

*Keweenaw Bay Indian Community*

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## CHAPTER 3.19 – CRIMINAL SEXUAL CONDUCT

### §3.1901 Criminal Sexual Conduct; title; definitions; general provisions.

Definitions. As used in the Criminal Sexual Conduct Chapter, the following terms and definitions shall apply:

- A. “Developmental Disability”: an impairment of general intellectual functioning or adaptive behavior which meets criteria (a) through (d) or (e):
  - 1. it originated before the person became 18 years of age; and
  - 2. it has been continuous since its origination and can be expected to continue indefinitely; and
  - 3. it constitutes a substantial burden to the impaired person’s ability to perform in society; and
  - 4. it is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other condition found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded; or
  - 5. someone who meets the definition of a Legally Incapacitated Person under §6.101(E) of the Tribal Code.
- B. “Force or Coercion”: the exercise of physical control or threatening influence over a victim sufficient to negate voluntary consent, including but not limited to any of the following circumstances:
  - 1. when the perpetrator overcomes the victim through the actual application of physical force or physical violence;
  - 2. when the perpetrator coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes the perpetrator has the present ability to execute these threats;
  - 3. when the perpetrator coerces the victim to submit by threatening to retaliate in the future (including threats of physical punishment, kidnapping or extortion) against the victim or against any other person, and the victim believes the perpetrator has the ability to execute this threat; or
  - 4. when the perpetrator, through concealment or by the element of surprise, is able to overcome the victim.
- C. “Intimate Parts”: parts of the human body in the primary genital area, including but not limited to the genitalia, anus, groin, breast, inner thigh, buttocks and mouth.
- D. “Minor or Juvenile”: for purposes of the Criminal Sexual Conduct Chapter the terms shall be interchangeable and their definition shall depend upon the context in which the term is used. If the term is used to refer to a suspect or defendant, the term shall mean any person under the age of seventeen (17) years. If the term is used to refer to a victim or someone other than a suspect or defendant, the term shall mean any person under eighteen (18) years of age.
- E. “Physically Helpless Person”: a person who is unconscious, asleep, or who for any other reason is physically unable to communicate unwillingness to an act. This includes a “Temporarily Incapacitated Person” a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a controlled substance, alcohol, anesthetic, or other substance, regardless of the

- voluntary or involuntary nature or method of the consumption or use, or due to any other act committed upon that person with or without his or her consent.
- F. “Perpetrator”: a person accused and or convicted of an illegal act described in the Criminal Sexual Conduct Chapter.
- G. “Personal Injury”: a bodily injury (however slight or impermanent), disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- H. “Producing”: means financing, directing, manufacturing, issuing, publishing or advertising for monetary gain.
- I. “Sexual Contact”: the intentional touching, either directly or through the clothing, of the intimate parts of any person with an intent to abuse, humiliate, harass, degrade, arouse or gratify sexual desires.
- J. “Sex Offender”: The term “sex offender” means an individual who was convicted of a sex offense, criminal sexual conduct, or is required to register under any sex offender registration laws.
- K. “Sex Offender Registry, Sex Offender Website”: These terms shall be interchangeable and shall mean both the Keweenaw Bay Indian Community Sex Offender Registry which is a list and database of sex offenders registered with the Keweenaw Bay Indian Community maintained by the Tribal Police Department and the Keweenaw Bay Indian Community Sex Offender Registry Website, (<http://kbic.nsopw.gov/>), with information on registered sex offenders and accessible to the public via the internet, which shall be maintained by the Tribal Police and Community’s IT department.
- L. “Sexual Penetration”:
1. Contact between the penis and the vulva, the penis and the anus, and for purposes of this definition 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, arouse or gratify the sexual desire of any person; or
  4. The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, arouse or gratify the sexual desire of any person.
- M. “Temporarily Incapacitated Person”: A person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a controlled substance, alcohol, anesthetic, or other substance, regardless of the voluntary or involuntary nature or method of the consumption or use, or due to any other act committed upon that person with our without his or her consent.
- N. “Tier Offenders”: Offenders are “tiered” for sex offender registration purposes pursuant to the appropriate criminal section of the Criminal Sexual Conduct Chapter and the Sex Offender Registration Chapter of the Tribal Code. There are three tiers of sex offenders with Tier 3 offenders being convicted of the most serious offenses and having the most restrictions and Tier 1 offenders being convicted of less serious offenses and having the least restrictions.

