



Kalispel Tribe of Indians
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RESOLUTION

WHEREAS, the Kalispel Business Committee is the duly Constituted governing body of the Kalispel Tribe by the authority of the Constitution and By-Laws for the Kalispel Tribe; and

WHEREAS, under the Constitution and By-Laws of the Tribe, the Kalispel Business Committee is charged with the duty of protecting the health, security and general welfare of the Kalispel Tribe and all reservation residents; and

WHEREAS, the Kalispel Business Committee by Resolution 2011-50 adopted the Sex Offender Registration Code as Chapter 9A of the Tribe's Law and Order Code; and


WHEREAS, the Code as adopted contains three (3) incorrect sections references as to certain military offenses within sections 9A-3.02 (D); 9A-3.03 (D), and 9A-3.04 (D), and


WHEREAS, it is necessary to correct those section references to accurately Tier those offenses in to comply with federal law.

NOW THEREFORE, BE IT RESOLVED that the Sex Offender Registration Code adopted 7/12/2011 by Resolution No. 2011-50 shall be amended as attached to accurately reflect the appropriate Tier.

CERTIFICATION

The Kalispel Business Committee adopted the foregoing RESOLUTION at a meeting held on the 19 day of July, 2011, at the Tribal office on the Kalispel Indian Reservation near Usk, Washington, with the required quorum present by a vote of 3 FOR and 0 AGAINST.


GLEN NENEMA, CHAIRMAN
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2014)


DARREN HOLMES, SECRETARY
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2013)



KALISPEL TRIBAL COUNCIL
KALISPEL INDIAN RESERVATION
USK, WASHINGTON 99180

MEMORANDUM:

To: Kalispel Tribal Council

FROM: Kalispel Legal Department

SUBJECT:

Corrections to Kalispel Law and Order Code Chapter 9A.

COUNCIL ACTION: Resolution 2011-56

- Correct numbering at page 10 section 9A-3.02 (D) to read "...similar to those outlined in 9A-3.02 A., B., C., or D.
- Correct numbering at page 11 section 9A-3.03 (D) to read "...similar to those outlined in 9A-3.03 A., B., C., or D.
- Correct numbering at page 12 section 9A-3.04 (D) to read "...similar to those outlined in 9A-3.04 A., B., C., or D.

MOTION: Ray Pierre

SECOND: Betty Piengkham

COUNCIL MEMBERS

VOTE CAST
(YES) (NO)

<u>Ray Pierre III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Betty Piengkham</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Curt Holmes</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

COUNCIL ACTIONS:

SIGNED: Glen Nene

FOR: 3 AGAINST: 0

ABSTAINED: _____

FOR: _____

AGAINST: _____

DATE: 7-19-11

4. 18 U.S.C. §2252B (misleading domain names on the internet),
5. 18 U.S.C. §2252C (misleading words or digital images on the internet),
6. 18 U.S.C. §2422(a) (coercion to engage in prostitution),
7. 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct),
8. 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places)
9. 18 U.S.C. §2423(d) (Transportation of an adult – ancillary offenses)
10. 18 U.S.C. §2424 (failure to file factual statement about an alien individual), or
11. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

D. Certain Military Offenses: Any Military offenses specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. No. 105-119, (codified at 10 U.S.C. §951 note), that is similar to those outlined in 9A-3.04~~2~~ A., B., C., or D.

9A-3.03 TIER 2 OFFENSES

- A. Recidivism and Felonies: Unless otherwise covered by section 9A-3.03, any Sex Offense, which is not the first Sex Offense for which a person has been convicted of, is considered to be a “Tier 2” Offense.
- B. Offenses Involving Minors: A “Tier 2” offense includes any Sex Offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such offense, that involves:
1. The use of Minors in prostitution, including solicitations,
 2. Enticing a Minor to engage in criminal sexual activity,
 3. A non-forcible Sexual Act with a Minor 16 or 17 years old,
 4. Sexual contact with a Minor 13 years of age or older, whether direct or through the clothing, that involves the intimate parts of the body,
 5. The use of a Minor in a sexual performance, or

