

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22ND NAVAJO NATION COUNCIL - Second Year, 2012

AN ACT

RELATING TO LAW AND ORDER AND NAABIKI'YATI'; ENACTING THE NAVAJO NATION SEX OFFENDER REGISTRATION AND NOTIFICATION ACT OF 2012 AT 17 N.N.C. §§ 2100 *ET SEQ.*; AND AMENDING THE NAVAJO NATION CRIMINAL CODE AT 17 N.N.C. §§ 220, 305, 400, 401, 402, 403, 404, 435, 436, 437, 438, 439, 440, 441, 442, 443, 443A, 444, 445, 446, 447, 448, 449, 450, 452 AND 453

BE IT ENACTED:

Section One. Enactment of the Navajo Nation Sex Offender Registration and Notification Act of 2012

The Navajo Nation Council hereby enacts the Navajo Nation Sex Offender Registration and Notification Act of 2012. This Act will replace the Sex Offender Registration and Reporting Act of 2006 that had been adopted on April 20, 2006 and will amend certain sections of Title 17 of the Navajo Nation Code.

Section Two. Purpose

The purposes of the Navajo Nation Sex Offender Registration and Notification Act of 2012 include the protection of children (the Navajo Nation's most precious resource) and the public from sex offenders, and compliance with Title I of the Adam Walsh Child Protection and Safety Act of 2006 by requiring the registration of sex offenders and providing notification to communities of the presence of convicted sex offenders.

Section Three. Findings

A. The Navajo Nation on April 26, 2006, enacted the "Navajo Nation Sex Offender Registration Act of 2006." CJY-20-07, 17 N.N.C. §220(D)(Supp. 2009). This law required the registration of all individuals convicted of sex offenses by the Navajo Nation and other jurisdictions.

B. The United States Congress on July 27, 2006 passed the "Adam Walsh Child Protection and Safety Act of 2006." P.L. 109-248(42 U.S.C. §16901 *et seq.*) ("Adam Walsh Act"). The purposes of the Adam Walsh Act are stated as - "To protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims." *id.*

C. Title I of the Adam Walsh Act, entitled "Sex Offender Registration and Notification Act," requires the registration of those convicted of certain sex offenses. This responsibility for registration of convicted sex offenders is placed upon jurisdictions wherein such offenders reside, work or go to school. "Jurisdiction" under the Act is defined to include Indian tribes, states, and the District of Columbia.

D. The Navajo Nation Council on July 19, 2007, through Resolution CJY-20-07, determined that the requirements of Title 1 of the Adam Walsh Act "exceed[ed] the current registration requirements of the Navajo Nation Sex Offender Registration Act of 2006." CJY-20-07, finding 6. The Council in this resolution "expressly reaffirm[ed] its intent to fully implement all of the applicable requirements of the Adam Walsh Act," and rejected any authorization for the exercise of state jurisdiction within Navajo Nation under the Act.

E. In the year 2011, the number of convicted sex offenders within Navajo Indian Country who must register under this Act approached seven hundred (700).

F. It is the responsibility of the Navajo Nation to protect the public, particularly children, from convicted sex offenders by notifying communities that convicted sex offenders may be residing, working or going to school in their community.

Section Four. Amendments to Title 17 of the Navajo Nation Code

The Navajo Nation hereby amends Title 17 of the Navajo Nation Code as follows:

Title 17. Law and Order
Chapter 2. General Provisions
Subchapter 3. Sentencing

§ 220. Criteria

A. No person convicted of an offense pursuant to this Title shall be sentenced otherwise than in accordance with this Subchapter. A sentence of incarceration is always considered an extraordinary measure under any offense enumerated in this Title and should be imposed only as a last alternative where a defendant is found to have caused serious injury to a victim or victims, or other serious circumstances warrant a jail sentence. All jail sentences must be supported by a written statement, by the Court, of reasons for imposition of a jail sentence.

B. Except as otherwise provided in sentencing of a specific offense under this Title, ~~the~~ court may suspend the imposition of sentence of a person who has been convicted of a crime, may order him or her, in lieu of a sentence to be committed ~~in lieu of sentence~~ to a hospital or other institution for medical, psychiatric or other rehabilitative treatment, or may sentence him or her as follows:

1. To pay a fine;
2. To be placed on probation;
3. To imprisonment for a definite period within the term authorized;
4. To fine and probation or fine and imprisonment;
5. To community service;
6. To pay restitution or nalyeeh.

C. The court may, pursuant to its legal authority, decree a forfeiture of property suspend or cancel a license, require full or partial restitution, remove a non-elected public servant or Navajo Nation government employee from office, or impose any other civil penalty, and such order or judgment may be included in the sentence.

D. At arraignment, the Court shall inform a defendant who is charged with a sex offense that if he or she is found guilty or pleads guilty or pleads no contest to the offense, the defendant will be ordered to register for a minimum of fifteen (15) years as a convicted sex offender in any Navajo police district wherein he or she resides, works or goes to school.

~~D. Sex offender registration and reporting~~

~~1. All Navajo Nation court sentences for convictions, guilty pleas, pleas of nolo contendere, and all conditions of probation and parole for violations of sexual offenses shall require that the offender register, and maintain registration, as a sex offender with the Navajo Nation Chief of Police.~~

~~2. All persons who have been convicted, or entered guilty pleas or pleas of nolo contendere to crimes constituting sexual offenses, by Navajo Nation courts or the courts of another jurisdiction, and who reside, work, or attend school within the Navajo Nation shall register, and maintain registration, as a sex offender with the Navajo Nation Chief of Police. This registration shall include:~~

~~a. A copy of each judgment of the court finding the person guilty of a sexual offense committed, including all conditions of probation or parole; and~~

~~b. A copy of the probation or parole order relative to each sexual offense committed, including all conditions of probation or parole; and~~

~~c. The physical address of the residence of the sex offender; and~~

~~d. The physical address of the school attended by the sex offender;~~

~~f. The census number and current photograph of the sex offender.~~

~~3. all sex offenders shall maintain their registration with the Navajo Nation Chief of Police by reporting any additional or changed information set forth in Subsection (D) (1) above to the Navajo Nation Chief of Police within ten days or any change affecting such information.~~

~~4. The Navajo Nation Chief of Police shall provide within notice to:~~

~~a. All District Commanders within the Department of Law Enforcement and all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, or works, or attends, school:~~

~~b. All print and broadcast media outlets which provide news coverage to all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, in addition to all Navajo Nation Chapter(s) in which the offender resides, or works, or attends school.~~

~~5. Failure by a sex offender to register, or maintain registration, as a sex offender shall be conclusive evidence of breach of conditions of probation or parole contained within any Navajo Nation court order and require that any such probation or parole be revoked. Any failure to register, or maintain registration, as a sex offender by a sex offender whose sexual offense conviction was issued by the court of another jurisdiction shall be reported, in writing, to that jurisdiction by the Navajo Nation Chief of Police.~~

E. Recidivism

If a sex offender is subsequently convicted of the same or another sex offense under 17 N.N.C. §436-449, he or she will be subject to serving a longer period of actual incarceration than he or she served for the previous conviction.

