

PROPOSED CHANGES TO SAULT TRIBE CRIMINAL CODE CONSISTENT WITH TLOA AND VAWA - 2013

INTRODUCTION

TRIBAL LAW AND ORDER ACT

The Tribal Law and Order Act of 2010 is a law that expands the punitive abilities of tribal courts across the nation. The law allows tribal courts operating in Indian country to increase jail or prison sentences handed down in criminal cases. This was a major step toward improving enforcement and justice in Indian Country.

Before this law, tribal courts were limited in the scope of punishment they could hand down in criminal cases. Courts could only sentence offenders to a maximum of one year in jail. They now possess the power under the Tribal Law and Order Act to pass increased sentences in order to incarcerate defendants longer. TLOA allows tribal criminal offenses to carry a maximum penalty of 3 years in prison, and consecutive sentences for a maximum of 9 years in prison.

VIOLENCE AGAINST WOMEN'S ACT

The Violence Against Women Act was developed and passed (originally in 1994) as a result of efforts from professionals from many fields seeking to adopt significant legislation to address domestic and sexual violence. Support for VAWA comes from many disciplines including domestic violence and sexual assault advocates, law enforcement, courts, prosecutors, medical providers, social workers and therapists.

The Violence against Women Reauthorization Act of 2013 contained special provisions that effected prosecutions in Indian Country. VAWA 2013 recognizes tribes' inherent power to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. This new law generally takes effect on March 7, 2015, but also authorizes a voluntary "Pilot Project" to allow certain tribes to begin exercising SDVCJ sooner.

STRENGTHENING OUR CURRENT CODE

The Criminal Tribal Code was adopted many years ago. Many of the current codes do not adequately address criminal behavior particularly with regard to domestic and sexual violence. Several proposed changes to the criminal code attempt to strengthen our laws pertaining to domestic, dating and sexual violence as well as personal protection orders.

Purpose of Proposed Changes Domestic Abuse

The Sault Ste. Marie Tribe of Chippewa Indians recognizes that its strength and sovereignty is grounded in its members. The future of the Sault Tribe requires a safe and healthy community. Domestic abuse is a serious crime which erodes our future. Through this code, the Sault Tribe will continue to embrace the time honored traditions of the sacredness of our people by ensuring the safety of our people, protecting the community from the impacts of violent acts and ensuring that offenders are held accountable to the community.

Predominant, Dominant or Primary Aggressor

In assessing whether domestic abuse has occurred, special attention should be paid to whether there is a dominant aggressor. Predominant, dominant or primary aggressor means the person whose actions are primarily responsible for initiating or triggering the domestic abuse throughout the course of the relationship. It can mean the person who has caused or has threatened to cause significant physical or emotional harm to another in his family or household, as compared to the other party(s) involved. This is regardless of which party was the first aggressor. In determining whether one person is a primary aggressor, consideration shall include but is not limited to:

Prior history of domestic violence
Difference in size and strength of the party(s)
The relative severity of the injuries inflicted on each person
The presence of defensive wounds
The likelihood of future injury to each person
Whether one of the persons acted in self-defense
Relative ability to inflict harm between the parties involved

Domestic Violence Report (Judge PPO 34. 119)

The law enforcement officer shall prepare a domestic abuse report after investigating or intervening in an incident involving domestic abuse. The law enforcement agency shall retain the completed domestic abuse report in its files for five (5) years. The law enforcement agency shall also file a copy of the completed domestic abuse report with the prosecuting attorney within 48 hours after the dispute or incident is reported to the law enforcement agency. The report shall contain, but is not limited to containing, all of the following:

1. The address, date and time of the occurrence or incident being investigated.
2. The victim's name, address, home and work telephone numbers, race, sex and date of birth.

