



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

**(Approving the Posting of Ordinance Nos. 245, 246, 247 & 248,
Amending the White Mountain Apache Tribe Criminal Code, Government
Code, Rules of Criminal Procedure & Health & Safety Code)**

- WHEREAS,** pursuant to Article IV, Section 1(a) of the Constitution of the White Mountain Apache Tribe, *inter alia*, the Tribal Council has the authority to represent the Tribe and act in all matters that concern the welfare of the Tribe; and
- WHEREAS,** the Legal Department and the Prosecution Unit have this day proposed revisions to the Criminal Code, Government Code, Rules of Criminal Procedure and Health & Safety Code for the White Mountain Apache Tribe as set forth in Ordinance Nos. 245, 246, 247 & 248 attached hereto; and
- WHEREAS,** Ordinance No. 245 proposed changes to Criminal Code Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.18, 2.20, 2.22, 2.23, 2.28, 2.37, 2.38, 2.40, 2.41, 2.45, 2.46, 2.50, 2.51, 2.52, 2.54, 2.55, 2.56, 2.59, 2.71, 3.2, 4.4, 4.22 and 4.23; added Sections 2.72 through 2.95; added a new Chapter Five, Sex Offender Registration, and moved the Victim's Bill of Rights from Chapter Five to Chapter Seven; and
- WHEREAS,** Ordinance No. 246 proposed changes to Section 5.4 of the Government Code; and
- WHEREAS,** Ordinance No. 247 proposed changes to Rule 7.1 of the Rules of Criminal Procedure; and
- WHEREAS,** Ordinance No. 248 proposed changes to the General Penalties and Criminal Penalties portions of Section 11.11 of the Health & Safety Code to correspond with the proposed changes to the Criminal Code set forth in Ordinance No. 245; 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 Nos. 245, 246, 247 & 248 carefully, and considered the recommendations and the implications thereof in great detail and finds that the adoption of these ordinances would greatly improve the administration of public safety and justice for crimes committed on the Fort Apache Indian Reservation.

BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance Nos. 245, 246, 247 & 248 attached hereto, which amend the Criminal Code, Government

Resolution No. 12-2010-310
Ordinance Nos. 245, 246, 247 & 248

Code, Rules of Criminal Procedure and Health & Safety Code are hereby recommended for posting by the Tribal Council.

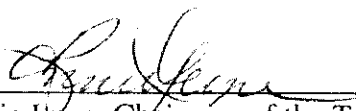
BE IT RESOLVED by the Tribal Council of the White Mountain Apache Tribe, as follows:

1. The Tribal Council Secretary is hereby authorized and directed to post this resolution, along with Ordinance Nos. 245, 246, 247 & 248, 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 these ordinances 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.

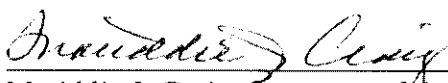
BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall govern.

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 1, 2010** duly adopted by a vote of **EIGHT** for and **ZERO** against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (q), (s), (t), and (u) of the Constitution of the Tribe, 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 of the Tribal Council



Mariddie J. Craig, Secretary of the Tribal Council

**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. 245, amending White Mountain Apache Criminal Code, Sections 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.18, 2.20, 2.22, 2.23, 2.28, 2.37, 2.38, 2.40, 2.41, 2.45, 2.46, 2.50, 2.51, 2.52, 2.54, 2.55, 2.56, 2.59, 2.71, 3.2, 4.4, 4.22 and 4.23, adding Sections 2.72 through 2.95, adding Chapter Five, Sex Offender Registration, and moving the Victim's Bill of Rights from Chapter Five to Chapter Seven, as follows:

SECTION 2.4 ASSAULT

B. A person found guilty under this Section, may be sentenced to imprisonment for a period not to exceed ~~One Hundred Eighty (180) days~~ **One (1) Year** or to pay a fine not to exceed ~~Five Hundred Dollars (\$500.00)~~ **One Thousand Dollars (\$1,000.00)**, or both.

SECTION 2.5 ASSAULT, AGGRAVATED

B. A person found guilty under this Section shall be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty Five (365) days~~ **Three (3) Years**, but not less than Thirty (30) days, and to pay a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**. Any person sentenced under this Section shall not be eligible for suspension of sentence, probation, parole, or any other release from custody until the sentence imposed by the court is served.

SECTION 2.6 ASSAULT WITH A DEADLY WEAPON

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ~~One Hundred Eighty (180) days~~ **One (1) Year** or to pay a fine not to exceed ~~One Thousand Dollars (\$1,000.00)~~ **Two Thousand Dollars (\$2,000.00)** or both.

C. A person found guilty under this Section of assaulting a law enforcement officer, judicial officer, or Tribal Council member, while such officer or Council member is acting in his or her official capacity, shall be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty Five (365) Days~~ **Three (3) Years** or to pay a fine not less than ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both.

SECTION 2.7 ASSAULT WITH INTENT TO COMMIT RAPE

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **Three (3) Years** or to pay

a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both.

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

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **Three (3) Years** or to pay a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both.

SECTION 2.9 **ASSAULT WITH INTENT TO KILL**

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **Three (3) Years** or to pay a fine not to exceed) ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)** or both.