Chapter 3. Offenses Subchapter 2

§ 305. Aggravated Kidnapping

A. A person commits aggravated kidnapping if the person intentionally or knowingly, without authority of law and against the will of the victim, by any means and any manner, seizes, confines, detains, or transports the victim with intent:

1. To hold for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct; or

~~5. To commit a sexual offense as described in Subchapter 15 of Chapter 3 of this Title.~~

B. A detention or moving is deemed to be result of force, threat, or deceit if the victim is mentally incompetent or younger than 16 years and the detention or moving is accomplished without the effective consent of the victim's custodial parent, guardian, or person acting in loco parentis to the victim.

C. Sentence. Any person found guilty of aggravated kidnapping may be sentenced to imprisonment for a term not to exceed 365 days, or ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.

~~Subchapter 11. Obscenity~~

~~§ 400. Definitions~~

~~The following definitions apply in this Subchapter.~~

A. ~~"Displays publicly" means the exposing, placing, posting, exhibiting or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a public thoroughfare, depot, or vehicle.~~

B. ~~"Furnishes" means to sell, give, rent, loan or otherwise provide.~~

C. ~~"Minor" means a person under eighteen (18) years of age.~~

~~D. "Sadomasochistic abuse" means flagellation torture by or upon a person who is nude or clad in undergarments or in revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.~~

~~E. "Sexual conduct" means human masturbation, sexual intercourse, or any direct or indirect touching of the genitals, pubic area or anus of the human male or female, whether alone or between members of the same or opposite sex or between humans or animals in an act of apparent sexual stimulation or gratification.~~

~~**§401. Furnishing sexual materials to minors**~~

~~A. Offense. A person commits furnishing sexual materials to minors if, knowing or having good reason to know the character of the material furnished, he or she intentionally or knowingly furnishes to a minor.~~

~~1. Any picture, photograph, drawing, sculpture, motion picture, film, electronic or other visual representation or image of a person or portion of a human body that depicts sadomasochistic abuse or sexual conduct, or~~

~~2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium however reproduced, or any sound recording which contains matter of the nature described in Subsection (A)(1) of this Section, or explicit verbal descriptions or narrative accounts of sexual conduct or sadomasochistic abuse.~~

~~B. Sentence.~~

~~1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).~~

~~2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nalyeeh shall be paid to the victim(s).~~

~~3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nalyeech and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.~~

~~4. The trial court may consider the imposition of a peace or security bond upon the defendant; including the pledges of family or clan sureties.~~

~~5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of the breach of the bond or pledge.~~

~~6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.~~

~~§ 402. Displaying sexual materials to minors~~

~~A. Offense. A person commits displaying sexual materials to minors if, being the owner, operator or manage of a business or acting in managerial capacity thereof, he or she intentionally, knowingly or recklessly permits a minor who is not accompanied by his or her parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minors is so permitted to be, there is visibly displayed.~~

~~1. Any picture, photograph, drawing, sculpture, film, electronic or other visual representation or image of a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse; or~~

~~2. Any book, magazine, paperback, pamphlet or other written or printed matter, electronic medium, however reproduced, that reveals a person or portion of the human body that depicts sexual conduct or sadomasochistic abuse.~~

~~B. Sentence.~~

~~1. Any person found guilty of violating this Section shall be sentenced to imprisonment for a term not to exceed 180 days, or be ordered to pay a fine not to exceed five hundred dollars (\$500.00).~~

~~2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nalyeech shall be paid to the victim(s).~~

~~3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nalyeech and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.~~

~~4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.~~

~~5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of the breach of the bond or pledge.~~

~~6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.~~

~~§ 403. Defenses to Prosecution~~

~~It shall be a defense to any prosecution under 17 N.N.C. §§401 and 402.~~

~~A. That the materials were being used for purely educational, scientific, charitable, or religious purposes by a religious association, library, museum, public school, private school or institution of learning or scientific research or~~

~~B. That the defendant was charged with the sale, showing, exhibition or display of an item, those portions of which might otherwise be contraband forming merely an incidental part of an otherwise non-offending whole, and serving some legitimate purpose therein other than titillation.~~

~~§ 404. Destruction of obscene material upon conviction~~

~~Upon the conviction of any person for a violation of this Subchapter, the materials which were the subject of the conviction may destroyed.~~

Subchapter 11. Reserved

Subchapter 15. Sexual Sex Offenses

~~§ 440. Definitions~~

§435. Definitions

A. "Sexual contact" means any ~~direct or indirect~~ touching directly or over the clothing; fondling; or manipulating of any part of the genitals, anus, groin, inner thigh, buttocks or female breast of any person or of oneself as in masturbation.

B. "Sexual act" means:

1. Contact and penetration, however slight, between the penis and the vulva or anus as in sexual intercourse; or

2. Contact between the mouth and penis or vulva or anus; or

3. Using a hand, finger or any object to penetrate, however slight, the anal or vaginal opening of another.

C. "Display publicly" means exposing, placing, posting, exhibiting or in any fashion displaying an item in such a manner that it may be seen by normal vision from or within a public location.

D. "Furnishes" means to sell, give, rent, loan or otherwise provide.

AE. "Electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, wireless mobile telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.

BF. "Minor" means a person under eighteen (18) years of age the same as defined under 17 N.N.C. §400 (C). A minor who commits this offense under this Act shall be referred to the Family Court for resolution pursuant to the Navajo Nation Children's Code.

G. "Prostitution" means, for purposes of this Subchapter, when a person uses a minor to engage in a sexual act or sexual contact with another for the monetary or personal gain of the person so using the minor.

H. "Sadomasochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments or in revealing apparel or shackled or bound or physically restrained.

BI. "Spouse" means a person who is recognized as the husband or wife of another person pursuant to 9 N.N.C. §1. ~~Title 9 of this Code.~~

EJ. "Without consent" means:

1. The victim is ~~reasonably~~ coerced by the immediate use or threatened use of force against a person or property; or
2. The victim is incompetent to consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition unless at the time the defendant engaged in the conduct constituting the offense he or she did not know and could not reasonably have known of the facts or conditions responsible for such incompetency to consent; or
3. The victim is intentionally deceived as to the nature of the act; or
4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

§ 436 Solicitation of a minor for prostitution

A. Offense. A person commits solicitation of a minor for prostitution if, with intent that a minor engage in prostitution, he or she commands, induces, or otherwise endeavors to persuade such minor to engage in prostitution.

B. Sentence.

1. Any person found guilty of solicitation of a minor for prostitution shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed twenty-five hundred dollars (\$2,500) or both and

shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than one thousand dollars (\$1,000), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 437. Solicitation involving a minor in sexual contact or a sexual act

A. Offense. A person commits solicitation involving a minor in sexual contact or a sexual act if, with intent to involve the minor to engage in sexual contact or a sexual act, he or she commands request, or otherwise endeavors to persuade the minor to engage in the sexual contact or sexual act.

B. Sentence

1. Any person found guilty of solicitation to involve a minor in sexual contact or a sexual act shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed twenty-five hundred dollars (\$2,500) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than one thousand dollars (\$1,000) and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 438. Conspiracy to coerce a minor to engage in sexual contact or a sexual act

A. Offense. A person commits conspiracy to coerce a minor to engage in sexual contact or a sexual act if he or she intentionally or knowingly promotes or facilitates the sexual contact or sexual act involving a minor and he or she agrees with one or more persons that at least one of them will engage in conduct constituting the sexual contact or sexual act, and one of the parties commits an overt act in furtherance of the agreement.

