

An Act

Legislative Act 20-08

A LEGISLATIVE ACT AMENDING CERTAIN SECTIONS OF THE CRIMINAL CODE RELATING TO SEX CRIMES AND OTHER CRIMES AGAINST THE PERSON

BE IT ENACTED BY THE CHEROKEE NATION:

SECTION 1. TITLE AND CODIFICATION; LEGISLATIVE HISTORY.

The various parts and provisions of this Legislative Act shall be known and codified as stated herein. The sections modified by this Legislative Act are located in Title 21 of the Cherokee Nation Code Annotated as codified in 1993. The source of most updates in this Legislative Act is Title 21 of the Oklahoma Statutes Annotated in effect as of February 22, 2008; however, some revisions are from the statutes of the State of Texas; others are novel and intended to be more protective of Cherokee Nation youth than those of the States of Oklahoma and Texas.

SECTION 2. PURPOSE AND FINDINGS.

The purpose of this legislation is to modernize certain sex crimes laws and other laws concerning crimes against the person in order to protect the public, with particular emphasis on protecting children and vulnerable or disabled or elderly adults; to require post-conviction registration and supervision of certain individuals convicted of sex crimes; to change the age at which a child can consent to various sexual activities; to combine the crimes of forcible sodomy and rape by instrumentation into the crime of rape; to address the evolution of electronic communication and its effect of giving greater access to our children from those outside our homes; and to require mandatory minimum sentences for certain sex crimes.

SECTION 3. AMENDATORY. TITLE 21 CNCA § 681 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 681. Assaults with intent to commit crime; Punishment.

A. Every person who commits an assault with intent to commit any crime, except an assault with intent to kill, the punishment for which assault is not otherwise prescribed in this code, is guilty of a crime, punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment if the offense involved sexual assault.

B. Any person convicted for a violation of subsection A of this section where the offense involved sexual assault, shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 4. AMENDATORY. TITLE 21 CNCA § 741 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 741. Kidnapping defined.

A. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

1. ~~First.~~ To cause such other person to be ~~secretly~~ confined or imprisoned in this Nation against the his-will of the other person; or,

2. ~~Second.~~ To cause such other person to be sent out of this Nation against the his-will of the other person; or,

3. ~~Third.~~ To cause such person to be sold as a slave, or in any way held to service against the his-will of such other person, is guilty of a crime, punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment when the offense was by a non-parent and involved sexual abuse or sexual exploitation.

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

C. Any person, except for the parent of the child, convicted for a violation of subsection A of this section where the offense involved sexual abuse or sexual exploitation, shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 5. AMENDATORY. TITLE 21 CNCA § 843 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 843. Abuse of children; Penalties. ~~Penalty.~~

A. For the purposes of this section:

1. "Abuse" means harm or threatened harm to a child's health, safety or welfare by a person responsible for the child's health, safety or welfare, including sexual abuse and sexual exploitation;

2. "Harm or threatened harm to a child's health or safety" includes, but is not limited to:

- a. nonaccidental physical or mental injury,
- b. sexual abuse,
- c. sexual exploitation,
- d. neglect,

- e. failure or omission to provide protection from harm or threatened harm, or
- f. abandonment;

3. "Neglect" means abandonment, or failure or omission to provide any of the following:

- a. adequate food, clothing, shelter, medical care, or supervision, or
- b. special care made necessary by the physical or mental condition of the child;

4. "Child" means any unmarried person under the age of eighteen (18) years;

5. "Person responsible for a child's health, safety or welfare" includes a parent, a legal guardian, a custodian, a foster parent, a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child, an agent or employee of a public or private residential home, institution, facility or day treatment program, or an owner, operator, or employee of a child care facility;

6. "Sexual abuse" includes, but is not limited to, rape, incest and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the child's health, safety or welfare regardless of the age or consent of the child;

7. "Sexual exploitation" includes, but is not limited to, allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's health, safety or welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the law, by a person responsible for the child's health, safety or welfare.

B. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a crime, punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. As used in this subsection, "child abuse" means the willful or malicious abuse, as defined by paragraph 1 of subsection A of this section, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another. ~~injure, torture, maim, use unreasonable force upon a child under the age of eighteen (18), or sexually abuse such child, as those terms are defined by Section 845 of this title or who shall cause, procure or permit any of said acts to be done, shall upon conviction be guilty of a crime.~~

C. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. As used in this subsection, "enabling child abuse" means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection A of this section, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the

person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

D. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. As used in this subsection, "child neglect" means the willful or malicious neglect, as defined by paragraph 3 of subsection A of this section, of a child under eighteen (18) years of age by another.

E. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. As used in this subsection, "enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection A of this section, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

F. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection A of this section, of a child under eighteen (18) years of age by another.

G. Any parent or other person who shall willfully or maliciously engage in sexual abuse to a child under twelve (12) years of age shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

H. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. As used in this subsection, "enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection A of this section, of a child under the age of eighteen (18) by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

I. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. As used in this subsection, "child sexual exploitation" means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection A of this section, of a child under eighteen (18) years of age by another.

J. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished pursuant

to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

K. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. As used in this subsection, "enabling child sexual exploitation" means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection A of this section, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

L. Notwithstanding any other provision of law, any parent or other person convicted of rape or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction, in any court of competent jurisdiction, for any offense of forcible anal or oral sodomy, rape, or lewd molestation of a child under fourteen (14) years of age shall be punished, punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

M. Any person convicted of violating the provisions of subsections F through L of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

N. Consent shall not be a defense for any violation of this section.

SECTION 6. AMENDATORY. TITLE 21 CNCA § 843.1 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 843.1. Caretaker; Abuse, neglect or financial exploitation of charge.

A. No caretaker or other person as defined in Section 803 of Title 43A of the Oklahoma Statutes shall willfully abuse, commit financial neglect of, commit neglect of, commit sexual abuse upon, or financially exploit any person entrusted in his to the care of such caretaker or other person in a nursing facility or other setting or knowingly, or shall cause, secure, or permit any of said acts to be done.

B. Any person convicted of violating the provisions of this section shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that when such conviction involves sexual abuse or sexual exploitation, such sentence must include a term of imprisonment.

C. Consent shall not be a defense for any violation of this section.

D. Any person convicted of violating the provisions of this section by committing sexual abuse or sexual exploitation shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

E. For purposes of this section and Sections 843.1 through 843.4 of this Title:

1. "Caretaker" shall be defined as a person who has:

- a. the responsibility for the care of a vulnerable adult or the financial management of the resources of a vulnerable adult as a result of a family relationship,
- b. assumed the responsibility for the care of a vulnerable adult voluntarily, by contract, or as a result of the ties of friendship, or
- c. been appointed a guardian, limited guardian, or conservator;

2. "Abuse" means causing or permitting:

- a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or
- b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult;

3. "Exploitation" or "exploit" means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense;

4. "Financial neglect" means repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including, but not limited to:

- a. squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult,
- b. refusing to pay for necessities or utilities in a timely manner, or
- c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources;

5. "Incapacitated person" means:

- a. any person eighteen (18) years of age or older:
 - i. who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental retardation, developmental disability or other cause, and

ii. whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage his or her financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others, or

b. a person for whom a guardian, limited guardian, or conservator has been appointed.

6. "Indecent exposure" means forcing or requiring a vulnerable adult to:

a. look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult, or

b. touch or feel the body or private parts of another;

7. "Neglect" means:

a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,

b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or

c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

8. "Sexual abuse" means:

a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object, or

b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult, or

c. indecent exposure by a caretaker or other person providing services to the vulnerable adult;

9. "Self-neglect" means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence or incapacity;

10. "Sexual exploitation" includes, but is not limited to, a caretaker's causing, allowing, permitting or encouraging a vulnerable adult to engage in prostitution or in the lewd, obscene, or pornographic photographing, filming or depiction of the vulnerable adult as those acts are defined by the Nation's laws; and

11. "Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

12. "Vulnerable adult" means an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others;

F. Nothing in this section shall be construed to mean a vulnerable adult is abused or neglected for the sole reason the vulnerable adult, in good faith, selects and depends upon spiritual means alone, in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease or remedial care, or a caretaker or other person responsible, in good faith, is furnishing such vulnerable adult spiritual means alone, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care in accordance with the practices of or express consent of the vulnerable adult.

