



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Posting of Ordinance No. 285, Amending the Juvenile Code of the White Mountain Apache Tribe)

WHEREAS, pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council may enact ordinances 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 Office of the Attorney General has this day proposed revisions to the Juvenile Code, Sections 2.2, 2.3, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.2, 4.5, 4.6, 5.2, 6.2, 6.3, 6.4, 7.1, 7.5, 7.6, 7.13, and 9.8, as set forth in Ordinance No. 285 attached hereto; 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. 285 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 284 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 285, which amends the Criminal Code, Sections 2.2, 2.3, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.2, 4.5, 4.6, 5.2, 6.2, 6.3, 6.4, 7.1, 7.5, 7.6, 7.13, and 9.8, attached hereto, 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. 285, 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. 285 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 and the Attorney General's Office and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action. Proof of posting should include start and end date of posting period, and locations of posting.

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 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.

Resolution No. 12-2017-268

Ordinance No.285

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 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.

The foregoing resolution was on **DECEMBER 13, 2017** duly adopted by a vote of **EIGHT** for, **ZERO** against, and **ONE** abstention 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).

	<u>12-14-17</u>		<u>12-15-17</u>
Ronnie Lupe, Tribal Chairman	Date	Doreen T. Numkena, Tribal Secretary	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. 285, amending White Mountain Apache Juvenile Code Sections 2.2, 2.3, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 4.1, 4.2, 4.5, 4.6, 5.2, 6.2, 6.3, 6.4, 7.1, 7.5, 7.6, 7.13, and 9.8, as follows:

CHAPTER TWO - THE JUVENILE COURT

SECTION 2.2 — APPOINTMENT OF YOUTH COUNSELORS

~~A. — The Chief Judge of the Trial Court when acting as the judge of the Juvenile Court shall appoint one or more Youth Counsellors. A person qualified to become a tribal police officer may become a Youth Counsellor.~~

~~B. — A Youth Counsellor shall have the authority to:~~

~~(1) — receive and examine complaints and allegations that a child is neglected, in need of supervision, or delinquent for the purpose of initiating proceedings under this chapter;~~

~~(2) — make referrals of cases to other private or public agencies where their assistance appears to be needed or desirable.~~

~~(3) — supervise and assist a child placed on probation or under his supervision by the Juvenile Court; and~~

~~(4) — take into custody and place in temporary care a child placed under his supervision when he has reasonable cause to believe that the child has violated the conditions of probation or that he may flee from the jurisdiction of the juvenile court.~~

~~C. — A Youth Counsellor shall not have the same powers and duties of a police officer nor may he initiate a petition under this chapter with respect to a child who is not on probation or otherwise under his supervision.~~

~~D. — If a Youth Counselor takes a child into custody, he shall proceed as provided for in Sections 4.6 and 7.7 of this code.~~

SECTION 2.3 2.2 TRANSFER OF JUVENILE CASES TO THE JUVENILE COURT

If it appears to a court in a criminal proceeding that the defendant was a minor at the time of the alleged offense, the court shall transfer the case to the Juvenile Court for processing as a juvenile case. No compliance with this requirement is necessary where the Juvenile Court has waived its jurisdiction pursuant to Section 2.1B.

SECTION 2.4 2.3 RETENTION OF JURISDICTION

Jurisdiction obtained by the Juvenile Court shall be retained by the Juvenile Court until a child becomes 18 years of age, unless terminated prior thereto.

CHAPTER THREE - GENERAL PROVISIONS

SECTION 3.1 — COMPLAINT; PRELIMINARY INQUIRY; AUTHORIZATION TO FILE PETITION

~~A. — Complaints alleging neglect, delinquency or need of supervision shall be referred to a Youth Counsellor. The Youth Counsellor shall conduct a preliminary inquiry to determine whether the best interests of the child or of the Tribe require that a petition be filed. If judicial action appears necessary, the Youth Counsellor may recommend the filing of a petition. All petitions shall bear the signature of the complainant.~~

~~B. When a child is in detention or temporary shelter care and a petition is not filed within 24 hours, excluding Saturdays, Sundays and legal holidays, the child shall be immediately released.~~

~~C. On motion by or on behalf of a child, a petition alleging that a child is delinquent or in need of supervision shall be dismissed with prejudice if it was not filed within 10 days from the date the complaint was referred.~~

SECTION 3.2 3.1 **PETITIONS**

A. Petitions commencing Juvenile Court action or seeking to revoke probation shall be signed by a person ~~other than a Youth Counsellor~~ who has knowledge of the facts alleged and believes them to be true.

~~B. When a child is in detention or temporary shelter care and a petition is not filed within 24 hours, excluding Saturdays, Sundays and legal holidays, the child shall be immediately released.~~

~~BC.~~ Petitions shall be entitled "In the matter of _____, a child" and shall be witnessed by the petitioner.

~~CD.~~ The petition shall specifically set forth:

- (1) facts which bring the child within the jurisdiction of the Juvenile Court;
- (2) the name, birth date and residence address of the child;
- (3) the name and address of the parents, guardian or custodian of the child, and the spouse, if any, and if none of these persons can be found, the name and address of a known adult relative of the child within the reservation.
- (4) the place of detention and time the child was taken into custody, if he is in custody; and
- (5) when any of these facts are unknown, the petition shall so state.

