



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Posting of Ordinance No. 286, 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 2.5, 2.9, 2.23, 2.38, 2.51, 2.78 and 2.79, as set forth in Ordinance No. 286 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. 286 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 286 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 286, which amends the Criminal Code, Sections 2.5, 2.9, 2.23, 2.38, 2.51, 2.78 and 2.79, 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. 286, 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. 286 proposed herein may be sent to the attention of the Tribal Council Secretary, White Mountain Apache Tribe, P. O. Box 700, Whiteriver, AZ 85941.
3. Upon completion of the posting period, the Tribal Council Secretary is further directed to submit proof of posting to the Tribal Council and the Attorney General's Office and to report any public comments to the Tribal Council, and schedule a meeting thereof for final action. Proof of posting should include start and end date of posting period, and locations of posting.

BE IT FURTHER RESOLVED by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

Resolution No. 12-2017-269

Ordinance No.286


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

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

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



Ronnie Lupe, Tribal Chairman 12-14-17
Date



Doreen T. Numkena, Tribal Secretary 12-15-17
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. 286, amending White Mountain Apache Juvenile Code Sections 2.5, 2.9, 2.23, 2.38, 2.51, 2.78 and 2.79 as follows:

SECTION 2.5 ASSAULT, AGGRAVATED

A A person commits aggravated assault if such person commits assault as defined in Section 2.4 under the following circumstances:

- 1 Causing serious physical injury to another; or
- 2 Using a deadly weapon or dangerous instrument; or
- 3 Assaulting a law enforcement officer, security officer, or judicial officer or Tribal Council member while such officer or council member is acting in his or her official capacity; **or**
- 4 **Assaulting a woman while she is pregnant.**

SECTION 2.9 ASSAULT WITH INTENT TO KILL

(Subsection A remains unchanged)

B. For the purposes of this statute, any credible evidence of strangulation shall be considered evidence of intent to kill.

(Old Subsection B shall be renumbered as Subsection C.)

SECTION 2.23 CRIMINAL DAMAGE, AGGRAVATED

A. A person who commits the following is guilty of an offense:

1. Defacing, damaging, or in any way changing the appearance of any tribal governmental building or tribally owned building, **vehicle, or other property.**

SECTION 2.38 FRAUD

A. A person is guilty of an offense who obtains property, **services, or any other benefit, tangible or intangible:**

SECTION 2.51 NARCOTICS AND DANGEROUS DRUGS

A. A person is guilty of an offense who:

1. Knowingly possesses for sale, sells, produces, trades, transports, or gives away any opium, cocaine, methamphetamine, heroin, or any derivative thereof; or
2. Knowingly possesses for sale, sells, produces, transports, or gives away any **prescription-only drug unless the person holds a license or permit to prescribe or dispense any prescription-only drug** ~~controlled substance~~; or
3. Knowingly possesses for sale, sells, trades, produces, transports, or gives away peyote which is not being used, or intended for use in connection with the bona fide practice of a religious belief, or as an integral part of a religious exercise; or
4. Knowingly possesses for sale, sells, produces, trades, transports, or gives away any

vapor-releasing substance containing a toxic substance, including, but not limited to, paint, gas, hair spray, or glue or other vapor-releasing toxic substance for the purpose of becoming intoxicated; or

5. Knowingly uses or possesses for use any of the above substances **unless the person obtains the prescrip~~tion~~-only drug pursuant to a valid prescription.**

B. Subsection A of this Section shall not apply to any transaction, possession, production, transportation, or use for medical purposes, under the prescription or supervision of a person licensed to administer, prescribe, control or dispense the prescribed substances in that Subsection.

C. A person found guilty under Subsection A (1), (2), (3) or (4) may be sentenced to imprisonment for a period of no less than One Hundred Eighty (180) days but not to exceed Three Hundred Sixty-Five (365) Days and to pay a fine of no less than Five Hundred Dollars (\$500.00) but not to exceed Five Thousand Dollars (\$5,000.00), and is not eligible for probation or suspension of sentence until the entire sentence is served. A person found guilty under Subsection A (5) 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 Thousand Dollars (\$1,000.00), or both, and may be eligible for probation or suspension of sentence only on the condition that such person completes a substance abuse evaluation with a certified substance abuse treatment program, and completes treatment as recommended by the evaluation.

D. Possession of any amounts in excess of the following amounts of controlled substances shall be conclusively presumed to be possession for sale: One (1) Ounce (435 grams) of marijuana; Five (5) Grams of hashish or other derivative of cannabis; One (1) Gram of cocaine, methamphetamine, opium, heroin, or any other controlled substance.

SECTION 2.78 DRIVING UNDER THE INFLUENCE

(Subsections A through F remain unchanged)

G. For the purposes of this offense, Sections 2.79 and 2.80, a person is deemed to be in "actual physical control" of a vehicle if he has the means to initiate any movement of that vehicle and he is in close proximity to the operating controls of the vehicle. If a person is in a parked vehicle and is able to start and move the vehicle without much difficulty, he is deemed to be in actual physical control of the vehicle.

SECTION 2.79 DRIVING UNDER THE INFLUENCE – AGGRAVATED

(Subsection A remains unchanged)

B. A person who is convicted of violating this Section shall be sentenced to serve not less than ~~Thirty (30)~~ **Sixty (60)** 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)~~ **Seven Hundred Fifty Dollars (\$750.00) nor more than Three Thousand Dollars (\$3,000.00)**, 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)~~ **One Hundred Twenty (120)** 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)~~ **One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00)**, 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.