SECTION 7. ADDING NEW SECTION. TITLE 21 CNCA § 843.2 SHALL BE ADDED AND SHALL READ AS FOLLOWS:

§ 843.2. Verbal abuse by caretaker.

No caretaker shall verbally abuse any person entrusted to the care of the caretaker, or knowingly cause, secure, or permit an act of verbal abuse to be done. Any person convicted of violating the provisions of this section shall, upon conviction, be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

SECTION 8. ADDING NEW SECTION. TITLE 21 CNCA § 843.3 SHALL BE ADDED AND SHALL READ AS FOLLOWS:

§ 843.3. Abuse or Exploitation of vulnerable adult by non-caretaker.

A. Any person who engages in abuse, sexual abuse, or exploitation of a vulnerable adult, as defined in Section 843 of Title 21 of the Cherokee Nation Statutes, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment when the offense involved sexual abuse or exploitation. Any person convicted of violating the provisions of this subsection by committing sexual abuse or exploitation shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be

advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

B. Any person who has a responsibility to care for a vulnerable adult who purposely, knowingly or recklessly neglects the vulnerable adult shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

SECTION 9. ADDING NEW SECTION. TITLE 21 CNCA § 843.4 SHALL BE ADDED AND SHALL READ AS FOLLOWS:

§ 843.4. Exploitation of elderly persons or disabled adults.

A. As used in this section, "exploitation of an elderly person or disabled adult" means:

1. Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:

a. stands in a position of trust and confidence with the elderly person or disabled adult, or

b. has a business relationship with the elderly person or disabled adult, or

2. Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

B. Any person convicted of violating this section commits a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

C. For purposes of this section, "elderly person" means any person sixty-two (62) years of age or older.

SECTION 10. REPEALING SECTION. TITLE 21 CNCA § 845 SHALL BE REPEALED IN ITS ENTIRETY AND THE DEFINITIONS CONTAINED THEREIN COMBINED WITH SECTION 843.

~~§ 845. Public policy Protection of children-Definitions~~

~~A. It is the policy of this nation to provide for the protection of children who have had physical injury inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of those responsible for~~

their care and protection.

~~B. As used in Sections 846 through 848 of this title:~~

~~1. "Abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through: Nonaccidental physical or mental injury; sexual abuse, as defined by nation law; sexual exploitation or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, shelter, or medical care except as provided for in Section 846 of this title;~~

~~2. "Child" means a person under the age of eighteen (18) years. A person responsible for a child's health or welfare includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution;~~

~~3. "Sexual abuse" includes rape, incest and lewd or indecent acts or proposals, as defined by law, by a person responsible for the child's welfare; and~~

~~4. "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the nation law, by a person responsible for the child's welfare.~~

SECTION 11. AMENDATORY. TITLE 21 CNCA § 865 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 865. Definitions.

As used in sections 866, 867, 868, and 869 of this Title, ~~this act~~ the terms hereinafter enumerated shall have the following meanings:

~~A~~1. "Child" means an unmarried or unemancipated person under the age of eighteen (18) years;

2. "Child-placing agency" means any child welfare agency licensed by any government and authorized to place minors for adoption;

3. "Birth parent" means a parent of a child being placed for adoption and includes, but is not limited to, a woman who is pregnant or who presents herself as pregnant and who is offering to place her child, born or unborn, for adoption;

~~B~~4. "Person" means any natural person, corporation, association, organization, institution, or partnership;

~~C~~5. "Department" means the Cherokee Nation Department of Children, Youth and Family Services;

~~D6.~~ "Foster home" means a home or other place, other than the home of a parent, relative within the fourth degree, or guardian of the child concerned, wherein a child is received for permanent care, custody and maintenance.

SECTION 12. AMENDATORY. TITLE 21 CNCA § 866 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 866. Elements of offense.

A. 1. The crime of trafficking in children is defined to consist of any of the following acts or any part thereof:

~~a1. the Acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person in connection with the acquisition or transfer of the legal or physical custody or adoption of a minor child except as otherwise provided by the Cherokee Nation Adoption Code; from the person or persons adopting a child, by any person, for services of any kind performed or rendered or purported to be performed or rendered, in connection with such adoption;~~

~~b2. the Acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed to facilitate or assist in the adoption or foster care placement of a minor child, except by the Cherokee Nation Department of Children, Youth and Family Services or an agency licensed thereby, or an attorney authorized to practice law in the Cherokee Nation. The provisions of this paragraph shall not prohibit an attorney licensed to practice law outside of the Cherokee Nation or a non-Cherokee Nation child-placing agency from receiving compensation when working with an attorney licensed in the Cherokee Nation who is, or when working with a child-placing agency licensed in the Cherokee Nation this state which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement, from any other person, in return for placing, assisting to place, or attempting to place a child for adoption or for permanent care in a foster home;~~

~~c3. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the solicitation or receipt had no intent to consent to eventual adoption; The offering or payment of any compensation, in money, property or other thing of value, to any person in order to acquire custody of a child for adoption;~~

~~d4. The payment of a recognized hospital or a physician qualified under the laws of the Cherokee Nation which renders competent and needed hospital and medical care to an expectant mother or reasonable domiciliary care to a mother and child when such hospital and medical care have been approved by the judge of the district court shall not be considered as compensation for the adoption of the child or in any sense of~~

the words be referred to as "trafficking in children"; nor shall the charge of a reasonable attorney's fee for services rendered in adoption or custody proceedings, approved by the court, be considered as trafficking in children; nor shall the fees charged by a licensed child placing agency, ~~as defined in Section 402 of Title 10 of the Oklahoma Statutes~~, approved by the court, for services rendered in the care of any child or its parent, the investigation and counseling services to and on behalf of the child, its parents and prospective adoptive home, be considered as trafficking in children; provided, however, that all such procedure relating to the care of an expectant unwed mother and her ~~an illegitimate~~ child and the adoption procedure therein comprised, or any other adoption, shall remain confidential in its nature, as otherwise provided by law;

e5. ~~O~~ffering to place, or advertising to place, a child for adoption or for care in a foster home, by any person, as an inducement to any woman to enter an institution or home or other place for maternity care or for the delivery of a child;

f6. ~~B~~ringing or causing to be brought into this Nnation or sending or causing to be sent outside this Nnation any child for the purpose of placing such child in a foster home or ~~of procuring for~~ the adoption thereof without first obtaining the consent of the Department of Children, Youth and Family Services. Provided, however, that this provision shall have no application to the parent or guardian of the child nor to a person bringing said child into this Nation for the purpose of adopting the child into such person's same into his own family; ~~or~~

g7. ~~A~~acceptance of or the offering or payment of any compensation, in money, property or other thing of value, by any person, in connection with the acquisition or transfer of the legal or physical custody of a child, except as ordered by the court or except as otherwise provided by law;:-

h. the solicitation or receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a woman who knows she is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption;

i. the receipt of any money or any other thing of value for expenses related to the placement of a child for adoption by a birth parent who receives, from one or more parties, an aggregate amount of One Thousand Dollars (\$1,000.00) or more in total value without first disclosing to each prospective adoptive parent, child-placing agency, or attorney the receipt of these expenses;

j. advertising of services for compensation to assist with or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Children, Youth and Family Services, or a child-placing agency licensed thereby. Nothing in this paragraph shall prohibit an attorney authorized to practice law in the

Cherokee Nation from the advertisement of legal services related to the adoption of children; and

k. Advertising for and solicitation of a woman who is pregnant to induce her to place her child upon birth for adoption, except by the Department of Children, Youth and Family Services or an attorney authorized to practice law in the Cherokee Nation.

2. a. Except as otherwise provided by this subsection, the violation of any of the subparagraphs in paragraph 1 of this subsection shall constitute a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

b. Prospective adoptive parents who violate subparagraph a of paragraph 1 of this subsection, upon conviction thereof, may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

B. 1. No person shall knowingly publish for circulation within the borders of the Cherokee Nation an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which violates subparagraph j or k of paragraph 1 of subsection A of this section.

2. Any person violating the provisions of this subsection shall, upon conviction thereof, be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

C. The payment or acceptance of costs and expenses listed in the Cherokee Nation Adoption Code shall not be a violation of this section as long as the petitioner or birth parent has complied with the applicable procedure specified therein, and such costs and expenses are approved by the court.

