

## **Chapter 6 - CRIMINAL CODE**

**Note: this is not the entire Chapter 6 Criminal Code; you will only see codes pertaining to General Information, Offenses Against Persons and Sexual Offenses.**

**For more information in reviewing the Fort McDowell Tribal Code please contact the Prosecutors Office at 480-789-7670.**

### **GENERAL INFORMATION:**

#### **Sec. 6-1. ELIGIBLE AGE FOR COURT JURISDICTION.**

The Fort McDowell Tribal Court shall have no jurisdiction to try any person under the age of eighteen (18) years as an adult, unless the juvenile court finds that the interests of the Nation or of the juvenile in question would be served better if a juvenile sixteen (16) years of age or older were tried as an adult.

#### **Sec. 6-2. CLASSIFICATION OF CRIMES; SENTENCING RANGES.**

The particular classification of each offense in the Fort McDowell Criminal Code is expressly designated in the subsection defining it.

For purposes of penalty, offenses are designated as Class I, Class II, Class III, Class IV or Class V.

The following are presumptive sentencing ranges for terms of incarceration for each class of offense. When sentencing an offender the Court shall impose a term of incarceration within the minimum and maximum terms of incarceration for each class of offense. Except to the extent that a provision of this Code specifically prohibits suspension, the court may suspend imposition of all or a portion of a sentence of incarceration.

**Class I** - A Class I offense shall carry a minimum term of incarceration of six months (180 days) and a maximum term of one year (365 days). In addition to the term of incarceration, a person convicted of a

Class I offense may also be required to pay a fine of not more than \$5,000.00.

**Class II** – A Class II offense shall carry a minimum term of incarceration of three months (90 days) and a maximum term of incarceration of nine months (270 days). In addition to a term of incarceration, a person convicted of a Class II offense may also be required to pay a fine of not more than \$3,000.00.

**Class III** – A Class III offense shall carry a minimum term of incarceration of sixty (60) days and a maximum term of incarceration of six months (180 days). In addition to a term of incarceration, a person guilty of a Class III offense may also be required to pay a fine of not more than \$1,000.00.

**Class IV** – A Class IV offense shall carry a minimum term of incarceration of not less than thirty (30) days and a maximum term of incarceration of three months (90 days). In addition to a term of incarceration, a person guilty of a Class IV offense may also be required to pay a fine of not more than \$750.00.

**Class V** – A Class V offense shall carry a maximum term of incarceration of thirty (30) days. In addition to a term of incarceration, a person guilty of a Class V offense may also be required to pay a fine of not more than \$500.00.

### **Sec. 6-3. DEFINITIONS.**

In this chapter, unless the context otherwise requires:

**“Court”** means any tribal judge, judge pro tempore, administrative judge or Supreme Court justice or any other person acting in those capacities under authority of the Nation or the Tribal Council of the Nation.

**“Dangerous instrument”** means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury.

**“Establishment”** means business of any type in any location including but not limited to: store, booth, table or kiosk.

**“Firearm”** means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun or other weapon that will or is designed to or may readily be converted to expel a projectile by the action of expanding gases, except that it does not include a firearm in permanently inoperable condition.

**“Intentionally”** or **“with the intent to”** means, with respect to result or to conduct described by a provision of this chapter defining an offense, that a person’s objective is to cause that result or to engage in the conduct.

**“Knowingly”** means, with respect to conduct or to a circumstance described by a provision of this chapter defining an offense that a person is aware or believes that his or her conduct is of a nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.

**“Law Enforcement Officer or Official”** means, a person acting in his or her official capacity as an employee of a law enforcement agency.

**“Minor”** means, for the purpose of this Chapter, age eighteen years of age unless a specific offense provision of this Chapter defines it differently.

**“Nation’s Officer or Official”** means, a person acting in his or her official capacity in an elected or appointed position of the Nation.

**“Negligently”** means, with respect to conduct or to a circumstance described by a provision of this chapter defining an offense that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

**“Physical injury”** means the impairment of physical condition.

**“Reasonable”** means that that degree of care which a person or ordinary prudence would exercise in the same or similar circumstances to avoid a foreseeable harm to another or oneself.

