



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

## **(Approving Posting of Ordinance No. 282, Amending the Criminal Code of the White Mountain Apache Tribe)**

**WHEREAS,** pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council may enact ordinances that concern the welfare of the Tribe, to manage all economic affairs and enterprises of the Tribe, and to regulate subordinate organizations for economic and other purposes; and

**WHEREAS,** the Office of the Attorney General has this day proposed revisions to the Criminal Code, Sections 1.4, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.15, 4.19, 4.20, 4.21, 5.36 and 5.41, as set forth in Ordinance No. 282 attached hereto; and

**WHEREAS,** pursuant to Article XV of the Constitution of the White Mountain Apache Tribe, the proposed amendments shall be posted in each district for at least ten (10) days before final action by the Council; and

**WHEREAS,** the Council has reviewed Ordinance No. 282 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 282 to be in the best interest of the Tribe.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that proposed Ordinance 282, which amends the Criminal Code, Sections 1.4, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.15, 4.19, 4.20, 4.21, 5.36 and 5.41, attached hereto, is hereby recommended for posting by the Tribal Council.

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

1. The Tribal Council Secretary is hereby authorized and directed to post this resolution and Ordinance No. 282, in each district for at least ten (10) days before final action by the Council. In addition, notices of the proposed ordinance shall be sent in the form of a press release to KNNB-FM and the Apache Scout.
2. Any and all comments concerning Ordinance No. 282 proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council and the Attorney General's Office and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action.

**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

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any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

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

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on MAY 3, 2017 duly adopted by a vote of EIGHT for, ZERO against, and TWO abstention by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

*Kasy B. Velusatz* <sup>Acting</sup> 5-24-17  
Ronnie Lupe, Tribal Chairman                      Date

*Doreen T. Numkena* 5-24-17  
Doreen T. Numkena, Tribal Secretary                      Date

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

BE IT ENACTED BY THE COUNCIL OF THE WHITE MOUNTAIN APACHE TRIBE Ordinance No. 282, amending White Mountain Apache Criminal Code Sections 1.4, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9, 4.13, 4.14, 4.15, 4.19, 4.20, 4.21, 5.36 and 5.41, as follows:

**CHAPTER ONE  
DEFINITIONS AND GENERAL PROVISIONS**

SECTION 1.4 ENHANCED SENTENCING

For any crime for which a person is sentenced to more than one year in jail or fined more than \$5,000, the provisions in Rule 7.1(A)(1) of the Rules of Criminal Procedure must be satisfied.

**CHAPTER FOUR  
COMPREHENSIVE SEX CRIMES ACT**

**SECTION 4.3 PUBLIC SEXUAL INDECENCY; PUBLIC SEXUAL INDECENCY TO A MINOR; CLASSIFICATIONS**

B. A person commits public sexual indecency to a minor if he intentionally or knowingly engages in any of the acts listed in Subsection A ~~and such person is reckless as to whether when~~ a minor under the age of Fifteen (15) Years is present.

**SECTION 4.4 SEXUAL ABUSE; CLASSIFICATIONS**

C. Sexual abuse is a class ~~21~~ 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 4.5 SEXUAL CONDUCT WITH A MINOR; CLASSIFICATIONS**

B. Sexual conduct with a minor under Fourteen (14) Years of age is a class ~~21~~ major offense and is punishable pursuant to §4.19. Sexual conduct with a minor Fourteen (14) Years of age or over is a class ~~32~~ major offense.

**SECTION 4.6 SEXUAL ASSAULT; CLASSIFICATION; INCREASED PUNISHMENT**

B. Sexual assault is a class ~~21~~ major offense, and the person convicted is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement until the sentence imposed by the court has been served. If the victim is under Fifteen (15) Years of age, sexual assault is punishable pursuant to §4.19.

C. Notwithstanding the provisions of §4.19, if the sexual assault involved the use or exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has previously been convicted of sexual assault, or any offense committed outside the reservation which if committed on the reservation would constitute sexual assault, the person shall ~~be sentenced to imprisonment not to exceed One (1) Year and to pay a fine not to exceed Five Thousand Dollars (\$5,000.00) and is~~ not be eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement.

