



WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

(Approving Posting of Ordinance No. 310, Amending the White Mountain Apache Tribe Criminal Code)

- WHEREAS,** Pursuant to Article IV, Section 1(q) of the Tribal Constitution, the Tribal Council (“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, as set forth in Ordinance No. 310, 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. 310 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 310 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 310, which amends Chapter 6 of the Criminal Code, 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. 310, 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. 310 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.

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 Chairwoman, or in her 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 APRIL 14, 2022 duly adopted by a vote of ELEVEN for, ZERO against, and ZERO 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).

 4.21.22  4.21.2022
Gwendena Lee-Gatewood, Chairwoman Date 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. 310, amending Chapter 6 of the White Mountain Apache Criminal Code:

CRIMINAL CODE

Green Section = Cut and moved from another part of the Code (renumbering and/or alphabetical order)

Red Section = New language inserted

~~Red-Strikethrough~~ = Deleted from Code

Yellow/Purple/Red/Blue Highlights = Notes or clarification from various reviewers

**CHAPTER SIX
DOMESTIC VIOLENCE**

SECTION 6.1 POLICY

The people of the White Mountain Apache Tribe recognize that domestic violence is a serious crime. The official response to cases of domestic violence shall stress the enforcement of laws to protect the victim and shall communicate the policy of the White Mountain Apache Tribe that domestic violence presents a clear and present danger to the mental and physical well-being of the Apache people. It is also a policy of the White Mountain Apache Tribe to assure the victim of domestic violence the maximum protection that the law and those that enforce it can provide and to hold the perpetrator accountable for ~~his or her~~ their conduct.

SECTION 6.2 GENERAL DEFINITIONS

A. **“Abuse”** means intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person, or placing another person in reasonable apprehension of imminent serious physical injury to ~~them~~ himself or another.

B. **“Counseling”** means services provided by Tribal Social Services, Apache Behavioral Health, or other ~~authorized licensed or accredited~~ agencies that provide services for, but not limited to, alcohol and drug rehabilitation, parenting, mental health and domestic violence education, and commonly accepted traditional or religious Apache practices, or other religious or cultural practices, as determined by the Cultural Advisory Board.

C. **“Court”** means the White Mountain Apache Tribal Court.

D. **“Domestic Violence”** means abuse, mental anguish, physical harm, bodily injury, assault, or the infliction of reasonable fear of bodily injury, between family or household members or romantic ~~or sexual~~ partners, or sexual assault of one family or household member or romantic partner by another.

E. **“Domestic Violence Offenses”** shall consist of the following, if the relationship between the defendant and the victim so qualifies, under (D), above:

1. Assault;
2. Aggravated Assault;
3. Assault with a Deadly Weapon;
4. Assault with Intent to Commit Rape;
5. Assault with Intent to Cause Serious Bodily Injury;
6. Assault with Intent to Kill;
7. ~~Battery~~ Child Abuse;
8. ~~Criminal Negligence;~~
9. ~~Disobedience to a Lawful Order of the Court~~
8910. Endangering welfare of child
- 910 Endangering the welfare of an elder
- 10.4 Harassment;

11. ~~Molestation of a Child;~~ Threatening and Intimidating
Criminal Code

~~11. Unlawful Restraint~~

~~12012. Sexual Abuse;~~

~~13. Sexual Conduct with a Minor~~

~~13134. Sexual Assault;~~

~~14245. Sexual Assault of a Spouse;~~

~~1535. Sexual Conduct with a Minor;~~

~~1646. Sexual Exploitation of a Minor;~~

~~17. Stalking;~~

~~185.7 Molestation of Child;~~

~~189687. Child Abuse Threatening and Intimidating; and~~

~~19201719. Unlawful Restraint.~~

~~18. Sexual Exploitation of a Minor~~

FE. “**Domestic Violence Shelter**” means a ~~confidential~~ location which provides emergency housing on a 24-hour basis for victims of sexual assault, domestic violence, or both.

GF. “**Family or Household Member**” means spouses, former spouses, parents, step-parents, grandparents, children, step-children, siblings, half-siblings, step-siblings, cousins, aunts, uncles, whether naturally or through adoption, adult persons or ~~emancipated~~ minors presently residing together, or any two persons who are or have been in a romantic or sexual relationship, or who have a child in common, regardless of whether they have been married at any time.

HG. “**Mandatory Arrest**” means that the victim need not sign agree to a complaint for an arrest to occur. A police officer shall arrest, with or without a warrant, if there is probable cause to believe the person to be arrested has committed an offense as defined by this Chapter even though the arrest may be against the expressed wishes of the victim.

