



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Enactment of Ordinance No. 270, Amending 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, Article IV, Section 1(q) to act in all matters that concern the welfare of the Tribe, including but not limited to, the amendment of codes through the adoption of ordinances; and

WHEREAS, Ordinance No. 270 proposed changes to Sections 2.1, 4.2, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.18, 4.19, 4.20, 4.21, 5.4, 5.5, 5.6, 5.7, 5.8, 5.12, 5.13, 5.15, 5.19, 5.25, 5.26, 5.35, 5.36, 5.41, 6.3, 6.7, 6.8, 6.9, 6.10 and 7.1 of the Criminal Code; and

WHEREAS, on July 10, 2014 the Tribal Council authorized the posting of Ordinance No. 270, pursuant to Article XV of the Constitution of the White Mountain Apache Tribe and it was posted on July 25, 2014. Since that time, the Office of the Tribal Council Secretary has received no comments regarding the proposed changes; and

WHEREAS, the Council has reviewed Ordinance No. 270 carefully, and considered the recommendations and implications thereof in great detail and finds the adoption of the amendments to the Criminal Code, as set forth in Ordinance No. 270 to be in the best interest of the White Mountain Apache Tribe.

BE IT ENACTED by the Tribal Council of the White Mountain Apache Tribe that it hereby adopts Ordinance No. 270, attached hereto and incorporated by reference, which amends Sections 2.1, 4.2, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.18, 4.19, 4.20, 4.21, 5.4, 5.5, 5.6, 5.7, 5.8, 5.12, 5.13, 5.15, 5.19, 5.25, 5.26, 5.35, 5.36, 5.41, 6.3, 6.7, 6.8, 6.9, 6.10 and 7.1 of the Criminal Code.

BE IT 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.

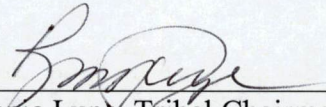
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed 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 Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

Resolution No. 08-2014-111

Ordinance No. 270

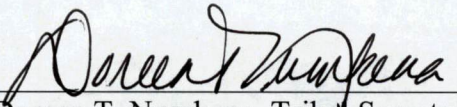
The foregoing resolution was on **AUGUST 6, 2014** duly adopted by a vote of **SEVEN** for and **ZERO** against with **ONE** abstaining by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Tribal Chairman

8/8/14

Date



Doreen T. Numkena, Tribal Secretary

8-11-2014

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. 270, amending White Mountain Apache Criminal Code, Sections 2.1, 4.2, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.18, 4.19, 4.20, 4.21, 5.4, 5.5, 5.6, 5.7, 5.8, 5.12, 5.13, 5.15, 5.19, 5.25, 5.26, 5.35, 5.36, 5.41, 6.3, 6.7, 6.8, 6.9, 6.10 and 7.1 as follows:

**CHAPTER TWO
OFFENSES**

[NOTE: Chapter Two was 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 and 2.71; Ordinance No. 251, enacted September 19, 2012, amended Sections 2.5, 2.21, 2.74, 2.74A and 2.75; Ordinance 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 and 2.78; Ordinance No. 270, enacted _____ amended Sections 2.1.]

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 ~~e~~Eighteen (18) ~~y~~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.

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed Three Hundred and Sixty-Five (365) ~~d~~Days or to pay a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

**CHAPTER FOUR
COMPREHENSIVE SEX CRIMES ACT**

[NOTE: Chapter Four was derived from Ordinance No. 170, enacted July, 1991; Section 4.3 was amended by Ordinance 264, enacted November 1, 2013; Sections 4.2, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.18, 4.19, 4.20 and 4.21 were amended by Ordinance No. 270, enacted _____.]

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 breastfeeding 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 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 4.5 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 2 major offense and is punishable pursuant to §4.19. Sexual conduct with a minor ~~Fourteen (14)~~ Years of age or over is a class 3 major offense.

SECTION 4.6 SEXUAL ASSAULT; CLASSIFICATION; INCREASED PUNISHMENT

B. Sexual assault is a class 2 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 be sentenced to imprisonment not to exceed One (1) Year imprisonment and a to pay a fine not to exceed Five Thousand Dollars (\$5,000.00) ~~fine~~ and is not 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

B. A first offense sexual assault of a spouse is a class 3 major offense. The judge has discretion to enter ~~judgement~~ judgment for conviction of a class 1 minor offense with mandatory counseling. Any subsequent sexual assault of a spouse is a class 2 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 sentenced 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.

