



# **GILA RIVER INDIAN COMMUNITY**

## **SACATON, AZ 85147**

### **ORDINANCE GR-003-22**

**THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE GILA RIVER INDIAN COMMUNITY CODE, TITLE 5, CRIMINAL CODE BY AMENDING AND ENACTING REVISIONS TO CHAPTER 4, SENTENCING; CHAPTER 12, CONTROLLED SUBSTANCES; AND CHAPTER 15, CRIMINAL PROCEDURE**

**WHEREAS,** the Gila River Indian Community Council (the "Community Council") is the governing body of the Gila River Indian Community (the "Community"), a federally recognized and sovereign Indian tribe; and

**WHEREAS,** the Community Council is authorized by Article XV, Section 1(a)(9) of the Constitution and Bylaws of the Community (March 17, 1960) (the "Constitution") to promote and protect the health, peace, morals, education, and general welfare of the Community and its members; and

**WHEREAS,** the Community Council is authorized by Article XV, Section 1(a)(17) of the Constitution to provide for the maintenance of law and order and the administration of justice by establishing a Community Court and police force and defining the powers and duties thereof; and

**WHEREAS,** the Community Council is authorized by Article XV, Section 1(a)(19) of the Constitution to pass ordinances necessary or incidental to the exercise of any of their powers authorized by Article XV, Section 1(a) of the Constitution; and

**WHEREAS,** the power to enact laws and ordinances is an inherent function of self-government which the Community has exercised over the years; and

**WHEREAS,** in 2010, voters in Arizona passed the Arizona Medical Marijuana Act, which set a presumption that a person is using marijuana for medicinal purposes and therefore not subject to arrest, prosecution or penalty if the person is in possession of a Registry Identification Card issued by the Arizona Department of Health Services; and

**WHEREAS,** in 2020, the voter in Arizona voters passed the Smart and Safe Arizona Act, which, among other things, legalized recreational marijuana for persons twenty-one years of age or older; and

**WHEREAS,** since 2018, the Community has reviewed and evaluated potential impacts on the Community as result of implementing medical marijuana and decriminalizing recreational marijuana in the Community; and

**WHEREAS,** the process to amend and revise the Criminal Code and incorporate medical marijuana and decriminalize recreational marijuana included review and input from Community departments and entities, including Human Resources Department, Department of Housing Development, Department of Community Housing, Department of Rehabilitation and Supervision, Gila River Police Department, Gila River Fire Department, Protective Services Office, Defense Services Office, Office of the Prosecutor, Department of Land Use Planning and Zoning, and Gila River Health Care; and

**WHEREAS,** the amended Criminal Code has complied with pre-adoption notification procedures pursuant to Title Eight, Chapter Seven, Section 8.703 of the Community Code by publication in the Gila River Indian Community News ("GRIN") on December 3, 2021, December 21, 2021, and a GRIN Special Edition on July 15, 2022, two virtual outreach meeting on February 5, 2022, and posting at all seven district service centers; and

**WHEREAS,** the amendments to the Criminal Code, as attached, include the following Chapters and Sections:

1. Chapter 4, Sentencing,  
Section 5.407 Classification of Offenses and Sentencing Structure;
2. Chapter 12, Controlled Substances,  
Section 5.1207 Possession, Use, or Production of Marijuana,  
Section 5.1207.1 Sale of Marijuana,  
Section 5.1208 Possession, Manufacture, Delivery,  
Advertisement of Drug Paraphernalia,  
Section 5.1210 Furnishing Marijuana to a Minor,  
Section 5.1213 Adult Use of Marijuana,  
Section 5.1214 Medical Marijuana,  
Section 5.1215 Definitions; and
3. Chapter 15, Criminal Procedure,  
Section 5.1202 Prosecutorial authority to initiate or dismiss  
offenses;  
Section 5.1510 Bail Hearings.

**WHEREAS,** the Legislative Standing Committee recommends enactment of the amended Criminal Code with an effective date of September 7, 2022.

**NOW, THEREFORE, BE IT ENACTED**, that the Community Council hereby amends Title 5, Criminal Code, and approves and enacts the attached revisions to Chapter 4, Sentencing; Chapter 12, Controlled Substances; and Chapter 15, Criminal Procedure.

**BE IT FURTHER ENACTED**, that the amended Criminal Code shall be made publically available at all District Service Centers, the Department of Rehabilitation and Supervision, and made available on-line.

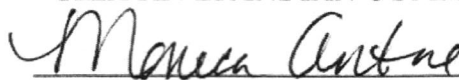
**BE IT FURTHER ENACTED**, that the amendments to Title 5, Criminal Code, Chapter 4, Sentencing; Chapter 12, Controlled Substances; and Chapter 15, Criminal Procedure shall become effective on September 7, 2022.

**BE IT FINALLY ENACTED**, that the Governor, or in the Governor's absence the Lieutenant Governor, is hereby authorized to take all steps necessary to carry out the intent of this enactment.

#### **CERTIFICATION**

Pursuant to authority contained in Article XV, of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Ordinance was adopted on the 7<sup>th</sup> day of September, 2022, at a Regular Community Council Meeting held by WebEx platform, at which a quorum of 16 members were present by a vote of: 13 FOR; 3 OPPOSE; 0 ABSTAIN; 1 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY

  
GOVERNOR

ATTEST:

  
COMMUNITY COUNCIL SECRETARY



## CHAPTER 4. SENTENCING

### 5.407. Classification of Offenses and Sentencing Structure.

A. When an offense is punishable as either a felony or a misdemeanor, the offense shall be considered a misdemeanor except when specifically charged as a felony. An offense punishable as either a felony or a misdemeanor is a felony when (1) one or more aggravating factors, as identified in subsection 5.407.C.7.(a)-(aa) are specifically included in the charging complaint as an additional element or (2) an additional element is included in the offense and the charging complaint, and proved beyond a reasonable doubt or admitted to by the defendant.