~~1. “Probable Cause” means the reasonable belief, based on the officer’s observations and statement made by the parties involved and witnesses, if any, that the person arrested committed an act of Domestic Violence.~~

IH. “**Mental Anguish**” means causing a person psychological or emotional damage by physical or verbal intimidation, threatening, verbal abuse, physical abuse, harassment, stalking, or any contact that is detrimental to the psychological and mental well-being of that person or any other family or household member, characterized by behavioral change or physical symptoms.

JJ. “**Order of Protection**” means a court order granted by any court of competent jurisdiction for the protection of victims of domestic violence.

K. “**Perpetrator**” means a person who is alleged to have committed or has been convicted of committing an act of abuse or domestic violence on their family member or household member.

JK. “**Physical Harm**” means the impairment of physical condition and includes but shall not be limited to any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils health or welfare.

~~**LK.** “Perpetrator”^[kc1] means a person who is alleged to have committed or has been convicted of~~

~~committing an act of abuse or domestic violence on his or her~~their family member or household member.

ML. “Police officer,” “officer,” or “police” means any certified law enforcement officer of the White Mountain Apache Police Department, White Mountain Apache Game ~~and Fish Officers~~Rangers, ~~White Mountain Apache Reserve Officers~~, or other applicable law enforcement officer having legal jurisdiction.

NM. “Primary Physical Aggressor” means a person who has caused or has threatened to cause the most significant physical or emotional harm to another in their~~his~~ family or household, as compared to the other party involved, regardless of whether or not the other party was the first aggressor, depending on the past history with violent behavior, the relative ability to inflict harm, and severity of injuries inflicted on each party, and likelihood of future injury to each person.

O. “Probable Cause” means the reasonable belief, based on the officer’s observations and statements made by the parties involved and witnesses, if any, that the person arrested —committed an act of Domestic Violence crime.

PON. “Romantic Partner” means a person with whom a subject is or has been involved in a romantic ~~or sexual~~ relationship, whether or not the person and the subject reside in the same household or have children together.

QP. “Sexual Partner” means a person with whom a subject is or has been involved in a sexual relationship, whether or not the person and the subject reside in the same household or have children together.

RQQ. “Victim” means a ~~family or household member or a romantic partner~~ person who has been subjected to domestic violence.

SECTION 6.3

PENALTIES

A. Criminal Penalties

1. First Offense:

- a. Any person who commits an act of domestic violence as defined by this Chapter shall be deemed guilty of the offense of domestic violence. A person convicted of a first offense of domestic violence shall be sentenced to imprisonment for a term of not less than Ten (10) Days or more than One (1) Year and shall be sentenced to a fine~~an amount~~ not less than One Hundred Dollars (\$100.00) or more than Five Thousand Dollars (\$5,000.00). Mandatory counseling shall be part of sentencing as provided in Section 6.4 of this Chapter, as well as restitution when appropriate.
- b. The Court may suspend imposition of fines and imprisonment for the first offense and place defendant on probation for not less than Three (3) Months or more than One (1) Year. When a sentence is suspended there must be complete

cooperation with the orders of the Court requiring cooperation with the domestic violence program and counseling, as ordered.

2. Second Offense: A person convicted of a second offense of domestic violence within Five (5) Years of a previous conviction shall be imprisoned for a term of not less than Thirty (30)Ninety (90) Days or more than One (1) Year and fined an amount not less than One ThousandFive Hundred Dollars (\$500.00\$1,000.00) or more than Five Thousand Dollars (\$5,000.00). Mandatory counseling shall be part of sentencing as provided in Section 6.4 of this Chapter, as well as restitution when appropriate.
3. Third and Subsequent Offenses: A person convicted of a third or subsequent offense of domestic violence within a Five (5) Year periods-of-the-last-a-previous-conviction shall be imprisoned for a term of not less than One Hundred Eighty (180) Days or more than One (1) Year and fined an amount not less than Two Thousand Dollars (\$2,000.00) or more than Five Thousand Dollars (\$5,000.00). Mandatory counseling shall be part of sentencing as provided in Section 6.4 of this Chapter, as well as restitution when appropriate.The Tribal Court Judge shall have discretion to reduce or suspend all but 30 days of sentences for third and subsequent offenses that results in no injuries to a victim(s), and at the consent of the victim(s) and advice of the Tribal Prosecutor.
4. In cases of failure to comply with the Court's orders of counseling under this Section, the Court shall find the perpetrator ~~person~~ in contempt and may issue a shall impose a sentence for contempt as provided for by Section 2.20(D) of the Tribe's Judicial Code, and may reimpose no greater than the original sentence for the offense, and may again require the perpetrator to complete-repeat the entire domestic violence program upon release from jail.
5. Release and Probation Subsequent to a Plea Deal: Failure of a perpetrator to attend counseling, violation of an order offer protection, commission of any crime during the order offer protection period, or violation of any condition of sentencing will result in a violation of probation, and upon a finding of such will-may result in the imposition of the original sentence no greater than the original sentence and require the perpetrator to complete the entire domestic violence program again, upon release.
6. Prosecution for the offense of domestic violence shall not preclude prosecution for any other offense arising from the same circumstances.
7. A person charged with or convicted of a domestic violence 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 as used in the foregoing Subsection A.7. shall mean husband, wife, son, daughter, brother, sister, father, mother or grandparent, whether naturally or through adoption.
8. None of the mandatory sentencing provisions in Subsections 2 or 3 of this Section shall apply to a person who has successfully completed a White Mountain Apache Tribe Wellness Court program and whose conviction of Domestic Violence has been vacated. The mandatory sentencing provisions of Subsections 2 or 3 shall apply to all persons

