

## **TITLE 23 – TRAFFIC CODE**

### **CHAPTER 4 - SEATBELTS AND CHILD RESTRAINTS**

*Legislative History: Resolution No. 05-438, "Enacting Seatbelt and Child Restraint Laws as Sections of the Traffic Code of the Tohono O'odham Nation," added new Section 1001, (vehicle restraints) and Section 1002 (child passenger restraint systems) to the Traffic Code of the Tohono O'odham Nation on August 3, 2005.*

*Related Legislation: The Traffic Code of the Tohono O'odham Nation was enacted on July 5, 2005 pursuant to Resolution No. 05-361.*

## **Section 1001 Primary vehicle restraints required; exceptions; civil penalties**

(A) Each front seat occupant of a motor vehicle that is designed for carrying ten or fewer passengers that is manufactured for the model year 1972 and thereafter and that is required to be equipped with an integrated lap and shoulder belt or a lap belt pursuant to the federal motor vehicle safety standards prescribed in 49 Code of Federal Regulations Section 571.208 shall either:

- (1) Have the lap and shoulder belt properly adjusted and fastened while the vehicle is in motion.
- (2) If only a lap belt is installed where the occupant is sitting, have the lap belt properly adjusted and fastened while the vehicle is in motion.

(B) The operator of a motor vehicle that is designed for carrying ten or fewer passengers, that is manufactured for the model year 1972 and thereafter and that is required to be equipped with an integrated lap and shoulder belt or a lap belt pursuant to the federal motor vehicle safety standards prescribed in 49 Code of Federal Regulations Section 571.208 shall require each passenger under sixteen years of age to either:

- (1) Have the lap and shoulder belt properly adjusted and fastened while the vehicle is in motion; or
- (2) If only a lap belt is installed where the passenger is sitting, have the lap belt properly adjusted and fastened while the vehicle is in motion.

(C) A peace officer may stop and issue a citation to a person operating a motor vehicle on a street, roadway, or highway within the Tohono O'odham Nation for a violation of this section upon having reasonable cause to believe there is a violation of this section or any other applicable motor vehicle law.

(D) This section does not apply to:

- (1) A child subject to the requirements of child passenger restraint of Section 1002 of the Traffic Code of the Tohono O'odham Nation.
- (2) A person possessing a written statement from a physician that the person is unable for medical or psychological reasons to wear a lap and shoulder belt or a lap belt. A copy of the physician's statement must be in the operator's possession while operating a motor vehicle within the Nation.

(E) If a person is found responsible for a civil traffic violation under this section, the person is subject to a civil penalty of \$50.00 for a first offense, \$100.00 for a second offense, and an additional \$50.00 for each subsequent offense (e.g., \$150.00 for a third offense, \$200 for a fourth offense, etc.).

(F) No person stopped for violation of this section shall be subject to arrest for violating this section, unless there is probable cause for another violation of law justifying an arrest.

**Section 1002 Child passenger restraint system; civil penalty; exemptions; definitions**

(A) Except as provided in subsection H of this section, a person shall not operate a motor vehicle on any street, roadway, or highway within the Tohono O'odham Nation when transporting a child who is under five years of age unless that child is properly secured in a child passenger restraint system.

(B) The performance, design, and installation of child passenger restraint systems for use in motor vehicles as prescribed in this section shall meet or exceed the standards established in 49 Code of Federal Regulations Section 571.213.

(C) A person who violates this section is subject to a civil penalty of \$50.00, except that a civil penalty shall not be imposed if the person makes a sufficient showing that the motor vehicle has been subsequently equipped with a child passenger restraint system that meets the standards adopted pursuant to subsection B of this section. A sufficient showing may include a receipt or other proof provided to the appropriate court officer that evidences purchase or acquisition of a child passenger restraint system. All penalties collected pursuant to this section shall be deposited in a fund administered by the Tohono O'odham Department of Health and Human Services and expended to promote child passenger safety prevention measures.

