

# WHITE MOUNTAIN APACHE CRIMINAL CODE



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## CHAPTER ONE - DEFINITIONS AND GENERAL PROVISIONS

### SECTION 1.1 DEFINITIONS

- A. In this Code, unless the context otherwise requires, the masculine form of a pronoun shall include the feminine.
- B. In this Code, unless the context otherwise requires, the following definitions shall apply:
1. **“Adult”** means a person who is Eighteen (18) Years of age or older.
  2. **“Court”** means the courts of the White Mountain Apache Tribe.
  3. **“Damaging”** means causing any physical or visual impairment to any surface or structure.
  4. **“Dangerous drug”, “Controlled Substance” or “Narcotic Drug”** means any drug listed within 21 U.S.C. §812 and any amendments thereto.
  5. **“Dangerous weapon” or “Dangerous instrument”** means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury, and includes but is not limited to any:
    - a. air gun, CO<sup>2</sup> gun, stun gun, blowgun, explosive device, pistol, or other firearm;
    - b. crossbow, bow and arrow;
    - c. bayonet, dagger, switchblade, bowie knife, or other kind of knife, except a folded pocket knife;
    - d. sling shot, club, blackjack or chain;
    - e. sword, sword cane, or spear;
    - f. metal knuckles; or
    - g. any other instrument capable of lethal use, possessed under circumstances not appropriate for lawful use.
  6. **“Deadly weapon”** means any instrument, including but not limited to a motor vehicle, used in such manner as to render it capable of causing death or serious physical or psychological injury.
  7. **“Defacing”** means any unnecessary act of substantially marring any surface or object, by any means, or painting any notice upon any structure, without permission from the owner.
  8. **“Disability”** means a physical or mental inability of a victim to perform his or her usual profession, trade or occupation, and/or usual household tasks.
  9. **“Drive by Shooting”** means intentionally discharging a firearm or the propulsion of any explosive or explosive device from a motor vehicle whether moving or stopped, at a person, another motor vehicle, or structure.
  10. **“Firearm”** means any weapon which propels an object through the use of gunpowder.
  11. **“Judicial Officer”** means any Tribal Court Judge, Bailiff, Clerk, Prosecutor, and any attorney, advocate or legal representative licensed to practice in Tribal Court, appearing in court, acting in his/her professional capacity.
  12. **“Litter”** includes any rubbish, refuse, waste water or material, paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or odoriferous objects, dead animals, sewage or any foreign substance of whatever kind or description, including junked or abandoned vehicles, whether or not any of these items are of value.
  13. **“Malicious”** means a deliberate act in an unlawful manner with or without ill will.
  14. **“Offense”** means any criminal conduct prohibited by this Code.
  15. **“Participant”** means a person who of his or her own will is in the vehicle used in a drive-by shooting, during the drive-by shooting.
  16. **“Peace Officer,” “Police Officer,” “Law Enforcement Officer,” or “Officer”** means any officer of the White Mountain Apache Tribe Police Department, White Mountain Apache Tribe Game and Fish Department and any other officer authorized by the White Mountain Apache Tribe to enforce this Code and includes reserve officers while authorized to engage in official law enforcement duties for the White Mountain Apache Tribe.
  17. **“Person”, “he” and “actor”** means any natural person and, where relevant, a corporation or unincorporated association.

18. **“Physical injury”** means the impairment of physical condition and includes, but is not limited to any skin or bone bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bones, subdural hematoma, soft tissue swelling, injury to any internal organ, or any physical conditions which imperils the health or welfare of a person.
19. **“Public Servant”** means any employee, servant, agent, attorney, or appointed official or contractor of the Tribe.
20. **“Public Office”** means any position of employment or appointment with the White Mountain Apache Tribe.
21. **“Reckless”** means an act done in conscious disregard of a unjustifiable risk and in gross deviation from reasonable standards of conduct. Ignorance of reasonable standards of conduct resulting from voluntary intoxication is no defense to recklessness.
22. **“School”** means any public, private, government, or parochial facility of instruction, including a Head Start or kindergarten program, elementary school, or high school, and any institution of higher learning, including a college or junior college.
23. **“School grounds”** means the area within three hundred feet of a school or its accompanying grounds, any public property within one thousand feet of a school or its accompanying grounds, a school bus stop, or any school bus or vehicle which transports pupils to any school.
24. **“Security Officer”** means any person employed as a watchman, patrolman, bodyguard, private security guard or other person who performs security guard services, but does not include any regularly commissioned police or peace officer.
25. **“Serious physical injury”** means physical injury which creates a risk of death; or which causes serious or permanent disfigurement, or serious impairment of health, or loss or protracted impairment of the function of any bodily organ or limb, or psychological/emotional impairment.
26. **“Sexual contact”** means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus, or female breast by any part of the body or by any object, or causing a person to engage in such contact.
27. **“Sexual intercourse”** means penetration into the penis, vulva or anus by any part of the body or by any object or manual masturbatory contact with the penis or vulva.
28. **“Tamper”** means any act of interference.
29. **“Tribal Council”** means the White Mountain Apache Tribal Council.
30. **“Tribe”** means the White Mountain Apache Tribe.

## **SECTION 1.2      JURISDICTION**

The White Mountain Apache Tribe has original and absolute jurisdiction on any basis consistent with its sovereignty, constitution and laws to prosecute any person for acts covered under this Code, except as may be expressly limited by the laws of the United States. This jurisdiction is not affected by, nor shall it be deemed to preclude, any federal prosecution.

## **SECTION 1.3      SEVERABILITY**

If any provision of this Code, or the application thereof, is held invalid, the remainder of this Code, or other applications of such provision, shall not be affected.

## **SECTION 1.4      ENHANCED SENTENCING**

For any crime for which a person is sentenced to more than one year in jail or fined more than \$5,000, the provisions in Rule 7.1(A)(1) of the Rules of Criminal Procedure must be satisfied.

## CHAPTER TWO - OFFENSES

### SECTION 2.1 ABDUCTION

- A. A person is guilty of an offense who willfully takes, keeps, or entices away:
1. Any child under the age of eighteen (18) years from his parent, guardian or custodian without the consent of the parent, guardian or custodian, or
  2. Any person from his lawful custodian, knowing he has no lawful right to do so.
  3. Any other person against his or her will.
- B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both.

### SECTION 2.2 ACCOMPLICE LIABILITY

- A. A person is an accomplice of another person in the commission of an offense if with the purpose of promoting or facilitating the commission of an offense he:
1. Solicits such person to commit it; or
  2. Aids or agrees or attempts to aid such other person in planning or committing it; or
  3. Knowingly fails to report injury to and/or death of a person; or
  4. Having a legal duty to prevent the commission of the offense, fails to make proper effort to do so.
- B. A person who is an accomplice as defined in this Section is no less guilty of the underlying offense as the person whom the accomplice solicited, aided, agreed or attempted to aid, and shall be subject to the same penalties as a person who is guilty of the underlying offense.
- C. In charging the commission of offenses by two or more persons acting together, the Tribe shall not be required to allege or to prove which of two or more co-defendants was acting as principal and which was acting as an accomplice, provided, however, that no defendant may be convicted without proof beyond a reasonable doubt of that defendant's participation in some capacity in the commission of the offense.

### SECTION 2.3 ADULTERY

- A. A person who has sexual intercourse with another person, knowing that either of such persons is married to a third person, is guilty of an offense.
- B. No prosecution for adultery shall commence except upon the complaint of an aggrieved wife or husband.
- C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed Ninety (90) days or to pay a fine not to exceed One Hundred Fifty Dollars (\$150.00), or both.

### SECTION 2.4 ASSAULT

- A. A person commits assault by:
1. Intentionally, knowingly, or recklessly causing any physical injury to another person; or
  2. Intentionally placing another person in reasonable apprehension of imminent physical injury; or
  3. Knowingly touching another person with the intent to injure, insult, or provoke such person; or
  4. Threatening another person with death, even if not imminent; or
  5. By threatening force or violence causes another to harm himself or herself.
- B. A person found guilty under this Section, may be sentenced to imprisonment for a period to exceed one (1) year or to pay a fine not to exceed one thousand dollars (\$1,000.00), or both.



**SECTION 2.5      ASSAULT; AGGRAVATED**

A. A person commits aggravated assault if such person commits assault as defined in Section 2.4 under the following circumstances:

1. Causing serious physical injury to another; or
2. Using a deadly weapon or dangerous instrument; or
3. Assaulting a law enforcement officer, security officer, or judicial officer or Tribal Council member while such officer or Council member is acting in his or her official capacity; or
4. Assaulting a woman while she is pregnant.

B. A person found guilty under this Section shall be sentenced to imprisonment for a period not to exceed three (3) years, but not less than thirty (30) days, and to pay a fine not to exceed fifteen thousand dollars (\$15,000.00). Any person sentenced under this Section shall not be eligible for suspension of sentence, probation, parole, or any other release from custody until the sentence imposed by the court is served.

C. If the commission of this offense results in the death or disability for a period exceeding six (6) months of another person, a person found guilty under this Section shall be sentenced to imprisonment for a period of not less than two hundred seventy (270) days, nor more than three (3) years, to pay a fine of no less than three thousand dollars (\$3,000.00) nor more than fifteen thousand dollars (\$15,000.00), which fine may be suspended only if the person found guilty pays restitution to the victim or, in the case of death, to the victim's family, in an amount equal to the fine. All restitution must be paid through the Court.

**SECTION 2.6      ASSAULT WITH A DEADLY WEAPON**

A. A person who willfully causes, attempts to cause, or threatens to cause bodily injury to another by means of a deadly weapon is guilty of an offense.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one (1) year or to pay a fine not to exceed two thousand dollars (\$2,000.00) or both.

C. A person found guilty under this Section of assaulting a law enforcement officer, judicial officer, or Tribal Council member, while such officer or Council member is acting in his or her official capacity, shall be sentenced to imprisonment for a period not to exceed three (3) years or to pay a fine not less than fifteen thousand dollars (\$15,000.00), or both.

**SECTION 2.7      ASSAULT WITH INTENT TO COMMIT RAPE**

A. A person who unlawfully attempts to threaten to cause bodily injury, or willfully and unlawfully uses force or violence upon another person, with intent to induce, coerce, or force such other person to submit to sexual intercourse is guilty of an offense.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three (3) years or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

**SECTION 2.8      ASSAULT WITH INTENT TO CAUSE SERIOUS PHYSICAL INJURY**

A. A person is guilty of an offense who willfully and unlawfully causes or attempts to cause serious physical injury to another.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three (3) years or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

**SECTION 2.9      ASSAULT WITH INTENT TO KILL**

A. A person is guilty of an offense who with intent to kill, willfully and unlawfully causes or attempts to cause physical injury to another.

B. For the purposes of this statute, any credible evidence of strangulation shall be considered evidence of intent to kill.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three (3) years or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00) or both.

#### **SECTION 2.10 ATTEMPT**

A. A person is guilty of an attempt to commit a crime when, with the intent to commit a specific offense, he does any act which constitutes a substantial step towards the commission of that offense.

1. Conduct shall not be held to constitute a substantial step under this Section unless it is strongly corroborative of the actor's criminal purpose.
2. When the actor's conduct would otherwise constitute an attempt under this Section, it is an affirmative defense that he abandoned his efforts to commit the specific offense, or otherwise prevented its commission, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.
  - a. Renunciation is not complete if it is in response to law enforcement surveillance or detection, or if it is motivated by any effort/ decision to postpone the criminal conduct until a more advantageous time, or if it is motivated by any effort/decision to transfer the criminal effort to another but similar objective or victim.
  - b. The renunciation of one actor does not affect the liability of an accomplice who did not join in such abandonment or prevention.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one-half (1/2) the maximum sentence of the underlying offense or to pay a fine not to exceed one-half (1/2) the maximum fine for the underlying offense, or both such term of imprisonment and payment of fine.

#### **SECTION 2.11 BAD CHECKS - ISSUANCE OF**

A. A person who issues or passes a check knowing that he does not have sufficient funds in, or on deposit with, the bank or other drawee for the payment in full of the check as well as all other checks outstanding at the time of issuance is guilty of an offense.

B. For purposes of this Section, the issuer's knowledge of insufficient funds may be presumed if either:

1. The issuer had no account with the bank or other drawee at the time he issued the check; or
2. Payment was refused by the bank or other drawee for lack of funds on presentation within thirty days after issue and the issuer failed to pay the holder in full the amount due on the check, together with reasonable costs, within twelve days after receiving notice of that refusal.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both; and

1. An order to make restitution to the victim in an amount not less than the face amount of the check or checks, together with all applicable costs and fees. Completion of restitution may be a mitigating factor in any imposition of punishment under this Section.
2. If a person has been previously convicted for violation of this Section, the court may require restitution in an amount not to exceed twice the amount of the dishonored check or checks or fifty dollars (\$50.00), whichever is greater, together with all applicable costs and fees.

#### **SECTION 2.12 BEGGING OR SOLICITING**

A. A person is guilty of an offense who begs or solicits gifts of money, property or other thing(s) of value on the streets, sidewalks or other public places.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed thirty (30) days, or to pay a fine not to exceed ninety dollars (\$90.00), or both.

C. This Section shall not apply to any person acting in behalf of any civic, charitable, religious or social organization authorized by the Tribal Council to solicit gifts of money, property or other things of value on the Fort Apache Indian Reservation.

**SECTION 2.13 BIGAMY**

A. A person is guilty of an offense who marries another person while having a husband or wife living.

B. Subsection A shall not apply to any person whose husband or wife has been absent for five successive years, without being known to such person within that time to be living, nor to any person whose former marriage has been dissolved by any court of competent jurisdiction.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed ninety dollars (\$90.00), or both.

**SECTION 2.14 BRANDING LIVESTOCK OF ANOTHER**

A. A person is guilty of an offense who brands or marks an animal with a brand other than the recorded brand of the owner, or alters or obliterates any brand or mark on any animal not his own, with intent to convert the animal to his or some third person's use without consent of the owner.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.15 BRIBERY - GIVING**

A. A person is guilty of an offense who gives or offers to give to another person money, property or any other thing of value with intent to influence a public servant in the discharge of his public duties.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.16 BRIBERY - RECEIVING**

A. A public servant is guilty of an offense who receives or asks to receive any money, property, or other thing of value from any person with the promise or intent to be influenced in the discharge of his or her public duties. This Section does not apply to political contributions made without corrupt intent.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

C. In addition to any sentence imposed under Subsection B, a person found guilty under this Section forfeits his or her public office.

**SECTION 2.17 BRIBERY - SOLICITING**

A. A person is guilty of an offense who obtains or seeks to obtain money, property or any other thing of value, upon a claim or representation that he can or will improperly influence the action of a public servant in the discharge of his public duties.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

C. In addition to any sentence imposed under Subsection B, a person found guilty under this Section forfeits his or her public office.

**SECTION 2.18 CARRYING A CONCEALED WEAPON**

A. A person is guilty of an offense who, in the course of committing any offense or with the intent to commit any offense, has concealed on or about his person, or within his immediate control, a dangerous weapon without a valid State issued permit.

B. The White Mountain Apache Tribe shall recognize and honor all permits authorizing the carrying of concealed weapons that are issued by any tribal government, state government, or by the government of the United States, on the condition that the person carrying a weapon pursuant to such a permit is not engaged in committing, or preparing to commit, any criminal offense as defined in this Code.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to any a fine not to exceed five hundred dollars (\$500.00), or both.

D. Any weapons concealed in violation of this Section shall be subject to seizure and forfeiture as provided in the White Mountain Apache Rules of Criminal Procedure.

**SECTION 2.19 CONSPIRACY**

A. A person is guilty of conspiracy with another person, or persons, to commit a crime if, with the purpose of promoting or facilitating the crime's commission, he agrees to aid such other person(s) in the planning or commission of such crime.

1. No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.
2. Any person guilty of conspiracy, who knows that a person with whom he conspired has also conspired with another person or persons to commit the same crime, is guilty of conspiring with such other person(s), whether or not he knows their identity.
3. If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.
4. Defense to Conspiracy: Renunciation. In a prosecution for conspiracy, it is a defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, gave timely warning to law enforcement authorities of the conduct or result which is the object of the conspiracy, or otherwise made a reasonable effort to prevent such conduct or result.
5. A renunciation is not voluntary and complete within the meaning of this Section if it is motivated in whole or in part by:
  - a. A belief that circumstances exist which either increase the probability of immediate detection or apprehension of the accused or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose;  
or
  - b. A decision to postpone the criminal conduct or to transfer the criminal effort to another victim, place or another but similar objective.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one-half (1/2) the maximum sentence for the underlying offense or to pay a fine not to exceed one-half (1/2) the maximum fine for the underlying offense, or both such term of imprisonment and payment of fine.

**SECTION 2.20     CONTRIBUTING TO THE DELINQUENCY OF A MINOR**

- A. An adult person is guilty of an offense who:
  - 1. Knowingly causes, encourages, or advises a minor to commit an offense as defined under the provisions of this Code; or
  - 2. Knowingly causes, encourages or assists a minor to be delinquent or in need of supervision as defined under the provisions of the Juvenile Code.
  
- B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or pay a fine not to exceed five thousand dollars (\$5,000.00), or both.

**SECTION 2.21     CRIMINAL NEGLIGENCE**

- A. A person is guilty of an offense who:
  - 1. Recklessly endangers the safety of another, or
  - 2. Acts with careless disregard for the safety of another.
  
- B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days, or pay a fine not to exceed five hundred dollars (\$500.00), or both.
  
- C. If the commission of this offense results in death or disability exceeding six (6) months of another person, a person found guilty under this Section shall be sentenced to imprisonment for a period of not less than two hundred seventy (270) days, nor more than three (3) years, to pay a fine of no less than three thousand dollars (\$3,000.00) nor more than fifteen thousand dollars (\$15,000.00), which fine may be suspended only if the person found guilty pays restitution to the victim or, in the case of death, to the victim's family, in an amount equal to the fine. All restitution must be paid through the Court.

**SECTION 2.22     CRIMINAL DAMAGE**

- A. A person who commits the following is guilty of an offense:
  - 1. Defacing or damaging property of any person, organization, corporation, government or other entity; or
  - 2. Tampering with property of any person, organization, corporation, government or other entity so as to substantially impair its function or value; or
  - 3. Parking any vehicle in such a manner as to deprive livestock of access to the only reasonably available water.
  
- B. A person found guilty under this Section may be imprisoned for a period not to exceed one (1) year, or to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.

**SECTION 2.23     CRIMINAL DAMAGE; AGGRAVATED**

- A. A person who commits the following is guilty of an offense:
  - 1. Defacing, damaging, or in any way changing the appearance of any tribal governmental building or tribally owned building, vehicle or other property.
  - 2. Defacing, damaging, or in any way changing the appearance of any building, structure, personal property, or place used for sunrise dance, holy ground shrines, sacred places, holy grounds and any other property, or place used for worship or any religious purpose; or
  - 3. Defacing or damaging any building, structure, or place used as a school or as an educational facility; or

4. Defacing, damaging, or tampering with any cemetery, mortuary, or personal property of the cemetery or mortuary or other facility used for the purpose of burial or memorializing the dead.

B. A person found guilty under this Section shall be sentenced to imprisonment for a period not to exceed three (3) years, or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.

#### **SECTION 2.24 CRIMINAL TRESPASS**

A. A person is guilty of an offense who:

1. Enters or remains upon any public property for an unlawful purpose; or
2. Without good cause enters, remains upon or traverses private lands or other private property not his own, where notice against trespassing has been reasonably communicated by the owner; or
3. Knowingly allows his livestock or livestock under his control to occupy or graze on the lands of another.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

#### **SECTION 2.25 CUSTODIAL INTERFERENCE**

A. A person commits custodial interference if, knowing or having reason to know that he or she has no legal right to do so, such person knowingly takes, entices or keeps from lawful custody any child less than eighteen (18) years of age or incompetent, entrusted by authority of law to the custody of another person or institution.

B. If a child is born out of wedlock, the mother is the legal custodian of the child for the purposes of this Section until paternity is established and custody is determined by the court.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed three thousand dollars (\$3,000.00) or both.

#### **SECTION 2.26 CRUELTY TO ANIMALS**

A. A person is guilty of an offense who:

1. Recklessly or maliciously inflicts injury, pain, suffering, or death upon any animal; or
2. Recklessly or maliciously subjects any animal to cruel mistreatment, neglect, deprivation of water or food, or abandonment.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed thirty (30) days or to pay a fine not to exceed thirty dollars (\$30.00), or both.

#### **SECTION 2.27 DEFAMATION [ Repealed by Ordinance No. 264, enacted November 1, 2013.]**

#### **SECTION 2.28 DISOBEDIENCE TO A LAWFUL ORDER OF THE COURT**

A. A person who willfully disobeys any order, subpoena, warrant, or command duly issued by the Tribal Court or any official thereof is guilty of an offense.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

C. If the order of the Tribal Court which a person is found guilty of disobeying is an Order of Exclusion and the person is subject to the criminal jurisdiction of the Tribal Court, that person shall be sentenced to imprisonment for a period of not less than one (1) year nor more than three (3) years.

**SECTION 2.29 DISORDERLY CONDUCT**

A. A person is guilty of an offense who:

1. Engages in fighting or provokes a fight;
2. Disrupts any lawful public or religious meeting;
3. Causes unreasonable noise; or
4. Uses language or gestures knowing them to be obscene or likely to provoke a fight.
5. Causes emotional distress in others by threatening or attempting to harm himself or herself.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

**SECTION 2.30 DISPOSING OF PROPERTY OF DECEDENT'S ESTATE**

A. A person is guilty of an offense who, without proper authority, uses, transfers or otherwise disposes of any property of a decedent's estate before the determination of devisees, heirs, or other distributees.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.31 DRIVE-BY SHOOTING**

A. Any person who is a participant in a drive-by shooting is guilty of an offense.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three hundred sixty five (365) days or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both. Such person shall not be eligible for suspension of sentence, probation, parole or any other release from custody until the sentence imposed by the Court is served.