B. Affirmative defense. It is an affirmative defense if the defendant gave a complete and voluntary renunciation of the act to co-conspirators and victim prior to the commission of the act, and there was an effort to prevent the sexual contact or sexual act by giving timely warning to law enforcement.

C. Defense precluded. It is not a defense that one or more of the persons with whom the defendant is alleged to have conspired as not been prosecuted or convicted, has been convicted of a different offense, or is immune from or otherwise not subject to prosecution.

D. Duration of conspiracy. Conspiracy is a continuing course of conduct which ends when the offense which is its object has been committed or when the agreement that it be committed is abandoned by the defendant.

E. Abandonment of conspiracy. A defendant may abandon a conspiratorial agreement and terminate his or her relationship with the conspiracy only if he or she clearly ceases to agree that the conspiratorial objective be committed, take no further part in the conspiracy, and communicates his or her desire to abandon the conspiracy to other members of the conspiracy.

F. Sentence

1. Any person found guilty of conspiracy to coerce a minor to engage in sexual contact or a sexual act shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed twenty-five hundred dollars (\$2,500) or both, and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than one thousand

dollars (\$1,000), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§439. Kidnapping with intent to commit sexual contact or a sexual act

A. a person commits kidnapping if the person intentionally or knowingly against the will of a victim, including a minor, by any means of any manner seizes, confines, detains, or transports the victim with intent to commit sexual contact or a sexual act.

B. A seizing, confining, detaining or transporting is deemed to be result of force, threat, or deceit if the victim is a minor or is mentally incompetent, and the seizing, confining, detaining or transporting is deemed to be accomplished without consent of the victim's or minor's parent or guardian.

C. Sentence.

1. Any person found guilty of this offense shall be sentenced to imprisonment for a term not to exceed 365 days or ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than twenty five hundred dollars (\$2,500), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 440. Furnishing sexual materials to minors

A. Offense. A person commits furnishing sexual materials to minors if knowing or having good reason to know the content of the material furnished he or she intentionally or knowingly furnishes to a minor:

1. Any picture, photograph, drawing, sculpture, motion picture, film, electronic or other visual representation or image of a person or portion of a human body that depicts sexual contact or sexual act or sadomasochistic abuse; or

2. Any book magazine, paperback, pamphlet or other written or printed matter, electronic medium however reproduced or any sound recording which depicts or narrates accounts of sexual contact or sexual act or sadomasochistic abuse.

B. Affirmative defense. It shall be an affirmative defense that the sexual content of the materials constituting the allegation is merely an incidental part of an otherwise non-offending whole and serve a legitimate purpose.

C. Destruction of the materials upon conviction. Upon the conviction of any person for a violation of this Section, the materials which were the subject of the conviction shall be forfeited and destroyed.

D. Sentence.

1. Any person found guilty of this offense shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed five hundred dollars (\$500) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than one thousand dollars (\$1,000), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

~~§ 441. Adultery~~

~~A. Offense. A person commits adultery if he or she intentionally or knowingly:~~

~~1. If married, engages in sexual intercourse with one other than his or her spouse; or~~

~~2. If unmarried, engages in sexual intercourse with a married person.~~

~~B. No prosecution for adultery shall be commenced except upon complaint of the husband or wife not committing the offense.~~

~~C. Sentence.~~

~~1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nalyech shall be paid to the victim(s).~~

~~2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nalyech and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.~~

~~3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family and clan sureties.~~

~~4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.~~

~~5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.~~

§ 441. Displaying sexual materials to minors as part of a person's business

A. Offense. A person commits displaying sexual materials to minors if, being the owner, operator or manager of a business or acting in managerial capacity thereof, he or she intentionally, knowingly or recklessly permits a minor who is not accompanied by his or her parent or guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed:

1. Any picture, photograph, drawing, sculpture, film, electronic or other visual representation or image of a person or portion of a human body that depicts sexual contact or sexual act or sadomasochistic abuse; or

2. Any book magazine, paperback, pamphlet or other written or printed matter, electronic medium however reproduced that reveals a person or portion of the human body that depicts sexual contact or sexual act or sadomasochistic abuse.

B. Affirmative defense. It shall be an affirmative defense that the sexual character of the materials constituting the allegation in merely an incidental part of an otherwise non-offending whole and serves a legitimate purpose.

C. Destruction of materials upon conviction. Upon the conviction of any person for a violation of this Section, the materials which were the subject of the conviction shall be forfeited and destroyed.

D. Sentence.

1. Any person found guilty of this offense shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed five hundred dollars (\$500) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than one thousand dollars (\$1,000), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 442 Public sexual indecency

A. Offense. A person commits an offense pursuant to this Section public sexual indecency if he or she intentionally or knowingly, in public, view, engages in:

1. A sexual act: or Exposes his or her genitals to public view under circumstances which he or she should know is likely to offend or alarm others

~~2. Sexual contact. In a public place, engages in an act of sexual contact; or~~

~~3. In a public place, engages in an act of sexual intercourse.~~

B. Sentence.

1. Any person found guilty of public sexual indecency shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed five hundred dollars (\$500) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than one thousand dollars (\$1,000), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, parole, commutation or suspension of a sentence or release on any other basis.

~~1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether, restitution or nalyeeh shall be paid to the victim(s):~~

~~2. The trial court utilize the services of the Navajo Peacemaker Court determine nalyeeh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.~~

~~3. The trial court may consider the imposition of a peace or security bond upon the defendant including the pledges of family or clan sureties.~~

~~4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.~~

~~5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization including the chapter in which the defendant resides.~~

§443. Sexual assault

A. Offense. A person commits sexual assault if he or she intentionally or knowingly engages in ~~sexual intercourse or~~ sexual contact or a sexual act with any person without the consent of that person.

B. Sentence.

1. Any person found guilty of sexual assault shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than twenty-five hundred dollars (\$2,500), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

C. Affirmative Defense. It is an affirmative defense to a prosecution ~~under this Section~~ that the victim's lack of consent is based on incapacity to consent because he or she was 16 or 17 years of age.

§ 443A. Aggravated sexual assault

A. Offense. A person commits aggravated sexual assault if he or she intentionally or knowingly in the course of committing sexual assault or attempted sexual assault:

1. Causes bodily injury to the victim;
2. Uses or threatens the victim by use of a deadly weapon;
3. Compels, or attempts to compel, the victim to submit to sexual assault by threat of kidnapping, death, or serious bodily injury to be inflicted imminently upon any person.

B. Sentence.

1. A person found guilty of aggravated sexual assault shall be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than twenty-five hundred dollars (\$2,500), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 444. Seduction

A. Offense. A person commits seduction if he or she has sexual ~~intercourse or sexual~~ contact or engages in a sexual act with another person, not his or her spouse, if the other person is less than 16 years old.

B. Affirmative Defense. It is an affirmative defense to prosecution if the age difference between the defendant and the victim is not more than three years provided the victim is at least 16 years of age at the time of the offense.

BC. Sentence.