D. Any person knowingly failing to file an affidavit of all adoption costs and expenses before the final decree of adoption as required by the Cherokee Nation Adoption Code shall be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00) per violation.

SECTION 13. AMENDATORY. TITLE 21 CNCA § 867 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 867. Punishment.

A. The offense of trafficking in children by any person shall be a crime.

B. Conviction of the crime of trafficking in children, subsequent to a prior conviction for such offense in any form, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

C. Any person convicted of the offense of trafficking in children shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation

Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 14. AMENDATORY. TITLE 21 CNCA § 885 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 885. Incest; Penalty.

Persons who, being within the degrees of consanguinity within which marriages are by the laws of the Nation declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, are guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 15. AMENDATORY. TITLE 21 CNCA § 886 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 886. Crime against nature.

Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 16. REPEALING SECTION. TITLE 21 CNCA § 1040.9 IS HEREBY REPEALED IN ITS ENTIRETY AND COMBINED WITH THE CRIME OF RAPE IN TITLE 21 CNCA § 1111.

~~**§ 888. Foreible sodomy.**~~

~~A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a crime.~~

~~B. The crime of forcible sodomy shall include:~~

~~1. sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or~~

~~2. sodomy 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; or~~

~~3. sodomy 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~~

~~victim or the person committing the crime.~~

SECTION 17. AMENDATORY. TITLE 21 CNCA § 891 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 891. Child stealing; Punishment.

Whoever maliciously, forcibly or fraudulently takes or entices any child under the age of ~~eighteen (18) twelve (12)~~ years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child ~~or to transport such child from the jurisdiction of the Cherokee Nation or the United States without the consent of the person having lawful charge of such child shall, upon conviction, be is~~ guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 18. AMENDATORY. TITLE 21 CNCA § 1021 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 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 person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby,
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 or otherwise stores or views on a computer, or exhibits any obscene material or child pornography or indecent writing, paper, book, picture, photograph, motion picture, figure, or form of any description, 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 other kind of sound recording of any ~~obscene or indecent language, poetry, or songs, or who speaks any words by means of a telephone to any person which are offensive to decency or are calculated to excite vicious or lewd thoughts or acts, or who speaks any other communicable words which are offensive to decency or are adapted to excite vicious or lewd thoughts or acts~~ type of obscene material or child pornography shall be guilty, upon conviction, of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that upon a second conviction for a violation of subparagraph 1 or 2 of subsection A, such sentence must include a term of imprisonment.

B. 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 ~~or indecent writing, paper, book, picture, photograph, motion picture, figure, or form of any description~~ for the purpose of inducing said minor to participate in, any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty, upon conviction, of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

C. 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.

D. Any person convicted of a second violation of paragraphs 1 or 2 of subsection A of this section, or for a first violation of either paragraph 3 or 4 of subsection A of this section when the offense involves child pornography, or for a first violation of subsection B, shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 19. AMENDATORY. TITLE 21 CNCA § 1021.1 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1021.1. Application of sections. aet

A. Sections 1021 through 1024.4 of this title ~~This act 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, or in the course of bona fide scientific education or comprehensive research or study, or bona fide objects of art or artistic pursuits, or like circumstances or justification, where the possession, distribution or conduct is not related to the subject matter's appeal to prurient interest.~~

B. The criminal provisions of this title shall not prohibit the Attorney General 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 20. AMENDATORY. TITLE 21 CNCA § 1021.2 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 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 film, motion picture, videotape, photograph, negative, slide, drawing, painting, play, or performance wherein the minor is engaged in or

~~portrayed, depicted, or represented as engaging in any act of sexual intercourse, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual activity, in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual activity, or in any other exhibition of the uncovered genitals having the purpose of sexual stimulation of the viewer, or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any said material involving the participation of any minor under the age of eighteen (18) shall be guilty, upon conviction, of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. 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. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.~~

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 21. AMENDATORY. TITLE 21 CNCA § 1021.3 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 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 film, motion picture, videotape, photograph, negative, slide, drawing, painting, play or performance wherein the minor is engaged in or portrayed, depicted or represented as engaging in any act of sexual intercourse, in any act of fellatio or cunnilingus, in any act of excretion in the context of sexual activity, or in any lewd exhibition of the uncovered genitals in the context of masturbation or other sexual activity, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

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

SECTION 22. ADDING NEW SECTION. TITLE 21 CNCA § 1021.4 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 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 or appearing to depict 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 Cherokee Nation Marshal Service and shall prepare and send a written report of the incident to the Cherokee Nation Marshal Service with an attached copy of such material, within thirty-six (36) hours after receiving the information concerning the incident.

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; 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.

B. Any person who violates the provisions of this section, upon conviction, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

C. 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 23. AMENDATORY. TITLE 21 CNCA § 1022 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1022. Indecent articles, by whom seized and to whom delivered.

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 ~~subdivision three of the last section~~ 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, any obscene or indecent writing, paper, book, picture, print or figure 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, provided that when the arrest is made pursuant to a federal warrant, the federal procedures for delivery of such materials shall be followed without violating this section.

SECTION 24. AMENDATORY. TITLE 21 CNCA § 1023 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1023. Indecent articles, how disposed of; Examination of accused.

The magistrate to whom any child pornography, or any obscene material, or indecent writing, paper, book, picture, print, or figure, is delivered pursuant to ~~the foregoing s~~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 writing, paper, book, picture, print, or figure, and if ~~the magistrate~~ he finds it to be obscene material or child pornography or indecent, ~~he~~ the magistrate shall cause the same to be destroyed, or to be delivered to the Attorney General prosecutor in which the accused is liable to indictment or trial as the interests of justice in his judgment require, but no more than two copies of any one writing, paper, book, picture, print, or figure shall be delivered to the prosecutor. The magistrate shall issue in writing the factual and legal basis for the determination by the magistrate of the character of the child pornography or obscene material. The Attorney General may transmit the child pornography or obscene material to the United States Attorney's Office for the district wherein a crime occurred upon the written request of said United States Attorney's Office, or may deliver such materials to the Cherokee Nation Marshal Service for storage as evidence pending trial and any appeals.

SECTION 25. AMENDATORY. TITLE 21 CNCA § 1024 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1024. Prosecutor Attorney General to destroy indecent articles, when.

Upon the final conviction of the accused, ~~the Attorney General such prosecutor~~ shall cause any child pornography or obscene material writing, paper, book, picture, print, or figure, in respect whereof the accused stands convicted and which remains in the possession or under the control of such Attorney General prosecutor to be destroyed.

SECTION 26. AMENDATORY. TITLE 21 CNCA § 1024.1 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1024.1. Definitions.

A. As used in Sections 1021, 1021.1 through 1021.3, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this Title, "child pornography" means and includes any film, motion picture, videotape, photograph, negative, undeveloped film, slide, photographic product, reproduction of a photographic product, CD-ROM, magnetic disk memory, magnetic tape memory, 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 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.

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 medium including still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, CD-ROM, magnetic disk memory, magnetic tape memory or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, 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.

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

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

3. "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 deviant sexual conduct, including oral and anal sodomy,

c. acts of masturbation,

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

i. 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

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

e. acts of excretion in a sexual context, or

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

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

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.

As used in Sections 1021 through 1024.4 of this title:

1. ~~"Obscene material" means and includes any photographic product depicting actual human models or actors, whether in the form of still photographs, undeveloped photographs, motion pictures, undeveloped film, videotape, or a purely photographic product or a reproduction of such product in any book, pamphlet, magazine, or other publication, if said items contain the elements of paragraph 2 of this section.~~

2. ~~"Performance" means and includes any live or cinematic show of whatever nature over any broadcast media, if the performance contains the following:~~

a. ~~The obscene material or performance has as one of its participants or portrayed observers a child under the age of eighteen (18) or who appears as prepubescent; or~~

b. ~~The obscene material or performance contains depictions or descriptions of sexual conduct which are patently offensive; and~~

e. ~~The obscene material or performance taken as a whole has as the dominant theme an appeal to prurient interest, as found by the average person applying contemporary community standards; and~~

d. ~~The obscene material or performance taken as a whole lacks serious literary, artistic, educational, political, or scientific purposes or value.~~

3. ~~"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,~~

e. ~~Acts of masturbation,~~

d. ~~Acts of sadomasochistic abuse including but not limited to:~~

i. ~~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~~

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

e. ~~Acts of excretion in a sexual context, or~~

f. ~~Acts of exhibiting human genitals or pubic areas. The types of sexual conduct described in paragraph 3 of this section 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 27. AMENDATORY. TITLE 21 CNCA § 1024.2 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1024.2. Purchase, procurement or possession of child pornography 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 ~~obscene material in violation of this act.~~ Such person shall, upon conviction, be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment for a period not exceeding one (1) year or a fine not to exceed Five Thousand Dollars (\$5,000.00) or by both such fine and imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 28. AMENDATORY. TITLE 21 CNCA § 1024.3 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1024.3. Power to arrest and seizure of obscene material.

