jurisdiction and Venue

- This provision allows our Tribal Prosecutors to prosecute crimes that occur in various jurisdictions, including the Choctaw Nation.

SECTION 644. Assault – Assault and battery – Domestic abuse

- This section is completely revised. The old version of this code was not used to modify this section. The version used originally was from an older state code, that did not include provisions related to domestic abuse by strangulation.

- The revisions are needed to ensure we can prosecute all crimes listed in the Major Crimes Act.

SECTIONS 700, 700.1, 701, 702, 703, & 704. Homicide

- These sections are being added to ensure that the Nation has criminal codes punishing the crimes listed in the Major Crimes Act.

- These provisions are modeled after the State and Federal codes.

SECTIONS 791-800 Robbery

- These sections are being added to ensure that the Nation has criminal codes punishing the crimes listed in the Major Crimes Act.

SECTIONS 1020-1042

- These sections are being added to ensure that the Nation has criminal codes punishing the crimes listed in the Major Crimes Act.

SECTION 1081. Offense – Punishment – Fines

- The range of punishment is being changed in this section to allow the court a broader range of punishment.

SECTIONS 1100, 1101, 1102, 1103, 1104, & 1105. Sex Offenses and Abduction

- These sections are added to ensure that the Nation has criminal codes punishing the crimes listed in the Major Crimes Act.

- These provisions are modeled after the State and Federal codes.

SECTION 1107. Sexual battery

- The additions to this section were needed to cover the scenario of a person forcing another person to touch his or her genitalia.

- The changes are modeled after the Federal code for abusive sexual contact.

SECTION 1247. Public Intoxication

- The changes made to this section gives the court a broad sentencing range for public intoxication.