who have not successfully completed a Wellness Court program or whose Domestic Violence convictions have not been vacated.

B. Civil PenaltiesLiability.

In addition to any other penalties herein, any person who engages in the act of domestic violence, may be ~~fin~~ed an amount of liable to the victim for civil damages. Conviction of a domestic violence offense hereunder shall constitute civil proof of the existence of a domestic violence by a preponderance of the evidence. not to exceed Five Thousand Dollars (\$5,000.00). Restitution shall be required when appropriate.

~~C. Other Offenses; Entering Reservation and Committing Domestic Violence.~~

- ~~1. A person who enters the White Mountain Apache Reservation with the intent to injure, harass, or intimidate that person's family or household member, and who, in the course of or as a result of such travel, intentionally commits an act of domestic violence and thereby causes injury to the family or household member, shall be punished as provided by Section 6.3 A. of this Chapter.~~
- ~~2. A person who causes a family or household member to enter or leave the White Mountain Apache Reservation by force, coercion, duress, or fraud and, in the course of, or as a result of that conduct, intentionally commits an act of domestic violence and thereby causes injury to the person's family or household member, shall be punished as provided by Section 6.3 A. of this Chapter.~~

CD. Other Conditions in Addition to Penalties.

1. In addition to the penalties above, the Court shall impose any condition it deems necessary to prevent further domestic violence, including but not limited to: additional orders restricting the defendant's ability to have contact with the victim and other family or household members; and the requirement that defendant make timely reports to the Court for the duration of the sentence.
2. A Peace Police Officer ~~may~~shall remove any weapons or firearms that are in plain view or discovered during the domestic violence-related investigation. Such weapons will be subject of the forfeiture proceedings under Section 2.5 of the White Mountain Apache Rules of Criminal Procedure.

DE. Pre-Sentencing Evaluation

1. Prior to sentencing a person convicted under this Cchapter for a domestic violence offense, the Court shall order a domestic violence evaluation upon motion of either party.
2. If ordering a domestic violence evaluation, the Court shall consider, when rendering a sentence, the findings, conclusions and recommendations of an evaluation completed pursuant to Section E.1. ~~in sentencing~~ under this Chapter.

SECTION 6.4

TREATMENT AND COUNSELING

A. Alcohol and substance abuse.

If alcohol, drugs, or other substance abuse plays a part in the domestic violence of which a person is convicted, a mandatory chemical dependency evaluation shall be conducted and complete cooperation with any recommendations for treatment shall be included as part of the sentence.

B. Mandatory Counseling.

1. A person convicted of domestic violence shall be ordered to participate in appropriate mandatory counseling which may include family counseling at the consent of the victim.
2. If possible, pPrior to the release of atheperpetrator sentenced todefendant incarceration, qualified personnel, which may include a domestic violence victims' advocate,~~if possible,~~ will talk with the victim and discuss the availability of domestic violence services and groups.

C. Mandatory Referral to Social Services.

1. If a law enforcement officer has reason to believe that the victim of domestic violence has abused alcohol, drugs or other substances, and such abuse contributed in part to a domestic violence incident which has occurred in the presence of a child(ren) under the care and control of such victim, the law enforcement officer shall report the circumstances of the incident to Tribal Social Services within Twenty-Four (24) Hours.
2. Once Tribal Social Services receives a report as provided in Subsection C.1., Tribal Social Services shall commence an investigation of the home environment of the victim and the child(ren) within Forty-Eight (48) Hours and shall take appropriate action as provided in the Juvenile Code.

D. Religious Consideration.

Persons who practice a ~~traditional Indian~~ religion, including a Native American tradition or any other religion, may participate in additional counseling or ceremonies at their own expense, and as appropriate to their sentence.