- O. "Victim": the person alleged to have been subjected to criminal sexual conduct.
- P. "Visual Medium" or "Print Medium" means: any film, photograph, videotape, negative, slide, recording, digital file, or photographic reproduction that incorporates in any manner any film, photograph, videotape, negative, slide; or any disk, diskette, or other physical or digital storage device, that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or any other method.
- Q. "Weapon": any object, although not inherently dangerous, which is used in a way that is likely to cause serious injury or death. Weapons include, without limitation, firearms, whether or not loaded and whether or not capable of being fired, knives, brass knuckles, clubs, iron bars, baseball bats, and any other device capable of causing serious injury.

**§3.1902 Criminal Sexual Conduct in the First and Second Degree.**

- A. The actual or apparent consent of the victim shall not be a defense to charges of Criminal Sexual Conduct in the First or Second Degree and shall not otherwise be relevant if any of the circumstances listed herein exist.
- B. Criminal Sexual Conduct in the First Degree. A person shall be guilty of the crime of Criminal Sexual Conduct in the First Degree if he or she engages in sexual penetration with another person and any of the following listed circumstances exist. The circumstances referred to in this paragraph are as follows:
  - 1. The victim is under 13 years of age.
  - 2. The victim is at least 13 years of age, but less than 16 years of age, and either
    - a. the perpetrator is a member of the same household as the victim, or
    - b. the perpetrator is related to the victim by blood or affinity to the fourth degree, or
    - c. the perpetrator is in a position of authority over the victim and used this authority to coerce the victim to submit, or
    - d. the perpetrator is 4 or more years older than the victim.
  - 3. The perpetrator knows or has reason to know that the victim is developmentally disabled, temporarily incapacitated or physically helpless.
  - 4. The perpetrator uses force or coercion to accomplish the sexual penetration or contact.
  - 5. The victim has knowledge that the perpetrator is armed with a weapon or the victim has knowledge that the perpetrator is armed with any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
  - 6. The perpetrator engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.
- C. Criminal Sexual Conduct in the Second Degree. A person shall be guilty of the crime of Criminal Sexual Conduct in the Second Degree if he or she engages in sexual contact with another person and any of the following circumstances exist. The circumstances referred to in this paragraph are as follows:
  - 1. The victim is under 13 years of age.
  - 2. The victim is at least 13 years of age, but less than 16 years of age, and either
    - a. the perpetrator is a member of the same household as the victim, or

- b. the perpetrator is related to the victim by blood or affinity to the fourth degree, or
  - c. the perpetrator is in a position of authority over the victim and used this authority to coerce the victim to submit, or
  - d. the perpetrator is 4 or more years older than the victim.
3. The perpetrator knows or has reason to know that the victim is developmentally disabled, temporarily incapacitated or physically helpless.
  4. The perpetrator uses force or coercion to accomplish the sexual contact.
  5. The victim has knowledge that the perpetrator is armed with a weapon or the victim has knowledge that the perpetrator is armed with any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
  6. The perpetrator engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