SECTION 2.18 **CARRYING A CONCEALED WEAPON**

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

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

A. An adult person is guilty of an offense who:

(1) Knowingly causes, encourages, or advises a minor to commit an offense as defined under the provisions of the ~~White Mountain Apache Tribe Law and Order~~ **this Code**; or

SECTION 2.22 **CRIMINAL DAMAGE**

B. A person found guilty under this Section may be imprisoned for a period not to exceed ~~One Hundred Eighty (180) days~~ **One (1) Year**, or to pay a fine not to exceed Two Thousand Five Hundred Dollars (\$2,500.00), or both. **No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.**

SECTION 2.23 CRIMINAL DAMAGE; AGGRAVATED

B. A person found guilty under this Section shall be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty Five (365) days~~ **Three (3) Years**, or to pay a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both. **No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.**

SECTION 2.28 DISOBEDIENCE TO A LAWFUL ORDER OF THE COURT

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

SECTION 2.37 FORGERY

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed One Hundred Eighty (180) days or to pay a fine not to exceed Five Thousand Dollars (\$5,000.00), or both. **In the event the defendant fails to make full restitution to the person defrauded by the forgery, the person found guilty under this Section shall be sentenced to imprisonment for a period of at least One (1) Year, but not to exceed Three (3) Years. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.**

SECTION 2.38 FRAUD

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed One Hundred Eighty (180) days or to pay a fine not to exceed ~~One Hundred Eighty Dollars (\$180.00)~~ **Five Thousand Dollars (\$5,000.00)**, or both. **In the event the defendant fails to make full restitution to the person defrauded by the forgery, the person found guilty under this Section shall be sentenced to imprisonment for a period of at least One (1) Year, but not to exceed Three (3) Years. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.**

SECTION 2.40 HARBORING A FUGITIVE

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **Three (3) Years**, or to pay

a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both.

SECTION 2.41 **ILLICIT COHABITATION**

[Repealed by Ordinance No. 245, effective _____.]

~~A. A person who lives or cohabits as a man and wife with another person, while not being married to such person, is committing a crime against the cultural integrity of the Tribe and is guilty of an offense.~~

~~B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed One Hundred Eighty (180) days or to pay a fine not to exceed Five Hundred Dollars (\$500.00), or both.~~

SECTION 2.45 **INTERFERENCE WITH AN OFFICER**

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

3. Knowingly making a false, fraudulent, or unfounded report or statement to an officer, **or to knowingly misrepresent a fact for the purpose of interfering with the orderly operation of a law enforcement agency, or to mislead a police officer;** or

SECTION 2.46 **INTERFERENCE WITH JUDICIAL PROCEEDINGS**

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

7. Intimidates a witness or victim or dissuades a witness from testifying;

or

8. **Inducing a witness in any official proceeding, or a person he/she believes may be called as a witness, to unlawfully withhold any testimony or testify falsely or absent himself from the proceeding;** or

9. **Threatens a witness or offers or agrees to confer any benefit upon a witness, or a person he/she believes may become a witness, in any official proceeding with the intent to influence the testimony or to induce or coerce that person to avoid legal process or absent himself from any official proceeding to which he has been legally summoned.**

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed One Hundred Eighty (180) days or to pay a fine not to exceed ~~Five Hundred Dollars (\$500.00)~~ **Two Thousand Dollars (\$2,000.00)**, or both.

SECTION 2.50 **MISUSING PROPERTY**

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed Ninety (90) days or to pay a fine not to exceed ~~Ninety Dollars (\$90.00)~~ **Two Hundred Dollars (\$200.00)**, or both. **Mandatory restitution shall be imposed in any case in which the defendant has damaged the property of another. If the defendant fails to make full restitution in such a case, he or she shall be sentenced to imprisonment for a period of no less than One Hundred Eighty (180) days or more than One (1) Year. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.**

SECTION 2.51 **NARCOTICS AND DANGEROUS DRUGS**

C. A person found guilty under Subsection A (1), (2) or (3) may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **Three (3) Years**, or to pay a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both; a person found guilty under Subsection A (4) may be sentenced to imprisonment for a period not to exceed ~~One Hundred Eighty (180) days~~ **One (1) Year** or to pay a fine not to exceed ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ **Five Thousand Dollars (\$5,000.00)**, or both.

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

B. Any person found guilty under this Section may be sentenced to imprisonment for a period not to exceed One Hundred Eighty (180) days for the first offense and for a period not to exceed ~~Three Hundred and Sixty-Five (365) days~~ **Three (3) Years** for any repeated offense, or to pay a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both such term of imprisonment and payment of fine. **Such person shall not be eligible for suspension of sentence or any other release from custody until the sentence imposed by the court is served.**

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

B. A person found guilty under Subsection A(1) of this Section shall be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~

Three (3) Years), but not less than Ninety (90) days, and to pay a fine not to exceed ~~Five Thousand (\$5,000.00) Dollars~~ **Fifteen Thousand Dollars (\$15,000.00)**, or both.

C. A person found guilty under Subsection A(2) of this Section may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **Two (2) Years**, or to pay a fine not to exceed ~~Five Thousand (\$5,000.00) Dollars~~ **Ten Thousand Dollars (\$10,000.00)**, or both.

SECTION 2.55 **POSSESSION OF DRUG PARAPHERNALIA**

B. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **Two (2) Years**, or to pay a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~ **Ten Thousand Dollars (\$10,000.00)**, or both.

SECTION 2.56 **POSSESSION OF MARIJUANA**

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

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

C. A person found guilty under this Section may be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~ **One (1) Year**, or to pay a fine not to exceed ~~Five Thousand Dollars (\$5,000.00)~~, or both.

SECTION 2.59 **RECEIVING STOLEN PROPERTY**

A. A person is guilty of an offense who buys, receives, conceals or aids in concealing any property which he knows or **should has reason to** know has been obtained by theft, extortion, fraud, or other means declared to be unlawful under the provisions of the ~~White Mountain Apache Tribe Law and Order~~ **this Code** .

SECTION 2.71 **WEAPONS OFFENSES**

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

(2) Any person found in violation of this Subsection shall be sentenced to imprisonment for a period not to exceed ~~Three Hundred Sixty-Five (365) days~~

Three (3) Years, or to pay a fine not to exceed ~~One Thousand Dollars (\$1,000.00)~~
Fifteen Thousand Dollars (\$15,000.00), or both.

SECTION 2.72 ARSON OF AN OCCUPIED STRUCTURE

A. A person commits this offense by knowingly and unlawfully damaging an occupied structure by causing a fire or explosion.

