



GILA RIVER INDIAN COMMUNITY

SACATON, AZ 85147

ORDINANCE GR-03-13

THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS THE 2009 GILA RIVER INDIAN COMMUNITY CODE BY RESCINDING TITLE 5, CRIMINAL CODE, AND ENACTING THE REVISED CRIMINAL CODE

- 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,** the safety of the Community, the ability to prosecute criminal behavior, and the ability to order longer or enhanced sentences as appropriate to the offense and the offender and as authorized under the Tribal Law and Order Act of 2010 (“TLOA”) are important to the Community; and
- WHEREAS,** on July 6, 2011, the Community Council directed the implementation of enhanced sentences (up to three years per criminal offense and up to nine years per criminal proceeding) as authorized under the TLOA; and
- WHEREAS,** a workgroup comprised of representatives from Community departments and other organizations (Gila River’s Office of the General Counsel, Office of the Prosecutor, Defense Services Office, Police Department, Department of Rehabilitation and Supervision, Judicial Department, Probation, Tribal Social Services; and GRHC Behavioral Health, Four Rivers Indian Legal Services, and Tribal Court Advocate), which included Community members, met on a monthly basis during 2011 and most of 2012 to revise the Criminal Code; and

WHEREAS, the revised Criminal Code includes enhanced sentencing (up to three years per criminal offense and up to nine years per criminal proceeding) for felony level offenses, judicial qualifications to preside over felony proceedings, additional procedures for criminal proceedings, and additional protections for defendants as provided under the TLOA; and

WHEREAS, the revised Criminal Code has complied with pre-adoption notification procedures pursuant to Title Eight, Chapter Seven, Section 8.703 of the 2009 Gila River Indian Community Code by publication in the Gila River Indian Community News and posting at all seven district service centers. Additionally, the revised Criminal Code was presented at two public hearings on December 15, 2012; all seven district meetings during March, 2013 and April, 2013; three public hearings for Community member employees on March 21, 2013; and one public hearing for Community member employees on March 28, 2013; and

WHEREAS, the Legislative Standing Committee recommends enactment of the revised Criminal Code.

NOW, THEREFORE, BE IT ENACTED, the Community Council hereby amends the 2009 Gila River Indian Community Code and approves and enacts the attached revised Criminal Code, which shall replace Title 5 of the Gila River Indian Community Code.

BE IT FURTHER ENACTED, that the revised Criminal Code shall be codified at Title 5 of the Gila River Indian Community Code.

BE IT FURTHER ENACTED, that the revised Criminal Code shall be made publically available at all District Service Centers and the Ira Hayes Library, made available at the Department of Rehabilitation and Supervision, and made available on-line by January 1, 2014; and any future appellate court decisions concerning the revised Criminal Code shall be made available in the same manner within two weeks of the release and publication of the appellate decision.

BE IT FURTHER ENACTED, that the revised Criminal Code shall become effective for any criminal complaint alleging a criminal act committed on or after January 1, 2014, except as noted in the revised Criminal Code, for any felony offense, procedures specifically relating to felony offenses, and mental competency, which shall not be effective until May 1, 2014.

BE IT FURTHER ENACTED, that any acts committed prior to January 1, 2014 shall be punished as if the law had not been amended or repealed and that upon the conclusion of any criminal proceeding for acts committed prior to January 1, 2014, Title 5 Criminal Code of the 2009 Gila River Indian Community Code shall be repealed.

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, Section 1, (a) (7), (9), (17), (18), (19), (b) (8), (10), and Section 4 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 15th of May 2013, at a regular Community Council meeting held in District 3, Sacaton, Arizona at which a quorum of 14 Members were present by a vote of: 12 FOR; 2 OPPOSE; 0 ABSTAIN; 3 ABSENT; 0 VACANCIES.

GILA RIVER INDIAN COMMUNITY



GOVERNOR

ATTEST:



COMMUNITY COUNCIL SECRETARY



RECEIVED
BIA PIMA AGENCY
MAY 22 2013

Title 5. Criminal Code

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CHAPTER 1. GENERAL PROVISIONS

5.101. Criminal Jurisdiction.

A. The Gila River Indian Community Court shall have criminal jurisdiction over any Indian who commits any offense in violation of the Gila River Indian Community Code (“Code” or “GRIC Code”), when the offense occurs within the boundaries of the Gila River Indian Reservation.

B. Nothing in this title shall be construed as limiting the civil or criminal power of the Community over non-Indians other than the express limitations imposed by the law of the United States.

HISTORY: GRIC Code §5.101 (2009).

5.102. Indian Defined.

A. An Indian is any person who is any of the following:

1. Is a member of, or is eligible for membership in, a federally recognized Indian tribe;
2. Has ever been eligible for membership in a federally recognized Indian tribe;
3. Is an Alaskan Native and member of a Regional Corporation as defined in Section 7 of the Alaskan Native Claims Settlement Act; or
4. Possesses some degree of Indian blood and maintains tribal or federal government recognition as an Indian. Tribal or federal government recognition as an Indian can be established by considering the following factors, in descending order of importance:
 - a. Tribal enrollment;
 - b. Government recognition formally and/or informally through receipt of assistance reserved only to Indians;
 - c. Enjoyment of the benefits of tribal affiliation; or
 - d. Social recognition as an Indian through residence on a reservation and participation in Indian social life.

B. An individual charged under this Code may raise the affirmative defense of non-Indian status under Section 5.102.A. The burden of raising the issue of non-Indian jurisdiction shall be upon the person claiming the exemption from jurisdiction, but the burden of proof of jurisdiction and status as an Indian remains with the prosecution. An individual shall raise the

issue of non-Indian status by presenting some evidence that he does not meet the definition of an Indian under this section. The prosecution shall have the burden of proving the evidence of an individual's Indian status beyond a reasonable doubt.

HISTORY: GRIC Code §5.102 (2009).

5.103. Statute of Limitations.

A. No person shall be prosecuted, fined, or punished for any criminal offense unless a complaint has been filed against the alleged offender within 36 months after actual discovery that an offense has been committed.

B. Any offense or any attempt to commit an offense listed in this subsection below may be commenced at any time:

1. Any homicide pursuant to Section 5.601, Homicide;
2. Any sexual assault pursuant to Section 5.801, Sexual Assault, that involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this Community that if committed in this Community would constitute a sexual offense under this chapter;
3. Any tampering with public record pursuant to Section 5.511. Tampering with Public Record;
4. Any felony involving forgery, frauds and related offenses relating to public records pursuant to Title 5, Chapter 11, Forgery, Frauds, and Related Offenses, of the GRIC Code;
5. Any misuse of Community monies;
6. Any of the following offenses during any time when the identity of the person who commits the offense is unknown:
 - a. Homicide;
 - b. Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument;
 - c. Sexual assault;
 - d. Arson of an occupied structure under Section 5.909.B.2, Arson;

- e. Burglary or aggravated burglary;
- f. Kidnapping;
- g. Sexual conduct with a minor under 15 years of age;
- h. Any of the following offenses committed against a minor who is under 15 years of age: homicide; aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument; sexual assault; molestation of a child; incest; child abuse; kidnapping; sexual abuse; causing or taking a child for purposes of prostitution; involving or using minors in drug offenses; manufacturing methamphetamine under circumstances that cause physical injury to a minor.

C. If a complaint filed before the period of limitation has expired is dismissed for any reason, a new prosecution may be commenced within six months after the dismissal becomes final even if the period of limitation has expired at the time of dismissal or will expire within six months of the dismissal.

HISTORY: GRIC Code §5.103 (2009).

5.104. Speedy Trial.

A. All individuals charged with a criminal offense under this Code shall enjoy the right to a speedy trial, which shall commence not later than 180 days following arraignment. The following periods of delay shall be excluded in computing the time within which a complaint must be filed, or in computing the time within which the trial of any such offense must commence:

- 1. Any period of delay resulting from other proceedings concerning the defendant, including but not limited to any of the following:
 - a. Delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;
 - b. Delay resulting from trial with respect to other charges against the defendant;
 - c. Delay resulting from any interlocutory appeal;
 - d. Delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

- e. Delay resulting from transportation of any defendant from another jurisdiction, or to and from places of examination or hospitalization, except that any time consumed in excess of 10 days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;
 - f. Delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the prosecutor for the Community; or
 - g. Delay reasonably attributable to any period, not to exceed 30 days, during which any proceeding concerning the defendant is actually under advisement by the court.
2. Any period of delay during which prosecution is deferred by the prosecutor for the Community pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.
3. Any period of delay resulting from the absence or unavailability of the defendant or an essential witness, including a victim. For purposes of this subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.
- a. If the defendant is absent on the day set for trial and the defendant's subsequent appearance before the court occurs pursuant to a bench warrant or other process or surrender and occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before the court in which the complaint is pending on the date of the defendant's subsequent appearance before the court; or
 - b. If the defendant is absent on the day set for trial, the new date for trial shall be scheduled not more than 30 days for a bench trial and not more than 60 days for a jury trial from the date of the defendant's subsequent appearance as defined in Section 5.104.A.3.
4. Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.
5. If the complaint is dismissed without prejudice upon motion of the prosecutor for the Community and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense.

6. A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.
7. Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel, or at the request of the prosecutor for the Community, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.
 - a. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.
 - b. The factors, among others, which a judge shall consider in determining whether to grant a continuance in any case under Section 5.104.A.7.a are any of the following:
 1. Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice;
 2. Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section; or
 3. Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within Section 5.104.A.7.b.2 of this section, would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Community continuity of counsel, or would deny counsel for the defendant or the prosecutor for the Community the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

HISTORY: New Section.

5.105. Rules of Evidence.

Unless provided otherwise under Community law, for all criminal matters the court shall apply the Gila River Indian Community Rules of Evidence. The Gila River Indian Community

Rules of Evidence may be amended by order of the Chief Judge after notice and opportunity for comment by Community members and review and analysis by an advisory committee on rules. The advisory committee on rules shall be comprised of the following members: interested Community members, at least one representative from the Office of the Prosecutor, at least one representative from the Defense Services Office, Chief Judge, Associate Judges, and others designated by the Chief Judge. The advisory committee on rules shall, when there is representation from at least the Office of the Prosecutor, Defense Services Office, and Judicial, review all proposed amendments and recommend revisions and additional rules as the committee deems appropriate; draft amendments, submit any proposed amendment for public notice and comment; and submit any proposed amendment to the Chief Judge for adoption or rejection.

HISTORY: New Section.

5.106. DEFINITIONS.

A. Whenever used in this title, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof. Words in the masculine gender include the feminine, and words of the feminine gender include the masculine. When used in a context consistent with the definition of a listed-defined term, the term shall have the meaning as defined below whether capitalized or italicized or otherwise.