(D) If a law enforcement officer stops a vehicle for an apparent violation of this section, the officer shall determine from the driver whether the unrestrained child or children in the vehicle are under five years of age.

(E) If the information given to the officer indicates that a violation of this section has not been committed, the officer shall not detain the vehicle any further unless some additional violation is involved. The stopping of a vehicle for an apparent or actual violation of this section is not probable cause for the search or seizure of the vehicle unless there is probable cause for another violation of law.

(G) The requirements of this section or evidence of a violation of this section are not admissible as evidence in a judicial proceeding except in a judicial proceeding for a violation of this section.

(H) This section does not apply to a person who:

- (1) operates a motor vehicle that was originally manufactured without passenger restraint devices;
- (2) operates a motor vehicle that is also a recreational vehicle as defined below;
- (3) operates a commercial motor vehicle and who holds a current commercial driver

license;

(4) must transport a child in an emergency to obtain necessary medical care; or  
(5) transports more than one child under five years of age in a motor vehicle that because of the restricted size of the passenger area does not provide sufficient area for the required number of child passenger restraint devices, if both of the following conditions are met:

- (a) at least one child is restrained as required by this section; and
- (b) the person has secured as many of the other children in child passenger restraint devices pursuant to this section as is reasonable given the restricted size of the passenger area and the number of passengers being transported in the motor vehicle.

(I) The following definitions shall apply to this section:

(1) "Recreational vehicle" means a vehicular type unit which is:

- (a) A portable camping trailer mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold for camping;
- (b) A motor home designed to provide temporary living quarters for recreational, camping or travel use and built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle;
- (c) A park trailer built on a single chassis, mounted on wheels and designed to be connected to utilities necessary for operation of installed fixtures and appliances and has a gross trailer area of not less than three hundred twenty square feet and not more than four hundred square feet when it is set up, except that it does not include fifth wheel trailers;
- (d) A travel trailer mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use, of a size or weight that may or may not require special highway movement permits when towed by a motorized vehicle and has a trailer area of less than three hundred twenty square feet. This subdivision includes fifth wheel trailers. If a unit requires a size or weight permit, it shall be manufactured to the standards for park trailers in A 119.5 of the American National Standards Institute Code; or
- (e) A portable truck camper constructed to provide temporary living quarters for recreational, travel or camping use and consisting of a roof, floor and sides designed to be loaded onto and unloaded from the bed of a pickup truck.

- (2) A "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:
- (a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;
  - (b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds;
  - (c) Is a school bus;
  - (d) Is a bus; or
  - (e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code §§ 5101 through 5127) and is required to be placarded under 49 Code of Federal Regulations § 172.504.

**RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL  
(Enacting Seatbelt and Child Restraint Laws as Sections of the Traffic Code of the  
Tohono O'odham Nation)**

**RESOLUTION NO. 05-438**

1 **WHEREAS, the Legislative Council is vested with the power "to enact criminal and civil laws**  
2 **governing the conduct of any person within the Tohono O'odham Nation" and to**  
3 **provide laws "to promote, protect and provide for public health, peace, morals,**  
4 **education and general welfare of the Tohono O'odham Nation and its members"**  
5 **(Constitution of the Tohono O'odham Nation, Article VI, Section 1(c)(6) and 1(c)(2)); and**

6 **WHEREAS, seatbelt and child restraint laws have proven effective in reducing the number of**  
7 **traffic fatalities and serious injuries to children and adults in other jurisdictions; and**

8 **WHEREAS, on June 27, 2005, the Council enacted the Traffic Code of the Tohono O'odham Nation**  
9 **and directed the Domestic Affairs Committee "to make recommendations to the**  
10 **Council within 90 days for enacting new and updated traffic laws, including but not**  
11 **limited to seatbelt and child restraint laws" (Resolution No. 05-361); and**