C. A person convicted under this section may, in the discretion of the court, be exempt from the registration requirements of ~~§4.22~~ §4.22 of this Chapter.

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 2 major offense and is punishable pursuant to §4.19.

SECTION 4.13 COMMERCIAL SEXUAL EXPLOITATION OF A MINOR; CLASSIFICATION

B. Commercial sexual exploitation of a minor is a class 2 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

B. Sexual exploitation of a minor is a class 2 major offense and if the minor is under ~~Fifteen (15)~~ Years of age it is punishable pursuant to §4.19.

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:

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

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~~ Three (3) Hours for the purpose of taking such evidence.

8. The period of time, not exceeding ~~Fifteen (15) Days~~ Fifteen (15) Days, during which the order shall continue in force and effect. If the order is not executed within ~~Fifteen (15) Days~~ Fifteen (15) Days, a new order may be issued, pursuant to the provisions of this ~~Section~~ Section.

C. The order issued pursuant to this ~~Section~~ Section shall be returned to the court not later than ~~Thirty (30) Days~~ 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~~ 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~~ Section, "identifying physical characteristics" includes, but is not limited to, the fingerprints, palm prints, footprints, measurements, handwriting, handprinting, 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~~ Fifteen (15) Years of age.

8. Child abuse as defined in §4.10.

B. Classification.

C. Except as otherwise provided in this section, a person who is at least ~~Eighteen (18) Years~~ 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~~ One (1) Year.

D. A person sentenced for a dangerous crime against children pursuant to this

~~s~~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 ~~s~~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.

SECTION 4.20 CLASSIFICATION OF SEXUAL OFFENSES; IMPRISONMENT AND FINES

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 may be sentenced to imprisonment for a period not to exceed ~~e~~One (1) ~~y~~Year and to pay a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. **Class 2 major offense:** A person found guilty of a class 2 major offense may be sentenced to imprisonment for a period not to exceed ~~e~~Eight (8) ~~m~~Months and to pay a fine not to exceed Two Thousand Dollars (\$2,000.00).

3. **Class 3 major offense:** A person found guilty of a class 3 major offense may be sentenced to imprisonment for a period not to exceed ~~f~~Four (4) ~~m~~Months and to pay a fine not to exceed 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 may be sentenced to imprisonment for a period not to exceed ~~s~~Sixty (60) ~~d~~Days and pay a fine not to exceed Two Hundred Dollars (\$200.00).

2. **Class 2 minor offense:** A person found guilty of a class 2 minor offense may be sentenced to imprisonment for a period not to exceed ~~t~~Thirty (30) ~~d~~Days and pay a fine not to exceed One Hundred Dollars (\$100.00).

3. **Class 3 minor offense:** A person found guilty of a class 3 minor offense may be sentenced to imprisonment for a period not to exceed ~~t~~Twenty (20) ~~d~~Days and pay a fine not to exceed 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, ~~may~~ 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) fine.~~ Said increase shall be based on the following circumstances.

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)~~ or more years of age or is a handicapped person.

B. **Reduction in Sentencing:** Sentenced provided in §4.20 for a first conviction of a major or minor sexual offense, except those offenses involving a use of 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. Said reduction shall be based on the following circumstances:

1. The age of the defendant.

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 to the defendant~~, 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.

E. Notwithstanding any other provisions of this Chapter, if a person is convicted of any class 3 major offense not involving the intentional or knowing infliction of serious physical injury or the use of a deadly weapon or dangerous instrument if the

court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that it would be unduly harsh to sentence the defendant for a class 3 major offense, the court may enter judgment of conviction for a class 1 minor offense and make disposition accordingly or may place the defendant on probation and refrain ~~from~~ from designating the offense as a major offense or minor offense until the probation is terminated. The offense shall be treated as a class 3 major offense for all purpose until such time as the court may actually enter an order designating the offense as a minor offense. The provisions of this ~~s~~Subsection shall not apply to any person who stands convicted of a major offense and who has previously been convicted of two or more minor offenses. When a crime is punishable in the discretion of the court by a sentence as a class 3 major offense or a minor offense, the offense shall be deemed a class 1 minor offense if the prosecuting attorney files a complaint, with the consent of the defendant, amending the complaint to charge a minor offense.