1. Any person found guilty of seduction shall be sentenced to imprisonment for a term not to exceed 180 days or be ordered to pay a fine not to exceed one thousand dollars (\$1,000) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than two thousand dollars (\$2,000), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

~~1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nalyaah shall be paid to the victim(s).~~

~~2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nalyeeh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.~~

~~3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.~~

~~4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.~~

~~5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.~~

§ 445. Internet Sexual exploitation of a minor through electronic communication device

A. Offense. A person commits ~~Internet~~ sexual exploitation of a minor if ~~a person~~ he or she knowingly ~~importunes~~, invites or entices the minor through the use of an electronic communication device ~~via a computer network or system~~ to:

1. Expose or touch the minor's own or another person's intimate parts while communicating with the minor via an electronic communication device ~~computer network or system~~; or

2. Observe the minor's intimate parts while communicating with the minor via an electronic communication device ~~computer network or system~~.

B. Jurisdiction. For purposes of determining jurisdiction, ~~Internet~~ sexual exploitation of a minor is committed within the Navajo Nation if an electronic communication device transmission either originates or is received in the Navajo Nation.

C. Affirmative Defense. It shall not be an affirmative defense to this Ssection that the minor was actually a law enforcement officer or an undercover operative working with a law enforcement agency posing as a minor.

D. Sentence.

1. Any person found guilty of this offense violating this Section shall be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department. except that civil penalties pursuant to 17 N.N.C. § 204(D) shall be imposed if the violation is a non-Indian.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than twenty-five hundred dollars (\$2,500), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 446. Luring a minor by electronic communication device

A. Offense. A person commits luring a minor by electronic communication device when the person knowingly uses or attempts to use the Internet, wireless mobile telephone or other an electronic communication device to:

1. Initiate contact with the minor or an individual a the person ~~the actor~~ believes to be a minor; and

2. Immediately after initiating contact, Subsequent to the action under Subsection A(1), by any electronic communication device or written means, solicits, seduces, lures, or entices or attempts to solicit, seduce, lure, or entice the minor or an individual a the person ~~the actor~~ believes to be a minor to engage in any sexual contact or a sexual act activity involving physical contact between the person perpetrator and the minor.

B. Jurisdiction. For purposes of determining jurisdiction, luring a minor by electronic communication device is committed within the Navajo Nation if an electronic communication device transmission either originates or is received in the Navajo Nation.

C. Affirmative Defense. It shall not be an affirmative ~~is not a~~ defense to this Section ~~the crime of enticement of a minor under Subsection A or an attempt to commit this offense~~ that a law enforcement officer or an undercover operative ~~who is~~ working with a law enforcement agency was involved in the detection or investigation of the offense.

D. Sentence.

1. Any person found guilty of this offense ~~violating this Section~~ shall be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department. ~~except that civil penalties pursuant to 17 N.N.C. § 204(D) shall be imposed if the violator is non Indian.~~

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be order to pay a fine of not less than twenty-five hundred dollars (\$2,500), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 447. Possession of child pornography

A. Offense. Any person who knowingly possesses ine ore mire books, magazines, periodicals, films, video tapes, computer generated images, or other matter which contain any visual depiction ~~involving the use of a minor engaging in sexual contact or a sexual act sexually explicit conduct and such visual depiction is of such conduct~~ is guilty of possession of a child pornography.

B. Affirmative Defense. It shall be an affirmative defense to ~~this Section a crime committed under Subsection A that 1. The person took reasonable steps to destroy each such visual depiction, or reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.~~

C. Sentence.

1. Any person found guilty of this offense violating this Section shall be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000.00) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department. except that civil penalties pursuant to 17 N.N.C. § 204(D) shall be imposed if the violator is a non-Indian.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than twenty-five hundred dollars (\$2,500), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§ 448. Incest

A. Offense. A person commits incest if he or she knowingly engages in sexual contact or a sexual act with another who is related to the person by whole or half-blood, as an ancestor or descendant, a brother or sister, or an uncle, niece, aunt, nephew or first cousin.

B. Sentence.

1. Any person found guilty of incest shall be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than twenty-five hundred dollars (\$2,500), and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

§449. Sexual contact or sexual act with a foster child or stepchild

A. Offense. A person commits sexual contact or a sexual act with a foster child or step-child if he or she intentionally or knowingly engages in sexual contact or a sexual act with his or her foster child or step-child who is under 18 years of age.

B. Sentence.

1. Any person found guilty of this offense shall be sentenced to imprisonment for a term not to exceed 365 days or be ordered to pay a fine not to exceed five thousand dollars (\$5,000) or both and shall be ordered to register as a convicted sex offender with the Navajo Police Department.

2. Upon any subsequent conviction of this offense, a person shall be sentenced to imprisonment of not less than 365 days, shall be ordered to pay a fine of not less than twenty-five hundred dollars (\$2,500) and shall be ordered to register with the Navajo Police Department. The district court shall not grant probation, pardon, parole, commutation or suspension of a sentence or release on any other basis.

Subchapter 16. Offenses Against the Family

§ 450. Definition

The following definition is applicable to this Subchapter:

"Sexual contact" and "sexual act" have the same meaning as those terms are defined in Section 435 in Subchapter 15 of this Title. ~~"Sexual conduct" means sexual contact as that term is defined in Section 440(A) of this Title, or sexual intercourse.~~

§452. Incest

~~A. Offense. A person commits incest if he or she knowingly engages in sexual conduct with another who is related to such person by whole or half blood, as an ancestor or descendant, a brother or sister, or an uncle, niece, aunt, nephew or first cousin.~~

~~B. Sentence.~~

~~1. Any person found guilty of incest may be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.~~

~~2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nalyeeh shall be paid to the victim(s).~~

~~3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nalyeeh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.~~

~~4. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.~~

~~5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.~~

~~6. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.~~

§452 Adultery

A. Offense. A person commits adultery if he or she intentionally or knowingly:

1. If married, engages in sexual intercourse with one other than his or her spouse; or

2. If unmarried engages in sexual intercourse with a married person.

B. No prosecution for adultery shall be commenced except upon complaint of the husband or wife not committing the offense.

C. Sentence.

1. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nalyeeh shall be paid to the victim(s).

2. The trial court may utilize the services of the Navajo Peacemaker Court to determine nalyeeh and make a sentencing recommendation regarding that sentence, and that trial court may require the defendant to pay the fee of the peacemaker.

3. The trial court may consider the imposition of a peace or security bond upon the defendant, including the pledges of family or clan sureties.

4. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.

5. The trial court shall consider the utility of labor or community service sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.