SECTION 3.2 3.3 **SUMMONS**

A. After a petition has been filed, the Juvenile Court shall direct the issuance of summons:

- (1) to the child, if he is over the age of 14 years or is alleged to be delinquent or in need of supervision;
- (2) to the parents, guardian or other custodian;
- (3) to the spouse of a married child; and
- (4) to any other person who appears to the Juvenile Court to be a proper and necessary party to the proceeding.

B. The persons summoned shall be required to appear before the court at a designated time to answer the allegations of the petition.

C. The summons shall advise the parties of their rights to retain counsel as provided in Section 5.1. A copy of the petition shall be attached to each summons.

D. The judge, on the summons, may order the person having custody or control of the child to bring the child to the hearing.

SECTION 3.3 3.4 **SERVICE OF SUMMONS**

A. If a party to be served with summons can be found within the reservation boundaries, the summons shall be served upon him at least 7 days before the hearing.

B. If a party who is a resident member of the White Mountain Apache Tribe cannot be found within the reservation boundaries, service of summons may be made upon him by leaving a copy of the summons at his dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

C. If service of summons cannot be made on a resident member of the White Mountain Apache Tribe at his dwelling house or usual place of abode, he may be served by the posting of a copy of the summons at the tribal courthouse for a continuous period of 14 days.

D. If it appears from an affidavit or sworn statement presented to the judge that the child requires placement in detention or shelter care pursuant to Section 4.3 the judge may endorse upon the summons an order, than an officer serving the summons shall take the child into custody and take to a place of detention or shelter care designated by the court on the summons.

E. A party other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

SECTION 3.4 3-5 **TIME LIMITATIONS**

On motion by or ~~in~~ on behalf of a child, a petition alleging that the child is delinquent or is in need of supervision shall be dismissed without ~~prejudice right to refile or amend~~ where the allegations of the petition are not determined ~~by an admission or a~~ at a hearing within ~~twenty (20) ninety (90)~~ days after the filing of the petition.

SECTION 3.5 3-6 **CONTINUANCES**

Continuances shall be granted by the court only upon a showing of good cause and only for so long as is reasonably necessary.

SECTION 3.6 3-7 **CONTEMPT POWER**

~~As provided in Section 6.2 of this code, the~~ The Juvenile Court may punish a person for contempt of court for obstruction or interfering with the proceedings of the court or the enforcement of its orders.

SECTION 3.7 3-8 **SUBPOENAS**

Upon application of a party, the Clerk of the Court shall issue, and the court on its own motion may issue, subpoenas requiring the attendance of witnesses to testify and produce records, documents or other tangible objects at any hearing.

CHAPTER FOUR - CUSTODY OF MINORS IN GENERAL

SECTION 4.1 **TAKING A CHILD INTO CUSTODY**

A child may be taken into custody:

- (1) pursuant to the order of the Juvenile Court under Section ~~3.33-4~~ (D) of this chapter;
- (2) for an act of delinquency pursuant to the laws of arrest as provided for in the Law and Order Code.
- (3) by a law enforcement officer when he has reasonable grounds to believe that the child is suffering from illness or the child's surroundings are such as to endanger his health, morals or welfare, and that his removal is necessary; and
- (4) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parents, guardian or other custodian.

SECTION 4.2 **NOTIFICATION TO PARENTS**

A. Any police officer who takes a child into custody without a court order shall immediately notify or attempt to notify the parents, guardian, or custodian.

B. In all cases where the parents, guardian or custodian of a child taken into custody without a court order can be located and are willing and able to take the child under their care, the child shall be surrendered to their care pending any proceedings in the Juvenile Court.

C. Where a child has to be taken into custody without a court order, the police officer shall notify the judge of the Juvenile Court ~~or a Youth Counsellor~~ and shall make such disposition of the child as directed by the judge, or in his absence, ~~the Youth Counsellor~~.

SECTION 4.5 PLACE OF DETENTION OR SHELTER

A. A child alleged to be delinquent or in need of supervision may be detained, pending court hearing, in the following places:

- (1) a foster home or other home approved by the Juvenile Court ~~or a Youth Counsellor~~;
- (2) a facility operated by a child welfare agency approved by the Juvenile Court; or
- (3) any other suitable place designated by the Juvenile Court.

B. A child may be detained in a jail or other facility for the detention of adults only if the facilities provided for in Subsection A are unavailable and the detention is in a room separate and removed from those adults.

C. A child alleged to be neglected may not be detained in a jail or other facility intended or used for the detention of adults charged with or convicted of criminal offenses or for children alleged to be delinquent.

SECTION 4.6 RELEASE FROM DETENTION OR SHELTER CARE; HEARING

A. When a child is not released under the provisions of Section 4.4, a petition shall be filed within ~~seventy-two (72)~~ 24 hours, excluding Saturdays, Sundays and legal holidays, and a hearing shall be held within 24 hours from the time of the filing of the petition (excluding Saturdays, Sundays, and legal holidays) to determine whether continued detention or shelter care is required under Section 4.3.