6. The production for distribution of child pornography.

C. Certain Federal Offenses: Conviction for any of the following federal offenses shall be considered a conviction for a “Tier 2” offense:

1. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
2. 18 U.S.C. §2244 (abusive sexual contact, victim 13 years of age or older),
3. 18 U.S.C. §2251 (sexual exploitation of children),
4. 18 U.S.C. §2251A (selling or buying of children),
5. 18 U.S.C. §2252 (production or distribution of material involving the sexual exploitation of a minor),
6. 18 U.S.C. §2252A (production or distribution of material containing child pornography),
7. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the united states),
8. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
9. 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution),
10. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct),
11. 18 U.S.C. §2423(d) (Transportation of a minor - ancillary offenses)

D. Certain Military Offenses: Any military offenses specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L.105-119, (codified at 10 U.S.C. §951 note), that is similar to those outlined in 9A-3.023 A., B., C., or D. shall be considered a “Tier 2” offense.

9A-3.04 TIER 3 OFFENSES

A. Recidivism and Felonies: Any Sex Offense that is punishable by more than one year in jail where the offender has at least one prior conviction for a Tier 2 Sex Offense or has previously become a Tier 2 sex offender, is a “Tier 3” offense.

- B. General Offense: A “Tier 3” offense includes any Sex Offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:
1. Non-parental kidnapping of a minor,
 2. A sexual act with another by force or threat,
 3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or
 4. Sexual contact with a minor 12 years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through clothing.
- C. Certain Federal Offenses: Conviction of any of the following federal offenses shall be considered conviction for a “Tier 3” offense:
1. 18 U.S.C. §2241 (aggravated sexual abuse),
 2. 18 U.S.C. §2242 (sexual abuse),
 3. 18 U.S.C. §2243 (sexual abuse of a minor or ward), or
 4. 18 U.S.C. §2244 (abusive sexual contact) where the victim is 12 years of age or younger.
- D. Certain Military Offenses: Any Military offenses specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. 105-119, (codified at 10 U.S.C. §951 note), that is similar to those outlined in 9A-3.034 A., B., C., or D shall be considered a “Tier 3” offense.

CHAPTER 9A

SEX OFFENDER REGISTRATION CODE

SECTION 9A-1: TITLE, LEGISLATIVE HISTORY, PURPOSE, CREATION OF REGISTRY, SUPERSESION, AND SEVERABILITY

9A-1.01 TITLE

This section shall be known as the Sex Offender Registration Code.

9A-1.02 LEGISLATIVE HISTORY

The Kalispel Business Committee enacted this statute to implement Title I of the Adam Walsh Act, also known as the Sex Offender Registration and Notification Act (SORNA) (42 U.S.C. §16927). Resolution No. 2007-50 specified that the Tribe elected to participate as a registration jurisdiction in the National Sex Offender Registry system.

9A-1.03 PURPOSE

The intent of this Code is to implement the federal Sex Offender Registration and Notification Act (SORNA). Implementation is in the best interest of the Tribe, its children, and the community. This code shall be interpreted liberally to comply with the terms and conditions of the SORNA as presently written or hereafter amended.

9A-1.04 CREATION OF REGISTRIES

- A. Sex Offender Registry. There is hereby established a sex offender registry, which Tribal Law Enforcement or its designee shall maintain and operate pursuant to the provisions of this Code, as currently written or hereafter amended.
- B. Public Sex Offender Registry Website. There is hereby established a public sex offender registry website, which Tribal Law Enforcement or its designee shall maintain and operate pursuant to the provisions of this Code, as currently written or hereafter amended. Any tribal specific national website provided or approved by the Office of Sex Offender Managing, Apprehending, Registering, and Tracking (SMART) shall qualify as a public sex offender registry website under this Code.

9A-1.05 SUPERSESION

This Chapter supersedes other laws or regulations relating to the same subject matter. If any provision of this Chapter is in conflict with any other law of the Tribe or any rule promulgated thereunder, this Chapter shall govern and control and the other law or rule shall be deemed superseded for the purpose of this Chapter. Amendments to this Chapter shall have the same effect.