Every person who is authorized or enjoined to arrest any person for a violation of ~~this act~~ Sections 1021, 1021.1 through 1021.3, Sections 1022 through 1024, and Sections 1040.8 through 1040.24 of this Title is equally authorized and enjoined to seize an evidentiary copy of any obscene material or child pornography or all copies of explicit child pornography ~~any obscene material~~ 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 magistrate before whom the person so arrested is required to be taken, provided that when the arrest is made pursuant to a federal warrant, the federal procedures for delivery of such materials shall be followed without violating this section.

SECTION 29. AMENDATORY. TITLE 21 CNCA § 1024.4 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1024.4. Destruction of obscene material upon conviction.

Upon final conviction of the accused, any magistrate or the Attorney General ~~prosecutor~~ shall cause any obscene material or child pornography, in respect whereof the accused stands convicted and which remains in the possession or control of such magistrate or the Attorney General ~~prosecutor~~, to be destroyed.

SECTION 30. AMENDATORY. TITLE 21 CNCA § 1040.8 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1040.8. Publication, distribution or participation in preparation of any obscene material or presentation; Unsolicited mailings; Penalty.

No person shall knowingly photograph, act in, pose for, model for, print, sell, offer for sale, giveaway, exhibit, to 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, filthy, indecent, lascivious, lewd, or unfit, as defined in Section 1040.12 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 pursuant to Section 1040.75 of this title shall be mailed to any person. The party mailing ~~such~~ the materials specified in this section may be ~~indicted~~ and tried where such material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person who violates any provision of this section, upon conviction, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. Any person convicted of a violation of this section where the offender is age eighteen (18) or over and the offense involved child pornography shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 31. REPEALING SECTION. TITLE 21 CNCA § 1040.9 IS HEREBY REPEALED IN ITS ENTIRETY.

~~§ 1040.9. — Obscene literature defined~~

~~"Obscene literature" shall mean any literature which, considered as a whole in the light of contemporary community standards, has as its predominant theme an appeal to prurient interests.~~

SECTION 32. REPEALING SECTION. TITLE 21 CNCA § 1040.10 IS HEREBY REPEALED IN ITS ENTIRETY.

~~§ 1040.10. — Provisions cumulative~~

~~The provisions of this act shall be cumulative to existing laws.~~

SECTION 33. ADDING NEW SECTION. TITLE 21 CNCA § 1040.11 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.11. Short Title.

Sections 1021 through 1040.77 of this title shall be known as the "Cherokee Nation Obscenity and Child Pornography Act" and may be referred to by that designation.

SECTION 34. AMENDATORY. TITLE 21 CNCA § 1040.13 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1040.13. Acts prohibited Crime.

Every person who, with knowledge of its contents, sends, brings, or causes to be sent or brought into this Nation for sale or commercial distribution, or in this Nation 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, lewd, lascivious, filthy, or indecent electronic video game, printed or written matter or material or other article, or any article of obscene, lewd, lascivious, filthy, or indecent character or for indecent or immoral use, 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. The party mailing such material may be indicted and tried where such material is deposited or delivered, or in which it is received by the person to whom it is addressed. Any person who violates any provision of this section, upon conviction, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such punishment must include a term of imprisonment. Any person convicted of a violation of this section where the offense involved child pornography shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 35. ADDING NEW SECTION. TITLE 21 CNCA § 1040.13A SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.13a. Facilitating, encouraging, offering or soliciting sexual conduct or engaging in sexual communication with a minor or person believed to be a minor.

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 crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. For purposes of this section, each communication shall constitute a separate offense. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

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 the Cherokee Nation by the fact of accessing any computer, cellular phone or other computer-related or satellite-operated device in the Cherokee Nation, regardless of the actual jurisdiction where the violator resides.

SECTION 36. ADDING NEW SECTION. TITLE 21 CNCA § 1040.14 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.14. Action for adjudication of obscenity or child pornographic content of mailable matter.

A. Whenever the Attorney General has reasonable cause to believe that any person, with knowledge of its contents, is (1) engaged in sending or causing to be sent, bringing or causing to be brought, into the Cherokee Nation for sale or commercial distribution, or is (2) in the Cherokee Nation preparing, selling, exhibiting or commercially distributing or giving away, or offering to give away, or has in his possession with intent to sell, or commercially distribute or to exhibit or give away or offer to give away, any obscene material or child pornography, the Attorney General may institute an action in the district court for an adjudication of the obscenity or child pornographic content of the mailable matter.

B. The procedure to be followed shall be that set forth in this Act.

SECTION 37. ADDING NEW SECTION. TITLE 21 CNCA § 1040.15 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.15. Petition.

The action described in Section 1040.14 of this title shall be commenced by filing with the court a petition:

(a) directed against the matter by name or description;

(b) alleging it is obscene material or child pornography;

(c) listing the names and addresses, if known, of its author, publisher and any other person sending or causing it to be sent, bringing or causing it to be brought into the Cherokee Nation for sale or commercial distribution and of any person in the Cherokee Nation preparing, selling, exhibiting or commercially distributing it, or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

(d) seeking an adjudication that it is either obscene material or child pornography, as defined in Section 1024.1 of this title;

(e) seeking a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into the Cherokee Nation for sale or commercial distribution, or in the Nation preparing, selling, exhibiting or commercially distributing it, giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

(f) seeking its surrender, seizure and destruction.

SECTION 38. ADDING NEW SECTION. TITLE 21 CNCA § 1040.16 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.16. Summary examination of material; Dismissal or show cause order.

A. Upon the filing of the petition described in Section 1040.15 of this title, the court shall summarily examine the obscene material or child pornography.

B. If the court finds no probable cause to believe it is obscene material or child pornography, the court shall dismiss the petition.

C. If the court finds probable cause to believe it is obscene material or child pornography, the court shall immediately issue an order or rule to show cause why it should not be adjudicated to be obscene material or child pornography.

D. The order or rule to show cause shall be:

1. directed against it by name or description;

2. if their names and addresses are known, served personally in the manner provided in this act for the service of process or in any manner now or hereafter provided by law, upon its author, publisher, and any other person interested in sending or causing it to be sent, bringing or causing it to be brought, into the Cherokee Nation for sale or commercial distribution, and on any person in the Nation preparing, selling, exhibiting or commercially distributing it or giving away or offering to give it away, or possessing it with intent to sell or commercially distribute or exhibit or give away or offer to give it away;

3. returnable six (6) days after its service.

SECTION 39. ADDING NEW SECTION. TITLE 21 CNCA § 1040.17 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.17. Answer.

A. On or before the return date specified in the order or rule to show cause, the author, publisher, or any person interested in sending or causing to be sent, bringing or causing to be brought, into the Cherokee Nation for sale or commercial distribution, or any person in the Cherokee Nation preparing, selling, exhibiting or commercially distributing, or giving away or offering to give away, or possessing with intent to sell or commercially distribute or exhibit or give away or offer to give away, the matter may appear and file an answer.

B. The court may, by order, permit any other person to appear and file an answer as amicus curiae. A person granted permission and appearing and filing an answer has all the rights of a party to the proceeding.

C. If no person appears and files an answer on or before the return date specified in the order or rule to show cause, the court shall enter judgment either:

1. adjudicating the matter not to be obscene material or child pornography, if the court so finds; or

2. adjudicating it to be obscene material or child pornography, if the court so finds.

D. Every person appearing and answering shall be entitled, upon request, to a trial of the issues before the court not less than three (3) days after a joinder of the issues.

SECTION 40. ADDING NEW SECTION. TITLE 21 CNCA § 1040.18 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.18. Trial; Evidence.

A. The court shall conduct the trial in accordance with the rules of civil procedure applicable to the trial of cases by the court without a jury.