~~§453. Sexual conduct with a foster child or stepchild~~

~~A. Offense. A person commits sexual conduct with a foster child or step child if he or she intentionally or knowingly engages in unprivileged sexual conduct with his or her foster child or step child who is under 18 years of age.~~

~~B. Sentence.~~

~~1. any person found guilty of violating this section shall be sentenced to imprisonment for a term not to exceed 365 days, or be ordered to pay a fine not to exceed five thousand dollars (\$5,000), or both.~~

~~2. The trial court shall review all charges to ascertain whether there is a personal victim of the offense(s) and whether restitution or nalyeeh shall be paid to the victim(s).~~

~~3. The trial court may utilize the services of the Navajo Peacemaker Court to determine nalyeeh and make a sentencing recommendation regarding that sentence, and the trial court may require the defendant to pay the fee of the peacemaker.~~

~~4. The trial court may consider the imposition of a peace or security bond upon the defendant including the pledges of family or clan sureties.~~

~~5. Upon the imposition of a bond or security pledges, the district Office of Probation and Parole shall counsel the sureties of the consequences of breach of the bond or pledge.~~

~~6. The trial court shall consider the utility of labor or community services sentences, under the supervision of the Navajo Nation Department of Public Safety or a public or private organization, including the chapter in which the defendant resides.~~

§453. Reserved

Chapter 5. Procedures
Subchapter 10. Sex Offender Registration and
Notification Act of 2012

§2100. Title

This Act shall be known as the Navajo Nation Sex Offender Registration and Notification Act of 2012 ("the Act")

§2101. Purpose

By implementing this Act, the Navajo Nation acts to protect the public, particularly children, from sex offenders by requiring the registration of convicted sex offenders and notification to the community of such convicted sex offenders in accordance with this Act and Title I of the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16901 et seq. ("Title I"). This Act shall be interpreted to carry out the terms and conditions of the Act as presently written or as may be hereafter amended.

§2102. Definitions

The Definitions below apply to this Act only.

A. Act. The Act is the Navajo Nation Sex Offender Registration and Notification Act of 2012.

B. Alford plea. A plea whereby a defendant does not admit the act but admits that the prosecution could likely prove the charge, and a court will pronounce the defendant guilty upon such plea.

C. Business days. Refers to working days excluding Saturdays, Sundays and holidays.

D. Convicted for purposes of this Act means.

1. An adult who has been found guilty or has pled guilty or has entered a plea of no contest or has entered an Alford plea to a sex offense as defined by this Act and Title I; or

2. A juvenile offender who:

a. Is prosecuted as an adult and found guilty or has pled guilty or has entered a plea of no contest or who has entered an Alford plea to a sex offense; or

b. Was 14 years or older at time of offense and who has been adjudicated of a sex offense comparable to or more severe than sexual assault at 17 N.N.C. § 443 or of an attempt or conspiracy to commit such an offense.

E. Dru sjodin National Sex Offender Public Website. A public website that is maintained by the Attorney General of the U.S. Department of Justice that includes information about convicted sex offenders.

F. Goes to school. Means an individual is enrolled in and attends a private or public secondary school, a vocational or professional school or an institution of higher education.

G. Incarceration. Refers to being lawfully detained, pursuant to a conviction in a tribal or local detention facility, a federal, state, military, foreign, private or contract facility or those under "house arrest" for a sex offense for which registration is required.

H. Jurisdiction. Means an Indian tribe, a state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands and the United States Virgin Islands.

I. Maintains registration. Means a convicted sex offender coming in person to register according to the timeline of the tier level of his or her sex offense; for example, registering in person every year if the person is convicted of a tier 1 sex offense.

J. Minor. An individual who has not attained the age of 18 years.

K. Navajo Indian Country. The territory of the Navajo Nation as defined by 7 N.N. C. § 254.

L. Navajo Nation Sex Offender Registry for the Public ("NNSORP"). A public website that contains information for the public about convicted sex offenders who reside, work, or go to school within Navajo Indian Country.

M. Registers. Means the initial registration of a convicted sex offender who is convicted by a Navajo district court or who comes into Navajo Indian Country to reside, work or go to school.

N. Resides. Means living in a place which one considers "home" or where one habitually lives or sleeps.

O. Sex Offender. A person convicted of any sex offenses that requires registration as a convicted sex offender under this Act or under Title I as defined herein.

P. Navajo Police Department Registry of Sex Offenders ("NPDR"). A website registry of convicted sex offenders who reside, work, or go to school within Navajo Indian Country and which is maintained by the Navajo Police Department. NPDR is restricted solely to the Navajo Police Department and to other law enforcement agencies as required by law.

Q. Sex offense for which one is required to register. A sex offense which, if convicted of, requires the sex offender to register under this Act or under Title I as defined herein.

R. Title I. Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 U.S.C. § 16901 et seq., is a federal statute that requires the registration of all sex offenders who are convicted of a sex offense(s) for which Title I requires registration and notification of the presence of sex offenders in a community.

S. Tier classification. Title I classifies sex offenses into three tiers: Tier 1, Tier 2, Tier 3. The tier classifications are based on the nature of the sex offense, the length of incarceration, and whether an individual has been previously convicted of a sex offense that requires registration.

T. Updates registration. Means a convicted sex offender comes in person within three (3) business days to inform the Navajo Police Department that a change has occurred in one or more of his or her required registration information.

U. Works. Means an individual is employed full time, part time, seasonally or temporarily for compensation by an employer; is self-employed; or is a volunteer, intern, extern or in some like capacity for which no compensation is paid.

§ 2103. Sex offenses that require registration under this Act and under Title I

A. An individual is required to register as a convicted sex offender only if he or she is convicted of a sex offense(s) enumerated under this Act or under Title I.

B. Sex offense(s) that require registration are the following tribal, state, local, military or foreign sex offenses:

1. Navajo Nation offenses.

a. The sex offenses enumerated at 17 N.N.C. §§ 436-449.

b. Conviction of Navajo Nation offenses as enumerated in the Violence Against Family Act at 17 N.N.C. §§ 541, 557, and 558, if such unlawful conduct involves a sex offense as provided in the Subchapter, shall also require sex offender registration with the Navajo Police Department.

2. Navajo Nation juvenile offenses. The sex offenses at 17 N.N.C. §§ 438, 439, 440, and 448 if committed by a minor who is 14 years of age or older at the time of the offense.

3. Non-Navajo Nation juvenile offenses. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than sexual assault at 17 N.N.C. § 443 and committed by a minor who is 14 years of age or older at the time of the offense.

4. Other Indian Tribal sex offenses. Sex offenses identified by an Indian tribe for which, if convicted, registration by that tribe is required.

5. Federal offenses. The federal sex offenses enumerated under Title 18 of the U.S. Code such as, but not limited to, 18 U.S.C. § 1591 (sex trafficking of children), 18 U.S.C. § 1801 (video voyeurism of a minor), 18 U.S.C. § 2241 (aggravated sexual abuse), 18 U.S.C. § 2242 (sexual abuse), 18 U.S.C. § 2243 (sexual abuse of a minor or ward), and 18 U.S.C. § 2244 (abusive sexual contact).

6. State offenses. Sex offenses identified by a state for which registration as a convicted sex offender by that state is required.

7. Military offenses. Sex offenses that are specified by the Secretary of Defense under 10 U.S.C. § 951.

8. Foreign offenses. Any conviction for a sex offense that was obtained in Canada, the United Kingdom, Australia, New Zealand or by any other foreign country when the United States State Department of its Country Reports on Human Rights Practices has concluded that an independent judiciary, generally or vigorously, enforced the right to a fair trial in that country during the year in which the conviction was obtained.

C. Every convicted sex offender who is required to register with the Navajo Police Department must comply with the registration requirements and will be subject to the notification provisions of this Act and of Title 1 if he or she resides, works or goes to school within Navajo Indian Country.

§ 2104. Classification of sex offenses by tier

A. The Navajo Nation shall apply the tiering classification adopted by Title I to the sex offenses enumerated at 17 N.N.C. §§ 436-449.