#### B. Classification of Offenses.

1. For purposes of sentencing, felonies are classified into the following three categories: category I felony; category II felony; or category III felony.
2. For purposes of sentencing, misdemeanors are classified into the following three categories: category I misdemeanor; category II misdemeanor, or category III misdemeanor.
3. For purposes of sentencing, petty offenses are offense for which a sentence of only a fine is authorized.

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#### H. Felony Offense Categories.

1. Felony Offense, Category I (Offense, Code Section):
  - a. Homicide, 5.601.B;
  - b. Aggravated Assault, 5.603.B;
  - c. Kidnapping, 5.607.B;
  - d. Child Abuse, 5.705.E;
  - e. Elderly or Vulnerable Adult Abuse, 5.706.D;
  - f. Sexual Assault, 5.801.D;
  - g. Sexual Abuse, 5.802.C;
  - h. Sexual Conduct with a Minor, 5.803.D;
  - i. Molestation of a Child, 5.804.C;
  - j. Arson, 5.909.B.2;
  - k. Participating in or Assisting a Criminal Street Gang, 5.1005.K;
  - l. Drive-by Shooting, 5.1010.E;
  - m. Sale of Marijuana, 5.1207.1.B.2.
2. Felony Offense, Category II (Offense, Code Section):
  - a. Bribery, 5.501.C;
  - b. Perjury, 5.502.C;



- c. Obstructing a Criminal Investigation or Prosecution, 5.517.C;
- d. Possession of Contraband by a Jail Inmate, 5.518.C;
- e. Delivery of Contraband, 5.519.C;
- f. Stalking, 5.608.C;
- g. Incest, 5.805.B;
- h. Aggravated Burglary, 5.903.B;
- i. Robbery, 5.904.C;
- j. Arson, 5.909.B.1,B.3, or B.4;
- k. Theft by Extortion, 5.912.D;
- l. Receiving Stolen Property, 5.913.C;
- m. Forgery, 5.1101.D;
- n. Possession, Use or Manufacture of Controlled Substances, 5.1201.F;
- o. Endangering Human Life While Illegally Manufacturing Controlled Substances, 5.1202.C;
- p. Maintaining Drug-Involved Premises, 5.1203.C;
- q. Distribution of Controlled Substances to Persons Under Age 21, 5.1204.C;
- r. Employment or Use of Persons under 18 Years of Age in Drug Operations, 5.1205.C;
- s. Distribution or Manufacturing A Controlled Substance In or Near Schools or Playgrounds, 5.1206.C;
- t. Sale of Marijuana, 5.1207.1.C.2;
- u. Misconduct Involving Weapons, 5.1301.E;
- v. Misuse of Firearms, 5.1302.D.

3. Felony Offense, Category III (Offense, Code Section):

- a. False Reporting, 5.503.E;
- b. Resisting Arrest, 5.506.C;
- c. Tampering with Public Record, 5.511.C;
- d. Escape from Lawful Custody, 5.512.E;
- e. Witness Tampering, 5.513.C;
- f. Receiving a Bribe as a Witness, 5.514.C;
- g. Jury Tampering, 5.515.C;
- h. Receiving a Bribe by a Juror, 5.516.C;
- i. Theft, 5.905.E;
- j. Criminal Damage to Property, 5.908.E;
- k. Riot, 5.1001.C;
- l. Fraud by Person Authorized to Provide Goods or Services, 5.1103.E;
- m. Fraudulent Use of Credit Card, 5.1104.D;
- n. Fraudulent Schemes and Practices Against the Community, 5.1108.C;
- o. Possession, Manufacture, Delivery, Advertisement of Drug Paraphernalia, 5.1208.F.

I. Misdemeanor Offense Categories.

1. Misdemeanor Offense, Category I (Offense, Code Section):

- a. Bribery, 5.501.B;
- b. Perjury, 5.502.B;
- c. Interfering with Law Enforcement or Jail Employee, 5.504.B;
- d. Resisting Arrest, 5.506.B;
- e. Escape from Lawful Custody, 5.512.D;
- f. Jury Tampering, 5.515.B;
- g. Obstructing a Criminal Investigation or Prosecution, 5.517.B;
- h. Possession of Contraband By a Jail Inmate, 5.518.B;
- i. Delivery of Contraband, 5.519.B;
- j. Assault, 5.602.B;
- k. Threatening, 5.605.B;
- l. Stalking, 5.608.B;
- m. Harassment, 5.609.D;
- n. Bigamy, 5.701.B;
- o. Child Abuse, 5.705.D;
- p. Elderly or Vulnerable Adult Abuse, 5.706.C;
- q. Contributing to the Delinquency of a Minor, 5.708.B;
- r. Indecent Exposure, 5.806.C;
- s. Causing or Taking a Child for Purposes of Prostitution, 5.808.B;
- t. Criminal Trespass, 5.901.B;
- u. Burglary, 5.902.B;
- v. Robbery, 5.904.B;
- w. Theft, 5.905.D;
- x. Shoplifting, 5.906.C;
- y. Criminal Damage to Property, 5.908.D;
- z. Arson, 5.909.D;
- aa. Theft by Extortion, 5.912.C;
- bb. Receiving Stolen Property, 5.913.B;
- cc. Criminal Polluting, 5.915.B;
- dd. Riot, 5.1001.B;
- ee. Cruelty to Animals, 5.1004.C;
- ff. Participating in or Assisting a Criminal Street Gang, 5.1005.J;
- gg. Wearing or Displaying Criminal Street Gang Clothing or Attire, 5.1006.B;
- hh. Defacement, 5.1007.C;
- ii. Drive-by Shooting, 5.1010.D;
- jj. Forgery, 5.1101.C;
- kk. Obtaining Signature by Deception, 5.1102.B;
- ll. Fraud by Person Authorized to Provide Goods or Services, 5.1103.D;
- mm. Fraudulent Use of Credit Card, 5.1104.C;
- nn. Possession, Use or Manufacture of Controlled Substances, 5.1201.E;
- oo. Endangering Human Life While Illegally Manufacturing Controlled Substances, 5.1202.B;
- pp. Maintaining Drug-Involved Premises, 5.1203.B;
- qq. Distribution of Controlled Substances to Persons Under Age 21, 5.1204.B;