B. The court shall receive evidence at the trial, including the testimony of experts, pertaining, but not limited, to:

1. whether, to the average person, applying contemporary community standards, the dominant theme of the mailable matter taken as a whole is to prurient interest;

2. the artistic, literary, scientific and educational merits of the mailable matter considered as a whole;

3. the intent of the author and publisher in preparing, writing and publishing the mailable matter;

4. the appeal to prurient interest, or absence thereof, in advertising or other promotion of the mailable matter.

SECTION 41. ADDING NEW SECTION. TITLE 21 CNCA § 1040.19 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.19. Destruction; Injunction.

In the event that a judgment is entered adjudicating the matter to be obscene material or child pornography, the court shall further:

A. order the person or persons having possession of it to surrender it to the Marshal Service for destruction and, in the event that person refuses, order the Marshal to seize and destroy it after all appeals are final;

B. enter a permanent injunction against any person sending or causing it to be sent, bringing or causing it to be brought, into the Cherokee Nation for sale or commercial distribution, and against any person in the Cherokee Nation preparing, selling, exhibiting or commercially distributing it, giving it away or offering to give it away, or having it in his possession with intent to sell or commercially distribute or exhibit or give it away or offer to give it away.

SECTION 42. ADDING NEW SECTION. TITLE 21 CNCA § 1040.20 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.20. Sending or selling of materials with knowledge of judgment.

Any matter which, following the entry of a judgment that it is obscene material or child pornography, is sent or caused to be sent, brought or caused to be brought, into the Cherokee Nation for sale or commercially distributed, given away or offered to be given away, by any person with knowledge of the judgment, or is in the possession of any such person with intent to sell or commercially distribute or exhibit or give away or offer to give away, is subject to the provisions of Section 1040.13 of this title.

SECTION 43. ADDING NEW SECTION. TITLE 21 CNCA § 1040.21 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.21. Contempt.

After the entry of a judgment that the matter is obscene material or child pornography, any person who, with knowledge of the judgment or of the order or rule to show cause, sends or causes to be sent, brings or causes to be brought, into the Cherokee Nation for sale or commercial distribution, the matter, or who in the Cherokee Nation sells, exhibits or commercially distributes it, gives away or offers to give it away, or has it in his possession with intent to sell or commercially distribute or exhibit or give away or offer to give it away, shall be guilty of contempt of court and upon conviction after notice and hearing shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

SECTION 44. ADDING NEW SECTION. TITLE 21 CNCA § 1040.22 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.22. Extradition.

In all cases in which a charge or violation of any section or sections of this act is brought against a person who cannot be found in the Cherokee Nation, the Principal Chief may demand extradition of such person from the executive authority of the state or tribal jurisdiction in which such person may be found.

SECTION 45. ADDING NEW SECTION. TITLE 21 CNCA § 1040.23 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.23. Presumptions.

The possession of two or more of any single article that is obscene material or child pornography, or the possession of a combined total of any five articles that are obscene material or child pornography (except the possession of them for the purpose of return to the person from whom received) shall create a presumption that they are intended for sale or commercial distribution, exhibition or gift, but such presumption shall be rebuttable. The burden of proof that their possession is for the purpose of return to the person from whom received shall be on the possessor.

SECTION 46. ADDING NEW SECTION. TITLE 21 CNCA § 1040.24 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.24. Jurisdiction; Service of process; Fines; Execution against property.

In order to protect the citizens and residents of the Cherokee Nation against unfit articles and printed or written matter or material which originates outside the Cherokee Nation, it is the purpose of this section to subject to the jurisdiction of the courts of the Cherokee Nation those persons who are responsible for the importation of those things into the Cherokee Nation.

To that end and in the exercise of its power and right to protect its citizens and residents, it is hereby provided that any person, whether or not a citizen or resident of the Cherokee Nation, who sends or causes to be sent into the Cherokee Nation for resale in the Cherokee Nation any article or printed matter or material, is for the purpose of this act transacting business in the Nation and by that act:

A. submits himself to the jurisdiction of the courts of the Cherokee Nation in any proceeding commenced under Section 1014 of this Title;

B. constitutes the Secretary of State his agent for service of process in any proceeding commenced under Section 1014 of this Title; and consents that service of process shall be made by serving a copy upon the Secretary of State or by filing a copy in the Secretary of State's office, and that this service shall be sufficient service provided that, within one (1) day after service, notice of the service and a copy of the process are sent by registered mail by the Attorney General to him at his last-known address and proof of such mailing filed with the clerk of the court within one (1) day after mailing;

C. consents that any fine levied against him under any section of this act may be executed against any of his real property, personal property, tangible or intangible, choses in action or property of any kind or nature, including debts owing to him, which are situated or found in the Cherokee Nation.

Service of process upon any person who is subject to the jurisdiction of the courts of the Cherokee Nation, as provided in this section, may also be made by personally serving the summons upon him outside the Cherokee Nation with the same force and effect as though summons had been personally served within the Cherokee Nation. The service of summons shall be made in like manner as service within the Cherokee Nation, by any person over twenty-one (21) years of age not a party to the action. No order of court is required. An affidavit of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

SECTION 47. REPEALING SECTION. TITLE 21 CNCA § 1040.51 IS HEREBY REPEALED IN ITS ENTIRETY.

~~§ 1040.51. Pictures, movies, etc. showing acts of sexual intercourse or unnatural copulation prohibited; Exceptions; Penalties~~

~~Any person who knowingly buys, sells, barter, traffics in, or causes to be delivered or transported into Cherokee Nation any picture, moving picture, drawing, electronic video game, diagram, or photograph of any person or animal or caricature thereof in an act of sexual intercourse or unnatural copulation, upon conviction, shall be deemed guilty of a crime. Nothing contained in this section shall prohibit the use of any of the above mentioned items pursuant to medical prescription by a duly licensed physician in the State of Oklahoma, or in recognized schools of medicine or veterinary science for educational purposes.~~

SECTION 48. ADDING NEW SECTION. TITLE 21 CNCA § 1040.52 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.52. Showing at outdoor theaters of pictures depicting sexual intercourse prohibited under certain conditions; Penalty.

A. Every owner or operator of an outdoor theater in the Cherokee Nation is guilty of a crime who shows or causes to be shown a motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or
2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernably turgid state, even if completely and opaquely covered.

B. This section shall be applicable, however, only where the viewing portion of the screen of such theater is situated within the view of any residence or where children under eighteen (18) years of age have an understanding view of the picture.

C. Any prosecution under this section must be preceded by a written complaint from a resident affected by the terms of this section.

D. Upon conviction of a violation of this section such person shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

SECTION 49. ADDING NEW SECTION. TITLE 21 CNCA § 1040.53 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.53. Projectionists, ushers or cashiers excepted from statutes relating to exhibition of obscene motion pictures.

The provisions of statutes of the Cherokee Nation prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial theater open to the general public shall not apply to a projectionist or assistant projectionist, usher or cashier, provided he has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist, usher or cashier. Provided further, that such person is not acting as manager or director of such theater. The provisions of this act shall not exempt any projectionist or assistant projectionist, usher or cashier from criminal liability for any act unrelated to projection of motion pictures in a commercial theater open to the general public.

SECTION 50. ADDING NEW SECTION. TITLE 21 CNCA § 1040.54 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.54. Seizure and forfeiture of equipment used in certain offenses relating to obscene material or child pornography.

A. Any peace officer of the Cherokee Nation is authorized to seize any equipment which is used, or intended for use in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography, as defined in subsection A of Section 1024.1 of this title. Said equipment may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the Attorney General as petitioner; provided, in the event the Attorney General elects not to file such an action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, a forfeiture action may be brought by the entity seizing such equipment as petitioner.

B. Notice of seizure and intended forfeiture proceeding shall be given all owners and parties in interest by the party seeking forfeiture as follows:

1. Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last-known address; and
2. Upon all other owners or parties in interest, whose addresses are unknown,

by one publication in a newspaper of general circulation in the county where the seizure was made.

C. Within sixty (60) days after the mailing or publication of the notice, the owner of the equipment and any other party in interest may file a verified answer and claim to the equipment described in the notice of seizure and of the intended forfeiture proceeding.

D. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the equipment forfeited to the Nation, if such fact is proven.

E. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

F. At the hearing the party seeking the forfeiture shall prove by clear and convincing evidence that the equipment was used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography, as defined in paragraph 1 of subsection A of Section 1024.1 of this title, with knowledge by the owner of the equipment.