CHAPTER FIVE - RIGHTS OF PARTIES AT JUVENILE PROCEEDINGS

SECTION 5.2 ADMISSIBILITY OF PRELIMINARY STATEMENTS

Unless advised by counsel, the statements of a child made while in custody to a ~~Youth Counsellor~~, including statements made during a preliminary inquiry or predisposition study, shall not be used against the child in determining the allegations of the petition.

CHAPTER SIX - PROCEEDINGS BEFORE THE JUVENILE COURT

SECTION 6.2 PREDISPOSITION STUDY AND REPORT

A. After the filing of a petition, the court shall direct that a predisposition study and report to the court concerning the child, his family, environment, and other matters relevant to the disposition of the case be made by a designated ~~Youth Counsellor or~~ child welfare agency. The study and report shall not be made prior to a finding with respect to the allegations in the petition unless a notice of intent to admit the allegations is filed and the party consents thereto.

SECTION 6.3 HEARING; FINDINGS; DISMISSAL

A. The parties shall be advised of their rights under the law in their first appearance before ~~a Youth Counsellor and~~ before the court. They shall be informed of the specific allegations in the petition and be given an opportunity to admit or deny such allegations.

SECTION 6.4 CONSENT DECREE; CONTINUED SUPERVISION WITHOUT AJUDICATION

A. At any time after the filing of a delinquency or need of supervision petition and before entry of an adjudication order, the court, on its own motion or on motion of counsel for the child, may suspend the proceedings and continue the child under supervision in the child's own home, under such terms and conditions as recommended by the ~~Juvenile Advocate Youth Counsellor~~ and agreed to by the parties affected.

C. A consent decree shall remain in force for six (6) months unless the child is sooner discharged from supervision by the ~~Court Youth Counsellor~~.

D. If prior to discharge by the ~~Court Youth Counsellor~~ or expiration of the consent decree, a new delinquency or need of supervision petition is filed against the child, or the ~~Juvenile Advocate Youth Counsellor~~ reports that the child has failed to abide by the express terms and conditions of the consent decree, the original petition under which the child was continued under supervision may be reinstated in the discretion of the Juvenile Court and the child may be held accountable as if the consent decree had never been entered.

E. A child who is discharged by the ~~Court Youth Counsellor~~, or who completes the period of continuance under supervision without reinstatement of the original delinquency or need of supervision petition, shall not again be proceeded against in any court for the same acts alleged in the petition or for an offense based upon the same condition.

CHAPTER SEVEN - DISPOSITION

SECTION 7.1 DISPOSITION OF NEGLECTED CHILD

A. If a child is found by the Juvenile Court to be neglected, the court may make any of the following orders of disposition to protect the welfare of the child.

- (1) permit the child to remain with his parents, guardian or other custodian, subject to such conditions and limitations as the court may prescribe;
- (2) place the child under protective supervision;
- (3) transfer legal custody of the child to any of the following:

(a) a tribal, state, federal, or other public agency responsible for the care of neglected children, provided that the child remains exclusively subject to the orders of the Juvenile Court;

(b) a child-placing agency or other private organization or facility willing and able to assume the education, care and maintenance of the child at no expense to the public, and which is licensed or otherwise authorized by law to receive and provide care for such child; and

(c) a relative or other individual who, after study by ~~a the Youth Counsellor or other~~ person designated by the court, is found by the court to be qualified to receive and care for the child.

SECTION 7.5 LIMITATION OF TIME ON DISPOSITIONAL ORDERS

C. An order of probation or protective supervision shall remain in force for an indeterminate period not exceeding one year from the date entered ~~unless terminated sooner by court order. Such probation or supervision shall be terminated within the one year period by the Youth Counsellor when he concludes that the purpose of the order has been achieved.~~

SECTION 7.6 MODIFICATION OF TERMINATION OF COURT ORDERS

A. At any time prior to expiration, an order vesting legal custody of an order of protective supervision made by the court in the case of a child may be modified, revoked, or extended on motion by:

- ~~(3) — a Youth Counsellor assigned to the child's case; or~~

(3)(4) the institution, agency or person vested with legal custody or responsibility for protective supervision.

B. To effectuate the provisions of this section, the Juvenile Court when it grants legal custody or protective supervision of a child to an agency, institution or person shall assign Tribal Social Services a ~~Youth Counsellor~~ to the child's case to make a quarterly report to the court on the welfare and progress of the child.

SECTION 7.13 RECORDS; PUBLICATION PROHIBITED

A. The records of proceedings of the Juvenile Court shall be kept in a docket separate from other proceedings, and shall not be opened for inspection or copied by anyone other than the parties to the proceedings, and the representatives of the court, ~~and youth counsellors having an interest therein~~, except upon order of the court.

CHAPTER NINE - ADOPTION

SECTION 9.8 INVESTIGATION

Upon the filing of a petition for adoption and after a hearing date has been set, the Court shall order ~~the Youth Counselor~~, an officer of a federal, state, or tribal placement agency or other competent person to conduct an investigation, such person shall report his findings to the court with respect to the following: