

**Proposed Amendments Criminal Violations Ordinance
Chapter D - Crimes Against Children**

Article 401.1. Omission to Provide for a Child

(A) **Omission to Provide for a Child.** Unless otherwise provided for by law, any parent, guardian, or person having custody or control of a child who willfully neglects, refuses or omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, medical attendance, payment of court-ordered day care or payment of court-ordered medical insurance costs for such child which is imposed by law, upon conviction, is guilty of a crime. Provided, any person obligated to make child support payments who willfully and without lawful excuse becomes delinquent in said child support payments after February 28th, 2011, and such delinquent child support accrues without payment by the obligor for a period of one (1) year, or exceeds Five Thousand Dollars (\$5,000.00) shall be guilty of this section.

Any conviction pursuant to this section shall be punishable by imprisonment for not more than six (6) months in the Tribal Jail or by the imposition of a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or by both such fine and imprisonment. As used in this section, the duty to furnish medical attendance shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted.

(B) **Fleeing Jurisdiction to Avoid Provision of Necessities.** Any person who leaves the tribal jurisdiction to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, shall be guilty of a crime punishable by imprisonment for not more than four (4) months in the tribal jail or by the imposition of a fine of not more than Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment.

(C) Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the health or welfare of the child.

(E) Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

(F) If any parent of a child in cases in which the Indian Child Welfare Department or the Tribal Child Support Department/Agency is providing services to or regarding the parent's child and the parent is determined by the Department(s) to be willfully violating the provisions of this section, the Department(s) may refer the case to the Kickapoo Attorney General for prosecution. The Department(s) shall provide assistance to the Attorney General in such prosecutions. Any

child support or arrears payments made pursuant to this section shall be made payable to the Department(s) and paid through the Tribal Court or a Centralized Support Registry if such exists.

(G) Alcohol or Drug-dependent Child. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, to provide for the treatment of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a crime. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

Violation of this sub-section shall be guilty of a crime punishable by imprisonment for not more than Three (3) months in the tribal jail or by the imposition of a fine of not more than One Thousand Five Hundred Dollars (\$1,500.00), or by both such fine and imprisonment.

Article 401.2 Child Endangerment - Knowingly Permitting Physical or Sexual Abuse - Penalties

(A) Child Endangerment. A person who is the parent, guardian, or person having custody or control over a child, commits child endangerment when the person:

(1) Knowingly permits physical or sexual abuse of a child;

(2) Knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in Federal, Tribal or Section 2-101 of Title 63 of the Oklahoma Statutes (as may be amended), or knowingly consumes or uses a controlled dangerous substance in the presence of a child;

(3) Knowingly permits a child to be present in a vehicle when the person knows or should have known that the operator of the vehicle is impaired by or is under the influence of alcohol or another intoxicating substance; or

(4) Is the driver, operator, or person in physical control of a vehicle in violation of Tribal law while transporting or having in the vehicle such child or children.

However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any action to stop the physical or sexual abuse or deny permission for the child to be in the vehicle with an intoxicated person would result in substantial bodily harm to the person or the child. Provided, such reasonable apprehension shall not relieve the person of a duty to report the physical or sexual abuse of the child. Failure to report sexual or physical abuse, in addition to any possible criminal penalties, shall result in a civil fine of not more than

\$1000.00.

B. Any person convicted of violating any provision of this section shall be guilty of a Crime punishable by imprisonment in the Tribal jail for a term of not more than One (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

Article 408. Proof of Marriage - Wife as Competent Witness

No other evidence shall be required to prove the marriage of a husband and wife, or that such person is the lawful father or mother of a child or children than is or shall be required to prove such fact in a civil action, and such wife shall be a competent witness to testify in any case brought under this Chapter, and to any and all matters relevant thereto, including the fact of the parentage of such child or children.