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed Three (3) Years, a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), and mandatory restitution. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.

SECTION 2.73 ARSON OF A STRUCTURE OR PROPERTY

A. A person commits this offense by knowingly and unlawfully damaging a structure or property by causing a fire or explosion.

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed One (1) Year, a fine not to exceed Five Thousand Dollars (\$5,000.00), and mandatory restitution. No part of the fine imposed by the court may be suspended unless the Defendant has made restitution in full to the owner of the property he or she has damaged.

SECTION 2.74 BOOTLEGGING

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

A. It shall be unlawful to manufacture, sell, offer, keep for sale, possess or transport liquor except upon the terms, conditions, limitations, and restrictions specified in the Health & Safety Code.

B. All liquor manufactured, sold, possessed or transported in violation of the Health & Safety Code is hereby declared contraband and in addition to any penalties or fines imposed by the court for violation of this Section, shall be confiscated and forfeited in accordance with the procedures set forth in Rule 2.5 of the White Mountain Apache Rules of Criminal Procedure governing the disposition of seized property.

C. It shall not be a violation to manufacture, possess or consume Tulapai for ceremonial purposes.

D. **General Penalties.** Any person adjudged to be in violation of this Section shall be subject to a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each such violation, notwithstanding any penalty for repeated violations adopted by the Liquor Board.

E. A person found guilty of this offense shall be sentenced to imprisonment of up to Three Hundred Sixty-Five (365) days for each violation.

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

SECTION 2.75 BURGLARY

A. A person commits this offense by:

1. Entering or remaining unlawfully in or on a structure or in a fenced or commercial yard with the intent to commit any crime, or

2. Making unlawful entry into any part of a motor vehicle with the intent to commit any crime in the motor vehicle, or

3. Entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any crime therein, or

4. Committing any of the subsections above while the person or an accomplice is knowingly in possession of any explosive or deadly weapon or dangerous instrument, or

5. Committing any of the subsections above while the residential structure is occupied by either residents or their lawful guests.

SECTION 2.76 DETENTION - BRINGING OR POSSESSION OF CONTRABAND

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

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

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

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

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

SECTION 2.78 DRIVING UNDER THE INFLUENCE

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

1. While under the influence of any intoxicating liquor, any drug, a vapor releasing substances containing a toxic substance, or any combination of these if the person is impaired to the slightest degree, or

2. If the person has an alcohol concentration of 0.08 or more within two (2) hours of driving or being in actual physical control of the vehicle and the alcohol concentration result from alcohol consumed either before or while driving or being in actual physical control of the vehicle.

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

C. A person who is convicted of violating this Section shall be sentenced to serve not less than Ten (10) consecutive days in jail, and to pay a fine of not less than Two Hundred Fifty Dollars (\$250.00), 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 in jail, and to pay a fine of not less than Five Hundred Dollars (\$500.00), and is not eligible for probation or suspension of sentence unless the entire sentence is served. Also, the person's driver's license shall be suspended for a period of One (1) Year.

E. Notwithstanding the provisions of Subsection C above, at the time of sentencing the Court may suspend all but Twenty-four (24) hours of the sentence if the person completes a court-ordered alcohol or other drug treatment program. If the person does not complete the program, the Court shall issue an Order to Show Cause why the suspended portion of the sentence should not be served.

F. Notwithstanding the provisions of Subsection D above, at the time of sentencing the Court may suspend all but Ten (10) days of the sentence if the person completes a court-ordered alcohol or other drug treatment program. If the person does not complete the program, the Court shall issue an Order to Show Cause why the suspended portion of the sentence should not be served.

SECTION 2.79 DRIVING UNDER THE INFLUENCE - AGGRAVATED

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

1. Commits a violation of Section 2.78 of this Code while the person's driver license or privilege to drive is suspended, canceled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive as a result of violating Section 2.78.

2. Within a period of Sixty (60) months commits a third or subsequent violation of Section 2.78 of this Code.

3. Commits a violation of Section 2.78 of this Code while a person under Fifteen (15) years of age is in the vehicle.

4. Commits a violation of Section 2.78 of this Code with a blood alcohol content of 0.15 or greater.

B. A person who is convicted of violating this Section shall be sentenced to serve not less than Thirty (30) consecutive days nor more than One

Hundred Eighty (180) days in jail, and to pay a fine of not less than Two Hundred Fifty Dollars (\$250.00), and is not eligible for probation or suspension of sentence unless the entire sentence is served.

C. A person who is convicted of violating this Section for a second time in a Sixty (60) month period shall be sentenced to serve not less than Ninety (90) days nor more than Three Hundred Sixty-Five (365) days in jail, and to pay a fine of not less than Five Hundred Dollars (\$500.00), and is not eligible for probation or suspension of sentence unless the entire sentence is served. Also, the person's driver's license shall be suspended for a period of One (1) year.

SECTION 2.80 DRIVING UNDER THE INFLUENCE - CAUSING AN ACCIDENT

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

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

C. Violation of this Section of the Code shall result in an additional sentence of Thirty (30) Days and an additional fine of Two Hundred Fifty Dollars (\$250.00) to the sentence imposed by the person's violation of either Section 2.78 or Section 2.79 of this Code, together with restitution, if the accident involved did not result in serious injuries to any person.

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

SECTION 2.81 EMBEZZLEMENT

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

B. Whoever, knowing any such moneys, funds, vouchers, credits, goods, assets, or other property to have been so embezzled, stolen, converted,

misapplied or permitted to be misapplied, receives, conceals, or retains the same with intent to convert it to his/her use or the use of another, or

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

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

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

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

1. Imprisonment in jail for a period not to exceed Three (3) Years; or
2. A fine not to exceed Fifteen Thousand Dollars (\$15,000.00); or
3. Mandatory restitution; or
4. All of the above.