- rr. Employment or Use of Persons under 18 Years of Age in Drug Operations, 5.1205.B;
- ss. Distribution or Manufacturing a Controlled Substance In or Near Schools or Playgrounds, 5.1206.B;
- tt. Sale of Marijuana, 5.1207.1.B.1 and C.1;
- uu. Possession, Manufacture, Delivery, Advertisement of Drug Paraphernalia, 5.1208.E;
- vv. Unlawful Possession, Sale, Use of Vapor-Releasing Substances, 5.1209.D;
- ww. Furnishing Marijuana to a Minor, 5.1210.B;
- xx. Misconduct Involving Weapons, 5.1301.D;
- yy. Misuse of Firearms, 5.1302.C;
- zz. Negligent Use of a Deadly Weapon, 5.1303.C;
- aaa. Dangerous Use of Explosives, 5.1304.B;
- bbb. Misconduct Involving Explosives, 5.1306.C;
- ccc. Unlawful Sale of Liquor, 5.1403.B;
- ddd. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.1;
- eee. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.2;
- fff. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.3;
- ggg. The following offenses have misdemeanor penalties effective January 1, 2014 through April 30, 2014 only: Homicide, 5.601.C; Kidnapping, 5.607.C; Aggravated Assault, 5.603.C; Sexual Assault, 5.801.E; Sexual Abuse, 5.802.D; Sexual Conduct with a Minor, 5.803.E; Molestation of a Child, 5.804.D; and Incest, 5.805.C.

2. Misdemeanor Offense, Category II (Offense, Code Section):

- a. False Reporting, 5.503.D;
- b. Refusing to Aid Law Enforcement Officer, 5.505.C;
- c. Refusing to Assist in Fire Control, 5.507.C;
- d. Failure to Obey Court Order, 5.508.B;
- e. Failure to Obey Restraining Order, 5.509.B;
- f. Criminal Contempt of Court, 5.510.D;
- g. Tampering with Public Record, 5.511.B;
- h. Witness Tampering, 5.513.B;
- i. Receiving a Bribe as a Witness, 5.514.B;
- j. Receiving a Bribe by a Juror, 5.516.B;
- k. Tampering with Physical Evidence, 5.520.B;
- l. Impersonating a Law Enforcement Officer, 5.521.B;
- m. Endangerment, 5.604.B;
- n. Unlawful Restraint, 5.606.B;
- o. Abandonment of a Child, 5.704.B;
- p. Criminal Nuisance, 5.1003.B;
- q. Delivery of Graffiti Material to a Minor, 5.1008.C;

- r. Fraudulent Use of Per Capita Payments, 5.1106.B;
- s. Making or Permitting a False Claim for Reimbursement for Community Assistance Services, 5.1107.C;
- t. Fraudulent Schemes and Practices Against the Community, 5.1108.B;
- u. Telecommunication Fraud, 5.1109.C;
- v. Unlawful Pyramid Promotional Scheme, 5.1111.G;
- w. Possession, Use, or Production of Marijuana, 5.1207.B.3, E.3, and F.3;
- x. Sale of Marijuana, 5.1207.1.C.1;
- y. Delivery of Liquor to a Minor, 5.1402.B;
- z. Extreme Driving Under Influence or Actual Physical Control, 6.602.B;
- aa. Extreme Driving Under Influence or Actual Physical Control, 6.602.C.

3. Misdemeanor Offense, Category III (Offense, Code Section):

- a. Refusing to Provide Truthful Name when Lawfully Detained, 5.522.C;
- b. Adultery, 5.702.B;
- c. Criminal Nonsupport, 5.703.E;
- d. Failure to Send Minor to School, 5.707.B;
- e. Interference with Custody, 5.709.C;
- f. Prostitution, 5.807.B;
- g. Promotion of Prostitution, 5.809.B;
- h. Joyriding, 5.907.B;
- i. Reckless Burning, 5.910.C;
- j. Setting Brush Fires, 5.911.C;
- k. Criminal Littering, 5.914.C;
- l. Disorderly Conduct, 5.1002.B;
- m. Failure to Adequately Supervise Minor, 5.1009.B;
- n. Tapping Electrical or Gas Lines, 5.1110.B;
- o. Furnishing Tobacco to a Minor, 5.1211.B;
- p. Possession, Use, or Production of Marijuana, 5.1207.B.2, D.2, E.2, and F.2;
- q. Unlawful Sale or Use of Fireworks, 5.1305.E;
- r. Underage Possession of Liquor, 5.1401.B;
- s. Possession of Alcohol Near a Hospital, Medical Clinic, School or Church, 5.1405.B;
- t. Driving or Actual Physical Control While Under the Influence, 6.601.C;
- u. Driving or Actual Physical Control While Under the Influence, 6.601.D;
- v. Possession of Alcoholic Beverage in a Motor Vehicle, 6.607.