**SECTION 2.32 ESCAPE**

A. A person is guilty of an offense who, willfully escapes, attempts to escape, assists in an escape from lawful custody, or fails to return to custody at the scheduled time.

B. "Lawful custody" means confinement by court order or actual or constructive restraint by a police officer pursuant to an arrest.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed one hundred eighty dollars (\$180.00), or both.

D. Any sentence imposed under this Section shall run consecutively to that of the original offense.

**SECTION 2.33 EXTORTION**

A. A person is guilty of an offense who compels or induces another person to deliver property, services, or any tangible or intangible benefit to himself or to a third person, or to perform any act which the other person has a right to refrain from performing, or to refrain from performing any act which the other person has a right to perform, by threatening that if the actor's demand is not complied with, the actor or another will:

1. Cause physical injury to some person; or
2. Cause damage to property; or

3. Accuse some person of a crime or cause criminal charges to be instituted against some person; or
4. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.34 FAILING TO SUBMIT TO TREATMENT OR KNOWINGLY TRANSMITTING A CONTAGIOUS DISEASE**

A. A person who knows or has reason to know that he or she is infected with a venereal disease, active tuberculosis, Acquired Immune Deficiency Syndrome (A.I.D.S.), or other contagious disease capable of being transmitted by immediate or intermediate contact, and who willfully exposes another to the disease, in a place other than a medical facility, is guilty of an offense.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred twenty (120) days, provided that any such sentence shall be suspended if the offender submits to and completes medical treatment.

C. The court, upon finding reasonable cause to believe that a person has any of the above diseases, may order the person examined. If upon examination, the person is found to be infected with any of the diseases, the court may order the person to submit to medical treatment as prescribed by competent medical authority.

**SECTION 2.35 FAILURE TO SEND CHILDREN TO SCHOOL - Refer to Truancy Code.**

**SECTION 2.36 FAILURE TO SUPPORT**

A. A person is guilty of an offense who knowingly and without justification fails to support, care for, or protect a spouse, child, or other person for whose support or care he or she is responsible. This Section shall apply to any caregiver whether such responsibility arises by law (including, but not limited to, a parent), by court order (including, but not limited to, a guardian or foster parent), or by agreement (including, but not limited to, a babysitter), regardless of the duration of the responsibility.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both.

**SECTION 2.37 FORGERY**

A. A person is guilty of an offense who, with intent to defraud

1. Alters, falsely signs, or completes any written instrument, or
2. Passes as genuine that which he knows to be a forged instrument.

B. "Forged instrument" means a written instrument which has been altered, falsely signed or falsely completed.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both. In the event the defendant fails to make full restitution to the person defrauded by the forgery, the person found guilty under this Section shall be sentenced to imprisonment for a period of at least one (1) year, but not to exceed three (3) years. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.



**SECTION 2.38     FRAUD**

A.     A person is guilty of an offense who obtains property, services, or any other benefit, tangible or intangible:

1.    By willful misrepresentation of fact; or
2.    By failure to reveal facts which he knows should be revealed.

B.     A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both. In the event the defendant fails to make full restitution to the person defrauded by the forgery, the person found guilty under this Section shall be sentenced to imprisonment for a period of at least one (1) year, but not to exceed three (3) years. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.

**SECTION 2.39     GAMBLING**

A.     A person is guilty of an offense who knowingly stakes or risks a thing of value in a game of chance upon an agreement understanding that he or some other person may receive something of value depending on the outcome.

B.     Under Subsection A of this Section, "bingo", raffles and lotteries shall not be considered games of chance when conducted by religious or charitable organizations authorized by the Tribal Council to conduct such games.

C.     A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed twenty (20) days or to pay a fine not to exceed twenty dollars (\$20.00) or both.

D.     This Section does not apply to entities or the patrons thereof authorized to conduct such activities pursuant to the White Mountain Apache Tribe and State of Arizona Gaming Compact and White Mountain Apache Tribe Gaming Ordinance.

**SECTION 2.40     HARBORING A FUGITIVE**

A.     A person is guilty of harboring a fugitive if, with the intent to hinder apprehension, prosecution, conviction or punishment of another for any offense, such person renders assistance to that person.

B.     A person renders assistance under this Section, by:

1.    Concealing the other person or the identity of the other person; or
2.    Warning the other person of impending discovery, apprehension, prosecution or conviction. This does not apply to a warning given in connection with an effort to bring another into compliance with the law; or
3.    Providing the other person with money, transportation, a weapon, a disguise or other similar means of avoiding discovery, apprehension, prosecution or conviction; or
4.    Preventing or obstructing by means of force, deception or intimidation anyone from performing an act that might aid in the discovery, apprehension, prosecution or conviction of the other person; or
5.    Suppressing by an act of concealment, alteration or destruction any physical evidence that might aid in the discovery, apprehension, prosecution or conviction of the other person.

C.     A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three (3) years, or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

**SECTION 2.41     ILLICIT COHABITATION [ Repealed by Ordinance No. 245, Dec. 13, 2010.]**

**SECTION 2.42      IMPERSONATING A TRIBAL OFFICIAL**

A. A person who impersonates or pretends to be a Tribal official and engages in any conduct with the intent to induce another to submit to his pretended official authority or to rely upon his pretended official acts is guilty of an offense.

B. It is no defense to impersonating a Tribal official that the office the person pretended to hold did not in fact exist.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed one hundred eighty (\$180.00), or both.

**SECTION 2.43      INCEST**

A. A person is guilty of an offense who, has sexual intercourse with another person knowing that he or she and such person are related, whether naturally or through adoption as either:

1. Parent and child,
2. Grandparent and grandchild (any degree),
3. Siblings,
4. Uncle and niece/nephew,
5. Aunt and nephew/niece, or
6. First cousins.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed one hundred eighty dollars (\$180.00), or both.

**SECTION 2.44      INHALING TOXIC VAPORS**

A. A person is guilty of an offense who inhales the vapors or fumes of paint, gas, glue, or any other toxic product for the purpose of becoming intoxicated.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.45      INTERFERENCE WITH AN OFFICER**

A. A person is guilty of an offense who, willfully prevents or attempts to prevent a police officer from effecting an arrest or from otherwise discharging his or her official duty by:

1. Creating a substantial risk of physical harm to the officer or any other person; or
2. Employing means of resistance which justify or require substantial force to overcome; or
3. Knowingly making a false, fraudulent, or unfounded report or statement to an officer, or to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of a law enforcement agency, or to mislead a police officer; or
4. Knowingly misrepresenting a fact to an officer.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.46      INTERFERENCE WITH JUDICIAL PROCEEDINGS**

A. A person commits interference with Judicial Proceedings if such person knowingly:

1. Engages in disorderly, disrespectful or insolent behavior during the session of a court which directly tends to interrupt its proceedings or impairs the respect due to its authority; or

2. Disobeys or resists the lawful order, process or other mandate of a court; or
3. Refuses to be sworn or affirmed as a witness in any court proceeding; or
4. Publishes a false or grossly inaccurate report of a court proceeding; or
5. Refuses to serve as a juror unless exempted by law; or
6. Fails inexcusably to attend a trial at which he has been chosen to serve as a juror; or
7. Intimidates a witness or victim or dissuades a witness from testifying; or
8. Inducing a witness in any official proceeding, or a person he/she believes may be called as a witness, to unlawfully withhold any testimony or testify falsely or absent himself from the proceeding; or
9. Threatens a witness or offers or agrees to confer any benefit upon a witness, or a person he/she believes may become a witness, in any official proceeding with the intent to influence the testimony or to induce or coerce that person to avoid legal process or absent himself from any official proceeding to which he has been legally summoned; or
10. Destroys physical, documentary or other evidence that the person knows or should know may be used in a trial.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed two thousand dollars (\$2,000.00), or both.

#### **SECTION 2.47 JOYRIDING**

A. A person who, without proper authority, drives, operates or otherwise uses any vehicle, not his own, is guilty of an offense.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

#### **SECTION 2.48 LITTERING**

A. A person who intentionally commits any of the following is guilty of an offense:

1. Discards or deposits any litter upon any highway, road or public place, or upon any land, not his own; or
2. Permits any litter to be thrown from a vehicle which he is operating.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed one hundred eighty dollars (\$180.00), or both.

#### **SECTION 2.49 MAINTAINING A PUBLIC NUISANCE**

A. A person is guilty of an offense who:

1. Endangers the health or safety of another; or
2. Interferes with the enjoyment of property by willfully or negligently permitting a hazardous, unsightly or unhealthy condition to exist on property under his possession or control; or
3. Knowingly conducts or maintains a premise or place where persons gather for purposes of engaging in unlawful conduct.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

C. In addition to any penalty imposed under Subsection B, the court shall order that the nuisance or condition be abated within a reasonable time.

**SECTION 2.50     MISUSING PROPERTY**

A.     A person who, without proper authority, knowingly uses or damages any property not his own is guilty of an offense.

B.     A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed two hundred dollars (\$200.00), or both. Mandatory restitution shall be imposed in any case in which the defendant has damaged the property of another. If the defendant fails to make full restitution in such a case, he or she shall be sentenced to imprisonment for a period of no less than one hundred eighty (180) days or more than one (1) year. No part of the fine imposed by the court may be suspended unless the defendant has made restitution in full to the owner of the property he or she has damaged.

**SECTION 2.51     NARCOTICS AND DANGEROUS DRUGS**

A.     A person is guilty of an offense who:

1.     Knowingly possesses for sale, sells, produces, trades, transports, or gives away any opium, cocaine, methamphetamine, heroin, or any derivative thereof; or
2.     Knowingly possesses for sale, sells, produces, transports, or gives away any prescription-only drug unless the person holds a license or permit to prescribe or dispense any prescription-only drug; or
3.     Knowingly possesses for sale, sells, trades, produces, transports, or gives away peyote which is not being used, or intended for use in connection with the bona fide practice of a religious belief, or as an integral part of a religious exercise; or
4.     Knowingly possesses for sale, sells, produces, trades, transports, or gives away any vapor-releasing substance containing a toxic substance, including, but not limited to, paint, gas, hair spray, or glue or other vapor-releasing toxic substance for the purpose of becoming intoxicated; or
5.     Knowingly uses or possesses for use any of the above substances unless the person obtains the prescription-only drug pursuant to a valid prescription.

B.     Subsection A of this Section shall not apply to any transaction, possession, production, transportation, or use for medical purposes, under the prescription or supervision of a person licensed to administer, prescribe, control or dispense the prescribed substances in that Subsection.

C.     A person found guilty under Subsection A(1), (2), (3) or (4) may be sentenced to imprisonment for a period of no less than one hundred eighty (180) days but not to exceed three hundred sixty-five (365) days and to pay a fine of no less than five hundred dollars (\$500.00) but not to exceed five thousand dollars (\$5,000.00), and is not eligible for probation or suspension of sentence until the entire sentence is served. A person found guilty under subsection a (5) may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed one thousand dollars (\$1,000.00), or both, and may be eligible for probation or suspension of sentence only on the condition that such person completes a substance abuse evaluation with a certified substance abuse treatment program, and completes treatment as recommended by the evaluation.

D.     Possession of any amounts in excess of the following amounts of controlled substances shall be conclusively presumed to be possession for sale: one (1) ounce (435 grams) of marijuana; five (5) grams of hashish or other derivative of cannabis; one (1) gram of cocaine, methamphetamine, opium, heroin, or any other controlled substance.

**SECTION 2.52     PARTICIPATING IN OR ASSISTING A CRIMINAL STREET GANG**

A.     A person is guilty of an offense who:

1. Organizes, manages, directs, or supervises a Criminal Street Gang with the intent to promote or further the criminal objectives of the Criminal Street Gang; or
2. Entices or induces others to engage in violence or intimidation with the intent to promote or further the criminal objectives of a Criminal Street Gang; or
3. Furnishes advice or direction in the conduct, financing or management of a Criminal Street Gang's affairs with the intent to promote or further the criminal objectives of a Criminal Street Gang; or
4. Hires, engages or uses a minor for any conduct preparatory to or in completion of any criminal conduct of a Criminal Street Gang; or
5. Commits any offense with the intent to promote or further the objectives of a Criminal Street Gang.

B. Any person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days for the first offense and for a period not to exceed three (3) years for any repeated offense, or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both such term of imprisonment and payment of fine. Such person shall not be eligible for suspension of sentence or any other release from custody until the sentence imposed by the court is served.

C. For the purposes of this Section, "Criminal Street Gang" means any group of three (3) or more persons which engages in or has its purpose to engage in conduct prohibited by this Code.

D. Evidence concerning indicia of gang membership including gang related paraphernalia, tattoos, clothing or colors may be submitted into evidence in any case brought under this Section, with proper foundation.

#### **SECTION 2.53     PERJURY**

A. A person who knowingly makes a false statement while under oath, or induces another to do so, is guilty of an offense.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed ninety dollars (\$90.00), or both.

#### **SECTION 2.54     POSSESSION, USE OR SALE OF DANGEROUS DRUGS IN DRUG FREE SCHOOL ZONE**

A. A person who commits any of the following is guilty of an offense:

1. To intentionally be present in a drug free school zone to sell marijuana, peyote, prescription-only drugs, dangerous drugs, or narcotic drugs; or
2. To possess or use marijuana, peyote, dangerous drugs or narcotic drugs in a drug free school zone.

B. A person found guilty under Subsection A1. of this Section shall be sentenced to imprisonment for a period not to exceed three (3) years, but not less than ninety (90) days, and to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

C. A person found guilty under Subsection A2 of this Section may be sentenced to imprisonment for a period not to exceed two (2) years, or to pay a fine not to exceed ten thousand dollars (\$10,000.00), or both.

#### **SECTION 2.55     POSSESSION OF DRUG PARAPHERNALIA**

A. A person who knowingly uses, or possesses with intent to use, drug paraphernalia is guilty of an offense.

1. "Drug paraphernalia" means and includes all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating,

growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance.

B. A person found guilty under this section may be sentenced to imprisonment for a period not to exceed two (2) years, or to pay a fine not to exceed ten thousand dollars (\$10,000.00), or both.

#### **SECTION 2.56 POSSESSION OF MARIJUANA**

A. A person who knowingly uses, possesses, plants, cultivates, or harvests, marijuana without a valid state issued Medical Marijuana Card is guilty of an offense.

B. A person who knowingly sells, possesses for sale, trades, or gives away, marijuana is guilty of an offense.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one (1) year, or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both.

#### **SECTION 2.57 PROSTITUTION**

A. A person is guilty of an offense who:

1. Solicits or practices prostitution; or
2. Knowingly provides, keeps, rents, leases, or otherwise maintains any place or premises for the purpose of prostitution.

B. "Prostitution" means engaging in, agreeing to, or offering to engage in sexual intercourse or sexual contact for consideration.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

#### **SECTION 2.58 PUBLIC INTOXICATION**

A. A person is guilty of an offense who appears in a public place while under the influence of alcohol, marijuana, toxic vapors, or any substance, the use or possession of which is prohibited by this Code, and which is not therapeutically administered, to the degree that he may reasonably endanger himself or other persons or property.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed sixty dollars (\$60.00), or both.

#### **SECTION 2.59 RECEIVING OR POSSESSING STOLEN PROPERTY**

A. A person is guilty of an offense who buys, receives, possesses, conceals or aids in concealing any property which he knows or has reason to know has been obtained by theft, extortion, fraud, or other means declared to be unlawful under the provisions of this Code.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or to pay a fine not to exceed two thousand five hundred dollars (\$2,500.00), or both.

#### **SECTION 2.60 REFUSING TO AID AN OFFICER WITH ARREST; FIRES**

A. A person is guilty of an offense who willfully refuses to assist a peace officer:

1. In the lawful arrest of any person; or

- 2. In conveying a lawfully arrested person to the nearest place of confinement when such assistance is reasonably requested.
- B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ninety (90) days or pay a fine not to exceed ninety dollars (\$90.00), or both.
- C. Any able-bodied person residing within the Reservation who shall refuse without good reason to render assistance when summoned by any forest officer, peace officer or other authorized person to suppress forest or range fires or fires threatening the forest or range, within the boundaries of the Reservation is guilty of an offense.
- D. Any person found guilty under Subsection C above shall be sentenced to labor or imprisonment for a period of not less than twenty-five (25) days and not more than one hundred (100) days, or to pay a fine not less than twenty five dollars (\$25.00) and not more than one hundred dollars (\$100.00), or any combination thereof.
- E. Any able bodied person residing, hunting, fishing, camping, and/or traveling upon the Fort Apache Indian Reservation, who shall refuse without good reason to render assistance when summoned by any forest officer, peace officer or other authorized person to suppress range and forest fires within the boundaries of the Reservation is guilty of an offense.
- F. Any person found guilty under Subsection E above shall forfeit or cause to be revoked all rights, privileges, leases and/or permits granted to said person by the White Mountain Apache Tribe.

**SECTION 2.61 REMOVAL OR DESTRUCTION OF ANTIQUITIES**

- A. A person is guilty of an offense who, without proper authority, removes, excavates, injures, or destroys any historic or prehistoric ruin or monument, or any object of antiquity.
- B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or to pay a fine not to exceed five thousand dollars (\$5,000.00), or both.

**SECTION 2.62 SALES OF TOXIC SUBSTANCES TO MINORS**

- A. Any person is guilty of an offense who sells, permits the sale of, attempts to sell, conspires to sell, trades, gives, or transfers any toxic substance or tobacco product to any person under the age of eighteen (18) years of age.
  - 1. As used in this Section the term "toxic substance" shall include glue, cement or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, menthyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or of the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance.
- B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days and to pay a fine not to exceed five hundred dollars (\$500.00) or both.

**SECTION 2.63 SHOPLIFTING**

- A. A person is guilty of an offense who willfully takes possession of any good offered for sale by any mercantile establishment, without the consent of the owner or manager, with the intent to convert such goods to his own use without paying for them.

B. A person who willfully conceals or attempts to conceal any goods offered for sale on his or among his belongings, or on the person or among the belongings of another, is presumed to have taken possession of such goods with the intent to convert them to his own without paying for them.

C. A police officer, merchant or merchant's employee who has reasonable cause to believe that a person has willfully taken possession of goods with the intent to convert them without paying for them may detain and interrogate the person in regard thereto in a reasonable manner and for a reasonable time.

D. If a police officer, merchant or merchant's employee detains and interrogates a person pursuant to Subsection C, and the person thereafter brings a civil or criminal action against the police officer, merchant or merchant's employee, based upon the detention or interrogation, such reasonable cause shall be a defense to the action if the detention and interrogation were performed in a reasonable manner and for a reasonable time.

E. A person found guilty under this Section may be sentenced to imprisonment for period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

#### **SECTION 2.64 SOLICITATION**

A. A person is guilty of solicitation to commit a crime if, with the purpose of promoting or facilitating its commission, he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime.

1. It is immaterial under this Section that the actor fails to communicate with the person he solicits to commit a crime if his conduct was designed to effect such communication.
2. It is an affirmative defense that the actor, after soliciting another person to commit a crime, persuaded him not to do so or otherwise prevented the commission of the crime, under circumstances manifesting a complete and voluntary renunciation of his criminal purpose.
  - a. Renunciation is not complete if it is in response to law enforcement surveillance or detection or is motivated by a decision to postpone the criminal conduct until a more advantageous time or to transfer the criminal effort to another but similar objective or victim.
  - b. The renunciation of one actor does not affect the liability of an accomplice who did not join in such abandonment or prevention.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one-half (1/2) the maximum sentence for the underlying offense or to pay a fine not to exceed one-half (1/2) the maximum fine for the underlying offense, or both such term of imprisonment and payment of fine.

#### **SECTION 2.65 STALKING**

A. A person is guilty of stalking if he intentionally or knowingly engages in conduct directed against another person which would cause a reasonable person to either:

1. Fear for his own safety or the safety of his immediate family; or
2. Fear for imminent physical injury or death to his person or his immediate family.

B. "Conduct" under this Section means maintaining visual or physical proximity to a specific person or directing verbal or written threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, not including constitutionally protected activity.

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.



**SECTION 2.66      TELEPHONE CALLS**

- A.     A person who commits any of the following is guilty of an offense:
1.     Uses, during a telephone call, text message or other means of electronic communication, with the intent to terrify, intimidate, threaten, harass, annoy or offend, any obscene, lewd or profane language to suggest any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person; or
  2.     Extorts money or other thing of value from any person, or otherwise disturbs by repeated anonymous telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls were received.
- B.     Any offense committed by use of a telephone as set forth in this Section shall be deemed to have been committed at either the place where the telephone call or calls originated or at the place where the telephone call or calls were received.
- C.     A person found guilty under this section may be sentenced to imprisonment for a period not to exceed sixty (60) days or to pay a fine not to exceed two hundred fifty dollars (\$250.00), or both.

**SECTION 2.67      THEFT**

- A.     A person is guilty of an offense who unlawfully takes or exercises control of property, services, or any other tangible or intangible benefit not his own, whether or not possession was originally obtained with consent of the owner, with the intent of permanently depriving the owner of the value or use of the property, services, or other tangible or intangible benefit, for the benefit of himself or another.
- B.     A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.68      THREATENING OR INTIMIDATING**

- A.     A person commits threatening or intimidating if such person threatens or intimidates by word or conduct:
1.     To cause physical injury to himself or another person or serious damage to the property of another; or
  2.     With reckless disregard, causes serious public inconvenience including, but not limited to, evacuation of a building, or place of assembly.
- B.     A person found guilty of Threatening or Intimidating may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

**SECTION 2.69      UNLAWFUL BURNING**

- A.     A person is guilty of an offense who:
1.     Willfully and unlawfully causes or attempts to cause damage to any property by fire or explosion; or
  2.     Negligently causes damage to any property by fire or explosion; or
  3.     Sets fire to any forest, brush or grasslands, or sets a campfire, with careless disregard for the spread or escape of such fire.
- B.     A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred twenty (120) days or to pay a fine not to exceed one hundred twenty dollars (\$120.00), or both.