1. *Absconder* means a probationer who has moved from the probationer's primary residence without permission of the probation officer or who cannot be located, or whose whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.
2. *Advocate* means a person who is authorized to practice in the Community Court and who is not licensed as an attorney to practice law in any state of the United States.
3. *Attorney* means a person who is licensed to practice law in any state of the United States and has been authorized to practice in the Community Court.
4. *Cold case* means a homicide or a sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.
5. *Community* or *GRIC* means the Gila River Indian Community.
6. *Contraband* means any dangerous drug, narcotic drug, marijuana, intoxicating liquor of any kind, deadly weapon, dangerous instrument, explosive, wireless communication device, multimedia storage device or other article whose use or possession would endanger the safety, security or preservation of order in a jail or correctional facility. Contraband does not include any tool or instrument used by

a jail correctional facility inmate used at the direction or with the permission of a jail correctional facility official.

7. *Council* means the Gila River Indian Community Council.
8. *Counsel* means an attorney licensed to practice law in any state and admitted to practice in the Community Court.
9. *Court* means the Gila River Indian Community Court.
10. *Court proceeding* means any proceeding heard before the Community Court or any other entity authorized by the Code to hear evidence under oath.
11. *Credit card* means:
 - a. Any instrument or device, whether known as a credit card, charge card, credit plate, courtesy card or identification card or by any other name, that is issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value, either on credit or in possession or in consideration of an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder, on a promise to pay in part or in full at a future time, whether or not all or any part of the indebtedness that is represented by the promise to make deferred payment is secured or unsecured.
 - b. A debit card, electronic benefit transfer card or other access instrument or device, other than a check, that is signed by the holder or other authorized signatory on the deposit account, that draws funds from a deposit account in order to obtain money, goods, services, or anything else of value.
 - c. The number that is assigned to the card, instrument, or device described in subsection a. and b. of this paragraph even if the physical card, instrument, or device is not used or presented.
12. *Crime victim advocate* means a person, which may include Tribal Social Services or Crime Victim Services, as designated by a victim and that exercises the rights of the victim.
13. *Custody* means the imposition of actual or constructive restraint pursuant to an arrest or court order, including being detained in jail, a correctional or police facility as a result of arrest or court order.
14. *Dangerous instrument* is defined as an instrument readily capable of causing death or serious physical injury under the circumstances in which it is used, attempted to be used or threatened to be used.

15. *Day* means 24 hours.
16. *Deadly force* means force that is used with the purpose of causing death or serious physical injury or force capable of creating a substantial risk of causing death or serious physical injury.
17. *Deadly weapon* means anything that is designed for lethal use, including a firearm.
18. *Defendant* means a person who is formally charged with committing a criminal offense, and may include persons convicted of a criminal offense.
19. *Economic loss* means any loss incurred by a victim of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.
20. *Elderly person* means a person 55 or more years old.
21. *Explosive* means any dynamite, nitroglycerine, black powder or similar explosive material including plastic explosives but does not mean or include ammunition or ammunition components such as primers, percussion caps, smokeless powder, black powder and black powder substitutes used for hand loading purposes.
22. *Felony* means a criminal offense punishable by more than one year of imprisonment.
23. *Fine* means a monetary or property payment to the Court, not to exceed the set maximum.
24. *Firearm* means any loaded or unloaded pistol, revolver, rifle, shotgun, or other weapon that will expel, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive.
25. *GRIC R. Crim. P.* means the Gila River Indian Community Rules of Criminal Procedure.
26. *Hate crime* means the commission of a crime with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation or gender identity of the victim, whether or not the offender's belief or perception was correct.
27. *Imprisonment* means detention in the Community jail or other such facility as the court shall direct.

28. *Inmate* means any person confined to the lawful custody of a jail.
29. *Intentionally* or *with the intent* means that a person's objective is to cause a particular result or to engage in particular conduct.
30. *Intimate partner* means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a part of a child of the person, and an individual who cohabitates or has cohabited with the person.
31. *Jail* means the Department of Rehabilitation and Supervision or the facility which incarcerates inmates, used for the confinement or control of an adult or juvenile person charged with or convicted of an offense, being held for extradition or being held in custody pursuant to a court order; but not including a residence being used for purposes of a home arrest.
32. *Judge* means a judge of the Gila River Indian Community Court.
33. *Juror* means any person who is a member of any impaneled jury, or who has been summoned by the court as a prospective juror.
34. *Knowingly* or *with knowledge* means, with respect to a circumstance described by the definition of an offense, that a person is aware or believes that his conduct is of that nature or that the circumstance exists.
35. *Law enforcement officer* means any person vested by law with a duty to maintain public order.
36. *Misdemeanor* means a criminal offense punishable by not more than one year of imprisonment.
37. *Negligence* and *negligently* means that a person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.
38. *Nonresidential structure* means a structure other than a residential structure.
39. *Offender* means any person convicted of a criminal offense.
40. *Offense* means conduct for which a sentence is imposed as provided by the Code or any other law or ordinance of the Community.
41. *Official proceeding* means any proceeding heard before the Community Court, the Community Council or any other entity authorized by the Code to hear evidence under oath.

42. *Oral sexual contact* means contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus of another.
43. *Order of protection* means a civil court order granted for the protection of victims of domestic violence as provided for in Section 5.711.
44. *Person* means a human being and, as the context requires, an enterprise, a public or private corporation, an unincorporated association, a partnership, a firm, a society, a government, a governmental authority or an individual or entity capable of holding a legal or beneficial interest in property.
45. *Physical injury* means impairment of a physical condition or substantial pain.
46. *Possession* means to have physical possession or control over property.
47. *Prohibited possessor* means any person:
- a. Who has been found to constitute a danger to himself or others or persistently or acutely disabled or gravely disabled pursuant to a court order of any court of competent jurisdiction and whose civil right to possess a firearm has not been restored.
 - b. Who has been convicted in any court of a crime punishable for a term exceeding one year and whose civil right to possess or carry a gun or firearm has not been restored.
 - c. Who at the time of possession is serving a term of detention in a jail.
 - d. Who at the time of possession is serving a term of probation pursuant to a conviction for a domestic violence offense or a felony offense, is on work furlough, home arrest or release on any other basis.
 - e. Who is subject to a court order that:
 1. Was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
 2. Restrains such person from harassing, stalking or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
 3. Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms

explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

48. *Prohibited weapon:*

- a. Includes the following:
 1. An item that is a bomb, mine, grenade, rocket having a propellant charge of more than four ounces and that is explosive, incendiary or poison gas;
 2. A device that is designed, made or adapted to muffle the report of a firearm;
 3. A firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger;
 4. A rifle with a barrel length of less than 16 inches, or shotgun with a barrel length of less than 18 inches, or any firearm that is made from a rifle or shotgun and that, as modified, has an overall length of less than 26 inches;
 5. An instrument, including a nunchaku, that consists of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire or chain, designed as a weapon used in connection with the practice of a system of self-defense;
 6. A breakable container that contains a flammable liquid with a flash point of 150 degrees Fahrenheit or less and that has a wick or similar device capable of being ignited;
 7. A chemical or combination of chemicals, compounds or materials, including dry ice, that is possessed or manufactured for the purpose of generating a gas to cause a mechanical failure, rupture or bursting or an explosion or detonation of the chemical or combination of chemicals, compounds or materials;
 8. An improvised explosive device; or
 9. Any combination of parts or materials that is designed and intended for use in making or converting a device into an item set forth in item (1), (6) or (8) of Section 5.106.A.48.a.

- b. Does not include:
 - 1. Any fireworks that are imported, distributed or used in compliance with state laws or local ordinances.
 - 2. Any propellant, propellant actuated devices or propellant actuated industrial tools that are manufactured, imported or distributed for their intended purposes.
 - 3. A device that is commercially manufactured primarily for the purpose of illumination.
 - 4. The items set forth in Sections 5.106.A.48.a, items (1), (2), (3) and (4) of this numbered definition do not include any firearms or devices that are registered in the national firearms registry and transfer records of the United States Treasury Department or any firearm that has been classified as a curio or relic by the United States Treasury Department.

- 49. *Property* means anything of value, tangible or intangible, including documents evidencing ownership or value.

- 50. *Psychiatric facility* means any facility or hospital that admits, evaluates and/or treats individuals with mental illness, mental or psychiatric disorders, diseases, or disabilities.

- 51. *Recklessly* means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

- 52. *Reservation* means the area within the exterior boundaries of the Gila River Indian Reservation, as designated by the United States Government.

- 53. *Residential structure* means a movable or immovable or permanent or temporary structure that is adapted for human residence or lodging.

- 54. *Serious bodily injury* means bodily injury which creates a reasonable risk of death, or which causes serious or permanent disfigurement, or serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

- 55. *Sexual contact* means any touching of any part of the genitals, anus, or female breasts.

56. *Sexual intercourse* means penetration into the penis, vulva or anus by any part of the body or by any object or manual masturbatory with the penis or vulva.
57. *Structure* means any building, vehicle, or place with sides that is separately securable from any other structure attached to it and that is being used for lodging, business or transportation.
58. *Unlawful* means contrary to the law or, where the context so requires, not permitted by law.
59. *Value* means the fair market value of the property or services at the time of the theft. When property has an undeterminable value the trier of fact shall determine its value and, in reaching its decision, may consider all relevant evidence, including evidence of the property's value to its owner.
60. *Victim* means a person against whom there is probable cause to believe a criminal offense has been committed, including a minor, or if the person is killed or incapacitated, the person's spouse, parent, child, grandparent, or sibling, unless that person is in custody for an offense or is the accused.
61. *Vulnerable adult* means an individual who is 18 years of age or older and who is unable to adequately provide for his care and protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.

HISTORY: GRIC Code §5.104 (2009).

5.107. Severability.

If any provision(s) of this title or any application of its provision is held invalid, the application of the remaining provisions of this title shall not be affected thereby.

HISTORY: GRIC Code §5.1408 (2009).

5.108. Effective Date.

Except as may otherwise be provided, the effective date for this title shall be January 1, 2014.

HISTORY: New Section.

CHAPTER 2. CRIMINAL LIABILITY

5.201. Criminal Liability.

A person may be charged with and convicted of an offense by the performance of conduct which includes a voluntary act or the omission to perform a duty imposed by law that the person is physically capable of performing.

HISTORY: GRIC Code §5.201 (2009).

5.202. Accomplice Liability.

A person may be charged with and convicted of an offense as an accomplice if with the intent to commit the offense, he intentionally or knowingly aids or attempts to aid in its commission.

HISTORY: GRIC Code §5.202 (2009).

5.203. Burden of Proof Required to Prove Criminal Liability.

No person may be convicted of an offense unless each element of such offense is proved beyond a reasonable doubt. In the absence of such proof, the innocence of the defendant is presumed.

HISTORY: New Section.

5.204. Burden of Proof Required to Assert Affirmative Defenses.

A. Unless otherwise provided, a defendant shall prove any affirmative defense raised by a preponderance of the evidence.

B. Evidence of an affirmative defense is not admissible unless the defendant asserts and discloses to the Community prosecutor within the time frames established by the GRIC R. Crim. P.