E. Cost for Counseling or Other Treatment.

The Court may order the person convicted of domestic violence to pay any cost for counseling or other treatment ordered pursuant to this Section.

F. Follow-up Assessment

1. ~~At a minimum~~ A mandatory follow-up assessment will be done at the end of the mandated counseling.

2. A treatment provider shall do the assessment and shall forward a written copy of the findings and recommendations to the Court.
3. All treatment records will be sealed by the Court and may be reviewed only on a need to know basis with written permission of the judge or perpetrator.

SECTION 6.5

PROCEDURE FOR MANDATORY ARREST

A. Police Department.

1. If probable cause exists, the officer shall arrest the perpetrator of domestic violence whether or not the victim signs-agrees to a complaint and whether or not the arrest is against the expressed wishes of the victim.
2. Whenever a police officer investigates ~~an-allegation~~allegatioun alleged report of domestic violence, whether or not an arrest is made, the officer shall make ~~a-written~~ incidenta written incident report of the alleged abuse and submit ~~that-a written incident~~ report to the Office of the Tribal Prosecutor within Twenty-Four (24) Hours. The Police Department shall have no duty to forward police reports to the Court but said police reports shall be presented by the parties as part of the presentation of evidence.
3. If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, circumstances shall be evaluated to determine if there was a primary physical aggressor. If the officer determines that one person was the primary physical aggressor and that the other person(s) acted in self-defense, the officer need not arrest the other person believed to have ~~committed domestic violence~~acted in self-defense. ~~In determining whether one person is a primary physical aggressor, consideration shall include but is not limited to:~~
 - ~~a. Prior history of domestic violence;~~
 - ~~b. The relative severity of the injuries inflicted on each person;~~
 - ~~c. The likelihood of future injury to each person;~~
 - ~~d. Whether one of the persons acted in self-defense; and~~
 - ~~de. Relative ability to inflict harm between the parties involved.~~

B. Office of the Tribal Prosecutor.

1. The Office of the Tribal Prosecutor shall evaluate ~~the~~ complaints based upon all available facts. A case shall not be dismissed or declined solely on the grounds that the victim may be an uncooperative witness.
2. The Office of the Tribal Prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the perpetrator is in custody and a prosecutor/advocate has decided to decline prosecution of the crime, or dismiss the criminal charges filed against the defendant.

C. Court.

~~1. When a defendant is arrested, automatic orders of protection will be issued as provided in Section 6.8 of this Chapter.~~

~~12. Anyone immediately arrested under this Chapter shall be held in the custody of the Police Department detained held for a period not less than Twenty Four (24) Hours as a mandatory "cooling-off" period, regardless of when until arraignment occurs, unless the Indian Health Services admits the defendant or transfers the defendant to another health care facility and is released by court order.~~

~~23. Prior to release of the defendant, if possible, the police department liaison or a domestic violence victim's advocate will talk with the victim and discuss the availability of domestic violence services and groups, or refer the victim to appropriate service providers.~~

~~34. Because of the serious nature of domestic violence:~~

~~a. Disposition of cases shall not be delayed or dismissed because of concurrent dissolution of marriage proceedings or other civil actions.~~

~~b. Proof that either party is seeking a dissolution of marriage prior to initiation of criminal proceedings shall not be required.~~

~~be. Any requirement that the victim's location be disclosed shall be waived and communication to victim regarding the domestic violence case shall be conducted through the a domestic violence victim's advocate or the Court,; and~~

~~ed. Docket sheets of criminal actions arising from acts of domestic violence shall be identified by any reasonable means. [MOU]~~

SECTION 6.6

DUTIES OF POLICE OFFICERS

A. **Primary duty of officers.** The primary duty of officers when responding to a domestic violence situation is to enforce the laws and ensure victim safety.

B. **Notification to victim.** If the victim is present when the officer arrests a person for domestic violence, the officer shall advise the victim of reasonable means to prevent further abuse, the availability of a shelter or other services in the community, and give the victim immediate notice of any legal rights and remedies available in accordance with policies and protocols adopted in accordance with Section 6.8 of this Chapter. The victim shall be furnished with a copy of the following statement.