## **SECTION 2.70     UNLAWFUL RESTRAINT**

A.     A person is guilty of an offense who unlawfully causes the removal, detention or confinement of another person, so as to interfere with the person's liberty, or interferes with a person's use of a telephone or other means to summon lawful assistance.

B.     A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both.

## **SECTION 2.71     WEAPONS OFFENSES**

### **A.     Possession by minors.**

1.     Notwithstanding any other provision of this Code, except as otherwise permitted under the Game and Fish Code, any person under eighteen (18) years of age is guilty of an offense who is found in the possession of a firearm or other dangerous weapon and not under the direct supervision of a parent or legal guardian.
2.     Any person found guilty under this Subsection shall forfeit such firearm or weapon and shall be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to a fine not to exceed five hundred dollars (\$500.00), or both such imprisonment and fine, with costs.

### **B.     Possession on school grounds.**

1.     A person, except for a peace officer while in the performance of his official duties or any person summoned by a peace officer to assist, is guilty of an offense who enters any public establishment sponsoring a school activity, or school grounds or school building or attends any event while carrying a firearm or other dangerous weapon; or who is otherwise in the possession of a firearm or other dangerous weapon in such establishment or at such events.
2.     Any person found guilty under this Subsection shall be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both such imprisonment and fine.

### **C.     Possession by persons convicted of crimes of violence.**

1.     A person previously convicted for any crime of violence against a person in which a firearm was used, who thereafter possesses any firearm, is guilty of an offense.
2.     Any person found in violation of this subsection shall be sentenced to imprisonment for a period not to exceed three (3) years, or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

### **D.     Possession by persons while committing other crimes.**

Any person found in possession or immediate control of a firearm while committing any of the following is guilty of an additional offense:

1.     Crimes of Violence: Assault (2.4), Aggravated Assault (2.5), Assault with a Deadly Weapon (2.6), Assault with Intent to Commit Rape (2.7), Assault with Intent to Cause Serious Physical Injury (2.8), Assault with Intent to Kill (2.9), Drive-By Shooting (2.31), Stalking (2.65), Threatening or Intimidating (2.68), Unlawful Restraint (2.70), Sexual Abuse (4.4), Sexual Assault (4.6), Sexual Assault of a Spouse (4.7) and any Domestic Violence Offense under Section 6.2).
2.     Crimes Involving Drugs or Bootlegging: Narcotics and Dangerous Drugs (2.51), Participating or Assisting a Criminal Street Gang (2.52), Possession of Drug Paraphernalia (2.55), Possession of Marijuana (2.56), Bootlegging (2.74), Aggravated Bootlegging (2.74A), and Processing of Methamphetamine (2.92).

3. Crimes Involving Property: Arson of an Occupied Structure (2.72), Arson of a Structure or Property (2.73), Burglary (2.75), Robbery (2.93), Aggravated Robbery (2.94), and Armed Robbery (2.95).
4. Any person found in violation of this Subsection shall be sentenced to imprisonment not to exceed three (3) years, a fine not to exceed fifteen thousand dollars (\$15,000.00) or both. any penalties imposed pursuant to this subsection shall run consecutively to those imposed for the underlying offense(s).

### **SECTION 2.72     ARSON OF AN OCCUPIED STRUCTURE**

- A. A person commits this offense by knowingly and unlawfully damaging an occupied structure by causing a fire or explosion.
- B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed three (3) years, a fine not to exceed fifteen thousand dollars (\$15,000.00), and mandatory restitution. No part of the fine imposed by the court may be suspended unless the defendant has made restitution in full to the owner of the property he or she has damaged.

### **SECTION 2.73     ARSON OF A STRUCTURE OR PROPERTY**

- A. A person commits this offense by knowingly and unlawfully damaging a structure or property by causing a fire or explosion.
- B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed one (1) year, a fine not to exceed five thousand dollars (\$5,000.00), and mandatory restitution. No part of the fine imposed by the court may be suspended unless the defendant has made restitution in full to the owner of the property he or she has damaged.

### **SECTION 2.74     BOOTLEGGING**

Bootlegging means the illegal manufacture, sale, possession, or transporting of liquor as defined in Section 11.2 (cc) of the Health & Safety Code.

- A. It shall be unlawful to manufacture, sell, offer, keep for sale, possess or transport liquor except upon the terms, conditions, limitations, and restrictions specified in the Health & Safety Code.
- B. All liquor manufactured, sold, possessed or transported in violation of the Health & Safety Code is hereby declared contraband and in addition to any penalties or fines imposed by the court for violation of this Section, shall be confiscated and forfeited in accordance with the procedures set forth in Rule 2.5 of the White Mountain Apache Rules of Criminal Procedure governing the disposition of seized property.
- C. It shall not be a violation to manufacture, possess or consume Tulapai for ceremonial purposes.
- D. For purposes of this statute and Section 11.10(A)(6) of the Health and Safety Code, a person shall be presumed to be in possession with intent to sell alcoholic beverages if he or she is in possession of any amount exceeding the following quantities:

**Beer, Ale, or other Malt Liquor:** 1200 ounces (100 12-ounce cans or bottles or equivalent);

**Wine:** 36 liters (48 750 ml bottles or equivalent); or

**Distilled Spirits (Whiskey, Vodka, Tequila, etc.):** 21 liters (28 750 ml bottles or equivalent).

- E. Civil Penalties. Any person adjudged to be in violation of this section shall be subject to a civil penalty of not less than five hundred dollars (\$500.00) or the retail value of the illegally possessed or sold alcoholic beverages, whichever is greater, and not more than five thousand dollars (\$5,000.00) for each such violation, notwithstanding any penalty for repeated violations adopted by the liquor board.

F. A person found guilty of this offense shall be sentenced to imprisonment of no less than ninety (90) days and up to three hundred sixty-five (365) days for each violation. No part of any sentence may be commuted or suspended unless the entire sentence is served.

G. Motor vehicles that are used in violation of this Section are subject to seizure for forfeiture in the manner provided for in Rule 2.5 of the White Mountain Apache Rules of Criminal Procedure governing the disposition of seized property.

**SECTION 2.74A BOOTLEGGING; AGGRAVATED**

A. A person commits this offense by knowingly selling to or engaging in any transaction involving alcoholic beverages with the following persons:

1. Any person under the age of twenty-one (21) years;
2. Any person who subsequently drives while under the influence of alcohol as defined by Section 2.78, and causes a traffic accident as defined in Section 2.80;
3. Any person who offers stolen property of any kind in exchange for alcoholic beverages; or
4. Any person who accepts stolen property in exchanges for alcoholic beverages.
5. Any person who knowingly buys or sells alcoholic beverages containing toxic substances including, but not limited to, isopropyl (rubbing) alcohol, methyl alcohol, mineral spirits (paint thinner), any petroleum products, or other toxic substances.

B. A person found guilty under this Section shall be sentenced to no less than one hundred eighty (180) days in custody nor more than three (3) years in custody, and shall be fined no less than one thousand dollars (\$1,000.00) nor more than fifteen thousand dollars (\$15,000.00).

**SECTION 2.75 BURGLARY**

A. A person commits this offense by:

1. Entering or remaining unlawfully in or on a structure or in a fenced or commercial yard with the intent to commit any crime, or
2. Making unlawful entry into any part of a motor vehicle with the intent to commit any crime in the motor vehicle, or
3. Entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any crime therein, or
4. Committing any of the Subsections above while the person or an accomplice is knowingly in possession of any explosive or deadly weapon or dangerous instrument, or
5. Committing any of the Subsections above while the residential structure is occupied by either residents or their lawful guests.

B. A person found guilty under this section shall be sentenced to imprisonment for a period not to exceed three (3) years, but not less than thirty (30) days, and to pay a fine not to exceed fifteen thousand dollars (\$15,000.00).

**SECTION 2.76 DETENTION – BRINGING OR POSSESSION OF CONTRABAND**

A. Any person bringing into or possessing within a detention facility any item the possession of which is prohibited by the detention facility, shall be guilty of an offense.

B. Any person found guilty under this section who is not already incarcerated shall serve no less than ninety (90) days nor more than one hundred eighty (180) days in custody. Any person found guilty under this section who is already subject to incarceration shall serve ninety (90) days or twice the sentence to which that person has already been sentenced, whichever is greater.

**SECTION 2.77      DETENTION – REPORTING TO DETENTION WHILE INTOXICATED**

A. Any person who is subject to an order to report to a detention facility and who appears at said detention facility while either impaired to the slightest degree by alcohol or by illegal drugs, or who reports to the detention facility with a blood alcohol content in excess of .08%, is guilty of an offense.

B. A person found guilty of reporting to a detention facility while intoxicated shall be sentenced to imprisonment for a period not to exceed ninety (90) days or to pay a fine not to exceed five hundred dollars (\$500.00), or both. Any sentence imposed for this offense shall run consecutively to any other sentence imposed.

**SECTION 2.78      DRIVING UNDER THE INFLUENCE**

A. A person commits this offense by driving or being in actual physical control of a vehicle under any of the following circumstances:

1. While under the influence of any intoxicating liquor, any drug, a vapor releasing substances containing a toxic substance, or any combination of these if the person is impaired to the slightest degree, or
2. If the person has an alcohol concentration of 0.08 or more within two (2) hours of driving or being in actual physical control of the vehicle and the alcohol concentration result from alcohol consumed either before or while driving or being in actual physical control of the vehicle.

B. In a prosecution for this offense, the tribe may allege all prior convictions of violating this section within the past sixty (60) months for the purpose of sentencing.

c. a person who is convicted of violating this section shall be sentenced to serve not less than ten (10) consecutive days, and not more than thirty (30) days in jail, and to pay a fine of not less than two hundred fifty dollars (\$250.00) nor more than five hundred dollars (\$500.00), and is not eligible for probation or suspension of sentence unless the entire sentence is served.

d. a person who is convicted of violating this section for a second time in a sixty (60) month period shall be sentenced to serve not less than thirty (30) days and not more than ninety (90) days in jail, and to pay a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), and is not eligible for probation or suspension of sentence unless the entire sentence is served. Also, the person's driver's license shall be suspended for a period of one (1) year.

e. notwithstanding the provisions of subsection c above, at the time of sentencing the court may suspend all but twenty-four (24) hours of the sentence if the person completes a court-ordered alcohol or other drug treatment program. If the person does not complete the program, the court shall issue an order to show cause why the suspended portion of the sentence should not be served.

f. notwithstanding the provisions of subsection d above, at the time of sentencing the court may suspend all but ten (10) days of the sentence if the person completes a court-ordered alcohol or other drug treatment program. If the person does not complete the program, the court shall issue an order to show cause why the suspended portion of the sentence should not be served.

G. For the purposes of this offense, Sections 2.79 and 2.80, a person is deemed to be in "actual physical control" of a vehicle if he has the means to initiate any movement of that vehicle and he is in close proximity to the operating controls of the vehicle. If a person is in a parked vehicle and is able to start and move the vehicle without much difficulty, he is deemed to be in actual physical control of the vehicle.

**SECTION 2.79      DRIVING UNDER THE INFLUENCE – AGGRAVATED**

A. A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does any of the following:

1. Commits a violation of Section 2.78 of this Code while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive as a result of violating Section 2.78.
2. Within a period of sixty (60) months commits a third or subsequent violation of Section 2.78 of this Code.
3. Commits a violation of Section 2.78 of this Code while a person under fifteen (15) years of age is in the vehicle.
4. Commits a violation of Section 2.78 of this Code with a blood alcohol content of 0.15 or greater.

B. A person who is convicted of violating this section shall be sentenced to serve not less than sixty (60) consecutive days nor more than one hundred eighty (180) days in jail, and to pay a fine of not less than seven hundred fifty dollars (\$750.00), and is not eligible for probation or suspension of sentence unless the entire sentence is served.

C. A person who is convicted of violating this section for a second time in a sixty (60) month period shall be sentenced to serve not less than one hundred twenty (120) days nor more than three hundred sixty-five (365) days in jail, and to pay a fine of not less than one thousand dollars (\$1,000.00) nor more than five thousand dollars (\$5,000.00), and is not eligible for probation or suspension of sentence unless the entire sentence is served. Also, the person's driver's license shall be suspended for a period of one (1) year.

#### **SECTION 2.80 DRIVING UNDER THE INFLUENCE - CAUSING AN ACCIDENT**

A. A person commits this offense by committing a violation of Section 2.78 of this Code when such conduct significantly contributes to the causing of a traffic accident of any kind.

B. Violation of this Section of the Code shall be charged only as an addition to a charge of Section 2.78 or Section 2.79 of this Code.

C. Violation of this Section of the Code shall result in an additional sentence of thirty (30) days and an additional fine of two hundred fifty dollars (\$250.00) to the sentence imposed by the person's violation of either Section 2.78 or Section 2.79 of this Code, together with restitution, if the accident involved did not result in serious injuries to any person.

D. Violation of this Section of the Code shall result in an additional sentence of sixty (60) days and an additional fine of five hundred dollars (\$500.00) to the sentence imposed by the person's violation of either Section 2.78 or Section 2.79 of this Code, together with restitution, if the accident involved resulted in serious injuries to any person.

#### **SECTION 2.81 EMBEZZLEMENT**

A. Whoever embezzles, steals, knowingly converts to his/her use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, vouchers, credits, goods, assets, or other property belonging to any tribal organization or entrusted to the custody or care of any officer, employee, or agent of a tribal organization, or

B. Whoever, knowing any such moneys, funds, vouchers, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his/her use or the use of another, or

C. Whoever commits this offense by taking or converting to their personal use the property of an employer or business associate through means of falsifying or otherwise manipulating business records or documents, or through other means of subterfuge, including fraudulently taking, stealing, or appropriating any property or money which has been entrusted to his/her care and control for his/her own use or the benefit or use by another person.

D. Any person, employee or custodian having money, checks, vouchers, credits or other assets in their possession or under their control who fail to deposit said funds in a timely manner or when required to do so by Accounting Office requirements, is guilty of embezzlement.

E. Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his/her own use or to the use of another, any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, of any fund connected therewith, is guilty of embezzlement.

F. A person found guilty of embezzlement shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed three (3) years; or
2. A fine not to exceed fifteen thousand dollars (\$15,000.00); or
3. Mandatory restitution; or
4. All of the above.

## **SECTION 2.82      ENDANGERING AN UNBORN CHILD - SUBSTANCE ABUSE**

A. A person commits this offense by knowingly inhaling, injecting, ingesting or otherwise introducing into her bloodstream any illegal substances, drugs or intoxicants, knowing that she is pregnant.

B. Knowingly ingesting alcoholic beverages so as to raise her blood alcohol content to a level of .10 or above, knowing that she is pregnant.

C. Providing any illegal substance, drug, intoxicant, or alcoholic beverage to a pregnant female, knowing that the female is pregnant.

D. Refusal to submit to analysis of breath, blood or urine upon the request of a police officer having probable cause to suspect violation of this Section shall be prima facie evidence of guilt. However, the consequences of such refusal must be explained to the person.

E. Samples of blood or urine in furtherance of investigation into possible violation of this Section may only be taken by trained medical persons.

F. A person found guilty under this Section shall be sentenced to imprisonment for a period not to exceed one hundred eighty (180) days, or a fine not to exceed one thousand dollars (\$1,000.00), or both.

G. A person who is convicted of violating this section for a second time in a nine (9) month period shall be sentenced to serve not less than thirty (30) days in jail, and to pay a fine of not less than one thousand five hundred dollars (\$1,500.00).

H. A person who is convicted of violating this section for a third time or more in a nine (9) month period shall be sentenced to serve not less than one hundred eighty (180) days in jail, and to pay a fine of not less than five thousand dollars (\$5,000.00).

I. Notwithstanding the provisions of subsection F above, at the time of sentencing the court may suspend all but twenty-four (24) hours of the sentence if the person completes a court-ordered alcohol or other drug treatment program and parenting classes. If the person does not complete the program, the court shall issue an order to show cause why the suspended portion of the sentence should not be served.

J. Any sentence for violation of this Section may be deferred by the Court until a time six (6) months after the birth of the child or other termination of the pregnancy.

**SECTION 2.83      ENDANGERING THE WELFARE OF A CHILD**

A. A person commits this offense by committing a crime of violence against a person of less than eighteen (18) years of age, or by recklessly exposing a person of less than eighteen (18) years of age to significant danger or physical harm.

B. endangering the health or well being of a person of less than eighteen (18) years of age for whom the person has a legal duty of care, by willfully withholding food, or water, or shelter or prescribed medicines from such a person, or by threatening to do any of these things in order to coerce or induce such person to act, or refrain from acting, in a manner that the person has a legal right to act or refrain from acting.

C. Failing to provide or make reasonable arrangements for the direct supervision of a person of less than twelve (12) years of age for whom they have a legal duty of care for a period of more than eight (8) consecutive hours if the person to whom the duty of care is owed is less than eight (8) years of age, or more than eighteen (18) consecutive hours if such person is between eight (8) and twelve (12) years of age.

D. A person found guilty under this section shall be sentenced to imprisonment not to exceed one hundred eighty (180) days for each child endangered, or a fine not to exceed one thousand dollars (\$1,000.00), or both.

**SECTION 2.84      ENDANGERING THE WELFARE OF AN ELDER**

A. A person commits this offense by committing a crime of violence against a person of more than sixty (60) years of age, or by recklessly exposing a person of more than sixty (60) years of age to significant danger of physical harm, or

B. Taking property or vouchers of a value of more than two hundred fifty dollars (\$250.00) from a person of more than sixty (60) years of age through the use of force, threats or subterfuge, or

C. Endangering the health or well being of a person of more than sixty (60) years of age for whom the person has a legal duty of care, by willfully withholding food, water, shelter or prescribed medicines from such a person, or by threatening to do any of these things in order to coerce or induce such person to act, or refrain from acting, in a manner that the person has a legal right to act or refrain from acting.

D. A person found guilty under this section shall be sentenced to imprisonment not to exceed one hundred eighty (180) days for each elder endangered, or a fine not to exceed one thousand dollars (\$1,000.00), or both.

**SECTION 2.85      FAILURE TO APPEAR**

A. A person commits this offense by willfully failing to appear at any official proceeding to which he has been legally summoned or ordered to appear.

B. A person found guilty of this offense shall be sentenced to imprisonment of not less than thirty (30) days nor more than ninety (90) days and a fine not to exceed five hundred dollars (\$500.00).

C. In the event that the official proceedings at which the person failed to appear is a hearing or trial at which he/she is the Defendant, any sentence imposed by the Court for this offense shall be served consecutively to any other sentence imposed.

**SECTION 2.86      FAILURE TO CONTROL A DANGEROUS ANIMAL**

A. A person commits this offense by recklessly failing to maintain control over a dog or other domesticated animal if such failure results in the animal biting or otherwise inflicting an injury on a



person or serious injury on another animal while that person or other animal is not on the property of the owner of the animal.

B. If such failure results in the animal biting or otherwise inflicting an injury on a person while that person is on the property of the animal's owner, except as the result of the animal's reasonable response in defense of the owner's property or reasonable defense of any person.

C. It is not a violation of this Section if the dog or other domestic animal should inflict an injury on a person or other animal if the animal is tethered or otherwise contained on the owner's property, or if the attack was in response to significant provocation by the injured person while the animal was on the owner's property.

D. If an injury inflicted upon a person should result in the breaking of the skin of the person, the owner of the animal must submit the animal to inspection or quarantine as recommended by the Indian Health Service. Failure to so submit will make the owner responsible for a violation of this Section without regard to any defense to this Section and the animal shall be subject to seizure, forfeiture and euthanasia for post mortem examination as may be deemed necessary by the Indian Health Service.

E. A person found guilty under this Section shall be sentenced to imprisonment of up to sixty (60) days, or a fine of up to one hundred dollars (\$100.00), or both.

#### **SECTION 2.87 FRAUDULENT SCHEMES AND PRACTICES**

A. A person commits fraudulent schemes and practices who, in the course of the business of any department, agency, political subdivision, enterprise, or other entity of the Tribe, uses a scheme or artifice to defraud or deceive and knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device, or who makes or uses any false writing or document knowing such writing or document contains false, fictitious or fraudulent statements or entries.

B. A person found guilty of fraudulent schemes and practices shall be sentenced to any of the following:

1. Imprisonment in jail for a period not to exceed one (1) year; or
2. A fine, not to exceed five thousand dollars (\$5,000.00); or
3. Mandatory restitution for any economic loss; or
4. All of the above.

As used in this Section, "scheme or artifice to defraud" includes a scheme or artifice to deprive a person of the intangible right of honest services.

#### **SECTION 2.88 HARASSMENT**

A. A person commits this offense if, with intent to harass or with knowledge that the person is harassing another person, the person:

1. Anonymously or otherwise communicates or causes a communication with another person by verbal, electronic, mechanical, telephonic or written means in a manner that harasses, or
2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist, or
3. Surveils or causes another person to surveil a person for no legitimate reason, or
4. Anonymously or otherwise subscribes to or makes arrangements for newspapers, magazines, books or other publications to be delivered to another person and billed to that person for the sole purpose of causing inconvenience to and harassing that person, or
5. On more than one (1) occasion in a twelve (12) month period makes a false report to a law enforcement officer, credit or social service, or other agency.

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed one hundred eighty (180) days, a fine not to exceed one thousand dollars (\$1,000.00), or both.

**SECTION 2.89      HARASSMENT – AGGRAVATED**

- A. A person commits this offense if the person commits harassment as defined in Section 2.88, and
1. A court has issued an order of protection or temporary restraining order against the person in favor of the victim and that order has been served and is still valid, or
  2. The person has been convicted of or pleads guilty or no contest to a previous charge of harassment (Section 2.88) against any person.

