

**CHAPTER THREE
CRIMINAL EXTRADITION PROCEDURE**

[NOTE: Chapter Three was derived from Ordinance No. 168, enacted August 27, 1991.]

SECTION 3.1 DEFINITIONS

A. In this procedure, unless the context otherwise requires:

(1) **Tribal Chairman:** shall be the Chief Executive Officer of the White Mountain Apache Tribe.

(2) **Executive Authority:** includes the Tribal chairman, or in his absence the Tribal Vice-Chairman, performing the functions of Chief Executive Officer of the White Mountain Apache Tribe.

(3) **State:** Shall mean any of the United States of America and the political subdivisions thereof.

(4) **Commissioned Police Officer:** Means any police officer who is commissioned by the White Mountain Apache Tribal Chief of Police to enforce federal, tribal and state laws within the White Mountain Apache Reservation.

(5) **Fugitive:** Means any enrolled member of the White Mountain Apache Tribe, or any non-member Indian, who is charged with a criminal offense and who has fled from justice and is found within the exterior boundaries of the Fort Apache Indian Reservation.

(6) **Warrant of Extradition:** Documents issued by any state or another Indian tribe in accordance with this extradition procedure, requesting the deliverance of a fugitive from justice.

(7) **Extradition Waiver:** Means a voluntary acknowledgment in written form, by the fugitive, that he/she is voluntarily willing to surrender to the demanding jurisdiction and waive this extradition procedure.

(8) **Habeas Corpus:** Shall mean 25 U.S.C. Section 1303.

SECTION 3.2 FUGITIVES FROM JUSTICE; DUTY OF THE TRIBAL CHAIRMAN

Subject to this procedure, the White Mountain Apache Constitution, the White Mountain Apache Tribal Code, and the laws of the United States which are applicable to Indians or Indian Tribes, it is the duty of the Tribal Chairman, or in the event of the Chairman's absence or conflict, the duty of the Vice-Chairman, subject to judicial review if requested, to insure review and compliance with this extradition procedure and to order the arrest and delivery to the demanding jurisdiction a fugitive charged with a criminal

offense who has fled from justice and is found within the exterior boundaries of the Fort Apache Indian Reservation.

SECTION 3.3 FORM OF DEMAND

A. No demand for the extradition of an Indian charged with a crime in a state or another Indian reservation shall be recognized by the Tribal Chairman unless the demand is in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state or Indian reservation having jurisdiction of the crime, or by a copy of a complaint supported by affidavit made before a state magistrate or a Tribal Chief Judge.

B. The indictment, information, or complaint supported by affidavit made before a state magistrate or Tribal chief Judge must substantially charge the person demanded with having committed a crime under the laws of the state or other Indian reservation, and the copy must be authenticated by the executive authority making the demand, which shall be prima facie evidence of its truth.

SECTION 3.4 TRIBAL CHAIRMAN MAY INVESTIGATE CASE

When demand shall be made upon the Tribal Chairman by the Executive authority of the state or Indian reservation for the surrender of a person so charged with a crime, the Tribal Chairman may call on the White Mountain Apache Tribal Attorney to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he/she ought to be surrendered.

SECTION 3.5 WHAT PAPERS MUST SHOW

A. A warrant of extradition shall not be issued unless the documents presented by the executive authority making the demand show that:

(1) The accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, and he/she thereafter fled the demanding jurisdiction;

(2) The accused is now on the Fort Apache Indian Reservation; and

(3) The accused is lawfully charged by indictment or by information filed by a prosecuting officer and supported by affidavit to the facts, or by complaint supported by affidavit made before a state magistrate or Tribal Chief Judge, with having committed a crime under the laws of the demanding jurisdiction or has been convicted of a crime in the demanding jurisdiction and has escaped from confinement or broken parole.

SECTION 3.6 **ISSUE OF TRIBAL CHAIRMAN'S WARRANT OF ARREST: ITS RECITAL**

If the Tribal Chairman determines that the demand should be complied with, a warrant of arrest shall be signed, which shall be sealed with the Tribal Seal, and be directed to any commissioned police officer for the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue.

SECTION 3.7 **MANNER AND PLACE OF EXECUTION**

Such warrant shall authorize any commissioned police officer to arrest the accused at any time and any place where the accused may be found on the Fort Apache Indian Reservation, and to deliver the accused, subject to the provisions of this Tribal Extradition Procedure, to the duly authorized agent of the demanding jurisdiction.

