HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

HO-CHUNK NATION CODE (HCC)

TITLE 9 – CRIMINAL CODE

SECTION 944 – CRIMES AGAINST SEXUAL MORALITY

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SUBCHAPTER I
LEGISLATIVE INTENT

944.01 Intent. The Nation recognizes that it has a duty to encourage high moral standards. Although the Nation does not regulate the private sexual activity of consenting adults, the Nation does not condone or encourage any form of sexual conduct outside the institution of marriage. Marriage is the foundation of family and society. Its stability is basic to morality and civilization, and of vital interest to society and this Nation.

SUBCHAPTER II
SEXUAL CRIMES WHICH AFFECT THE FAMILY

944.05 Bigamy.
(1) Whoever does any of the following is guilty of a felony:
(a) Contracts a marriage in this jurisdiction with knowledge that his or her prior marriage is not dissolved; or
(b) Contracts a marriage in this jurisdiction with knowledge that the prior marriage of the person he or she marries is not dissolved; or
(c) Cohabits in this jurisdiction with a person whom he or she married outside this jurisdiction with knowledge that his or her own prior marriage had not been dissolved or with knowledge that the prior marriage of the person he or she married had not been dissolved.
(2) In this section "cohabit" means to live together under the representation or appearance of being married.

944.06 Incest. Whoever marries or has nonmarital sexual intercourse, as defined in s. 948.01 (6), with a person he or she knows is a blood relative and such relative is in fact related in a degree within which the marriage of the parties is prohibited by the law of this jurisdiction is guilty of a felony.

SUBCHAPTER III
FORNICATION; GRATIFICATION

944.15 Public fornication.
(1) In this section, "in public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual intercourse.
(2) Whoever has sexual intercourse in public is guilty of a Class A misdemeanor.

944.17 Sexual gratification.
(1) In this section, "in public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification.
(2) Whoever does any of the following is guilty of a Class A misdemeanor:
(a) Commits an act of sexual gratification in public involving the sex organ of one person and the mouth or anus of another.

(c) Commits an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal.

(d) Commits an act of sexual gratification involving his or her sex organ, mouth or anus and the sex organ of an animal.

(3) Subsection (2) does not apply to a mother's breast-feeding of her child.

SUBCHAPTER IV
OBSCENITY

944.20 Lewd and lascivious behavior.

(1) Whoever does any of the following is guilty of a Class A misdemeanor:

(a) Commits an indecent act of sexual gratification with another with knowledge that they are in the presence of others; or

(b) Publicly and indecently exposes genitals or pubic area.

(2) Subsection (1) does not apply to a mother's breast−feeding of her child.

944.21 Obscene material or performance.

(1) The legislature intends that the authority to prosecute violations of this section shall be used primarily to combat the obscenity industry and shall never be used for harassment or censorship purposes against materials or performances having serious artistic, literary, political, educational or scientific value. The legislature further intends that the enforcement of this section shall be consistent with the first amendment to the U.S. constitution, Article X, Section 1.(a)(1) of the Ho-Chunk Nation Constitution and the compelling interest in protecting the free flow of ideas.

(2) In this section:

(a) "Community" means this state.

(am) "Exhibit" has the meaning given in s. 948.01 (1d).

(b) "Internal revenue code" means the Federal Internal Revenue Code.

(c) "Obscene material" means a writing, picture, film, or other recording that:

1. The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole;

2. Under contemporary community standards, describes or shows sexual conduct in a patently offensive way; and

3. Lacks serious literary, artistic, political, educational or scientific value, if taken as a whole.

(d) "Obscene performance" means a live exhibition before an audience which:

1. The average person, applying contemporary community standards, would find appeals to the prurient interest if taken as a whole;

2. Under contemporary community standards, describes or shows sexual conduct in a patently offensive way; and

3. Lacks serious literary, artistic, political, educational or scientific value, if taken as a whole.

(dm) "Recording" has the meaning given in s. 948.01 (3r).

(e) "Sexual conduct" means the commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.

(f) "Wholesale transfer or distribution of obscene material" means any transfer for a valuable consideration of obscene material for purposes of resale or commercial distribution; or any distribution of obscene material for commercial exhibition. "Wholesale transfer or distribution of obscene material" does not require transfer of title to the obscene material to the purchaser, distributee or exhibitor.

(3) Whoever does any of the following with knowledge of the character and content of the material or performance and for commercial purposes is subject to the penalties under sub. (5):

(a) Imports, prints, sells, has in his or her possession for sale, publishes, exhibits, plays, or distributes any obscene material.

(b) Produces or performs in any obscene performance.

(c) Requires, as a condition to the purchase of periodicals, that a retailer accept obscene material.

(4) Whoever does any of the following with knowledge of the character and content of the material is subject to the penalties under sub. (5):

(a) Distributes, exhibits, or plays any obscene material to a person under the age of 18 years.

(b) Has in his or her possession with intent to distribute, exhibit, or play to a person under the age of 18 years any obscene material.