B. A person found guilty under Subsection A (1) or (2) may be sentenced to imprisonment for a period not to exceed three (3) years, or to pay a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

**SECTION 2.90      LEAVING THE SCENE OF AN ACCIDENT**

A. A person commits this offense by failing to immediately stop the vehicle at the scene of an accident in which the person is involved, or as close to the accident as possible or prudent and immediately return to the accident scene, until police officers have arrived at the scene and given permission to leave.

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed ninety (90) days, a fine not to exceed five hundred dollars (\$500.00), or both, and if found to be responsible for the accident, shall pay restitution to the victim(s) thereof in an amount to be determined by the court. No part of the fine imposed by the court may be suspended unless the defendant has made restitution in full to the owner of the property he or she has damaged.

**SECTION 2.91      LOITERING**

- A. A person commits this offense if such person intentionally:
1. Is present in a public place and in an offensive manner or in a manner likely to disturb the public peace and after a reasonable request to cease or unless specifically authorized to do so, engages in any business, trade, solicitation or commercial transaction, or
  2. Is present in or about any school or college building or grounds after a reasonable request to leave and either does not have any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there, or
  3. Is present in a group of more than five (5) persons on the premises of any commercial or tribal facility for a period of more than thirty (30) minutes, after a reasonable request to leave and without any specific legitimate reason to be there.

B. A person found guilty under this section shall be sentenced to imprisonment not to exceed sixty (60) days, a fine not to exceed one hundred dollars (\$100.00), or both.

**SECTION 2.92      PROCESSING OF METHAMPHETAMINE**

- A. A person commits this offense by manufacturing or attempting to manufacture methamphetamine, or
- B. Procuring, obtaining, possession, transporting, or supplying to another any one or more of the chemicals commonly used to manufacture methamphetamine in an aggregate quantity of more than one (1) pound in weight, exclusive of packaging and without a legitimate reason, or
- C. Processing or packaging for use, sale or distribution any quantity of methamphetamine or its related forms, or

D. Allowing premises or structures or vehicles over which he/she has control to be used for any of the acts of this Section knowing, or having reason to know that such use was for the purpose of such acts.

E. A person found guilty under this Section shall be sentenced to imprisonment of at least thirty (30) days and no more than three (3) years, and pay a fine of at least fifty dollars (\$50.00) and no more than fifteen thousand dollars (\$15,000.00).

**SECTION 2.93      ROBBERY**

A. A person commits this offense if in the course of taking any property of another from his person or immediate presence and against his will, such person uses or threatens to use force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining the property.

B. A person found guilty under this Section shall be sentenced to imprisonment not to exceed one (1) year, a fine not to exceed five thousand dollars (\$5,000.00), or both.

**SECTION 2.94      ROBBERY; AGGRAVATED**

A. A person commits this offense by committing Robbery as defined by Section 2.93 if such person is aided by one or more accomplices actually present.

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed three (3) years, a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

**SECTION 2.95      ROBBERY; ARMED**

A. A person commits this offense by committing Robbery as defined by Section 2.93 if such person or an accomplice is armed with a deadly weapon or simulated deadly weapon, or uses or threatens to use a deadly weapon or simulated deadly weapon.

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed three (3) years, a fine not to exceed fifteen thousand dollars (\$15,000.00), or both.

## CHAPTER THREE - CRIMINAL EXTRADITION PROCEDURE

### SECTION 3.1 DEFINITIONS

- A. In this procedure, unless the context otherwise requires:
1. **“Tribal Chairman”** shall be the Chief Executive Officer of the White Mountain Apache Tribe.
  2. **“Executive Authority”** includes the Tribal Chairman, or in his absence the Tribal Vice-Chairman, performing the functions of Chief Executive Officer of the White Mountain Apache Tribe.
  3. **“State”** shall mean any of the United States of America and the political subdivisions thereof.
  4. **“Commissioned Police Officer”** means any police officer who is commissioned by the White Mountain Apache Tribal Chief of Police to enforce federal, tribal and state laws within the White Mountain Apache Reservation.
  5. **“Fugitive”** means any enrolled member of the White Mountain Apache Tribe, or any non-member Indian, who is charged with a criminal offense and who has fled from justice and is found within the exterior boundaries of the Fort Apache Indian Reservation.
  6. **“Warrant of Extradition”** means documents issued by any state or another Indian Tribe in accordance with this extradition procedure, requesting the deliverance of a fugitive from justice.
  7. **“Extradition Waiver”** means a voluntary acknowledgment in written form, by the fugitive, that he/she is voluntarily willing to surrender to the demanding jurisdiction and waive this extradition procedure.
  8. **Habeas Corpus”** shall mean 25 U.S.C. Section 1303.

### SECTION 3.2 FUGITIVES FROM JUSTICE; DUTY OF THE TRIBAL CHAIRMAN

Subject to this procedure, the White Mountain Apache Constitution, the White Mountain Apache Tribal Code, and the laws of the United States which are applicable to Indians or Indian Tribes, it is the duty of the Tribal Chairman, or in the event of the Chairman’s absence or conflict, the duty of the Vice-Chairman, subject to judicial review if requested, to insure review and compliance with this extradition procedure and to order the arrest and delivery to the demanding jurisdiction a fugitive charged with a criminal offense who has fled from justice and is found within the exterior boundaries of the Fort Apache Indian Reservation.

### SECTION 3.3 FORM OF DEMAND

A. No demand for the extradition of an Indian charged with a crime in a state or another Indian reservation shall be recognized by the Tribal Chairman unless the demand is in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state or Indian reservation having jurisdiction of the crime, or by a copy of a complaint supported by affidavit made before a state magistrate or a Tribal Chief Judge.

B. The indictment, information, or complaint supported by affidavit made before a state magistrate or Tribal chief Judge must substantially charge the person demanded with having committed a crime under the laws of the state or other Indian reservation, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

### SECTION 3.4 TRIBAL CHAIRMAN MAY INVESTIGATE CASE

When demand shall be made upon the Tribal Chairman by the Executive authority of the state or Indian reservation for the surrender of a person so charged with a crime, the Tribal Chairman may call on the White Mountain Apache Tribal Attorney to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he/she ought to be surrendered.

### **SECTION 3.5            WHAT PAPERS MUST SHOW**

A.     A warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand show that:

1. The accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, and he/she thereafter fled the demanding jurisdiction;
2. The accused is now on the Fort Apache Indian Reservation; and
3. The accused is lawfully charged by indictment or by information filed by a prosecuting officer and supported by affidavit to the facts, or by complaint supported by affidavit made before a state magistrate or Tribal Chief Judge, with having committed a crime under the laws of the demanding jurisdiction or has been convicted of a crime in the demanding jurisdiction and has escaped from confinement or broken parole.

### **SECTION 3.6            ISSUE OF TRIBAL CHAIRMAN'S WARRANT OF ARREST: ITS RECITAL**

If the Tribal Chairman determines that the demand should be complied with, a warrant of arrest shall be signed, which shall be sealed with the Tribal Seal, and be directed to any commissioned police officer for the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue.

### **SECTION 3.7            MANNER AND PLACE OF EXECUTION**

Such warrant shall authorize any commissioned police officer to arrest the accused at any time and any place where the accused may be found on the Fort Apache Indian Reservation, and to deliver the accused, subject to the provisions of this Tribal Extradition Procedure, to the duly authorized agent of the demanding jurisdiction.

### **SECTION 3.8            AUTHORITY OF ARRESTING OFFICER**

Every commissioned police officer shall have the authority to arrest the accused and to command assistance therein as empowered by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

### **SECTION 3.9            DUTY OF ARRESTING OFFICER; APPLICATION FOR WRIT OF HABEAS CORPUS**

No person arrested upon such warrant shall be delivered over to the demanding jurisdiction unless the accused has been informed of the demand made for his/her surrender and of the crime with which he/she is charged. The accused shall further be advised that he/she has the right to obtain counsel and may contest the legality of his/her arrest in accordance with the habeas corpus provisions of the Indian Civil Rights Act, 25 U.S.C. Section 1303. The accused may also waive extradition and voluntarily surrender himself/ herself to the demanding jurisdiction. In either case, the accused, as soon as is practical after arrest, shall be taken before the White Mountain Apache Tribal Chief Judge who shall fix a reasonable time for the accused to apply for a writ of habeas corpus or record that the arrestee has waived extradition.

### **SECTION 3.10          COMMITMENT TO AWAIT REQUISITION; BAIL**

If from the examination before the Chief Tribal Judge it appears that the person held is the person charged with having committed the crime alleged and that he/she has fled from justice, the Chief Tribal Judge must commit him/her to jail by virtue of the Tribal Chairman's warrant for such a time not exceeding thirty (30) days, as will enable the appointed agent for the demanding jurisdiction to take personal charge of the prisoner, unless the accused gives bail as provided in Section 3.11 or until he/she is legally discharged.

**SECTION 3.11      BAIL; IN WHAT CASES; FORFEITURE OF BAIL**

The Chief Judge of the Tribal Court may admit the person arrested to bail or bond or undertaking for such time as will allow him/her to apply for a writ of habeas corpus as prescribed herein. If the prisoner is admitted to bail or fails to press his/her writ of habeas corpus within the time allowed, or fails to appear and surrender himself/ herself according to the conditions of the bond, the court by proper order shall declare the bond forfeited and order the re-arrest of the accused.

**SECTION 3.12      IF NO ARREST IS MADE ON TRIBAL CHAIRMAN'S WARRANT BEFORE THE TIME SPECIFIED**

If the accused is not arrested under the warrant of the Tribal Chairman by the expiration of the time specified in the warrant, only the Tribal Chairman may extend such time specification.

**SECTION 3.13      FUGITIVE UNDER CRIMINAL PROSECUTION BY THE WHITE MOUNTAIN APACHE TRIBE WHEN DEMAND IS MADE**

If a criminal prosecution has been instituted against a named fugitive by the White Mountain Apache Tribe, the Tribal Chairman may, in his discretion, either surrender him/her to the demand jurisdiction or hold the fugitive until he/she has been tried and discharged or convicted and punished on the Fort Apache Indian Reservation.

**SECTION 3.14      TRIBAL CHAIRMAN MAY RECALL WARRANT OR ISSUE ALIAS**

The Tribal Chairman may recall his warrant of arrest or may issue another warrant whenever he deems proper.

**SECTION 3.15      APPLICATION FOR ISSUANCE OF REQUISITION; BY WHOM MADE; CONTENTS**

When the return to the Fort Apache Indian Reservation of a person charged with crime on the reservation is required, the Tribal Attorney shall present to the Tribal Chairman his written application for the requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him/her and the state or other Indian Reservation in which he/she is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the Tribal Attorney, the ends of justice require the arrest and return of the accused to the reservation for trial and that the proceeding is not instituted to enforce a private claim. The application shall be verified by affidavit and shall be accompanied by a certified copy of the complaint made to the Tribal Judge stating the offense with which the accused is charged. The Tribal Attorney may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application.

**SECTION 3.16      WRITTEN WAIVER OF EXTRADITION PROCEEDINGS; PRIOR WAIVER**

A. Any person arrested on the Fort Apache Indian Reservation who is charged with having committed a crime in another state or another Indian reservation or alleged to have escaped from confinement or broken the terms of his/her bail, probation or parole may waive the issuance and service of the warrant provided for herein and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of the Chief Tribal Judge a writing which states that he/she consents to return to the demanding jurisdiction, except that before the waiver is executed or subscribed to by the person it is the duty of the Chief Tribal Judge to inform the person of his/her right to the issuance or service of a warrant of extradition, the right to contest extradition by habeas corpus as provided for in 25 U.S.C. Section 1303, and the right to bail as provided in Section 3.11.

B. If the consent is duly executed, the Chief Tribal Judge shall direct the officer who has custody of the person to deliver the person promptly to the accredited agents or agents of the demanding jurisdiction and to deliver or cause to be delivered to the agent or agents a copy of the consent.

C. Notwithstanding Subsection A of this Section, a law enforcement agency holding a person who is alleged to have broken the terms of his probation, parole, bail or any other release shall immediately deliver the person to the duly authorized agent of the demanding jurisdiction without the requirement of a Tribal Chairman's warrant if the following apply:

1. The person signed a prior waiver of extradition as a term of his/her current probation, parole, bail or other release in the demanding jurisdiction.
2. The law enforcement agency holding the person has received both of the following:
  - a. An authenticated copy of the prior waiver of extradition signed by the person; and
  - b. A photograph and fingerprints properly identifying the person as the person who signed the waiver.

### **SECTION 3.17 CLOSE PURSUIT; DEFINITIONS**

In this Chapter, unless the context otherwise requires:

1. **"Close pursuit"** does not necessarily imply instant pursuit, but pursuit without unreasonable delay, and includes:
  - a. Close pursuit as defined by the common law.
  - b. Pursuit of a person who has committed a criminal offense, or who is reasonably suspected of having committed a criminal offense.
  - c. Pursuit of a person suspected of having committed a supposed criminal offense, though no criminal offense has actually been committed, if there is reasonable grounds for believing that a criminal offense has been committed.
2. **"Criminal Offense"** means any misdemeanor, felony, petty offense or other criminal act.
3. **"Fort Apache Indian Reservation" or "Reservation"** includes all lands within the exterior boundaries of the Fort Apache Indian Reservation as defined in the Constitution of the White Mountain Apache Tribe, Article 1, Section 1.
4. **"Person"** means any person over whom the White Mountain Apache Tribe may assert criminal jurisdiction.
5. **"Tribal Court" or "Court"** means the courts of the White Mountain Apache Tribe.
6. **"Tribal Police Officer"** means a duly sworn officer of the Whiteriver Police Department.

### **SECTION 3.18 AUTHORITY OF PEACE OFFICER ENTERING RESERVATION IN CLOSE PURSUIT**

A member of a duly organized tribal, state, county or municipal law enforcement agency of a reservation or state who enters the Fort Apache Indian Reservation in close pursuit, and continues within the Reservation in close pursuit of a person in order to arrest him on the ground that he is believed to have committed a criminal offense in such other reservation or state shall have the same authority to arrest and hold the person in custody as has a Tribal police officer to arrest and temporarily hold a person in custody within the Reservation on the ground that he is believed to have committed a criminal offense within the Reservation.

### **SECTION 3.19 ARREST AND HEARING; TRANSFER TO TRIBAL POLICE; TRIBAL JUDGE'S DETERMINATION**

A. Upon crossing into the Reservation, the officer in pursuit shall immediately notify and maintain contact with the Whiteriver Police Department until a Tribal police officer responds to the scene, or the arresting officer transports the person arrested pursuant to paragraph B.

B. If an officer of another jurisdiction makes an arrest within the Reservation in accordance with Section 3.18, he shall immediately deliver the person arrested to the custody of the Tribal police. If no Tribal police officer responds to the scene, the arresting officer shall immediately transport the person arrested to Tribal Police headquarters.

C. Upon taking custody of an arrested person, the Tribal police officer shall within Twenty-Four (24) Hours take the person arrested before a Tribal Court judge, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest.

D. If the judge determines that the arrest was unsupported by probable cause or was otherwise unlawful, the judge shall order the person released from custody.

E. If the judge determines that the arrest was lawful, the judge shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Tribal Chairman pursuant to this Chapter.

### **SECTION 3.20        INTERPRETATION**

The provisions of this procedure shall be interpreted and construed so as to effectuate its general purpose to make uniform the law of the state and Indian reservations that are involved; provided that under no circumstances shall the provisions of this procedure be interpreted to authorize the extradition, pursuit, or arrest of any person within the exterior boundaries of the Fort Apache Indian Reservation without complying with this Chapter.

### **SECTION 3.21        SHORT TITLE**

This procedure may be cited as the Tribal Criminal Extradition Procedure.



## CHAPTER FOUR - COMPREHENSIVE SEX CRIMES ACT

### SECTION 4.1 DEFINITIONS

- A. **"Culpable Mental State"** means intentionally, knowingly, recklessly or with criminal negligence as those terms are thusly defined:
1. **"Intentionally"** or **"with the intent to"** means, with respect to a result or to conduct described by a statute defining an offense, that a person's objectives is to cause that result or to engage in that conduct.
  2. **"Knowingly"** means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists. It does not require any knowledge of the unlawfulness of the act or omission.
  3. **"Recklessly"** means, with respect to a result or to a circumstance described by a statute defining an offense, that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.
  4. **"Criminal Negligence"** means, with respect to a result or to a circumstance described by a statute defining an offense, that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
- B. **"Oral Sexual Contact"** means oral contact with the penis, vulva or anus.
- C. **"Producing"** means financing, directing, manufacturing, issuing, publishing or advertising for pecuniary gain.
- D. **"Sexual Conduct"** means actual or simulated:
1. Sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex.
  2. Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
  3. Sexual bestiality.
  4. Masturbation, for the purpose of sexual stimulation of the viewer.
  5. Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.
  6. Lewd exhibition of the genitals, pubic or rectal areas of any person.
  7. Defecation or urination for the purpose of sexual stimulation of the viewer.
- E. **"Sexual Contact"** means any direct or indirect fondling or manipulating of any part of the genitals, anus or female breast.
- F. **"Sexual Intercourse"** means penetration into the penis, vulva or anus by any part of the body or by any object or manual masturbatory contact with the penis or vulva.
- G. **"Simulated"** means any depicting of the genitals or rectal areas which gives the appearance of sexual conduct or incipient sexual conduct.
- H. **"Spouse"** means a person who is legally married and cohabiting.
- I. **"Visual or Print Medium"** means:
1. Any film, photograph, videotape, negative, slide or,
  2. Any book, magazine or other form of publication or photographic reproduction containing or incorporating in any manner any film, photograph, videotape, negative or slide.
- J. **"Without Consent"** includes the following:
1. The victim is coerced by the immediate use or threatened use of force against a person or property.
  2. The victim is incapable of consent by reason of mental disorder, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant.
  3. The victim is intentionally deceived as to the nature of the act.
  4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

**SECTION 4.2            INDECENT EXPOSURE; INDECENT EXPOSURE TO A MINOR; CLASSIFICATIONS**

A.     A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts, and is not breast-feeding an infant, and another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act.

B.     A person commits indecent exposure to a minor if he or she intentionally or knowingly engages in any of the acts listed in Subsection A and such person is reckless as to whether a minor under the age of fifteen (15) years is present.

C.     Indecent exposure is a class 1 minor offense. Indecent exposure to a person under the age of fifteen (15) years is a class 3 major offense.

**SECTION 4.3            PUBLIC SEXUAL INDECENCY; PUBLIC SEXUAL INDECENCY TO A MINOR; CLASSIFICATIONS**

A.     A person commits public sexual indecency by intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act:

1.     An act of sexual contact.
2.     An act of oral sexual contact.
3.     An act of sexual intercourse.
4.     An act involving contact between the person's mouth, vulva or genitals and the anus or genitals of an animal.

B.     A person commits public sexual indecency to a minor if he intentionally or knowingly engages in any of the acts listed in Subsection A when a minor under the age of fifteen (15) years is present.

C.     Public sexual indecency is a class 1 minor offense. Public sexual indecency to a minor is a class 3 major offense.

**SECTION 4.4            SEXUAL ABUSE; CLASSIFICATIONS**

A.     A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person Fourteen (14) or more years of age without consent of that person or with any person who is under Fourteen (14) Years of age regardless of consent.

B.     It is a defense to a prosecution pursuant to Section 4.4 if the victim is fifteen (15), sixteen (16) or seventeen (17) years of age, the defendant is under nineteen (19) years of age or attending high school and is no more than twenty-four (24) months older than the victim and the conduct is consensual.

C.     Sexual abuse is a class 1 major offense.

**SECTION 4.5            SEXUAL CONDUCT WITH A MINOR; CLASSIFICATIONS**

A.     A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen (18) years of age.

B.     sexual conduct with a minor under fourteen (14) years of age is a class 1 major offense and is punishable pursuant to §4.19. Sexual conduct with a minor fourteen (14) years of age or over is a class 2 major offense.

**SECTION 4.6            SEXUAL ASSAULT; CLASSIFICATION; INCREASED PUNISHMENT**

A.     A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B.     Sexual assault is a class 1 major offense, and the person convicted is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement until the sentence imposed by the court has been served. If the victim is under fifteen (15) years of age, sexual assault is punishable pursuant to §4.19.

C.     Notwithstanding the provisions of §4.19, if the sexual assault involved the use or exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has previously been convicted of sexual assault, or any offense committed outside the reservation which if committed on the reservation would constitute sexual assault, the person shall not be eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement.

**SECTION 4.7            SEXUAL ASSAULT OF A SPOUSE; DEFINITIONS; VIOLATION; CLASSIFICATION**

A.     A person commits sexual assault of a spouse by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with a spouse without consent of the spouse by the immediate or threatened use of force against the spouse or another.

B.     A first offense sexual assault of a spouse is a class 1 major offense. A person convicted of this offense is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement until the sentence imposed by the court has been served. Convictions for two or more major offenses not committed on the same occasion but consolidated for trial purposes shall not be counted as prior convictions for purposes of this Section.

**SECTION 4.8            DEFENSES**

A.     It is a defense to a prosecution pursuant to §§4.4 and 4.5, involving a minor, if the act was done in furtherance of lawful medical practice.

B.     It is a defense to a prosecution pursuant to §§4.4 and 4.5, in which the victim's lack of consent is based on incapacity to consent because the victim was fourteen (14), fifteen (15), sixteen (16) or seventeen (17) years of age, if at the time the defendant engaged in conduct constituting the offense the defendant did not know and could not reasonably have known the age of the victim.