If you are a victim of domestic violence, the Office of the Tribal Prosecutor will be notified of the incident and they shall determine whether to file charges against your abuser. An emergency order of protection may be issued against your abuser at ~~the time of the~~

~~arrest or arraignment~~ your request or at your request. You also have the right to go to Court and file a petition requesting any or all of the following temporary orders for relief:

1. An order restraining your abuser from abusing, harassing, stalking, threatening, ~~annoying,~~ telephoning or otherwise contacting you and committing other acts of domestic violence;
2. An order directing your abuser to leave your household and to stay away with no contact;
3. An order preventing your abuser from removing any property from your household except for clothing and other such personal effects, which may only be removed when the abuser is accompanied by a police officer;
4. An order awarding you custody or visitation of a minor child or children;
5. An order specifying arrangements for visitation by your abuser, including required supervised visitation;
6. An order restraining your abuser from harassing or interfering with minor children in your custody;
7. An order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is already a legal obligation to do so; ~~or and~~
8. An order protecting other family and household members.

C. **Protection of the Victim.** A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

1. Taking action necessary to provide for the safety of the victim and any family or household member;
2. Transporting or obtaining transportation for the victim or any minor child (or children) to a temporary shelter; ~~and~~
3. Assisting the victim and any minor child (~~children~~) in obtaining immediate medical treatment, including obtaining transportation to a medical facility.

D. **Notification of Release of a Perpetrator.** When a perpetrator is scheduled to be released from custody, the ~~police department~~ Department of Corrections shall immediately notify the Office of the Tribal Prosecutor ~~who shall~~ and make reasonable efforts to notify the victim prior to, or upon release of, the perpetrator from custody.

SECTION 6.7

SPECIAL COURT RULES

In addition to the Rules of Court generally applicable to such proceedings, the Court is authorized to take the following actions in a proceeding involving alleged domestic violence offenses.

~~A. **Conditions of Release.** The Court shall, at the earliest stage of the proceedings, impose release conditions restraining the accused from committing any further acts of violence against the alleged victim or any other person regardless of whether the Court orders bond release, recognizance release or denies bond.~~

AB. Arraignment. At the arraignment and all subsequent hearings, any person including a Domestic Violence Victim Advocate may accompany and may make a statement in support for the alleged victim. ~~to the hearing and may accompany the victim to all other subsequent hearings.~~

BC. Admissibility of Victim's Allegations. Any written statement made by the alleged victim under oath and signed by the victim describing the alleged acts of domestic violence shall not be considered inadmissible solely because of an hearsay objection, but shall be subject to ordinary judicial analysis for admissibility of evidence in the White Mountain Apache Tribal Court.

C. Deferrals. Only the Tribal Prosecution and the Defendant may enter into an agreement whereby prosecution is deferred and deferred prosecution cannot be ordered sua sponte from the bench.

D. Presentation of Evidence. Evidence for or against the allegation shall be presented by the parties. It shall not be the duties of the parties to prepare or submit evidence to the Court sooner than required by the Rules of Criminal Procedure.

ED. Victim - Impact Statement. When offered to the court, input from the victim shall be considered when determining the sentence to be imposed.

FE. Conviction. Upon conviction, the perpetrator shall be ordered to participate in an appropriate counseling program consisting of at least the following:

1. The perpetrator shall attend and cooperate in an intake session at Apache Behavioral Health or a licensed or accredited agency, for evaluation and preparation of a treatment plan.
2. Such evaluation and treatment plan shall be completed by the appropriate agency no later than ~~t~~Twenty (20) ~~c~~Calendar ~~d~~Days after the entry of the order requiring the evaluation, unless the Court extends that time period.
3. The perpetrator shall provide a copy of the A-copy-of-the evaluation and treatment plan ~~shall be provided to the Court and made available to the~~ Office of ~~the Tribal Prosecutor~~ Probation within [insert number of days] twenty (20) business days.

GF. Failure to Comply with Court Order. Failure to comply with a court order requiring a perpetrator to attend and cooperate in evaluation and/or undergo treatment as described in a treatment plan shall constitute contempt of court punishable as such. Failure to submit a copy of the evaluation and treatment plan to the Court and the Office of the Tribal Prosecutor shall constitute contempt of court punishable as such. The Court may also order the imposition of any sentence that has been suspended.

SECTION 6.8

CIVIL ORDERS OF PROTECTION

Any person may seek relief under this Section by filing a petition, as a civil action, with the Court alleging that the person has been a victim of domestic violence committed by the Respondent. The person may petition for relief on behalf of himself or herself ~~themselves~~ and on behalf of minors within the family or other household members. The Petition need not specify irreparable harm as a

~~casual~~ factor.

