



# WHITE MOUNTAIN APACHE TRIBE

A Sovereign Tribal Nation

## (Approving Posting of Ordinance No. 311, 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. 311, 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. 311 carefully, and considered the recommendations and the implications thereof in great detail and finds the posting of Ordinance No. 311 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 311, which amends Chapter 5 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. 311, 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. 311 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 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 AUGUST 3, 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 November 10, 2021, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

Kasey Velasquez      8.5.22  
Kasey Velasquez, Chairman      Date

Vaneysa Johnson      8/8/22  
Vaneysa Johnson, 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. 311, amending Chapter 5 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 language from Code

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



**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) (42 U.S.C. 16901 et seq) 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 ("**Tribe**") is disproportionately affected by violent crime and sex offenses 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's Police Department **and SORNA Program** 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's Police Department **and SORNA Program** shall maintain and operate pursuant to the provisions of this Code, as amended.

**SECTION 5.4      APPLICABILITY**

**Sex offenders who are subject to the requirements of this Code include those who:**

- A. **Reside on lands under the Tribe's jurisdiction, including reservation lands or property owned by the Tribe in fee or trust regardless of location, or**
- B. **Are employed on lands under the Tribe's jurisdiction, including on reservation lands or on property owned by the Tribe in fee or trust regardless of location, or**
- C. **Attend school on lands under the Tribe's jurisdiction, including on reservation lands or on property owned by the Tribe in fee or trust regardless of location, and**
- D. **Are convicted by any Tribal court of any sex offense for which registration is mandated by this Code, or**
- E. **Are incarcerated by the Tribe for a sex offense.**

**SECTION 5.54      DEFINITIONS**

The definitions below apply to ~~this eSex-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, and including but not limited to those sex offenders whose convictions predate the enactment of this Code or the Sex Offenders Registration Notification Act. 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 ~~t~~Three (3) ~~b~~Business ~~d~~Days.
- E. **Imprisonment.** ~~The term “Imprisonment” refers to~~means 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. **Indian.** Means any person of Indian descent who is a member of a federally recognized Indian Tribe according to the laws of that Tribe, and any other person recognized by federal law as an Indian for any purpose, and denotes both the singular and the plural.
- G. **Jurisdiction.** ~~The term “Jurisdiction” as used in this Section refers to~~includes 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 that elected to function as a SORNA registration and notification jurisdiction pursuant to PL 109-248 Section 127 (42U.S.C. § 16927).
- H. **Minor.** ~~The term “M~~minor” means an individual who has not attained the age of Eighteen (18) Years.
- I. **Reservation.** Means all lands within the exterior boundaries of the Fort Apache Indian Reservation, and includes any non-contiguous lands owned by the Tribe, in trust or in fee, and over which the Tribe exercises criminal jurisdiction.
- J. **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.
- K. **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, **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.
- L. **Sex Offender.** A person convicted of a sex offense is a “sex offender.”
- M. **Sexual Act.** The term “sexual act” means:
1. Contact between the penis and the anus, **or between the penis and the vagina**, 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, **including but limited to the offender**; or
  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, including but not limited to the offender.

- N. **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.
- O. **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.
- P. **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.
- Q. **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 **and SORNA Program.**
- R. **National Sex Offender Registry (NSOR).** The national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.
- S. **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.
- T. **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.
- U. **Tier ~~1I~~ Sex Offender.** A Tier ~~1I~~ sex offender, or a sex offender designated as Tier ~~1I~~, is one that has been convicted of a Tier ~~1I~~ sex offense as defined in Section 5.6.
- V. **Tier ~~2II~~ Sex Offender.** A Tier ~~2II~~ sex offender, or a sex offender designated as Tier ~~2II~~, is one that has been either convicted of a Tier ~~2II~~ sex offense as defined in Section 5.7, or who is subject to the recidivist provisions of Section 5.7(B).
- W. **Tier ~~3III~~ Sex Offender.** A Tier ~~3III~~ sex offender, or a sex offender designated as Tier ~~3III~~, is one that has been either convicted of a Tier ~~3III~~ sex offense as defined in Section 5.8, or who is subject to the recidivist provisions of Section 5.8(B).