**“Recklessly”** means, with respect to a result or to a circumstance described by a provision of the chapter defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

**“Restrain”** means to confine or to hold back from acting, proceeding or moving.

**“Serious physical injury”** includes physical injury that creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss, break or impairment of the function of any bodily organ, limb or body part.

**“Voluntary Intoxication”** means intoxication resulting from the voluntary ingestion, consumption, inhalation, or injection of alcohol, an illegal or controlled substance prohibited under Article 6 of this Code, other psychoactive substances or the abuse of prescription medications is not a defense for any criminal act or requisite state of mind and does not constitute insanity.

**“Willfully”** means, with respect to a result, to conduct or to a circumstance described by a provision of this chapter defining an offense that a person’s objective is to cause that result or circumstance or to voluntarily engage in the conduct, without justifiable excuse.

## **ARTICLE III. OFFENSES AGAINST PERSONS.**

### **Sec. 6-35. ASSAULT.**

A. A person commits assault by:

1. intentionally, knowingly or recklessly causing any physical injury to another person; or,
2. intentionally placing another person in reasonable fear of imminent physical injury by some action or conduct; or
3. knowingly touching another person with the intent to injure, insult or provoke such person.

**Assault is a Class II offense**

### **Sec. 6-36. AGGRAVATED ASSAULT.**

A. A person commits aggravated assault if such person commits assault as defined in Sec. 6-51 under any of the following circumstances:

1. If such person causes serious physical injury to another.
2. If such person uses deadly weapon or dangerous instrument.
3. If such person is eighteen (18) years of age or more and commits the assault upon a minor the age of fifteen (15) years or under.
4. If the assault is committed upon a person 55 years of age or older and the perpetrator is 10 or more years younger than the victim.
5. If such person commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to effectively resist is substantially impaired.
6. If the assault is committed upon any law enforcement official; or a Nation's officer, judge, or other officer of the Fort McDowell Tribal Courts.

B. Aggravated Assault is a Class I offense. Any person convicted pursuant to subsection (d) shall be sentenced to a mandatory minimum jail sentence of ten (10) days that shall not be suspended by the court, in addition to any other sentence.

**Sec. 6-38. THREATENING OR INTIMIDATING.**

- A. A person commits threatening or intimidating if such person, with the intent to terrify or in reckless disregard of the risk of terrifying, threatens by word or conduct to cause physical injury to another person or serious damage to property of another and that other person is reasonably threatened or intimidated by the person's word or conduct.
- B. A person commits intimidating if such person threatens by word or conduct to cause physical injury to another person or damage to the property of another with the intent to induce another to do an act against his or her will or to refrain from doing a lawful act.

**Threatening or intimidating is a Class II offense.**

**Sec. 6-39. HOMICIDE.**

- A. A person commits homicide by intentionally, knowingly or recklessly causing the death of another person.
- B. Homicide is a Class I offense. A person convicted of homicide shall serve a mandatory minimum jail sentence of six (6) months and shall not be eligible for suspension of jail sentence, probation, pardon or release from custody on any basis until the jail sentence imposed is fully served.

**Sec. 6-40 HARASSMENT.**

- A. A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:
  - 1. Anonymously or otherwise communicates or causes a communication with another person by verbal, electronic,

mechanical, telegraphic, telephonic or written means in a manner that harasses.

2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist.
  3. Repeatedly commits an act or acts that harass another person.
  4. Surveys or causes another person to survey a person for no legitimate purpose.
  5. On more than one occasion makes a false report to a law enforcement, credit or social service agency.
  6. Interferes with the delivery of any public or regulated utility to a person.
- B. For purposes of this section, "harassment" means conduct directed at a specific person, which would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person.
- C. Harassment is a Class V offense.