SECTION 2.82 ENDANGERING AN UNBORN CHILD - SUBSTANCE ABUSE

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

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

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

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

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

F. A person found guilty under this Section shall be sentenced to imprisonment for a period not to exceed One Hundred Eighty (180) days, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

G. A person who is convicted of violating this Section for a second time in a Nine (9) month period shall be sentenced to serve not less than Thirty (30) days in jail, and to pay a fine of not less than One Thousand Five Hundred Dollars (\$1,500.00).

H. A person who is convicted of violating this Section for a third time or more in a Nine (9) month period shall be sentenced to serve not less than One Hundred Eighty (180) days in jail, and to pay a fine of not less than Five Thousand Dollars (\$5,000.00).

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

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

SECTION 2.83 ENDANGERING THE WELFARE OF A CHILD

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

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

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

D. A person found guilty under this Section shall be sentenced to imprisonment not to exceed One Hundred Eighty (180) days for each child endangered, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

SECTION 2.84 ENDANGERING THE WELFARE OF AN ELDER

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

B. Taking property or vouchers of a value of more than Two Hundred Fifty Dollars (\$250.00) from a person of more than Sixty (60) years of age through the use of force, threats or subterfuge, or

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

D. A person found guilty under this Section shall be sentenced to imprisonment not to exceed One Hundred Eighty (180) days for each elder endangered, or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

SECTION 2.85 FAILURE TO APPEAR

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

B. A person found guilty of this offense shall be sentenced to imprisonment of not less than Thirty (30) days nor more than Ninety (90) days and a fine not to exceed Five Hundred Dollars (\$500.00).

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

SECTION 2.86 FAILURE TO CONTROL A DANGEROUS ANIMAL

A. A person commits this offense by recklessly failing to maintain control over a dog or other domesticated animal if such failure results in the animal biting or otherwise inflicting an injury on a person or serious injury on another animal while that person or other animal is not on the property of the owner of the animal.

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

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

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

E. A person found guilty under this Section shall be sentenced to imprisonment of up to Sixty (60) days, or a fine of up to One Hundred Dollars (\$100.00), or both.

SECTION 2.87 FRAUDULENT SCHEMES AND PRACTICES

A. A person commits fraudulent schemes and practices who, in the course of the business of any department, agency, political subdivision,

enterprise, or other entity of the Tribe, uses a scheme or artifice to defraud or deceive and knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device, or who makes or uses any false writing or document knowing such writing or document contains false, fictitious or fraudulent statements or entries.

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

- 1. Imprisonment in jail for a period not to exceed One (1) Year;**
or
- 2. A fine, not to exceed Five Thousand Dollars (\$5,000.00); or**
- 3. Mandatory restitution for any economic loss; or**
- 3. All of the above.**

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

SECTION 2.88 HARASSMENT

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

- 1. Anonymously or otherwise communicates or causes a communication with another person by verbal, electronic, mechanical telephonic or written means in a manner that harasses, or**
- 2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist, or**
- 3. Surveils or causes another person to surveil a person for no legitimate reason, or**
- 4. Anonymously or otherwise subscribes to or makes arrangements for newspapers, magazines, books or other publications to be delivered to another person and billed to that person for the sole purpose of causing inconvenience to and harassing that person, or**

5. On more than One (1) occasion in a Twelve (12) month period makes a false report to a law enforcement officer, credit or social service, or other agency.

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed One Hundred Eighty (180) days, a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

SECTION 2.89 HARASSMENT - AGGRAVATED

A. A person commits this offense if the person commits harassment as defined in Section 2.88, and

1. A court has issued an order of protection or temporary restraining order against the person in favor of the victim and that order has been served and is still valid, or

2. The person has been convicted of or plead guilty or no contest to a previous charge of harassment (Section 2.88) against any person.

B. A person found guilty under Subsection A (1) or (2) may be sentenced to imprisonment for a period not to exceed Three (3) Years, or to pay a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or both.

SECTION 2.90 LEAVING THE SCENE OF AN ACCIDENT

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

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

SECTION 2.91 LOITERING

A. A person commits this offense if such person intentionally:

1. Is present in a public place and in an offensive manner or in a manner likely to disturb the public peace and after a reasonable request to cease or unless specifically authorized to do so, engages in any business, trade, solicitation or commercial transaction, or

2. Is present in or about any school or college building or grounds after a reasonable request to leave and either does not have any reason or relationship involving custody of or responsibility for a pupil or student or any other specific legitimate reason for being there, or

3. Is present in a group of more than Five (5) persons on the premises of any commercial or tribal facility for a period of more than Thirty (30) minutes, after a reasonable request to leave and without any specific legitimate reason to be there.

B. A person found guilty under this Section shall be sentenced to imprisonment not to exceed Sixty (60) days, a fine not to exceed One Hundred Dollars (\$100.00), or both.

SECTION 2.92 PROCESSING OF METHAMPHETAMINE

A. A person commits this offense by manufacturing or attempting to manufacture methamphetamine, or

B. Procuring, obtaining, possession, transporting, or supplying to another any one or more of the chemicals commonly used to manufacture methamphetamine in an aggregate quantity of more than one pound in weight, exclusive of packaging and without a legitimate reason, or

C. Processing or packaging for use, sale or distribution any quantity of methamphetamine or its related forms, or

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

E. A person found guilty under this Section shall be sentenced to imprisonment of at least Thirty (30) days and no more than Three (3) years, and pay a fine of at least Fifty Dollars (\$50.00) and no more than Fifteen Thousand Dollars (\$15,000.00).

SECTION 2.93 ROBBERY

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

B. A person found guilty under this Section shall be sentenced to imprisonment not to exceed One (1) Year, a fine not to exceed Five Thousand Dollars (\$5,000.00), or both.

SECTION 2.94 ROBBERY - AGGRAVATED

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

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed Three (3) Years, a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or both.