SECTION 3.8 **AUTHORITY OF ARRESTING OFFICER**

Every commissioned police officer shall have the authority to arrest the accused and to command assistance therein as empowered by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

SECTION 3.9 **DUTY OF ARRESTING OFFICER; APPLICATION FOR WRIT OF HABEAS CORPUS**

No person arrested upon such warrant shall be delivered over to the demanding jurisdiction unless the accused has been informed of the demand made for his/her surrender and of the crime with which he/she is charged. The accused shall further be advised that he/she has the right to obtain counsel and may contest the legality of his/her arrest in accordance with the habeas corpus provisions of the Indian Civil Rights Act, 25 U.S.C. Section 1303. The accused may also waive extradition and voluntarily surrender himself/herself to the demanding jurisdiction. In either case, the accused, as soon as is practical after arrest, shall be taken before the White Mountain Apache Tribal Chief Judge who shall fix a reasonable time for the accused to apply for a writ of habeas corpus or record that the arrestee has waived extradition.

SECTION 3.10 **COMMITMENT TO AWAIT REQUISITION; BAIL**

If from the examination before the Chief Tribal Judge it appears that the person held is the person charged with having committed the crime alleged and that he/she has fled from justice, the Chief Tribal Judge must commit him/her to jail by virtue of the Tribal Chairman's warrant for such a time not exceeding thirty days, as will enable the appointed agent for the demanding jurisdiction to take personal charge of the prisoner, unless the accused gives bail as provided in Section 3.11 or until he/she is legally discharged.

SECTION 3.11 BAIL; IN WHAT CASES; FORFEITURE OF BAIL

The Chief Judge of the Tribal Court may admit the person arrested to bail or bond or undertaking for such time as will allow him/her to apply for a writ of habeas corpus as prescribed herein. If the prisoner is admitted to bail or fails to press his/her writ of habeas corpus within the time allowed, or fails to appear and surrender himself/herself according to the conditions of the bond, the court by proper order shall declare the bond forfeited and order the rearrest of the accused.

SECTION 3.12 IF NO ARREST IS MADE ON TRIBAL CHAIRMAN'S WARRANT BEFORE THE TIME SPECIFIED

If the accused is not arrested under the warrant of the Tribal Chairman by the expiration of the time specified in the warrant, only the Tribal Chairman may extend such time specification.

SECTION 3.13 FUGITIVE UNDER CRIMINAL PROSECUTION BY THE WHITE MOUNTAIN APACHE TRIBE WHEN DEMAND IS MADE

If a criminal prosecution has been instituted against a named fugitive by the White Mountain Apache Tribe, the Tribal Chairman may, in his discretion, either surrender him/her to the demand jurisdiction or hold the fugitive until he/she has been tried and discharged or convicted and punished on the Fort Apache Indian Reservation.

SECTION 3.14 TRIBAL CHAIRMAN MAY RECALL WARRANT OR ISSUE ALIAS

The Tribal Chairman may recall his warrant of arrest or may issue another warrant whenever he deems proper.

SECTION 3.15 APPLICATION FOR ISSUANCE OF REQUISITION; BY WHOM MADE; CONTENTS

When the return to the Fort Apache Indian Reservation of a person charged with crime on the reservation is required, the Tribal Attorney shall present to the Tribal Chairman his written application for the requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him/her and the state or other Indian Reservation in which he/she is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the Tribal Attorney, the ends of justice require the arrest and return of the accused to the reservation for trial and that the proceeding is not instituted to enforce a private claim. The application shall be verified by affidavit and shall be accompanied by a certified copy of the complaint made to the Tribal Judge stating the offense with which the accused is charged. The Tribal Attorney may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application.

SECTION 3.16 WRITTEN WAIVER OF EXTRADITION PROCEEDINGS; PRIOR WAIVER

A. Any person arrested on the Fort Apache Indian Reservation who is charged with having committed a crime in another state or another Indian reservation or alleged to have escaped from confinement or broken the terms of his/her bail, probation or parole may waive the issuance and service of the warrant provided for herein and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of the Chief Tribal Judge a writing which states that he/she consents to return to the demanding jurisdiction, except that before the waiver is executed or subscribed to by the person it is the duty of the Chief Tribal Judge to inform the person of his/her right to the issuance or service of a warrant of extradition, the right to contest extradition by habeas corpus as provided for in 25 U.S.C. Section 1303, and the right to bail as provided in Section 3.11.

