

**MESCALERO APACHE TRIBE
MESCALERO, NEW MEXICO**

ORDINANCE 22-11

WHEREAS, the Mescalero Apache Tribe, an Indian Tribe organized under the Indian Reorganization Act of June 18, 1934 (25 U.S.C. § 5123) and under its Revised Constitution has the power to act for the Tribe; and

WHEREAS, the Mescalero Apache Tribal Council has the power to represent the Tribe and act in all matters that concern the welfare of the Tribe and to make decisions not inconsistent with, or contrary to, its Revised Constitution, pursuant to Article XI, Section 1 (i) of the Revised Constitution; and

WHEREAS, the Mescalero Apache Tribal Council has the power to enact ordinances establishing and governing Tribal Courts, regulating social and domestic relations of members of the Tribe, pursuant to Article XI, Section 1 (p) of the Revised Constitution; and

WHEREAS, with the prevalence of social media and other digital forums, negative, mean, hurtful, false, and harassing content also known as cyberstalking and cyberbullying can result in physical violence, substantial negative impacts on emotional and mental health, and substance abuse and suicide, especially in the case of children; and

WHEREAS, Chapter 10 of the Mescalero Apache Tribal Code must be revised to ensure that Reservation Law Enforcement and Prosecutors can prosecute cyberbullying and other similar criminal behavior to fully protect victims; and

WHEREAS, Chapter 35 of the Mescalero Apache Tribal Code must be revised to clarify the civil tort of defamation to better define free speech versus non-protected speech; and

WHEREAS, the Mescalero Apache Tribal Council wishes to adopt the below revisions to Chapters 10 and 35 and believes that the same are in the best interests of the Mescalero Apache people.

NOW, THEREFORE, BE IT ORDAINED that the following revisions to Chapters 10 and 35 of the Mescalero Apache Tribal Code are hereby adopted.

BE IT FURTHER ORDAINED that all contrary provisions are hereby repealed.

**CHAPTER 10
OFFENSES & PENALTIES**

[Sections 10-1-1 to 10-1-8 remain unmodified.]

SECTION 2. CRIMES AGAINST THE PERSON.

[Sections 10-2-1 to 10-2-8 remain unmodified.]

10-2-9. STALKING. Any person who shall willfully or voluntarily engage in a course of conduct involving repeated unconsented contact with another person directly or indirectly, whether by phone calls, in person visits, or other means of contact, after having been requested by the other person to discontinue the same and such course of conduct would cause a reasonable person to feel terrorized; frightened for the safety and well-being of him- or herself, a spouse, an intimate partner, or a close family member; intimidated; threatened; harassed; or molested or causes, attempts to

cause, or reasonably be expected to cause substantial emotional distress shall be deemed guilty of an offense and:

- A. Upon a first conviction, sentenced to imprisonment for a term not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both;
- B. Upon a second conviction, sentenced to imprisonment for a period not to exceed two hundred forty (240) days or a fine not to exceed Seven Hundred and Fifty Dollars (\$750.00), or both; or
- C. Upon a third and each subsequent conviction, sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

10-2-10. CYBERSTALKING. Any person who shall commit stalking via email, social media direct messages or posts, or other internet or electronic communication platform shall be deemed guilty of an offense and:

- A. Upon a first conviction, sentenced to imprisonment for a term not to exceed two hundred (200) days or a fine of Seven Hundred and Fifty Dollars (\$750.00), or both;
- B. Upon a second conviction, sentenced to imprisonment for a period not to exceed three hundred (300) days or a fine not to exceed One Thousand Dollars (\$1,000.00), or both; or
- C. Upon a third and each subsequent conviction, sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed One Thousand Five Hundred Dollars (\$1,500.00), or both.

[Sections 10-3-1 to 10-7-9 remain unmodified.]

10-7-10. UNLAWFUL DISTRIBUTION OF AN INTIMATE IMAGE. Any person who shall knowingly, willfully, and voluntarily distribute a private, visual depiction of a person who is engaging in sexual conduct, or of a person's intimate parts, with reckless disregard for the person's lack of consent to the distribution, when the person is identifiable from the visual depiction itself or information displayed in connection with the visual depiction shall be deemed guilty of an offense and upon conviction sentenced to imprisonment for a period not to exceed ninety (90) days and fine not to exceed Five Hundred Dollars (\$500.00), or both.