(5) (a) Except as provided under pars. (b) to (e), any person violating sub. (3) or (4) is subject to a Class A forfeiture.

(b) If the person violating sub. (3) or (4) has one prior conviction under this section, the person is guilty of a Class A misdemeanor.

(c) If the person violating sub. (3) or (4) has 2 or more prior convictions under this section, the person is guilty of a felony.

(d) Prior convictions under pars. (b) and (c) apply only to offenses occurring on or after the date of enactment of this code.

(e) Regardless of the number of prior convictions, if the violation under sub. (3) or (4) is for a wholesale transfer or distribution of obscene material, the person is guilty of a felony.

(5m) A contract printer or employee or agent of a contract printer is not subject to prosecution for a violation of sub. (3) regarding the printing of material that is not subject to the contract printer's editorial review or control.

(6) Each day a violation under sub. (3) or (4) continues constitutes a separate violation under this section.

(7) A prosecutor may submit a case for review. No civil or criminal proceeding under this section may be commenced against any person for a violation of sub. (3) or (4) unless the attorney general determines that the proceeding may be commenced.

(8) (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the Nation to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.

(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:

1. A public elementary or secondary school, head-start or youth center.
2. A private school or a tribal school.
3. Any school offering vocational, technical or adult education that:
   a. Is a technical college; and
   b. Is exempt from taxation under USC section 501 (c) (3) of the internal revenue code.
4. Any institution of higher education that is accredited, and is exempt from taxation under USC section 501 (c) (3) of the internal revenue code.
5. A library that receives funding from any unit of government.

(9) In determining whether material is obscene under sub. (2) (c) 1. and 3., a judge or jury shall examine individual pictures, recordings of images, or passages in the context of the work in which they appear.

(10) The provisions of this section, including the provisions of sub. (8), are severable.

944.23 Making lewd, obscene or indecent drawings. Whoever makes any lewd, obscene or indecent drawing or writing in public or in a public place is guilty of a Class C misdemeanor.

944.25 Sending obscene, lewd or sexually explicit electronic messages.

(1) In this section:

(a) "Electronic mail solicitation" means an electronic mail message, including any attached program or document, that is sent for the purpose of encouraging a person to purchase property, goods, or services.

(b) "Obscene material" means a writing, picture, film, or other recording that under contemporary community standards, describes or shows sexual conduct in a patently offensive way.

(c) "Sexually explicit conduct" has the meaning given in s. 948.01 (7).

(2) Whoever sends an unsolicited electronic mail solicitation to a person that contains obscene material or a depiction of sexually explicit conduct without including the words "ADULT ADVERTISEMENT" in the subject line of the electronic mail solicitation is guilty of a Class A misdemeanor.

SUBCHAPTER V
PROSTITUTION

944.30 Prostitution.

(1m) Any person who intentionally does any of the following is guilty of a Class A misdemeanor:

(a) Has or offers to have or requests to have nonmarital sexual intercourse for anything of value.

(b) Commits or offers to commit or requests to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another for anything of value.

(c) Is an inmate of a place of prostitution.

(d) Masturbates a person or offers to masturbate a person or requests to be masturbated by a person for anything of value.

(e) Commits or offers to commit or requests to commit an act of sexual contact for anything of value.

(2m) If the person under sub. (1m) has not attained the age of 18 years and if the court determines

that the best interests of the person are served and society will not be harmed, the court may enter a consent decree as a minor or a deferred prosecution agreement as a minor or an adult.

944.31 Patronizing prostitutes. Any person who enters or remains in any place of prostitution with intent to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute is guilty of a Class A misdemeanor.

944.32 Soliciting prostitutes. Except as provided under s. 948.08, whoever intentionally solicits or causes any person to practice prostitution or establishes any person in a place of prostitution is guilty of a felony.

944.33 Pandering. Whoever does any of the following is guilty of a Class A misdemeanor:
(1) Solicits another to have nonmarital sexual intercourse or to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a person the solicitor knows is a prostitute; or
(2) With intent to facilitate another in having nonmarital intercourse or committing an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another, masturbation or sexual contact with a prostitute, directs or transports the person to a prostitute or directs or transports a prostitute to the person.

944.34 Keeping place of prostitution. Whoever intentionally does any of the following is guilty of a felony:
(1) Keeps a place of prostitution; or
(2) Grants the use or allows the continued use of a place as a place of prostitution.

Legislative History:

12/17/13	Legislature established the Criminal Code Workgroup through Resolution 12-17-13C.
12/11/14	The Criminal Code Workgroup presented the Criminal Code to the Administration Committee at which time it was referred to the full Legislature to be placed out for 45 Day Public Comment.
01/06/15	Legislature placed the Criminal Code out for 45 Day Public Comment by Resolution 01-06-15B.
03/17/15	Legislature placed the Criminal Code out for an additional 45 Day Public Comment by Resolution 03-17-15K.
05/05/15	Legislature enacted the Criminal Code through Resolution 05-05-15P.
05/17/16	Technical corrections made in accordance with Section 45 of the Legislative Organization Act (2 HCC § 11).