SECTION 2.95 ROBBERY - ARMED

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

B. A person found guilty of this offense shall be sentenced to imprisonment not to exceed Three (3) Years, a fine not to exceed Fifteen Thousand Dollars (\$15,000.00), or both.

SECTION 3.2 FUGITIVES FROM JUSTICE; DUTY OF THE TRIBAL CHAIRMAN

Subject to this procedure, the White Mountain Apache Constitution, the White Mountain Apache Tribal Law and Order Code, and the laws of the United States which are

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

SECTION 4.4 SEXUAL ABUSE; CLASSIFICATIONS

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person fourteen **(14)** or more years of age without consent of that person or with any person who is under fourteen (14) years of age ~~if the sexual contact involves only the female breast~~ **regardless of consent.**

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

C. Sexual abuse is a class 2 major offense unless the victim is under fourteen **(14)** years of age which case sexual abuse is a class 1 major offense punishable pursuant to **Section 4.19.**

SECTION 4.22 REGISTRATION OF SEX OFFENDERS

[Refer to Chapter Five of the White Mountain Apache Criminal Code.]

~~_____~~ A. ~~Person required to register; procedure:~~

~~_____~~ (1) ~~Any person eighteen years of age or older or who has been tried as an adult who has been convicted of a violation of this Chapter or who has been convicted of an offense committed in another state which committed on the Fort Apache Indian Reservation would be a violation of this chapter shall, within thirty days after the conviction or within thirty days after entering the Reservation for the purpose of residing, employment, or setting up a temporary domicile for the thirty days or more, shall register with the White Mountain Apache Police Department.~~

~~_____~~ (2) ~~At the time of registering, the person shall sign a statement in writing giving such information as required by the Chief of Police. The Police Department shall fingerprint and photograph the person and within three days thereafter shall send copies of the statement, fingerprints and photographs to Chief of Police.~~

~~B. Violation; classification: A person who, being subject to registration under the provisions of subsection A fails to register as prescribed, is guilty of a class 1 minor offense.~~

SECTION 4.23 EXCLUSION OF NON-MEMBER

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

**CHAPTER FIVE
SEX OFFENDER REGISTRATION**

SECTION 5.1 PURPOSE

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

SECTION 5.2 NEED

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

SECTION 5.3 CREATION OF REGISTRY

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

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

SECTION 5.4 DEFINITIONS

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

A. Convicted. An adult sex offender is “convicted” for the purposes of this Code if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled. A juvenile is “convicted” for purposes of this Code if the juvenile offender is either:

1. Prosecuted and found guilty as an adult for a sex offense, or

2. Adjudicated delinquent as a juvenile for a sex offense, but only if the offender is fourteen (14) years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of Section 2241 of Title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

B. Foreign Convictions. A foreign conviction is one obtained outside of the United States.

C. Employee. The term “employee” as used in this Section includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a Tribal agency or organization are included within the definition of employee for registration purposes.

D. Immediate. “Immediate” and “immediately” mean within three (3) business days.

E. Imprisonment. The term “imprisonment” refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, or a local or Tribal “jail.” Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this Section during their period of “house arrest.”

F. 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.

G. **Minor.** The term "minor" means an individual who has not attained the age of eighteen (18) years.

H. **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.

I. **Sex Offense.** The term "sex offense" as used in this Section includes those offenses contained in 42 U.S.C. §16911(5) and those offenses enumerated in Section 5.5(B) of this Code or any other covered offense under tribal law.

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

J. **Sex Offender.** A person convicted of a sex offense is a "sex offender."

K. **Sexual Act.** The term "sexual act" means:

1. Contact between the penis and the anus, and for purposes of this definition, contact involving the penis occurs upon penetration, however slight,
2. Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus,
3. The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with the intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person,
4. The intentional touching, not through the clothing, of the genitalia or another person that has not attained the age of eighteen (18)

years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

L. **Sexual Contact.** The intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

M. **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.

N. **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.

O. **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.

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

Q. **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.

R. **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.

S. **"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.

T. **"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).

U. “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 COVERED 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 Chapter:

A. Tribal offenses.

- 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 under fourteen (14) years of age),**
- 3. WMAT Criminal Code §4.5 (Sexual Conduct with a Minor – if it involves a victim under fourteen (14) 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),**
- 7. WMAT Criminal Code §4.13 (Commercial Sexual Exploitation of a Minor – if it involves a victim under fourteen (14) years of age),**
- 8. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if it involves a victim under fourteen (14) years of age).**

B. Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "sex offense" at 42 U.S.C. §16911(5):

1. 18 U.S.C. §1591 (sex trafficking of children),
2. 18 U.S.C. §1801 (video voyeurism of a minor),
3. 18 U.S.C. §2241 (aggravated sexual abuse),
4. 18 U.S.C. §2242 (sexual abuse),
5. 18 U.S.C. §2243 (sexual abuse of a minor or ward),
6. 18 U.S.C. §2244 (abusive sexual contact),
7. 18 U.S.C. §2245 (offenses resulting in death),
8. 18 U.S.C. §2251 (sexual exploitation of children),
9. 18 U.S.C. §2251A (selling or buying of children),
10. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
11. 18 U.S.C. §2252A (material containing child pornography),
12. 18 U.S.C. §2252B (misleading domain names on the internet),
13. 18 U.S.C. §2252C (misleading words or digital images on the internet),
14. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the U.S.),
15. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),
16. 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity),

17. 18 U.S.C. §2423 (Mann Act),

18. 18 U.S.C. §2424 (failure to file factual statement about an alien individual),

19. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

C. **Foreign Offenses.** Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

D. **Military Offenses.** Any military offense specified by the Secretary of Defense under Section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).