#### **Sec. 6-41. USE OF TELEPHONE TO COMMIT OFFENSE.**

- A. A person is guilty of use of telephone to commit offense when such person, with intent to terrify, intimidate, threaten, harass, annoy or offend, uses a telephone and:
1. Uses any obscene, lewd or profane language
  2. Suggests any lewd or lascivious act.
  3. Threatens to inflict injury or physical harm to the person or property of any person.
- B. Makes repeated telephone calls that reasonably disturb the peace and quiet or right to privacy of any person at the place where the telephone calls are received.
- C. The use of obscene, lewd or profane language or the making of a threat or statement as set forth in subsection (a) of this section shall be prima facie evidence of intent to terrify, intimidate, threaten, harass, annoy or offend.

- D. Any offense committed by use of a telephone as set forth in this section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.
- E. Use of telephone to commit offense is a Class IV offense.

**Sec. 6-42 STALKING.**

- A. A person commits stalking if the person intentionally or knowingly engages in a course of conduct that is directed toward another person if that conduct either:
  - 1. Would cause a reasonable person to fear for that person's safety or the safety of that person's immediate family and that person in fact fears for their safety or the safety of that person's immediate family.
  - 2. Would cause a reasonable person to fear imminent physical injury or death to that person or that person's immediate family and the person in fact fears imminent physical injury or death to that person or that person's immediate family.
- B. For the purpose of this section:
  - 1. "Course of conduct" means maintaining visual or physical proximity to a specific person or directing verbal or written threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include activity protected under the Indian Civil Rights Act, 215 U.S.C. Sec. 1302.
  - 2. "Immediate family" means a spouse, parent, child or sibling or any other person who regularly resides in a person's household or resided in a person's household within the past six months.
- C. Stalking is a Class II offense.



## **ARTICLE IV. SEXUAL OFFENSES**

### **Sec. 6-55. DEFINITIONS.**

In this chapter, unless the context otherwise requires:

(a) "Minor" means any person who has not attained the age of eighteen (18) years.

(b) "Oral sexual contact" means oral contact with the penis, vulva, anus or female breast.

(c) "Prostitution" means engaging in and/or agreeing or offering to engage in sexual contact or intercourse with another person in exchange for money, goods or services with that person or any other person.

(d) "Sexual contact" means any direct or indirect fondling or manipulating of, or contact with any part of the genitals, anus or female breast.

(e) "Sexual intercourse" means penetration by the penis, or into the vulva or anus by any part of the body or by any object, or manual masturbatory contact with penis or vulva.

(f) "Without consent" includes any of the following:

1. The victim is coerced by the imminent or immediate use or threatened use of force against a person or property; or
2. The victim is incapable of consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of awareness and such conditions known or reasonably should have been known to defendant; or
3. The victim is intentionally deceived as to the nature of the act or the identity of the individual committing the act.

**Sec. 6-57. SEXUAL ASSAULT.**

- A. person commits sexual assault by knowingly or intentionally engaging in sexual intercourse, sexual contact or oral sexual contact with any person and without consent of that person. For purposes of this provision, a person fifteen (15) years or younger can not legally consent.
- B. Sexual assault is a Class I offense.

**Sec. 6-58. SEXUAL ASSAULT OF A MINOR.**

- A. A person commits sexual assault of a minor by:
  - 1. knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with a minor 15 years of age or younger, or
  - 2. knowingly or intentionally engaging in sexual contact with a minor fifteen (15) years of age or older not their lawful spouse and without consent, or
  - 3. knowingly or intentionally engaging in oral sexual contact or sexual intercourse with any person not his spouse who is under the age of eighteen (18) years, or
  - 4. knowingly causing a minor fifteen (15) years or younger to directly or indirectly fondle or manipulate any part of the genitals, anus or female breasts of such person or another.
- B. Sexual assault of a minor is a Class I offense. A person convicted of sexual assault of a minor shall serve a mandatory minimum jail sentence of thirty (30) days and shall not be eligible for suspension of sentence, probation, pardon or release from custody on any basis until the jail sentence imposed by the Court has been fully served.
- C. A person convicted of sexual assault of a minor for a second or subsequent time shall be sentenced to a mandatory jail sentence of one (1) year and shall not be eligible for suspension of sentence, probation, pardon or release from custody on any basis until the one year jail sentence is fully served.