

## **Sexual Assault Code June 2014:**

The Sault Tribe recognizes that every person is entitled to be free from sexual assault. All sexual encounters require that all parties give consent. At the heart of consent is the idea that every person, man or woman, has a right to personal sovereignty - not to be acted upon by someone else in a sexual manner unless s/he gives clear permission to do so. It is the responsibility of the person initiating the sexual activity to get this permission. Absence of clear permission means you *can't* touch someone, not that you can. Consent is a clear and unambiguous agreement, expressed in mutually understandable words or actions, to engage in a particular activity. Consent can be withdrawn by either party at any point. Consent must be voluntarily given and may not be valid if a person is being subjected to actions or behaviors that elicit emotional or psychological pressure, intimidation, or fear. Consent to engage in one sexual activity, or past agreement to engage in a particular sexual activity, cannot be presumed to constitute consent to engage in a different sexual activity or to engage again in a sexual activity. Consent cannot be validly given by a person who is incapacitated.

### **DEFINITIONS:**

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) Force or Coercion includes, but is not limited to, any of the following circumstances
  - (i) When the actor overcomes the victim through the actual application of physical strength, physical force or physical violence.
  - (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim or another person, and the victim believes that the actor has the present ability to execute these threats.
  - (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
  - (iv) When the actor seizes control of the victim in a manner facilitating commission of the sexual act without regard to the victim's wishes.
  - (v) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
  - (vi) When the actor, through concealment or by the element of surprise, is able to overcome the victim.
- (c) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.

(d) "Mental health professional" means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

(i) A physician.

(ii) A psychologist licensed to practice in any tribe or state.

(iii) A registered professional nurse licensed to practice in any tribe or state.

(iv) A licensed master's social worker licensed by any tribe or state.

(v) A licensed professional counselor licensed to practice in any tribe or state.

(vi) A marriage and family therapist licensed by any tribe or state.

(e) "Mentally incapacitated" means the victim is incapable of appraising the nature of the conduct; or physically incapable of declining participation in, or communicating unwillingness to engage in the sexual act. The victim may be temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, alcohol or other substance.

(f) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.

(g) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts (genital area, groin, inner thigh, buttock, or breast) or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(i) Revenge.

(ii) To inflict humiliation.

(iii) Out of anger.

(u) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(v) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

**CRIMINAL SEXUAL CONDUCT FIRST DEGREE:**

A. A person who engages in, or attempts to engage in sexual penetration with another person, without his or her consent, is guilty of CSC 1st. "Without consent" includes but is not limited to the following:

- 1) The actor uses force or coercion to accomplish the sexual act.
- 2) The actor threatens to harm a person or property to accomplish the sexual act.
- 3) The actor is in a position of authority over the victim and uses that authority to accomplish the sexual act.
- 4) The actor and the victim were related by blood or affinity to the third degree
- 5) The victim was receiving special education services and the actor was an employee or volunteer in providing those services.
- 6) The actor uses or threatens to use a weapon to accomplish the sexual act.
- 7) The victim is incapable of consent by reason of mental disease or defect, mental incapacitation, physical helplessness, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the actor
- 8) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse or intimate partner.
- 9) The victim is intentionally deceived as to the nature of the act.
- 10) The actor is an employee or volunteer of a school and the victim attends that school.
- 11) The actor is an employee or volunteer of a detention center (juvenile or adult) where the victim is detained.
- 12) The actor is an employee or volunteer of a child care organization in which that other person is enrolled.
- 13) The sexual act occurs under circumstances involving the commission of any other felony.
- 14) The actor is a mental health professional and the penetration occurs during or within 2 years after the period in which the victim is his or her client or patient and is not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision.

B. A person commits CSC 1st if they engage in, or attempt to engage in, sexual contact with another person and any one of the following circumstances exists:

- 1) The actor uses or threatens to use a weapon to accomplish the sexual act.