A. Availability of Civil Petition for Orders of Protection in General.

1. A civil Petition to obtain an Order of Protection under this Section may be filed by:
 - a. Any person claiming to be the victim of domestic violence;
 - b. Any family member or household member of a person claimed to be the victim of domestic violence, on behalf of the alleged victim;
 - c. Any Victim Witness Advocate; or
 - d. The Office of the Tribal Prosecutor.
2. A Petition shall include the following elements:
 - a. The Petitioner's name, date of birth, mailing address and physical address. If the Petitioner's physical address is unknown to the Respondent, the Petitioner may request that it be protected. On the Petitioner's request, the address shall not be listed on the Petition;
 - b. If the Petitioner is not the alleged victim, the name of the alleged victim;
 - c. The Respondent's name, and, if known, date of birth, mailing address and physical address;
 - d. A statement that the Petitioner is domiciled on the Fort Apache Indian Reservation, or that the Respondent is domiciled on the Fort Apache Indian Reservation;
 - e. The nature of the relationship between the victim and the Respondent and between the Petitioner and the victim, if Petition is being filed on behalf of another;
 - f. A ~~briefly~~ description of ~~the~~ incident(s) of domestic violence, including dates, times and places of the alleged domestic violence;
 - g. The name of any court in which a prior, current, or pending proceeding or order of protection was sought or issued concerning the conduct sought to be restrained;
 - h. The desired relief; and
 - i. ~~and shall be a~~ ~~verified petition or support~~ ~~ing~~ ~~ed by an~~ affidavit made under oath and penalty of perjury, that need not be notarized, stating that the specific facts and circumstances ~~allegations justifying the requested order contained in the Petition~~ are true and accurate, to the Petitioner's best knowledge.
3. No filing fees shall be required for filing a petition, nor shall a bond be required to obtain relief, under this Section.

4. Service. The Court shall be responsible service of process on respondents under this Section, and shall not charge a fee for such service.
- ~~4. The Petitioner, or the victim on whose behalf a petition has been filed is not required to file for annulment, separation, or divorce as a prerequisite to obtaining an order of protection; but the petition shall state whether any such action is pending[ke3].~~
- ~~545.~~ Standard, simplified petition forms with instructions for completion shall be available upon request from the Court Clerk.
- ~~656.~~ Mutual ~~restraining~~ orders of protection ~~are prohibited except~~ may be granted in cases where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as primary aggressors or are in need of protection or separation from one another ~~and that neither party acted in self defense.~~
- ~~767.~~ An order ~~offer~~ protection does not preclude the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceedings.
- ~~878.~~ An order for protection may be revoked, modified, or extended.
- ~~989.~~ An order for protection may be presented in a proceeding for the modification of an existing order, judgment or decree.
- ~~10. Section 2.26(C) of the White Mountain Apache Judicial Code shall apply to any proceeding under this Section.[MOU4]~~

B. Procedure for Issuance of an Order of Protection: In General.

1. The Order of Protection shall include the immediate granting of an Ex Parte Order of Protection without bond if, based on the specific facts stated under oath, the Court has reasonable cause to believe that the Petitioner, or the person on whose behalf the petition is filed, is the victim of an act of domestic violence committed by the Respondent.
2. Within Five (5) Days of the issuance of an ex parte order, excluding holidays and weekends, a hearing shall be held to determine whether the order should be vacated, extended for an additional period of time, ~~made permanent~~, or modified in any respect with reasonable notice to the Respondent. The Respondent shall not be required to attend this hearing. If the Respondent fails to attend the hearing after having been given notice, the Court shall grant to Petitioner a Default Judgment containing such reasonable relief as the Petitioner may request. A failure of any party to appear at such a hearing, after reasonable notice has been given, shall not result in a warrant for the absent party's arrest, but shall result in a ruling or judgment in favor of the appearing party to the extent permissible by law.
3. The provisions of White Mountain Apache Judicial Code Section 2.26(C), regarding representation in court in a civil case, shall not apply to hearings regarding Orders of Protection or any other proceedings pursuant to this Chapter.
- ~~43.~~ If the Court does not find sufficient reasonable cause to grant an ex parte order, the

Court shall serve notice to appear upon both parties and hold a hearing on the Petition for an Order of Protection within Five (5) Days after the filing of the Petition, excluding holidays and weekends.

54. An Order of Protection granted pursuant to this Section shall be forwarded by the Clerk of the Court to the Whiteriver Police Department within ~~twenty-four~~ (24) ~~h~~Hours of issuance. In the case of an emergency Order ~~offer~~ Protection, it shall be filed with Police immediately upon issuance. The Police Department shall make available to each officer, information as to the existence and status of every Order ~~offer~~ Protection issued under this Section.