B. The Navajo Nation shall apply the tiering classification of the convicting jurisdiction for purposes of registering those convicted sex offenders who come into Navajo Indian Country to reside, work or go to school.

C. For jurisdiction that do not apply a tiering classification, for purposes of sex offender registration, the Navajo Nation shall apply the Title I tiering classification to the sex offense of the convicted sex offender who comes into Navajo Indian Country to reside, work or go to school.

§2105. Sex offenses by Tiers 1, 2, and 3

A. Tier 1 sex offense

1. Any sex offense under 17 N.N.C. §§ 435-449 shall be considered a Tier 1 sex offense.

2. Any sex offense which another jurisdiction has convicted as a Tier I sex offense shall be recognized as a Tier I sex offense by the Navajo Police Department.

B. Tier 2 sex offense

Any sex offense for which registration is required and is classified as Tier 2 by the convicting jurisdiction shall, for purposes of this Act, be recognized as a Tier 2 sex offense by the Navajo Police Department.

C. Tier 3 Offenses

Any sex offense for which registration is required and is classified as Tier 3 by the convicting jurisdiction shall, for purposes of this Act, be recognized as a Tier 3 sex offense by the Navajo Police Department.

§ 2106. Initial registration, maintaining and updating registration

A. Initial registration refers to the first time a convicted sex offender comes in person to register with the Navajo Police Department whether from conviction by a Navajo district court or by another jurisdiction.

B. Maintaining registration refers to a convicted sex offender coming in person to the Navajo Police Department in accordance with the time line required for the tier classification of his or her sex offense.

C. Updating registration refers to a convicted sex offender coming in person to inform the Navajo Police Department within three (3) business days of any change in his or her required registration information. The convicted sex offender shall immediately notify the Navajo Police Department if he or she will travel outside of Navajo Indian Country for more than seven (7) calendar days including international travel.

§ 2107 Frequency and duration of registration

A. Frequency of registration. A convicted sex offender must periodically register according to a time line based on the tier classification of the sex offense. The frequency interval begins from the date of sentencing if incarceration is not a part of the sentence or from the date of release from incarceration.

1. A Tier 1 offense requires registration in person every year.

2. A Tier 2 offense requires registration in person every six (6) months.

3. A Tier 3 offense requires registration in person every three (3) months.

B. Duration of registration. A convicted sex offender must register for the entire period required by the tier classification of the sex offense. The registration period begins from the date of sentencing if incarceration is not a part of the sentence or from the date of release from incarceration.

1. A Tier 1 offense requires registration in person for fifteen (15) years.

2. A Tier 2 offense requires registration in person for twenty-five (25) years.

3. A Tier 3 offense requires registration in person for life.

§ 2108. Information required for registration

A. A convicted sex offender who is required to register shall provide to the Navajo Police Department the following information for his or her initial registration:

1. Full primary name and any nicknames, aliases and pseudonyms regardless of the context in which they may be used.

2. Actual date of birth and any other date of birth used by the convicted sex offender.

3. A general description of the convicted sex offender's physical appearance including any identifying marks such as but not limited to scars, moles, birthmarks, or tattoos.

4. Navajo Nation census number, Certificate of Indian Blood and Navajo Identification Card of which the Navajo Police Department will make a photocopy.

5. Valid social security number and any other social security number the sex offender used in the past whether valid or otherwise.

6. Land line telephone number(s), cellular telephone number(s), and any and all Voice over IP telephone number(s).

7. Valid driver's license or other identification card such as passports or immigration documents of which the Navajo Police Department will make a photocopy.

8. License plate number(s), registration number(s) and description of any vehicle(s) including aircraft and watercraft owned or operated or occasionally driven by the convicted sex offender and any permanent or frequent location where any vehicle, aircraft or watercraft is kept.

9. Residence address at each place a sex offender resides or will reside, and if a street address is not available, a description of the location of the residence(s).

10. Name and address or physical location of temporary lodging if the sex offender does not reside in a permanent residence.

11. Name of employer, if any; place of employment including if self-employed; place where he or she volunteers, is an intern or extern or works in any other capacity; and the telephone number(s) and address(es) of the employer(s).

12. Name and address of the school where the sex offender is or will be a student.

13. Internet names including all email addresses, instant message addresses and identifiers, and any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings including but not limited to social network identifications, twitter accounts, video posting site identifications such as You Tube.

14. Professional license that authorize the sex offender to engage in an occupation or a profession or to carry out a trade or business.

15. If any intentional travel will be done by the sex offender, he or she shall provide notice of destination to the Navajo Police Department at least twenty-one (21) days prior to travel.

B. The Navajo Police Department shall obtain and process the following information for all convicted sex offenders who are required to register as follows:

1. Photographs of the sex offenders.

2. Fingerprints that shall be submitted to the Integrated Automated Fingerprint Identification System (IAFIS).

3. Palm prints that shall be submitted to the FBI Next Generation Identification Program.

4. DNA sample from either the Combined DNA Index System (CODIS) or, if from the sex offender, a DNA sample that shall be submitted to the appropriate state DNA laboratory or to the FBI Laboratory for submission of such DNA sample into CODIS.

5. The statutory language that describes the criminal offense(s) for which the sex offender was convicted and is required to register.

6. Criminal history of the sex offender that includes dates of all arrests; dates of all convictions; his or her status of parole, probation or supervised release; his or her sex offender registration status; and any outstanding arrest warrants.

§ 2109. Initial registration of a convicted sex offender

A. Every sex offender convicted of a sex offense by a Navajo district court shall initially register with the Navajo Police Department within the following timelines:

1. Within three (3) business days prior to his or her release from a Navajo corrections facility; or

2. Within three (3) business days of having been sentenced by a Navajo district court and which sentence does not include incarceration.

B. Every sex offender convicted of a sex offense that requires registration by another jurisdiction and who has come into Navajo Indian Country to reside, work or go to school shall initially register with the Navajo Police Department within three (3) business days of coming into Navajo Indian Country.

C. Every convicted sex offender shall appear in person to register in the Navajo police district wherein he or she resides, work or goes to school. Registration by one police district will automatically make the sex offender's information available to all Navajo police districts.

D. Every convicted sex offender shall bring with him or her all the documentation required for his or her initial registration as enumerated in 17 N.N.C. § 2108(A).

E. The Navajo Police Department shall obtain information on the sex offender that is enumerated at 17 N.N.C. § 2108(B).

F. the Navajo police officer conducting the registration:

1. shall verify that the documentation delivered by the convicted sex offender is documentation about that individual.

2. shall explain the Sex Offender Registration and Notification Act of 2012 Acknowledgement Form to the sex offender and shall obtain his or her signature which verifies that the sex offender understands the purpose, procedures and requirements of registration. The Navajo police officer will provide the explanation in Navajo as necessary.

3. will record all necessary information, take photographs, fingerprints, palm prints, DNA samples and any other records as required by Title I and 17 N.N.C. § 2108.

4. will explain the frequency and duration of registration to the sex offender and that he or she must appear in person at each registration.

5. will provide verbal and written notice to the sex offender that the Navajo Police Department will conduct periodic verification of his or her residence or temporary lodging.