D. Penalties:

1. Criminal Sexual Conduct in the First Degree;
  - a. First Offense; Penalty. Criminal sexual conduct in the First Degree is a Class A misdemeanor and shall be punished upon plea or conviction by incarceration for not more than 1 year, or by a fine of not more than \$5,000.00, or by both, plus costs. A person convicted of Criminal Sexual Conduct in the First Degree must register as a sex offender with the Tribal Police pursuant to the Sex Offender Registration Chapter (§3.2005(C)(1)).
  - b. Second Offense; Penalty. Criminal Sexual Conduct in the First Degree is a Class A misdemeanor and shall be punished upon plea or conviction of a second offense by incarceration for not more than 1 year, or by a fine of not more than \$5,000.00, or by both, plus costs. The sentence imposed for such second offense shall require a mandatory minimum sentence of incarceration for not less than 180 days and a fine of not less than \$5,000.00, plus costs. A person convicted for a second offense of Criminal Sexual Conduct in the First Degree must register as a sex offender one tier higher than current registration requirements with the Tribal Police pursuant to the Sex Offender Registration Chapter (§3.2006(B)(1)). An offense shall be considered a second offense if, prior to conviction of said second offense, the perpetrator has been convicted of Criminal Sexual Conduct in the First or Second Degree, Assault with intent to commit Criminal Sexual Conduct in the First or Second Degree, Sexual Exploitation of Minors, or under any substantially similar statute of this or any other jurisdiction for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit any such offenses within ten (10) years of the date of conviction for this offense.
  - c. Third or Subsequent Offense; Penalty. Criminal Sexual Conduct in the First Degree is a Class A misdemeanor and shall be punished upon plea or conviction of a third or subsequent offense by incarceration for not more than 1 year, or by a fine of not more than \$5,000.00, or by both, plus costs. The sentence imposed for such third or subsequent offense shall require a

mandatory minimum sentence of incarceration for not less than 270 days and a fine of not less than \$5,000.00, plus costs. A person convicted for a third or subsequent offense of Criminal Sexual Conduct in the First Degree must register as a Tier 3 sex offender with the Tribal Police pursuant to the Sex Offender Registration Chapter (§3.2007(B)(1)) and may be subject to banishment as to be determined by the Court at sentencing. An offense shall be considered a third or subsequent offense if, prior to conviction of said third or subsequent offense, the perpetrator has been convicted two or more times of Criminal Sexual Conduct in the First or Second Degree, Assault with intent to commit Criminal Sexual Conduct in the First or Second Degree, Sexual Exploitation of Minors, or under any substantially similar statute of this or any other jurisdiction for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit any such offenses within fifteen (15) years of the date of conviction for this offense.

2. Criminal Sexual Conduct in the Second Degree;

- a. First Offense; Penalty. Criminal Sexual Conduct in the Second Degree is a Class A misdemeanor and shall be punished upon plea or conviction by incarceration for not more than 1 year, or by a fine of not more than \$5,000.00, or both, plus costs. A person convicted of Criminal Sexual Conduct in the Second Degree must register as a sex offender with the Tribal Police pursuant to the Sex Offender Registration Chapter (§3.2005(C)(2)).
- b. Second Offense; Penalty. Upon plea or conviction of a second offense, the defendant is guilty of a Class A misdemeanor and may be incarcerated for up to 1 year and or fined up to \$5,000. The sentence imposed for such second offense shall require a mandatory minimum sentence of incarceration for not less than 180 days and a fine of not less than \$3,500.00, plus costs. A person convicted of a second offense of Criminal Sexual Conduct in the Second Degree must register as a sex offender one tier higher than current registration requirements with the Tribal Police pursuant to the Sex Offender Registration Chapter (§3.2006(B)(2)). An offense shall be considered a second offense if, prior to conviction of said second offense, the perpetrator has at any time been convicted of Criminal Sexual Conduct in the First or Second Degree, Assault with intent to commit Criminal Sexual Conduct in the First or Second Degree, Sexual Exploitation of Minors, or Criminal Sexual Conduct in the Second Degree, or under any similar statutes of this or any other jurisdiction for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit any such offenses within ten (10) years of the date of conviction for this offense.
- c. Third or Subsequent Offense; Penalty. Upon plea or conviction of a third or subsequent offense, the defendant is guilty of a Class A misdemeanor which requires a mandatory minimum sentence of incarceration for not less than 270 days and a fine of not less than \$5,000.00, plus costs. A person convicted for a third or subsequent offense of Criminal Sexual Conduct in the Second Degree must register as a Tier 3 sex offender with the Tribal Police pursuant to the Sex Offender Registration Chapter (§3.2006(B)(2)) and may be subject to

banishment as to be determined by the Court at sentencing. An offense shall be considered a third or subsequent offense if, prior to conviction of said third or subsequent offense, the perpetrator has been convicted two or more times of Criminal Sexual Conduct in the First or Second Degree, Assault with intent to commit Criminal Sexual Conduct in the First or Second Degree, Sexual Exploitation of Minors, or under any substantially similar statute of this or any other jurisdiction for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit any such offenses within fifteen (15) years of the date of conviction for this offense.