B. If the consent is duly executed, the Chief Tribal Judge shall direct the officer who has custody of the person to deliver the person promptly to the accredited agents or agents of the demanding jurisdiction and to deliver or cause to be delivered to the agent or agents a copy of the consent.

C. Notwithstanding subsection A of this section, a law enforcement agency holding a person who is alleged to have broken the terms of his probation, parole, bail or any other release shall immediately deliver the person to the duly authorized agent of the demanding jurisdiction without the requirement of a Tribal Chairman's warrant if the following apply:

(1) The person signed a prior waiver of extradition as a term of his/her current probation, parole, bail or other release in the demanding jurisdiction.

(2) The law enforcement agency holding the person has received both of the following:

(a) An authenticated copy of the prior waiver of extradition signed by the person; and

(b) A photograph and fingerprints properly identifying the person as the person who signed the waiver.

[NOTE: Sections 3.17 through Section 3.20 were derived from Ordinance No. 201, enacted August 2, 1995.]

SECTION 3.17 CLOSE PURSUIT; DEFINITIONS

In this Chapter, unless the context otherwise requires:

(1) "**Close pursuit**" does not necessarily imply instant pursuit, but pursuit without unreasonable delay, and includes:

- (a) Close pursuit as defined by the common law.
 - (b) Pursuit of a person who has committed a criminal offense, or who is reasonably suspected of having committed a criminal offense.
 - (c) Pursuit of a person suspected of having committed a supposed criminal offense, though no criminal offense has actually been committed, if there is reasonable grounds for believing that a criminal offense has been committed.
- (2) **"Criminal Offense"** means any misdemeanor, felony, petty offense or other criminal act.
- (3) **"Fort Apache Indian Reservation" or "Reservation"** includes all lands within the exterior boundaries of the Fort Apache Indian Reservation as defined in the Constitution of the White Mountain Apache Tribe, Article 1, Section 1.
- (4) **"Person"** means any person over whom the White Mountain Apache Tribe may assert criminal jurisdiction.
- (5) **"Tribal Court" or "Court"** means the courts of the White Mountain Apache Tribe.
- (6) **"Tribal Police Officer"** means a duly sworn officer of the Whiteriver Police Department.

SECTION 3.18 AUTHORITY OF PEACE OFFICER ENTERING RESERVATION IN CLOSE PURSUIT

A member of a duly organized tribal, state, county or municipal law enforcement agency of a reservation or state who enters the Fort Apache Indian Reservation in close pursuit, and continues within the Reservation in close pursuit of a person in order to arrest him on the ground that he is believed to have committed a criminal offense in such other reservation or state shall have the same authority to arrest and hold the person in custody as has a Tribal police officer to arrest and temporarily hold a person in custody within the Reservation on the ground that he is believed to have committed a criminal offense within the Reservation.

SECTION 3.19 ARREST AND HEARING; TRANSFER TO TRIBAL POLICE; TRIBAL JUDGE'S DETERMINATION

A. Upon crossing into the Reservation, the officer in pursuit shall immediately notify and maintain contact with the Whiteriver Police Department until a Tribal police officer responds to the scene, or the arresting officer transports the person arrested pursuant to paragraph B.

B. If an officer of another jurisdiction makes an arrest within the Reservation in accordance with Section 3.18, he shall immediately deliver the person arrested to the custody of the Tribal police. If no Tribal police officer responds to the scene, the arresting officer shall immediately transport the person arrested to Tribal Police headquarters.

C. Upon taking custody of an arrested person, the Tribal police officer shall within 24 hours take the person arrested before a Tribal Court judge, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest.

D. If the judge determines that the arrest was unsupported by probable cause or was otherwise unlawful, the judge shall order the person released from custody.

E. If the judge determines that the arrest was lawful, the judge shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Tribal Chairman pursuant to this Chapter.

SECTION 3.20 INTERPRETATION

The provisions of this procedure shall be interpreted and construed so as to effectuate its general purpose to make uniform the law of the state and Indian reservations that are involved; provided that under no circumstances shall the provisions of this procedure be interpreted to authorize the extradition, pursuit, or arrest of any person within the exterior boundaries of the Fort Apache Indian Reservation without complying with this Chapter.

SECTION 3.21 SHORT TITLE

This procedure may be cited as the Tribal Criminal Extradition Procedure.