6. shall immediately transmit registration information through the SORNA Exchange Portal to law enforcement agencies of other jurisdictions where a sex offender may be required to register and to the National Clearing Information Center (NCIC) National Sex Offender Registry (NSOR).

G. The Navajo Police Department:

1. Shall maintain current registration information on each convicted sex offender who resides, works, or goes to school within Navajo Indian Country in the Navajo Nation Sex Offender Registry of Sex Offender (NPDR) website.

2. Shall notify through various media all public entities such as, but not limited to, Navajo Head Start and other schools, housing areas, Navajo chapters, hospitals and clinics, business areas and government offices.

3. Will periodically verify the residence or temporary lodging of each registered sex offender.

4. Shall immediately notify the U.S. Marshals Service and any other jurisdiction where the sex offender is registered or is required to register of necessary information including a convicted sex offender's international travel.

§ 2110. Requirements to maintain and update registration

A. A convicted sex offender must maintain his or her registration in accordance with the tier level of the sex offense for which he or she has been convicted as follows:

1. Tier 1 - every year for 15 years; and
2. Tier 2 - every 6 months for 25 years; and
3. Tier 3 - every 3 months for life.

B. The Navajo Police Department shall take a photograph of the convicted sex offender annually from the date of initial registration unless a change in the sex offender's physical appearance requires an updated photograph. A convicted sex offender must appear in person to maintain registration at the Navajo police district office where he or she is registered.

C. A convicted sex offender must update his or her registration within the three (3) business days whenever any required registration information under 17 N.N.C. § 2108 changes including significant changes in physical appearance. The convicted sex offender must appear in person to update registration at the Navajo police district office where he or she is registered.

§ 2111. Reduction of Period to Register

A. A sex offender who was convicted of a Tier 1 sex offense may have his or her registration period reduced from fifteen (15) years to ten (10) years if he or she has complied with registration requirements and has maintained a clean record for ten (10) consecutive years beginning from date of release from incarceration or from the date of sentencing.

B. A sex offender who was a juvenile adjudicated of a Tier 3 sex offense by another jurisdiction may have his or her registration period reduced from life to twenty-five (25) years if he or she has complied with registration requirements and has maintained a clean record for twenty-five (25) consecutive years beginning from date of release from incarceration.

C. For purposes of this Section, a sex offender has a clean record if he or she has:

1. Not been convicted of any offense for which incarceration for more than 1 year may be imposed,
2. Not been convicted of any sex offense
3. Successfully completed, and with no revocation, any period of supervised release, probation, or parole, and
4. Successfully completed a certified sex offender treatment program.

§ 2112. Penalty and civil sanction for failure to register or for absconding

A. Offense. A convicted Indian sex offender who is required to register under this Act and who:

1. Does not register with the Navajo Police Department within statutory time lines shall be found guilty of failure to register, or

2. Initially registered with the Navajo Police Department but subsequently has failed to maintain or update registration shall be found guilty of absconding.

B. Sentence. Any convicted Indian sex offender found guilty of failure to register or of absconding shall be sentenced to incarceration for a term not to exceed 365 days, shall register with the Navajo Police Department upon commencement of incarceration, and thereafter shall maintain registration in accordance with the tier level of the sex offense for which he or she was convicted.

C. Civil Sanction. Any non-Indian convicted sex offender who is required to register under this Act will be in civil violation of the Act if he or she fails to register or absconds. Upon a determination by a Navajo district court that he or she failed to register or absconded, the non-Indian convicted sex offender shall be ordered to pay a fine not to exceed five thousand dollars (\$5,000) and shall be ordered to register within three (3) business days of the district court's determination and may be subject to exclusion.

§ 2113. Procedures when a convicted sex offender does not register within statutory time lines

A. When a convicted sex offender who is required to initially register with the Navajo Police Department does not register within the statutory time line, the Navajo Police Department shall:

1. If the sex offender was referred from another jurisdiction, immediately notify that jurisdiction.

2. Immediately update the NNSORP and NPDR registries to show that the sex offender has not registered with the Navajo Police Department.

3. Locate or attempt to locate the convicted sex offender within Navajo Indian Country and notify him or her that he or she must immediately register as a convicted sex offender.

4. Seek a Navajo district court arrest warrant for an Indian convicted sex offender:

a. If he or she cannot be located within five (5) business days of commencing a search; or

b. Who has not immediately registered after having been given notice to register.

5. Notify the U.S. Marshals Service, the FBI, and the NCIC Wanted Person File if the Navajo Police Department cannot locate the convicted sex offender within five (5) business days of commencing a search.

B. If the NPDR registry indicates that a sex offender has not maintained or updated registration within statutory time lines, the Navajo Police Department shall:

1. If the convicted sex offender was referred from another jurisdiction, immediately notify that jurisdiction, if necessary.

2. Locate or attempt to locate the sex offender within Navajo Indian Country and notify him or her that he or she must immediately maintain or update his or her registration as a convicted sex offender.

3. If the sex offender cannot be located within five (5) business days of commencing a search, notify local and state law enforcement agencies and update the NNSORP and NPDR registries that the sex offender has not maintained or updated his registration.

4. Seek a Navajo district court arrest warrant for an Indian sex offender:

a. If he or she cannot be located within five (5) business days commencing a search or

b. Who has not immediately maintained or updated his or her registration after having been given notice to register.

5. Notify the U.S. Marshals Service, the FBI, and the NCIC Wanted Person File if the Navajo Police Department cannot locate the sex offender within five (5) business days of commencing a search.

§ 2114. The Navajo Nation Sex Offender Registry for the Public (NNSORPP)

The Navajo Police Department shall operate and maintain a public website that shall provide information about convicted sex offenders who reside, work or go to school within Navajo Indian Country.

A. The information shall be maintained in a digitized format and by an electronic database in a form capable of electronic transmission that will automatically update changes in registration information.

B. NNSORP shall be capable of field search capabilities necessary for full participation in the Dru Sjodin National Sex Offender Public Website including the capability to conduct searches by name, country, city and/or town, and zip code and/or geographic radius and that will enable the public to request e-mail notices relating to sex offender information.

C. NNSORP shall include instructions on how a registered sex offender may seek correction of information that he or she contends is erroneous.

D. The information contained in NNSORP shall not be used to injure, harass, or commit a crime against any convicted sex offender named in NNSORP. Any such action may result in civil or criminal penalties.

E. NNSORP shall contain at least the following information on every convicted sex offender:

1. Name including all aliases;
2. A current photograph;
3. A physical description;
4. License plate number and description of his or her vehicle.
5. Residential address, physical address, or physical location of temporary lodging;
6. Address of the place where he or she works;
7. Address of the place where he or she goes to school;
8. Sex offense(s) for which he or she is currently required to register.
9. All sex offenses for which he or she has been convicted; and
10. Information that he or she did not initially register or has not maintained or updated his or her registration.

§ 2115. Navajo Police Department Registry of Sex Offenders ("NPDR")

The Navajo Police Department shall operate and maintain a website that will provide information about convicted sex offenders who reside, work or go to school within Navajo Indian Country.

A. The information in NPDR shall be maintained in a digitized format and by an electronic database in a form capable of electronic transmission that will automatically update changes in registration information.