C.     It is a defense to a prosecution pursuant to §§4.2, 4.4, 4.5 and 4.6, if the act was done by a duly licensed physician or registered nurse or a person acting under his or her direction, or any other person who renders emergency care at the scene of an emergency occurrence, and consisted of administering a recognized and lawful form of treatment which was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under his or her direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.

D.     It is a defense to a prosecution pursuant to §§4.4, 4.5 or 4.6 that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution pursuant to §4.7 that the defendant was not motivated by a sexual interest.

E. It is a defense to prosecution pursuant to §4.9 that the defendant was not motivated by a sexual interest. It is a defense to prosecution pursuant to §4.4 involving a victim under Fourteen (14) Years of age that the defendant was not motivated by a sexual interest.

F. It is a defense to prosecution pursuant to §§4.4 and 4.9 if both the defendant and the victim are of the age of fourteen (14), fifteen (15), sixteen (16) or seventeen (17) and the conduct is consensual.

#### **SECTION 4.9 MOLESTATION OF CHILD; CLASSIFICATION**

A person who knowingly molests a child under the age of fourteen (14) years by directly or indirectly touching the private parts of such child or who causes a child under the age of fourteen (14) years to directly or indirectly touch the private parts of such person is guilty of a class 1 major offense and is punishable pursuant to §4.19.

#### **SECTION 4.10 CHILD ABUSE; DEFINITIONS; CLASSIFICATION**

A. In this Section, unless the context otherwise requires:

1. **"Abuse"** means the infliction or allowing of physical injury, impairment of bodily function or disfigurement or the infliction of or allowing another person to cause serious emotional damage as evidenced by severe anxiety, depression, withdrawal or outward aggressive behavior and which emotional damage is diagnosed by a medical doctor or psychologist and which is caused by the acts or omissions of an individual having care, custody and control of a child. Abuse shall include inflicting or allowing sexual abuse pursuant to §4.4, sexual conduct with a minor; pursuant to §4.5, sexual assault; pursuant to §4.6, molestation of a child; pursuant to §4.9, commercial sexual exploitation of a minor; pursuant to §4.13, sexual exploitation of a minor; pursuant to §4.14, incest; pursuant to Chapter 2 of the White Mountain Apache Criminal Code; or child prostitution.
2. **"Child, Youth or Juvenile"** means an individual who is under the age of eighteen (18) years of age.
3. **"Physical Injury"** the impairment of physical condition and includes but shall be limited to any skin bruising, bleeding, failure to thrive, malnutrition, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils a child's health or welfare.
4. **"Serious Physical Injury"** means physical injury which creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

B. Under circumstances likely to produce death or serious physical injury, any person who causes a child to suffer physical injury or, having the care or custody of such child, causes or permits the person or health of such child to be injured or causes or permits such child to be placed in a situation where its person or health is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 1 major offense and if the victim is under fifteen (15) years of age it is punishable pursuant to §4.19.
2. If done recklessly, the offense is a class 2 major offense.
3. If done with criminal negligence, the offense is a class 3 major offense.

C. Under circumstances other than those likely to produce death or serious physical injury to a child, any person who causes a child to suffer physical injury or abuse except for those acts in the definition which are declared unlawful by another Section of this Chapter or, having the care or custody of such child, causes or permits the person or health of such child to be injured or causes or permits such child to be placed in a situation where its person or health is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 major offense.
2. If done recklessly, the offense is a class 3 major offense.
3. If done with criminal negligence, the offense is a class 1 minor offense.

**SECTION 4.11            JUSTIFICATION; USE OF PHYSICAL FORCE**

The use of physical force upon another person which would otherwise constitute an offense is justifiable and not criminal under the following circumstance:

A.     A parent or guardian and a teacher or other person entrusted with the care and supervision of a minor or incompetent person may use reasonable and appropriate physical force upon the minor or incompetent person when and to the extent reasonably necessary and appropriate to maintain discipline, self defense, or to protect the child from injuring itself or others.

**SECTION 4.12            DUTY AND AUTHORIZATION TO REPORT NONACCIDENTAL INJURIES; PHYSICAL NEGLECT AND DENIAL OR DEPRIVATION OF NECESSARY MEDICAL OR SURGICAL CARE TO NOURISHMENT OF MINORS; DUTY TO MAKE MEDICAL RECORDS AVAILABLE; EXCEPTION; VIOLATION; CLASSIFICATION**

A.     Any physician, hospital intern or resident, surgeon, dentist, osteopath, chiropractor, podiatrist, county medical examiner, nurse, psychologist, school personnel, social worker, peace officer, parent counselor, clergyman or priest or any other person having responsibility for the care or treatment of children whose observation or examination of any minor discloses reasonable grounds to believe that a minor is or has been the victim of injury, sexual abuse pursuant to §4.4, sexual conduct with a minor pursuant to §4.5, sexual assault pursuant to §4.6, molestation of a child pursuant to §4.9, or commercial sexual exploitation of a minor pursuant to §4.13, abuse or physical neglect which appears to have been inflicted upon such minor by other than accidental means or which is not explained by the available medical history as being accidental in nature or who has reasonable grounds to believe there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant shall immediately report or cause reports to be made of such information to a peace officer or to the child protective services of the tribal social services.

B.     A clergyman, priest, traditional medicine man or medicine woman who has received a confidential communication or a confession in his role as a clergyman, priest or a traditional medicine man or medicine woman, the course of the discipline enjoined by the church to which he or she belongs may withhold reporting of the communication or confession if the clergyman, priest, medicine man or medicine woman determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the clergyman, priest, traditional medicine man, or medicine woman may otherwise make of the minor.

C.     No report is required under this Section for conduct prescribed by §4.4 and §4.5 if the conduct involves only minors age fourteen (14), fifteen (15), sixteen (16) or seventeen (17) and there is nothing to indicate that the conduct is other than consensual. Such reports shall be made forthwith by telephone or in person forthwith and shall be followed by a written report within seventy-two (72) hours. Such reports shall contain:

1.     The names and addresses of the minor and his parents or person or persons having custody of such minor, if known.
2.     The minor's age and the nature and extent of his injuries or physical neglect, including any evidence of previous injuries or physical neglect.
3.     Any other information that such person believes might be helpful in establishing the cause of the injury or physical neglect.

D.     Any person other than one required to report or cause reports to be made in Subsection A of this Section who has reasonable grounds to believe that a minor is or has been a victim of abuse or neglect may report the information to a peace officer or to the child protective services of the Tribal Social Services Department.

E. A person having custody or control of medical records of a minor for whom a report is required or authorized under this Section shall make such records, or a copy of such records, available to a peace officer or child protective services worker investigating the minor's neglect or abuse on written request for the records signed by the peace officer or child protective services worker. Records disclosed pursuant to this Subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this Section.

F. When such telephone or in-person reports are received by the peace officer, they shall immediately notify the Tribal Social Services and make such information available to them. Notwithstanding any other statute, when the Tribal Social Services receives these reports by telephone or in person, it shall immediately notify the White Mountain Apache Tribal Police Department.

G. Any person required to receive reports pursuant to Subsection A of this Section may take or cause to be taken photographs of the child and the vicinity involved. Medical examinations including, but not limited to, radiological examinations of the involved child may be performed.

H. A person furnishing a report, information or records required or authorized under this Section, or a person participating in a judicial or administrative proceeding or investigation result from a report, information or records required or authorized under this Section, shall be immune from any civil or criminal liability by reason of such action unless such person acted with malice or unless such person has been charged with or is suspected of abusing or neglecting the child or children in question. Except as provided in Subsection G of this Section, the physician-patient privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation or administrative proceeding in which a child's neglect, dependency, abuse or abandonment is an issue not in any judicial or administrative proceedings resulting from a report, information or records submitted pursuant to this Section nor in any investigation of a child's neglect or abuse conducted by a peace officer or the child protective services of the Tribal Social Services Department.

I. In any civil or criminal litigation in which a child's neglect, dependency, abuse or abandonment is an issue, a clergyman, priest, traditional medicine man, or medicine woman shall not, without his or her consent, be examined as a witness concerning any confession made to him or her in his or her role as a clergyman, a priest, a traditional medicine man or medicine woman in the course of the discipline enjoined by the church or tradition to which he or she belongs. Nothing in this Subsection discharges a clergyman, priest, traditional medicine man or medicine woman from the duty to report pursuant to Subsection A of this section.

J. If psychiatric records are requested pursuant to Subsection C of this Section, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.
2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

K. If any portion of a psychiatric record is excised pursuant to Subsection H of this Section, a court, upon application of a peace officer or child protective services worker, may order that the entire record or any portion of such record containing information relevant to the reported abuse or neglect be made available to the peace officer or child protective services worker investigating the abuse or neglect.

L. A person who violates any provision of this Section is guilty of a minor offense.

**SECTION 4.13      COMMERCIAL SEXUAL EXPLOITATION OF A MINOR; CLASSIFICATION**

- A. A person commits commercial sexual exploitation of a minor by knowingly:
1. Using, employing, persuading, enticing, inducing or coercing a minor to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.
  2. Using, employing, persuading, enticing, inducing or coercing a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain.
  3. Permitting a minor under such person's custody or control to engage in or assist others to engage in sexual conduct for the purpose of producing any visual or print medium or live act depicting such conduct.
  4. Transporting or financing the transportation of any minor through or across this reservation with the intent that such minor engage in prostitution or sexual conduct for the purpose of producing a visual or print medium or live act depicting such conduct.
- B. Commercial sexual exploitation of a minor is a class 1 major offense and if the minor is under fifteen (15) years of age it is punishable pursuant to §4.19.

**SECTION 4.14      SEXUAL EXPLOITATION OF A MINOR; CLASSIFICATION**

- A. A person commits sexual exploitation of a minor by knowingly:
1. Recording, filming, photographing, developing or duplicating any visual or print medium in which minors are engaged in sexual conduct.
  2. Distributing, transporting, exhibiting, receiving, selling, purchasing, possessing or exchanging any visual or print medium in which minors are engaged in sexual conduct.
- B. Sexual exploitation of a minor is a class 1 major offense and if the minor is under fifteen (15) years of age it is punishable pursuant to 4.19.

**SECTION 4.15      PORTRAYING ADULT AS MINOR; CLASSIFICATION**

- A. It is unlawful for any person depicted in a visual or print medium or live act as a participant in sexual conduct to masquerade as a minor.
- B. It is unlawful for any person knowingly to produce, record, film, photograph, develop, duplicate, distribute, transport, exhibit, sell, purchase or exchange any visual or print medium whose text, title or visual representation depicts a participant in sexual conduct as a minor even though any such participant is an adult.
- C. Any person who violates this Section is guilty of a class 3 major offense.

**SECTION 4.16      PERMISSIBLE INFERENCES**

In a prosecution relating to the sexual exploitation of children, the trier of fact may draw the inference that a participant is a minor if the visual or print medium or live act through its title, text or visual representation depicts the participant as a minor.

**SECTION 4.17      ADMITTING MINORS TO PUBLIC DISPLAYS OF SEXUAL CONDUCT; CONSTRUCTIVE KNOWLEDGE OF AGE; CLASSIFICATION**

- A. It is unlawful for an owner, operator or employee to admit a person under the age of Eighteen (18) Years into any business establishment where persons, in the course of their employment expose their genitals or anus or the areola or nipple of the female breast.
- B. An owner, operator or employee who admits a person to an establishment without evidence of the person's age is deemed to have constructive knowledge of the person's age.

C. A person who violates this Section is guilty of a class 1 minor offense.

**SECTION 4.18      DETENTION FOR OBTAINING EVIDENCE OF IDENTIFYING PHYSICAL CHARACTERISTICS**

A. A peace officer who is engaged, within the scope of his authority, in the investigation of an alleged criminal offense punishable up to one (1) year under this Chapter may make written application upon oath or affirmation to a tribal court judge for an order authorizing the temporary detention, for the purpose of obtaining evidence of identifying physical characteristics, of an identified or particularly described individual residing in or found in the tribal court's jurisdiction. The order shall require the presence of the identified or particularly described individual at such time and place as the court shall direct for obtaining the identifying physical characteristic evidence. Such order may be issued by the tribal judge upon a showing of all of the following:

1. Reasonable cause for belief that a specifically described criminal offense punishable under this Chapter has been committed.
2. Procurement of evidence of identifying physical characteristics from an identified or particularly described individual may contribute to identification of the individual who committed such offense.
3. Such evidence cannot otherwise be obtained by the investigating officer from either the law enforcement agency employing the affiant or the criminal identification division of the Bureau of Indian Affairs Police Federal Bureau of Investigation, or Whiteriver Police Department.

B. Any order issued pursuant to the provisions of this Section shall specify the following:

1. The alleged criminal offense which is the subject of the application.
2. The specific type of identifying physical characteristic evidence which is sought.
3. The relevance of such evidence to the particular investigation.
4. The identity or description of the individual who may be detained for obtaining such evidence.
5. The name and official status of the investigative officer authorized to effectuate such detention and obtain such evidence.
6. The place at which the obtaining of such evidence shall be effectuated.
7. The time that such evidence shall be taken except that no person may be detained for a period of more than three (3) hours for the purpose of taking such evidence.
8. The period of time, not exceeding fifteen (15) days, during which the order shall continue in force and effect. If the order is not executed within fifteen (15) days, a new order may be issued, pursuant to the provisions of this Section.

C. The order issued pursuant to this Section shall be returned to the court not later than thirty (30) days after its date of issuance and shall be accompanied by a sworn statement indicating the type of evidence taken. The court shall give to the person from whom such evidence was taken a copy of the order and a copy of the sworn statement indicating what type of evidence was taken, if any.

D. For the purpose of this Section, "identifying physical characteristics" includes, but is not limited to, the fingerprints, palm prints, footprints, measurements, handwriting, hand printing, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearance, or photographs of an individual.

**SECTION 4.19      DANGEROUS CRIMES AGAINST CHILDREN; SENTENCES; DEFINITIONS**

A. "**Dangerous crime against children**" means of any of the following committed against a minor under fifteen (15) years of age.

1. Second degree murder.



2. Aggravated assault resulting in serious physical injury or committed by the use of a deadly weapon or dangerous instrument.
3. Sexual assault.
4. Molestation of a child.
5. Sexual conduct with a minor.
6. Commercial sexual exploitation of a minor.
7. Sexual exploitation of a minor.
8. Child abuse as defined in §4.10.
9. Kidnapping.
10. Sexual abuse.
11. Taking a child for the purpose of prostitution.
12. Child prostitution.
13. Involving or using minors in drug offenses.

B. Classification.

1. A dangerous crime against children is a class 1 major offense if it is a completed offense.
2. A dangerous crime against children is a class 2 major offense if it is a preparatory offense.

C. Except as otherwise provided in this Section, a person who is at least eighteen (18) years of age or who has been tried as an adult and who stands convicted of a dangerous crime against children shall be sentenced to a presumptive term of imprisonment for one (1) year.

D. A person sentenced for a dangerous crime against children pursuant to this Section is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement until the sentence imposed by the court has been served.

E. In addition to the term of imprisonment imposed pursuant to this Section and notwithstanding any other law, the court shall order that a person convicted of any dangerous crime against children be supervised on parole after release from confinement on such conditions as the court deems appropriate.

F. The sentence imposed on a person by the court for a dangerous crime against children shall be consecutive to any other sentence imposed on the person at any time.

**SECTION 4.20            CLASSIFICATION OF SEXUAL OFFENSES; IMPRISONMENT AND FINES**

A. A sentence of imprisonment for sexual offenses shall be a definite term and the person sentenced, unless otherwise provided by law, shall be committed to the custody of the White Mountain Apache Department of Corrections.

B. The term of imprisonment and fine for major sexual offenses shall be determined as follows for the first offense:

1. **Class 1 major offense:** A person found guilty of a class 1 major offense shall be sentenced to imprisonment for a period no less than one-hundred eighty days (180), no more than one (1) year and to pay a fine no less than two thousand five hundred dollars (\$2,500.00), no more than five thousand dollars (\$5,000.00).
2. **Class 2 major offense:** A person found guilty of a class 2 major offense shall be sentenced to imprisonment for a period no less than one-hundred twenty days (120), no more than eight (8) months and to pay a fine no less than one thousand dollars (\$1,000.00), no more than two thousand dollars (\$2,000.00).
3. **Class 3 major offense:** A person found guilty of a class 3 major offense shall be sentenced to imprisonment for a period no less than sixty (60) days, no more than four (4) months and to pay a fine no less than five hundred dollars (\$500.00), no more than one thousand dollars (\$1,000.00).

C. The term of imprisonment and fine for minor sexual offenses shall be determined as follows for the first offense:

1. **Class 1 minor offense:** A person found guilty of a class 1 minor offense shall be sentenced to imprisonment for a period no less than thirty (30) days, no more than sixty (60) days and to pay a fine no less than one hundred dollars (\$100.00), no more than two hundred dollars (\$200.00).
2. **Class 2 minor offense:** A person found guilty of a class 2 minor offense shall be sentenced to imprisonment for a period no less than fifteen days (15) days, no more than thirty (30) days and to pay a fine no less than fifty dollars (\$50.00), no more than one hundred dollars (\$100.00).
3. **Class 3 minor offense:** A person found guilty of a class 3 minor offense shall be sentenced to imprisonment for a period no less than ten (10) days, no more than twenty (20) days and to pay a fine no less than twenty-five dollars (\$25.00), no more than fifty dollars (\$50.00).

#### **SECTION 4.21      SENTENCING**

A. **Increase in Sentencing:** Sentencing provided in §4.20 for first conviction of a major or minor sexual offense, except those offenses involving a use or exhibition of a deadly weapon or dangerous instrument or when the intentional or knowing infliction of serious physical injury upon another has occurred, shall be increased by the court up to twenty-five percent (25%), not to exceed one (1) year imprisonment and a fine not to exceed five thousand dollars (\$5,000.00). Said increase shall be based on the following circumstances:

1. Infliction or threatened infliction of serious physical injury.
2. Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of a crime.
3. If the offense involves the taking of or damage to property, the value of the property so taken or damaged.
4. Presence of an accomplice.
5. Especially heinous, cruel or depraved manner in which the offense was committed.
6. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.
7. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.
8. At the time of the commission of the offense, the defendant was a public servant and the offense involved conduct directly related to his office or employment.
9. The physical, emotional and financial harm caused to the victim or, if the victim has died as a result of the conduct of the defendant, the emotional and financial harm caused to the victim's immediate family.
10. During the course of the commission of the offense, the death of an unborn child at any stage of its development occurred.
11. The defendant was previously convicted of a sexual offense within the ten (10) years immediately preceding the date of the offense. A conviction outside the jurisdiction of the White Mountain Apache Tribe for an offense which if committed within the Tribe's jurisdiction would be punishable as a sexual offense is a sexual offense conviction for the purposes of this paragraph.
12. If the victim of the offense is sixty-five (65) years of age or more or is a handicapped person.
13. Any other factors which the court may deem appropriate to the ends of justice.

B. **Reduction in Sentencing:** Sentencing provided in §4.20 for a first conviction of a major or minor sexual offense, except those offenses involving a use or exhibition of a deadly weapon or dangerous instrument or when the intentional or knowingly infliction of serious physical injury upon another has occurred, may be reduced by the court up to twenty-five percent (25%) of the sentence and fine prescribed for said offense when the defendant files a written or oral motion prior to sentencing. the court

shall not *sua sponte* reduce the sentence and fine for a first conviction of a major or minor sexual offense. said reduction shall be based on the following circumstances:

1. The age of the defendant.
2. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.
3. The defendant was under unusual or substantial duress, although not such as to constitute a defense to prosecution.
4. The degree of the defendant's participation in the crime was minor, although not so minor as to constitute a defense to prosecution.
5. Any other factors which the court may deem appropriate to the ends of justice.

C. The upper or lower term imposed pursuant to this Section may be imposed only if the alleged circumstances of the crime are found to be true by the tribal judge upon any evidence or information introduced or submitted to the court prior to sentencing or any evidence previously heard by the judge at the trial, and factual findings and reasons in support are set forth on the record at the time of sentencing.

D. The victim of any sexual offense or the immediate family of the victim if the victim has died as a result of the defendant's conduct, may appear personally or by counsel at any sentencing proceeding to present evidence and express opinions concerning the crime, the defendant or the need for restitution. The court in imposing sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any sentencing proceeding or in the pre-sentence report.

**SECTION 4.22      REGISTRATION OF SEX OFFENDERS - See Chapter Five**

**SECTION 4.23      EXCLUSION OF NON-MEMBER**

Any non-member convicted for any violation of this Code may be excluded from the Fort Apache Indian Reservation in accordance with the Government Code of the White Mountain Apache Tribe in addition to any other penalties provided herein.

## CHAPTER FIVE - SEX OFFENDER REGISTRATION

### SECTION 5.1 PURPOSE

The intent of this Code is to implement the Federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) (42 U.S.C. 16901 et seq) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

### SECTION 5.2 NEED

The White Mountain Apache Tribe is disproportionately affected by violent crime and sex offenses from both Indian and non-Indian perpetrators; consequently, the conduct and presence of convicted sex offenders on the Fort Apache Indian Reservation threatens the political integrity, economic security, health and welfare of Tribal Nations even to the point of imperiling the subsistence of Tribal communities.

### SECTION 5.3 CREATION OF REGISTRY

A. **Sex Offender Registry.** There is hereby established a Sex Offender Registry which the White Mountain Apache Tribe Police Department shall maintain and operate pursuant to the provisions of this Code, as amended.

B. **Public Sex Offender Registry Website.** There is hereby established a public Sex Offender Registry Website which the White Mountain Apache Tribe Police Department shall maintain and operate pursuant to the provisions of this Code, as amended.

### SECTION 5.4 DEFINITIONS

The Definitions below apply to the Sex Offender Registry Chapter of the Criminal Code only.