G. The owner or party in interest may prove that the right or interest in the equipment was created without any knowledge or reason to believe that the equipment was being, or was to be, used for the purpose charged.

H. In the event of such proof, the court may order the equipment released to the bona fide or innocent owner or party in interest if the amount due the person is equal to, or in excess of, the value of the equipment as of the date of the seizure.

I. If the amount due to such person is less than the value of the equipment, or if no bona fide claim is established, the equipment shall be forfeited to the Cherokee Nation and shall be sold pursuant to the judgment of the court.

J. Equipment taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the Attorney General or in the custody of the party seeking the forfeiture. The Attorney General or the party seeking the equipment may release said equipment to the owner of the equipment if it is determined that the owner had no knowledge of the illegal use of the equipment or if there is insufficient evidence to sustain the burden of showing illegal use of the equipment. Equipment which has not been released by the Attorney General or the party seizing the equipment shall be subject to the orders and decrees of the district court or the official having jurisdiction thereof.

K. The Attorney General or the party seizing such equipment shall not be held civilly liable for having custody of the seized equipment or proceeding with a forfeiture action as provided for in this section.

L. The proceeds of the sale of any equipment not taken or detained by the Cherokee Nation Marshal Service or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser or conditional sales vendor of the equipment, if any, up to the amount of the person's interest in the equipment, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the equipment; and

3. The balance to the Marshal Service. Monies from said fund may be used to pay costs for the storage of such equipment if such equipment is ordered released to a bona fide or innocent owner, purchaser, or conditional sales vendor and if such monies are available in said fund.

M. When any equipment is forfeited pursuant to this section, the district court may order that the equipment seized may be retained by the Marshal Service for its official use.

N. If the court finds the equipment was not used in the preparing, photographing, printing, selling, exhibiting, publishing, distributing, displaying, advertising, filming, copying, recording, or mailing of obscene material, as defined in paragraph 1 of subsection B of Section 1024.1 of this title or child pornography as defined in paragraph 1 of subsection A of Section 1024.1 of this title, the court shall order the equipment released to the owner.

O. No equipment shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, or by any person other than such owner while such equipment was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

SECTION 51. ADDING NEW SECTION. TITLE 21 CNCA § 1040.75 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.75. Definitions.

As used in Sections 1040.75 through 1040.77 of this title:

1. "Minor" means any unmarried person under the age of eighteen (18) years;

2. "Harmful to minors" means:

a. 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:

i. 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

ii. 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

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

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

3. "Inappropriate violence" means any description or representation, in an interactive video game or computer software, of violence which, 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 interactive video game or computer software is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and

b. the interactive video game or computer software lacks serious literary, scientific, medical, artistic, or political value for minors based on, but not limited to, the following criteria:

i. is glamorized or gratuitous,

ii. is graphic violence used to shock or stimulate,

iii. is graphic violence that is not contextually relevant to the material,

iv. is so pervasive that it serves as the thread holding the plot of the material together,

v. trivializes the serious nature of realistic violence,

vi. does not demonstrate the consequences or effects of realistic violence,

vii. uses brutal weapons designed to inflict the maximum amount of pain and damage,

viii. endorses or glorifies torture or excessive weaponry, or

ix. depicts lead characters who resort to violence freely;

4. "Nudity" means the:

a. showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering,

- b. showing of the female breast with less than a full opaque covering of any portion of the female breast below the top of the nipple, or
- c. depiction of covered male genitals in a discernibly turgid state;
5. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast;
6. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal;
7. "Sadomasochistic abuse" means flagellation or torture by or upon a person clothed or naked or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed or naked;
8. "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, CD-ROM disk, Magnetic Disk Memory, Magnetic Tape Memory, downloadable media including but not limited to podcasts, video tape, computer software or video game;
9. "CD-ROM" means a compact disk with read only memory which has the capacity to store audio, video and written materials and may be used by computer to play or display materials harmful to minors;
10. "Magnetic Disk Memory" means a memory system that stores and retrieves binary data on record-like metal or plastic disks coated with a magnetic material, including but not limited to floppy diskettes;
11. "Magnetic Tape Memory" means a memory system that stores and retrieves binary data on magnetic recording tape;
12. "Performance" means any motion picture, film, video tape, played record, phonograph or tape, preview, trailer, play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration;
13. "Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:
- a. the character and content of any material or performance which is reasonably susceptible of examination by the defendant, and
- b. the age of the minor. However, an honest mistake, shall constitute an excuse from liability pursuant to Sections 1040.75 through 1040.77 if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor;
14. "Person" means any individual, partnership, association, corporation, or other legal entity of any kind; and

15. "A reasonable bona fide attempt" means an attempt to ascertain the true age of the minor by requiring production of a driver license, marriage license, birth certificate or other governmental or educational identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

SECTION 52. ADDING NEW SECTION. TITLE 21 CNCA § 1040.76 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.76. Material or performances harmful to minors; Prohibited acts.

No person, including but not limited to any persons having custody, control or supervision of any commercial establishment, shall knowingly:

1. Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material. Provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds (2/3) of the material is not exposed to view;
2. Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors; or
3. Present to a minor or participate in presenting to a minor, with or without consideration, any performance which is harmful to a minor.

SECTION 53. ADDING NEW SECTION. TITLE 21 CNCA § 1040.77 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1040.77. Violations; Penalties.

Any person convicted of violating any provision of Section 1040.76 of this title shall be fined a sum not exceeding Five Hundred Dollars (\$500.00) for the first or second offense. Any person convicted of a third or subsequent violation of any provision of Section 1040.76 of this title shall be fined a sum not exceeding One Thousand Dollars (\$1,000.00). Each day that any violation of Section 1040.76 of this title occurs or continues shall constitute a separate offense and shall be punishable as a separate violation. Every act or transaction prohibited by Section 1040.76 of this title shall constitute a separate offense as to each item, issue or title involved and shall be punishable as such. For the purpose of this section, multiple copies of the same identical title, monthly issue, volume and number issue or other such identical material as prohibited by Section 1040.76 of this title shall constitute a single offense.

SECTION 54. AMENDATORY. TITLE 21 CNCA § 1087 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1087. Offering or Transporting Child for Purpose of Prostitution; Penalty.
Child
under 18 years of age; Procuring for prostitution, lewdness or other indecent act;
Punishment

A. No person shall:

1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;

2. Receive or to offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or

3. Direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;

B. 1. Any person violating the provisions of subsection A of this section shall, upon conviction, be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under his control or of which he has possession shall, upon conviction for the first offense, be guilty of a crime ~~and punishable by~~ punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes imprisonment in the penal institution for a period of not less than six (6) months nor more than one (1) year, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00). Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 55. AMENDATORY. TITLE 21 CNCA § 1088 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1088. Child under 18 years of age; Inducing, keeping, detaining or restraining for prostitution; Punishment.

A. No person shall:

1. By promise, threats, violence, or by any device or scheme, including but not limited to the use of any controlled dangerous substance prohibited pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, Title 63 CNCA ~~Okl. Stat.~~ Section 2-101 et seq., cause, induce, persuade, or encourage a child under eighteen (18) years of age to engage or continue to engage in prostitution or to become or remain an inmate of a house of prostitution or other place where prostitution is practiced;

2. Keep, hold, detain, restrain, or compel against his or her will, any child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or other place where prostitution is practiced or allowed;

3. Directly or indirectly keep, hold, detain, restrain, or compel or attempt to keep, hold, detain, restrain, or compel a child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or any place where prostitution is practiced or allowed for the purpose of compelling such child to directly or indirectly pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred by such child.

B. 1. Any person violating the provisions of this section, upon conviction, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits a violation of this section in any house, building, room, tent, lot or premises under his control or of which he has possession, upon conviction for the offense, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 56. AMENDATORY. TITLE 21 CNCA § 1111 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1111. Rape defined.

~~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:~~

A. A person commits the offense of rape if the person intentionally or knowingly:

1. causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

2. causes the penetration of the mouth of another person by the sexual organ

of the actor, without that person's consent; or

3. _____ causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

4. _____ causes the anus of another person, without that person's consent, to contact the mouth, anus, or sexual organ of another person, including the actor; or

5. _____ causes the mouth of another person, without that person's consent, to contact the anus or sexual organ of another person, including the actor; or

6. _____ engages in any of the activities listed in paragraphs 1 through 5 of this subsection with an animal.