3. The suspect's name, address, home and work telephone numbers, race, sex, date of birth and information describing the suspect and whether an injunction or restraining order covering the suspect exists.
4. The name, address, home and work telephone numbers, race, sex, date of birth of any witness, including a child of the victim or suspect, and the relationship of the witness to the suspect or victim.
5. The following information about the occurrence or incident being investigated:
 - a) The name of the person that called the law enforcement agency.
 - b) The relationship of the victim and suspect.
 - c) Whether alcohol or controlled substance use was involved in the occurrence or incident and by whom.
 - d) A brief narrative describing the dispute or incident and the circumstances that led to it.
 - e) Whether and how many times the suspect physically assaulted the victim and a description of any weapon or object used.
 - f) A description of all injuries sustained by the victim and an explanation of how the injuries were sustained.
 - g) If the victim sought medical attention, information concerning where and how the victim was transported, whether the victim was admitted to a hospital or clinic for treatment, and the name and telephone number of the attending physician.
 - h) A description of any property damage reported by the victim or evident at the scene.
6. A description of any previous incidents involving domestic abuse between the victim and the suspect.
7. The date and time of the report and the name, badge number, and signature of the peace officer completing the report.

DOMESTIC ABUSE:

Domestic Abuse is:

1. One or more of the following acts, by a family or household member (further described in 2(A-F) below:

- A. Attempting to cause or causing physical, substantial emotional or mental harm to another family or household member.
- B. Placing a family or household member in fear of physical harm to him or herself or another family or household member. This fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets.
- C. Causing a family or household member to engage involuntarily in sexual activity, which includes, but not limited to, through coercion, intoxication, force, however slight (which includes the element of surprise or overcoming victim by size), threat of force, or duress.
- D. Attempting to commit, solicitation of, conspiracy to commit or committing any criminal offense under Sault Tribe Criminal Code against another family or household member.

2. Family or Household Member includes:

- A. The relationship between the victim and the defendant is one of marriage or former marriage or of persons residing or have resided in the same household.
- B. The victim and the defendant have a child in common.
- C. The victim is pregnant by the other party
- D. The victim is related to the defendant or the defendant's spouse by blood, marriage or court order as a parent, grandparent, child, grandchild, brother or sister.
- E. The victim is a child who resides or has resided in the same household as defendant and is related by blood to a former spouse of the defendant or to a person who resides in the same household as the defendant .
- F. The relationship between the victim and the defendant is currently or was previously an intimate relationship.
- G. The victim and defendant are in or have been in a dating relationship

H. Persons who are part of the extended family of the victim or abuser and who commonly interact with the victim or abuser.

I. Persons who have a biological, legal, or step parent-child relationship

J. Minor children either biological, legal, or step of a person in a relationship that is described in A-J above.

3. Evidence; Defendant's commission of other acts of domestic abuse; admissibility; notice

A. In a criminal action in which the defendant is accused of an offense involving domestic abuse, evidence of the defendant's commission of other acts of domestic abuse is admissible for any purpose for which it is relevant.

B. If the prosecuting attorney intends to offer evidence under this section, the evidence must be disclosed, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or a later time as allowed by the court for good cause shown.

C. This section does not limit or preclude the admission or consideration of evidence under any other statute, rule of evidence, or case law.

4. Evidence; statement by declarant relating to infliction or threat of physical injury; admissibility; notice

Evidence of a statement by a declarant is admissible if all of the following apply:

A. The statement purports to narrate, describe, or explain the infliction or threat of physical injury upon the declarant.

B. The action in which the evidence is offered under this section is an offense involving domestic abuse.

C. The statement was made at or near the time of the infliction or threat of physical injury.

D. The statement was made under circumstances that would indicate the statement's trustworthiness. Circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following:

i) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.

ii) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.

iii) Whether the statement is corroborated by evidence other than statements that are admissible only under this section.

E. The statement was made to a law enforcement officer or to a witness made close in time to the event or there is a reasonable explanation for the delayed disclosure.

F. If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered, to the defendant not less than 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown.

PENALTY:

A violation of the domestic abuse code is a misdemeanor offense punishable by up to 1 year in custody and up to \$1,000.00 fine.

If the offender has a prior conviction for domestic abuse, or a crime substantially similar under any other jurisdiction, the violation constitutes a felony offense punishable by up to 2 years in custody and a fine of up to \$2,500.00.

If the offender has 2 prior convictions for domestic abuse, or a crime substantially similar under any other jurisdiction, the violation constitutes a felony offense punishable by up to 3 years in custody and a fine of up to \$5,000.00.