HISTORY: New Section.

5.205. Immaturity.

A person less than eight years old at the time of the conduct charged is not criminally responsible.

HISTORY: New Section.

5.206. Intoxication.

- A. Voluntary intoxication of a defendant will not be a defense to a criminal charge.
- B. When recklessness is an element of the offense, if the defendant, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he not been intoxicated, such unawareness is not a defense.
- C. Intoxication is used in this section to mean a disturbance of mental or physical capabilities resulting from the introduction of any substance into the body, including but not limited to alcohol, toxic vapors or narcotic drugs.

HISTORY: GRIC Code §5.205 (2009).

5.207. Duress.

- A. It is an affirmative defense that the defendant engaged in the conduct charged to constitute an offense because he was coerced to do so by the use or threat of immediate unlawful force against his person or the person of another, which a reasonable person in his situation would not have resisted.
- B. The defense provided by this section is unavailable if the defendant recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

HISTORY: New Section.

5.208. Justification for Use of Force.

- A. It is a defense that physical force or threatened physical force is not a crime for the following lawful purposes:
 - 1. In the exercise of the right of moderate restraint or correction given by law to a parent over a child, a guardian over a ward, or a teacher over a student.
 - 2. For preservation of the peace, or to prevent the commission of an offense.
 - 3. In preventing or interrupting an intrusion upon the lawful possession of property.
 - 4. In making a lawful arrest and detaining the party arrested when authorized by law, or in obedience to the lawful order of the court, or in overcoming resistance to such lawful order.
 - 5. In self-defense or in defense of another against the immediate use of unlawful force to his person or property, or the person or property of another.

B. The use of force is justifiable only to the degree of force that is reasonably necessary to accomplish the lawful purpose.

C. The use of force is not justifiable under this section to resist an arrest that the defendant knows is being made by a peace officer, whether or not the arrest is unlawful.

D. The use of deadly force is not justifiable under this section unless the defendant believes that such force is necessary to protect himself against death, serious bodily injury, kidnapping or sexual intercourse compelled by force or threat.

E. If evidence of justification for use of force is presented by the defendant, the Community must prove beyond a reasonable doubt that the defendant did not act with justification for use of force.

HISTORY: GRIC Code §5.206 (2009).

5.209. Mental Competency.

A. No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures. The presence of a mental illness, mental or psychiatric disorder, disease, or disability alone is not grounds for finding a defendant incompetent to stand trial.

B. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders.

HISTORY: GRIC Code §5.204 (2009).

5.210. Insanity.

It is an affirmative defense to a prosecution that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental illness, mental or psychiatric disorder, disease or disability was unable to appreciate the nature and quality or wrongfulness of his acts.

HISTORY: New Section.

CHAPTER 3. PREPARATORY OFFENSES

5.301. Attempt.

A. A person commits the offense of attempt if, with the intent to commit a specific offense, he does any act which is a substantial step toward the commission of that offense.

B. It is a defense to a prosecution under this section that, under circumstance manifesting a complete and voluntary renunciation of his criminal intent, the defendant gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the attempt. A timely warning to law enforcement authorities means that the authorities are given a reasonable amount of time to prevent the conduct or result.

C. Factual impossibility is not a defense to a charge of attempt if the offense would have been committed if the factual circumstances would have been as the person believed them to be. Legal impossibility will be a defense if the attempted offense is legally impossible to commit.

D. The penalty for committing attempt of a misdemeanor offense shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$2,500.00, or both.

E. The penalty for committing attempt of a felony offense shall be imprisonment for a period not to exceed 545 days, or a fine not to exceed \$7,500.00, or both

F. In no case shall the penalty imposed exceed the maximum specified penalty for the offense that was the object of committing attempt.

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

HISTORY: GRIC Code § 5.301 (2009).

Felony Comparability References: Wash. Rev. Code Ann. § 9A.28.020.

5.302. Solicitation.

A. A person commits the offense of solicitation if, with the intent to promote or facilitate the commission of a felony or misdemeanor, he commands, entreats, induces, or otherwise endeavors to persuade another person to engage in specific conduct that would constitute the felony or misdemeanor or that would establish the other's complicity in its commission.

B. It is a defense to a prosecution under this section that, under circumstances manifesting a complete and voluntary renunciation of his criminal intent, the defendant gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which is the object of the solicitation. A timely warning to law enforcement authorities means that the authorities are given a reasonable amount of time to prevent the conduct or result.

C. This section does not apply to law enforcement officers who act in their official capacity within the scope of their authority and in the line of duty.

D. The penalty for committing solicitation of a misdemeanor offense shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$2,500.00, or both.

E. The penalty for committing solicitation of a felony offense shall be imprisonment for a period not to exceed 545 days, or a fine not to exceed \$7,500.00, or both.

F. In no case shall the penalty imposed exceed the maximum specified penalty for the offense that was the object of the solicitation.

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

HISTORY: GRIC Code §5.302 (2009).

Felony Comparability References: Ariz. Rev. Stat. § 13-1002.

5.303. Conspiracy.

A. A person commits the offense of conspiracy if, with the intent to promote or facilitate the commission of an offense, he agrees with one or more persons that at least one of them will engage in conduct constituting an offense and one of the parties commits an overt act in furtherance of the offense, except that an overt act shall not be required if the object of the conspiracy was to commit any felony upon the person of another, or to commit an offense under Section 5.909, Arson.

B. If a person guilty of conspiracy, as defined in Section 5.303.A, knows or has reason to know that a person with whom such person conspires to commit an offense has conspired with another person or persons to commit the same offense, such person is guilty of conspiring to commit the offense with such other person or persons, whether or not such person knows their identity.

C. A person who conspires to commit a number of offenses is guilty of only one conspiracy if the multiple offenses are the object of the same agreement or relationship. The degree of the conspiracy shall be determined by the most serious offense conspired to.

D. It is not a defense that a person's participation in a conspiracy was minor or for a short period of time.

E. It is a defense to a prosecution under this section that, under circumstances manifesting a complete and voluntary renunciation of his criminal intent, the defendant gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which was the objective of the conspiracy. A timely warning to law enforcement authorities means that the authorities are given a reasonable amount of time to prevent the conduct or result.

F. A defendant may abandon a conspiracy and terminate his relationship with the conspiracy only if he clearly ceases to agree with the objective of the conspiracy, takes no further

part in the conspiracy, and communicates his desire to abandon the conspiracy to other members of the conspiracy.

G. The penalty for committing conspiracy of a misdemeanor offense shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$2,500.00, or both.

H. The penalty for committing conspiracy of a felony offense shall be imprisonment for a period not to exceed 545 days, or a fine not to exceed \$7,500.00, or both.

I. In no case shall the penalty imposed exceed the maximum specified penalty for the offense that was the object of the conspiracy.

J. Effective Dates: The effective date for Subsection H shall be May 1, 2014.

HISTORY: GRIC Code § 5.303 (2009).

Felony Comparability References: Ariz. Rev. Stat. §13-1003.

5.304. Facilitation.

A. A person commits the offense of facilitation if, acting with knowledge that another person is committing or intends to commit an offense, he engages in conduct which knowingly provides the other person with the means or opportunity for the commission of the offense and which in fact aids the person in committing the offense.

B. It is a defense to a prosecution under this section that, under circumstances manifesting a complete and voluntary renunciation of his criminal intent, the defendant gave timely warning to law enforcement authorities or otherwise made a reasonable effort to prevent the conduct or result which was the objective of the facilitation. A timely warning to law enforcement authorities means that the authorities are given a reasonable amount of time to prevent the conduct or result.

C. This section does not apply to law enforcement officers who act in their official capacity within the scope of their authority and in the line of duty.

D. The penalty for committing facilitation of a misdemeanor offense shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$2,500.00, or both.

E. The penalty for committing facilitation of a felony offense shall be imprisonment for a period not to exceed 545 days, or a fine not to exceed \$7,500.00, or both.

F. In no case shall the penalty imposed exceed the maximum specified penalty for the offense that was the object of the facilitation.

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

HISTORY: GRIC Code § 5.304 (2009).

Felony Comparability References: Ariz. Rev. Stat. § 13-1004.

CHAPTER 4. SENTENCING

5.401. Authorized Dispositions of Offenders.

A. Upon conviction for any offense which prescribes a criminal penalty a judge shall sentence the offender to one or more of the following:

1. Imprisonment;
2. Probation;
3. Fine;
4. Restitution;
5. Any sentencing option authorized by this title; or
6. Any other reasonable terms a judge may find appropriate.

B. Before imposing sentence a judge shall take into consideration the offender's prior tribal, state or federal criminal record, family circumstance, employment status, or any other circumstances that may aid a judge in imposing sentence.

C. A judge shall have the discretion to impose a fine in a particular case, in an amount up to the authorized maximum, and the method of payment. A judge may order installment payments of any imposed fine on conditions tailored to the means of the offender.

1. In determining whether to impose a fine and its amount, a judge shall consider the following:
 - a. The financial resources of the offender and the burden that payment of a fine may impose with due regard to his other obligations;
 - b. The ability of the offender to pay a fine on an installment basis or on other conditions to be fixed by the court;
 - c. The extent to which payment of a fine will interfere with the offender's ability to make any ordered restitution; and

- d. Whether there are particular reasons that make a fine appropriate as a deterrent to the offense involved or appropriate as a corrective measure for the offender.
2. If after a schedule for installment payment has been set following the above guidelines and the offender has been informed of the possible consequence that nonpayment could result in jail time, and an installment payment is not met, the court may apprehend the offender and sentence him to imprisonment for a period not to exceed the statutory penalty for the offense; however, the term of imprisonment shall be appropriate to the amount of the unpaid fine.
3. A judge shall have the discretion to order community service in lieu of a fine, which shall be converted pursuant to the applicable federal minimum wage at the time the fine is ordered.

D. Any offense under this Code or any ordinance of the Community for which no penalty is specifically provided for may be punished by incarceration not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. In imposing a sentence on an offender who has been found guilty of a felony offense, a judge may also order that the civil rights or privileges to possess a gun or firearm be forfeited or suspended. A person whose rights to possess a gun or firearm have been forfeited or suspended may file for restoration of the right to possess or carry a gun or firearm two years after discharge from probation or sentence.

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

HISTORY: GRIC Code §5.1324 (2009).

5.402. Pretrial Services.

A. Pretrial services performs functions that are critical to the effective operation of the Community's justice systems by assisting the court in making prompt, fair, and effective release/detention decisions, and by monitoring and supervising released defendants charged with felony offenses to minimize risks of nonappearance at court proceedings and risks of safety of the Community and to individual Community members.