**§3.1903 Assault with intent to commit Criminal Sexual Conduct in the First Degree.**

A. A person is guilty of the crime of Assault with intent to commit Criminal Sexual Conduct in the First Degree if he or she commits an assault or an assault and battery against another person, as those terms are defined in Sections 3.201, 3.202 and 3.203 of the Tribal Code, with the intent to engage in sexual penetration with that other person without the voluntary consent of that person.

B. Penalty:

1. First Offense. A conviction for Assault with intent to commit Criminal Sexual Conduct in the First Degree shall constitute a conviction of a Class A misdemeanor and, in addition to those penalties, a person convicted of Assault with intent to commit Criminal Sexual Conduct in the First Degree must register as a sex offender pursuant to the Sex Offender Registration Chapter (§3.2005(C)(3)).
2. Second or Subsequent Offense. A second or subsequent conviction for Assault with intent to commit Criminal Sexual Conduct in the First Degree shall constitute a conviction of a Class A misdemeanor and, in addition to those penalties, the defendant shall be required to register as a sex offender one tier higher than current registration requirements pursuant to the Sex Offender Registration Chapter (§3.2007(B)(2)). An offense shall be considered a second or subsequent offense if, prior to conviction of said second or subsequent offense, the perpetrator has been previously convicted of Assault with intent to commit Criminal Sexual Conduct in the First or Second Degree, Criminal Sexual Conduct in the First or Second Degree, Sexual Exploitation of Minors, or under any substantially similar statute of this or any other jurisdiction for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit any such offenses within fifteen (15) years of the date of conviction for this offense.

**§3.1904 Assault with intent to commit Criminal Sexual Conduct in the Second Degree.**

A. A person is guilty of the crime of Assault with intent to commit Criminal Sexual Conduct in the Second Degree if he or she commits an assault or an assault and battery against another person, as those terms are defined in Sections 3.201, 3.202 and 3.203 of the Tribal code, with the intent to engage in sexual contact with that other person without the voluntary consent of that person.

B. Penalty:

1. First Offense. Assault with intent to commit Criminal Sexual Conduct in the Second Degree shall be a Class A misdemeanor and in addition to those penalties, a person convicted of Assault with intent to commit Criminal Sexual Conduct in the Second Degree must register as a sex offender pursuant to the Sex Offender Registration Chapter (§3.2005(C)(4)).
2. Second or Subsequent Offense. A second or subsequent conviction for Assault with intent to commit Criminal Sexual Conduct in the Second Degree shall constitute a conviction of a Class A misdemeanor and in addition to those penalties the Court shall require the Defendant to register as a sex offender one tier higher than current registration requirements pursuant to the Sex Offender Registration Chapter (§3.2006(B)(3)). An offense shall be considered a second or subsequent offense if, prior to conviction of said second or subsequent offense, the perpetrator has been previously convicted of Assault with intent to commit Criminal Sexual Conduct in the First or Second Degree, Criminal Sexual Conduct in the First or Second Degree, Sexual Exploitation of Minors, or under any substantially similar statute of this or any other jurisdiction for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit any such offenses within fifteen (15) years of the date of conviction for this offense.

### **§3.1905 Sexual Exploitation of Minors.**

- A. Any person who shall knowingly for personal or commercial use, commit any of the following acts shall be guilty of Sexual Exploitation of Minors:
  1. Employ, use, or permit the employment or use of a minor in an exhibition of sexual conduct, actual or simulated;
  2. Photograph, film, videotape, or record a minor engaging in sexual conduct, actual or simulated;
  3. Permit, persuade, entice, coerce, counsel, or procure a minor to engage in or assist others to engage in sexual conduct, actual or simulated for the purpose of producing any visual or print medium or live act depicting such conduct;
  4. Process, develop, print, publish, transport, distribute, exchange, sell, receive, purchase, possess with intent to sell, exhibit, or advertise any visual, print, or digital medium representing a minor engaging in sexual conduct, actual or simulated;
  5. Finance any of the activities described in Subsections (1) through (4) above knowing that the activity is of the nature described in those subsections;
  6. Transport or finance the transportation of any minor through or across the L'Anse Reservation or tribal trust lands with the intent that such minor engage in sexual conduct for the purposes of producing visual or print medium or a live act depicting such conduct.
- B. Penalty. Any person found guilty of Sexual Exploitation of Minors shall be guilty of a Class A misdemeanor, and in addition to those penalties, the person shall be subject to banishment for the remainder of his or her natural life. A person convicted of Sexual Exploitation of Minors shall be required to register as a Tier 3 sex offender pursuant to the Sex Offender Registration Chapter (§3.2007(B)(3)).