**SECTION 4.7 SEXUAL ASSAULT OF A SPOUSE; DEFINITIONS; VIOLATION; CLASSIFICATION**

B. A first offense sexual assault of a spouse is a class ~~1~~ **31** major offense. ~~The judge has discretion to enter judgment for conviction of a class 1 minor offense with mandatory counseling. Any subsequent sexual assault of a spouse is a class 2 major offense and the~~ A person convicted of this offense is not eligible for suspension or commutation of sentence, probation, pardon, parole, work furlough or release from confinement until the sentenced imposed by the court has been served. Convictions for two or more major offenses not committed on the same occasion but consolidated for trial purposes shall not be counted as prior convictions for purposes of this Section.

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

**SECTION 4.9 MOLESTATION OF CHILD; CLASSIFICATION**

A person who knowingly molests a child under the age of Fourteen (14) Years by directly or indirectly touching the private parts of such child or who causes a child under the age of Fourteen (14) Years to directly or indirectly touch the private parts of such person is guilty of a class ~~2~~ **21** major offense and is punishable pursuant to §4.19.

**SECTION 4.13 COMMERCIAL SEXUAL EXPLOITATION OF A MINOR; CLASSIFICATION**

B. Commercial sexual exploitation of a minor is a class ~~2~~ **21** major offense and if the minor is under Fifteen (15) Years of age it is punishable pursuant to §4.19.

**SECTION 4.14 SEXUAL EXPLOITATION OF A MINOR; CLASSIFICATION**

B. Sexual exploitation of a minor is a class ~~2~~ **21** major offense and if the minor is under Fifteen (15) Years of age it is punishable pursuant to 4.19.

**SECTION 4.15 PORTRAYING ADULT AS MINOR; CLASSIFICATION**

C. Any person who violates this Section is guilty of a class ~~1~~ ~~minor~~ **3** major offense.

**SECTION 4.19 DANGEROUS CRIMES AGAINST CHILDREN; SENTENCES; DEFINITIONS**

B. Classification.

2. A dangerous crime against children is a class ~~3~~ major offense if it is a preparatory offense.

D. A person sentenced for a dangerous crime against children pursuant to this Section is not eligible ~~for~~ for suspension or commutation of sentence, probation, pardon, parole, work furlough or release ~~from~~ from confinement until the sentence imposed by the court has been served.

## SECTION 4.20 CLASSIFICATION OF SEXUAL OFFENSES; IMPRISONMENT AND FINES

A. A sentence of imprisonment for sexual offenses shall be a definite term and the person sentenced, unless otherwise provided by law, shall be committed to the custody of the White Mountain Apache ~~Department of Corrections Tribal Police Department~~.

B. The term of imprisonment and fine for major sexual offenses shall be determined as follows for the first offense:

1. **Class 1 major offense:** A person found guilty of a class 1 major offense ~~may~~ shall be sentenced to imprisonment for a period ~~no less than One-Hundred and Eighty Days (180), no more than ~~not to exceed~~ One (1) Year~~ and to pay a fine ~~no less than Two Thousand Five Hundred Dollars (\$2,500.00), no more than ~~not to exceed~~ Five Thousand Dollars (\$5,000.00)~~.

2. **Class 2 major offense:** A person found guilty of a class 2 major offense ~~may~~ shall be sentenced to imprisonment for a period ~~no less than One-Hundred Twenty Days (120), no more than ~~not to exceed~~ Eight (8) Months~~ and to pay a fine ~~no less than One Thousand Dollars (\$1,000.00), no more than ~~not to exceed~~ Two Thousand Dollars (\$2,000.00)~~.

3. **Class 3 major offense:** A person found guilty of a class 3 major offense ~~may~~ shall be sentenced to imprisonment for a period ~~no less than Sixty (60) Days, no more than ~~not to exceed~~ Four (4) Months~~ and to pay a fine ~~no less than Five Hundred Dollars (\$500.00), no more than ~~not to exceed~~ One Thousand Dollars (\$1,000.00)~~.