B. Pretrial services program officers shall perform the following duties:

1. Interview and assemble verified information and data concerning the arrested person's Community ties, employment, financial resources, character and mental condition, residence, criminal record, record of appearance or nonappearance at court proceedings, the nature and circumstance of the alleged offense(s), any victim(s) statements, whether the person is a danger to himself or the Community, and social background prior to an arraignment, to assist the judge in determining the appropriate terms and conditions of pretrial release;

2. Submit written reports of those investigations to the judge along with such findings and recommendations, if any, as may be necessary to assess: the need for financial security to assure the defendant's appearance at later proceedings; and appropriate conditions which shall be imposed to protect against the risks of nonappearance and commission of new offenses or other interference with the orderly administration of justice before trial;
3. Supervise compliance with pretrial release conditions for persons charged with felony offenses, and promptly report violations of those conditions to the court and prosecutor to assure effective enforcement; and
4. Monitor the operations of the pretrial release program and maintain accurate and comprehensive records of program activities.

C. Pretrial service program officers shall have the authority to interview all persons charged with an offense or held on probable cause before or after their initial appearance if the person is in custody.

D. No person shall be interviewed by the pretrial service program unless he has first been told of the identity of the interviewer, the scope of the interview, the right to secure legal counsel, and the right to refuse cooperation. Inquiry of the defendant shall carefully exclude questions concerning the details of the current charge. Statements made by the defendant during the interview, or evidence derived therefrom, are admissible in evidence only when the judge is considering the imposition of pretrial or post trial conditions to bail or recognizance, or when considering the modification of a prior release order.

E. When conditions are imposed on a defendant charged with a felony offense, the judge shall direct the pretrial services program officer to monitor the defendant's compliance with the conditions of release and submit reports to the court concerning the defendant's compliance with the conditions. The judge may at any time amend the order to impose additional or different conditions of release.

F. Any pretrial conditions of release, orders of release, or revocation of release shall be in accordance with Section 5.1509, Release, Revocation of Release, Forfeiture of Bond.

G. Information and records maintained by the pretrial services program that have not been disclosed in open court during a court proceeding shall not be released to any individual or organization, other than an employee of the probation department, without the express permission of the defendant. An individual shall have access to all information and records about himself maintained by or collected by the pretrial services program, with the exception of confidential informants or other information ordered by the court to be held confidential.

H. The pretrial service program, which is part of the Probation Department, is authorized to promulgate and publish Standard Operating Procedures in conformance with this chapter and title, subject to review by the Legislative Standing Committee.

I. Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

J. Effective Dates: The effective date for this Section shall be May 1, 2014.

HISTORY: New Section.

5.403. Inmate Work Crew Requirements.

A. An offender sentenced to incarceration in the jail shall be ordered to perform work on an inmate work crew during the term of his incarceration. The jail shall be responsible for the screening and assignment of any available and appropriate work for the inmate. If there is no available or appropriate work, as determined by the jail, the inmate may be excused from the work crew for as long as the jail determines.

B. An offender sentenced to incarceration for a conviction of a sex offense enumerated in Chapter 8 of this title, a crime against a minor, homicide, or possession, distribution or manufacturing of a controlled substance shall not be eligible to perform work on inmate work crews outside the boundaries of the jail and shall not be eligible for early release based on credits from work on inmate work crews.

C. An inmate assigned to perform any work by the jail shall neither be considered an employee nor employed by the Community, nor shall any employee-employer relationship exist between the inmate and the Community for any purpose.

D. An offender sentenced to pay a fine shall be allowed to petition the court to credit the performance on inmate work crews in lieu of the court ordered fine, which shall be converted pursuant to the applicable federal minimum wage at the time the fine is ordered.

E. An inmate may petition the court for 'work time credit' for early release after serving three-fourths of his term of incarceration with good behavior.

1. 'Work time credit' means the performance of work on an inmate work crew that is credited at a specified rate against an inmate's sentence of incarceration allowing for early release from incarceration.
2. Work performed in lieu of court ordered fine shall not be credited towards work time credit for early release.
3. Work time credit for early release accrues at a rate of 24 hours of work for one 24 hour day of incarceration.
4. A judge may credit work time for commutation of early release provided:
 - a. The inmate has served three-fourths of his term of incarceration;

- b. The inmate has no jail rule violations; and
- c. The work has not been credited in lieu of court ordered fine.

F. The jail shall develop and maintain a labor system for inmate work crews that may include inmate laundry services, food preparation, grounds keeping, facility sanitation, etc. and work crews within the boundaries of the Reservation, subject to review by the Legislative Standing Committee.

HISTORY: GRIC Code §5.1324.B.

5.404. Restitution.

A. A judge may order, upon a defendant's conviction for an offense causing economic loss to any person and after finding by preponderance of the evidence, restitution be paid by the defendant to any person who suffered an economic loss caused by the defendant's conduct.

- 1. The restitution order shall be prepared by the sentencing judge, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, any of the following:
 - a. Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible;
 - b. Medical expenses;
 - c. Mental health counseling expenses;
 - d. Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor; or
 - e. Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

B. A judge shall not consider the economic circumstances of the defendant in determining the amount of restitution.

C. A judge shall specify the manner in which the restitution is to be paid and shall take into account the views of the victim.

D. If a victim has received reimbursement for the victim's economic loss from an insurance company a judge may order the defendant to pay the restitution to that entity.

E. If more than one defendant is convicted of an offense which caused loss, the defendants are jointly and severally liable for the restitution.

F. If a judge does not have sufficient evidence to support a finding of the amount of restitution or the manner in which the restitution should be paid, the judge may conduct a hearing upon the issue according to procedures established by rules of court. The Office of the Prosecutor does not represent persons who have suffered economic loss at the hearing, but may present evidence or information relevant to the issue of restitution.

G. The court shall retain jurisdiction of the case for purposes of modifying the manner in which the court-ordered payments are made until paid in full or until the defendant's sentence expires. At the time the defendant completes his sentence or the defendant absconds from probation or other sentence, a judge shall enter a criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered. A criminal restitution order does not expire until paid in full and may be recorded and enforced as any civil judgment.

HISTORY: New Section.

5.405. Diversionary Prosecution.

A. Except where prohibited by this title, a judge shall have the discretion in sentencing a defendant charged with a misdemeanor offense to accept a defendant's plea of guilt and defer entering the plea into the record and defer imposition of sentence for a specified time upon the condition of the defendant successfully completing drug and/or alcohol treatment, and/or any other appropriate conditions that promote rehabilitation.

B. A defendant is not eligible for diversion if he:

1. Has been previously charged with a misdemeanor or felony offense in any jurisdiction, regardless of whether the conviction was expunged; or
2. Has previously been granted or completed diversion.

C. Defendants ordered to diversion shall be monitored by the Probation Department and shall be subject to random urinalysis tests.

D. At any time after the defendant has satisfactorily completed one-half of the original diversion period, the defendant may petition the court to reduce or terminate the supervision if the defendant proves successful completion of the stated condition(s). Upon

satisfactory fulfillment of the diversion condition(s), including no subsequent criminal charges against the defendant while on diversion, a judge shall dismiss the offense.

E. If the defendant fails to successfully complete the stated condition(s) a judge shall enter the defendant's plea of guilt into the record and sentence the defendant pursuant to this title. The defendant shall be entitled to a hearing limited to the scope of whether, by preponderance of the evidence, the defendant violated a diversion condition or has been charged with subsequent criminal charges. A judge may receive any reliable evidence not legally privileged. Hearsay is admissible. The hearing need not be a formal, "trial type" hearing and the rules of evidence need not be observed.

HISTORY: New Section.

5.406. Probation.

A. At sentencing a judge shall have the discretion in sentencing, except where prohibited by this title, to suspend a convicted offender's sentence of imprisonment, and release the offender on probation. The offender shall sign a probationary pledge which specifically states the terms and conditions of probation.

B. The terms of probation must include services or programs to promote rehabilitation.

1. A judge may order successful completion of a court approved drug and/or alcohol treatment; programming or classes for domestic violence; programming or classes for anger management; programming or classes for parenting; programming or classes offered by Mothers Against Drunk Driving; successful compliance with mental health treatment; community service; restitution; or any other reasonable terms a judge finds appropriate.
2. A judge may modify an order of probation to allow a probationer to be excused from checking in with the probation officer for the specified time while the probationer is off Reservation while enrolled and physically attending an inpatient treatment program.

C. Special Conditions of Probation for Offenders Convicted of an Offense Involving Domestic Violence; Required Reports by Probation Department.

1. Before placing an offender who is convicted of a crime involving domestic violence on probation, the judge shall consider the safety and protection of the victim of domestic violence.
2. The judge may condition the granting of probation to an offender on any reasonable condition the judge finds appropriate or on any of the following conditions:

- a. Enjoining the offender from threatening to commit or committing acts of domestic violence against the victim or other family or household member as described in Section 5.710.B, Domestic Violence;
 - b. Prohibiting the offender from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, directly or indirectly through family, relations by marriage, friends, or co-workers;
 - c. Requiring the offender to stay away from the residence, school, place of employment, or any specified place frequented regularly by the victim or any designated family or household member as described in Section 5.710.B, Domestic Violence;
 - d. Prohibiting the offender from possessing or consuming alcohol or controlled substances;
 - e. Prohibiting the offender from possessing a firearm or other specified weapon;
 - f. Directing the offender to surrender any weapons owned or possessed by the offender; and/or
 - g. Directing the offender to refrain from any violations of law for the duration of probation.
3. Any probation that a judge may order as a condition of sentencing shall be supervised probation with the Probation Department.
 4. The Probation Department shall document and report to the Community Court any violations of law, any assaults by the probationer, any threats of harm made by the probationer, and any failure by the probationer to comply with any condition imposed by the court or Probation Department, regardless of where the violation occurred or under what jurisdiction the crime was adjudicated. Such a violation shall be deemed as constituting non-compliance with probation conditions and is subject to revocation under Section 5.406.D.

D. If a prosecutor or probation officer has reasonable cause to believe that a probationer has violated a written condition of probation imposed by the court, the prosecutor or probation officer may petition the court to revoke probation.

1. After a petition to revoke has been filed the court shall issue a summons directing the probationer to appear on a specified date and time to arraign the probationer on the petition to revoke probation.
2. Unless a warrant is requested by the probation officer or the prosecutor, the court should issue a summons for the probationer.

3. The filing of a petition to revoke probation shall automatically stay the term of probation, during which the court shall retain jurisdiction.

E. If a probationer has been found guilty of a subsequent criminal offense by a judge or judicial officer of any jurisdiction, no petition to revoke probation shall be required. A judge may set the probation matter for disposition hearing within a reasonable amount of time after the determination of guilt of a subsequent criminal offense.

F. A probationer shall be arraigned on a petition to revoke probation and shall be informed of each alleged violation of probation, and the probationer shall admit or deny each allegation. If no admission is made or if an admission is not accepted, the court shall set a probation violation hearing.

G. A probation violation hearing to determine whether a probationer has violated a written condition of probation shall be held before the court on the petition to revoke probation.

H. A disposition hearing shall be held after an admission by the probationer or a judicial finding that a probationer has violated a condition or regulation of probation.