**SECTION 5.65 REGISTERABLE 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 Code:

- A. **Tribal Offenses. A conviction for, or a conviction for an attempt or conspiracy to commit, any of the following tribal offenses:**
  - 1. WMAT Criminal Code §2.7 (Assault with Intent to Commit Rape);
  - 2. WMAT Criminal Code §4.2 (Indecent Exposure to a Minor – if it involves a victim under Fifteen (15) Years of age);
  - 3. WMAT Criminal Code §4.3B (Public Sexual Indecency to a Minor – if it involves a victim under Fifteen (15) Years of age);
  - 4. WMAT Criminal Code §4.4 (Sexual Abuse);
  - 5. WMAT Criminal Code §4.5 (Sexual Conduct with a Minor);
  - 6. WMAT Criminal Code §4.6 (Sexual Assault);
  - 7. WMAT Criminal Code §4.7 (Sexual Assault of a Spouse);
  - 8. WMAT Criminal Code §4.9 (Molestation of a Child);
  - 9. WMAT Criminal Code §4.13 (Commercial Sexual Exploitation of a Minor – if it involves a victim under Fourteen (14) Years of age);~~or~~
  - 10. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if it involves a victim under Fourteen (14) Years of age);

2. Plea Agreement; Notification of Registration Requirements. The Tribal Prosecutor shall, before finalizing any plea agreement for an offense listed above, notify the defendant of the registration requirements and legal implications of pleading to such an offense. [MOU1]

**B.State of Arizona Offenses.** A conviction for, or a conviction for an attempt or conspiracy to commit, any of the following State of Arizona Offenses:

1. A.R.S. 13-1402 (indecent exposure; exception; classification);
2. A.R.S. 13-1403 (public sexual indecency; public sexual indecency to a minor; classification);
3. A.R.S. 13-1404 (sexual abuse; classification);
4. A.R.S. 13-1405 (sexual conduct with a minor; classification);
5. A.R.S. 13-1406 (sexual assault; classification);
6. A.R.S. 13-1410 (molestation of a child; classification);
7. A.R.S. 13-1424 (voyeurism; classification);
8. A.R.S. 13-1304 (kidnapping);
9. A.R.S. 13-3206 (taking a child for purpose of prostitution; classification);
10. A.R.S. 13-3212 (child prostitution; classification);
11. A.R.S. 13-3552 (commercial sexual exploitation of a minor; classification);
12. A.R.S. 13-3553 (sexual exploitation of a minor; classification); and
13. A.R.S. 13-3554 (luring a minor for sexual exploitation; classification).

**B.C. Federal Offenses.** A conviction for, or a conviction for an attempt, or conspiracy to commit any of the following **federal offenses**, and any other offense hereafter included in the definition of “sex offense” at 42 U.S.C. § 16911(5): Including any offenses prosecuted under the Assimilative Crimes Act (18 U.S.C. § 1152 or § 1153):

1. 18 U.S.C. §1591 (sex trafficking of children **or by force, fraud, or coercion**);
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 **constituting or** 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 (transportation of minors for illegal sexual activity, **Travel with the Intent to Engage in Illicit Sexual Conduct with a Minor, Engaging in illicit Sexual Conduct in Foreign Places**);
18. 18 U.S.C. §2424 (failure to file factual statement about an alien individual);
19. 18 U.S.C. §2425 (**use of interstate facilities to transmit information about a minor transmitting information about a minor to further criminal sexual conduct**); and
20. Any other offense that meets the definition of “sex offense” under 42 U.S.C. §16911(5).

**D. 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.

**E.—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).

**F.—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.

**G.—Jurisdiction Offenses.** Any sex offense committed within this Tribe's jurisdiction, or any other jurisdiction that involves:

1. Any conduct that by its nature is a sex offense against a minor;
2. Any type or degree of genital, oral, or anal penetration;
3. Any sexual touching of or sexual contact with a person's body, either directly or through the clothing;
4. 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;
5. False imprisonment of a minor;
6. Kidnapping of a minor;
7. Possession, production, or distribution of child pornography;
8. Solicitation of a minor to practice prostitution;
9. 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;
10. Use of a minor in a sexual performance;
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~~transportation of a minor with intent to engage in criminal sexual activity).

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 unless the adult was under the custodial authority of the offender at the time of the offense, 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. 76 TIER I+ OFFENSES

- A. Sex—Offenses Generally.** A Tier ~~I~~ 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 ~~II~~ or Tier ~~III~~ offense.

**B. Offenses Involving Minors.** A Tier ~~II~~ 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 of a minor, or possession or receipt of child pornography.