ASSAULT or ASSAULT and BATTERY

A person commits the crime of assault or assault and battery if the person:

1. Intentionally, knowingly or recklessly causes physical injury however slight to another; or
2. Intentionally places another in reasonable apprehension of imminent physical injury; or
3. Intentionally strikes or offensively touches the person of another. A strike or offensive touching occurs when a person uses their own body to offensively touch or strike another or uses something closely connected to their person to accomplish the offensive touching.

PENALTY:

A violation of assault or assault and battery is a misdemeanor offense punishable by up to 6 months in custody and a fine of up to \$2,500.00.

AGGRAVATED ASSAULT /AGGRAVATED BATTERY

A person commits the crime of aggravated assault and/or battery if the person:

A. Commits an assault or battery and causes "serious injury. Serious injury includes any injury for which medical attention is or should be sought.

B. Commits an assault or battery which causes physical injury, however slight, and is committed in the immediate presence of, or is seen or directly perceived in any other manner by, the person's or the victim's minor child or stepchild or a minor child residing within the household of

the person or victim.

C. Causing physical injury, however slight, and commits the assault or battery knowing that the victim is pregnant.

D. Strangles the victim and the assault involves domestic abuse.

E. While being aided by another person actually present, intentionally or knowingly causes physical injury to another.

F. Intentionally, knowingly or recklessly causes physical injury to another, however slight, by means of a deadly or dangerous weapon.

G. Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants.

H. Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger.

PENALTY:

A violation of aggravated assault and/or battery is a misdemeanor offense punishable by up to 1 year in custody and up to a \$1,000.00 fine.

ASSAULT WITH INTENT GREAT BODILY HARM / STRANGULATION

A. A person commits the crime of assault with intent to do great bodily harm if the person:

1. Assaults another person with intent to do great bodily harm, less than the crime of murder.

2. Assaults another person by strangulation or suffocation. Strangulation or suffocation means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

B. This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law arising out of the same conduct as the violation of this section.

C. Proof of actual injury is not necessary but may be taken into consideration in deciding whether someone intended to cause great bodily harm.

PENALTY:

A violation of Assault with Intent to do Great Bodily Harm is a felony offense punishable by up to three (3) years in custody and up to a \$5,000.00 fine.

STALKING

The stalking provision of the Sault Tribe Domestic Abuse Code is construed to promote the fact that active stalking of another, is a basic and often primary activity used by domestic abuse offenders to establish, or re-establish, control over domestic abuse victims. Through the pursuit or following of the victim by the perpetrator, the risk to the victim of being physically assaulted by the stalker is greatly increased. The goal of this section is to provide safety and protection to all victims (both domestic and non-domestic), potential victims, and to set standards of behavior within the family.

1. DEFINITIONS:

A. "Course of Conduct" means a pattern of conduct composed of a series of 2 or more separate non continuous acts evidencing a continuity of purpose.

B. "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose. Harassing behavior can include but is not limited to vandalism, annoying or threatening telephone calls, following or other violations of protection orders, sending unwanted letters, electronic mail, electronic forms of communication, sending messages through third parties, showing up at victim's home or workplace, attempting to obtain private information about the victim through others, leaving gifts for the victim, disabling or otherwise tampering with the victim's vehicle, taking mail from the victim's mailbox, entering the victim's home or place of residence, parking near or driving by the victim's residence or workplace for no legitimate reason.

C. "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

- i) Following or appearing within the sight of that individual.
- ii) Approaching or confronting that individual in a public place or on private property.
- iii) Appearing at that individual's workplace or residence.
- iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
- v) Contacting that individual by telephone.
- vi) Sending mail or electronic communications to that individual.
- vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

D. "Emotional Distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

2. PRESUMPTION:

In a prosecution for a violation of this section (both stalking and aggravated stalking), evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

3. VIOLATIONS STALKING: A person commits the crime of stalking if the person:

Engages in a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

PENALTY:

A violation of stalking is a misdemeanor offense punishable by 1 year in custody and a fine of up to \$1,000.00.

AGGRAVATED STALKING

A person commits an aggravated stalking if the person engages in stalking behavior and any of the following circumstances exist:

- A. At least one of the actions constituting the offense is in violation of a personal protection order and the individual has received actual notice of that order .
- B. At least one of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.
- C. The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.
- D. The individual has been previously convicted of a violation of stalking or aggravated stalking.