9A-1.06 RETROACTIVITY

This Chapter shall apply retroactively to individuals with convictions that require registration under this Code even though the individual did not have said Code at the time of conviction.

9A-1.07 SEVERABILITY

If any provision of this Chapter or its application to any person or circumstance is held invalid, the remainder of the Chapter or the application of the provision to other persons or circumstances is not affected.

9A-1.08 NO RIGHT OF ENTRY

Nothing in this Chapter negates the inherent authority of the Kalispel Tribe of Indians to Exclude people from the Kalispel Indian Reservation.

SECTION 9A-2: DEFINITIONS AND COVERED OFFENSES

9A-2.01 DEFINITIONS

The Definitions below apply to this Chapter only.

- A. "Convicted" shall mean for an adult sex offender, that the sex offender has been subject to penal consequences based on the conviction however the conviction may be styled. A juvenile offender is "convicted" for the purposes of this Code when prosecuted as an adult for a Sex Offense, or is adjudicated delinquent as a juvenile for a Sex Offense, but only if the offender is 14 years of age or older at the time of the offense.

- B. "Employee" shall mean and include, but is not limited to, an individual who is self-employed or works for any other entity or business, regardless of compensation. Volunteers, interns, externs, and apprentices are included within the definition of Employee for registration purposes under this Code.
- C. "Foreign Convictions" shall mean convictions obtained outside of the United States.
- D. "Immediate" and "immediately" shall mean within three (3) business days.
- E. "Imprisonment" shall mean incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in any local, state, tribal facility, or house arrest for purposes of incarceration as well as in a federal, military, foreign, BIA, private or contract facility.
- F. "Jurisdiction" shall mean the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe, including the Kalispel Tribe of Indians.
- G. "Minor" shall mean any individual who has not attained the age of 18 years or an individual who has not attained the age of 21 years and has been determined a Youth In Need of Care (YINOC) and the Kalispel Tribal Court has continued jurisdiction over said individual.
- H. "Reservation" shall mean the Kalispel Indian Reservation as defined in the Law and Order Code of the Kalispel Tribe of Indians Chapter 1 section 1-2.03 and includes all Tribally owned enterprises and entities for registration purposes.
- I. "Reside", "Residing", or "Resides" "Residence" or "Residency" shall mean, with respect to an individual, the location of the individual's home, or any other place where the individual habitually stays, lives, or sleeps. Resides shall also mean and include those

who will be visiting, staying, living, or sleeping on the Reservation. For the purposes of this Code, a person may have more than one place where they Reside.

- J. “Sex Offense” shall mean and includes those offenses contained in section 42 U.S.C. §16911(5) and those offenses enumerated in section 9A-2.02 of this Chapter, or as defined in Chapter 9A section K or any other covered offense under Tribal law. An offense involving consensual sexual conduct is not a Sex Offense for the purposes of this Code if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense.
- K. “Sex Offender” shall mean a person convicted of a Sex Offense in any local, state, tribal, military or foreign court under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in 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 occurred.
- L. “Student” shall mean a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, an institution of higher education, or who is home schooled.
- M. “Sexual Act” shall mean:
 - 1. Contact between the penis and the vulva or the penis and the anus, and for purposes of this Code, contact involving the penis occurs upon penetration, however slight,
 - 2. Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus,
 - 3. The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with any intent to abuse, humiliate, harass,

degrade, or arouse or gratify the sexual desire of any person, or

4. The intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of 18 years with intent to abuse, humiliate, harass, degrade, or arouse, or gratify the sexual desire of any person. This shall not include the lawful touching conducted by law enforcement officials within the course and scope of their official duties.
- N. “Sexual Contact” shall mean the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with intent to abuse, humiliate, harass, degrade, or arouse, or gratify the sexual desires of another person.
- O. “SORNA” means The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 Pub. L. 109-248, (42 U.S.C. §16911 *et. seq.*, as amended).
- P. “Sex Offender Registry” means the registry of sex offenders, and the notification program, maintained by Tribal Law Enforcement or its designee.
- Q. “NSOR” means The National Sex Offender Registry, the national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.
- R. “SMART Office” means The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. §16945.
- S. “NSOPW” or “NSOPR” means the Dru Sjodin National Sex Offender Public Website, the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.
- T. “Tier 1 Sex Offender” or a “sex offender” designated as “Tier 1”, is one that has been

convicted of a “Tier 1” Sex Offense as defined in section 9A-3.01.