C. The term of imprisonment and fine for minor sexual offenses shall be determined as follows for the first offense:

1. **Class 1 minor offense:** A person found guilty of a class 1 minor offense ~~may~~ shall be sentenced to imprisonment for a period ~~no less than Thirty (30) Days, no more than ~~not to exceed~~ Sixty (60) Days~~ and to pay a fine ~~no less than One Hundred Dollars (\$100.00), no more than ~~not to exceed~~ Two Hundred Dollars (\$200.00)~~.

2. **Class 2 minor offense:** A person found guilty of a class 2 minor offense ~~may~~ shall be sentenced to imprisonment for a period ~~no less than Fifteen Days (15) days, no more than ~~not to exceed~~ Thirty (30) Days~~ and to pay a fine ~~no less than Fifty Dollars (\$50.00), no more than ~~not to exceed~~ One Hundred Dollars (\$100.00)~~.

3. **Class 3 minor offense:** A person found guilty of a class 3 minor offense ~~may shall~~ be sentenced to imprisonment for a period ~~no less than Ten (10) Days, no more than not to exceed~~ Twenty (20) Days and to pay a fine ~~no less than Twenty-Five Dollars (\$25.00), no more than not to exceed~~ Fifty Dollars (\$50.00).

#### SECTION 4.21 SENTENCING

A. **Increase in Sentencing:** Sentencing provided in §4.20 for first conviction of a major or minor sexual offense, except those offenses involving a use or exhibition of a deadly weapon or dangerous instrument or when the intentional or knowing infliction of serious physical injury upon another has occurred, ~~may shall~~ be increased by the court up to Twenty-Five Percent (25%), not to exceed One (1) Year imprisonment and a fine not to exceed Five Thousand Dollars (\$5,000.00). Said increase shall be based on the following circumstances:

B. **Reduction in Sentencing:** Sentenced provided in §4.20 for a first conviction of a major or minor sexual offense, except those offenses involving a use of exhibition of a deadly weapon or dangerous instrument or when the intentional or knowingly infliction of serious physical injury upon another has occurred, may be reduced by the court up to Twenty-Five Percent (25%) of the sentence and fine prescribed for said offense ~~when the Defendant files a written or oral motion prior to sentencing. The court shall not sua sponte reduce the sentence and fine for a first conviction of a major or minor sexual offense.~~ Said reduction shall be based on the following circumstances:

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

**CHAPTER FIVE**  
**SEX OFFENDER REGISTRATION**

**SECTION 5.36**      **FAILURE TO APPEAR FOR REGISTRATION AND ABSCONDING**

C.      Failure to Register. In the event a sex offender who is required to register due to their residence, employment, or school attendance status fails to do so or otherwise violates a registration requirement of this Code, the White Mountain Apache Tribe Police Department shall take all appropriate follow-up measures including those outlined in Section 5.34(B). The White Mountain Apache Tribe Police Department shall first make an effort to determine if the sex offender is actually residing, employed, or attending school in lands subject to the Tribe's jurisdiction. **Penalties for failing to register are outlined in Section 5.41.**

**SECTION 5.41**      **CRIMES AND CIVIL SANCTIONS**

A.      Offenses and Criminal ~~Penalty~~ Penalties.

1.      **Failure to Register.** Any person who has been convicted of a sex offense and who fails to register as a sex offender with the White Mountain Apache Police Department is guilty of the offense of failure to register as a sex offender.

    a.      **First Offense:** A person convicted of a first offense of Failure to Register shall be imprisoned for a term no less than Thirty (30) Days or more than Sixty (60) Days, or fined no less than Fifty Dollars (\$50.00) but no more than One Hundred Dollars (\$100.00), or both.

    b.      **Second Offense:** A person convicted of a second offense of Failure to Register shall be imprisoned for a term no less than Ninety (90) Days or more than One Hundred and Eighty (180) Days, or fined no less than Two Hundred and Fifty Dollars (\$250.00) but no more than Five Hundred Dollars (\$500.00), or both.

    c.      **Third and Subsequent Offenses:** A person convicted of a third and subsequent offense of Failure to Register shall be imprisoned for a term no less than One Hundred and Eighty Days (180) or more than Three Hundred Sixty-Five (365) Days, or fined no less than Five Hundred Dollars (\$500.00) but no more than One Thousand Dollars (\$1,000.00), or both.