1. A judge may reinstate the probationer to the sentence of probation, may order the probationer to serve out the remainder of the sentence by incarceration, or may impose some other sentencing option provided for in this chapter, so long as the time period does not exceed the original sentence.

2. Time will be tolled from the date of the violation, any time the defendant absconded, or any time a warrant is issued. Time tolled is not counted as days served on probation and may be served in jail or by reinstated sentence of probation.

I. The judge shall have the discretion to impose a term of probation for as long as necessary to address any issues that may have contributed to the conviction, provided however that the length of the probationary period for each offense shall not exceed the maximum time per offense as permitted under this title.

J. All persons placed under the supervision of probation shall be ordered to pay reasonable probation fees, costs and expenses, which shall be recommended by the court and approved by the Community Council.

K. The duties of probation officers include, but are not limited to, the following:

1. Make investigations, reports, and recommendations to the court as required by a judge;
2. Receive under supervision any person sentenced to probation;

3. Provide release assistance, and supervise any person placed on probation or in a diversion, work release or community service;
4. Give each person under their supervision a statement of the conditions of probation and instruct the person regarding the conditions;
5. Keep informed concerning the conduct and condition of persons under their supervision by requiring visits, reports, or otherwise;
6. Use all suitable methods, not inconsistent with the condition of probation or program participation, to aid and encourage persons under their supervision and to effect improvement in their conduct and condition;
7. Keep detailed records of the work done and to make reports to the court as required; and/or
8. Perform other duties not inconsistent with the normal and customary functions of probation officers as may be ordered and authorized by the court.

L. Failure to satisfy any time frames provided in this section will not be grounds for dismissal if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

M. The Probation Office is authorized to promulgate and publish Standard Operating Procedures to effectuate the purpose of this chapter, subject to review by the Legislative Standing Committee.

HISTORY: GRIC Code §5.1324 (2009).

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.

C. Aggravating and Mitigating Factors.

1. Generally, Burden of Proof.

- a. The trier of fact shall consider evidence of aggravating factors present in the offense that make an aggravated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the judge.
- b. Unless admitted by the defendant, the prosecutor bears the burden of proving beyond a reasonable doubt before the trier of fact any aggravating factors affecting a sentence, except that an alleged aggravating circumstance for prior conviction (which includes both prior criminal convictions and probation revocations) shall be found to be true by the judge.
- c. The defendant bears the burden of proving by preponderance of the evidence before a judge any mitigating factors affecting a sentence and that makes a mitigated sentence appropriate.
- d. No sentence for an offense of a felony shall be enhanced beyond three years or the maximum provided in the statute.
- e. No sentence for an offense for a misdemeanor shall be enhanced beyond one year or the maximum provided in the statute.
- f. In determining a sentence, the judge shall consider whether any aggravating and/or mitigating circumstance is sufficiently substantial to justify the sentence imposed.

2. If a jury trial is not requested the judge shall determine if one or more aggravating factors are present in the offense that makes an aggravated sentence appropriate.

3. Jury Procedure in Determining Aggravating Factors; Jury Procedure if Trial Bifurcated; Notice of Intent to Use Aggravating Factors.

- a. The jury impaneled for the trial of a felony or misdemeanor shall also determine if one or more aggravating factors are present in the offense that makes an aggravated sentence appropriate.
- b. The proceeding to determine any aggravating factors shall be conducted by the trial jury immediately after, or as soon as practicable after, the guilty verdict is returned.
- c. If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes

incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected.

- d. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue. A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.
 - e. The prosecutor shall provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors under subsection 5.407.C.7 within the time frames prescribed by the GRIC R. Crim. P. A defendant may waive the right to receive such notice. The notice shall list all the aggravating factors the prosecutor seeks to establish.
4. Procedure if Defendant Admits Aggravating Factor Only. If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying offense, after request for a jury, a jury shall be impaneled to dispose of the charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the trial.
 5. Procedure if Defendant Pleads Guilty to the Offense Only. If the defendant pleads guilty to the offense, but contests the existence of one or more aggravating factors, after request for a jury, a jury shall be impaneled to determine if the aggravating factor or factors exist, except that an alleged aggravating circumstance for prior conviction shall be found to be true by the judge.
 6. Written Findings; When Required. The judge shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive sentence specified in Section 5.407.D and Section 5.407.E. If the jury finds factors in aggravation, the court shall ensure that those findings are entered into the court's determination. Findings shall be in writing. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.
 7. Aggravating Factors. For the purpose of determining the sentence, the trier of fact shall determine and the judge shall consider any of the following aggravating circumstances:
 - a. Causing or threatening serious physical injury;
 - b. Engaging in violent conduct that indicates a serious danger to Community;

- c. Causing extensive property damage;
- d. Use or possession of deadly weapon during and in relation to any criminal offense;
- e. The offender's prior criminal conviction in any jurisdiction;
- f. Accomplice(s) present;
- g. Offender induced others to commit crime/ringleader;
- h. Offender induced minor to commit crime or participate;
- i. Offense was especially heinous/depraved;
- j. Offense committed for financial gain;
- k. Offender was public servant (Community Employee or Elected Official), and crime related to that position;
- l. Victim suffered physical, emotional, or financial harm;
- m. Death of unborn child resulted;
- n. Offender was wearing body armor;
- o. Victim was elderly, disabled, or vulnerable;
- p. Offender was a fiduciary, or held a position of trust/authority with respect to the victim;
- q. The offense constituted a hate crime;
- r. Committed murder, negligent homicide, or manslaughter while driving above .15 blood alcohol content;
- s. Violence committed in the presence of a child;
- t. Committed in retaliation for reporting criminal activity or testifying in a criminal proceeding;
- u. Impersonating a law enforcement officer during offense;
- v. Prior probation revocation in any jurisdiction;

- w. Offender committed this offense while on probation;
- x. Multiple victims;
- y. Offender continued criminal activity subsequent to arrest;
- z. Crime involved planning, sophistication, or professionalism;
- aa. Offender engaged in tying, binding, or confining any victim;
- bb. Offender reasonably appears not to be conducive to supervision in a less restrictive setting; or
- cc. Any other relevant factor.

Evidence necessary to prove an element of an offense shall not be used to prove any factor in aggravation for sentencing consideration, and the same item of evidence shall not be used to prove more than one factor in aggravation. The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

- 8. Mitigating Factors. For the purpose of determining the sentence, the judge shall consider any of the following mitigating circumstances:
 - a. Offender's ability to appreciate criminality of acts was impaired;
 - b. Offender was under substantial duress or subject to provocation, although not to a degree that would constitute a defense to prosecution;
 - c. Offender played a minor role in offense;
 - d. Offender complied with duties requiring stopping for a traffic accident;
 - e. Offender assisted law enforcement with resolution of other crimes;
 - f. Offender reasonably appears to be amenable to supervision in a less restrictive setting;
 - g. Imprisonment would entail excessive hardship on defendant or dependents;
 - h. Offender has extended period of arrest-free street time or lack of criminal history;
 - i. The offender suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime, and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate

partner, or parent of the defendant's child; and the abuse does not amount to a defense;

- j. Offender's prior good history on probation;
- k. Offender is not a danger to the Community;
- l. Offender has a serious medical condition that cannot be accommodated or monitored at the jail, or a diagnosis of terminal illness with a doctor projection of less than six months to live; or
- m. Any other relevant factor.

9. The judge in imposing a sentence shall consider the evidence and opinions presented by the victim or the victim's immediate family at any aggravation or mitigation proceeding or in the presentence report.

10. This section does not affect any provision of law that authorizes or restricts the granting of probation and suspending the execution of sentence.

D. Sentencing Misdemeanor Offenders.

1. Unless a specific sentence is otherwise provided, the term of imprisonment for a misdemeanor offense shall be the presumptive sentence determined pursuant to Section 5.407.D.2. below, except that a decision to depart from the range is in the discretion of the judge. Any reduction or increase shall be based on the aggravating and mitigating circumstances listed in Sections 5.407.C.7 and 5.407.C.8. However, if the offense is designated as domestic violence, Section 5.710.C shall apply in determining the sentencing enhancements related to convictions of domestic violence.

2. The term of imprisonment for a presumptive, mitigated or aggravated misdemeanor sentence shall be within the range prescribed under this subsection, except that a decision to depart from the range is in the discretion of the judge. The terms are as follows:

Misdemeanor	Mitigated	Presumptive	Aggravated
Category I	180 days	270 days	1 year
Category II	90 days	180 days	270 days
Category III	30 days	60 days	90 days

3. Before imposing sentence, the judge shall inform all of the parties of its intent to depart from the sentencing range.

4. If a defendant is convicted of a misdemeanor offense and the offense requires enhanced punishment because it is a second or subsequent offense, the judge shall

determine the existence of the previous conviction by proof beyond a reasonable doubt. The court shall allow the allegation of a prior conviction to be made in the same manner as the allegation prescribed in the GRIC Rules of Evidence. A person who has been convicted in any court outside the jurisdiction of the Gila River Indian Community of an offense that if committed in the Gila River Indian Community would be punishable as a misdemeanor offense is subject to this section.

5. The judge may direct that a defendant who is sentenced pursuant to this section may not be released on any basis until the sentence imposed by the court has been served.

E. Sentencing Felony Offenders.

1. Unless a specific sentence is otherwise provided, the term of imprisonment for a felony offense shall be the presumptive sentence determined pursuant to Section 5.407.E.2. below, except that a decision to depart from the range is in the discretion of the judge. Any reduction or increase shall be based on the aggravating and mitigating circumstances listed in Sections 5.407.C.7 and 5.407.C.8. However, if the offense is designated as domestic violence, Section 5.710.C shall apply in determining the sentencing enhancements related to convictions of domestic violence.

2. The term of imprisonment for a presumptive, mitigated or aggravated sentence shall be within the range prescribed under this subsection, except that a decision to depart from the range is in the discretion of the judge. The terms are as follows:

Felony	Mitigated	Presumptive	Aggravated
Category I	2 years	2 years, 180 days	3 years
Category II	1 year, 180 days	2 years	2 years, 180 days
Category III	180 days	1 year	1 year, 180 days

3. Before imposing sentence, the judge shall inform all of the parties of its intent to depart from the sentencing range.

4. If a defendant is convicted of a felony offense and the offense requires enhanced punishment because it is a second or subsequent offense, the judge shall determine the existence of the previous conviction by proof beyond a reasonable doubt. The judge shall allow the allegation of a prior conviction to be made in the same manner as provided in the GRIC Rules of Evidence. A defendant who has been convicted in any court outside the jurisdiction of the Gila River Indian Community of an offense that if committed in the Gila River Indian Community would be punishable as a felony is subject to this section.

5. The judge may direct that a defendant who is sentenced pursuant this section may not be released on any basis until the sentence imposed by the court has been served.