C. Contents of an Order of Protection in General.

1. An Order of Protection shall include provisions:

- a. Finding that the Court has personal jurisdiction over the parties and subject matter jurisdiction over the matter;
- b. Stating the names and dates of birth of the parties;
- ~~c.~~ Restraining the Respondent from committing any acts of domestic violence;
- ~~d.~~ Restraining the Respondent from harassing, stalking, threatening, annoying, telephoning—via telephone, electronic means, or third parties; or otherwise contacting the Petitioner, directly or indirectly, or engaging in any other conduct that would place any named family or household members in reasonable fear of bodily injury;
- ~~e.~~ Prohibiting the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury;
- ~~f.~~ Restraining Respondent from receiving, possessing, or transporting a firearm or ammunition within the exterior boundaries of the Fort Apache Indian Reservation;
- ~~g.~~ Restraining one or both parties from transferring, removing, encumbering, mortgaging, concealing, disposing, altering or damaging property except as authorized by the Court, and requiring that an accounting be made to the Court for all authorized transfers, encumbrances, disposition, and expenditures;
- ~~h.~~ Notifying the parties involved that the knowing violation of and provision of the order may constitute contempt of court punishable by fines, imprisonment, or both;
- ~~i.~~ The order shall include the following statement: *Warning. This is an official Court Order. If you disobey this Court Order, the Court may find you in contempt of Court. You may also be arrested and prosecuted for the willful disobedience of an order lawfully issued by the Court and any other crime you may have committed in disobeying this Order.*
- j. Stating the date on which the Order was entered and on which it expires, if any;

and

k. Containing the name of the White Mountain Apache Tribal Court that entered the Order and the signature of the judge.

2. An order of Protection may include any other relief the Court deems appropriate, including but not limited to:

- a. Excluding the Respondent from the residence of the victim (whether or not the Respondent and the victim share the residence), school, place of employment, or a specified place frequented by the Petitioner and any named family or household member.
- b. Awarding temporary child custody, temporary child support, or establishing temporary visitation rights of the minor children of the parties, for the duration of the Order, with the primary consideration of the least disruption of the children, including but not limited to health, safety, education, and normal routines of the children.
- c. If visitation is granted there shall be set rules for exchange of children for visitation, including but not limited to times, places, persons, and the non-custodial parent may be required to post a bond as determined by the Court.
- d. Ordering temporary possession and use of the parties' property.
- e. Ordering the Respondent to make timely payments on existing debts of the Respondent, including mortgage or rental payments and necessary utilities in order to maintain the Petitioner and children in their residence.
- f. Ordering any other lawful relief as the Court deems necessary for the protection or any claimed or potential victim of domestic violence, including orders or directives to the Whiteriver Police Department or other appropriate departments and programs.

D. Duration and Amendments to Orders of Protection in General.

1. An initial Order of Protection shall be enforced until further order of the Court but not to exceed ~~One Hundred Eighty (180) Days~~ Three-hundred and sixty-five (365) days, but ~~and~~ may be subject to amendment for extension at the discretion of the Court or at the request of one of the parties. After the initial period has expired, the Court may make an Order of Protection permanent upon a showing that the Respondent presents an ongoing danger to the safety of the Victim(s). Permanent Orders of Protection shall be reviewed by the Court not less often than every 5 years, but such review may be through a file review and a hearing shall not be held unless requested in writing by either party.
2. The Court may, in its discretion, conduct a review of the Order of Protection at the request of the parties, and may vacate or amend it only upon the showing of a substantial change of circumstances.-

E. Emergency Orders of Protection.

1. During the hours that the Court is closed, the Court shall provide for the availability of a judge or other authorized personnel who ~~shall authorize~~ may issue the issuance of emergency and temporary orders for protection by telephone or by any other appropriate and effective method.
2. If an officer, for any reason, cannot make an arrest under Section 6.5 of this Chapter, but states there is probable cause to believe a person is in immediate and present danger of domestic violence, the judge or other person authorized to issue emergency Orders for Protection may issue an ex parte Order of Protection if such authorized person finds that the officer's grounds are reasonable.
3. Written procedures for issuance of emergency Orders of Protection shall be promulgated by the Court.

F. Violation of Order of Protection.

1. In addition to any other penalties available under law or equity, a person, who knowingly violates, or a person who aides and abets another person to knowingly violate an Order of Protection is guilty of an offense and shall be sentenced to a minimum of ~~s~~Sixty (60) ~~d~~Days imprisonment, or fined an amount not to exceed ~~t~~Three ~~t~~Thousand ~~d~~Dollars (\$3,000.00) or both.
- ~~2. A person who enters the Fort Apache Indian Reservation with the intent to engage in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the Protection order was issued, shall be punished as provided in Subsection F.1. above.~~
- ~~3. A person who causes a family or household member to enter or leave the Fort Apache Indian Reservation by force, coercion, duress, or fraud, and in the course or as a result of that conduct, intentionally commits an act that injures the person's family or household member in violation of a valid protection order issued by the court shall be punished as provided in Subsection F.1.~~

G. Recognition of Orders of Protection from Other Jurisdictions

1. Enforcement. PLaw Enforcement ~~tee~~ Officers and the Tribal Court shall give full faith and credit to, and enforce, Orders of Protection from other jurisdictions, if the Orders are facially valid.
2. Facial Validity. An Order of Protection shall be deemed facially valid if it contains the following elements:
 - a. Identification of the Petitioner and the Defendant;
 - b. Identification of the court that issued the Order;

c. The terms of the Order, including what conduct the Defendant is restrained from;

—No indication that the Order has expired.

d.