- A. **Convicted.** An adult sex offender is “convicted” for the purposes of this Code if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled. A juvenile is “convicted” for purposes of this Code if the juvenile offender is either:
1. Prosecuted and found guilty as an adult for a sex offense, or
  2. Adjudicated delinquent as a juvenile for a sex offense, but only if the offender is fourteen (14) years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of Section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense.
- B. **Foreign Convictions.** A foreign conviction is one obtained outside of the United States.
- C. **Employee.** The term “employee” as used in this Section includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a Tribal agency or organization are included within the definition of employee for registration purposes.
- D. **Immediate.** “Immediate” and “immediately” mean within three (3) business days.
- E. **Imprisonment.** The term “imprisonment” refers to 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 a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, or a local or Tribal “jail.” Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this Section during their period of “house arrest.”
- F. **Indian.** Means any person of Indian descent who is a member of a federally recognized Indian Tribe according to the laws of that Tribe, and any other person recognized by federal law as an Indian for any purpose, and denotes both the singular and the plural.
- G. **Jurisdiction.** The term “jurisdiction” as used in this Section refers to 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 that elected to function as a SORNA registration and notification jurisdiction pursuant to PL 109-248 Section 127 (42 U.S.C. § 16927).
- H. **Minor.** The term “minor” means an individual who has not attained the age of eighteen (18) years.

- I. **Resides.** The term “reside” or “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives or sleeps.
- J. **Sex Offense.** The term “sex offense” as used in this Section includes those offenses contained in 42 U.S.C. §16911(5) and those offenses enumerated in Section 5.5(B) of this Code or any other covered offense under tribal law.

An offense involving consensual sexual conduct is not a sex offense for the purposes of this Sex Offender Registry Section if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, if the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

- K. **Sex Offender.** A person convicted of a sex offense is a “sex offender.”
- L. **Sexual Act.** The term “sexual act” means:
  1. Contact between the penis and the anus, and for purposes of this definition, 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 the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person,
  4. The intentional touching, not through the clothing, of the genitalia or another person that has not attained the age of eighteen (18) years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- M. **Sexual Contact.** The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.
- N. **Student.** A “student” is a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.
- O. **SORNA.** The Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 *et. seq.*, as amended.
- P. **Sex Offender Registry.** The term “sex offender registry” means the registry of sex offenders, and a notification program, maintained by the White Mountain Apache Tribe Police Department.
- Q. **National Sex Offender Registry (NSOR).** The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.
- R. **SMART Office.** 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. **Dru Sjodin National Sex Offender Public Website (NSOPW).** The public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.
- T. **Tier 1 Sex Offender.** A 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 5.6.
- U. **Tier 2 Sex Offender.** A 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 5.7, or who is subject to the recidivist provisions of Section 5.7(B).
- V. **Tier 3 Sex Offender.** A 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 5.8, or who is subject to the recidivist provisions of Section 5.8(B).

**SECTION 5.5 REGISTERABLE OFFENSES**

Individuals who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the Tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, 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.**

1. WMAT Criminal Code §2.7 (Assault with Intent to Commit Rape),
2. WMAT Criminal Code §4.2 (Indecent Exposure to a Minor – if it involves a victim under Fifteen (15) Years of age),
3. WMAT Criminal Code §4.3B (Public Sexual Indecency to a Minor – if it involves a victim under Fifteen (15) Years of age),
4. WMAT Criminal Code §4.4 (Sexual Abuse),
5. WMAT Criminal Code §4.5 (Sexual Conduct with a Minor),
6. WMAT Criminal Code §4.6 (Sexual Assault),
7. WMAT Criminal Code §4.7 (Sexual Assault of a Spouse),
8. WMAT Criminal Code §4.9 (Molestation of a Child),
9. WMAT Criminal Code §4.13 (Commercial Sexual Exploitation of a Minor – if it involves a victim under Fourteen (14) Years of age),
10. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if it involves a victim under Fourteen (14) Years of age).

**B. Federal Offenses.** A conviction for, or a conviction for an attempt, or conspiracy to commit any of the following, and any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. § 16911(5): Including any offenses prosecuted under the Assimilative Crimes Act (18 U.S.C. § 1152 or § 1153):

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),
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 U.S.),
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 for Illegal Sexual Activity, Travel with the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in illicit Sexual Conduct in Foreign Places),
18. 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 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 Public Law 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, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) and committed by a minor who is fourteen (14) years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious

violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

F. **Jurisdiction Offenses.** Any sex offense committed within this Tribe's jurisdiction, or any other jurisdiction that involves:

1. Any conduct that by its nature is a sex offense against a minor,
2. Any type or degree of genital, oral, or anal penetration,
3. Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,
4. 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,
5. False imprisonment of a minor,
6. Kidnapping of a minor,
7. Possession, production, or distribution of child pornography,
8. Solicitation of a minor to practice prostitution,
9. Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,
10. Use of a minor in a sexual performance,
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. §2244 (abusive sexual contact),
  - f. 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution),
  - g. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct), or
12. Offenses involving consensual sexual conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Sex Offense Registration Code if the victim was an adult unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

## **SECTION 5.6            TIER 1 OFFENSES**

A. **Sex Offenses.** A Tier 1 offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that is not a Tier 2 or Tier 3 offense.

B. **Offenses Involving Minors.** A Tier 1 offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 5.5(C) that involves the false imprisonment of a minor, video voyeurism of a minor, or possession or receipt of child pornography.

C. **Tribal Offenses.** Conviction for any of the following offenses shall be considered a conviction for a Tier 1 offense:

1. WMAT Criminal Code §4.2 (Indecent Exposure to a Minor – if it involves a victim under fifteen (15) years of age),
2. WMAT Criminal Code §4.3(B) (Public Sexual Indecency to a Minor – if it involves a victim under fifteen (15) years of age),
3. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if in possession of any visual or print medium involving a victim under fourteen (14) years of age).

D. **Certain Federal Offenses.** Conviction for any of the following federal offenses shall be considered a conviction for a Tier 1 offense:

1. 18 U.S.C. §1801 (video voyeurism of a minor),
2. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
3. 18 U.S.C. §2252A (material containing child pornography),
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) (arranging, inducing, procuring, or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain),
10. 18 U.S.C. §2424 (failure to file factual statement about an alien individual),
11. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

E. **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Section 5.6 (A), (B), or (C) shall be considered a Tier 1 offense.

## **SECTION 5.7 TIER 2 OFFENSES**

A. **Recidivism and Felonies.** Unless otherwise covered by Section 5.8, any sex offense that is not the first sex offense for which a person has been convicted or an attempt or conspiracy to commit such an offense and that is punishable by more than one (1) year in jail is considered 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 an 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 sixteen (16) or seventeen (17) years old,
4. Sexual contact with a minor thirteen (13) years of age or older, whether directly or indirectly 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 or distribution of child pornography.

C. **Tribal Offenses.** Conviction for any of the following offenses shall be considered a conviction for a Tier 2 offense:

1. WMAT Criminal Code §4.4 (Sexual Abuse – if it involves a victim thirteen (13) years of age or older),
2. WMAT Criminal Code §4.5 (Sexual conduct with a minor – if it involves a victim who is sixteen (16) or seventeen (17) years old),
3. WMAT Criminal Code §4.9 (Molestation of a Child – if it involves a victim thirteen (13) years and older),
4. WMAT Criminal Code §4.13 (Commercial Sexual Exploitation of a Minor – if it involves a victim under fourteen (14) years of age),
5. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if recording, filming, photographing, developing, duplicating, distributing, transporting, exhibiting, receiving, selling, purchasing, or exchanging of any visual or print medium involving a victim under fourteen (14) years of age engaged in sexual conduct).

D. **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. § 2243(d) (arranging, inducing, procuring, or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain),
3. 18 U.S.C. §2244 (abusive sexual contact, where the victim is thirteen (13) years of age or older),
4. 18 U.S.C. §2251 (sexual exploitation of children),
5. 18 U.S.C. §2251A (selling or buying of children),
6. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
7. 18 U.S.C. §2252A (production or distribution of material containing child pornography),
8. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
9. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
10. 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution),
11. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

E. **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Section 5.7 (A), (B), or (C) shall be considered a Tier 2 offense.

## **SECTION 5.8            TIER 3 OFFENSES**

A. **Recidivism and Felonies.** Any sex offense that is punishable by more than one (1) year in jail where the offender has had at least one (1) prior conviction or an attempt or conspiracy to commit such an offense for a Tier 2 sex offense, or has previously become a Tier 2 sex offender, is a Tier 3 offense.

B. **General Offenses.** 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 twelve (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.

C. **Certain Federal Offenses.** Conviction for 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. Where the victim is twelve (12) years of age or younger, 18 U.S.C. §2244 (abusive sexual contact).

D. **Certain Military Offenses.** Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. §951 note) that is similar to those offenses outlined in Section 5.8 (A), (B), or (C) shall be considered a Tier 3 offense.

E. **Tribal Offenses.** Conviction for any of the following offenses shall be considered a conviction for a Tier 3 offense.

1. WMAT Criminal Code §2.7 (Assault with Intent to Commit Rape),
2. WMAT Criminal Code §4.4 (Sexual Abuse – if it involves a victim twelve (12) years of age or younger),
3. WMAT Criminal Code §4.5 (Sexual Conduct with a Minor – if it involves a victim under the age of Sixteen (16) Years of age),
4. WMAT Criminal Code §4.6 (Sexual Assault),
5. WMAT Criminal Code §4.7 (Sexual Assault of a Spouse),
6. WMAT Criminal Code §4.9 (Molestation of a child – if it involves a victim twelve (12) years and younger).

**SECTION 5.9            GENERAL REQUIREMENTS**

A.     **Duties.** A sex offender covered by this Code who is required to register with the Tribe pursuant to Section 5.30 shall provide all of the information detailed in this Section to the White Mountain Apache Tribe Police Department, and the White Mountain Apache Tribe Police Tribe Department shall obtain all of the information detailed in this Section from covered sex offenders who are required to register with the Tribe in accordance with this Code and shall implement any relevant policies and procedures.

B.     **Digitization.** All information obtained under this Code shall be, at a minimum, maintained by the White Mountain Apache Tribe Police Department in a digitized format.

C.     **Electronic Database.** A sex offender registry shall be maintained in an electronic database by the White Mountain Apache Tribe Police Department and shall be in a form capable of electronic transmission.

**SECTION 5.10           CRIMINAL HISTORY**

A.     **Criminal History.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's criminal history:

1.     The date of all arrests,
2.     The date of all convictions,
3.     The sex offender's status of parole, probation, or supervised release,
4.     The sex offender's registration status, and
5.     Any outstanding arrest warrants.

**SECTION 5.11           DATE OF BIRTH**

A.     **Date of Birth.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's date of birth:

1.     The sex offender's actual date of birth, and
2.     Any other date of birth used by the sex offender.

**SECTION 5.12           DNA SAMPLE**

A.     **DNA.** If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the White Mountain Apache Tribe Police Department or designee a sample of his/her DNA.

B.     **CODIS.** Any DNA sample obtained from a sex offender shall be submitted to the Arizona Department of Public Safety Crime Lab for analysis and entry of the resulting DNA profile into CODIS.

**SECTION 5.13           DRIVER'S LICENSES, IDENTIFICATION CARDS, PASSPORTS, AND IMMIGRATION DOCUMENTS**

A.     **Driver's License.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the original driver's license card for all of the sex offender's valid driver's licenses issued by any jurisdiction. The Police Department shall make a photocopy of any such licenses.

B.     **Identification Cards.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, all original identification cards including the sex offender's Tribal enrollment card issued by any jurisdiction. The Police Department shall make a photocopy of any such cards.

C. **Passports.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, all original passports issued to or used by the sex offender. The Police Department shall make a photocopy of any such passport.

D. **Immigration Documents.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the original of any and all immigration documents. The Police Department shall make a photocopy of any such documents.

#### **SECTION 5.14 EMPLOYMENT INFORMATION**

A. **Employment.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's employment, include any and all places where the sex offender is employed in any means including volunteer and unpaid positions:

1. The name of the sex offender's employer,
2. The address of the sex offender's employer, and
3. Similar information related to any transient or day labor employment.

#### **SECTION 5.15 FINGER AND PALM PRINTS**

A. **Finger and Palm Prints.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, both finger prints and palm prints of the sex offender in a digitized format. After the White Mountain Apache Tribe Police Department obtains both finger prints and palm prints in a digitized format, the fingerprints will then be submitted to IAFIS and the palm prints will be submitted to the FBI Next Generation Identification Program by the Arizona Department of Public Safety Crime Lab.

#### **SECTION 5.16 INTERNET IDENTIFIERS**

A. **Internet Names.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's internet related activity:

1. Internet user names or identifiers, including but not limited to:
  - a. Any and all email addresses used by the sex offender,
  - b. Any and all Instant Message addresses and identifiers,
  - c. Any and all other designations or monikers used for self-identification in internet communications or postings, and
  - d. Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings, including but not limited to social network identifications, online gaming names, and video posting site identifications such as facebook, twitter, flickr, instagram, etc.

#### **SECTION 5.17 NAME**

A. **Name.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's name:

1. The sex offender's full primary given name,
2. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and
3. Any and all ethnic or tribal names by which the sex offender is commonly known. This does not include any religious or sacred names not otherwise commonly known.

**SECTION 5.18      PHONE NUMBERS**

A.     **Phone Numbers.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's telephone numbers:

1.     Any and all land line telephone numbers,
2.     Any and all cellular telephone numbers, and
3.     Any and all Voice over IP (VOIP) telephone numbers.

**SECTION 5.19      PICTURE**

A.     **Photograph.** A covered sex offender shall permit his photograph to be taken by the White Mountain Apache Tribe or its designee.

B.     **Update Requirements.** Unless the appearance of a sex offender has not changed significantly, a digitized photograph shall be collected:

1.     Every ninety (90) days for Tier 3 sex offenders,
2.     Every one hundred eighty (180) days for Tier 2 sex offenders, and
3.     Every year for Tier 1 sex offenders.

**SECTION 5.20      PHYSICAL DESCRIPTION**

A.     **Physical Description.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, an accurate description of the sex offender as follows:

1.     A physical description,
2.     A general description of the sex offender's physical appearance or characteristics, and
3.     Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos.

**SECTION 5.21      PROFESSIONAL LICENSING INFORMATION**

A.     **Professional Licenses.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.

**SECTION 5.22      RESIDENCE ADDRESS**

A.     **Address.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's residence:

1.     The address of each residence at which the sex offender resides or will reside, and
2.     Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

**SECTION 5.23      SCHOOL**

A.     **School Location.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to the sex offender's school:

1.     The address of each school where the sex offender is or will be a student, and
2.     The name of each school the sex offender is or will be a student.

**SECTION 5.24      SOCIAL SECURITY NUMBER**

A.     **Social Security.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information:

1. A valid social security number for the sex offender, and
2. Any social security number the sex offender has used in the past, valid or otherwise.

**SECTION 5.25      TEMPORARY LODGING**

A. **Lodging Information.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information when the sex offender will be absent from his residence for seven (7) days or more:

1. Identifying information of the temporary lodging locations including addresses and names,
2. The dates the sex offender will be staying at each temporary lodging location, and
3. The registered sex offender shall provide the information no later than three (3) business days before the scheduled travel. The information shall be provided in person.

**SECTION 5.26      INTERNATIONAL TRAVEL**

A. **Travel Abroad.** Sex offenders must inform their residence jurisdictions twenty-one (21) days before they intend to travel outside of the United States. Jurisdictions must notify the U.S. Marshals Service National Sex Offender Targeting Center (USMS – NSOTC) and immediately notify any other jurisdiction where the sex offender is either registered, or is required to register, of that updated information. Update must also be made to NCIC/NSOR.

**SECTION 5.27      OFFENSE INFORMATION**

A. **Offense Information.** The White Mountain Apache Tribe Police Department or designee shall obtain the text of each provision of law defining the criminal offense(s) for which the sex offender is registered.

**SECTION 5.28      VEHICLE INFORMATION**

A. **Detailed Information.** The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, the following information related to all vehicles owned or operated by the sex offender for work or personal use including land vehicles, aircraft, and watercraft:

1. License plate numbers,
2. Registration numbers or identifiers,
3. General description of the vehicle to include color, make, model, and year, and
4. Any permanent or frequent location where any covered vehicle is kept.

**SECTION 5.29      FREQUENCY, DURATION AND REDUCTION**

A. **Frequency.** A sex offender who is required to register shall, at a minimum, appear in person at the White Mountain Apache Tribe Police Department for purposes of verification and keeping their registration current in accordance with the following time frames:

1. For Tier 1 offenders, once every year for fifteen (15) years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
2. For Tier 2 offenders, once every one hundred eighty (180) days for twenty-five (25) years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.
3. For Tier 3 offenders, once every ninety (90) days for the rest of their lives, and
  - a. must allow for their picture to be taken, and
  - b. must review their existing registration information for accuracy.

**B. Reduction of Registration Periods.** A sex offender may have their period of registration reduced as follows:

1. A Tier 1 offender may have his or her period of registration reduced to ten (10) years if he or she has maintained a clean record for ten (10) consecutive Years,
2. A Tier 3 offender may have his or her period of registration reduced to twenty-five (25) years if he or she was adjudicated delinquent of an offense as a juvenile that required tier 3 registration and he or she has maintained a clean record for twenty-five (25) consecutive years.

**C. Clean Record.** For purposes of Section 5.29(B) a person has a clean record if:

1. He or she has not been convicted of any offense, for which imprisonment for more than one (1) year may be imposed,
2. He or she has not been convicted of any sex offense during the period in question,
3. He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and
4. He or she has successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

### **SECTION 5.30 REQUIREMENTS FOR IN PERSON APPEARANCES**

**A. Photographs.** At each in person verification, the sex offender shall permit the White Mountain Apache Tribe Police Department to take a photograph of the offender.

**B. Review of Information.** At each in person verification the sex offender shall review existing information for accuracy.

**C. Notification.** If any new information or change in information is obtained at an in person verification, the White Mountain Apache Tribe Police Department shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.

**D.** If any new information or change in information is obtained at an in person verification, the White Mountain Apache Police Department shall immediately update the public website, if applicable, and update information in NCIC/NSOR.

### **SECTION 5.31 SEX OFFENDER ACKNOWLEDGEMENT FORM**

**A.** The sex offender shall read, or have read to them, and sign a form stating that the duty to register has been explained to them by the White Mountain Apache Police Department and that the sex offender understands the registration requirement.

1. The form shall be signed and dated by the White Mountain Apache Police Department personnel registering the sex offender.

**B.** The White Mountain Apache Police Department shall immediately upload the acknowledgment form into the White Mountain Apache Tribal sex offender registry.

### **SECTION 5.32 WHERE REGISTRATION IS REQUIRED**

**A. Jurisdiction of Conviction.** A sex offender must initially register with the White Mountain Apache Tribe Police Department if the sex offender was convicted by the Tribal Court of a covered sex offense regardless of the sex offender's actual or intended residency.

**B. Jurisdiction of Incarceration.** A sex offender must register with the White Mountain Apache Tribe Police Department if the sex offender is incarcerated by the Tribe while completing any sentence for a covered sex offense, regardless of whether it is the same jurisdiction as the jurisdiction of conviction or residence.

C. **Jurisdiction of Residence.** A sex offender must register with the White Mountain Apache Tribe Police Department if the sex offender resides within the exterior boundary of the Fort Apache Indian Reservation.

D. **Jurisdiction of Employment.** A sex offender must register with the White Mountain Apache Tribe Police Department if he or she is employed by the Tribe in any capacity or otherwise is employed within the exterior boundary of the Fort Apache Indian Reservation.

E. **Jurisdiction of School Attendance.** A sex offender must register with the White Mountain Apache Tribe Police Department if the sex offender is a student in any capacity within the exterior boundary of the Fort Apache Indian Reservation.

### **SECTION 5.33 TIMING OF REGISTRATION**

A. **Timing.** A sex offender required to register with the Tribe under this Code shall do so in the following time frame:

1. If convicted by the White Mountain Apache Tribe for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration,
2. If convicted by the White Mountain Apache Tribe but not incarcerated, within three (3) business days of sentencing for the registration offense, and
3. Within three (3) business days of establishing a residence, commencing employment, or becoming a student at a school within the exterior boundary of the Fort Apache Indian Reservation, a sex offender must appear in person to register with the White Mountain Apache Tribe Police Department.

B. **Duties of White Mountain Apache Tribe Police Department.** The White Mountain Apache Tribe Police Department shall have policies and procedures in place to ensure the following:

1. That any sex offender incarcerated or sentenced by the Tribe for a covered sex offense completes their initial registration with the Tribe,
2. That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,
3. That the sex offender is registered, and added to the public website if applicable,
4. That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or study status,
5. That all information is entered and updated in NCIC/NSOR.

### **SECTION 5.34 RETROACTIVE REGISTRATION**

A. **Retroactive Registration.** The White Mountain Apache Tribe Police Department shall have in place policies and procedures to ensure the following three categories of sex offenders are subject to the registration and updating requirements of this Code:

1. Sex offenders incarcerated or under the supervision of the Tribe, whether for a covered sex offense or other crime,
2. Sex offenders already registered or subject to a pre-existing sex offender registration requirement under the Tribe's laws, and
3. Sex offenders reentering the justice system due to conviction for any crime.

B. **Timing of Recapture.** The White Mountain Apache Tribe Police Department shall ensure recapture of the sex offenders mentioned in Section 5.32(A) within the following time frame to be calculated from the date of passage of this Code:

1. For Tier 1 sex offenders, one (1) year,
2. For Tier 2 sex offenders, one hundred eighty (180) days, and
3. For Tier 3 sex offenders, ninety (90) days.