U. “Tier 2 Sex Offender” or a “sex offender” designated as “Tier 2”, is one that has been either convicted of a “Tier 2” Sex Offense as defined in section 9A-3.02, or who is subject to the recidivist provisions of 3.02(B).

V. “Tier 3 Sex Offender” or a “sex offender” designated as “Tier 3”, is one that has been either convicted of a “Tier 3” Sex Offense as defined in section 9A-3.03, or who is subject to the recidivist provisions of 3.03(B).

9A-2.02. COVERED OFFENSES:

Offenders who reside or are Employees or Students within the Reservation that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the following offenses, are subject to the requirements of this Code:

A. Tribal Offenses: Any offense listed in the Kalispel Tribe’s Criminal Code that contains a Sexual Act.

B. Federal Offenses: A conviction for any of the following, and any other offense hereafter included in the definition of “Sex Offense” at 42 U.S.C. §16911(5):

1. 18 U.S.C. §1591 (sex trafficking of children),
2. 18 U.S.C. §1801 (video voyeurism of a minor),
3. 18 U.S.C. §2241 (aggravated sexual abuse),
4. 18 U.S.C. §2242 (sexual abuse),
5. 18 U.S.C. §2243 (sexual abuse of a minor or ward),
6. 18 U.S.C. §2244 (abusive sexual contact),
7. 18 U.S.C. §2245 (offenses resulting in death in context of a sex crime),
8. 18 U.S.C. §2251 (sexual exploitation of children),
9. 18 U.S.C. §2251A (selling or buying of children),
10. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),

11. 18 U.S.C. §2252A (material containing child pornography),
12. 18 U.S.C. §2252B (misleading domain names on the internet),
13. 18 U.S.C. §2252C (misleading words or digital images on the internet),
14. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
15. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
16. 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity),
17. 18 U.S.C. §2423 (transportation of minors),
18. U.S.C. §2424 (failure to file factual statement about an alien individual),
19. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

- C. Foreign Offenses: Any conviction for a Sex Offense involving any conduct listed in this section under 9A-2.02 F. that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in 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 occurred.
- D. Military Offenses: any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. 105-119 (codified at 10 U.S.C. 951 note).
- E. Juvenile Offenses or Adjudications: Any Sex Offense, or attempt or conspiracy to commit a Sex Offense committed by a minor who is 14 years of age or older at the time of the offense.

F. Jurisdiction Offenses: Any Sex Offense committed in any jurisdiction that involves:

1. Any type or degree of genital, oral, or anal penetration,
2. Any sexual touching of or contact with a person's body, either directly or through the clothing,
3. Kidnapping of a minor,
4. False imprisonment of a minor,
5. Solicitation to engage a minor is sexual conduct understood broadly to include any direction, request, enticement, persuasion or encouragement of a minor to engage in sexual conduct,
6. Use of a minor in a sexual performance,
7. Solicitation of a minor to practice prostitution,
8. Possession, production, or distribution of child pornography,
9. Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,
10. any conduct that by its nature is a Sex Offense against a minor, and
11. any offense similar to those outlined in:
 - a. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
 - b. 18 U.S.C. §1801 (video voyeurism of a minor),
 - c. 18 U.S.C. §2241 (aggravated sexual abuse),
 - d. 18 U.S.C. §2242 (sexual abuse),
 - e. 18 U.S.C. §2243 (sexual abuse of a minor or ward),
 - f. 18 U.S.C. §2244 (abusive sexual contact),