



WHITE MOUNTAIN APACHE TRIBE

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

Resolution No. 03-2013-76

(Authorizing the Posting of Proposed Ordinance No. 256, Amending the Rules of Criminal Procedure)

WHEREAS, pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council may enact ordinances to establish and govern Tribal Courts and law enforcement on the reservation; and

WHEREAS, the Legal Department and Prosecution Unit came before the Tribal Council this day to propose changes to Criminal Rules 3.1, 3.7, 3.11, 4.3, 4.4 and 7.1; and

WHEREAS, the Tribal Council of the White Mountain Apache Tribe finds that the recommendations by the Legal Department and Prosecution Unit, as set forth in Ordinance No. 256, are in the best interest of the White Mountain Apache Tribe; and

WHEREAS, the Tribal Council concludes that Ordinance No. 256 should be posted in each district for at least ten (10) days before final action is taken by the Council, as required by Article XV, Section 2, of the Constitution of the White Mountain Apache Tribe.

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 No. 256 in the form and content attached hereto, in each District for at least ten (10) days before final action on the amendment is taken by the Tribal Council.
2. That any and all comments concerning these Ordinances may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. That upon completion of the posting period, the Tribal Council Secretary is directed to (a) submit proof of posting of the amendment to the Tribal Council and to the Legal Department; (b) report any public comments to the Tribal Council, and (c) schedule a Tribal Council meeting through the Office of the Tribal Chairman for final action by the Tribal Council.

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

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances or Federal Laws, this Resolution shall be declared null and void and have no legal effect. This Resolution shall not be subject to Judicial Interpretation, only the Tribal Attorney, with the assistance of the Tribal Council Secretary, may opine on Tribal Council intent and the meaning of the language as used herein.

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


The foregoing resolution was on MARCH 20, 2013 duly adopted by a vote of SIX for and ONE against by the Tribal Council of the White Mountain Apache Tribe, pursuant to the authority vested in it by Article IV, Section 1 (a), (f), (h), (i), (q), (r), (s), (t) and (u) of the Tribal Constitution, ratified by the Tribe September 30, 1993, and approved by the Secretary of the Interior on November 12, 1993, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).



Ronnie Lupe, Chairman

3/21/13

Date



Mariddie J. Craig, Secretary

3/21/13

Date

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

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 256, amending White Mountain Apache Rules of Criminal Procedure, Rule 3.1, 3.7, 3.11, 4.3, 4.4, and 7.1 as follows:

RULE 3.1 COMPLAINT

A. All criminal prosecutions for violation of the White Mountain Apache Tribal Code shall be initiated by the filing of a complaint in the Tribal Court by the office of the tribal prosecutor. A complaint is a written statement signed and verified by the tribal prosecutor or prosecution advocate that probable cause exists that a named individual has committed a particular criminal offense.

RULE 3.7 NOTIFICATION OF RIGHTS AT TIME OF ARREST

~~Immediately upon arrest the suspect shall be~~ No suspect in custody shall be questioned without first being advised of the following rights:-

- (1) That he or she has the right to remain silent; and
- (2) That any statements made by the suspect may be used against him or her in court; and
- (3) That the suspect has the right to obtain counsel and to have counsel present during all questioning.

RULE 3.11 BAIL - RELEASE PRIOR TO TRIAL

A. Every defendant shall be released pending and during trial on his or her own recognizance, unless the court determines, based upon findings of fact made at arraignment or at a later hearing to modify the conditions of release, that such a release will not reasonably assure his or her appearance for all future hearings without committing additional criminal offenses, except that a defendant who is being held for an offense which has resulted in death or disability of another that is predicted by a medical professional to last six (6) months or longer may be held without bond pending a resolution of the proceedings.

RULE 4.3 SPEEDY TRIAL; TIME LIMITS

A. All Defendants. Every person against whom a complaint has been filed

shall be tried within ~~one hundred fifty (150) days of the arrest or service of summons~~ one hundred eighty (180) days of his or her arraignment, or as soon thereafter as the court may schedule a trial, but in any case no later than two hundred twenty (220) days after his or her arraignment.

B. Defendants in Custody. If a defendant is in custody, he or she shall be tried within ~~ninety (90) days of his arraignment~~ one hundred twenty (120) days of his or her arraignment, or as soon thereafter as the court may schedule a trial, but in any case no later than one hundred eighty (180) days after his or her arraignment.

C. If a defendant is released from custody within one hundred (100) days of his arraignment, the speedy trial limit in paragraph (a) shall apply.

D. New Trial. A trial ordered after a mistrial, upon a motion for a new trial, or upon the reversal of a judgment by the Court of Appeals shall begin within ninety (90) days of the entry of the order of the Court of Appeals.

DE. Calculation of Time Limits. The calculation of the time limits prescribed by this Rule shall not include any delay caused by or on behalf of the defendant, including, but not limited to, continuances requested by the defendant, time required to hear and adjudicate any motions filed by or on behalf of the defendant, delays caused by an examination and hearing to determine competency, the defendant's failure to attend court hearings, or his or her absence from the reservation for any reason.

EF. Waiver. ~~If Defendant is given the opportunity for a trial date within the speedy trial limits but declines that opportunities, whether by continuing the trial date beyond the speedy trial limits, being placed on warrant status for failure to appear in court, or by violating the defense duty to inform the court about speedy trial under rule 4.2(B), Defendant waives his right to speedy trial.~~ A defendant or his or her counsel shall be deemed to have waived his or her right to speedy trial by doing or failing to do any of the following:

- (1) Failing to appear at any court appearance;
- (2) Any continuance requested by defendant or defense counsel;
- (3) Failing to notify the court and the tribe in advance of any impending speedy trial deadline as required by Rule 4.2D;
- (4) Any motion filed by or on behalf of the defendant, but only for the amount of time required to calendar, hear and adjudicate the motion;
- (5) Request for a visiting judge; and
- (6) Agreement by the parties to set a case for trial outside of the speedy trial limits, but only for such time as the trial date set exceeds those limits.

RULE 4.4 DENIAL OF SPEEDY TRIAL; DISMISSAL

If the court determines that a speedy trial time limit established by these Rules has been violated, it shall, on motion of defendant or on its own initiative, dismiss the prosecution, ~~with or without prejudice, as justice requires.~~ If, however, the defendant or his counsel have complied strictly with the duty to inform the court and the tribe under Rule 4.2(b), and a trial has nevertheless not been set within the time limits set forth herein, the defendant shall be entitled to a dismissal with prejudice.

RULE 7.1 SENTENCING

B. Civil Restitution. In addition to or instead of the penalties provided in subsection A. above, the court may require a convicted offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person by means of the surrender of property, payment of money, or the performance of any other act for the benefit of the injured party which is reasonably related to the offense committed. Testimony of the victim shall be considered in the determination of the appropriate disposition under this section. All money paid in restitution to the victim shall be paid through the court or the probation officer. Proof of any other form of restitution, such as a written receipt signed by the victim, shall be submitted to the court or to the probation officer.