B. Only the Navajo Police Department may access NPDR and information contained in NPDR may be disseminated to other law enforcement agencies as required by applicable law. NPDR shall not be accessible by the public.

C. The following information, in addition to Section 2108(B), about convicted sex offenders shall be restricted to NPDR.

1. Social security number;
2. Internet identifiers;
3. Any travel and immigration documents;
4. The identity of the victim of the sex offense for which the sex offender is required to register, and
5. If a sex offender is under a witness protection program, the Navajo Police Department may honor the request of the U.S. Marshals Service or other agency responsible for witness protection by not including the original identity of the offender in NNSORP.

§ 2116. Community Notification

Whenever a sex offender registers or maintains or updates his or her information, the Navajo Police Department shall:

A. Immediately update information posted on the Navajo Nation Sex Offender Registry for the Public.

B. Immediately notify any agency, department, or program within Navajo Indian Country that is responsible for criminal investigation, prosecution, child welfare services or sex offender supervision.

C. Immediately notify child protection agencies including agencies responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. § 5119a).

D. Timely notify all entities whose constituents include children and youth such as, but not limited to, schools, Navajo chapters, housing areas and businesses.

§ 2117. Sovereign Immunity and good faith immunity

A. Nothing under this Act shall be construed as a waiver, implied or express, of the sovereign immunity of the Navajo Nation, its departments, agencies, employees or agents.

B. Any person acting under good faith of this Act shall be immune from any civil liability arising out of such actions.

Section Five. Codification

The provisions of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions into the next codification or supplement of the Navajo Nation Code.

Section Six. Savings Clause

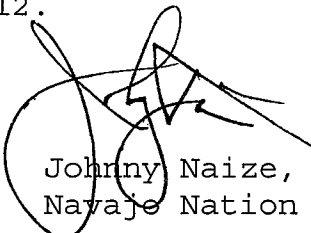
Should any provisions of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, the remainder of the Act shall remain the law of the Navajo Nation.

Section Seven. Effective Date

The provisions of this Act shall become effective in accord with 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 16 in favor and 2 opposed, this 18th day of April 2012.



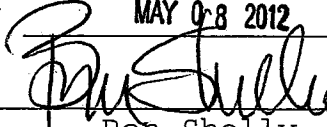
Johnny Naize, Speaker
Navajo Nation Council

May 02, '12
Date

Motion: Edmund Yazzie
Second: Nelson Begaye

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (10), on this _____ day of MAY 08 2012 2012.



Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2012 for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President
Navajo Nation

**LAW AND ORDER COMMITTEE
22nd NAVAJO NATION COUNCIL**

SECOND YEAR 2012

COMMITTEE REPORT

Mr. Speaker,

The **LAW AND ORDER COMMITTEE** to whom has been assigned:

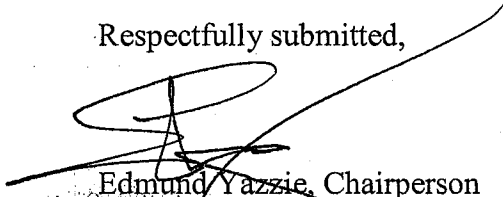
NAVAJO LEGISLATION NO. 0101-12

An Act Relating to Law and Order and Naabik'Iyati: Enacting the Navajo Nation Sex Offender Registration and Notification Act of 2012 at 17 N.N.C. §§2100 et seq.; And Amending the Navajo Nation Criminal Code at 17 N.N.C. §§ 220, 205, 400, 401, 402, 403, 404, 435, 436, 437, 438, 439, 440, 441, 442, 443, 443A, 444, 445, 446, 447, 448, 449, 450, 452 and 453. *Sponsor: Honorable Alton Joe Shepherd*

Has had it under consideration and report the same with a recommendation that it **DO PASS**, with no amendments

and therefore referred to **NAABIK'IYATI COMMITTEE**.

Respectfully submitted,



Edmund Yazzie, Chairperson
Law and Order Committee of the
22nd Navajo Nation Council

Date: March 26, 2012

The vote was 3 in favor and 0 opposed.

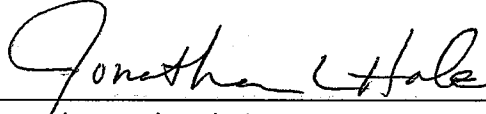
Motion: Russell Begaye

Second: Elmer P. Begaye



MEMORANDUM

TO : Honorable Johnny Naize, Speaker
Navajo Nation Council

FROM : 
Jonathan Hale, Chairperson
Health, Education and Human Services Committee

DATE : April 12, 2012

SUBJECT : Recommending Amendment to Legislation No. 0101-12

The Naabik'iyáti' Committee requested the Health, Education and Human Services and the Navajo Department of Social Services to review Legislation No. 0101-12, Navajo Nation Sex Offender Registration and Notification Act of 2012.

At the regular meeting of April 11, 2012, based on the recommendation for amendment from Regina Holyan, NNDOJ Attorney, and Sharon Begay-McCabe, NDSS Executive Director, the Health, Education and Human Services Committee approved the following amendment:

At page 27, line 6: Insert the following provision:

1. Navajo Nation offences. The sex offenses enumerated at 17 N.N.C. §§ 436-449.
 - a. Conviction of Navajo Nation offenses as enumerated in the Violence Against Family Act at 17 N.N.C. §§ 541, 557 and 558, if such unlawful conduct involves a sex offense as provided for in the Subchapter, shall also require sex offender registration with the Navajo Police Department.

¹HEHSC approved the report with the recommended amendment by the vote of 5 in favor, 0 opposed and 0 abstain.

Cc: 22nd Navajo Nation Council

¹Motioned by the Hon. Joshua L Butler and Seconded by the Hon. Kenneth Maryboy.

NAA'BIK'IYATI' COMMITTEE REPORT
22ND NAVAJO NATION COUNCIL – SECOND YEAR 2012

Mr. Speaker:

The NAA'BIK'IYATI' COMMITTEE to whom has been assigned:

LEGISLATIVE NO. 0101-12

Introduced by Alton Shepherd

AN ACTION

Relating to Law and Order and Naa'bik'iyati'; Enacting the Navajo Nation Sex Offender Registration and Notification Act of 2012 at 17 §§ 2100 ET SEQ.; and Amending the Navajo Nation Criminal Code at 17 N.N.C. §§ 220, 400, 401, 402, 403, 404, 435, 436, 437, 438, 439, 440, 441, 442, 443, 443A, 444, 445, 446, 447, 448, 449, 450, 452, and 453

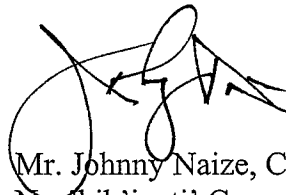
Has had it under consideration and reports the same with the recommendation that it Table without amendment.

(Main motion held by Russell Begaye, seconded by Jonathan Hale; Tabling motion made by Katherine Benally, seconded by Walter Phelps)

and thence referred to the Health, Education and Human Services Committee for Division of Social Services input.

CERTIFICATION

I, hereby certify that the foregoing legislation was duly considered by the Naa'bik'iyati' Committee of the Navajo Nation Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that was it was tabled with a vote of 12 in favor and 1 opposed this 6th day of April 2012.



Mr. Johnny Naize, Chairperson
Naa'bik'iyati' Committee