B. _____ A rape under subsection A of this Section is without the consent of the other person:

1. _____ Where the victim is under the age of 14 years of age; or

2. _____ The victim is age 14 or older but has not yet attained the age of 16, except when:

a. _____ the victim otherwise consents, and

b. _____ the accused is not required to register as a sex offender, and

c. _____ the accused is less than 19 years of age or the accused is married to the victim; or

~~32. _____ Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent the actor knows that as a result of mental disease or defect, whether temporary or permanent, the other person is at the time of the act incapable either of appraising the nature of the act or of resisting it; or~~

~~43. _____ Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person; or~~

5. _____ Where the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; or

~~64. _____ 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 the actor, or someone in privity with the actor, has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; or~~

75. Where the victim is at the time unconscious of the nature of the act and this is known to the accused the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; or

8. Where the other person has not consented and the actor knows the other person is unaware that the rape is occurring; or

96. 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 such spouse with intent to induce such 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; or

107. Where the victim is under the legal custody or supervision of a Cherokee Nation, other tribal, state, municipal, other governmental subdivision, nation or federal agency and submits to engages in sexual intercourse with a nation Cherokee Nation, other tribal, state, municipal, other governmental subdivision, or federal employee or official in the belief that such intercourse or activity will influence the professional responsibility of the employee or if not submitted to will result in detrimental condition for the victim; or

11. Where the victim is a student, or under the legal custody, supervision, or authority of any public or private elementary or secondary school, junior high or high school, or public vocational school, or any Cherokee Nation agency and engages in sexual intercourse with a person who is an employee or official of the same school system or Cherokee Nation agency or otherwise exercises power as an official over the school system or Cherokee Nation agency regardless of the ages of the victim and the accused; or

12. Where the actor is a public servant who coerces the other person to submit or participate; or

13. Where the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor; or

14. Where the actor is a clergyman, or purports to be a clergyman, who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

15. Where the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other.

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 and if:

- ~~1. A petition for divorce is pending; or~~
- ~~2. A petition for a legal separation is pending or has been granted; or~~
- ~~3. A petition for a protective order as provided for by the provisions of Section 60.2 of Title 22 of the Cherokee Nation Statutes is pending; or~~
- ~~4. The victim and perpetrator are living separate and apart from each other.~~

C. For purposes of this section:

1. "Health care services provider" means:

- a. a physician licensed by any government;
- b. a chiropractor licensed by any government;
- c. a physical therapist licensed by any government;
- d. a physician assistant licensed by any government; or
- e. a licensed practical nurse, a registered nurse, a vocational nurse, or an advanced practice nurse licensed by any government.

2. "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

- a. social worker;
- b. chemical dependency counselor;
- c. any counselor;
- d. any marriage and family therapist;
- e. member of the clergy; or
- f. psychologist or psychiatrist offering psychological services.

D. It is a defense to prosecution under Subsection A that the conduct consisted of medical care for a child under 18 years of age and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

E. Any person convicted of committing rape is guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

F. All references in current statutes to rape in either the first or second degree are hereby deemed references to the crime of rape.

SECTION 57 REPEALING SECTION. Title 21 CNCA § 1111.1 IS HEREBY REPEALED IN ITS ENTIRETY.

~~§ 1111.1. — Rape by instrumentation.~~

~~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. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met.~~

SECTION 58. REPEALING SECTION. TITLE 21 CNCA § 1112 IS HEREBY REPEALED IN ITS ENTIRETY.

~~§ 1112. — Age limitations on conviction 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 59. AMENDATORY. TITLE 21 CNCA § 1113 IS HEREBY AMENDED TO READ AS FOLLOWS:

§ 1113. 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 of rape.~~

SECTION 60. REPEALING SECTION. TITLE 21 CNCA § 1114 IS HEREBY REPEALED IN ITS ENTIRETY.

~~§ 1114. — Rape in first degree — Second degree~~

~~A. — Rape 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; or~~
- ~~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; or~~
- ~~3. — 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~~
- ~~4. — rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or~~

~~5. rape by instrumentation committed upon a person under fourteen (14) years of age.~~

~~B. In all other cases, rape or rape by instrumentation is rape in the second degree.~~

SECTION 61. REPEALING SECTION. TITLE 21 CNCA § 1115 IS HEREBY REPEALED IN ITS ENTIRETY.

~~§ 1115. Punishment for rape in first degree~~

~~Rape in the first degree is a crime.~~

SECTION 62. AMENDATORY. TITLE 21 CNCA § 1119 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1119. Abduction of person under eighteen-fifteen.

Every person who takes away or induces to leave any person under the age of eighteen (18) fifteen (15)-years, from a parent, guardian or other person having the legal charge of the person, without the consent of said parent, guardian, or other person having legal charge, for the purpose of marriage or concubinage, or any crime involving moral turpitude is guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

SECTION 63. AMENDATORY. TITLE 21 CNCA § 1123 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1123. Lewd or indecent proposals or acts as to child under 18; ~~Sexual battery.~~

A. It is a crime for any ~~Any person who shall to~~ knowingly and intentionally:

1. make any oral, ~~or written, or electronically or computer-generated~~ lewd or indecent proposal to any child under eighteen (18) sixteen (16) years of age, or other individual the person believes to be a child under eighteen (18) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or
2. look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) eighteen (18) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or
3. ask, invite, entice, or persuade any child under eighteen (18) sixteen (16) years of age, or other individual the person believes to be a child under eighteen (18) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or
4. in any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under eighteen (18) sixteen (16)-years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. in a lewd or lascivious manner and for the purposes of sexual gratification:-

a. urinate or defecate upon a child under eighteen (18) sixteen (16) years of age, ~~or~~

b. ejaculate upon or in the presence of a child under eighteen (18) years of age, ~~or~~

c. cause, expose, force or require a child under eighteen (18) years of age to look upon the body or private parts of another person, ~~or~~

d. force or require any child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,

e. cause, expose, force or require a child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to look upon sexual acts performed in the presence of the child, or

f. force or require a child under eighteen (18) years of age or other individual the person believes to be a child under eighteen (18) years of age to touch or feel the body or private parts of said child or another person, upon conviction, shall be deemed guilty of a crime.

B. The provisions of this section shall apply:

1. Where the victim is under the age of 14 years of age; or

2. The victim is age 14 or older but has not yet attained the age of 16, except when:

a. the victim otherwise consents, and

b. the accused is not required to register as a sex offender, and

c. the accused is less than 19 years of age or the accused is married to the victim; or ~~shall not apply unless the accused is at least three (3) years older than the victim.~~

~~B. — No person shall commit sexual battery on any other person. "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 and without the consent of that person. Any person convicted of any violation of this subsection shall be deemed guilty of a crime.~~

C. Any person convicted of violating this section is guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

D. 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 64. NEW SECTION. TITLE 21 CNCA § 1123.1 SHALL BE ADDED TO READ AS FOLLOWS:

§ 1123.1. Sexual battery.

A. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts, in a lewd and lascivious manner, of:

1. Where the victim is under the age of 14 years of age; or
2. The victim is age 14 or older but has not yet attained the age of 16, except when:
 - a. the victim otherwise consents, and
 - b. the accused is not required to register as a sex offender, and
 - c. the accused is less than 19 years of age or the accused is married to the victim; or
3. any person without the victim's consent when the victim is over age eighteen (18) years, or
4. any person who is a student, or under the legal custody, supervision, or authority of any public or private elementary or secondary school, junior high or high school, or public vocational school, or any Cherokee Nation agency and the accused is a person who is an employee or official of the same school system or Cherokee Nation agency or otherwise exercises power as an official over the school system or Cherokee Nation agency regardless of the ages of the victim and the accused.

B. Any person convicted of violating this section is guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a

civil remedy that shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of this section shall not be eligible for any form of probation.

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.

SECTION 65. ADDING NEW SECTION. TITLE 21 CNCA § 1124 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1124. Using computer networks to violate Cherokee Nation statutes.

No person shall communicate with, store data in, or retrieve data from a computer system or computer network for the purpose of using such access to violate any of the provisions of the Cherokee Nation Statutes. Any person convicted of violating the provisions of this section shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

SECTION 66. ADDING NEW SECTION. TITLE 21 CNCA § 1125 SHALL BE ADDED AS A NEW SECTION AND SHALL READ AS FOLLOWS:

§ 1125. Zone of safety.