E. **Juvenile Offenses or Adjudications.** Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) and committed by a minor who is fourteen (14) years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

F. **Jurisdiction Offenses.** Any sex offense committed in any jurisdiction, including this tribe, that involves:

1. Any type or degree of genital, oral, or anal penetration,
2. Any sexual touching of or sexual contact with a person's body, either directly or through the clothing,
3. Kidnapping of a minor,
4. False imprisonment of a minor,

5. **Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct,**
6. **Use of a minor in a sexual performance,**
7. **Solicitation of a minor to practice prostitution,**
8. **Possession, production, or distribution of child pornography,**
9. **Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense,**
10. **Any conduct that by its nature is a sex offense against a minor, or**
11. **Any offense similar to those outlined in:**
 - a. **18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),**
 - b. **18 U.S.C. §1801 (video voyeurism of a minor),**
 - c. **18 U.S.C. §2241 (aggravated sexual abuse),**
 - d. **18 U.S.C. §2242 (sexual abuse),**
 - e. **18 U.S.C. §2244 (abusive sexual contact),**
 - f. **18 U.S.C. §2422(b) (coercing a minor to engage in prostitution), or**
 - g. **18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).**
12. **Offenses Involving Consensual Sexual Conduct. An offense involving consensual sexual conduct is not a sex offense for the purposes of this Sex Offense Registration Code if the victim was an adult, or if the**

victim was at least thirteen (13) years old and the offender was not more than four (4) years older than the victim.

SECTION 5.6 TIER 1 OFFENSES

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

B. Offenses Involving Minors. A "Tier 1" offense also includes any offense for which a person has been convicted by any jurisdiction, local government, or qualifying foreign country pursuant to Section 5.5(C) that involves the false imprisonment of a minor, video voyeurism or 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),**
2. **WMAT Criminal Code §4.2 (Indecent Exposure to a Minor),**
3. **WMAT Criminal Code §4.3(B) (Public Sexual Indecency to a Minor),**
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),**
6. **WMAT Criminal Code §4.7 (Sexual Assault of a Spouse),**
7. **WMAT Criminal Code §4.13 (Commercial Sexual Exploitation of a Minor – if it involves a victim under fourteen (14) years of age),**
8. **WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if it involves a victim under fourteen (14) years of age).**

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

1. 18 U.S.C. §1801 (video voyeurism of a minor),
2. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),
3. 18 U.S.C. §2252A (material containing child pornography),
4. 18 U.S.C. §2252B (misleading domain names on the internet),
5. 18 U.S.C. §2252C (misleading words or digital images on the internet),
6. 18 U.S.C. §2422(a) (coercion to engage in prostitution),
7. 18 U.S.C. §2423(b) (travel with the intent to engage in illicit conduct),
8. 18 U.S.C. §2423(c) (engaging in illicit conduct in foreign places),
9. 18 U.S.C. §2424 (failure to file factual statement about an alien individual),
10. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

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

SECTION 5.7 TIER 2 OFFENSES

A. Recidivism and Felonies. Unless otherwise covered by Section 5.8, any sex offense that is not the first sex offense for which a person has been convicted and that is punishable by more than one (1) year in jail is considered a "Tier 2" offense.

B. Offenses Involving Minors. A "Tier 2" offense includes any sex offense against a minor for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

1. The use of minors in prostitution, including solicitations,
2. Enticing a minor to engage in criminal sexual activity,
3. Sexual contact with a minor thirteen (13) years of age or older, whether directly or indirectly through the clothing, that involves the intimate parts of the body,
4. The use of a minor in a sexual performance, or
5. The production or distribution of child pornography.

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

1. WMAT Criminal Code §4.9 (Molestation of a Child),
2. WMAT Criminal Code §4.6 (Sexual Assault).

D. Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered a conviction for a "Tier 2" offense:

1. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion),
2. 18 U.S.C. §2243 (sexual abuse of a minor or ward),
3. 18 U.S.C. §2244 (abusive sexual contact, where the victim is thirteen (13) years of age or older),
4. 18 U.S.C. §2251 (sexual exploitation of children),
5. 18 U.S.C. §2251A (selling or buying of children),
6. 18 U.S.C. §2252 (material involving the sexual exploitation of a minor),

7. 18 U.S.C. §2252A (production or distribution of material containing child pornography),

8. 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),

9. 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity),

10. 18 U.S.C. §2422(b) (coercing a minor to engage in prostitution),

11. 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

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

SECTION 5.8 TIER 3 OFFENSES

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

B. **General Offenses.** A "Tier 3" offense includes any sex offense for which a person has been convicted, or an attempt or conspiracy to commit such an offense, that involves:

1. Non-parental kidnapping of a minor,

2. A sexual act with another by force or threat,

3. A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate, or

4. **Sexual contact with a minor twelve (12) years of age or younger, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing.**

C. **Certain Federal Offenses. Conviction for any of the following federal offenses shall be considered conviction for a "Tier 3" offense:**

1. **18 U.S.C. §2241 (aggravated sexual abuse),**

2. **18 U.S.C. §2242 (sexual abuse), or**

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

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

SECTION 5.9 GENERAL REQUIREMENTS

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

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

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

SECTION 5.10 CRIMINAL HISTORY

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

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

SECTION 5.11 DATE OF BIRTH

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

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

SECTION 5.12 DNA SAMPLE

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

B. CODIS. Any DNA sample obtained from a sex offender shall be submitted to an appropriate 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 of all of the sex offender's valid driver's licenses issued by any jurisdiction.

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

C. Passports. The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, a photocopy of any passports used by the sex offender.

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

SECTION 5.14 EMPLOYMENT INFORMATION

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

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

SECTION 5.15 FINGER AND PALM PRINTS

A. Finger and Palm Prints. The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide, both finger prints and palm prints of the sex offender in a digitized format.

SECTION 5.16 INTERNET IDENTIFIERS

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

- 1. Any and all email addresses used by the sex offender,**
- 2. Any and all Instant Message addresses and identifiers,**
- 3. Any and all other designations or monikers used for self-identification in internet communications or postings, and**
- 4. Any and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings.**

SECTION 5.17 NAME

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

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

SECTION 5.18 PHONE NUMBERS

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

- 1. Any and all land line telephone numbers, and**

2. Any and all cellular telephone numbers.

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.