**C. Tribal Offenses.** Conviction for any of the following offenses ~~or an attempt or conspiracy to commit such an offense~~ shall be considered a conviction for a Tier ~~II~~ offense:

1. WMAT Criminal Code §4.2 (Indecent Exposure to a Minor – if it involves a victim under fifteen (15) years of age,
2. WMAT Criminal Code §4.3(B) (Public Sexual Indecency to a Minor – if it involves a victim under fifteen (15) years of age,
3. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if in possession of any visual or print medium involving a victim under fourteen (14) years of age.

**D. State of Arizona Offenses.** Conviction for any of the following federal offenses ~~or an attempt or conspiracy to commit such an offense~~ shall be considered a conviction for a Tier ~~II~~ offense:

1. A.R.S. 13-1402 (indecent exposure; exception; classification);
2. A.R.S. 13-1403 (public sexual indecency; public sexual indecency to a minor; classification); and
3. A.R.S. 13-1424 (voyeurism; classification).

**~~ED~~. Certain Federal Offenses.** Conviction for any of the following federal offenses ~~or an attempt or conspiracy to commit such an offense~~ shall be considered a conviction for a Tier ~~II~~ 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 ~~constituting or~~ 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. §2423(d) (arranging, inducing, procuring, or facilitating the travel in interstate commerce of an adult for the purpose of engaging in illicit conduct for financial gain);
10. 18 U.S.C. §2424 (failure to file factual statement about an alien individual); and
11. 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

**~~FE~~. 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), ~~as amended~~, that is similar to those offenses outlined in Section 5.6 (A), (B), or (C) shall be considered a Tier ~~II~~ offense.

## **SECTION 5.87**      **TIER ~~II~~ OFFENSES**

**A. Recidivism ~~and Felonies~~.** Unless otherwise covered by Section 5.8, ~~if an offender has previously been convicted of a sex offense, and the current conviction is for a sex offense, or an attempt or conspiracy to commit such a sex offense, the current conviction is considered a Tier II offense.~~ ~~any sex offense that is not the first sex offense for which a person has been convicted or an attempt or conspiracy to commit such an offense and that is punishable by more than One (1) Year in jail is considered a Tier II offense.~~

**BC. Tribal Offenses.** Conviction for any of the following offenses, or an attempt or conspiracy to commit such a sex offense, shall be considered a conviction for a Tier **2II** offense:

1. WMAT Criminal Code §4.4 (Sexual Abuse – if it involves a victim Thirteen (13) Years of age or older);
2. WMAT Criminal Code §4.5 (Sexual Conduct with a Minor – if it involves a victim who is Sixteen (16) or Seventeen (17) Years old);
3. WMAT Criminal Code §4.9 (Molestation of a Child – if it involves a victim Thirteen (13) Years and older);
4. WMAT Criminal Code §4.13 (Commercial Sexual Exploitation of a Minor – if it involves a victim under Fourteen (14) Years of age);
5. WMAT Criminal Code §4.14 (Sexual Exploitation of a Minor – if recording, filming, photographing, developing, duplicating, distributing, transporting, exhibiting, receiving, selling, purchasing, or exchanging of any visual or print medium involving a victim under Fourteen (14) years of age engaged in sexual conduct).

**C. State of Arizona Offenses.** Conviction for any of the following offenses, or an attempt or conspiracy to commit such a sex offense, shall be considered a conviction for a Tier II offense:

1. A.R.S. 13-1403(B) (public sexual indecency to a minor);
2. A.R.S. 13-1404(A) (sexual abuse);
3. A.R.S. 13-1405 (A) (sexual conduct with a minor 16, 17 or 18 years old);
4. A.R.S. 13-1406 (sexual assault);
5. A.R.S. 13-1410 (molestation of a child);
6. A.R.S. 13-3212 (child sex trafficking – if it involves a victim over 13 years of age);
7. A.R.S. 13-3552 (commercial sexual exploitation of a minor);
8. A.R.S. 13-3553 (sexual exploitation of a minor); and
9. A.R.S. 13-3554 (luring a minor for sexual exploitation).

**DB. Offenses Involving Minors.** A Tier **2II** 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. A non-forcible sexual act with a minor sixteen (16) or seventeen (17) years old;
4. 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;
5. The use of a minor in a sexual performance, ~~or~~;
6. The production or distribution of child pornography; **or**
7. Any other offense defined as a Tier II offense under 42 U.S.C. §16911(3), as it may be amended.

