

Proposed OST Criminal Child Abuse and Neglect Law

These would go under the Crimes Against Persons Sections

Child means any person under the age of 18.

Child Abuse in the First Degree: It shall be unlawful for any person to knowingly or intentionally cause serious physical or serious mental harm to a child. Serious physical harm means any physical injury to a child that results in death or any physical injury that seriously impairs the child's health or physical well-being that includes but is not limited to, brain injury, any fractures of any bone, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, dislocation, poisoning, burns or scalds, soft tissue swelling, or severe cut. Serious mental harm means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrative manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

Child Abuse in the First Degree is punishable up to the maximum penalties allowable under OST tribal law.

Child Abuse in the Second Degree: It shall be unlawful if a person's omission or negligence causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm or serious mental harm to a child regardless of whether harm results; or the person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results. An omission is the willful failure to provide food, clothing, or shelter necessary for a child's welfare or the willful abandonment of a child. Negligence in this section is the failure to use reasonable care to avoid consequences that threaten or harm the safety of a child and that are the foreseeable outcome of one's conduct. Serious physical harm means any physical injury to a child that seriously impairs the child's health or physical wellbeing, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut. Serious mental harm means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

Child Abuse in the Second Degree is punishable up to the maximum penalties allowable under OST tribal law.

Child Abuse in the Third Degree: It shall be unlawful if a person knowingly or intentionally causes physical harm to a child OR the person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in physical harm to a child. Physical harm means any injury to a child's physical condition.

Child Abuse in the Third Degree is punishable up to 12 months in jail, \$5000 fine, plus court costs and other related expenses (e.g. victim services, restitution, etc.).

Child Abuse in the Fourth Degree: It shall be unlawful if a person's omission or negligence or reckless act causes physical harm to a child OR the person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results. An omission is the willful failure to provide, food, clothing or shelter necessary for a child's welfare or the willful abandonment of a child. Negligence in this section is the failure to use reasonable care to avoid consequences that threaten or harm the safety of a child and that are the foreseeable outcome of one's conduct. Physical harm means any injury to the child's physical condition.

Child Abuse in the Fourth Degree is punishable up to 12 months in jail, \$5000 fine, plus court costs and other related expenses (e.g. victim services, restitution, etc).

Child Endangerment

Child Endangerment in the First Degree: It shall be unlawful for a person to:

- 1) Commit a violent act as defined in this code, against a victim knowing that such violent act was witnessed either by sight or sound, by a child who is present at the time of the occurrence.
- 2) Commits the offense of DWI/DUI as set forth in the tribal code, or operates any motorized vehicle including but not limited to boats, all-terrain vehicles, motorcycles, etc., and knowingly permits a child to be a passenger in or on such vehicle.
- 3) Allow or cause a child to enter or remain in a dwelling or vehicle in which alcohol, chemical substance, and/or controlled substance, is in use or stored in violation of tribal law.
- 4) To be impaired by an intoxicant, whether or not prescribed for the person and there is no third person who is at least 15 years of age and not impaired by an intoxicant, present to care for the child. "Impaired" means that a person is unconscious or a person is physically or mentally affected so that the person does not have the ability to care for the basic safety or personal needs of a child with the caution characteristic of a sober person of ordinary prudence. "Intoxicant" means any alcohol, chemical substance, or controlled substance, as set forth under tribal law.
- 5) Be an expectant mother of an unborn child and demonstrate a habitual lack of self-control by using alcohol, chemical substance, or controlled substance, which endangers the well-being of the unborn child.
- 6) To leave their child in a home or allows the child to reside in a home where there is a known convicted sex offender.

Child Endangerment in the First Degree is punishable up to 12 months in jail, \$5000 fine, plus court costs and other related expenses (e.g. victim services, restitution, etc).

Child Endangerment in the Second Degree: It shall be unlawful for a person:

- 1) To leave their child, without justifiable cause, with another person without provision for the child's support and without meaningful communication with the child for a period of three (3) months or more.
- 2) To be absent from the home for a period of time that created a substantial risk of serious harm to a child left in the home.
- 3) To intentionally do or fail to do any act, with the result that the child becomes a neglected child. Neglect includes but is not limited to physical, educational, emotional, and medical, as defined under the tribal child and family law.
- 4) To knowingly contribute to the delinquency of any child by doing or failing to do any act with the result, alone, or in conjunction with other acts or circumstances, that the child becomes a delinquent child.

Child Endangerment in the Second Degree is punishable up to six (6) months in jail, \$1500 fine, plus court costs and other related expenses (e.g. victim services, restitution, etc).

Penalties for any of the criminal offenses of child abuse or child endangerment may include but are not limited to compensation to the victim(s) through various means such as monetary, asset forfeiture, and cultural means under customary law.