**CHAPTER FIVE
SEX OFFENDER REGISTRATION**

[NOTE: Chapter Five, Sex Offender Registration was adopted by Ordinance No. 245, enacted December 13, 2010; Ordinance No. 251, enacted September 19, 2012 amended Sections 5.1, 5.4 F, 5.5, 5.6, 5.7, 5.8, 5.12, 5.16, 5.18, 5.25, 5.26, 5.27, 5.28, 5.29, 5.30, 5.31, 5.32, 5.33, 5.34, 5.35, 5.36, 5.37, 5.38, 5.39, 5.40 and 5.41; and Ordinance No. 270, enacted _____ amended Sections 5.4, 5.5, 5.6, 5.7, 5.8, 5.12, 5.13, 5.15, 5.19, 5.25, 5.26, 5.35, 5.36 and 5.41.]

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:

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.

D. Immediate. “Immediate” and “immediately” mean within ~~three (3)~~ hBusiness ~~d~~Days.

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.

FG. 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).

GH. Minor. The term “minor” means an individual who has not attained the age of ~~e~~Eighteen (18) ~~y~~Years.

HI. 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.

IJ. 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 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, or if the victim was at least ~~t~~Thirteen (13) ~~y~~Years old and the offender was not more than ~~f~~Four (4) ~~y~~Years older than the victim.

JK. Sex Offender. A person convicted of a sex offense is a “sex offender.”

KL. Sexual Act. The term “sexual act” means:

4. The intentional touching, not through the clothing, of the genitalia or another person that has not attained the age of ~~e~~Eighteen (18) ~~y~~Years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

LM. 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~~ any person.

MN. 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.

NO. 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.

OP. 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.

PQ. National Sex Offender Registry (NSOR). The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.

QR. 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.

RS. 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.

ST. “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.

TU. “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).

UV. “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.

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 ~~– if it involves a victim under fourteen (14) years of age~~),

5. WMAT Criminal Code §4.5 (Sexual Conduct with a Minor ~~– if it involves a victim under fourteen (14) years of age~~),

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

10. Use of a minor in a sexual performance, ~~or~~

12. ~~Offenses involving Consensual Sexual Conduct~~ 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)~~ thirteen (13) ~~years old~~ years old and the offender was not more than ~~four (4)~~ four (4) ~~years older than the victim.~~

SECTION 5.6 TIER 1 OFFENSES

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 ~~or~~ 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 §2.7 (Assault with Intent to Commit Rape),~~

~~21.~~ 21. WMAT Criminal Code §4.2 (Indecent Exposure to a Minor – if it involves a victim under Fifteen (15) Years of age),

~~32.~~ 32. WMAT Criminal Code §4.3(B) (Public Sexual Indecency to a Minor – if it involves a victim under Fifteen (15) Years of age),

~~4.~~ 4. ~~WMAT Criminal Code §4.4 (Sexual Abuse – if it involves a victim under fourteen (14) years of age),~~

~~5.~~ 5. ~~WMAT Criminal Code §4.5 (Sexual Conduct with a Minor – if it involves a victim under fourteen (14) years of age),~~

~~6.~~ 6. ~~WMAT Criminal Code §4.7 (Sexual Assault of a Spouse),~~

~~7.~~ 7. ~~WMAT Criminal Code §4.13 (Commercial Sexual Exploitation of a Minor – if it involves a victim under fourteen (14) years of age),~~

~~83.~~ 83. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – ~~if it involves~~ if in possession of any visual or print medium involving a victim under ~~Fourteen (14) y~~Years of age engaged in sexual conduct).

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) y~~One (1) Year in jail is considered a “Tier 2” offense.

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

~~1.~~ 1. ~~WMAT Criminal Code §4.9 (Molestation of a Child),~~

~~2.~~ 2. ~~WMAT Criminal Code §4.6 (Sexual Assault),~~

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).

SECTION 5.8 TIER 3 OFFENSES

A. Recidivism and Felonies. Any sex offense that is punishable by more than ~~one~~ (1) ~~Year~~ 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.