**ED. Certain Federal Offenses.** Conviction for any of the following federal offenses, or an attempt or conspiracy to commit such a sex offense, shall be considered a conviction for a Tier **2II** offense:

1. 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion);
2. 18 U.S.C. § 2243(d) (arranging, inducing, procuring, or facilitating the travel in interstate commerce of a minor for the purpose of engaging in illicit conduct for financial gain);
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 **constituting or** 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~~transportation of a minor with intent to engage in criminal sexual activity);
  12. 18 U.S.C. §2423(d) (ancillary offenses where the victim is under 18); or
  13. Any other offense defined as a Tier II offense under 42 U.S.C. § 16911(3), as it may be amended.
- FE. 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 5.87 (A), (B), ~~or (C)~~, or (D) shall be considered a Tier ~~2II~~ offense.

SECTION 5.98 TIER ~~3II~~ 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 (1) prior conviction or an attempt or conspiracy to commit such an offense for a Tier 2II sex offense, or has previously become a Tier 2II sex offender, is a Tier 3III offense.~~If an offender has previously been convicted of a Tier II sex offense, and the current conviction is for any sex offense, or an attempt or conspiracy to commit any sex offense, the current conviction is considered a Tier III offense.

**BE. Tribal Offenses.** Conviction for any of the following offenses, ~~or an attempt or conspiracy to commit such a sex offense,~~ shall be considered a conviction for a Tier ~~3II~~ offense.

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 Twelve (12) Years of age or younger);
3. WMAT Criminal Code §4.5 (Sexual Conduct with a Minor – if it involves a victim under the age of Sixteen (16) Years of age);
4. WMAT Criminal Code §4.6 (Sexual Assault);
5. WMAT Criminal Code §4.7 (Sexual Assault of a Spouse); and
6. WMAT Criminal Code §4.9 (Molestation of a Child – if it involves a victim Twelve (12) Years and younger).

**C. State of Arizona Offenses.**

1. A.R.S. 13-1404(C) (sexual abuse – if it involves victims under fifteen (15) years of age);
2. A.R.S. 13-1405(B) (sexual conduct with a minor);
3. A.R.S. 13-1304(A)(3) (kidnapping);
4. A.R.S. 13-3206 (taking a child for purpose of prostitution);
5. A.R.S. 13-3212 (child Sex Trafficking – if it involves a victim twelve (12) years and younger); and
6. A.R.S. 13-3552 (C) (commercial sexual exploitation of a minor if the victim is under thirteen 13 years of age).

**DB. General Other Offenses.** A Tier ~~3II~~ 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; or
5. Any other offense defined as a Tier III offense under 42 U.S.C. §16911(4), as it may be amended.

**EC.**Certain Federal Offenses. Conviction for any of the following federal offenses, or an attempt or conspiracy to commit such a sex offense, shall be considered conviction for a Tier **3III** offense:

1. 18 U.S.C. §2241 (aggravated sexual abuse);
2. 18 U.S.C. §2242 (sexual abuse);
3. 18 U.S.C. § 2243 (sexual abuse of a minor or ward); or
4. Where the victim is twelve (12) years of age or younger, 18 U.S.C. §2244 (abusive sexual contact); or
5. Any other offense defined as a Tier III offense under 42 U.S.C. §16911(4), as it may be amended.

**FD.**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), as amended, that is similar to those offenses outlined in Section 5.98 (A), (B), ~~or (C)~~, (D), or (E) shall be considered a Tier **3III** offense.

[MOU2]

## SECTION 5. 109

### GENERAL REQUIREMENTS

- A. Duties. A sex offender covered by this Code who is required to register with the Tribe pursuant to ~~this Code Section 5.30~~ shall provide all of the information detailed in this Section to the ~~White Mountain Apache Tribe's Police Department and SORNA Program and the White Mountain Apache Tribe Police Department~~ The Tribe's SORNA Program 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 ~~Section Code~~ shall be, at a minimum, maintained by the ~~White Mountain Apache Tribe Police Department~~ Tribe's SORNA Program 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~~ Tribe's SORNA Program and shall be in a form capable of electronic transmission.
- D. Biometrics. The Tribe's SORNA Program shall obtain, and a sex offender shall provide, the following biometric and biologic information:
  1. Finger and Palm Prints. Both fingerprints and palm prints. Fingerprints and palm prints shall be immediately submitted to the appropriate Federal Bureau of Investigation (FBI) databases by the Tribe's SORNA Program.
  2. DNA. If the sex offender's DNA is not already contained in the Combined DNA Index System (CODIS), the sex offender shall provide the Tribe's SORNA Program a sample of their DNA to be submitted to the FBI Next Generation Identification Program by the Arizona.
- E. Registration Information. The Tribe's SORNA Program shall obtain, and a sex offender shall provide, the following biographic and documentary information:
  1. Name. The following information related to the sex offender's name:

- a. The sex offender's full primary given name;
  - b. Any and all nicknames, aliases, and pseudonyms regardless of the context in which it is used, and
  - c. 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.
2. Date of Birth. The sex offender's actual date of birth, and any other date of birth used by the sex offender.
  3. Photograph. A sex offender shall permit their photograph to be taken by the Tribe's SORNA Program:
    - a. Every Ninety (90) Days for Tier III sex offenders;
    - b. Every One Hundred Eighty (180) Days for Tier II sex offenders;
    - c. Every year for Tier I sex offenders; and
    - d. Photos of the sex offender may be posted on the registration website.
  4. Physical Description. An accurate description of the sex offender as follows:
    - a. A physical description;
    - b. A general description of the sex offender's physical appearance or characteristics; and
    - c. Any identifying marks, such as, but not limited to, scars, moles, birthmarks, or tattoos. If possible, photographs of any tattoos or significant marks shall also be taken.
  5. Offense Information. The text of each provision of law defining the criminal offense(s) for which the sex offender is registered.
  6. Criminal History. The following information related to the sex offender's criminal history:
    - a. The date of all arrests;
    - b. The date of all convictions;
    - c. The sex offender's status of parole, probation, or supervised release;
    - d. The sex offender's registration status; and
    - e. Any outstanding arrest warrants.
  7. Social Security Number. A valid social security number for the sex offender, and any social security number the sex offender has used in the past, valid or otherwise.
  8. Driver's License. A valid driver's licenses issued by any jurisdiction and the Tribe's SORNA Program shall make a photocopy of any such licenses.
  9. Identification Cards. Any original identification card(s) including Tribal enrollment card issued by any jurisdiction, and the Tribe's SORNA Program shall make a photocopy of any such cards.
  10. Passports. Any original passports issued to or used by the sex offender, and the Tribe's SORNA Program shall make a photocopy of any such passport.
  11. Immigration Documents. The original of any and all immigration documents. The Tribe's SORNA Program shall make a photocopy of any such documents.
  12. Phone Numbers. Any and all telephone numbers and any other designations used by sex offenders for purposes of routing or self-identification in telephonic communications including but not limited to:
    - a. Any and all land line telephone numbers;
    - b. Any and all cellular telephone numbers; and
    - c. Any and all Voice over Internet Protocol (VOIP) telephone numbers.
  13. Residence Address. The following information related to the sex offender's residence:

- a. The address of each residence at which the sex offender resides or will reside; and
  - b. 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.
14. Employment. 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:
- a. The name of the sex offender's employer;
  - b. The address of the sex offender's employer; and
  - c. Similar information related to any transient or day labor employment.
15. School Location. The following information related to the sex offender's school:
- a. The address of each school where the sex offender is or will be a student; and
  - b. The name of each school the sex offender is or will be a student
16. Vehicle Information. 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:
- a. License plate numbers;
  - b. Registration numbers or identifiers;
  - c. General description of the vehicle to include color, make, model, and year; and
  - d. Any permanent or frequent location where any covered vehicle is kept.
17. Internet Identifiers. The following information related to the sex offender's internet related activity:
- a. Any and all email addresses used by the sex offender;
  - b. Any and all Instant Message addresses and identifiers;
  - c. Any and all other designations or monikers used for self-identification in internet communications or postings; and
  - d. Any and all designations used by the sex offender for the purpose of routing or self identification in internet communications or postings, including but not limited to social network identifications, online gaming names, and video posting site identifications such as Facebook, twitter, flickr, instagram, etc.;
  - e. All telephone numbers and IP addresses.
18. Professional Licenses. The WMAT's SORNA Program 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.
19. Temporary Lodging/ Travel Information. The WMAT's SORNA Program 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:
- a. Identifying information for the location where the offender will be lodging while absent from the WMAT and its jurisdiction, including addresses and names (such as hotel, campground, or home owner); and
  - b. The dates the sex offender will be staying at each temporary lodging location;

- c. The registered sex offender shall provide the information no later than three (3) business days before the scheduled travel. The information shall be provided in-person; and
  - d. The WMAT's SORNA Program's shall immediately notify any jurisdiction where the offender will be traveling to and will be lodging. Notification shall be made via the SORNA Exchange Portal, or any additional method(s) of communication, as appropriate.
20. International Travel. The following information is required when; the sex offender will be traveling to a foreign country:
- a. Any information required to be provided by 42 U.S.C. § 16914(a)(7), or any other information necessary to complete the International Travel Form utilized by the United States Marshals Service;
  - b. The registered sex offender shall provide such information no later than 21 days prior to their scheduled travel. The information shall be provided in-person;
  - c. The WMAT SORNA Program shall submit the completed International Travel Form to the United States Marshals Service via the SORNA Exchange Portal within 24 hours.