PENALTY:

A violation of aggravated stalking is a felony offense punishable by a maximum of 2 years in custody and up to a \$2,500.00 fine.

UNLAWFUL IMPRISONMENT

A person commits the crime of unlawful imprisonment if without lawful authority, that person intentionally removes, detains, restrains, or confines the person of another.

PENALTY:

A violation of unlawful imprisonment is a misdemeanor offense punishable by up to one (1) year in custody and up to a \$1,000.00 fine.

HARASSMENT (ADD TO 71.706)

71.706 Harassment.

(1) A person commits the offense of harassment if that person, by words or conduct, and, with the intent to annoy, harass, intimidate, threaten or alarm:

- (a) causes physical injury or emotional distress to another person;
- (b) subjects another person to offensive physical contact;
- (c) causes physical damage to or destruction of the property of another person;
- (d) places another person in reasonable fear of harm to his or her person or property or to the person or property of a third person;
- (e) interferes with another person's free exercise or enjoyment of any right or privilege secured to him or her by any applicable law or otherwise violates the rights of another.

PENALTY:

A violation of Harassment is a misdemeanor offense punishable by up to 6 months in custody and up to a \$500.00 fine.

CUSTODIAL INTERFERENCE

A person commits the crime of custodial interference if they do any of the following:

Knowing or having reason to know that he has no legal right to do so, takes, entices, or keeps a person from his lawful custodian with intent to hold him permanently or for a protracted period or in violation of a lawful custody or visitation order.

PENALTY:

A violation of Custodial Interference is a misdemeanor offense punishable by up to one (1) year in custody and up to a \$1,000.00 fine.

COERCION

A person commits the crime of coercion when he compels or induces another person to engage in conduct from which he has a legal right to abstain, or to abstain from engaging in conduct in which he has a legal right to engage, by means of instilling in him a fear that, if the demand is not complied with, the actor or another will:

- 1) Cause physical injury to the actor or some other person;
- 2) Cause damage to property,
- 3) Engage in other conduct constituting a crime;
- 4) Accuse some person of a crime or cause criminal charges to be instituted against him;
- 5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
- 6) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act;
- 7) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
- 8) Use or abuse his position as a public servant by performing some act within or related to his official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely;
- 9) Inflict any other harm which would not benefit the actor.

PENALTY:

A violation of Coercion is a misdemeanor punishable by up to one (1) year in custody and up to a \$5,000.00 fine.

MENACING

A person commits the crime of menacing if, by word or conduct, he intentionally attempts to place another person in fear of imminent physical injury.

PENALTY:

A violation of menacing is a misdemeanor offense punishable by up to three (3) months in custody and up to a \$300.00 fine.

ENDANGERMENT

A person commits the crime of Endangerment if s/he recklessly endangers another person with a substantial risk of death or serious physical injury.

PENALTY:

A violation of Endangerment is a misdemeanor offense punishable by up to one (1) year in custody and up to a \$1,000.00 fine.

THREATENING

A person commits the crime of Threatening if s/he threatens to commit any violent crime with the intent to do any of the following:

- a) Terrify or intimidate another person
- b) Cause evacuation of a building or any other place of assembly
- c) Cause serious public inconvenience

PENALTY:

A violation of Threatening is a misdemeanor offense punishable by up to one (1) year in custody and up to a \$1,000.00 fine.

MALICIOUS USE OF TELECOMMUNICATION SERVICE

A person commits the crime of Malicious use of telecommunications device if s/he uses any service or device provided by a telecommunications service provider with intent to terrorize, frighten, intimidate, threaten, harass, molest, or annoy another person, or to disturb the peace and quiet of another person by any of the following:

- 1) Threatening physical harm or damage to any person or property in the course of a conversation or message through the use of a telecommunications service or device.
- 2) Falsely and deliberately reporting by message through the use of a telecommunications service or device that a person has been injured, has suddenly taken ill, has suffered death, or has been the victim of a crime or an accident.
- 3) Deliberately refusing or failing to disengage a connection between a telecommunications device and another telecommunications device or between a telecommunications device and other equipment provided for the transmission of messages through the use of a telecommunications service or device.
- 4) Using vulgar, indecent, obscene, or offensive language or suggesting any lewd or lascivious act in the course of a conversation or message through the use of a telecommunications service or device.
- 5) Repeatedly initiating a telephone call and, without speaking, deliberately hanging up or breaking the telephone connection as or after the telephone call is answered.