J. Petty offenses. For petty offenses, a sentence of only a fine is authorized. The fine for a petty offense shall be no more than three hundred dollars (\$300.00).

K. Felony compatibility references in this title are not binding on the Community Court.

L. Effective Dates: The effective date for Subsections A, B.1, C.1.d, E, H and references to felony offenses or sentencing in Subsections C.3.a, C.6, and F shall be May 1, 2014. Subsection I.1.ggg. shall be effective January 1, 2014 through April 30, 2014.

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*HISTORY:* New Section.



## CHAPTER 12. CONTROLLED SUBSTANCES

### 5.1201. Possession, Use or Manufacture of Controlled Substances.

A. A person commits the offense of possession, use or manufacture of controlled substances if he knowingly:

1. Manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute, or dispense, a controlled substance;
2. Creates, distributes, or possesses with intent to distribute, dispenses, or disposes a counterfeit substance;
3. With intent to commit a crime of violence against an individual, distributes a controlled substance or controlled substance analogue to that individual without that individual's knowledge;
4. Possesses equipment or a listed chemical with intent to manufacture a controlled substance except as authorized by this chapter;
5. Possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this chapter;
6. Possesses or uses a controlled substance except as authorized by this chapter; or
7. Administers a controlled substance to another person except as authorized by this chapter.

B. Any person convicted of manufacturing or possessing chemicals or equipment to manufacture a controlled substance shall also be required to repay any and all costs to remove chemicals, materials or property contaminated by said chemicals or equipment, and repair or remediate real property or watersheds where said chemicals were possessed, stored, used or disposed.

C. All controlled substances except as authorized by this chapter are subject to forfeiture pursuant to Chapter 15 of this title.

D. In the case of controlled substances in schedule V, the offense shall be charged as a misdemeanor, except that any violation following a prior controlled substance conviction may be charged as a felony.

E. The penalty for misdemeanor possession, use or manufacture of controlled substances shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

F. The penalty for felony possession, use or manufacture of controlled substances shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

F. Effective Dates: The effective date for Subsections D and F shall be May 1, 2014.

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*HISTORY:* GRIC Code §5.701 (2009).

Felony Comparability References: 21 U.S.C. §841; Ariz. Rev. Stat §13-3407.

#### **5.1202. Endangering Human Life While Illegally Manufacturing Controlled Substances.**

A. A person commits the offense of endangering human life while illegally manufacturing a controlled substance in violation of this chapter, or attempting to do so, when he transports or causes to be transported materials, including chemicals, in a manner that creates a substantial risk of harm to human life.

B. The penalty for misdemeanor endangering human life while illegally manufacturing controlled substance shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

C. The penalty for felony endangering human life while illegally manufacturing controlled substance shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

D. Effective Dates: The effective date for Subsection C shall be May 1, 2014.

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*HISTORY:* New Offense.

Felony Comparability References: 21 U.S.C. §858.

#### **5.1203. Maintaining Drug-Involved Premises.**

A. A person commits the offense of maintaining drug-involved premises if he:

1. Knowingly leases, rents, uses or maintains any place, whether permanent or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance; or
2. Manages or controls any place, whether permanent or temporarily, either as owner or lessee, agent, employee, occupant, and knowingly and intentionally renting, leasing, profiting from, or making available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.

B. The penalty for misdemeanor maintaining drug-involved premises shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

C. The penalty for felony maintaining drug-involved premises shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

D. Effective Dates: The effective date for Subsection C shall be May 1, 2014.

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*HISTORY:* New Offense.

Felony Comparability References: 21 U.S.C. §856.

#### **5.1204. Distribution of Controlled Substances to Persons Under Age 21.**

A. A person commits the offense of distribution of controlled substance to persons under age 21 if he distributes a controlled substance, except as authorized by this chapter, to a person under 21 years of age.

B. The penalty for misdemeanor distribution of controlled substance to persons under age 21 shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

C. The penalty for felony distribution of controlled substance to persons under age 21 shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

D. Effective Dates: The effective date for Subsection C shall be May 1, 2014.

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*HISTORY:* New Offense.

Felony Comparability References: 21 U.S.C. §859.

#### **5.1205. Employment or Use of Persons Under 18 Years of Age in Drug Operations.**

A. A person commits the offense of employment or use of persons under 18 years of age in drug operations when he knowingly or intentionally:

1. Employs, hires, uses, persuades, induces, entices or coerces, a person under 18 years of age to violate any provision of this chapter;
2. Employs, hires, uses, persuades, induces, entices, or coerces, a person under 18 years of age to assist in avoiding detection or apprehension for any offense of this chapter by any Community or Federal law enforcement official; or
3. Receives a controlled substance from a person under 18 years of age, other than immediate family member, in violation of this chapter.

B. The penalty for misdemeanor employment or use of persons under 18 years of age in drug operations shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

C The penalty for felony employment or use of persons under 18 years of age in drug operations shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

D. Effective Dates: The effective date for Subsection C shall be May 1, 2014.

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*HISTORY:* New Offense.

