

HO-CHUNK NATION CODE (HCC)
TITLE 2 – GOVERNMENT CODE
SECTION 16 – CRIMES AGAINST HO-CHUNK NATION
GOVERNMENT AND GOVERNMENT OFFICIALS ACT

ENACTED BY LEGISLATURE: APRIL 15, 2002
LAST AMENDED: September 21, 2021

CITE AS: 2 HCC § 16

*This Act supersedes the Crimes Against HCN Government and Government Officials
Enacted by the Legislature on 7/22/97.*

1. Authority.

- a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.
- b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.
- c. Article VII, Section 5 of the Constitution grants the Trial Court original jurisdiction over all case and controversies, both criminal and civil, in law or equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, including cases in which the Nation, or its Officials and employees, shall be a party.

2. Purpose. This Act provides for remedies to the Ho-Chunk Nation and its Officials for misdemeanors committed against the Nation and its Officials.

3. Definitions.

- a. “Family Member” means a parent, spouse, co-habitant, sibling, child, stepchild, foster child, or person living in the same household of the government Official or government Official’s staff.
- b. “Judge” means a supreme court justice, trial court judge,, traditional court elder, temporary or permanent reserve judge, or juvenile, probate, family or other court commissioner.
- c. “Nation” means the Ho-Chunk Nation and includes the area within the boundaries of the Nation and the area over which the Ho-Chunk Nation exercises exclusive or concurrent jurisdiction under Article 1 of the constitution of the Ho-Chunk Nation.

- d. “Official” means legislator, president, attorney general, or judge.
- e. “Staff” means and includes any member of the Official’s immediate internal office staff, court personnel, and legal counsel for the Ho-Chunk Nation Legislature and the Department of Justice.
- f. “Court” means the Ho-Chunk Nation Trial Court.

4. Tribal Court Jurisdiction. A person is subject to prosecution under the law of the Nation under any of the following criteria:

- a. The person commits a crime, of which any of the constituent elements takes place within the territory of the nation as prescribed in Article I, Section 1 of the Constitution.
- b. The person, while outside of the nation, aids and abets, conspires with, or advises, incites, commands, or solicits another to commit a crime in the Nation.
- c. The person, while outside of the Nation, does an act with intent that it cause within the Nation a consequence set forth in paragraph 5 defining a crime.

5. Classification of Misdemeanors. The classification of misdemeanors and associated penalties, pursuant to and in accordance with 25 U.S.C. §§ 1301-1303 are as follow.

- a. Class A Misdemeanor. A fine not to exceed \$5,000 or imprisonment not to exceed one (1) year, or both.
- b. Class B Misdemeanor. A fine not to exceed \$2,500 or imprisonment not to exceed six (6) months, or both.
- c. Class C Misdemeanor. A fine not to exceed \$1,000 or imprisonment not to exceed ninety (90) days, or both.

6. Crimes Against the Ho-Chunk Nation.

- a. Battery to Public Officers. Whoever intentionally causes bodily harm to a public officer in order to influence the action of such officer or as a result of any action taken within an official capacity, without the consent of the person injured is guilty of a Class A. Misdemeanor.
- b. Battery. Whoever intentionally causes bodily harm to the person or family member of any Nation Official or any member of the Official’s staff under all of the following circumstances is guilty of Battery, a Class A Misdemeanor.

- (1) At the time of the act or threat, the actor knows or should have known that the victim is an Official or member of his or her family.
 - (2) The Official is acting in an official capacity at the time of the act or threat or the act of threat is in response to any action taken in an official capacity.
 - (3) There is no consent by the person harmed or threatened.
- c. Attempted Battery. Whoever intentionally acts to cause bodily harm to the person or family member of any Nation Official or member of the Official's staff under all of the following circumstances is guilty of Battery, a Class B. Misdemeanor.
- (1) At the time of the act, the actor knows or should have known that the victim is an Official or a member of her or his family.
 - (2) The Official is acting in an official capacity at the time of the act or threat or the act of threat is in response to any action taken in an official capacity.
 - (3) There is no consent by the person harmed or threatened.
- d. Conspiracy. Whoever, with intent to commit a crime, agrees or combines with another for the purpose of committing that crime may, if one or more of the parties to the conspiracy does an act to effect its object, the party may be fined, or imprisoned or both not to exceed the maximum provided for the completed crime. Aiding, abetting, or assisting in any understanding, combination or conspiracy to cause bodily harm or threatens to cause bodily harm to the person or family member of any Official or any member of the Official's staff, under the circumstances for that crime, is guilty of Conspiracy, a Class B Misdemeanor.
- e. Assault. Whoever intentionally threatens to cause bodily harm to the person or family member of any Official or any member of the Official's staff under all of the following circumstances is guilty of Assault, a Class C Misdemeanor.
- (1) At the time of the threat, the actor knows or should have known that the victim is an Official or a member of her or his family.
 - (2) The Official is acting in an official capacity at the time of the threat is in response to any action taken in an official capacity.
 - (3) There is no consent by the person threatened.
- f. Attempt. An attempt to commit a crime requires that the actor have an intent to perform acts and attain a result which, if accomplished, would constitute such crime and that the actor commits acts toward the commission of the crime which