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

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

SECTION 5.20 PHYSICAL DESCRIPTION

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

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

SECTION 5.21 PROFESSIONAL LICENSING INFORMATION

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

SECTION 5.22 RESIDENCE ADDRESS

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

1. The address of each residence at which the sex offender resides or will reside, and

2. Any location or description that identifies where the sex offender habitually resides regardless of whether it pertains to a permanent residence or location otherwise identifiable by a street or address.

SECTION 5.23 SCHOOL

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

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

2. The name of each school the sex offender is or will be a student.

SECTION 5.24 SOCIAL SECURITY NUMBER

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

1. A valid social security number for the sex offender, and

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

SECTION 5.25 TEMPORARY LODGING

A. Lodging Information. The White Mountain Apache Tribe Police Department or designee shall obtain, and a covered sex offender shall provide,

the following information when the sex offender will be absent from his residence for seven (7) days or more:

1. Identifying information of the temporary lodging locations including addresses and names, and
2. The dates the sex offender will be staying at each temporary lodging location.

SECTION 5.26 OFFENSE INFORMATION

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

SECTION 5.27 VEHICLE INFORMATION

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

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

SECTION 5.28 FREQUENCY, DURATION AND REDUCTION

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

1. For "Tier 1" offenders, once every year for fifteen (15) years from the time of release from custody for a sex offender who is

incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

2. For "Tier 2" offenders, once every one hundred eight (180) days for twenty-five (25) years from the time of release from custody for a sex offender who is incarcerated for the registration offense or from the date of sentencing for a sex offender who is not incarcerated for the registration offense.

3. For "Tier 3" offenders, once every ninety (90) days for the rest of their lives.

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

1. A Tier 1 offender may have his or her period of registration reduced to ten (10) years if he or she has maintained a clean record for ten (10) consecutive years,

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

C. Clean Record. For purposes of Section 5.28(B) a person has a clean record if:

1. He or she has not been convicted of any sex offense during the period in question,

2. He or she has successfully completed, without revocation, any period of supervised release, probation, or parole, and

3. He or she has successfully completed an appropriate sex offender treatment program certified by the tribe, another jurisdiction, or by the Attorney General of the United States.

SECTION 5.29 REQUIREMENTS FOR IN PERSON APPEARANCES

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

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

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

SECTION 5.30 WHERE REGISTRATION IS REQUIRED

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

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

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

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

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

SECTION 5.31 TIMING OF REGISTRATION

A. Timing. A sex offender required to register with the tribe under this Code shall do so in the following timeframe:

1. If convicted by the White Mountain Apache Tribe for a covered sex offense and incarcerated, the sex offender must register before being released from incarceration,

2. If convicted by the White Mountain Apache Tribe but not incarcerated, within three (3) business days of sentencing for the registration offense, and

3. Within three (3) business days of establishing a residence, commencing employment, or becoming a student at a school within the exterior boundary of the Fort Apache Indian Reservation, a sex offender must appear in person to register with the White Mountain Apache Tribe Police Department.

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

1. That any sex offender incarcerated or sentenced by the tribe for a covered sex offense completes their initial registration with the tribe,

2. That the sex offender reads, or has read to them, and signs a form stating that the duty to register has been explained to them and that the sex offender understands the registration requirement,

3. That the sex offender is registered, and

4. That upon entry of the sex offender's information into the registry, that information is immediately forwarded to all other jurisdictions in which the sex offender is required to register due to the sex offender's residency, employment, or study status.

SECTION 5.32 RETROACTIVE REGISTRATION

A. Retroactive Registration. The White Mountain Apache Tribe Police Department shall have in place policies and procedures to ensure the following

three categories of sex offenders are subject to the registration and updating requirements of this Code:

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

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

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

SECTION 5.33 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, the sex offender shall immediately notify the jurisdiction in which the sex offender will be temporarily staying.

B. Jurisdiction of School Attendance. Any sex offender who is a student in any capacity within the exterior boundary of the Fort Apache Indian Reservation regardless of location that change their school, or otherwise terminate their schooling, shall immediately appear in person at the White Mountain Apache Tribe Police Department to update that information. The White

Mountain Apache Tribe Police Department shall ensure that each jurisdiction in which the sex offender is required to register, or was required to register prior to the updated information being given, are immediately notified of the change.

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

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

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

SECTION 5.34 FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING

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

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

1. In the event no determination can be made, the White Mountain Apache Tribe Police Department or designee shall ensure the tribal police and any other appropriate law enforcement agency is notified.

2. If the information indicating the possible absconding came through notice from another jurisdiction or federal authorities, they shall be informed that the sex offender has failed to appear and register.

3. If an absconded sex offender cannot be located then the tribal police shall take the following steps.

a. Update the registry to reflect the sex offender has absconded or is otherwise not capable of being located,

b. Notify the U.S. Marshals Service,

c. Seek a warrant for the sex offender's arrest. The U.S. Marshals Service or FBI may be contacted in an attempt to obtain a federal warrant for the sex offender's arrest,

d. Update the NSOR to reflect the sex offender's status as an absconder, or is otherwise not capable of being located, and

e. Enter the sex offender into the National Crime Information Center Wanted Person File.

C. Failure to Register. In the event a sex offender who is required to register due to their 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 employed or attending school in lands subject to the tribe's jurisdiction.