A. A zone of safety is hereby created around elementary, junior high, and high schools, licensed child care centers, playgrounds, and parks. A person is prohibited from loitering within three hundred (300) feet of any elementary, junior high, or high school, licensed child care facility, playground, or park if the person has been convicted of a crime that requires the person to register pursuant to the Sex Offenders Registration Act or the person has been convicted of an offense in another jurisdiction, which offense if committed or attempted in the Cherokee Nation, would have been punishable as one or more of the offenses listed in Section 1004 of Title 63 of the Cherokee Nation Statutes and the victim was a child under the age of thirteen (13) years.

B. A person convicted of a violation of subsection A of this section shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes. This proscription of conduct shall not modify or remove any restrictions currently applicable to the person by court order, conditions of probation or as provided by other provision of law.

C. 1. A person shall be exempt from the prohibition of this section regarding a school or a licensed child care facility only under the following circumstances:

a. the person is the custodial parent or legal guardian of a child who is an enrolled student at the school or child care facility, and

b. the person is enrolling, delivering or retrieving such child at the school or child care facility during regular school or facility hours.

2. This exception shall not be construed to modify or remove any restrictions applicable to the person by court order, conditions of probation, or as provided by other provision of law.

D. The provisions of subsection A of this section shall not apply to any person receiving treatment at a hospital or other facility certified or licensed by any government to provide medical services.

E. Nothing in this section shall prohibit a person, who is registered as a sex offender pursuant to the Sex Offenders Registration Act, from attending a recognized church or religious denomination for worship; provided, the person has notified the religious leader of his or her status as a registered sex offender and the person has been granted written permission by the religious leader.

SECTION 67. AMENDATORY. TITLE 21 CNCA § 1171 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1171. ~~Peeping Tom~~ Loitering Around Residence to Watch Occupants.

A. Every person who hides, waits or otherwise loiters in the vicinity of any private dwelling house, apartment building, ~~or any other place of residence,~~ or in the vicinity of any locker room, dressing room, restroom, or any other place where a person has a right to a reasonable expectation of privacy, with the unlawful and willful intent to watch, gaze, or look upon any person ~~the occupants therein~~ in a clandestine manner, is guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

B. Every person who uses photographic, electronic or video equipment in a clandestine manner for any illegal, illegitimate, prurient, lewd or lascivious purpose with the unlawful and willful intent to view, watch, gaze or look upon any person without the knowledge and consent of such person when the person viewed is in a place where there is a right to a reasonable expectation of privacy, or who publishes or distributes any image obtained from such act, shall, upon conviction, be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes, provided that such sentence must include a term of imprisonment.

C. Any person convicted of a violation of this section shall be required to register as a sex offender pursuant to Sections 1001 et seq. of Title 63 of the Cherokee Nation Statutes. The jury, if any, shall be advised that the mandatory sex offender registration is a civil remedy that shall be in addition to the actual imprisonment.

SECTION 68. AMENDATORY. TITLE 21 CNCA § 1172 SHALL BE AMENDED TO READ AS FOLLOWS:

§ 1172. Obscene, threatening or harassing telephone calls; Penalty.

A. It shall be unlawful for a person who, by means of a telecommunication or other electronic communication device ~~telephone~~, willfully either:

1. Makes any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, or indecent;
2. Makes a telecommunication or other electronic communication with intent to terrify, intimidate or harass, or threaten to inflict injury or physical harm to any person or property of that person;

3. Makes a telecommunication or other electronic communication, whether or not conversation ensues, with intent to put the party called in fear of physical harm or death;

42. Makes a telecommunication or other electronic communication ~~telephone call~~, whether or not conversation ensues, without disclosing ~~the his~~ identity of the person making the call or communication and with intent to annoy, abuse, threaten, or harass any person at the called number or other type of electronic communication identifier;

53. Knowingly permits any ~~telephone~~ telecommunication or other electronic communication from a device under his control to be used for any purpose prohibited by this section; and

64. In conspiracy or concerted action with other persons, makes repeated calls or electronic communications or simultaneous calls or electronic communications solely to harass any person at the called number(s) or other type of electronic communication address.

B. As used in this section, "telecommunication" and "electronic communication" mean any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet. The term includes:

1. A communication initiated by electronic mail, instant message, network call, or facsimile machine; and

2. A communication made to a pager.

CB. Use of a telephone or other electronic communications facility under this section shall include all use made of such a facility between the points of origin and reception. Any offense under this section ~~is~~ a continuing offense and shall be deemed to have been committed at either the place of origin or the place of reception.

DC. Any person who is convicted of the provisions of this section, shall be guilty of a crime punishable pursuant to Section 10 of Title 21 of the Cherokee Nation Statutes.

SECTION 69. PROVISIONS NOT CUMULATIVE.

The provisions of this act shall not be cumulative to existing law and the provisions of this act shall supersede any existing law in conflict herewith.

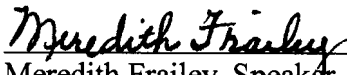
SECTION 70. SEVERABILITY.

The provisions of this act are severable, and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

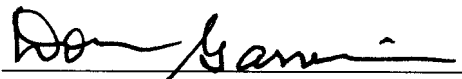
SECTION 71. EFFECTIVE DATE.

It being necessary for the welfare of the Cherokee Nation, the Council hereby declares that this Act shall go into effect ninety (90) days after its passage by the full Council.


Enacted by the Council of the Cherokee Nation on the 13th day of October, 2008.


Meredith Frailey, Speaker
Council of the Cherokee Nation


ATTEST:


Don Garvin, Secretary
Council of the Cherokee Nation

Approved this and signed by the Principal Chief on this 15th day of October, 2008.


Chadwick Smith, Principal Chief
Cherokee Nation

ATTEST:


Melanie Knight, Secretary of State
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Tina Glory Jordan	<u>Yea</u>	Meredith A. Frailey	<u>Yea</u>
Bill John Baker	<u>Yea</u>	Chris Soap	<u>Yea</u>
S. Joe Crittenden	<u>Yea</u>	Cara Cowan Watts	<u>Yea</u>
Jodie Fishinghawk	<u>Yea</u>	Buel Anglen	<u>Yea</u>
Janelle Lattimore Fullbright	<u>Yea</u>	Bradley Cobb	<u>Yea</u>
David W. Thornton, Sr.	<u>Yea</u>	Chuck Hoskin, Jr.	<u>Yea</u>
Don Garvin	<u>Yea</u>	Julia Coates	<u>Yea</u>
Harley Buzzard	<u>Yea</u>	Jack D. Baker	<u>Yea</u>
Curtis G. Snell	<u>Yea</u>		

ADMINISTRATIVE CLEARANCE:

Program/Project Manager:

Signature _____ Date _____

Department Director:

Signature _____ Date _____

Group Leader:

Signature _____ Date _____

Finance Approval (if needed):

Signature _____ Date _____

Government Resources Group:

Signature _____ Date _____

Administration Approval:

Melami Knight 9/15/08
Signature _____ Date _____

LEGISLATIVE CLEARANCE

Legislative Aide:

Shelli Britton 9-15-08
Signature/Initial _____ Date _____

Standing Committee:

Rules

9-25-08

Next Meeting Date

Chairperson:

Franky _____
Signature/Initial _____ Date _____

Returned to Presenter: _____
Date

**Cherokee Nation
Act/Resolution Proposal Form**



Act



Resolution

TITLE: A LEGISLATIVE ACT AMENDING CERTAIN SECTIONS OF THE CRIMINAL CODE RELATING TO SEX CRIMES AND OTHER CRIMES AGAINST THE PERSON; AND REQUIRING POST-CONVICTION REGISTRATION FOR THOSE CONVICTED OF CERTAIN OFFENSES

Department Contact: Becky M. Johnson

Resolution Presenter: Becky M. Johnson

Council Sponsor: Cara Cowan-Watts, David Thornton, Julia Coates

NARRATIVE:

(See Attached Outline for Information Needed)

The purpose of this legislation is to modernize certain sex crimes laws and other laws concerning crimes against the person in order to protect the public, with particular emphasis on protecting children and vulnerable or disabled or elderly adults; to change the age at which a child can consent to various sexual activities; to combine the crimes of forcible sodomy and rape by instrumentation into the crime of rape; to address the evolution of electronic communication and its effect of giving greater access to our children from those outside our homes; and to require mandatory incarceration for certain crimes.

09-15-08P05:50 RCVD