F. **Offenses Committed While Released From Confinement.** A judge may sentence a defendant for the presumptive sentence authorized under Sections 5.407.D. and 5.407.E. when a defendant is convicted of any offense that is committed while the defendant is on probation, work release, community supervision or any other release or on escaped status from confinement; however, the judge shall consider imposing a sentence of imprisonment for not less than the presumptive sentence authorized under Sections 5.407.D. and 5.407.E., and shall consider not allowing suspension or commutation of sentence or release on any basis until the sentence imposed is served. The judge shall provide written findings when departing from the presumptive sentence, suspension or commutation of sentence, or release on any basis.

G. **Calculation of Terms of Imprisonment.**

1. A sentence of imprisonment commences when sentence is imposed if the defendant is in custody or surrenders into custody at that time. Otherwise it commences when the defendant becomes actually in custody.
2. All time actually spent in custody pursuant to an offense until the defendant is sentenced to imprisonment for such offense shall be credited against the term of imprisonment otherwise provided for by this chapter.
3. If a sentence of imprisonment is vacated and a new sentence is imposed on the offender for the same offense, the new sentence is calculated as if it had commenced at the time the vacated sentence was imposed, and all time served under the vacated sentence shall be credited against the new sentence.
4. If an offender serving a sentence of imprisonment escapes from custody, the escape interrupts the sentence. The interruption continues until the defendant is apprehended and confined for the escape or is confined and subject to a detainer for the escape. Time spent in actual custody prior to return under this subsection shall be credited against the term authorized by law if custody rested on an arrest or surrender for the escape itself, or if the custody arose from an arrest on another charge which culminated in a dismissal or an acquittal, and the person was denied admission to bail pending disposition of that charge because of a warrant lodged against such person arising from the escape.
5. The judge shall include the time of commencement of sentence under Section 5.407.G.1 and the computation of time credited against sentence under Section 5.407.G.2, 3 or 4, in the original or an amended commitment order, under procedures established by the GRIC R. Crim. P.

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.

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. Possession, Use, Production, Sale or Transportation of Marijuana, 5.1207.C;
 - 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. Possession, Use, Production, Sale or Transportation of Marijuana, 5.1207.B;
- 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. Delivery of Liquor to a Minor, 5.1402.B;
- x. Extreme Driving Under Influence or Actual Physical Control, 6.602.B;
- y. 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. Unlawful Sale or Use of Fireworks, 5.1305.E;
- q. Underage Possession of Liquor, 5.1401.B;
- r. Possession of Alcohol Near a Hospital, Medical Clinic, School or Church, 5.1405.B;
- s. Driving or Actual Physical Control While Under the Influence, 6.601.C;
- t. Driving or Actual Physical Control While Under the Influence, 6.601.D;
- u. Possession of Alcoholic Beverage in a Motor Vehicle, 6.607.

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

K. 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.l.ggg. shall be effective January 1, 2014 through April 30, 2014.

HISTORY: New Section.

5.408. Work Release.

A. A defendant sentenced to incarceration for a misdemeanor offense may petition the court for release from incarceration for the limited purpose and hours of attending employment at a job the defendant was employed prior to sentencing. A judge shall specifically state the time an inmate may be released from incarceration to attend employment, which shall be no more than the time the inmate is scheduled to be on job plus reasonable time for commuting to and from the jobsite. The judge may impose additional restrictions while the inmate is released, may require verification of work schedule and follow-up verification of hours actually worked.

B. An inmate granted work release shall be subject to random urinalysis test by the jail or Probation Department. Refusal to submit to random urinalysis test shall be grounds for immediate termination of work release pending a hearing.

C. A prosecutor or employee of the jail shall notify the court when an inmate violates a condition of work release or refuses to submit to random urinalysis test, and the court shall terminate the work release if after notice and opportunity to be heard at an informal and non-evidentiary hearing the inmate is found responsible for violating a condition of work release or refusing to submit to random urinalysis test.

HISTORY: New Section.

5.409. Expungement.

A. Except as provided in subsection 5.409.D below, any person convicted of a criminal offense, on fulfillment of the conditions of probation or sentence and discharge by the court, may apply to the judge who pronounced sentence or imposed probation or such judge's

successor in office to have the judgment of guilt set aside. The convicted person shall be informed of this right at the time of discharge.

B. The convicted person or, if authorized in writing, the convicted person's attorney or advocate may apply to set aside the judgment.

C. If the judge grants the application, the judge shall set aside the judgment of guilt, dismiss the accusations or information and order that the person be released from all penalties and disabilities resulting from the conviction.

D. This section does not apply to a person who was convicted of a criminal offense under any of the following circumstances:

1. Involving a dangerous offense, as determined by the judge;
2. For which the person is required or ordered by the court to register as a sex offender pursuant to Title 8, Chapter 8 of the GRIC Code entitled "Sex Offender Registration and Notification;"
3. For which there has been a finding of sexual motivation; or
4. In which the victim is a minor under 15 years of age.

HISTORY: New Section.

5.410. Funeral Release.

A defendant sentenced to incarceration may be released to attend a funeral service or graveside service for a relative at the sole discretion of the jail, pursuant to the Standard Operating Procedures governing administration of the jail. Decisions to deny funeral releases are not subject to judicial review.

HISTORY: New Section.

5.411. Commutation.

A. If a judge is satisfied that justice will best be served by reducing a sentence, a judge may commute to a lesser period of incarceration any sentence for a misdemeanor offense imposed upon a defendant, upon proof that during the period of incarceration the defendant served without misconduct. The defendant may be placed on probation for the remainder of the sentence.

B. If a judge is satisfied that justice will best be served by reducing a sentence, a judge may commute to a lesser period of incarceration any sentence for a felony offense imposed upon a defendant, upon proof that the defendant has served at least half his sentence of

incarceration and has served without misconduct. The defendant may be placed on probation for the remainder of the sentence.

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

HISTORY: GRIC Code §5.1324.E (2009).

5.412. Concurrent or Consecutive Sentences.

A. If a defendant has been found guilty of more than one offense, regardless if felony or misdemeanor, the judge shall determine whether to impose concurrent or consecutive sentences for the offenses. The judge shall state on the record and shall indicate in the order of judgment and commitment:

1. If the sentences are imposed to run concurrently or consecutively to each other;
2. If the sentences are to run concurrently or consecutively with any other sentences the defendant is already serving.

B. In determining whether to order concurrent or consecutive sentences the judge shall consider the gravity and circumstances of the offenses, the number of victims, any comments or input by the victim(s), and the criminal history and rehabilitative needs of the defendant.

C. A judge shall order offenses to run consecutively if the later offense is committed while the defendant is imprisoned or on probation, unless the judge finds and states on the record that consecutive sentencing would be inappropriate.

D. A judge may order concurrent or consecutive sentencing for offenses arising out of a single criminal episode.

E. If a judge imposes consecutive sentences, the aggregate maximum of all sentences imposed in any one criminal proceeding shall not exceed nine years.

F. No sentence shall exceed one year per criminal proceeding.

G. Effective Dates: The effective date for references to felony in Subsections A and E shall be May 1, 2014. The effective date for Subsection F shall be January 1, 2014 through April 30, 2014.

HISTORY: New Section.

5.413. Concurrent Prosecutions.

For any offense enumerated in this Code, over which tribal, state, or federal courts may have lawful jurisdiction, the jurisdiction of the court shall be concurrent and sentencing by the court may be concurrent or consecutive to any Federal or state sentencing.

HISTORY: New Section.

CHAPTER 5. INTERFERENCE WITH THE ADMINISTRATION OF JUSTICE

5.501. Bribery.

- A. A person commits the offense of bribery if:
 - 1. He offers, confers, or agrees to confer any benefit upon a Community employee, Council member, elected official, any person acting as a trustee or fiduciary, court official or judge, policeman, state or federal official, with the intent of influencing such person's vote, opinion, judgment, exercise of discretion or other action in his official capacity.
 - 2. While a Community official, judge or employee, he solicits, accepts or agrees to accept any benefit with the agreement or understanding that his vote, opinion, judgment, exercise of discretion or other action as a Community official judge or employee may thereby be influenced.
 - 3. It is no defense to a prosecution under this section that a person sought to be influenced was not qualified to act in the desired way because such person had not yet assumed office, lacked jurisdiction, or any other reason.

B. The penalty for misdemeanor bribery 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 bribery 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.

HISTORY: GRIC Code §5.801 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-2602.

5.502. Perjury.

- A. A person commits the offense of perjury if he makes either:
 - 1. A false sworn statement in regard to a material issue, believing it to be false; or

2. Makes a false unsworn declaration, certification or statement in regard to a material issue that the person subscribes as true under penalty of perjury, believing it to be false.

B. The penalty for misdemeanor perjury 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 perjury 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.

HISTORY: GRIC Code §5.802 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-2702.

5.503. False Reporting.

A. A person commits the offense of false reporting if he initiates or circulates a report of a bombing, fire, offense or other emergency knowing that the report is false or baseless, and intending or knowing:

1. That it will cause action of any sort by an official or volunteer agency organized to deal with emergencies; or
2. That it will prevent or interrupt the occupation of any building, room, place of assembly, public place or means of transportation.

B. A person who commits a violation of this section that results in an emergency response or investigation of false reporting and who is convicted of a violation of this section is liable for the expenses incurred incident to the emergency response or the investigation of the commission of false reporting; except that if the person is a juvenile who is adjudicated delinquent the court may order the juvenile to pay expenses incurred under this section as restitution.

C. A first offense of false reporting shall be charged as a misdemeanor offense; a second or subsequent offense of false reporting may be charged as either a felony or misdemeanor offense.

D. The penalty for misdemeanor false reporting shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony false reporting 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 C and E shall be May 1, 2014.

HISTORY: GRIC Code §5.803 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-2907.

5.504. Interfering with Law Enforcement or Jail Employee.

A. A person commits the offense of interfering with a law enforcement officer or jail employee if he intentionally or knowingly engages in conduct with the intent to impair, obstruct, hinder, or prevent a law enforcement officer or jail employee from discharging his official duties.

B. The penalty for misdemeanor interfering with a law enforcement or jail employee shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code §5.804 (2009).

5.505. Refusing to Aid Law Enforcement Officer.

A. A person commits the offense of refusing to aid a law enforcement officer if upon a reasonable command by a person reasonably known to be a law enforcement officer he intentionally or knowingly refuses to aid such law enforcement officer in:

1. Effectuating or securing an arrest; or
2. Preventing the commission of any offense by another person.

B. A person who complies with this section by aiding a law enforcement officer shall not be held liable to any person for damages resulting therefrom, provided he acted reasonably under the circumstances known to him at the time.

C. The penalty for misdemeanor refusing to aid a law enforcement officer shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code §5.805 (2009).

5.506. Resisting Arrest.

A. A person commits the offense of resisting arrest if he intentionally or knowingly prevents or attempts to prevent a person reasonably known to him to be a law enforcement officer, acting under color of such law enforcement officer's official authority, from effecting an arrest by:

1. Using or threatening to use physical force against the law enforcement officer or another; or

2. Creating a substantial risk of physical injury to the law enforcement officer or another.

B. The penalty for misdemeanor resisting arrest 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 resisting arrest 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.