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 5.12 DNA SAMPLE

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, ~~a photocopy~~ the original driver's license card for ~~of~~ 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, ~~a photocopy~~ all original of any 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, ~~a photocopy of any~~ 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, ~~a photocopy~~ the original of any and all immigration documents. The Police Department shall make a photocopy of any such documents.

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 5.19 PICTURE

A. Photograph. ~~The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, a current photograph of the sex offender.~~ A covered sex offender shall permit his photograph to be taken by the White Mountain Apache Tribe or its designee.

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 ~~s~~Seven (7) ~~d~~Days or more:

3. The registered sex offender shall provide the information no later than ~~five (5)~~ Three (3) Business dDays 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) d~~Days in advance if before they intent 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 5.35 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 ~~s~~Seven (7) dDays, the sex offender shall immediately notify ~~the his residence jurisdiction, in which the sex offender will be temporarily staying which in turn will notify the jurisdiction in which the offender is temporarily staying.~~

SECTION 5.36 FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING

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.

SECTION 5.41 CRIMES AND CIVIL SANCTIONS

A. Criminal penalty. Each violation of a provision of this Code by a sex offender who is an Indian shall be considered a crime and subject to a period of

incarceration ~~of~~ not to exceed Three (3) Years and a fine ~~of~~ not to exceed ~~One~~ Five Thousand Dollars (~~\$15,000.00~~).

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~~ 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, ~~and traditions and exclusion~~ 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. ~~Hindrance of sex offender registration~~ Hindrance of sex offender registration.

CHAPTER SIX DOMESTIC VIOLENCE

[NOTE: Section 6.2 and 6.3 were amended by Ordinance No. 216, enacted April 8, 1998; Section 6.2 and 6.3 were amended by Ordinance No. No. 251, enacted July 25, 2012; Section 6.2 was amended by Ordinance No. 262, enacted November 1, 2013; Section 6.3, 6.7, 6.8, 6.9 and 6.10 were amended by Ordinance No. 270, enacted _____.]

SECTION 6.3 PENALTIES

A. **Criminal Penalties.**

1. First Offense:

a. Any person who commits an act of domestic violence 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 imprisoned for a term of not less than ~~ten~~ Ten (10) ~~days~~ Days or more than ~~one~~ One (1) ~~year~~ Year and shall be fined an amount 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) ~~h~~Months nor more than ~~€~~One (1) ~~Ƴ~~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) ~~Ƴ~~Years shall be imprisoned for a term of not less than ~~h~~Ninety (90) ~~€~~Days or more than ~~€~~One (1) ~~Ƴ~~Year and fined an amount not less than One Thousand Dollars (\$1,000.00) 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.

3. Third and Subsequent Offenses: A person convicted of a third or subsequent offense of domestic violence within ~~€~~Five (5) ~~Ƴ~~Years of the last conviction shall be imprisoned for a term of not less than ~~€~~One ~~h~~Hundred ~~€~~Eighty (180) days or more than ~~€~~One (1) ~~Ƴ~~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.

SECTION 6.7 SPECIAL COURT RULES

E. Conviction.

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

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.

SECTION 6.8 CIVIL ORDERS OF PROTECTION

B. Procedure for Issuance of an Order of Protection in General.

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, made permanent, or modified in any respect with reasonable notice to the Respondent.

3. 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.

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

1. An Order of Protection shall be enforced until further order of the Court but not to exceed one hundred ~~Eighty (180) Days~~, and may be subject to amendment for extension at the discretion of the Court or at the request of one of the parties.

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.

SECTION 6.9 REPORTING OF DOMESTIC VIOLENCE

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.

SECTION 6.10 DISCLOSURE OF DOMESTIC VIOLENCE SHELTERS

A. Any person who knowingly publishes, disseminates or otherwise discloses the location of any domestic violence shelter or any place designated as a domestic violence shelter as defined in Section 6.2, without the authorization of that domestic violence shelter, 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.

**CHAPTER SEVEN
VICTIM'S RIGHTS ACT**

[NOTE: The Victim's Rights Act was derived from Ordinance No. 171, enacted July, 1991; Ordinance No. 245, enacted December 13, 2010, moved the Victim's Rights Act from Chapter Five to Chapter Seven; and Ordinance No. 270, enacted amended Section 7.1 D.]

SECTION 7.1 VICTIM'S BILL OF RIGHTS

D. The Tribal Council, or the people by ~~initiative or~~ 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.