Felony Comparability References: 21 U.S.C. §861.

**5.1206. Distribution or Manufacturing A Controlled Substance In or Near Schools or Playgrounds.**

A. A person commits the offense of distribution or manufacturing a controlled substance in or near schools or playgrounds if he violates 5.1201.A.1., Possession, Use or Manufacture of Controlled Substances, or 5.1203, Maintaining Drug-Involved Premises, by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within 1,000 feet of real property comprising a public or private elementary school, or a playground, or housing facility owned by a Community housing department or entity, or within 100 feet of a youth center, or public swimming pool.

B. The penalty for misdemeanor distribution or manufacturing in or near schools or playgrounds shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

C. The penalty for felony distribution or manufacturing in or near schools or playgrounds shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

D. Effective Dates: The effective date for Subsection C shall be May 1, 2014.

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*HISTORY:* New Offense.

Felony Comparability References: 21 U.S.C. §860.

**5.1207. Possession, Use, or Production of Marijuana.**

A. Notwithstanding any other law, a person who is at least 21 years of age who possesses an amount of marijuana greater than one (1) ounce, but not more than two and one-half (2.5) ounces of marijuana, or more than twelve and one-half (12.5) grams is in the form of marijuana concentrate, is guilty of a petty offense.

B. Notwithstanding any other law, a person who is at least 21 years of age who possesses an amount of marijuana greater than two and one-half (2.5) ounces, but not more than two (2) pounds, or more than twelve and one-half (12.5) grams in the form of marijuana concentrate, is guilty of a category I misdemeanor.

C. Notwithstanding any other law, a person who is at least 21 years of age who possesses an amount of marijuana greater than two (2) pounds shall be guilty of a category II felony.

D. Notwithstanding any other law, a person who is under 21 years of age and who possesses, consumes, transports or transfers without remuneration one (1) ounce or less of marijuana, of which not more than five (5) grams is in the form of marijuana concentrate, or paraphernalia relating to the consumption of marijuana or marijuana products:

1. For a first violation, is guilty of a petty offense, and in the court's discretion, may be ordered to attend up to four (4) hours of drug education or counseling.
2. For a second violation, is guilty of a category III misdemeanor, and shall be ordered to attend at least four (4) and no more than eight (8) hours of drug education or counseling.
3. For a third or subsequent violation, is guilty of a category II misdemeanor.

E. A person who smokes marijuana in a public place or open space is guilty of a petty offense.

F. Notwithstanding any other law, any person who cultivates marijuana plants pursuant to section 5.1213.A.2 where they are visible from public view without using binoculars, aircraft or other optical aids or outside of an enclosed area that is equipped with a lock or other security device that prevents access by persons under 21 years of age is guilty of:

1. For a first violation, a petty offense.
2. For a second or subsequent violation, a category III misdemeanor.

G. A person who is under 21 years of age and who misrepresents the person's age to any other person by means of a written instrument of identification or who uses a fraudulent or false written instrument of identification with the intent to induce a person to sell or otherwise transfer marijuana or a marijuana product to the person who is under 21 years of age is guilty of:

1. For a first violation, a petty offense.
2. For a second violation, is guilty of a category III misdemeanor.
3. For a third or subsequent violation, is guilty of a category II misdemeanor.



H. A person who is under 21 years of age and who solicits another person to purchase marijuana or a marijuana product in violation of this chapter is guilty of:

1. For a first violation, a petty offense.
2. For a second violation, is guilty of a category III misdemeanor.
3. For a third or subsequent violation, is guilty of a category II misdemeanor.

#### **5.1207.1 Sale of Marijuana.**

A. A person commits the offense of sale of marijuana if he:

1. Possesses marijuana or marijuana concentrate in violation of this chapter;
2. Possesses, transports, cultivates, or processes marijuana in violation of this chapter; or
3. Transports for sale, or offers to transport for sale, sells, transfers or offers to sell or transfer marijuana in violation of this chapter.

B. The penalty for misdemeanor sale of marijuana shall be imprisonment not to exceed one year, or a fine of not less than \$1,000.00 but not more than \$5,000.00, or both.

C. The penalty for felony sale of marijuana shall be imprisonment not to exceed three years, or a fine of not less than \$5,000.00 but not more than \$15,000.00, or both.

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*HISTORY:* GRIC Code §§5.702, 703 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-3405.

#### **5.1208. Possession, Manufacture, Delivery, Advertisement of Drug Paraphernalia.**

A. A person commits the offense of possession, manufacture, delivery, advertisement of drug paraphernalia if he:

1. Uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the body a drug in violation of this chapter;
2. Delivers, possesses with intent to deliver or manufacture with intent to deliver drug paraphernalia knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store,

contain, conceal, ingest, inhale or otherwise introduce into the human body a drug in violation of this chapter; or

3. Places in a newspaper, magazine, handbill or other publication any advertisement knowing, or under circumstances where one should reasonably know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

B. For purposes of this subsection, *deliver* or *delivery* means the actual, constructive, or attempted transfer of drug paraphernalia, whether or not there exists an agency relationship.

