

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 1: CRIMES AGAINST THE PERSON

§ 1362. Classes of Offenders; Tiered Offenses.

(a) Tier 1 Offenses.

(1) *Sex Offenses.* A "Tier 1" offense includes any sex offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to § 1361, that involves an attempt or conspiracy to commit such an offense, that is not "Tier 2" or "Tier 3" offense and/or that involves any sexual act or sexual contact with another person that is not included in § 1361(b), (d), (e) or (f) and/or is not punishable by more than one year imprisonment.

(2) *Offenses Involving Minors.* A "Tier 1" offense also includes any offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to § 1361(f) which is similar to an offense listed in § 1362(a)(3) or (4) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

(3) *Certain Commonwealth Offenses.* Conviction for any of the following Commonwealth offenses shall be considered "Tier 1" offenses:

(i) 6 CMC § 1302(a)(1), (2), or (4) (sexual assault in the second degree), when the victim is 18 years of age or older;

(ii) 6 CMC § 1303(a)(1) (sexual assault in the third degree), when the victim is 18 years of age or older;

(iii) 6 CMC § 1315 (indecent exposure in the second degree);

(iv) 6 CMC § 1316 (indecent exposure in the first degree);

(v) An offense that involves possession/receipt of child;

(vi) Possession of child pornography, and false imprisonment of a minor (non-parent).

(4) *Certain Federal Offenses.* Conviction for any of the following federal offenses shall be considered a "Tier 1" offense:

(i) 18 U.S.C. § 1801 (video voyeurism of a minor),

(ii) 18 U.S.C. § 2252 (receipt or possession of child pornography),

(iii) 18 U.S.C. § 2252A (receipt or possession of child pornography),

(iv) 18 U.S.C. § 2252B (misleading domain names on the internet),

(v) 18 U.S.C. § 2252C (misleading words or digital images on the internet),

(vi) 18 U.S.C. § 2422(a) (coercion to engage in prostitution),

(vii) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual), and

(viii) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct).

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 1: CRIMES AGAINST THE PERSON

(5) *Certain Military Offenses.* Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in § 1362(a)(1), (2) or (4) shall be considered "Tier 1" offenses.

(b) Tier 2 Offenses.

(1) *Recidivism and Felonies.* Any sex offense, which is not the first sex offense for which a person has been convicted, that is punishable by more than one year imprisonment is considered a "Tier 2" offense. In the case of subsequent convictions from any tribal court, the offense shall be treated as if it is punishable by more than one year imprisonment if a substantially similar Commonwealth, state or federal offense is punishable by more than one year.

(2) *Offenses Involving Minors.* A "Tier 2" offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to § 1361 that involves:

(i) The use of minors in prostitution, including solicitations,

(ii) Enticing a minor to engage in criminal sexual activity,

(iii) 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,

(iv) The use of a minor in a sexual performance, or

(v) The production for distribution of child pornography.

(3) *Certain Commonwealth Offenses.* Conviction for any of the following Commonwealth offenses shall be considered "Tier 2" offenses:

(i) 6 CMC § 1302(a)(1), (2) or (4) (sexual assault in the second degree), where the victim is 13-18 years of age;

(ii) 6 CMC § 1303(a)(1) (sexual assault in the third degree), where the victim is 13-18 years of age;

(iii) 6 CMC § 1306(a)(2) (sexual abuse of a minor in the first degree), where the victim is 16 or 17 years of age;

(iv) 6 CMC § 1307(a)(3) or (5) (sexual abuse of a minor in the second degree) where the victim is 13-18 years of age;

(v) 6 CMC § 1307(a)(4) (sexual abuse of a minor in the second degree);

(vi) 6 CMC § 1308 (sexual abuse of a minor in the third degree);

(vii) 6 CMC § 1309(a)(2) (sexual abuse of a minor in the fourth degree);

(viii) 6 CMC § 1311 (incest), where the victim is 16 or 17 years of age;

(ix) 6 CMC § 1314 (unlawful exploitation of a minor);

(x) Possession of child pornography and false imprisonment of a minor (non-parental).