### **SECTION 5.35 KEEPING REGISTRATION CURRENT**

**A. Jurisdiction of Residency.** All sex offenders required to register in this jurisdiction shall immediately appear in person at the White Mountain Apache Tribe Police Department to update any changes to their name, residence (including termination of residency), employment, or school attendance. All sex offenders required to register in this jurisdiction shall immediately inform the White Mountain Apache Tribe Police Department in person of any changes to their temporary lodging information, vehicle information, internet identifiers, or telephone numbers. In the event of a change in temporary lodging of over seven (7) days, the sex offender shall immediately notify his residence jurisdiction, which in turn will notify the jurisdiction in which the offender is temporarily staying.

**B. Jurisdiction of School Attendance.** Any sex offender who is a student in any capacity within the exterior boundary of the Fort Apache Indian Reservation regardless of location that change their school, or otherwise terminate their schooling, shall immediately appear in person at the White Mountain Apache Tribe Police Department to update that information. The White Mountain Apache Tribe Police Department shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

**C. Jurisdiction of Employment.** Any sex offender who is employed by the Tribe in any capacity or otherwise is employed within the exterior boundary of the Fort Apache Indian Reservation regardless of location that change their employment, or otherwise terminate their employment, shall immediately appear in person at the White Mountain Apache Tribe Police Department to update that information. The White Mountain Apache Tribe Police Department shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

**D. Duties of White Mountain Apache Tribe Police Department.** With regard to changes in a sex offender's registration information, the White Mountain Apache Tribe Police Department or designee shall immediately notify:

1. All jurisdictions where a sex offender intends to reside, work, or attend school,
2. Any jurisdiction where the sex offender is either registered or required to register,
3. Specifically with respect to information relating to a sex offender's intent to commence residence, school, or employment outside of the United States, any jurisdiction where the sex offender is either registered or required to register, and the U.S. Marshals Service. The Tribal police shall also ensure this information is immediately updated on NCIC/NSOR.

### **SECTION 5.36 FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING**

**A. Failure to Appear.** In the event a sex offender fails to register with the Tribe as required by this Code, the White Mountain Apache Tribe Police Department or designee shall immediately inform the jurisdiction that provided notification that the sex offender was to commence residency, employment, or school attendance with the Tribe that the sex offender failed to appear for registration.

**B. Absconded Sex Offenders.** If the White Mountain Apache Tribe Police Department or designee receives information that a sex offender has absconded the White Mountain Apache Tribe Police Department shall make an effort to determine if the sex offender has actually absconded.

1. In the event no determination can be made, the White Mountain Apache Tribe Police Department or designee shall ensure the Tribal police and any other appropriate law enforcement agency is notified.
2. If the information indicating the possible absconding came through notice from another



jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

3. If an absconded sex offender cannot be located then the Tribal police shall take the following steps.
  - a. Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,
  - b. Notify the U.S. Marshals Service,
  - c. Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,
  - d. Update the NCIC/NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and
  - e. Enter the sex offender into the National Crime Information Center Wanted Person File.

C. **Failure to Register.** In the event a sex offender who is required to register due to their residence, employment, or school attendance status fails to do so or otherwise violates a registration requirement of this Code, the White Mountain Apache Tribe Police Department shall take all appropriate follow-up measures including those outlined in Section 5.34(B). The White Mountain Apache Tribe Police Department shall first make an effort to determine if the sex offender is actually residing, employed, or attending school in lands subject to the Tribe's jurisdiction. Penalties for failing to register are outlined in Section 5.41.

#### **SECTION 5.37 PUBLIC SEX OFFENDER REGISTRY WEBSITE**

A. **Website.** The White Mountain Apache Tribe Police Department shall use and maintain a public sex offender registry website.

B. **Links.** The registry website shall include links to sex offender safety and education resources.

C. **Instructions.** The registry website shall include instructions on how a person can seek correction of information that the individual contends is erroneous.

D. **Warnings.** The registry website shall include a warning that the information contained on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported addresses and that any such action could result in civil or criminal penalties.

E. **Search Capabilities.** The registry website shall have the capability of conducting searches by (1) name; (2) county, city, and/or town; and (3) zip code and/or geographic radius.

F. **Dru Sjodin National Sex Offender Public Website.** The Tribe shall include in the design of its website all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General of the United States.

#### **SECTION 5.38 REQUIRED AND PROHIBITED INFORMATION**

A. **Required Information.** The following information shall be made available to the public on the sex offender registry website:

1. Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,
2. All sex offenses for which the sex offender has been convicted,
3. The sex offense(s) for which the offender is currently registered,
4. The address of the sex offender's employer(s),
5. The name of the sex offender including all aliases,
6. A current photograph of the sex offender,
7. A physical description of the sex offender,
8. The residential address and, if relevant, a description of a habitual residence of the sex offender,

9. All addresses of schools attended by the sex offender, and
10. The sex offender's vehicle license plate number along with a description of the vehicle.

**B. Prohibited Information.** The following information shall not be available to the public on the sex offender registry website:

1. Any arrest that did not result in conviction,
2. The sex offender's social security number,
3. Any travel and immigration documents,
4. The identity of the victim, and
5. Internet identifiers (as defined in 42 U.S.C. §16911).

**C. Witness Protection.** For sex offenders who are under a witness protection program, the Tribal police may honor the request of the United States Marshals Service or other agency responsible for witness protection by not including the original identity of the offender on the publicly accessible sex offender registry website.

### **SECTION 5.39**      **COMMUNITY NOTIFICATION**

**A. Law Enforcement Notification.** Whenever a sex offender registers or updates his or her information with the Tribe, the White Mountain Apache Tribe Police Department shall:

1. Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status.
2. Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NCIC/NSOR or other relevant databases, or if able, immediately update NCIC/NSOR.
3. Immediately notify any agency, department, or program within the Tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, Tribal prosecutors and Tribal probation.
4. Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.
5. Immediately notify National Child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. §5119a) when a sex offender registers or updates registration.
6. Enter or update information posted on the public website.

**B. Community Notification.** The White Mountain Apache Tribe Police Department shall ensure there is an automated community notification process in place that ensures the following:

1. Upon a sex offender's registration or update of information with the Tribe, the Tribe's public sex offender registry website is immediately updated,
2. The Tribe's public sex offender registry has a function that enables the general public to request an e-mail notice that will notify them when a sex offender commences residence, employment, or school attendance with the Tribe, with a specified zip code, or within a certain geographic radius. This email notice shall include the sex offender's identity so that the public can access the public registry for the new information.

### **SECTION 5.40**      **IMMUNITY**

**A. No waiver of immunity.** Nothing under this Section shall be construed as a waiver of sovereign immunity for the White Mountain Apache Tribe, its departments, agencies, employees, or agents.

**B. Good faith.** Any person acting under good faith of this Code shall be immune from any civil liability arising out of such actions.

A. **Offenses and Criminal Penalties.**

1. **Failure to Register.** Any person who has been convicted of a sex offense and who fails to register as a sex offender with the White Mountain Apache Police Department is guilty of the offense of failure to register as a sex offender.
  - a. *First Offense:* A person convicted of a first offense of failure to register shall be imprisoned for a term no less than thirty (30) days or more than sixty (60) days, or fined no less than fifty dollars (\$50.00) but no more than one hundred dollars (\$100.00), or both.
  - b. *Second Offense:* a person convicted of a second offense of failure to register shall be imprisoned for a term no less than ninety (90) days or more than one hundred and eighty (180) days, or fined no less than two hundred and fifty dollars (\$250.00) but no more than five hundred dollars (\$500.00), or both.
  - c. *Third and Subsequent Offenses:* a person convicted of a third and subsequent offense of failure to register shall be imprisoned for a term no less than one hundred and eighty days (180) or more than three hundred sixty-five (365) days, or fined no less than five hundred dollars (\$500.00) but no more than one thousand dollars (\$1,000.00), or both.
2. **Failure to Update Registration.** Any sex offender who fails to update a registration as required by this Code is guilty of the offense of failure to update registration.
  - a. *First Offense:* A person convicted of a first offense of failure to update registration shall be imprisoned to a term of not less than sixty (60) days or more than ninety (90) days, or fined no less than one hundred dollars (\$100.00) but no more than two hundred dollars (\$200.00), or both.
  - b. *Second Offense:* A person convicted of a second offense of failure to update registration shall be imprisoned to a term of not less than ninety (90) days or more than one hundred and eighty (180) days, or fined no less than two hundred dollars (\$200.00) but no more than five hundred dollars (\$500.00), or both.
  - c. *Third and Subsequent Offenses:* A person convicted of a third and subsequent offense of failure to update registration shall be imprisoned for a period no less than one hundred and eighty days (180) or more than three hundred and sixty-five (365) days, or fined no less than five hundred dollars (\$500.00) but no more than one thousand dollars (\$1,000.00), or both.
3. **Hindrance of Sex Offender Registration**
  - a. A person is guilty of Hindrance of Sex Offender Registration if they:
    - i. Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor a sex offender who is in violation of this Code,
    - ii. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Code, or
    - iii. Provide information to a law enforcement agency regarding a sex offender which the person knows to be false.
  - b. Sentence and Fine.
    - i. *First Offense:* A person convicted of a first offense of Hindrance of Sex Offender Registration shall be imprisoned for a term no less than sixty (60) days or more than ninety (90) days, or fined no less than one hundred dollars (\$100.00) but no more than two hundred dollars (\$200.00), or both.
    - ii. *Second Offense:* A person convicted of a second offense of Hindrance of Sex Offender Registration shall be imprisoned for a term no less than ninety (90) day or more than one hundred and eighty (180) days, or fined no less than two hundred dollars (\$200.00) but no more than five hundred dollars (\$500.00), or both.

- iii. *Third and Subsequent Offenses:* A person convicted of a third and subsequent offense of Hindrance of Sex Offender Registration shall be imprisoned for a term no less than one hundred eighty days (180) or more than three hundred sixty-five (365) days, or fined no less than five hundred dollars (\$500.00) but no more than one thousand dollars (\$1,000.00), or both.
  4. The Tribal Court and the Parole Board shall not suspend the imposition of fines and/or imprisonment for a person convicted of Failure to Register, Failure to Update Registration, or Hindrance of Sex Offender Registration.
  5. A person convicted of Failure to Register, Failure to Update Registration, or Hindrance of Sex Offender Registration shall not be released from custody for community service or to attend funeral or wake services unless said services are for a member of the person's immediate family.
    - a. Immediate family shall mean husband, wife, son, daughter, sister, brother, father, mother, or grandparent.
  6. A person convicted of Failure to Register, Failure to Update Registration, or Hindrance of Sex Offender Registration shall not be eligible for two-thirds release.
- B. Civil penalty.** Each violation of a provision of this Code by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to, the issuance of a civil fine not to exceed five thousand dollars (\$5,000.00), forfeitures, and civil contempt, in addition to any other penalties provided herein.
- C. Customs, Traditions, and Exclusion of Non-Members.**
1. The customs and traditions of the White Mountain Apache Tribe may be used to supplement the provisions of this Code.
  2. A violation of a provision of this Code by a sex offender who is not an Indian or is a non-member of the White Mountain Apache Tribe may be subject to exclusion or removal from the Fort Apache Indian Reservation in accordance with Chapter Five of the White Mountain Apache Government Code, in addition to any other penalties provided herein.
- D. Distribution of Fines Collected.**
1. The fines imposed shall be paid to the White Mountain Apache Tribal Court. The Tribal Court shall transfer all fines collected under this Section as follows:
    - a. Thirty-Three Percent (33%) of the fines collected shall be retained by the Tribal Court.
    - b. Thirty-Three Percent (33%) of the fines collected shall be transferred to the White Mountain Apache Police Department SORNA Program.
    - c. Thirty-Three Percent (33%) of the fines collected shall be transferred to the White Mountain Apache Prosecution Department.

## CHAPTER SIX - DOMESTIC VIOLENCE

### SECTION 6.1      POLICY

The people of the White Mountain Apache Tribe recognize that domestic violence is a serious crime. The official response to cases of domestic violence shall stress the enforcement of laws to protect the victim and shall communicate the policy of the White Mountain Apache Tribe that domestic violence presents a clear and present danger to the mental and physical well-being of the Apache people. It is also a policy of the White Mountain Apache Tribe to assure the victim of domestic violence the maximum protection that the law and those that enforce it can provide and to hold the perpetrator accountable for their conduct.

### SECTION 6.2      GENERAL DEFINITIONS

A.      **“Abuse”** means intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person, or placing another person in reasonable apprehension of imminent serious physical injury to themselves or another.

B.      **“Counseling”** means services provided by Tribal Social Services, Apache Behavioral Health, or other licensed or accredited agencies that provide services for, but not limited to, alcohol and drug rehabilitation, parenting, mental health and domestic violence education, and commonly accepted traditional Apache practices, or other religious or cultural practices.

C.      **“Court”** means the White Mountain Apache Tribal Court.

D.      **“Domestic Violence”** means abuse, mental anguish, physical harm, bodily injury, assault, or the infliction of reasonable fear of bodily injury, between family or household members or romantic or sexual partners, or sexual assault of one family or household member or romantic partner by another.

E.      **“Domestic Violence Offenses”** shall consist of the following, if the relationship between the defendant and the victim qualifies, under (D), above:

1.      Assault;
2.      Aggravated Assault;
3.      Assault with a Deadly Weapon;
4.      Assault with Intent to Commit Rape;
5.      Assault with Intent to Cause Serious Bodily Injury;
6.      Assault with Intent to Kill;
7.      Child Abuse;
8.      Endangering welfare of child
- 9      Endangering the welfare of an elder
10.    Harassment;
11.    Molestation of a Child;
12.    Sexual Abuse;
13.    Sexual Assault;
14.    Sexual Assault of a Spouse;
15.    Sexual Conduct with a Minor;
16.    Sexual Exploitation of a Minor;
17.    Stalking;
18.    Threatening and Intimidating; and
19.    Unlawful Restraint.

F.      **“Domestic Violence Shelter”** means a location which provides emergency housing on a twenty-four (24) hour basis for victims of sexual assault, domestic violence, or both.

G.      **“Family or Household Member”** means spouses, former spouses, parents, step-parents, grandparents, children, step-children, siblings, half-siblings, step-siblings, cousins, aunts, uncles, whether naturally or through adoption, adult persons or minors presently residing together, or any two persons

who are or have been in a romantic or sexual relationship, or who have a child in common, regardless of whether they have been married at any time.

H. **“Mandatory Arrest”** means that the victim need not agree to a complaint for an arrest to occur. A police officer shall arrest, with or without a warrant, if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter even though the arrest may be against the expressed wishes of the victim.

I. **“Mental Anguish”** means causing a person psychological or emotional damage by physical or verbal intimidation, threatening, verbal abuse, physical abuse, harassment, stalking, or any contact that is detrimental to the psychological and mental well-being of that person or any other family or household member, characterized by behavioral change or physical symptoms.

J. **“Order of Protection”** means a court order granted by any court of competent jurisdiction for the protection of victims of domestic violence.

K. **“Perpetrator”** means a person who is alleged to have committed or has been convicted of committing an act of domestic violence.

L. **“Physical Harm”** means the impairment of physical condition and includes but shall not be limited to any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils health or welfare.

M. **“Police Officer,” “Officer,” or “Police”** means any certified law enforcement officer of the White Mountain Apache Police Department, White Mountain Apache Game Rangers, or other applicable law enforcement officer having legal jurisdiction.

N. **“Primary Physical Aggressor”** means a person who has caused or has threatened to cause the most significant physical or emotional harm to another in their family or household, as compared to the other party involved, regardless of whether or not the other party was the first aggressor, depending on the past history with violent behavior, the relative ability to inflict harm, severity of injuries inflicted on each party, and likelihood of future injury to each person.

O. **“Probable Cause”** means the reasonable belief, based on the officer’s observations and statements made by the parties involved and witnesses, if any, that the person arrested committed a crime.

P. **“Romantic Partner”** means a person with whom a subject is or has been involved in a romantic relationship, whether or not the person and the subject reside in the same household or have children together.

Q. **“Sexual Partner”** means a person with whom a subject is or has been involved in a sexual relationship, whether or not the person and the subject reside in the same household or have children together.

R. **“Victim”** means a person who has been subjected to domestic violence.

## **SECTION 6.3            PENALTIES**

### **A.    Criminal Penalties**

#### **1.    First Offense:**

- a. Any person who commits an act of domestic violence as defined by this Chapter shall be deemed guilty of the offense of domestic violence. A person convicted of a first offense of domestic violence shall be sentenced to imprisonment for a term of not less than ten (10) days or more than one (1) year and shall be sentenced to a fine not less than one hundred dollars (\$100.00) or more than five thousand dollars (\$5,000.00). Mandatory counseling shall be part of sentencing as provided in

Section 6.4 of this Chapter, as well as restitution when appropriate.

- b. The Court may suspend imposition of fines and imprisonment for the first offense and place defendant on probation for not less than three (3) months or more than one (1) year. When a sentence is suspended there must be complete cooperation with the orders of the Court requiring cooperation with the domestic violence program and counseling, as ordered.
2. Second Offense: A person convicted of a second offense of domestic violence within five (5) years of a previous conviction shall be imprisoned for a term of not less than thirty (30) days or more than one (1) year and fined an amount not less than five hundred dollars (\$500.00) or more than five thousand Dollars (\$5,000.00). Mandatory counseling shall be part of sentencing as provided in Section 6.4 of this Chapter, as well as restitution when appropriate.
3. Third and Subsequent Offenses: A person convicted of a third or subsequent offense of domestic violence within a five (5) year period shall be imprisoned for a term of not less than one hundred eighty (180) days or more than one (1) year and fined an amount not less than two thousand dollars (\$2,000.00) or more than five thousand dollars (\$5,000.00). Mandatory counseling shall be part of sentencing as provided in Section 6.4 of this Chapter, as well as restitution when appropriate. The Tribal Court Judge shall have discretion to reduce or suspend all but thirty (30) days of sentences for third and subsequent offenses that result in no injuries to a victim(s), and at the consent of the victim(s) and advice of the Tribal Prosecutor.
4. In cases of failure to comply with the Court's orders of counseling under this Section, the Court shall find the perpetrator in contempt and may issue a sentence for contempt as provided for by Section 2.20(D) of the Tribe's Judicial Code, and may reimpose the original sentence for the offense, and may require the perpetrator to repeat the entire domestic violence program.
5. Release and Probation Subsequent to a Plea Deal: Failure of a perpetrator to attend counseling, violation of an order of protection, commission of any crime during the order of protection period, or violation of any condition of sentencing will result in a violation of probation, and upon a finding of such may result in the imposition of the original sentence and require the perpetrator to complete the entire domestic violence program again, upon release.
6. Prosecution for the offense of domestic violence shall not preclude prosecution for any other offense arising from the same circumstances.
7. A person charged with or convicted of a domestic violence shall not be released from custody for community service or to attend funeral or wake services unless said services are for a member of the person's immediate family. Immediate family as used in the foregoing Subsection A.7. shall mean husband, wife, son, daughter, brother, sister, father, mother or grandparent, whether naturally or through adoption.
8. None of the mandatory sentencing provisions in Subsections 2 or 3 of this Section shall apply to a person who has successfully completed a White Mountain Apache Tribe Wellness Court program and whose conviction of domestic violence has been vacated. The mandatory sentencing provisions of Subsections 2 or 3 shall apply to all persons who have not successfully completed a Wellness Court program or whose domestic violence convictions have not been vacated.

## **B. Civil Liability.**

In addition to any other penalties herein, any person who engages in the act of domestic violence may be liable to the victim for civil damages. Conviction of a domestic violence offense hereunder shall constitute civil proof of the existence of domestic violence by a preponderance of the evidence.

**C. Other Conditions in Addition to Penalties.**

1. In addition to the penalties above, the Court shall impose any condition it deems necessary to prevent further domestic violence, including but not limited to: additional orders restricting the defendant's ability to have contact with the victim and other family or household members.
2. A Police Officer shall remove any weapons or firearms that are in plain view or discovered during the domestic violence-related investigation. Such weapons will be subject of the forfeiture proceedings under Section 2.5 of the White Mountain Apache Rules of Criminal Procedure.

**D. Pre-Sentencing Evaluation**

1. Prior to sentencing a person convicted under this Chapter for a domestic violence offense, the Court shall order a domestic violence evaluation upon motion of either party.
2. If ordering a domestic violence evaluation, the Court shall consider, when rendering a sentence, the findings, conclusions and recommendations of an evaluation completed pursuant to Section E.1. under this Chapter.

**SECTION 6.4 TREATMENT AND COUNSELING**

**A. Alcohol and substance abuse.**

If alcohol, drugs, or other substance abuse plays a part in the domestic violence of which a person is convicted, a mandatory chemical dependency evaluation shall be conducted and complete cooperation with any recommendations for treatment shall be included as part of the sentence.

**B. Mandatory Counseling.**

1. A person convicted of domestic violence shall be ordered to participate in appropriate mandatory counseling which may include family counseling at the consent of the victim.
2. If possible, prior to the release of a perpetrator sentenced to incarceration, qualified personnel, which may include a domestic violence victims' advocate, will talk with the victim and discuss the availability of domestic violence services and groups.

**C. Mandatory Referral to Social Services.**

1. If a law enforcement officer has reason to believe that the victim of domestic violence has abused alcohol, drugs or other substances, and such abuse contributed in part to a domestic violence incident which has occurred in the presence of a child(ren) under the care and control of such victim, the law enforcement officer shall report the circumstances of the incident to Tribal Social Services within twenty-four (24) hours.
2. Once Tribal Social Services receives a report as provided in Subsection C.1., Tribal Social Services shall commence an investigation of the home environment of the victim and the child(ren) within forty-eight (48) hours and shall take appropriate action as provided in the Juvenile Code.

**D. Religious Consideration.**

Persons who practice a religion, including a Native American tradition or any other religion, may participate in additional counseling or ceremonies at their own expense, and as appropriate to their sentence.

**E. Cost for Counseling or Other Treatment.**

The Court may order the person convicted of domestic violence to pay any cost for counseling or other treatment ordered pursuant to this Section.