**\*\*Section 5.10 through 5.28 is replaced in its entirety with Section 5.10(E)\*\***

**SECTION 5.1129 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~~Tribe's SORNA Program for purposes of verification and keeping their registration current in accordance with the following time frames:

1. For Tier ~~I~~ 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 ~~II~~ offenders, once every one hundred eighty (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 ~~III~~ offenders, once every ninety (90) days for the rest of their lives, ~~and~~
  - a. ~~must allow for their picture to be taken, and~~
  - b. ~~must review their existing registration information for accuracy.~~

B. **Tolling.** The duration of an offender's registration requirement will be tolled for any period of time during which they are incarcerated for any offense.

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

1. A Tier ~~I~~ offender may have ~~his or her~~their period of registration reduced to ten (10) years if ~~he or she~~they have maintained a clean record for ten (10) consecutive years,
2. A Tier ~~III~~ offender may have ~~his or her~~their period of registration reduced to twenty-five (25) years if ~~he or she~~they were as adjudicated delinquent of an offense as a juvenile that required Tier ~~III~~ registration and ~~he or she~~they have s-maintained a clean record for twenty-five (25) consecutive years.

~~DC.~~**Clean Record.** For purposes of Section 5.1129(B) a person has a clean record if:

1. ~~He or she has~~They have not been convicted of any offense, ~~for which imprisonment for more than One (1) Year may be imposed,~~



2. ~~He or she~~They have ~~has~~ not been convicted of any sex ~~offense~~ during the period in question,
3. ~~He or she~~They have ~~has~~ successfully completed, without revocation, any period of supervised release, probation, or parole, and
4. ~~He or she has~~They have successfully completed an appropriate sex offender treatment program certified by the Tribe, another jurisdiction, or by the Attorney General of the United States.

**SECTION 5.1230      REQUIREMENTS FOR IN-PERSON APPEARANCES**

- A. **Photographs.** At each in-person verification, the sex offender shall permit the ~~White Mountain Apache Tribe Police Department Tribe's SORNA Program~~ 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 Tribe's SORNA Program~~ shall immediately notify all other jurisdictions in which the sex offender is required to register of the information or change in information.
- D. **New or Changed Information.** If any new information or change in information is obtained at an in-person verification, the ~~White Mountain Apache Tribe Police Department Tribe's SORNA Program~~ shall immediately update the public website, if applicable, and update information in NCIC/NSOR.

**SECTION 5.1331      SEX OFFENDER ACKNOWLEDGEMENT FORM**

- A. The sex offender shall read, or have read to them, and sign a form stating that the duty to register has been explained to them by the ~~White Mountain Apache Tribe Police Department Tribe's SORNA Program~~ and that the sex offender understands the registration requirement.
  1. The form shall be signed and dated by the ~~White Mountain Apache Tribe Police Department Tribe's SORNA Program~~ personnel registering the sex offender.
  2. The ~~White Mountain Apache Tribe Police Department Tribe's SORNA Program~~ shall immediately upload the acknowledgment form into the White Mountain Apache Tribal sex offender registry.

**SECTION 5.1432      WHERE REGISTRATION IS REQUIRED**

- A. **Jurisdiction of Conviction.** A sex offender must initially register with the ~~White Mountain Apache Tribe Police Department Tribe's SORNA Program~~ 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~~ jurisdiction of residence.
- B. **Jurisdiction of Incarceration.** A sex offender must register with the ~~White Mountain Apache Tribe Police Department Tribe's SORNA Program~~ if the sex offender is released from incarceration by the Tribal Court while completing any sentence for a sex offense, regardless of whether the offender was convicted in the Tribal Court, and regardless of whether the offender intends to live, work, or attend school within the exterior boundary of the Fort Apache Indian Reservation. ~~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 Tribe's SORNA Program~~ 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~~ ~~Tribe's SORNA Program~~ 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~~ ~~Tribe's SORNA Program~~ if the sex offender is a student in any capacity within the exterior boundary of the Fort Apache Indian Reservation.