- C. This section shall also apply to the sexual exploitation of legally incapacitated adults and developmentally disabled adults as those terms are defined in Sections 6.101(E) and 3.1901(A) of the Tribal Code.

**§3.1906 Admitting Minors to Public Displays of Sexual Conduct; Constructive Knowledge of Age.**

- A. Any person who is an owner, operator or employee shall not admit a person under the age of eighteen (18) into any business establishment where persons, in the course of their employment, expose their genitals, buttocks, or the areola or nipple of the female breast. Violation of this section shall constitute a class A misdemeanor.
- B. An owner, operator or employee who admits a person to an establishment without evidence of the person's age is deemed to have constructive knowledge of the person's age. Mistake as to the minor's age is not a defense.

**§3.1907 Deviant Sexual Intercourse.**

Any person who shall have sexual intercourse with an animal or who shall, without consent, cause another to engage in sexual intercourse with an animal shall be guilty of a Class B misdemeanor.

**§3.1908 Evidence:**

- A. Corroboration of victim's testimony. The testimony of a victim need not be corroborated in prosecutions under any section of the Criminal Sexual Conduct Chapter.
- B. Resistance. A victim need not resist the perpetrator in the perpetrator's commission of an offense under any section or subsection of the Criminal Sexual Conduct Chapter. Resistance by a victim is not an element of any offense under any section or subsection of the Criminal Sexual Conduct Chapter, and the absence of a victim's resistance is not a defense in a prosecution under any section or subsection of the Criminal Sexual Conduct Chapter.
- C. Admissibility of evidence; victim's prior sexual conduct.
  - 1. Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted into evidence in a case under any section or subsection of the Criminal Sexual Conduct Chapter, unless and only to the extent that the judge finds that the proposed evidence is material to a fact at issue in the case, and that the evidence's inflammatory or prejudicial nature does not outweigh its probative value, and that the proposed evidence is of the following nature: evidence of the victim's past sexual conduct with the perpetrator; or evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy or disease.
  - 2. If the defendant proposes to offer evidence described in Subsection (1) immediately above, the defendant shall file, no later than ten (10) days after the initial pretrial conference following arraignment, a written motion and offer of proof. The court may order an in-camera hearing to determine whether the proposed evidence is admissible under Subsection (1) above. If new information is discovered during the course of the trial that may make the evidence described

in Subsection (1) above admissible, the judge may order an in-camera hearing at that time to determine whether the proposed evidence is admissible under Subsection (1) above.

- D. Suppression of names and details. Upon the request of the victim or the perpetrator in a prosecution under the Criminal Sexual Conduct Chapter, the judge before whom the perpetrator is brought on a charged offense under the Criminal Sexual Conduct Chapter shall order the names of the victim and the perpetrator and the details of the alleged offense to be suppressed until such time as the perpetrator is arraigned, the charge is dismissed, or the case is otherwise concluded.
- E. Married persons. A person may be charged and convicted under the Criminal Sexual Conduct Chapter even though the victim is his or her legal spouse. However, a person may not be charged or convicted solely because his or her legal spouse is under the age of 16 years, or is developmentally disabled, or is a legally incapacitated adult.

### **§3.1909 Miscellaneous**

- A. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this ordinance will not be affected thereby.
- B. Effective Date. This ordinance shall take effect immediately upon the date of its adoption.

**Legislative History: Ordinance 2011 – 01 was adopted on April 21, 2011.  
Ordinance 2014 – 05 – 01 was adopted on October 23, 2014.**