C. Drug paraphernalia used in violation of this chapter is subject to forfeiture pursuant to Chapter 15 of this title. The failure to charge or acquittal of an owner or anyone in control of drug paraphernalia in violation of this chapter does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

D. Factors to Determine if an Object is Drug Paraphernalia. The court, a law enforcement officer, or probation officer may consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner or anyone in control of the object, under any Community, tribal, state or federal law relating to any controlled substance or a vapor-releasing substance containing a toxic substance;
3. The proximity of the object, in time and space, to a direct violation of the Code involving controlled substances;
4. The proximity of the object to a controlled substance or a vapor-releasing substance containing a toxic substance;
5. The presence of any residue of a controlled substance or a vapor-releasing substance containing a toxic substance on the object;
6. Instructions, oral or written, provided with the object concerning its use;
7. Descriptive materials accompanying the object concerning its use;
8. National and local advertising concerning its use;
9. The manner in which the object is displayed for sale;
10. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the Community;

11. The existence and scope of legitimate uses for the object in the Community; and/or
12. Expert testimony concerning its use.

E. The penalty for misdemeanor possession, manufacture, delivery and advertisement of drug paraphernalia shall be imprisonment not to exceed one year, or a fine not to exceed \$5,000.00, or both.

F. The penalty for felony possession, manufacture, delivery and advertisement of drug paraphernalia shall be imprisonment not to exceed three years, or a fine not to exceed \$15,000.00, or both.

G. Effective Dates: The effective date for Subsection F shall be May 1, 2014.

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*HISTORY:* GRIC Code §5.705 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-3415.

#### **5.1209. Unlawful Possession, Sale, Use of Vapor-Releasing Substances.**

A. A person commits the offense of unlawful possession, sale, use of vapor-releasing substances if he knowingly:

1. Inhales, breathes, or drinks paint, gas, glue, or any other vapor-releasing substance or product containing a toxic substance for the purpose of becoming intoxicated;
2. Possesses any container or material with paint, gas, glue, or any other vapor-releasing substance, for the purpose of becoming intoxicated; or
3. Sells, transfers or offers to sell or transfer a vapor-releasing substance containing toxic substance to a person under 18 years of age.

B. For purposes of this subsection, *vapor-releasing substance containing a toxic substance* means paint or varnish dispensed by the use of aerosol spray, or any glue, that releases vapors or fumes containing acetone, volatile acetates, benzene, butyl alcohol, ethyl alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ketone, pentachlorophenol, petroleum ether, toluene, volatile ketones, isophorone, chloroform, methylene chloride, mesityl oxide, xylene, cumene, ethylbenzene, trichloroethylene, mibk, miak, mek or diacetone alcohol or isobutyl nitrite.

C. This offense is not applicable to the transfer of vapor-releasing substances containing a toxic substance from a parent or guardian to his child or ward, or the sale or transfer for manufacturing or industrial purposes.

D. The penalty for misdemeanor unlawful possession, sale, use of vapor-releasing substance shall be imprisonment not to exceed one year, or a fine not to exceed \$5,000.00, or both.

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*HISTORY:* GRIC Code §5.704 (2009).

**5.1210. Furnishing Marijuana to a Minor.**

A. A person commits the offense of furnishing marijuana to a minor if he gives or furnishes marijuana to any person under 21 years of age.

B. The penalty for misdemeanor furnishing marijuana to a minor shall be imprisonment not to exceed one year, or a fine not to exceed \$5,000.00, or both.

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*HISTORY:* New Offense.

**5.1211. Furnishing Tobacco to a Minor.**

A. A person commits the offense of furnishing tobacco to a minor if he gives or furnishes cigars, cigarettes or cigarette papers, or smoking or chewing tobacco to any person under 18 years of age.

B. The penalty for misdemeanor furnishing tobacco to a minor shall be imprisonment not to exceed one year, or a fine not to exceed \$5,000.00, or both.

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*HISTORY:* New Offense.

**5.1212. Exceptions.**

A. This chapter shall not apply to persons who:

1. Possess, have under their control, or transport controlled substances pursuant to a prescription issued to that person by a licensed physician, osteopath, physician's assistant, nurse practitioner, dentist, veterinarian, or other medical personnel authorized by law, where such use is:
  - a. Under the supervision of and pursuant to a prescription issued to that person by a licensed physician, osteopath, physician's assistant, nurse practitioner, dentist, or other medical personnel authorized by law;
  - b. As prescribed, as may be determined by analysis of the person's blood, urine or other bodily fluids, which analysis quantifies the amount of the controlled substance in the person's system and which quantified amount is within the range of medically accepted levels for the effective use of the controlled substance for that person; and
  - c. For a current medical condition and is reasonable according to generally accepted medical standards.

2. Are licensed manufacturers, wholesalers, pharmacists, physicians, physician assistants, nurse practitioners, osteopaths, dentists, or veterinarians who have under their control, dispense, transport, sell, possess for sale, furnish, administer, or offer to do the same, any controlled substance prohibited by this section while acting within the scope of their profession, in good faith, and in accordance with generally accepted medical standards (where applicable), provided such acts are consistent with and not in violation of any law, regulation, code or ordinance of the United States or the Gila River Indian Community.
3. Are duly commissioned law enforcement officials and other authorized employees of any tribal, state, or federal law enforcement agency while performing required functions within the scope of their official duties.

B. Peyote. This chapter shall not apply to persons who use or intend to use peyote in connection with a bona fide practice of a religious belief, as an integral part of a religious exercise, and in a manner not dangerous to the public health or morals of the Community.

C. Exceptions as affirmative defenses. These exceptions shall be affirmative defenses and subject to the requirements under Section 5.204, Burden of Proof Required to Assert Affirmative Defenses.

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*HISTORY:* GRIC Code §5.701 (2009).