- demonstrates unequivocally, under all the circumstances, that the actor formed that intent and would commit the crime except for the intervention of another person or some other extraneous factor. Whoever attempts the commission of any act prohibited by this Act is guilty of a Class C Misdemeanor, without regard to the success or failure of the attempt. The fact that no person was injured physically, or in fact intimidated, is not a defense against any prosecution under this Act.
- g. Parties to Crime. Whoever is concerned in the commission of a crime is a principal and may be charged with and convicted of the commission of the crime although the person did not directly commit it and although the person who directly committed it has not been convicted or has been convicted of some other degree of the crime or of some other crime based on the same act. A person so charged may be found guilty of a Class C Misdemeanor.
- h. Intimidation of Witness. Whoever knowingly and maliciously prevents or dissuades, or who attempts to so prevent or dissuade any witness from attending or giving testimony at any trial, proceeding, or inquiry authorized by law, is guilty of a Class C Misdemeanor.
- i. Obstructing Justice. Whoever for a consideration knowingly give false information to any officer of any court with intent to influence or mislead the officer in the performance of official functions is guilty of a Class C Misdemeanor.
- j. Bribery or Attempted Bribery.
- (1) Whoever gives money or an item of tangible value to an Official or member of an Official's staff with a corrupt intent to induce or influence an action or vote of an Official or staff member in an official business before the nation is guilty of the crime of bribery. Bribery shall be punishable as a Class A Misdemeanor.
 - (2) An Official or member of an Official's staff who accepts money or an item of tangible value, whether within or without the nation, in return for an action or vote of the Official that is outside of the Official's fiduciary duty to the Nation is guilty of a Class A Misdemeanor.
 - (3) It shall be a defense to any charge of bribery or attempted bribery that the Official or member of the Official's staff promptly reported any attempt to bribe the Official, and returned the money or item of tangible value or surrendered it to the Nation with 48 hours of the attempted bribe.
 - (4) Whoever attempts or offers to give money or an item of tangible value to an Official or a member of an Official's staff with the corrupt intent to induce or influence the Official or staff member to act outside of their fiduciary duty to

the Ho-Chunk Nation is guilty of the crime of attempted bribery shall be punishable as a Class B. Misdemeanor.

- (5) An item of tangible value shall not include an item that is given as a customary and traditional gift without intent to receive anything in return.

k. General Council.

- (1) No person shall obstruct the assembly, meeting, or administration of a Ho-Chunk Nation Annual General Council Meeting or Special Meeting of the Ho-Chunk Nation General Council. Such prohibition includes, but is not limited to, the dissemination of misinformation with the intent to influence, deter, or stop attendance at an Annual Meeting or Special Meeting of the General Council. Any person found in violation of this provision is guilty of a Class A Misdemeanor. In addition, any violation of this provision will serve as the basis for disciplinary action under the Ho-Chunk Nation Employment Relations Act (6 HCC § 5) for employees found guilty.
- (2) No person shall interfere with Ho-Chunk Nation government services in the execution of logistical, technological, or administrative support of an Annual Meeting or Special Meeting of the General Council. Any person found in violation of this provision is guilty of a Class A Misdemeanor. In addition, any violation of this provision will serve as the basis for disciplinary action under the Ho-Chunk Nation Employment Relations Act (6 HCC § 5) for employees found guilty.