- 2) The actor knew or should reasonably have known that the victim was incapable of giving consent by reason of mental disease or defect, mental incapacitation, physical helplessness, drugs, alcohol, sleep or any other similar impairment of cognition
- 3) The actor is an employee or volunteer of a school and the victim attends that school.
- 4) The actor is an employee or volunteer of a detention center (juvenile or adult) where the victim is detained.
- 5) The actor is an employee or volunteer of a child care organization in which that other person is enrolled.
- 6) The actor was an employee or volunteer of an organization providing special education services to the victim.
- 7) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and is not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision.
- 8) The actor uses force or coercion to accomplish the sexual act, causing personal injury to the victim.
- 9) The actor threatens to harm a person or property to accomplish the sexual act, causing personal injury to the victim.
- 10) The actor is in a position of authority over the victim and uses that authority to accomplish the sexual act, causing personal injury to the victim.

**PENALTY:** A violation of Criminal Sexual Conduct first degree is a felony offense punishable by up to three (3) years in custody and up to a \$15,000.00 fine. The offender must be registered as a sex offender and may be placed on electronic monitoring. CSC 1st is a Tier III offense under tribal code chapter 72 for purposes of sexual offender registration.

**CRIMINAL SEXUAL CONDUCT SECOND DEGREE:**

A person who engages in, or attempts to engage in sexual contact with another person, without his or her consent, is guilty of CSC 2nd.

**PENALTY:** A violation of Criminal Sexual Conduct second degree is a felony offense punishable by up to two and one half (2 1/2) years in custody and up to a \$10,000.00 fine. The offender must be registered as a sex offender and may be placed on electronic monitoring. CSC 2nd is a Tier II offense under tribal code chapter 72 for purposes of sexual offender registration.

**Section # ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT**

(1) A person is guilty of Assault with intent to commit criminal sexual conduct if they commit an assault with the intent to commit any criminal sexual conduct.

PENALTY: A violation of Assault with intent to commit criminal sexual conduct is a felony offense punishable by up to two years in custody and up to a \$10,000.00 fine. The offender must be registered as a sex offender and may be placed on electronic monitoring.

### **SEXUAL CONDUCT WITH A MINOR:**

A person commits the offense of sexual conduct with a minor if he/she intentionally or knowingly engages in or attempts to engage in, any of the following:

1. Sexual penetration or sexual contact with a person under the age of 13.
2. Sexual penetration with a person under the age of 16
3. Sexual contact with a person between the ages of 13-16 and is 4 or more years older.
4. Sexual penetration or contact with a person under the age of 18 and any of the following exist:
  - a. Is related to the victim in the third degree of consanguinity or affinity.
  - b. Is a member of the same household and more than 4 years older than the victim.
  - c. Is a person responsible for the victim's care or custody.
  - d. Is in a dating or intimate relationship with the person responsible for the victim's care or custody.

PENALTY: A violation of Sexual Conduct with a minor is a felony offense punishable by up to three (3) years in custody and up to a \$15,000.00 fine. The offender must be registered as a sex offender and may be placed on electronic monitoring. Sexual Conduct with a Minor is a Tier III under tribal code chapter 72 for purposes of sexual offender registration.

### **ADMISSIBILITY OF A MINOR'S STATEMENT:**

- A. A statement made by a minor who is under the age of 10 years describing any sexual offense or physical abuse performed with, on or witnessed by the minor, which is not otherwise admissible, is admissible in evidence in a criminal proceeding if both the following are true:
  - 1) The judge finds in an in camera hearing, that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
  - 2) Either of the following is true:
    - a) The minor testifies at the proceeding; or
    - b) The minor is unavailable as a witness, provided that if the minor is unavailable as a witness, the statement may be admitted only if there is corroborative evidence of the statement.
- B. A statement shall not be admitted under this section unless the proponent of the statement makes known, in writing, to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the

proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

**section # CHILD SEXUALLY ABUSIVE MATERIAL or ACTIVITY**

**1. DEFINITIONS**

(a) "Child" means a person who is less than 18 years of age.

