



WHITE MOUNTAIN APACHE TRIBE

*A Sovereign Nation Exercising Self-Governance
Over the Fort Apache Indian Reservation*

Resolution No. 10-2013-196

(Approving the Posting of Ordinance No. 264, Amending 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. of the Criminal Code of the White Mountain Apache Tribe)

WHEREAS, the Tribal Council of the White Mountain Apache Tribe ("Tribe") is entrusted by the Tribe's Constitution to act in all matters that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and

WHEREAS, the Legal Department and the Prosecution Unit have this day proposed revisions to the Criminal Code for the White Mountain Apache Tribe as set forth in Ordinance No. 264 attached hereto; and

WHEREAS, Ordinance No. 264 proposes changes to 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. of the Criminal Code; and

WHEREAS, pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, the proposed amendments shall be posted in each district for at least ten (10) days before final action by the Council; and

WHEREAS, the Council has reviewed Ordinance No. 264 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 264 to be in the best interest of the Tribe.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance 264 attached hereto, which amends 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. of the Criminal Code, is hereby recommended for posting by the Tribal Council.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe, as follows:

1. The Tribal Council Secretary is hereby authorized and directed to post this resolution and Ordinance No. 264, in each district for at least ten (10) days before final action by the Council. In addition, notices of the proposed ordinance shall be sent in the form of a press release to KNNB-FM and the Apache Scout.

2. Any and all comments concerning Ordinance No. 264 proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council as well as the Legal Department and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and have no legal effect.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Acting Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution. In the event that the Chairman fails to delegate signatory authority to an Acting Chairman, the Vice-Chairman may sign.

The foregoing resolution was on **OCTOBER 2, 2013** duly adopted by a vote of **SEVEN** for, **ZERO** against and **ZERO** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (q), (s), (t) and (u) of the Tribal Constitution, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Chairman

10/7/13
Date



Mariddie J. Craig, Secretary

10/03/2013
Date

**ORDINANCE OF THE
WHITE MOUNTAIN APACHE TRIBE OF THE
FORT APACHE INDIAN RESERVATION**

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 264, amending White Mountain Apache Criminal Code, Sections 2.2, 2.3, 2.18, 2.27, 2.36, 2.46, 2.51, 2.59, 2.66, 2.70, 2.78 and 4.3 B. as follows:

SECTION 2.2 ACCOMPLICE LIABILITY

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.~~ 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 ~~being~~ is married to a third person, is guilty of an offense.

SECTION 2.18 CARRYING A CONCEALED WEAPON

B. ~~Subsection A shall not apply to any person authorized by any tribal government, or state government, or by the government of the United States or any subdivision of any of the aforementioned governments to carry such weapon.~~ 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.

SECTION 2.27 DEFAMATION

~~A. — A person is guilty of an offense who, with malice towards another and with intent to harm such other person in his relationship with others, publishes, declares or otherwise communicates to a third person in an unprivileged communication a statement, knowing the statement is false or in reckless disregard of the truthfulness of such statement, which exposes such other person to public hatred, contempt, or ridicule.~~

~~B. — A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed Fifty (50) days or to pay a fine not to exceed Fifty (\$50.00), or both.~~

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.**

SECTION 2.46 INTERFERENCE WITH JUDICIAL PROCEEDINGS

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

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.

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 ~~or uses~~ any opium, cocaine, methamphetamine, heroin, or any derivative thereof; or

2. Knowingly possesses **for sale**, sells, produces, transports, or gives away ~~or uses~~ any controlled substance; or

3. Knowingly possesses for sale, sells, trades, produces, transports, or gives away ~~or uses~~ 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, gives away or uses 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.

C. A person found guilty under Subsection A (1), (2)~~or~~, (3) or (4) may be sentenced to imprisonment for a period no less than One Hundred Eighty (180) days but not to exceed ~~Three (3) Years~~, Three Hundred Sixty-Five (365) days and ~~or~~ to pay a fine no less than Five Hundred Dollars (\$500.00) but not to exceed ~~Fifteen Thousand Dollars (\$15,000.00)~~, Five Thousand Dollars (\$5,000.00), ~~or both~~; and is not eligible for probation or suspension of sentence until the entire sentence is served. a A person found guilty under Subsection A (4) (5) may be sentenced to imprisonment for a period not to exceed ~~One (1) Year~~ One Hundred Eighty (180) days or to pay a fine not to exceed ~~Five One Thousand Dollars (\$51,000.00)~~, 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 2.59 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.

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

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.**

SECTION 2.78 DRIVING UNDER THE INFLUENCE

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.

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

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 and such person is reckless as to whether a minor under the age of fifteen years is present.