

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

- WHEREAS**, the Tribal Council in Resolution No. 10-93-265, adopted Tribal Personnel Policies and Procedures on Background Investigations requiring background investigations of employees, including prospective foster parents, whose work involves regular contact with children; and
- WHEREAS**, under the policy, the White Mountain Apache Tribal Police Department is directed to verify that such employees have had no conviction in any court for specified criminal offenses which would make such employees unsuitable for work which involves contact with children; and
- WHEREAS**, the Tribal Police Department wishes to forward fingerprint cards of each employee who is subject to a background investigation to the Arizona Department of Public Safety, Criminal History Records Section; and
- WHEREAS**, the Department of Public Safety would be able to provide information on convictions of specified offenses in the State of Arizona and forward the fingerprint cards to the F.B.I. (Federal Bureau of Investigation) for a search of national crime records; and
- WHEREAS**, the Department of Public Safety is unable to process requests on behalf of the Tribe for employees in non-law enforcement positions because the Tribal Policies and Procedures do not specifically authorize the Department of Public Safety to carry out an investigation nor to forward the information to the F.B.I.; and
- WHEREAS**, in order to carry out the directives of the Background Investigation Policies and Procedures, the Tribe wishes to receive background information from the Department of Public Safety.
- BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby amends the Tribal Personnel Policies and Procedures on Background Investigations so that the following text shall be added to Section I, Part B of the Policy:

**All such employees, except those exempted under paragraph F, shall be required to submit a full set of fingerprints to the Tribe for the purpose of obtaining a state and national criminal history records check pursuant to Arizona Revised Statutes, Section 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation.**

# PERSONNEL POLICIES AND PROCEDURES

## BACKGROUND INVESTIGATIONS

### I. General Policy

- A. The White Mountain Apache Tribe, Division of Human Resources, Personnel Department, in coordination with the Tribal Police Department, will conduct a thorough and comprehensive background investigation on all employees, whether paid or not, who may be hired or who may provide services to the Tribe in potentially sensitive positions as defined herein. Such employees will include all employees of the Tribe, consultants, subcontractors, independent contractors, volunteers, students, foster parents, and persons otherwise affiliated with the Tribe.
- B. Employees of the White Mountain Apache Tribe who are required or allowed to provide services directly to minors will be subject to a thorough and comprehensive background investigation as a condition of employment. All such employees, except those exempted under paragraph F, shall be required to submit a full set of fingerprints to the Tribe for the purpose of obtaining a state and national criminal history records check pursuant to Arizona Revised Statutes, Section 41-1750 and Public Law 92-544. The Arizona Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation.
- C. Employees of the White Mountain Apache Tribe who are under the age of 18 years and who are required or allowed to provide services directly to other minors will be subject to a background investigation as a condition of employment.
- D. The White Mountain Apache Tribe may prohibit any Department from hiring any employee from providing services directly to minors until a thorough and comprehensive background investigation is completed and results (in writing) of the investigation are submitted to the Division of Human Resources, Personnel Department, for clearance.

However, if the background investigations cannot be conducted on a timely basis (within two (2) weeks after notification to the Personnel Department of the intent to hire), routine reference checks of the previous employers and/or schools/training institutions will be conducted by the Personnel Department, and results of such reference checks will be issued to the Hiring Authority of the Department and to the Tribal Police Department in writing.

The Manager may use his discretion to hire the employee (based on the results of the reference checks), pending the outcome of the background investigations.

The Personnel Department shall be notified in writing of the Manager's decision and the reasoning behind the decision that was made. Otherwise, the Personnel Department will not process any Notice of Personnel Action forms that may be sent to the office.

Until a background investigation is formally completed and a written report is submitted to the Hiring Authority, the employee may work with children but only under direct visual supervision, to the extent practicable and feasible. In the event that it is not practicable and feasible for the employee to be under direct visual supervision, said employee shall not be left alone with less than five (5) minors for a period of time not to exceed fifteen (15) minutes. Furthermore, the employee shall not act or be directed to act in any capacity that would require physical contact with minors in such circumstances.