(b) "Child sexually abusive activity" means a child engaging in a listed sexual act.

(c) "Child sexually abusive material" means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(d) "Erotic fondling" means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(e) "Erotic nudity" means the lascivious exhibition of the genital, pubic, or rectal area of any person and, if female, any part of the breast. As used in this subdivision, "lascivious" means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(f) "Listed sexual act" means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(g) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(h) "Passive sexual involvement" means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(i) "Sadomasochistic abuse" means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(j) "Sexual excitement" means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(k) "Sexual intercourse" means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

**2. A person who in any way produces, promotes, distributes or possesses child sexually abusive material or child sexually abusive activity is guilty of a felony.**

The prohibited conduct includes the following:

a. A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, copies, reproduces, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, copy, reproduce, or finance any child sexually abusive activity or child sexually abusive material for personal, distributional, or other purposes, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

b. A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

c. A person who knowingly possesses or knowingly seeks and accesses any child sexually abusive material if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

3. This subsection does not apply to attorneys, law enforcement, probation, health care providers, counselors, social workers, judicial officers acting in the scope of their employment or a party or a witness in a criminal or civil proceeding acting within the scope of that proceeding.

PENALTY: A violation of Child Sexual Abusive Activity or Material is a felony offense punishable by up to three (3) years in custody and up to a \$15,000.00 fine. The offender must be registered as a sex offender and may be placed on electronic monitoring.

**Section # Accosting, enticing or soliciting child for immoral purpose.**

A person commits the crime of accosting, enticing or soliciting a child for immoral purpose when s/he accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual contact or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts.

PENALTY: Accosting, Enticing or soliciting a child for immoral purpose is a felony offense punishable by up to two and one half (2 1/2) years in custody. The offender must be registered as a sex offender and may be placed on electronic monitoring.

**section # SEXUAL EXPLOITATION**

A person commits the crime of sexual exploitation when s/he causes another to be exposed to explicit sexual acts, photographs, movies, or any other media, OR takes sexually explicit photographs or videos or uses any other media to document same of another if any one of the following:

1. The victim is under 18
2. The victim is unaware of the photograph or videos (other medium used) being taken.
3. The victim suffers from a mental disease or defect, which renders him or her incapable of appraising the nature of his or her conduct.

PENALTY: A violation of Sexual Exploitation is a felony offense punishable by up to two years' incarceration and/or \$5,000.00 fine. The offender must be registered as a sex offender and may be placed on electronic monitoring.

**section # Surveillance of or distribution, dissemination, or transmission of recording, photograph, or visual image of individual having reasonable expectation of privacy; prohibited conduct; violation as felony; penalty; exceptions**

**1. Definitions.**

(a) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.

(b) "Surveillance" means to secretly observe the activities of another person for the purpose of spying upon and invading the privacy of the person observed.

(c) "Person" means any individual, partnership, corporation or association

**2. Prohibited Conduct:** A person shall not do any of the following:

(a) Surveil another individual who is clad only in his or her undergarments, the unclad genitalia or buttocks of another individual, or the unclad breasts of a female individual under circumstances in which the individual would have a reasonable expectation of privacy.

(b) Photograph, or otherwise capture or record, the visual image of the undergarments worn by another individual, the unclad genitalia or buttocks of another individual, or the unclad breasts of a female individual under circumstances in which the individual would have a reasonable expectation of privacy.

(c) Distribute, disseminate, or transmit for access by any other person a recording, photograph, or visual image the person knows or has reason to know was obtained in violation of this section.

(3) In any criminal or civil action, proof of the installation in any private place of any device which may be used for the purposes of violating the provisions of this act shall be prima facie evidence of a violation of section 539d.

(4) This section does not apply to a peace officer of this state or of the federal government, or the officer's agent, while in the performance of the officer's duties.

**PENALTY:** A violation this section is a felony offense punishable by up to incarceration for two years and a fine of up to \$2,500.00. The offender must be registered as a sex offender and may be placed on electronic monitoring.