**SECTION 5.1533**     **TIMING OF REGISTRATION**

- A. **Timing.** A sex offender required to register with the Tribe under this Code shall do so in the following time frame:
1. If convicted by the ~~White Mountain Apache Tribe Police Department~~ ~~Tribe's SORNA Program~~ ~~of~~ ~~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 Tribal Courte but not incarcerated, within three (3) business days of sentencing for the registration offense, ~~the sex offender must appear in-person, to register with the Tribe's SORNA Program;~~
  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~~ ~~Tribe's SORNA Program;~~ or
  4. If convicted in a foreign jurisdiction, within three days of entering into the Reservation.
- B. **Duties of ~~White Mountain Apache Tribe Police Department~~ ~~Tribe's SORNA Program.~~** The ~~White Mountain Apache Tribe Police Department~~ ~~Tribe's SORNA Program~~ 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's SORNA Program;~~
  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 added to the public website if applicable;
  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 ~~studystudent~~ status; and
  5. That all information is ~~immediately~~ entered and updated in NCIC/NSOR.

**SECTION 5.1634**     **RETROACTIVE REGISTRATION**

- A. **Retroactive Registration.** The ~~White Mountain Apache Tribe Police Department~~ ~~Tribe's SORNA Program~~ 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-Tribe's~~ SORNA Program shall ensure recapture of the sex offenders mentioned in Section 5.1632(A) within the following time frame to be calculated from the date of passage of this Code:

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

**SECTION 5.1735      KEEPING REGISTRATION CURRENT**

A. **Jurisdiction of Residency.** All sex offenders who reside in lands subject to the jurisdiction of the Tribe who are required to register pursuant to this Code shall: ~~required to register in this jurisdiction shall:~~

1. Immediately appear in-person at the ~~White Mountain Apache Tribe Police Department- Tribe's~~ SORNA Program to update any changes to their name, residence (including termination of residency), employment, or school attendance;
2. Immediately update any changes to their vehicle information, internet identifiers, or telephone numbers. Such updates are not required to be made in-person at the Tribe's SORNA Program;
3. Appear in-person at the ~~White Mountain Apache Tribe Police Department- Tribe's~~ SORNA Program at least three (3) days in advance of any intended travel away from the White Mountain Apache Tribe which will last seven (7) days or more, as required by Section 5.10 (E)(19); and
4. Appear in-person at the Tribe's SORNA Program at least twenty-one (21) days in advance of any intended international travel to provide the information required by Section 5.10(E)(20).

~~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 of over Seven (7) Days, the sex offender shall immediately notify his residence jurisdiction, which in turn will notify the jurisdiction in which the offender is 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 changes their school, or otherwise terminate their schooling, shall immediately appear in-person at the ~~White Mountain Apache Tribe Police Department-Tribe's~~ SORNA Program to update that information. The ~~White Mountain Apache Tribe Police Department-Tribe's~~ SORNA Program 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 changes their employment, or otherwise terminates their employment, shall immediately appear in-person at the ~~White Mountain Apache Tribe Police Department-Tribe's~~ SORNA Program to update that information. The ~~White Mountain Apache Tribe Police Department-Tribe's~~ SORNA Program 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-Tribe's~~ SORNA Program.** With regard to changes in a sex offender's registration information, the ~~White Mountain Apache Tribe Police Department-Tribe's~~ SORNA Program 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; and
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 NCIC/NSOR.

**SECTION 5.1836      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~~ **Tribe's SORNA Program** 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~~ **Tribe's SORNA Program** receives information that a sex offender has absconded the ~~White Mountain Apache Tribe Police Department or designee~~ **Tribe's SORNA Program** 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~~ **Tribe's SORNA Program** 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 and steps;
    - a. Update the ~~Tribe's SORNA Program~~ registry and the ~~Tribe's SORNA Program~~ website 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 NCIC/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 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~~ **Tribe's SORNA Program** shall take all appropriate follow-up measures including those outlined in **Section 5.34(B)**. The ~~White Mountain Apache Tribe Police Department~~ **Tribe's SORNA Program** 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 5.1937      PUBLIC SEX OFFENDER REGISTRY WEBSITE**

- A. **Website.** The ~~White Mountain Apache Tribe Police Department~~ **Tribe's SORNA Program** shall use and maintain ~~the Tribe's~~ **Public Sex Offender Registry** ~~Website~~.
- B. **Links.** The ~~Tribe's Public Sex Offender Registry Website~~ **registry website** shall include links to sex

offender safety and education resources.