The Manager and the Employee will be notified at the time of hire, that the White Mountain Apache Tribe reserves the right to terminate an employee at any time, if adverse or questionable information regarding the employee's character is discovered as a result of the background investigation which may interfere with the employee's ability to effectively perform the job duties and responsibilities.

E. Employees of the Tribe who are required or allowed to provide services directly to minors will certify on forms provided by the White Mountain Apache Tribe and notarized whether they have had a civil judgment against them for any offense involving a minor, or if they are awaiting trial on, or have committed, or have ever been convicted of any of the following criminal offenses in this state, or similar offenses in another state or other tribal jurisdictions:

1. Sexual abuse of a minor;
2. Incest;
3. First or second degree murder;
4. Kidnapping;
5. Arson;
6. Sexual assault;
7. Sexual exploitation of a minor;
8. Contributing to the delinquency of a minor;
9. Commercial sexual exploitation of a minor;
10. Felony offense involving distribution of marijuana or dangerous or

- narcotic drugs;
- 11. Burglary;
- 12. Robbery;
- 13. A dangerous crime against children;
- 14. Child abuse;
- 15. Sexual conduct with a minor;
- 16. Molestation of a child;
- 17. Manslaughter;
- 18. Aggravated assault.

- F. Employees who are hired by the Tribe for specific educationally related short-term projects may be exempt from background investigations, if the following conditions exist:
1. the employee has been continuously employed during the previous six (6) months with an accredited school system where background investigations which meet or exceed the standards required by the White Mountain Apache Tribe are required; and
  2. the employee is able to provide to the Tribe, written documentation from the school superintendent that background investigations were completed and that the employee has not encountered any problems pursuant to those situations listed in Section I.E. (1-18) while currently employed.
- G. Each Department will maintain a list of volunteers who work with children and who will work only under direct visual supervision. It shall be the responsibility of the Manager to ensure that adequate supervision is provided at all times. The listing of volunteers will be made available to the Division of Human Resources, Personnel Department, and will be updated each month, or as the volunteer list changes.
- H. Employees who are under 18 years of age and are placed in an in-school/after school work/study program or a summer youth employment program, and are placed with different organizations on the Reservation, whether placed with Tribal, Bureau of Indian Affairs (BIA), Indian Health Service (IHS), State Government, or Public School offices of facilities, will only be placed in positions that require and are provided direct visual supervision by other adults. The Sponsoring Agency reserves the right to monitor each organization.
- I. Employees who disclose the conviction of, commission of, or pending trial of an offense, as listed below, shall not be allowed to have regular contact

with, or control over, or provide services to minors:

1. Sexual abuse of a minor;
2. Incest;
3. First or second degree murder;
4. Kidnapping;
5. Arson;
6. Sexual assault;
7. Sexual exploitation of a minor;
8. Contributing to the delinquency of a minor;
9. Commercial sexual exploitation of a minor;
10. Felony offense involving distribution of marijuana or dangerous or narcotic drugs;
11. Burglary;
12. Robbery;
13. A dangerous crime against children;
14. Child abuse;
15. Sexual conduct with a minor;
16. Molestation of a child;
17. Manslaughter;
18. Aggravated assault.

J. Confidentiality: All and any reports generated from the background investigations shall remain confidential. The identity of any individual making a report shall not be disclosed without the expressed written consent of the individual who made the report, except in the following circumstances:

1. If a court of competent jurisdiction subpoenas such information, or
2. An employee of the White Mountain Apache Tribe, State, or Federal Government who needs to know the information on the performance of such employee's duties requests such information.

Upon consultation with the Tribal Legal Department, the Division of Human Resources Director may release the information requested.

K. Effect of Confirmed Criminal History: If upon completion of the background investigation, it is confirmed that an employee has committed, or have been convicted of, or are awaiting trial of an offense, or has lost a civil case involving an offense against a minor, as listed in Section I.E. (1-18), the Manager shall immediately prohibit the employee from acting in any capacity requiring or allowing contact with minors. The White Mountain Apache Tribe reserves the right to terminate the employee.

## II. Investigative Procedures

A. The Division of Human Resources, Personnel Department will initiate all background investigations in coordination with the White Mountain Apache Tribal Police Department, after a request for such services is received from the Hiring Authority of any Department.