HISTORY: GRIC Code §5.806 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-2508.

5.507. Refusing to Assist in Fire Control.

A. A person commits the offense of refusing to assist in fire control if he:

1. Upon reasonable command by a person reasonably known to be a fireman or law enforcement officer he intentionally or knowingly refuses to aid in extinguishing a fire or in protecting property at the scene of a fire; or

2. Upon command by a person reasonably known to be a fireman or law enforcement officer he intentionally or knowingly disobeys an order or regulation relating to the conduct of persons in the vicinity of a fire; or

3. Intentionally or knowingly violates Title 21 of the GRIC Code, entitled “Fire and Public Safety.”

B. A person who complies with this section by assisting in fire control shall not be held liable to any person for damages resulting therefrom, provided that he acted reasonably under the circumstances known to him at that time.

C. The penalty for misdemeanor refusing to assist in fire control shall be imprisonment for a period not to exceed 90 days, or a fine not to exceed \$300.00, or both.

HISTORY: GRIC Code §5.807 (2009).

5.508. Failure to Obey Court Order.

A. A person commits the offense of failure to obey court order if he knowingly or intentionally fails to obey a lawful order of the court.

B. The penalty for misdemeanor failure to obey court order shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code §5.808 (2009).

5.509. Failure to Obey Restraining Order.

A. A person commits the offense of failure to obey restraining order if he fails to obey a court ordered restraining order, temporary restraining order, civil restraining order, order of protection, or emergency order of protection.

B. The penalty for misdemeanor failure to obey restraining order shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

5.510. Criminal Contempt of Court.

A. A person commits the offense of criminal contempt of court if he knowingly and intentionally does any of the following:

1. While in court, engages in conduct which is disorderly, contemptuous, or insolent, tending to interrupt any criminal or civil proceeding or which lessens the respect due to the court's authority;
2. Commits a breach of the peace, boisterous conduct, or a violent disturbance in the presence of the judge, or in the immediate vicinity of the court held by him, tending to interrupt the due course of a trial or other judicial proceeding;
3. Refuses to be sworn as a witness in any court proceeding;
4. Refuses to serve as a juror;
5. Fails without excuse to attend a trial at which he has been chosen to serve as a juror;
6. Fails to pay a fine or restitution that was ordered by the court as a penalty for committing a criminal offense.
 - a. The clerk of the court shall notify the Office of the Prosecutor and the sentencing court whenever a defendant defaults in the payment of a fine or restitution.
 - b. The court, on motion by the prosecutor, or on the court's own motion, may order the defendant to appear for a hearing to show cause why the defendant's default should not be treated as contempt.

- c. At the hearing, the prosecutor, the court and any person entitled to restitution may examine the defendant under oath concerning the defendant's ability to pay the fine or restitution.
- d. If the court finds the defendant has shown sufficient cause for not paying the fine or restitution, despite sufficient good faith efforts to obtain the monies, the court may enter any reasonable order that would assure compliance with the order to pay, including ordering garnishment of the defendant's per capita payments if applicable.
- e. If the court finds the defendant has not shown sufficient cause for not paying the fine or restitution, it will be considered contempt has been committed as provided in Section 5.510.C. If a detention sentence is imposed, the sentence must be commuted upon satisfaction of the debt.
- f. Any penalty ordered under this section does not affect the obligation to pay any fines or restitution previously ordered, including those fines or restitution ordered in the underlying matter.

B. When contempt is committed in the immediate view and presence of a judge, the judge must make an order reciting the facts as the facts occurred, and that the person proceeded against is guilty of contempt, and that the matter will be set for a sentencing hearing.

C. When contempt is not committed in the immediate view and presence of the judge it may not be punished except after notice to the defendant stating the facts and setting a hearing. The defendant shall be given a reasonable time to prepare his defense and shall be entitled to be represented by counsel and to present witnesses. Any charge under this section must be established beyond a reasonable doubt. If the contempt charge is for disrespect to or criticism of a judge, that judge shall be disqualified from hearing the contempt charge.

D. The penalty for misdemeanor criminal contempt of court shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code §5.1320 (2009).

5.511. Tampering with Public Record.

A. A person commits the offense of tampering with a public record if he intentionally or knowingly:

- 1. Makes or completes a written instrument which purports to be a public record or true copy thereof, or alters or makes a false entry in a written instrument which is a public record or true copy thereof;

2. Presents or uses a written instrument which is or purports to be a public record or a copy thereof, knowing that it has been falsely made, completed or altered or that a false entry has been made therein, with the intent that it be taken as genuine;
3. Records, registers, files or offers for recordation registration or filing in a governmental office or agency a written statement which has been falsely made completed or altered or in which a false entry has been made or which contains a false statement or false information;
4. Destroys, mutilates, conceals, moves or otherwise impairs the availability of any public record; or
5. Refuses to deliver a public record in his possession upon proper request of a public servant entitled to receive such record for examination or other purposes.

B. The penalty for misdemeanor tampering with a public record 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 tampering with a public record 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.

HISTORY: GRIC Code §5.809 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-2407.

5.512. Escape from Lawful Custody.

A. A person commits the offense of escape from lawful custody if having been arrested for, charged with or found guilty of a misdemeanor or felony offense, he knowingly escapes or attempts to escape from custody, including failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited time.

B. A law enforcement officer or jail employee may use all reasonable means to prevent a person in lawful custody from escaping, or attempting to escape, from lawful custody.

C. Any person convicted of escape from lawful custody shall be liable for restitution for any costs incurred in the person's apprehension.

D. The penalty for misdemeanor escape from lawful custody shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony escape from lawful custody 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 Subsection E shall be May 1, 2014.

HISTORY: GRIC Code §5.813 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-2502(B).

5.513. Witness Tampering.

A. A person commits the offense of witness tampering if he knowingly induces a witness or a person he believes may be called as a witness in any criminal proceeding, by threat, conferring benefit, or other means, with the intent to:

1. Influence the testimony of that person, including unlawfully withholding testimony;
2. Induce that person to avoid legal process summoning him to testify; or
3. Induce that person to absent himself from any official proceeding to which he has been legally summoned.

B. The penalty for misdemeanor witness tampering 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 witness tampering 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2804.

5.514. Receiving a Bribe as a Witness.

A. A person commits the offense of receiving a bribe as a witness if as a witness in a criminal proceeding or a person who believes he may be called as a witness knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that:

1. His testimony will thereby be influenced;
2. He will attempt to avoid legal process summoning him to testify; or
3. He will absent himself from any official proceeding to which he has been legally summoned.

B. The penalty for misdemeanor receiving a bribe as a witness 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 receiving a bribe as a witness 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2803.

5.515. Jury Tampering.

A. A person commits the offense of jury tampering if, with the intent to influence a juror's vote, opinion, decision or other action, he:

1. Directly or indirectly communicates with a juror other than as part of the normal proceedings of the case;
2. Threatens a juror; or
3. Confers or agrees to confer a benefit upon a juror.

B. The penalty for misdemeanor jury tampering 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 jury tampering 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2807.

5.516. Receiving a Bribe by a Juror.

A. A juror commits the offense of receiving a bribe by a juror if he knowingly solicits, accepts or agrees to accept any benefit upon an agreement or understanding that his vote, opinion, decision or other action as a juror may be influenced.

B. The penalty for misdemeanor receiving a bribe by a juror 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 receiving a bribe by a juror 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2806.

5.517. Obstructing a Criminal Investigation or Prosecution.

A. A person commits the offense of obstructing a criminal investigation or prosecution if he knowingly:

1. Bribes, misrepresents, intimidates, or forces or uses threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of any criminal offense to a public officer, Community judge, prosecutor or jury; or
2. Intimidates, threatens to injure a witness or victim or their family, damages property of a witness or victim or their family, to prevent the communication of information or testimony relating to a violation of any criminal offense to a law enforcement officer, Community judge, prosecutor or jury.

B. The penalty for misdemeanor obstructing a criminal investigation or prosecution 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 obstructing a criminal investigation or prosecution 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2409.

5.518. Possession of Contraband by a Jail Inmate.

A. A jail inmate commits the offense of possession of contraband if he knowingly:

1. Takes contraband into a jail or onto the grounds of a jail; or
2. Makes, obtains or possesses contraband while being confined in a jail or while being lawfully transported or moved incident to jail confinement.

B. The penalty for misdemeanor possession of contraband by a jail inmate 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 possession of contraband by a jail inmate 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2505.

5.519. Delivery of Contraband.

A. A person commits the offense of delivery of contraband if he knowingly delivers or attempts to deliver contraband to any jail inmate.

B. A person convicted of misdemeanor delivery of contraband shall be sentenced to 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 delivery of contraband 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2505.

5.520. Tampering with Physical Evidence.

A. A person commits the offense of tampering with physical evidence if he:

1. Destroys, mutilates, alters, conceals or removes physical evidence with intent that it be used, introduced rejected or unavailable in a criminal proceeding;
2. Knowingly makes, produces or offers any false physical evidence in a criminal proceeding.

B. The penalty for misdemeanor tampering with physical evidence shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

5.521. Impersonating a Law Enforcement Officer.

A. A person commits the offense of impersonating a law enforcement officer if he, without lawful authority, pretends to be a law enforcement officer and engages in any conduct with the intent to induce another to submit to the person's pretended authority or to rely on the person's pretended acts.

B. The penalty for misdemeanor impersonating a law enforcement officer shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

5.522. Refusing to provide truthful name when lawfully detained.

A. A person commits the offense of refusing to provide truthful name when lawfully detained, if after being advised that his refusal to answer is unlawful, he fails or refuses to state his true full name on request of a law enforcement officer who has lawfully detained the person based on reasonable suspicion that the person committed a crime, is committing or is about to commit a crime.

B. A person detained under this section shall state the person's true name, but shall not be compelled to answer any other inquiry of the law enforcement officer.

C. The penalty for misdemeanor offense refusing to provide truthful name when lawfully detained shall be imprisonment for a period not to exceed 30 days, or a fine not to exceed \$500.00, or both.

HISTORY: New Offense.

CHAPTER 6. OFFENSES AGAINST PERSONS

5.601. Homicide.

A. A person commits the offense of homicide if he intentionally, knowingly, recklessly, or negligently causes the death of another.

B. The penalty for felony homicide shall be imprisonment for a period not to exceed of three years, or a fine not to exceed \$15,000.00, or both.

C. The penalty for misdemeanor homicide shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

D. Effective Dates: The effective date for Subsection B shall be May 1, 2014. The effective dates for Subsection C shall be from January 1, 2014 through April 30, 2014.

HISTORY: GRIC Code § 5.401 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-1101, 13-1102, 13-1103, 13-1104, 13-1105.