- C. **Instructions.** The ~~Tribe's Public Sex Offender Registry Website registry-website~~ shall include instructions on how a person can seek correction of information that the individual contends is erroneous.
- D. **Warnings.** The ~~Tribe's Public Sex Offender Registry Website 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 ~~Tribe's Public Sex Offender Registry Website 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 ~~itstheTribe's Public Sex Offender Registry Website registry-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 5.2038     REQUIRED AND PROHIBITED INFORMATION**

- A. **Required Information.** The following information shall be made available to the public on the ~~sex offender registry website~~ **Tribe's Public Sex Offender Registry Website:**
  - ~~1.5.~~ The name of the sex offender including all aliases,
  - ~~2.6.~~ A current photograph of the sex offender,
  - ~~3.7.~~ A physical description of the sex offender,
  - ~~4.3.~~ The sex offense(s) for which the offender is currently registered,
  - ~~5.2.~~ All sex offenses for which the sex offender has been convicted,
  - ~~6.8.~~ The residential address and, if relevant, a description of a habitual residence of the sex offender,
  - ~~7.4.~~ The address of the sex offender's employer(s),
  - ~~8.9.~~ All addresses of schools attended by the sex offender, ~~and~~
  - ~~9.10.~~ The sex offender's vehicle license plate number along with a description of the vehicle, ~~and~~
  - ~~10.1.~~ Notice that an offender is in violation of their registration requirements or cannot be located if the sex offender has absconded, ~~and~~.
- B. **Prohibited Information.** The following information shall not be available to the public on the ~~Tribe's Public Sex Offender Registry Website~~ ~~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~~ **Tribe's SORNA Program** 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 5.2139      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-Tribe's SORNA Program~~ shall:
1. Monitor and utilize the SORNA Exchange Portal for inter-jurisdictional change of residence, employment or student status, ~~and immediately notify any relevant jurisdiction of an offender's intended change of residence, employment, or student status;~~
  2. Immediately ~~notify the FBI or other federal agency as designated by the Attorney General in order that the information may be updated on NCIC/NSOR or other relevant databases, or if able, immediately~~ update NCIC/NSOR;
  3. 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;
  4. 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; and
  5. 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.
  - ~~6. Enter or update information posted on the public website.~~
- B. **Community Notification.** The ~~White Mountain Apache Tribe Police Department-Tribe's SORNA Program~~ 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~~ ~~Public Sex Offender Registry Website~~ is immediately updated, ~~with the information required by Section 6.02(A) of this Code.~~
  2. The Tribe's ~~public sex offender registry~~ ~~Public Sex Offender Registry Website~~ has ~~an automated~~ 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, ~~within~~ 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~~ ~~Tribe's Public Sex Offender Registry Website~~ for the new information.
  3. Except as specified as Section 5.21(C), the Tribe is also permitted to provide the community information about any registered sex offender as might be necessary to protect public safety.

**SECTION 5.2240      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 5.4123      CRIMES AND CIVIL SANCTIONS**

- A. **Offenses and Criminal 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 Tribe Police Department-Tribe's SORNA~~

**Program** 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.

d. Affirmative Defenses. A sex offender may have an affirmative defense to liability for failure to register if:

1. Uncontrollable circumstances prevented the Sex Offender with complying;
2. Where the Sex Offender did not contribute to the creation of those circumstances in reckless disregard of the of the requirement to comply; and
3. If the Sex Offender complied as soon as the circumstances preventing compliance ceased to exist.

**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 person is guilty of Hindrance of Sex Offender Registration if they:

- ai.** 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;
- bii.** 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
- ciii.** Provide information to a law enforcement agency regarding a sex offender which the person knows to be false.

**4.b. Sentence and Fine for Hindrance of Sex Offender Registration.**

- ai.** *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.
- bii.** *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.
- ciii.** *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.

**54.** 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.

**65.** 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.

**76.** 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.

**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 a civil fine not to exceed Five Thousand Dollars (\$5,000.00), forfeitures, and civil contempt, in addition to any other penalties provided herein.

**C. ~~Customs, Traditions, and Exclusion of Non-Members.~~**

~~1. The customs and traditions of the White Mountain Apache Tribe may be used to supplement the provisions of this Code.~~

12. A violation of a provision of this Code by a sex offender who is not an Indian or is a non-member of the White Mountain Apache Tribe may be subject to exclusion or removal from the Fort Apache Indian Reservation in accordance with Chapter Five of the White Mountain Apache Government Code, in addition to any other penalties provided herein.

**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-Tribe's~~ SORNA Program; and



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