1. Background Checks: Which ensures that none of the employees appointed to positions within the Tribal Government Structure have been found guilty of, or entered a plea of *nolo contendere* (no contest), or guilty to, any offenses under Federal, State or Tribal law involving crimes of violence, sexual assault, molestation, exploitation, prostitution, or crimes against persons, as listed in Section I.E. (1-18).

Background checks will be conducted by the Tribal Police Department. Typed reports of the background checks shall be submitted to the Personnel Department as soon as the investigation is completed. The Investigative Officer shall sign and date all reports.

2. Reference Checks: Which ensures that the employees appointed to positions within the Tribal Government Structure have been employed and/or received education and training at organizations and schools listed on the applications/resumes submitted to the White Mountain Apache Tribe.

Reference checks will be conducted by the Division of Human Resources, Personnel Department at the same time the background checks are being conducted by the Police Department.

3. Fingerprinting: Where applicable, will be conducted by the Tribal Police Department who will also be responsible for distributing the appropriate information and materials to the Division of Human Resources, Personnel Department for processing. At no time should the fingerprints be given to the employee or applicant, or the Personnel Department. Fingerprints should remain at the Police Department.

- B. Cost of Fingerprinting: Shall be the responsibility of the Department requesting the information. The Tribal Police Department will bill all associated costs directly to the Department. A copy of the bill will be sent to the Division of Human Resources, Personnel Department.
- C. All interviews will be conducted according to established Personnel Procedures.
- D. A background check may be requested at any time a candidate is being seriously considered for employment. However, all background checks must be requested no later than five (5) working days after the interviews have been held.

The Hiring Authority of the Department will, in writing, contact the Division of Human Resources, Personnel Department, to request background investigations of the top three (3) candidates, where applicable, who have interviewed for the positions that were announced.

Attached to the written request, the Hiring Authority will include the following forms:

1. Authorization to Release Information form, signed and dated by the applicant and witnessed by a Notary Public; and
  2. completed Certification form with all questions answered and witnessed by a Notary Public.
- E. Within three (3) working days after receipt of the request and the appropriate forms, the Personnel MIS Administrator will review all information for completeness and accuracy, and immediately begin the necessary steps to initiate the background investigations.

A memorandum from the Personnel Department requesting background checks will be submitted to the Tribal Police Department with copies of the Authorization to Release Information and Certification forms. At the same time the MIS Administrator shall begin the reference checks of former employers and training institutions. While the reference checks are being conducted, the Authorization for Release of Information form may be issued to former employers and/or training institutions upon request.

A written report will be submitted to the Hiring Authority within two (2) weeks after receipt of the initial request, unless circumstances beyond the Personnel Department's control prohibits completion of the tasks within the

two (2) week time frame. A letter to the Hiring Authority will be issued to explain the circumstances.

- F. Once all background investigations have been completed, a typed report that has been signed and dated by the investigative officer will be submitted to the Division of Human Resources Director who will compile all the information and issue a synopsis of the reports to the Hiring Authority in writing within five (5) working days after receipt of the reports.

### III. Recordkeeping

- A. All documentation pertaining to background investigations will be submitted in writing. Investigative procedures will not be initiated unless documented properly.
- B. All background investigations will be requested in writing from the Hiring Authority. The Hiring Authority will also be responsible for receiving appropriate authorization to conduct background investigations pursuant to Section II.D. (1-2).
- C. All reports pertaining to the background investigations will be submitted in writing (signed and dated) to the appropriate authorities.
- D. All investigative reports will be marked CONFIDENTIAL and filed in the applicant/personnel file at the Division of Human Resources, Personnel Department.
- E. Investigative reports will be retained for at least three (3) years after the first date of issuance.

### IV. Effective Date

- A. These policies and procedures as written will be duly adopted immediately after approval from the White Mountain Apache Tribal Council.
- B. Each Department pursuant to funding agency requirements shall initiate background investigative procedures of current employees, as necessary.

### V. Subrogation

- A. If any part of these regulations conflict with federal regulations when promulgated, then federal regulations shall prevail.