6) Deliberately engaging or causing to engage the use of a telecommunications service or device of another person in a repetitive manner that causes interruption in telecommunications service or prevents the person from utilizing his or her telecommunications service or device.

PENALTY:

A violation of Malicious Use of Telecommunication Service is a misdemeanor offense punishable by up to 6 months in custody and up to a \$500.00 fine.

CRIMINAL MISTREATMENT OF DEPENDENT

A. A person commits the crime of criminal mistreatment if any of the following occur:

1) The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly or with criminal negligence withholds necessary and adequate food, physical care or medical attention from that other person.

2) The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly or with criminal negligence:

a) causes physical injury or injuries to the dependent person.

b) leaves the dependent person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person.

3) The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly:

a) Deserts the dependent person in a place with the intent to abandon that person.

b) Hides the dependent person's money or property, or takes the money or property for any use or purpose not in the due and lawful execution of the person's responsibility.

c) Takes charge of a dependent person for the purposes of fraud.

4. If the person knowingly fails to report the crime of criminal mistreatment committed by another person.

B. As used in this section:

1) "Dependent person" means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person's physical needs.

2) "Legal duty" includes, but is not limited to a duty created by familial relationship, court order, contractual agreement, or statutory or case law.

PENALTY:

A violation of Criminal Mistreatment of Dependant is a felony offense punishable by up to two (2) years in custody and up to a \$2,5000.00 fine.

PENALTIES

IMPRISONMENT AND FINES

The Court may impose the following criminal penalties against a person who is convicted for violating this Code:

A. Felony offenses are punishable by more than 1 year incarceration with a maximum of 3 years of incarceration and up to a \$5,000.00 fine. Crimes that have a 2 year maximum incarceration will carry up to a \$2,500.00 fine. Crimes that have a 3 year maximum will carry a fine of up to \$5,000.00

B. Misdemeanor offenses are punishable by any amount of incarceration with a maximum of up to 1 year incarceration and up to a \$1,000.00 fine.

REPETITIVE OFFENDERS

The Court may, at its discretion, sentence a person who has been previously convicted of the same offense, or a comparable offense by any jurisdiction in the United States, to one class higher than the sentence imposed in the previous conviction. Convictions for two or more offenses committed for the same act may be counted as one conviction for the purposes of this section.

CONSECUTIVE TERMS OF IMPRISONMENT

If multiple crimes are committed, and multiple sentences of imprisonment are imposed on a person at the same time, the Court may, at its discretion, direct the sentences to run consecutively. Under TLOA, the maximum imprisonment for cumulative sentences is 9 years.

OTHER CRIMINAL PENALTIES

In addition to, or in lieu of, the penalties set forth in this penalty section, the Court may order restitution, community service, treatment, probation, parole, suspension of sentence, or any rehabilitative service(s) appropriate under the circumstances, unless a provision of this Code provides otherwise with respect to a certain type of offense.

APPLICATION OF NON-TRIBAL LAWS

§____ Adoption of State Laws and Ordinances

(a) The Sault Ste. Marie Tribe of Chippewa Indians adopts the laws, codes, ordinances, and other instruments of the law of the State of Michigan to the extent these instruments, law, codes, and ordinances do not conflict with appropriate federal law or Tribal codes, ordinances, and laws in force now or enacted in the future.

(b) The intent behind this section is similar to Congress's intent behind the Assimilative Crimes Act, 18 U.S.C. § 13, which makes state law applicable to conduct occurring on lands reserved or acquired by the Federal Government when the act or omission is not made punishable by an enactment of Congress. Similarly, prosecutions instituted under this section are not to enforce the laws of the State of Michigan, but to enforce Tribal law, the details of which, instead of being recited, are adopted by reference from the State of Michigan and are essentially to provide gap fillers where the current Sault Chippewa Tribal Code is silent.

This provision could apply to CJIs, rules of evidence, court rules; laws not addressed i.e. accosting a minor for immoral purposes, new laws as they are passed,