12 **WHEREAS, in response, the Domestic Affairs Committee has drafted seatbelt and child restraint**  
13 **provisions designed to protect the health and safety of the public; and**

14 **WHEREAS, if enacted, Traffic Code Section 1001 ("Section 1001"), requiring primary vehicle**  
15 **restraints, and Traffic Code Section 1002 ("Section 1002"), requiring child passenger**  
16 **restraint systems, would be added to the Traffic Code; and**

17 **WHEREAS, fines for violating Section 1002 child restraint provisions would not be imposed if the**  
18 **vehicle is later equipped with a child passenger restraint system; and**

19 **WHEREAS, the Tohono O'odham Department of Health & Human Services provides child restraint**  
20 **systems to members of the Nation free of charge; and**

21 **WHEREAS, fines that are collected would be expended to promote child passenger safety**  
22 **prevention measures; and**

23 **WHEREAS, it is in the Nation's best interest to enact Section 1001 and Section 1002, which are**  
24 **hereby incorporated by this reference, as civil laws of the Nation in order to protect**  
25 **the public health, safety, and welfare.**

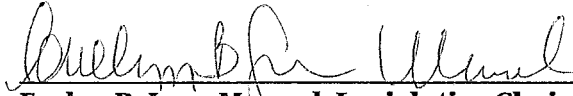
26 **NOW, THEREFORE, BE IT RESOLVED that the Legislative Council hereby enacts Section**  
27 **1001 and Section 1002, which are hereby added to the Traffic Code of the Tohono**  
28 **O'odham Nation, provided that the severability clause adopted and made part of the**

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Traffic Code pursuant to Resolution No. 05-361 shall apply to Section 1001, Section 1002, and to any provisions of the Traffic Code that are added or amended in the future.

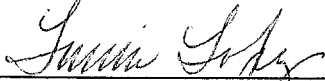
The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 02<sup>ND</sup>. Day of AUGUST, 2005 at a meeting at which a quorum was present with a vote of 2,440.80 FOR; -0- AGAINST; -0- NOT VOTING; and [01] ABSENT, pursuant to the powers vested in the Council by Section 1 (c)(1), 1(c)(2) and 1(c)(6) of Article VI of the Constitution of the Tohono O'Odham Nation, adopted by the Tohono O'Odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

TOHONO O'ODHAM LEGISLATIVE COUNCIL

  
Evelyn B. Juan Manuel, Legislative Chairwoman

2<sup>nd</sup> day of August, 2005

ATTEST:

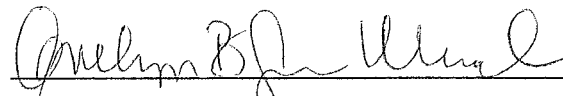


Lucille Lopez, Acting Legislative Secretary

02<sup>nd</sup> day of August, 2005.

Said Resolution was submitted for approval to the office of the Chairwoman of the Tohono O'Odham Nation on the 2<sup>nd</sup> day of August, 2005 at 4:50 o'clock, P.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon her approval or upon her failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL

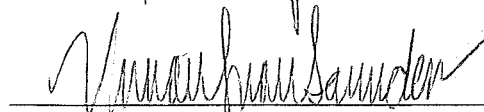
  
Evelyn B. Juan Manuel, Legislative Chairwoman

APPROVED

on the 3 day of August, 2005

DISAPPROVED

at 12:59 o'clock, P.M.

  
VIVIAN JUAN-SAUNDERS, CHAIRWOMAN  
TOHONO O'ODHAM NATION

**RESOLUTION NO. 05-438**

**(Enacting Seatbelt and Child Restraint Laws as Sections of the Traffic Code of the Tohono O'odham Nation)**

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Returned to the Legislative Secretary on the 20<sup>th</sup> day of

August, 2005, at 2:02 o'clock, P.M.

*Lucille Lopez*  
Lucille Lopez, Acting Legislative Secretary