

PUBLIC NOTICE

A public notice is being provided for proposed revisions or additions to the criminal section of the Tribal Code, Title 26 Offenses and Penalties for Crimes Against Children, regarding sex with student prohibition and sending graphic texts and photos prohibition.

Copies of the proposed amendments are available at the Tribal Records Dept or on the website at: www.TMChippewa.com, or can be obtained in writing by request. Written comments are to be submitted by mail to PO Box 900, Belcourt, ND 58316, by fax at 477-0916 or by email to tribalrecordsdept@yahoo.com. Please contact the Tribal Records Dept at 477-2602, 477-2664 or 477-2677 if there are any questions.

RESOLUTION NUMBER **TMBC1148-05-18** OF THE DULY ELECTED AND CERTIFIED GOVERNING BODY OF THE TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

- WHEREAS, the Turtle Mountain Band of Chippewa Indians, hereinafter referred to as the Tribe, is an unincorporated Band acting under a revised Constitution and By-Laws approved by the Secretary of the Interior on June 16th, 1959 and amendments thereto approved; and
- WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and By-Laws empowers the Tribal Council with the authority to represent the Band and to negotiate with Federal, State, and Local Governments and with private persons; and
- WHEREAS, Article IX (a) Section 1 of the Turtle Mountain Constitution and Bylaws requires a 30-day comment period prior to the adoption of any ordinances or amendments to the Tribal Code, whether proposed by resolution or otherwise. Adoption must occur through a roll call vote of the Tribal Council at a publicly held meeting; and
- WHEREAS, the Tribe is placing proposed amendments out for a public comment for revisions or additions to the criminal section of the Tribal Code, Title 26 Offenses and Penalties for Crimes Against Children regarding sex with student prohibition and sending graphic texts and photos prohibition; now

THEREFORE BE IT RESOLVED that the Tribe is approving a comment period for the attached proposed revisions or additions to the criminal section of the Tribal Code, Title 26 Offenses and Penalties for Crimes Against Children, Section 26.20 and numbered accordingly, regarding sex with student prohibition and sending graphic texts and photos prohibition.

CERTIFICATION

I, the undersigned Tribal Secretary of the Turtle Mountain Band of Chippewa Indians, do hereby certify that the Tribal Council is composed of nine (9) members of whom **eight (8)** constituting a quorum were present at a meeting duly called, convened and held on the **29th day of May, 2018** that the foregoing resolution was adopted by an affirmative vote of **seven (7) in favor**— Representatives Roman F. Marcellais, Alice G. Lunday, Tyrrell DeCoteau, Don Keplin, Lynn Gourneau, Jim Baker and Chad Counts; one (1) absent—Rep. Stuart LaFountain; with the Chairman not voting.


Joleen A. Morin, Tribal Secretary 5/31/18

SIGNED INTO LAW/Dated this 31st day of May, 2018
 VETOED/Dated this _____ day of _____, 2018


Jamie Azure, Tribal Chairman

PROPOSED AMENDMENTS TO TITLE 26, SECTION 26.20 OF THE TURTLE
MOUNTAIN TRIBAL CODE, CRIMES TO CHILDREN

**Sexual assault of a child by a school staff person or a person who works or
volunteers with children.**

(1) In this section:

(a) "School" means a public or private elementary or secondary school, or a tribal school.

(b) "School staff" means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class 4 Offense if all of the following apply:

(a) The child is enrolled as a student in a school or a school district or if the student is a child with a developmental disability which renders the student incapable of consent and is less and 21.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

(c) The student or is less than 21 years of age

(3)

(a) A person who has attained the age of 21 years and who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children may not have sexual contact or sexual intercourse with a child who has attained the age of 16 years, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position.

(b) Whoever violates this provision is guilty of a Class 4 Offense.

(c) Paragraph (a) does not apply to an offense to which sub. (2) applies.

(d) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact directly with children:

1. Teaching children.
2. Child care.
3. Youth counseling.
4. Youth organization.
5. Coaching children.
6. Parks or playground recreation.
7. School bus driving.

Exposing a child to harmful material or harmful descriptions or narrations.

(1) DEFINITIONS. In this section:

(ag) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children.

(ar) "Harmful material" means:

1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or

2. Any book, pamphlet, magazine, printed matter however reproduced or recording that contains any matter enumerated in subd. 1., or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children.

(b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity, sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:

1. Predominantly appeals to the prurient, shameful or morbid interest of children;
2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and
3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.

(d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.

(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(2) CRIMINAL PENALTIES.

(a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.
2. The person has face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.

(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class 3 Offense if any of the following applies:

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face-to-face contact with the child before or during the communication.

(b) Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class 2 Offense.

1. The person knows or reasonably should know that the child has not attained the age of 18 years.

2. The person has face-to-face contact with the child.

(c) It is an affirmative defense to a prosecution for a violation of pars. (a) 2., (am) 2., and (b) 2. if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

(3) SEVERABILITY. The provisions of this section, including the provisions are severable.