7. Judicial Proceedings.

- a. Presumed Innocence. No provision of this Act shall be construed as changing the existing law with respect to presumption of innocence or burden of proof.

b. Custody.

- (1) Any person who is arrested shall be taken within reasonable time before a judge in the jurisdiction in which the offense was alleged to have committed.
- (2) When a person is arrested without a warrant and brought before a judge, a complaint shall be filed forthwith.
- (3) At the initial appearance the judge shall inform the defendant of the following:
- (a) The charge against the defendant and shall furnish the defendant with a copy of the complaint which shall contain the possible penalties for the offense.

- (b) The right to counsel.
- c. Right to Jury Trial. A defendant under this Act shall have the right to a jury trial.
- d. Duty to Request a Trial. A defendant may request a jury trial at any time prior to the fact-finding hearing and within 20 days after the plea hearing. The defendant shall be granted a jury trial upon request if the request is made before the close of business on the twentieth (20th) day and after the plea hearing. If the defendant does not elect to have a jury trial, such right to a jury trial shall be waived.
- (1) The defendant is entitled to a trial by six (6) peers and one (1) alternate, who shall serve in the event that a jury person shall be unable to serve.
 - (2) If during the trial, the jury is reduced to a number less than four (4), the case shall be dismissed and jury selection re-initiated to afford the defendant a fair trial.
- e. Standard. The right to have all allegations of the petition proved by clear and convincing evidence, unless the charge is a civil regulatory enforcement action within the Court's jurisdiction under paragraphs 6e and 6f, in which case the standard of proof shall be preponderance of the evidence.
- f. Disqualification of Judge. Where a specific judge is subject of a specific assault, that judge shall be required to excuse himself or herself from hearing the case.
- g. Pleas.
- (1) A defendant charged with a criminal offense may plead as follows:
 - (a) Guilty
 - (b) Not Guilty
 - (c) No Contest, as subject to the approval of the Court
 - (2) If a defendant stands mute or refuses to plead, the Court shall direct the entry of Not Guilty on the defendant's behalf.

8. Civil Regulation of Tribal Territory and Property.

- a. Civil Regulatory. All persons or entities having sufficient contact or interaction with the Nation shall be subject to suit and the laws of the Nation. The Nation shall have long arm jurisdiction (see the Nation's *Long-Arm Statute*) to the furthest extent

constitutionally possible. The following items are torts within the jurisdiction of the Nation's Court.

- (1) Liability for Battery. Whoever causes bodily harm to the person or family member of any nation Official or any member of the Official's staff under the following criteria may be subject to suit in equity or for damages.
 - (a) At the time of the act or threat, the actor knows or should have known that the victim is an Official or a member of her or his family.
 - (b) The Official is acting in an official capacity at the time of the act, threat or the act or threat is in response to any action taken in an official capacity.
 - (c) There is no consent by the person threatened.

- (2) Liability for Assault. Whoever threatens to cause bodily harm to the person or family member of any Official or any member of the Official's staff under all of the following circumstances may be subject to suit in equity or for damages.
 - (a) At the time of the threat, the actor knows or should have known that the victim is an Official or a member of her or his family.
 - (b) The Official is acting in an official capacity at the time of the threat or the threat is in response to any action taken while the Official was acting in an official capacity.
 - (c) There is no consent by the person threatened.

- (3) Liability for Obstructing Justice. Whoever for a consideration knowingly gives false information to any officer or any court with the intent to influence or mislead the officer in the performance of official functions may be subject to suit in equity or for damages.
 - (a) In civil regulatory enforcement actions of suits, there shall be no requirement of a criminal trial.
 - (b) Penalty shall be a fine, damages to the injured party, removal and/or exclusion from Tribal lands. The Court shall have the authority to impose or levy fines as shall serve justice. Matters are subject to appellate review and may only be reversed if the reviewing court finds clear error.
 - (c) The above penalties shall not limit the ability of the Court to fashion a remedy to fit the crime or violation such as including community service or restitution for the harm done.

Legislative History:

7/22/97 Legislature adopts Crimes Against Ho-Chunk Nation Government and Government Officials.

4/15/02 Enacted and restated Crimes Against Ho-Chunk Nation Government and Government Officials Act, 2 HCC § 16, by Legislative Resolution 4/15/02E.

9/21/21 Legislature adopts quick passage amendments, via Legislative Resolution 09-21-21H, to Section 6.