2.      **Failure to Update Registration.** Any sex offender who fails to update a registration as required by this Code is guilty of the offense of failure to update registration.

    a.      **First Offense:** A person convicted of a first offense of Failure to Update Registration shall be imprisoned to a term of not less than Sixty (60) Days or more than Ninety (90) Days, or fined no less than One Hundred Dollars (\$100.00) but no more than Two Hundred Dollars (\$200.00), or both.

    b.      **Second Offense:** A person convicted of a second offense of Failure to Update Registration shall be imprisoned to a term of not less than Ninety (90) Days or more than

One Hundred and Eighty (180) Days, or fined no less than Two Hundred Dollars (\$200.00) but no more than Five Hundred Dollars (\$500.00), or both.

c. Third and Subsequent Offenses: A person convicted of a third and subsequent offense of Failure to Update Registration shall be imprisoned for a period no less than One Hundred and Eighty Days (180) or more than Three Hundred and Sixty-Five (365) Days, or fined no less than Five Hundred Dollars (\$500.00) but no more than One Thousand Dollars (\$1,000.00), or both.

3. Hindrance of Sex Offender Registration

a. A person is guilty of Hindrance of Sex Offender Registration if they:

i. Knowingly harbor or knowingly attempt to harbor, or knowingly assist another person in harboring or attempting to harbor a sex offender who is in violation of this Code,

ii. 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

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

b. Sentence and Fine.

i. First Offense: A person convicted of a first offense of Hindrance of Sex Offender Registration shall be imprisoned for a term no less than Sixty (60) Days or more than Ninety (90) Days, or fined no less than One Hundred Dollars (\$100.00) but no more than Two Hundred Dollars (\$200.00), or both.

ii. Second Offense: A person convicted of a second offense of Hindrance of Sex Offender Registration shall be imprisoned for a term no less than Ninety (90) Day or more than One Hundred and Eighty (180) Days, or fined no less than Two Hundred Dollars (\$200.00) but no more than Five Hundred Dollars (\$500.00), or both.

iii. Third and Subsequent Offenses: A person convicted of a third and subsequent offense of Hindrance of Sex Offender Registration shall be imprisoned for a term no less than One Hundred Eighty Days (180) or more than Three Hundred Sixty-Five (365) Days, or fined no less than Five Hundred Dollars (\$500.00) but no more than One Thousand Dollars (\$1,000.00), or both.

4. The Tribal Court and the Parole Board shall not suspend the imposition of fines and/or imprisonment for a person convicted of Failure to Register, Failure to Update Registration, or Hindrance of Sex Offender Registration.



5. A person convicted of Failure to Register, Failure to Update Registration, or Hindrance of Sex Offender Registration shall not be released from custody for community service or to attend funeral or wake services unless said services are for a member of the person's immediate family.

a. Immediate family shall mean husband, wife, son, daughter, sister, brother, father, mother, or grandparent.

6. A person convicted of Failure to Register, Failure to Update Registration, or Hindrance of Sex Offender Registration shall not be eligible for two-thirds release.

~~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 assist 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 a law enforcement agency regarding a sex offender which the person knows to be false.~~

~~2. A person found guilty under this Section shall be sentenced to imprisonment for a period not to exceed One (1) year or to pay a fine not to exceed Five Thousand Dollars (\$5,000.00).~~

D. Distribution of Fines Collected.

1. The fines imposed shall be paid to the White Mountain Apache Tribal Court. The Tribal Court shall transfer all fines collected under this Section as follows:

a. Thirty-Three Percent (33%) of the fines collected shall be retained by the Tribal Court.

b. Thirty-Three Percent (33%) of the fines collected shall be transferred to the White Mountain Apache Police Department SORNA Program.

c. Thirty-Three Percent (33%) of the fines collected shall be transferred to the White Mountain Apache Prosecution Department.