#### **5.1213. Adult Use Marijuana**

A. Except as specifically and expressly provided in subsection C and notwithstanding any other law, the following acts by a person who is at least 21 years of age are lawful, are not an offense under the laws of the Community, may not constitute the basis for detention, search or arrest, and cannot serve as the sole basis for seizure or forfeiture of assets, for imposing penalties of any kind under the laws of the Community or for abrogating or limiting any right or privilege conferred or protected by the laws of the Community:

1. Possessing, consuming, purchasing, processing, transporting, or manufacturing by manual or mechanical means, including sieving or ice water separation but excluding chemical extraction or chemical synthesis one (1) ounce or less of marijuana, except that not more than five (5) grams of marijuana may be in the form of marijuana concentrate.
2. Possessing, transporting, cultivating or processing not more than six (6) marijuana plants for personal use at the person's homesite, and possessing, processing and manufacturing by manual or mechanical means, including sieving or ice water separation but excluding chemical extraction or chemical synthesis, the marijuana



produced by the plants on the premises where the marijuana plants were grown if all of the following apply:

- a. Not more than six (6) plants are produced at a homesite where at least one person is at least 21 years of age.
  - b. Cultivation takes place within a closet, room, greenhouse or other enclosed area on the grounds of the homesite equipped with a lock or other security device that prevents access by persons under 21 years of age.
  - c. Cultivation takes place in an area where the marijuana plants are not visible from public view without using binoculars, aircraft or other optical aids.
  - d. The person cultivating the plants has registered with the Department of Land Use Planning and Zoning in accordance with the policies and procedures the Department of Land Use Planning and Zoning adopts to implement and enforce this subsection.
3. Acquiring, possessing, manufacturing, using, purchasing, selling or transporting paraphernalia relating to the cultivation, manufacture, processing or consumption of marijuana or marijuana products.
  4. Assisting another person who is at least 21 years of age in any of the acts described in this subsection.
  5. Notwithstanding any other law, a person with metabolites or components of marijuana in the person's body is not guilty of violating Title 6, Chapter 6 unless the person is also impaired to the slightest degree.

B. Notwithstanding any other law, the odor of marijuana or burnt marijuana does not by itself constitute reasonable articulable suspicion of a crime. This subsection does not apply when a law enforcement officer is investigating whether a person has violated Title 6, Chapter 6.

C. This chapter does not:

1. Allow driving, flying or boating while impaired to even the slightest degree by marijuana or prevent the Community from enacting and imposing penalties for driving, flying or boating while impaired to even the slightest degree by marijuana.

2. Allow a person who is under 21 years of age to purchase, possess, transport or consume marijuana or marijuana products.
3. Allow the sale, transfer or provision of marijuana or marijuana products to a person who is under 21 years of age.
4. Allow any person to:
  - a. Consume or smoke marijuana within 100 feet of a public place or open space.
  - b. Consume marijuana or marijuana products while driving, operating or riding in the passenger seat or compartment of an operating motor vehicle, boat, vessel, aircraft or another vehicle used for transportation.
  - c. Possess, consume or smoke marijuana on the grounds of any preschool, primary school, or secondary school, on a school bus, or in any correction facility.
5. Restrict the rights of the Community and its entities to maintain a drug- and alcohol-free workplace or affect the ability of the Community to have workplace policies restricting the use of marijuana by employees or prospective employees.
6. Require the Community to allow or accommodate the use, consumption, possession, transfer, display, transportation, sale or cultivation of marijuana in a place of employment.
7. Prohibit the Community or any of its entities, enterprises, affiliates or subdivisions from prohibiting or regulating conduct otherwise allowed by this chapter when such conduct occurs on or in property that is occupied, owned, controlled or operated by the Community or any or any of its entities, enterprises, affiliates or subdivisions.
8. Restrict the rights of the Community, its entities, schools, day care centers, adult day care facilities, health care facilities or corrections facilities to prohibit or regulate conduct otherwise allowed by this chapter when such conduct occurs on or in their properties.
9. Restrict the ability of a person, partnership, limited liability company, private corporation, private entity or private organization of any character that occupies,

owns or controls property on the Gila River Indian Reservation to prohibit or regulate conduct otherwise allowed by this chapter on or in such property.

9. Require a person to violate federal law or to implement or fail to implement a restriction on the possession, consumption, display, transfer, processing, manufacturing or cultivation of marijuana if by so doing the person will lose a monetary or licensing-related benefit under federal law.
10. Supersede or eliminate any existing rights or privileges of any person except as specifically set forth in this chapter.
11. Limit any privilege or right of a qualifying patient or designated caregiver under section 5.1214 of this chapter.

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*HISTORY:* New Section

Ariz. Rev. Stat. Ann. § 36-2851 *et seq.*

#### **5.1214. Medical Marijuana.**

A. There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of marijuana if the qualifying patient or designated caregiver possesses:

1. A Registry Identification Card issued in his or her name by the Arizona Department of Health Services pursuant to Arizona Revised Statutes § 36-2804.02, as the same may be amended from time to time; and
2. An amount of marijuana that does not exceed the allowable amount of marijuana permitted pursuant to Arizona Revised Statutes § 36-2801(1)(a)(i), as the same may be amended from time to time.

B. The presumption may be rebutted by evidence that the qualifying patient's conduct or the designated caregiver's conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition pursuant to the Arizona Administrative Code § R9-17-201, as the same may be amended from time to time.

C. A registered qualifying patient or designated caregiver is not subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau:

1. For the registered qualifying patient's medical use of marijuana pursuant to this chapter, if the registered qualifying patient does not possess more than the

allowable amount of marijuana permitted pursuant to Arizona Revised Statutes § 36-2801(1)(a)(i), as the same may be amended from time to time.