SECTION 5.35 PUBLIC SEX OFFENDER REGISTRY WEBSITE

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

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

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

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

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

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

SECTION 5.36 REQUIRED AND PROHIBITED INFORMATION

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

1. Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded,

2. All sex offenses for which the sex offender has been convicted,

3. The sex offense(s) for which the offender is currently registered,

4. **The address of the sex offender's employer(s),**
5. **The name of the sex offender including all aliases,**
6. **A current photograph of the sex offender,**
7. **A physical description of the sex offender,**
8. **The residential address and, if relevant, a description of a habitual residence of the sex offender,**
9. **All addresses of schools attended by the sex offender, and**
10. **The sex offender's vehicle license plate number along with a description of the vehicle.**

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

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

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

SECTION 5.37 COMMUNITY NOTIFICATION

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

1. Immediately notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NSOR or other relevant databases.

2. Immediately notify any agency, department, or program within the tribe that is responsible for criminal investigation, prosecution, child welfare or sex offender supervision functions, including but not limited to, police, whether BIA, tribal, or FBI, tribal prosecutors and tribal probation.

3. Immediately notify any and all other registration jurisdictions where the sex offender is registered due to the sex offender's residency, school attendance, or employment.

4. Immediately notify National child Protection Act agencies, which includes any agency responsible for conducting employment-related background checks under Section 3 of the National Child Protection Act of 1993 (42 U.S.C. §5119a) when a sex offender registers or updates registration.

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

1. Upon a sex offender's registration or update of information with the tribe, the tribe's public sex offender registry website is immediately updated,

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

SECTION 5.38 IMMUNITY

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

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

SECTION 5.39 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 Three (3) Years and a fine of One Thousand Dollars (\$1,000.00).

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 fines, forfeitures, and civil contempt.

C. Customs and traditions and banishment/exclusion.

D. Hindrance of sex offender registration.

1. A person is guilty of an offense if they:

a. Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Code,

b. Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Code, or

c. Provides information to law enforcement agency regarding a sex offender which the person knows to be false.

**CHAPTER FIVE SEVEN
VICTIM'S RIGHTS ACT**

SECTION 5.1 7.1 VICTIM'S BILL OF RIGHTS

**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. 246, amending White Mountain Apache Government Code, Section 5.4 as follows:

SECTION 5.4 EXCLUSION OR REMOVAL OF NON-MEMBERS AFTER HEARING; INTERIM EXCLUSION OR REMOVAL PENDING HEARING; PENALTIES

C. Penalties for Disobedience of Exclusion Order:

1. Any property, real or personal, of a non-member who is subject to an Order of Exclusion and who returns to the White Mountain Apache Indian Reservation in violation thereof shall be subject to civil forfeiture proceedings in Tribal Court.

2. Any non-member Indian who is subject to an Order of Exclusion and who returns to the White Mountain Apache Indian Reservation in violation thereof shall be subject to criminal prosecution for violation of a lawful order of the Court, WMAT Criminal Code Section 2.28(C), in addition to the civil forfeiture penalty specified above.

**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. 247, amending White Mountain Apache Rules of Criminal Procedure, Rule 7.1 as follows:

RULE 7.1 SENTENCING

A. Any person who has been convicted of a criminal offense in the Tribal Court may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period permitted by the Tribal Code provision specifying the punishment for the offense, ~~and in no case greater than one year for each offense.~~ **but only if all of the following conditions have been met may the Defendant be sentenced to imprisonment greater than One (1) Year, or a fine greater than Five Thousand Dollars (\$5,000.00) for any single offense:**

(a) **If the Defendant has been previously convicted of the same or a comparable offense by any jurisdiction of the United States;**

(b) **If the offense is comparable to an offense that would be punishable by more than One (1) Year of imprisonment if prosecuted by the United States or any of the States;**

(c) **If the Defendant has been provided the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution;**

(d) **If the Tribe, at its own expense, provides indigent Defendants the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;**

(e) **If the judge presiding over the criminal proceedings (i) has sufficient legal training to preside over criminal proceedings, and (ii) is licensed to practice law by any jurisdiction in the United States; and**

(f) **If the Tribal Code was publicly available at the time the Defendant was charged, and the proceedings have been recorded pursuant to the White Mountain Apache Tribe Judicial Code, Section 2.24(C).**

(2) A money fine in an amount permitted by the Tribal Code provision specifying the punishment for the offense, and in no case greater than ~~five thousand dollars (\$5,000.00)~~ **Fifteen Thousand Dollars (\$15,000.00)** for each offense.

**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. 248, amending White Mountain Apache Health & Safety Code, Section 11.11 as follows:

SECTION 11.11 TRIBAL COURT JURISDICTION; ENFORCEMENT

C. **General Penalties.** Any person adjudged to be in violation of this Chapter shall be subject to a civil penalty of not more than ~~Five Hundred Dollars (\$500.00)~~ **Five Thousand Dollars (\$5,000.00)** for each such violation. The Board may adopt by separate rule or regulation a schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such a schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the ~~Five Hundred Dollars (\$500)~~ **Five Thousand Dollars (\$5,000.00)** limitation set forth above.

F. **Criminal Penalties.** Any person subject to tribal criminal jurisdiction and prosecution and adjudged to be in violation of **any provision of** this Chapter may be subject to a criminal penalty of up to ~~180~~ **Three Hundred Sixty-Five (365)** days imprisonment and/or a maximum fine of ~~\$500.00~~ **Five Thousand Dollars (\$5,000.00)**.

~~(1) — Any person subject to tribal criminal jurisdiction and prosecution and adjudged to be in violation of Sections 11.10 A(3), 11.10 A(4), 11.10 A(5), 11.10 A(6) and Section 11.3 shall be sentenced as follows:~~

~~—— (a) — **First Offense:** Mandatory 180 days imprisonment in addition to a maximum fine of \$500.00;~~

~~—— (b) — **Second Offense:** Mandatory 240 days imprisonment in addition to a maximum fine of \$1,500.00;~~

~~—— (c) — **Third Offense:** Mandatory 365 days imprisonment in addition to a maximum fine of \$3,000.00.~~

[NOTE: Subsection 11.11 F(1) was derived from Ordinance 206, enacted October 17, 1996.]