10-7-11. SEX OFFENDER REGISTRY. Additional penalties for convictions under Sections 7 and 8 of this Chapter, are mandatory and are found in Chapter 33, "Sex Offender Registry Code.

SECTION 11. CRIMES AGAINST REPUTATION.

10-11-1. DEFAMATION. Any person who shall knowingly or with reckless disregard for the truth communicate or spread any falsehood affecting the reputation, business, or occupation of another, or which exposes another to hatred, contempt, ridicule, degradation or disgrace either orally, in writing shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both. The Mescalero Apache Tribal Court shall recognize common law defenses to criminal defamation existing in jurisdictions outside the Mescalero Apache Indian Reservation.

10-11-2. CYBERBULLYING. Any person who shall commit criminal defamation via email, social media direct messaging or posts, or other internet or electronic communication platform shall be deemed guilty of an offense and upon conviction thereof, shall be:

- A. Upon a first conviction, sentenced to imprisonment for a term not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both;
- B. Upon a second conviction, sentenced to imprisonment for a period not to exceed two hundred forty (240) days or a fine not to exceed Seven Hundred and Fifty Dollars (\$750.00), or both; or
- C. Upon a third and each subsequent conviction, sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed One Thousand Five Hundred Dollars (\$1,500.00), or both.

CHAPTER 35

TORTS AND CLAIMS AGAINST THE MESCALERO APACHE TRIBE

SECTION 1. TORTS.

35-1-1. CIVIL DEFAMATION.

- A. Any person who shall knowingly or with reckless disregard for the truth communicate or spread any falsehood affecting the reputation, business, or occupation of another, or which exposes another to hatred, contempt, ridicule, degradation or disgrace either orally, in writing, or via email, social media direct messages or posts, or other internet or electronic communication platform may be deemed to have committed defamation and made to pay civil damages, including punitive damages, to the person against or about whom the statement was made.
- B. The Mescalero Apache Tribal Court shall recognize that a defamatory statement made against another individual is in fact damaging to the name and reputation of the victim and, therefore, *prima facie* proof of damages to the victim that is sufficient to provide the victim a reasonable monetary recovery in an amount sufficient to discourage such conduct in the future.

REDLINE
CHAPTER 10
OFFENSES & PENALTIES

[Sections 10-1-1 to 10-1-8 remain unmodified.]

SECTION 2. CRIMES AGAINST THE PERSON.

[Sections 10-2-1 to 10-2-8 remain unmodified.]

10-2-9. STALKING. Any person who shall willfully or voluntarily engage in a course of conduct involving repeated unconsented contact with another person directly or indirectly, whether by phone calls, in person visits, ~~email, social media,~~ or other means of contact, after having been requested by the other person to discontinue the same and such course of conduct would cause a reasonable person to feel terrorized, ~~or frightened for the safety and well-being of him- or herself, a spouse, an intimate partner, or a close family member,~~ ~~or intimidated, or threatened, or harassed;~~ or molested ~~or causes, attempts to cause, or reasonably be expected to cause substantial emotional distress~~ shall be deemed guilty of an offense and:

- A. Upon a first conviction, sentenced to imprisonment for a term not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both;
- B. Upon a second conviction, sentenced to imprisonment for a period not to exceed two hundred forty (240) days or a fine not to exceed Seven Hundred and Fifty Dollars (\$750.00), or both; or
- C. Upon a third and each subsequent conviction, sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed One Thousand Dollars (\$1,000.00), or both.

10-2-10. CYBERSTALKING. Any person who shall commit stalking via email, social media direct messages or posts, or other internet or electronic communication platform shall be deemed guilty of an offense and:

- A. Upon a first conviction, sentenced to imprisonment for a term not to exceed two hundred (200) days or a fine of Seven Hundred and Fifty Dollars (\$750.00), or both;
- B. Upon a second conviction, sentenced to imprisonment for a period not to exceed three hundred (300) days or a fine not to exceed One Thousand Dollars (\$1,000.00), or both; or
- C. Upon a third and each subsequent conviction, sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed One Thousand Five Hundred Dollars (\$1,500.00), or both.