(4) *Certain Federal Offenses.* Conviction for any of the following federal offenses shall be considered "Tier 2" offenses:

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 1: CRIMES AGAINST THE PERSON

- (i) 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion),
- (ii) 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
- (iii) 18 U.S.C. § 2244 (abusive sexual contact with a person 13 years of age or older),
- (iv) 18 U.S.C. § 2251 (sexual exploitation of children),
- (v) 18 U.S.C. § 2251A (selling or buying of children),
- (vi) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor),
- (vii) 18 U.S.C. § 2252A (production or distribution of material containing child pornography),
- (viii) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import into the United States),
- (ix) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity),
- (x) 18 U.S.C. § 2422(b)(coercing a minor to engage in prostitution),
- (xi) 18 U.S.C. § 2423(a) (transporting a minor to engage in illicit conduct),
- (xii) 18 U.S.C. § 2423(b) (travel with the intent to engage in illicit conduct),
- (xiii) 18 U.S.C. § 2423(c) (engaging in illicit conduct in foreign places).

(5) *Certain Military Offenses.* Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in §1362(b)(1), (2) or (4) shall be considered "Tier 2" offenses.

(c) Tier 3 Offenses.

(1) *Recidivism and Felonies.* Any sex offense that is punishable by more than one year imprisonment where the offender has at least one prior conviction for a Tier 2 sex offense is a "Tier 3" offense. In the case of subsequent convictions from any tribal court, the offense shall be treated as if it is punishable by more than one year imprisonment if a substantially similar Commonwealth, state or federal offense is punishable by more than one year.

(2) *General Offenses.* A "Tier 3" offense also includes any sex offense for which a person has been convicted by a jurisdiction, local government, or qualifying foreign country pursuant to § 1361(f) that involves:

- (i) Non-parental kidnapping of a minor,
 - (ii) A sexual act with another by force or threat,
 - (iii) 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

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 1: CRIMES AGAINST THE PERSON

(iv) 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 the clothing.

(3) *Certain Commonwealth Offenses.* Conviction for any of the following Commonwealth offenses shall be considered "Tier 3" offenses: (i) 6 CMC § 1301 (sexual assault in the first degree);

(ii) 6 CMC § 1302(a)(1), (2), or (4) (sexual assault in the second degree), where the victim is under 13 years of age;

(iii) 6 CMC § 1302(a)(3) (sexual assault in the second degree);

(iv) 6 CMC § 1303(a)(1) (sexual assault in the third degree)

where the victim is under 13 years of age;

(v) 6 CMC § 1306(a)(1) or (3) (sexual abuse of a minor in the first degree);

(vi) 6 CMC § 1306(a)(2) (sexual abuse of a minor in the first degree) where the victim is under 16 years of age;

(vii) 6 CMC § 1307(a)(1) or (2) (sexual abuse of a minor in the second degree);

(viii) 6 CMC § 1307(a)(3) or (5) (sexual abuse of a minor in the second degree) where the victim is under 13 years of age;

(ix) 6 CMC § 1309(a)(1) (sexual abuse of a minor in the fourth degree);

(x) 6 CMC § 1311 (incest), where the victim is under 16 years of age.

(4) *Certain Federal Offenses.* Conviction for any of the following federal offenses shall be considered "Tier 3" offenses:

(i) 18 U.S.C. § 2241 (aggravated sexual abuse),

(ii) 18 U.S.C. § 2242 (sexual abuse), or

(iii) Where the victim is 12 years of age or younger, 18 U.S.C. § 2244 (abusive sexual contact).

(5) *Certain Military Offenses.* Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. § 951) that is similar to those offenses outlined in § 1362(a)(1), (2) or (3) shall be considered "Tier 3" offenses.

Source: PL 11-104, § 1 (Section 3 of reenacted PL 11-35) repealed and reenacted PL 11-35; repealed and reenacted by PL 17-49 § 2(1362) (July 29, 2011), modified.

Commission Comment: The Commission changed capitalization throughout this section for conformity pursuant to 1 CMC § 3806(f) and italicized titles of numbered subsections for emphasis. The Commission corrected punctuation throughout the lists in this section pursuant to its authority in 1 CMC § 3806(g). Where appropriate, the Commission added semi-colons, changed periods to semi-colons and inserted periods at the end of lists. The Commission inserted "by" before "more than one year imprisonment" to correct a manifest error in subsection (a)(1).