**section # INDECENT EXPOSURE:**

A person commits an indecent exposure if they intentionally, knowingly or recklessly expose his or her genitals in a public place or unwilling observers in a private place.

**PENALTY:** A violation of indecent exposure is a misdemeanor offense punishable by up to 6 months in custody and/or a \$500.00 fine, unless the indecent exposure is to a minor (under 18) in which case the offense is punishable by up to 1 year in custody and/or a \$1,000.00 fine.

**section # Use of computer program, computer, computer system, or computer network to commit crime.**

A person commits the crime of use of a computer to commit a crime if they use a computer program, computer, computer system, or computer network to commit a crime or they attempt to commit, conspire to commit, or solicit another person to commit a crime.

PENALTY: A violation of using a computer to commit a crime is a misdemeanor offense punishable by up to 1 year custody and up to a \$1,000.00 fine if the underlying crime is a misdemeanor and is a felony offense punishable by up to 3 years in custody and a \$15,000.00 fine if the underlying crime is a felony. This section applies regardless of whether the person is convicted of committing, attempting to commit, conspiring to commit, or soliciting another person to commit the underlying offense.

**Section # LEWD or LASCIVIOUS CONDUCT:**

A person, married or unmarried, commits the crime of lewd or lascivious conduct if they engage in behavior that is lewd or lascivious.

PENALTY: A violation of lewd or lascivious conduct is a misdemeanor offense punishable by up to 1 year in custody and up to a \$1,000.00 fine. This offense is not subject to the sex offender registration.

**section # Evidence; proof of intent or motive by similar acts.**

In any criminal case where the defendant's motive, intent, the absence of, mistake or accident on his part, or the defendant's scheme, plan or system in doing an act, is material, any like acts or other acts of the defendant which may tend to show his motive, intent, the absence of, mistake or accident on his part, or the defendant's scheme, plan or system in doing the act, in question, may be proved, whether they are contemporaneous with or prior or subsequent thereto; notwithstanding that such proof may show or tend to show the commission of another or prior or subsequent crime by the defendant.

**section # Evidence that defendant committed another sex offense against minor; admissibility; disclosure of evidence to defendant; definitions.**

(1) In a criminal case in which the defendant is accused of committing any sex offense against a minor, evidence that the defendant committed another sex offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant. If the prosecuting attorney intends to offer evidence under this section, the prosecuting attorney shall disclose the evidence to the defendant at least 15 days before the scheduled date of trial or at a later time as allowed by the court for good cause shown, including the statements of witnesses or a summary of the substance of any testimony that is expected to be offered.

(2) As used in this section "Minor" means an individual less than 18 years of age.

**section # Corroboration of victim's testimony not required.**

The testimony of a victim need not be corroborated in prosecutions under [the tribal sexual offense code](#).

**section # Resistance by victim not required.**

A victim need not resist the actor in any case under the [sexual offense code](#)

**section # Evidence of victim's sexual conduct. (Rape-shield law)**

(1) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted in a sexual assault case, unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

(a) Evidence of the victim's past sexual conduct with the actor.

(b) Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease.

(2) If the defendant proposes to offer evidence described in subsection (1)(a) or (b), the defendant within 10 days after the arraignment on the information shall file a written motion and offer of proof. The court may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1). If new information is discovered during the course of the trial that may make the evidence described in subsection (1)(a) or (b) admissible, the judge may order an in camera hearing to determine whether the proposed evidence is admissible under subsection (1).

**section # Legal spouse as victim.**

A person may be charged and convicted under the **sexual offense code** even though the victim is his or her legal spouse.

**REPEAT OFFENDERS – ENHANCED SENTENCE – SEXUAL OFFENSE**

The penalty for any person who is convicted of any offense under the sexual offense code and has a previous conviction for any offense under the sexual offense code, (or an offense substantially similar from any other jurisdiction, including state, federal or tribe), will be up to 3 years in custody and a \$15,000.00 fine. Sexual offender registration is required.