[Sections 10-3-1 to 10-7-9 remain unmodified.]

10-7-10. UNLAWFUL DISTRIBUTION OF AN INTIMATE IMAGE. Any person who shall knowingly, willfully, and voluntarily distribute a private, visual depiction of a person who is engaging in sexual conduct, or of a person's intimate parts, with reckless disregard for the person's lack of consent to the distribution, when the person is identifiable from the visual depiction itself or information displayed in connection with the visual depiction shall be deemed guilty of an offense and upon conviction sentenced to imprisonment for a period not to exceed ninety (90) days and fine not to exceed Five Hundred Dollars (\$500.00), or both.

10-7-1011. SEX OFFENDER REGISTRY. Additional penalties for convictions under Sections 7 and 8 of this Chapter, are mandatory and are found in Chapter 33, "Sex Offender Registry Code.

SECTION 11. CRIMES AGAINST REPUTATION.

10-11-1. DEFAMATION. Any person who shall knowingly or with reckless disregard for the truth, falsely and maliciously communicate or spread any falsehood affecting the reputation, business, or occupation of another, or which exposes another to hatred, contempt, ridicule, degradation or disgrace concerning another person either orally, or in writing - shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to imprisonment for a period not to exceed ninety (90) days or a fine not to exceed One Hundred Eighty Dollars (\$180.00), or both. The Mescalero Apache Tribal Court shall recognize common law defenses to criminal defamation existing in jurisdictions outside the Mescalero Apache Indian Reservation.

10-11-2. CYBERBULLYING. Any person who shall commit criminal defamation via email, social media direct messaging or posts, or other internet or electronic communication platform shall be deemed guilty of an offense and upon conviction thereof, shall be:

- A. Upon a first conviction, sentenced to imprisonment for a term not to exceed one hundred eighty (180) days or a fine of Five Hundred Dollars (\$500.00), or both;
- B. Upon a second conviction, sentenced to imprisonment for a period not to exceed two hundred forty (240) days or a fine not to exceed Seven Hundred and Fifty Dollars (\$750.00), or both; or
- A.C. Upon a third and each subsequent conviction, sentenced to imprisonment for a period not to exceed three hundred sixty-five (365) days or a fine not to exceed One Thousand Five Hundred Dollars (\$1,500.00), or both.

CHAPTER 35

TORTS AND CLAIMS AGAINST THE MESCALERO APACHE TRIBE

SECTION 1. TORTS.

35-1-1. SLANDER, LIBEL,CIVIL DEFAMATION. & INTENTIONAL INTERFERENCE. The Mescalero Apache Tribal Court shall recognize the civil torts of slander, libel, and the intentional interference of a contract as those common law torts have been recognized in jurisdictions outside of the Mescalero Apache Reservation

A. Any person who shall knowingly or with reckless disregard for the truth communicate or spread any falsehood affecting the reputation, business, or occupation of another, or which exposes another to hatred, contempt, ridicule, degradation or disgrace either orally, in writing, or via email, social media direct messages or posts, or other internet or electronic communication platform may be deemed to have committed defamation and made to pay civil damages, including punitive damages, to the person against or about whom the statement was made.

A.

35-1-2. PROOF OF DAMAGES. B. The Mescalero Apache Tribal Court shall recognize that a defamatory false and hurtful statement made against another individual is in fact damaging to the name and reputation of the victim and, therefore, *prima facie* proof of damages to

| the victim that is sufficient to provide the victim a reasonable monetary recovery in an amount sufficient to discourage such ~~indecent and vile~~ conduct in the future.

ORDINANCE 22-11

CERTIFICATION

The foregoing enactment of the Mescalero Apache Tribal Council is duly adopted and approved on the 12th day of December 2022, at a legally called session of the Mescalero Apache Tribal Council, by a vote of 6 in favor, 0 opposed, 2 abstained and 0 absent at which a quorum was present and at which a majority of the members voted in favor thereof. This enactment is approved by the President of the Mescalero Apache Tribe under authority of Article XII, Section 1, of the Revised Constitution.

Bernalyn R Via (Acting)

Eddie Martinez, President

Ardena Orosco
Ardena Orosco, Secretary