SECTION 6.9

REPORTING OF DOMESTIC VIOLENCE

A. Reporting Requirements.Mandated Reporting Requirements.

Any medical personnel, physician, physician's assistant, nurse, community health representative, social worker, dentist, school teacher, parent aide, adult services worker, law enforcement officer, court personnel, hospital intern or resident, substance abuse worker, health program worker, alcohol program worker, or domestic violence program worker who reasonable suspects that a person has been a victim of domestic violence shall report in accordance with Subsection BD. of this Section.

B. Report to Law Enforcement.

The report required by Subsection AD. of this Section shall be made orally and immediately by telephone or otherwise to a law enforcement officer.In the event that a law enforcement officer is the suspected perpetrator of domestic violence, in addition to filing of a police report, the Police Department shall report the suspected perpetrator to theits internal affairs department of the suspect's agency, or to another law enforcement agency of competent jurisdiction, and to the licensing bureau of the suspect officer's certification.

C. Immunity for Reporting.

Except for malicious acts as described under Subsection D.2. of this Section, anyone other than the perpetrator participating in good faith in the making of a report pursuant to this Section shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed, and shall have the same immunity with respect to participation in any Court proceeding resulting from such a report.

D. Penalties for False Reports or Failure to Report.

1. Any person who knowingly fails to make a report required under this Section is guilty of an offense and shall be imprisoned for a term of not less than Ten (10) Days nor more than Thirty (30) Days and shall be fined an amount not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00) or both.
2. A person acting with malice who knowingly and intentionally makes a false report of domestic violence or a person acting with malice who coerces another person to make a false report of domestic violence, is guilty of an offense and shall be sentenced to jail not less than Thirty (30) Days, or fined an amount not to exceed Five Hundred Dollars (\$500.00) or both.
3. A person who knowingly and intentionally makes a false report that a person has

violated the provisions of Subsection 2 above, is guilty of an offense and shall be sentenced to jail not to exceed Thirty (30) Days, or fined an amount not to exceed Five Hundred Dollars (\$500.00) or both.

4. A person not subject to the criminal jurisdiction of the White Mountain Apache Tribal Court but who violates either Subsections 1, 2, or 3 above, is liable for a civil offense and shall be fined not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00).

SECTION 6.10 DISCLOSURE OF DOMESTIC VIOLENCE SHELTERS

A. Any person who knowingly publishes, disseminates or otherwise discloses the location of a victim who has been placed in a secured any-domestic violence shelter, ~~or any place designated as a domestic violence shelter as defined in Section 6.2,~~ without the authorization of that domestic violence shelter or the victim, is guilty of a crime and shall be sentenced to jail no less than Five (5) Days or more than Thirty (30) Days or fined an amount not less than One Hundred Dollars (\$100.00) or to exceed Five Hundred Dollars (\$500.00), or both.

B. A person not subject to the criminal jurisdiction of the White Mountain Apache Tribal Court but who violates either Subsections 1, 2, or 3 above, is liable for a civil offense and shall be fined not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00).

SECTION 6.11 CIVIL SANCTIONS

A. Removal and Exclusion

1. Whenever a non-member is involved in a situation of domestic violence as the perpetrator, the mandatory arrest provisions of Section 6.5 shall apply.
2. Proceedings for removal and exclusion of the non-member perpetrator from the Fort Apache Indian Reservation shall be initiated by the Legal Department Office of the Prosecutor with a finding that exclusion is a proper remedy to ensure the safety of the victim(s) and uphold the policy of this Chapter.

B. Civil Fines

A person found to have committed an act of domestic violence may be liable for civil fines and damages for domestic violence pursuant to Section 6.3 of this Chapter.

SECTION 6.12 APPELLATE REVIEW

Appeals under this Chapter shall be made pursuant to the Tribe's Rules of Civil and Rules of Appellate Procedure.

SECTION 6.13 SEVERABILITY

If any part or parts, or the application of any part, of this Chapter is held invalid, such holding shall not affect the validity of the remaining parts of the Chapter.