**F. Follow-up Assessment**

1. A mandatory follow-up assessment will be done at the end of the mandated counseling.
2. A treatment provider shall do the assessment and shall forward a written copy of the findings and recommendations to the Court.
3. All treatment records will be sealed by the Court and may be reviewed only on a need to know basis with written permission of the judge or perpetrator.

**SECTION 6.5            PROCEDURE FOR MANDATORY ARREST**

**A. Police Department.**

1. If probable cause exists, the officer shall arrest the perpetrator of domestic violence whether or not the victim agrees to a complaint and whether or not the arrest is against the expressed wishes of the victim.
2. Whenever a police officer investigates an alleged report of domestic violence, whether or not an arrest is made, the officer shall make a written incident report of the alleged abuse and submit a written incident report to the Office of the Tribal Prosecutor within twenty-four (24) hours. The Police Department shall have no duty to forward police reports to the Court but said police reports shall be presented by the parties as part of the presentation of evidence.
3. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, circumstances shall be evaluated to determine if there was a primary physical aggressor. If the officer determines that one person was the primary physical aggressor and that the other person(s) acted in self-defense, the officer need not arrest the person believed to have acted in self-defense.

**B. Office of the Tribal Prosecutor.**

1. The Office of the Tribal Prosecutor shall evaluate complaints based upon all available facts. A case shall not be dismissed or declined solely on the grounds that the victim may be an uncooperative witness.
2. The Office of the Tribal Prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the perpetrator is in custody and a prosecutor/advocate has decided to decline prosecution of the crime, or dismiss the criminal charges filed against the defendant.

**C. Court.**

1. Anyone immediately arrested under this Chapter shall be detained until arraignment occurs, unless the Indian Health Services admits the defendant or transfers the defendant to another health care facility and is released by court order.
2. Prior to release of the defendant, if possible, the police department liaison or a domestic violence victim's advocate will talk with the victim and discuss the availability of domestic violence services and groups, or refer the victim to appropriate service providers.
3. Because of the serious nature of domestic violence:
  - a. Disposition of cases shall not be delayed or dismissed because of concurrent dissolution of marriage proceedings or other civil actions.
  - b. Any requirement that the victim's location be disclosed shall be waived and communication to victim regarding the domestic violence case shall be conducted through a domestic violence victim's advocate or the Court.

**SECTION 6.6            DUTIES OF POLICE OFFICERS**

- A. Primary duty of officers.** The primary duty of officers when responding to a domestic violence situation is to enforce the law and ensure victim safety.

**B. Notification to victim.** If the victim is present when the officer arrests a person for domestic violence, the officer shall advise the victim of reasonable means to prevent further abuse, the availability of a shelter or other services in the community, and give the victim immediate notice of any legal rights and remedies available in accordance with policies and protocols adopted in accordance with Section 6.8 of this Chapter. The victim shall be furnished with a copy of the following statement.

*If you are a victim of domestic violence, the Office of the Tribal Prosecutor will be notified of the incident and they shall determine whether to file charges against your abuser. An emergency order of protection may be issued against your abuser at your request. You also have the right to go to Court and file a petition requesting any or all of the following temporary orders for relief:*

1. *An order restraining your abuser from abusing, harassing, stalking, threatening, telephoning or otherwise contacting you and committing other acts of domestic violence;*
2. *An order directing your abuser to leave your household and to stay away with no contact;*
3. *An order preventing your abuser from removing any property from your household except for clothing and other such personal effects, which may only be removed when the abuser is accompanied by a police officer;*
4. *An order awarding you custody or visitation of a minor child or children;*
5. *An order specifying arrangements for visitation by your abuser, including required supervised visitation;*
6. *An order restraining your abuser from harassing or interfering with minor children in your custody;*
7. *An order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is already a legal obligation to do so; or*
8. *An order protecting other family and household members.*

**C. Protection of the Victim.** A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

1. Taking action necessary to provide for the safety of the victim and any family or household member;
2. Transporting or obtaining transportation for the victim or any minor child (or children) to a temporary shelter; and
3. Assisting the victim and any minor child(ren) in obtaining immediate medical treatment, including obtaining transportation to a medical facility.

**D. Notification of Release of a Perpetrator.** When a perpetrator is scheduled to be released from custody, the Department of Corrections shall immediately notify the Office of the Tribal Prosecutor who shall make reasonable efforts to notify the victim prior to, or upon release of, the perpetrator from custody.

## **SECTION 6.7                      SPECIAL COURT RULES**

In addition to the Rules of Court generally applicable to such proceedings, the Court is authorized to take the following actions in a proceeding involving alleged domestic violence offenses.

**A. Arraignment.** At the arraignment and all subsequent hearings, any person including a Domestic Violence Victim Advocate may accompany and may make a statement in support for the alleged victim.

**B. Admissibility of Victim's Allegations.** Any written statement made by the alleged victim under oath and signed by the victim describing the alleged acts of domestic violence shall not be considered inadmissible solely because of an hearsay objection, but shall be subject to ordinary judicial analysis for admissibility of evidence in the White Mountain Apache Tribal Court.

C. **Deferrals.** Only the Tribal Prosecution and the Defendant may enter into an agreement whereby prosecution is deferred and deferred prosecution cannot be ordered sua sponte from the bench.

D. **Presentation of Evidence.** Evidence for or against the allegation shall be presented by the parties. It shall not be the duties of the parties to prepare or submit evidence to the Court sooner than required by the Rules of Criminal Procedure.

E. **Victim - Impact Statement.** When offered to the court, input from the victim shall be considered when determining the sentence to be imposed.

F. **Conviction.** Upon conviction, the perpetrator shall be ordered to participate in an appropriate counseling program consisting of at least the following:

1. The perpetrator shall attend and cooperate in an intake session at Apache Behavioral Health or a licensed or accredited agency, for evaluation and preparation of a treatment plan.
2. Such evaluation and treatment plan shall be completed by the appropriate agency no later than twenty (20) calendar days after the entry of the order requiring the evaluation, unless the Court extends that time period.
3. The perpetrator shall provide a copy of the evaluation and treatment plan to the Office of Probation within twenty (20) business days.

G. **Failure to Comply with Court Order.** Failure to comply with a court order requiring a perpetrator to attend and cooperate in evaluation or undergo treatment as described in a treatment plan shall constitute contempt of court punishable as such. Failure to submit a copy of the evaluation and treatment plan to the Court and the Office of the Tribal Prosecutor shall constitute contempt of court. The Court may also order the imposition of any sentence that has been suspended.

## **SECTION 6.8            CIVIL ORDERS OF PROTECTION**

Any person may seek relief under this Section by filing a petition, as a civil action, with the Court alleging that the person has been a victim of domestic violence committed by the Respondent. The person may petition for relief on behalf of themselves and on behalf of minors within the family or other household members. The Petition need not specify irreparable harm as a factor.

A. **Availability of Civil Petition for Orders of Protection in General.**

1. A civil Petition to obtain an Order of Protection under this Section may be filed by:
  - a. Any person claiming to be the victim of domestic violence;
  - b. Any family member or household member of a person claimed to be the victim of domestic violence, on behalf of the alleged victim;
  - c. Any Victim Witness Advocate; or
  - d. The Office of the Tribal Prosecutor.
2. A Petition shall include the following elements:
  - a. The Petitioner's name, date of birth, mailing address and physical address. If the Petitioner's physical address is unknown to the Respondent, the Petitioner may request that it be protected. On the Petitioner's request, the address shall not be listed on the Petition;
  - b. If the Petitioner is not the alleged victim, the name of the alleged victim;
  - c. The Respondent's name, and, if known, date of birth, mailing address and physical address;
  - d. A statement that the Petitioner is domiciled on the Fort Apache Indian Reservation, or that the Respondent is domiciled on the Fort Apache Indian Reservation;
  - e. The nature of the relationship between the victim and the Respondent and

between the Petitioner and the victim, if Petition is being filed on behalf of another;

- f. A brief description of the incident(s) of domestic violence, including dates, times and places of the alleged domestic violence;
  - g. The name of any court in which a prior, current, or pending proceeding or order of protection was sought or issued concerning the conduct sought to be restrained;
  - h. The desired relief; and
  - i. A supporting affidavit made under oath and penalty of perjury, that need not be notarized, stating that the specific facts and allegations contained in the Petition are true and accurate, to the Petitioner's best knowledge.
3. No filing fees shall be required for filing a petition, nor shall a bond be required to obtain relief, under this Section.
  4. Service. The Court shall be responsible service of process on respondents under this Section, and shall not charge a fee for such service.
  5. Standard, simplified petition forms with instructions for completion shall be available upon request from the Court Clerk.
  6. Mutual orders of protection may be granted in cases where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors or are in need of protection or separation from one another.
  7. An order of protection does not preclude the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceedings.
  8. An order for protection may be revoked, modified, or extended.
  9. An order for protection may be presented in a proceeding for the modification of an existing order, judgment or decree.

**B. Procedure for Issuance of an Order of Protection; In General.**

1. The Order of Protection shall include the immediate granting of an Ex Parte Order of Protection without bond if, based on the specific facts stated under oath, the Court has reasonable cause to believe that the Petitioner, or the person on whose behalf the petition is filed, is the victim of an act of domestic violence committed by the Respondent.
2. Within five (5) days of the issuance of an ex parte order, excluding holidays and weekends, a hearing shall be held to determine whether the order should be vacated, extended for an additional period of time, or modified in any respect with reasonable notice to the Respondent. A failure of any party to appear at such a hearing, after reasonable notice has been given, shall not result in a warrant for the absent party's arrest, but shall result in a ruling or judgment in favor of the appearing party to the extent permissible by law.
3. The provisions of White Mountain Apache Judicial Code Section 2.26(C), regarding representation in court in a civil case, shall not apply to hearings regarding Orders of Protection or any other proceedings pursuant to this Chapter.
4. If the Court does not find sufficient reasonable cause to grant an ex parte order, the Court shall serve notice to appear upon both parties and hold a hearing on the Petition for an Order of Protection within five (5) days after the filing of the Petition, excluding holidays and weekends.
5. An Order of Protection granted pursuant to this Section shall be forwarded by the Clerk of the Court to the Whiteriver Police Department within twenty-four (24) hours of issuance. In the case of an emergency Order of Protection, it shall be filed with Police immediately upon issuance. The Police Department shall make available to each officer, information as to the existence and status of every Order of Protection issued under this Section.

**C. Contents of an Order of Protection in General.**

1. An Order of Protection shall include provisions:
  - a. Finding that the Court has personal jurisdiction over the parties and subject matter jurisdiction over the matter;
  - b. Stating the names and dates of birth of the parties;
  - c. Restraining the Respondent from committing any acts of domestic violence;
  - d. Restraining the Respondent from harassing, stalking, threatening, annoying, via telephone, electronic means, or third parties; or otherwise contacting the Petitioner, directly or indirectly, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;
  - e. Prohibiting the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury;
  - f. Restraining Respondent from receiving, possessing, or transporting a firearm or ammunition within the exterior boundaries of the Fort Apache Indian Reservation;
  - g. Restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, altering or damaging property except as authorized by the Court, and requiring that an accounting be made to the Court for all authorized transfers, encumbrances, disposition, and expenditures;
  - h. Notifying the parties involved that the knowing violation of and provision of the order may constitute contempt of court punishable by fines, imprisonment, or both;
  - i. The order shall include the following statement: *Warning. This is an official Court Order. If you disobey this Court Order, the Court may find you in contempt of Court. You may also be arrested and prosecuted for the willful disobedience of an order lawfully issued by the Court and any other crime you may have committed in disobeying this Order.*
  - j. Stating the date on which the Order was entered and on which it expires, if any; and
  - k. Containing the name of the White Mountain Apache Tribal Court that entered the Order and the signature of the judge.
2. An order of Protection may include any other relief the Court deems appropriate, including but not limited to:
  - a. Excluding the Respondent from the residence of the victim (whether or not the Respondent and the victim share the residence), school, place of employment, or a specified place frequented by the Petitioner and any named family or household member.
  - b. Awarding temporary child custody, temporary child support, or establishing temporary visitation rights of the minor children of the parties, for the duration of the Order, with the primary consideration of the least disruption of the children, including but not limited to health, safety, education, and normal routines of the children.
  - c. If visitation is granted there shall be set rules for exchange of children for visitation, including but not limited to times, places, persons, and the non-custodial parent may be required to post a bond as determined by the Court.
  - d. Ordering temporary possession and use of the parties' property.
  - e. Ordering the Respondent to make timely payments on existing debts of the Respondent, including mortgage or rental payments and necessary utilities in order to maintain the Petitioner and children in their residence.
  - f. Ordering any other lawful relief as the Court deems necessary for the protection or any claimed or potential victim of domestic violence, including orders or directives to the Whiteriver Police Department or other appropriate departments and programs.

**D. Duration and Amendments to Orders of Protection in General.**

1. An initial Order of Protection shall be enforced until further order of the Court but not to exceed Three-hundred and sixty-five (365) days, but may be subject to amendment for extension at the discretion of the Court or at the request of one of the parties. After the initial period has expired, the Court may make an Order of Protection permanent upon a showing that the Respondent presents an ongoing danger to the safety of the Victim(s). Permanent Orders of Protection shall be reviewed by the Court not less often than every 5 years, but such review may be through a file review and a hearing shall not be held unless requested in writing by either party.
2. The Court may, in its discretion, conduct a review of the Order of Protection at the request of the parties, and may vacate or amend it only upon the showing of a substantial change of circumstances.

**E. Emergency Orders of Protection.**

1. During the hours that the Court is closed, the Court shall provide for the availability of a judge or other authorized person who may issue emergency and temporary orders for protection by telephone or by any other appropriate and effective method.
2. If an officer, for any reason, cannot make an arrest under Section 6.5 of this Chapter, but states there is probable cause to believe a person is in immediate and present danger of domestic violence, the judge or other person authorized to issue emergency Orders for Protection may issue an ex parte Order of Protection if such authorized person finds that the officer's grounds are reasonable.
3. Written procedures for issuance of emergency Orders of Protection shall be promulgated by the Court.

**F. Violation of Order of Protection.**

1. In addition to any other penalties available under law or equity, a person, who knowingly violates, or a person who aides and abets another person to knowingly violate an Order of Protection is guilty of an offense and shall be sentenced to a minimum of sixty (60) days imprisonment, or fined an amount not to exceed three thousand dollars (\$3,000.00) or both.

**G. Recognition of Orders of Protection from Other Jurisdictions**

1. Enforcement. Law Enforcement Officers and the Tribal Court shall give full faith and credit to, and enforce, Orders of Protection from other jurisdictions, if the Orders are facially valid.
2. Facial Validity. An Order of Protection shall be deemed facially valid if it contains the following elements:
  - a. Identification of the Petitioner and the Defendant;
  - b. Identification of the court that issued the Order;
  - c. The terms of the Order, including what conduct the Defendant is restrained from;
  - d. No indication that the Order has expired.

**SECTION 6.9                      REPORTING OF DOMESTIC VIOLENCE**

**A. Mandated Reporting Requirements.** Any medical personnel, community health representative, social worker, school teacher, parent aide, adult services worker, law enforcement officer, court personnel, substance abuse worker, alcohol program worker, or domestic violence program worker who reasonable suspects that a person has been a victim of domestic violence shall report in accordance with Subsection B. of this Section.

**B. Report to Law Enforcement.** The report required by Subsection A. of this Section shall be made orally and immediately by telephone or otherwise to a law enforcement officer. In the event that a law enforcement officer is the suspected perpetrator of domestic violence, in addition to filing of a police

report, the Police Department shall report the suspected perpetrator to the internal affairs department of the suspect's agency, or to another law enforcement agency of competent jurisdiction, and to the licensing bureau of the suspect officer's certification.

**C. Immunity for Reporting.** Except for malicious acts as described under Subsection D.2. of this Section, anyone other than the perpetrator participating in good faith in the making of a report pursuant to this Section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any Court proceeding resulting from such a report.

**D. Penalties for False Reports or Failure to Report.**

1. Any person who knowingly fails to make a report required under this Section is guilty of an offense and shall be imprisoned for a term of not less than ten (10) days nor more than thirty (30) days and shall be fined an amount not less than one hundred dollars (\$100.00) nor more than three hundred dollars (\$300.00) or both.
2. A person acting with malice who knowingly and intentionally makes a false report of domestic violence or a person acting with malice who coerces another person to make a false report of domestic violence, is guilty of an offense and shall be sentenced to jail not less than thirty (30) days, or fined an amount not to exceed five hundred dollars (\$500.00) or both.
3. A person who knowingly and intentionally makes a false report that a person has violated the provisions of Subsection 2 above, is guilty of an offense and shall be sentenced to jail not to exceed thirty (30) days, or fined an amount not to exceed five hundred dollars (\$500.00) or both.
4. A person not subject to the criminal jurisdiction of the White Mountain Apache Tribal Court but who violates either Subsections 1, 2, or 3 above, is liable for a civil offense and shall be fined not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00).

**SECTION 6.10      DISCLOSURE OF DOMESTIC VIOLENCE SHELTERS**

A. Any person who knowingly publishes, disseminates or otherwise discloses the location of a victim who has been placed in a secured domestic violence shelter, without the authorization of that domestic violence shelter or the victim, is guilty of a crime and shall be sentenced to jail no less than five (5) days or more than thirty (30) days or fined an amount not less than one hundred dollars (\$100.00) or to exceed five hundred dollars (\$500.00), or both.

B. A person not subject to the criminal jurisdiction of the White Mountain Apache Tribal Court but who violates either Subsections 1, 2, or 3 above, is liable for a civil offense and shall be fined not less than three hundred dollars (\$300.00) nor more than one thousand dollars (\$1,000.00).

**SECTION 6.11      CIVIL SANCTIONS**

**A. Removal and Exclusion**

1. Whenever a non-member is involved in a situation of domestic violence as the perpetrator, the mandatory arrest provisions of Section 6.5 shall apply.
2. Proceedings for removal and exclusion of the non-member perpetrator from the Fort Apache Indian Reservation shall be initiated by the Office of the Prosecutor with a finding that exclusion is a proper remedy to ensure the safety of the victim(s) and uphold the policy of this Chapter.

**B. Civil Fines**

A person found to have committed an act of domestic violence may be liable for civil fines and damages for domestic violence pursuant to Section 6.3 of this Chapter.

**SECTION 6.12      APPELLATE REVIEW**

Appeals under this Chapter shall be made pursuant to the Tribe's Rules of Civil and Rules of Appellate Procedure.

**SECTION 6.13      SEVERABILITY**

If any part or parts, or the application of any part, of this Chapter is held invalid, such holding shall not affect the validity of the remaining parts of the Chapter.



## CHAPTER SEVEN - VICTIM'S RIGHTS ACT

### SECTION 7.1 VICTIM'S BILL OF RIGHTS

- A. To preserve and protect victim's rights to justice and due process, a victim of crime has a right:
1. To be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process.
  2. To be informed, upon request, when the accused or convicted person is released from custody or has escaped.
  3. To be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present.
  4. To be heard at any proceeding involving a post-arrest release decision, a negotiated plea, and sentencing.
  5. To refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant.
  6. To confer with the prosecution after the crime against the victim has been charged, before trial or before any disposition of the case and to be informed of the disposition.
  7. To read pre-sentence reports relating to the crime against the victim when they are available to the defendant.
  8. To receive prompt restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury.
  9. To be heard at any proceeding when any post-conviction release from confinement is being considered.
  10. To a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.
  11. To have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and to have these rules be subject to amendment or repeal by the Tribal Council to ensure the protection of these rights.
  12. To be informed of victims' constitutional rights.
- B. A victim's exercise of any right granted by this Section shall not be grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.
- C. "Victim" means a person against whom the criminal offense has been committed or, if the person is killed or incapacitated, the person's spouse, parent, child or other lawful representative, except if the person is in custody for an offense or is the accused.
- D. The Tribal Council, or the people by referendum have the authority to enact substantive and procedural laws to define, implement, preserve and protect the rights guaranteed to victims by this Section, including the authority to extend any of these rights to juvenile proceedings.
- E. The enumeration in the constitution of certain rights for victims shall not be construed to deny or disparage others granted by the tribal council or retained by victims.

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[NOTE: Chapters One and Two were amended by Ordinance No. 218, enacted January 14, 2000; Ordinance No. 245, enacted December 13, 2010, amended Sections 2.4 through 2.9, 2.18, 2.20, 2.22, 2.23, 2.28, 2.37, 2.38, 2.40, 2.41, 2.45, 2.46, 2.50, 2.51, 2.52, 2.54, 2.55, 2.56, 2.59, 2.71, 3.2, 4.4, 4.22 and 4.23, added Sections 2.72 through 2.95, added Chapter Five, Sex Offender Registration, and moved the Victim's Bill of Rights from Chapter Five to Chapter Seven; Ordinance No. 251, enacted September 19, 2012, amended Sections 1.1, 2.5, 2.21, 2.74, 2.74A, 2.75, 5.1, 5.4 F, 5.5, 5.6, 5.7, 5.8, 5.12, 5.16, 5.18, 5.25 through 5.41 and 6.2; Ordinance No. 262, enacted November 1, 2013, amended Section 6.2; Ordinance No. 264, enacted November 1, 2013, amended Sections 2.2, 2.3, 2.18, 2.27, 2.36, 2.46, 2.51, 2.59, 2.66, 2.70, 2.78 and 4.3B; Ordinance 282, enacted July 12, 2017, amended Sections 1.4, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.15, 4.19, 4.20, 4.21, 5.36 and 5.41; Ordinance 286, enacted January 17, 2018, amended Sections 2.5, 2.9, 2.23, 2.38, 2.51, 2.78 and 2.79; Ordinance 290, enacted November 19, 2018, amended Section 2.1, 2.29, 2.33, 2.67, 2.68 & 2.71; Ordinance 310, enacted May 17, 2022, amended Chapter 6]