2. For the registered designated caregiver assisting a registered qualifying patient to whom he or she is connected through the Arizona Department of Health Services registration process with the registered qualifying patient's medical use of marijuana pursuant to this chapter if the registered designated caregiver does not possess more than the allowable amount of marijuana permitted pursuant to Arizona Revised Statutes § 36-2801(1)(a)(i), as the same may be amended from time to time.

D. No person may be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

1. Providing a registered qualifying patient or a registered designated caregiver with drug paraphernalia for purposes of a qualifying patient's medical use of marijuana.
2. Being in the presence or vicinity of the medical use of marijuana authorized under this chapter.
3. Assisting a registered qualifying patient with administering marijuana as authorized by this chapter.

E. A qualifying patient or a designated caregiver may possess, transport, cultivate, and process not more than six (6) marijuana plants at the qualified patient's homesite. The marijuana plants shall be contained within a closet, room, greenhouse or other enclosed area on the grounds of the homesite equipped with a lock or other security device that prevents access by persons under 21 years of age. Cultivation shall take place in an area where the marijuana plants are not visible from public view without using binoculars, aircraft or other optical aids. The qualifying patient or the designated caregiver must register with the Department of Land Use Planning and Zoning in accordance with the policies and procedures the Department of Land Use Planning and Zoning adopts to implement and enforce this subsection.

F. This chapter does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal or other penalties for engaging in, the following conduct:

1. Undertaking any task under the influence of marijuana that would constitute negligence or professional malpractice.
2. Possessing or engaging in the medical use of marijuana:
  - a. On a school bus.

- b. On the grounds of any preschool or primary or secondary school.
  - c. In any correctional facility.
  - d. On any form of public transportation.
  - e. In any public place, including the casinos.
- 3. Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.
  - 4. Using marijuana except as authorized under this chapter.

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*HISTORY:* New Section  
Ariz. Rev. Stat. Ann. § 36-2801 *et seq.*

**5.1215. Definitions as Used in this Chapter.**

A. *Administer* means to apply, inject or facilitate the inhalation or ingestion of a substance to the body of a person.

B. *Allowable amount of marijuana* means:

- 1. With respect to a qualifying patient:
  - a. The amount of marijuana permitted pursuant to Arizona Revised Statutes § 36-2801(1)(a)(i), as the same may be amended from time to time.
  - b. If the qualifying patient's registry identification card states that the qualifying patient is authorized to cultivate marijuana, six (6) marijuana plants kept pursuant to this chapter.
- 2. With respect to a designated caregiver, for each patient assisted by the designated caregiver under this chapter:
  - a. The amount of marijuana permitted pursuant to Arizona Revised Statutes § 36-2801(1)(b)(i), as the same may be amended from time to time..



- b. If the designated caregiver's registry identification card provides that the designated caregiver is authorized to cultivate marijuana, six (6) marijuana plants kept pursuant to this chapter.
- 3. Does not include marijuana that is incidental to medical use, but is not usable marijuana.

C. *Controlled substance analogue* means, except as provided in subsection (c), a substance: (i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II; (ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or (iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

- 1. Controlled substance analogue does not include:
  - a. A controlled substance;
  - b. Any substance for which there is an approved new drug application; or
  - c. Any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

D. *Controlled substance* means any drug or other substance, or immediate precursor, included in Schedules I, II, III, IV, or V, of 21 U.S.C. § 812, including any future amendments to Schedules I through V, as may be enacted by Congress, or is listed in current or future schedules issued pursuant to authority vested in the Attorney General of the United States pursuant to 21 U.S.C. § 811. Controlled substance does not include distilled spirits, wine, malt beverages or tobacco. The term does not include marijuana, marijuana concentrate or any vapor-releasing substance that contains a toxic substance.

E. *Counterfeit substance* means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

F. *Crime of violence* means an offense that has an element the use, attempted use or threatened use of physical force against the person or property of another; or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

G. *Debilitating medical condition* means one or more of the following:

1. Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, crohn's disease, agitation of alzheimer's disease or the treatment of these conditions.
2. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.
3. Any other medical condition or its treatment added by the Arizona Department of Health Services pursuant to Arizona Revised Statutes § 36-2801.01.

H. *Designated caregiver* means a person who is authorized by the Arizona Department of Health Services pursuant to Arizona Revised Statutes § 36-2804.02 to assist a qualifying patient with medical use of marijuana.

I. *Manufacture* means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable Community, Federal or state law by a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted by the United States or the Community in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

J. *Marijuana* means all parts of the plant of the genus *cannabis*, whether growing or not, as well as the seeds from the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds or resin. Marijuana does not include industrial hemp, the fiber produced from the stalks of the plant of the genus *cannabis*, oil or cake made from the seeds of the plant, sterilized seeds of the plant that are incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink or other products.

K. *Marijuana concentrate* means resin extracted from any part of a plant of the genus *cannabis* and every compound, manufacture, salt, derivative, mixture or preparation of that resin or tetrahydrocannabinol.

L. *Open Space* means a public park, public sidewalk, public walkway or public pedestrian thoroughfare.

M. *Public place* means any enclosed area to which the public is invited or in which the public is permitted, including bars, casinos, common areas of multifamily housing facilities, educational facilities, entertainment facilities or venues, health care facilities, hotels and motels, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports facilities, theaters, and waiting rooms.

N. *Qualifying patient* means a person who has been diagnosed by a physician as having a debilitating medical condition.

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*HISTORY:* GRIC Code §5.701 (2009).