5.602. Assault.

- A. A person commits the offense of assault if he:
1. Intentionally, knowingly, or recklessly causes physical injury to another person;
 2. Intentionally places another person in reasonable apprehension of immediate physical injury; or
 3. Knowingly and without justification or excuse, touches another person with the intent to injure, insult or provoke such person.

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

HISTORY: GRIC Code § 5.402 (2009).

5.603. Aggravated Assault.

A. A person commits the offense of aggravated assault if he commits assault as prescribed by Section 5.602, Assault, under any of the following circumstances:

1. If he causes serious physical injury to another.
2. If he intentionally uses a deadly weapon or dangerous instrument.
3. If he commits the assault by any means of force that causes temporary but substantial disfigurement, temporary but substantial loss or impairment of any body organ or part or, a fracture of any body part.
4. If he commits the assault while the victim is bound or otherwise physically restrained or while the victim's capacity to resist is substantially impaired.
5. If he commits the assault after entering the private home of another with the intent to commit the assault.
6. If the person is 18 years of age or older and commits the assault on a minor under 15 years of age.
7. If he commits assault under Section 5.602.A.1, Assault, or 5.602.A.3, Assault, and the person is in violation of a civil order of protection or emergency order of protection issued against the person pursuant to Section 5.711, Civil Order of Protection, or 5.712, Emergency Orders of Protection.
8. If he commits the assault knowing or having reason to know that the victim is any of the following:

- a. A law enforcement officer, or a person summoned and directed by the officer while engaged in the execution of any official duties;
- b. A firefighter, fire investigator, fire inspector, emergency medical technician or paramedic engaged in the execution of any official duties, or a person summoned and directed by such individual while engaged in the execution of any official duties;
- c. A teacher or other person employed by any school and the teacher or other employee is on the grounds of a school or grounds adjacent to the school or is in any part of a building or vehicle used for school purposes, any teacher or school nurse visiting a private home in the course of the teacher's or nurse's professional duties or any teacher engaged in any authorized and organized classroom activity held on other than school grounds.
- d. A health care practitioner who is certified or licensed, or a person summoned and directed by the licensed health care practitioner while engaged in the person's professional duties. This subsection does not apply if the person who commits the assault is seriously mentally ill or is afflicted with Alzheimer's disease or related dementia;
 - 1. Seriously mentally ill means persons, who as a result of a mental disorder, exhibit emotional or behavioral functioning which is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long-term or indefinite duration. In these persons mental disability is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation.
- e. A prosecutor;
- f. A code enforcement officer employed by the Gila River Indian Community whose duties include performing field inspections of buildings, structures or property to ensure compliance with ordinances and codes;
- g. A public defender;
- h. Any elected or appointed official of the Gila River Indian Community while engaged in the execution of any official duties, or in retaliation or on account of an exercise of official power or performance of an official duty.

9. If he knowingly takes or attempts to exercise control over a law enforcement officer's or other officer's firearm, or any instrument or weapon other than a firearm that is being used by a law enforcement officer or other officer or that the officer is attempting to use and the person knows or has reason to know that the victim is a law enforcement officer or other officer and is engaged in the execution of any official duties.
10. If he meets both of the following conditions:
 - a. Is imprisoned or otherwise subject to the custody of any of the following:
 1. The Gila River Indian Community Department of Rehabilitation Services Adult and Juvenile Divisions.
 2. A law enforcement agency.
 - b. Commits an assault knowing or having reason to know that the victim is acting in an official capacity as an employee of any of the entities listed in subsection 5.603.A.10.a of this paragraph.

B. The penalty for felony aggravated assault shall be imprisonment for a period not to exceed three years, or a fine of \$15,000.00, or both.

C. The penalty for misdemeanor aggravated assault shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

D. Effective Dates: The effective date for Subsection B shall be May 1, 2014. The effective dates for Subsection C shall be from January 1, 2014 through April 30, 2014.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-1204; Tex. Penal Code § 22.02.b.2.B.

5.604. Endangerment.

A. A person commits the offense of endangerment if he intentionally, knowingly or recklessly endangers or exposes another person with a substantial risk of physical injury.

B. The penalty for misdemeanor endangerment shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code § 5.403 (2009).

5.605. Threatening.

A. A person commits the offense of threatening if by word or conduct he threatens to cause physical injury to the person of another or serious damage to the property of another.

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

HISTORY: GRIC Code § 5.404 (2009).

5.606. Unlawful Restraint.

A. A person commits the offense of unlawful restraint if either by force, threat or deception, he unlawfully restrains, removes, detains or confines another person without his consent so as to substantially interfere with that person's liberty.

B. The penalty for misdemeanor unlawful restraint shall be imprisonment for a period not to exceed 120 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code § 5.408 (2009).

5.607. Kidnapping.

A. A person commits the offense of kidnapping if he knowingly restraining another person with the intent to:

1. Hold the victim for ransom, as a shield or hostage;
2. Hold the victim for involuntary servitude;
3. Inflict death or physical injury on the victim; or
4. Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or such third person.

B. The penalty for felony kidnapping shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

C. The penalty for misdemeanor kidnapping shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

D. Effective Dates: The effective date for Subsection B shall be May 1, 2014. The effective dates for Subsection C shall be from January 1, 2014 through April 30, 2014.

HISTORY: GRIC Code § 5.409 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-1304.

5.608. Stalking.

A. A person commits the offense of stalking if he intentionally or knowingly engages in maintaining visual or physical proximity to a specific person or directing verbal, written, electronic communications, or other threats, whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity, that is directed toward another person and if that conduct either:

1. Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate family member and that person in fact fears for their safety or the safety of that person's immediate family member; or
2. Would cause a reasonable person to fear death of that person or that person's immediate family member and that person in fact fears death of that person or that person's immediate family member.

B. The penalty for misdemeanor stalking 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 stalking 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.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat §13-2923.

5.609. Harassment.

A. A person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, he:

1. Anonymously or otherwise contacts, communicates or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic or written means in a manner that harasses;
2. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist;
3. Repeatedly commits an act or acts that harass another person;
4. Surveils or causes another person to surveil a person for no legitimate purpose;
5. On more than one occasion makes a false report to a law enforcement, credit agency or social service agency; or

6. Interferes with the delivery of any public or regulated utility to a person.

B. This section does not apply to an otherwise lawful demonstration, assembly or picketing.

C. For the purposes of this section, “harassment” means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person.

D. The penalty for misdemeanor harassment shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

CHAPTER 7. OFFENSES AGAINST THE FAMILY

5.701. Bigamy.

A. A person commits the offense of bigamy if he, while lawfully married, intentionally or knowingly marries or purports or attempts to marry another person.

B. The penalty for misdemeanor bigamy shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$150.00, or both.

HISTORY: GRIC Code § 5.1101 (2009).

5.702. Adultery.

A. A person commits the offense of adultery if, while married to another, he knowingly or intentionally engages in sexual intercourse or oral sexual contact with another person not his spouse.

B. The penalty for misdemeanor adultery shall be imprisonment for a period not to exceed 90 days, or a fine not to exceed \$300.00, or both.

HISTORY: GRIC Code § 5.1108 (2009).

5.703. Criminal Nonsupport.

A. A person commits the offense of criminal nonsupport if he, having a spouse, child or children under 18 years of age, born in or out of wedlock, intentionally and persistently fails to provide adequate food, shelter, clothing, medical attention, financial support or other necessary care, which he can or has sufficient ability to provide and is legally obliged to provide to the spouse, child or children.

B. It is no defense to a prosecution under this section that either parent has contracted a subsequent marriage, that issue has been born of a subsequent marriage, that the defendant is the parent of issue born of a prior marriage or that the child is being supported by another person or agency.

C. It is an affirmative defense to a prosecution under this section that the defendant was unable to provide support for the child. If the defendant intends to rely on the affirmative defense, the defendant must assert and disclose the intent to do so pursuant to Section 5.204, Burden of Proof Required to Assert Affirmative Defense.

D. A prosecution under this section shall not affect the power of any court to enter an order for child support in a separate proceeding.

E. The penalty for misdemeanor criminal nonsupport shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code § 5.1103 (2009).

5.704. Abandonment of a Child.

A. A person commits the offense of abandonment of a child under 18 years of age if, as a parent, guardian or person having custody of a child, he intentionally or knowingly abandons and leaves in a destitute condition the child without good cause.

B. The penalty for misdemeanor abandonment of a child shall be imprisonment for a period not to exceed 240 days, or a fine not to exceed \$2,000.00, or both.

HISTORY: GRIC Code § 5.1102 (2009).

5.705. Child Abuse.

A. A person commits the offense of child abuse if he intentionally, knowingly, recklessly or negligently:

1. Causes or permits to be caused bodily harm to the child or otherwise causing the child to suffer; or
2. Places the child in a situation or place that allows the child's life or health to be endangered.

B. A person commits the offense of misdemeanor or felony child abuse when, in exercising temporary or permanent control of a child, he causes mental harm to that child by conduct which demonstrates substantial disregard for the mental well-being of the child.

C. Except for circumstances provided for in Section 5.705.B., a person commits the offense of felony child abuse if the abuse occurs under circumstances likely to produce death or serious bodily injury.

D. The penalty for misdemeanor child abuse shall be imprisonment for a period not to exceed one year imprisonment, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony child abuse shall be imprisonment for a period not to exceed three years imprisonment, or a fine not to exceed \$15,000.00, or both.

F. Effective Dates: The effective date for Subsections C, E and any references to felony in Subsection B shall be May 1, 2014.

HISTORY: GRIC Code § 5.1104 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-3623; Wis. Stat. Ann § 948.04; Ann. Cal. Penal Code § 273a; N.M. Stat § 30-6-1.

5.706. Elderly or Vulnerable Adult Abuse.

A. A person commits the offense of elderly or vulnerable adult abuse if he knows or reasonably should know that a person is an elderly or vulnerable adult and he intentionally, knowingly, recklessly or negligently:

1. Causes or permits to be caused bodily harm to the elderly or vulnerable adult or otherwise causes the elderly or vulnerable adult to suffer; or
2. Places the elderly or vulnerable adult in a situation or place that allows the elderly or vulnerable adult's life or health to be endangered; or
3. Subjects the elderly or vulnerable adult, or permits the elderly or vulnerable adult to be subjected, to emotional abuse.

B. A person commits the offense of felony elderly or vulnerable adult abuse if the abuse occurs under circumstances likely to produce death or serious bodily injury.

C. The penalty for misdemeanor elderly or vulnerable adult abuse shall be imprisonment for a period not to exceed one year imprisonment, or a fine not to exceed \$5,000.00, or both.

D. The penalty for felony elderly or vulnerable adult abuse shall be imprisonment for a period not to exceed three years imprisonment, or a fine not to exceed \$15,000.00, or both.

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

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat § 13-3623; Ann. Cal. Penal Code § 368; Wis. Stat. Ann § 940.285.

5.707. Failure to Send Minor to School.

A. A person commits the offense of failure to send a minor to school if he is a parent, guardian or custodian having custody of a minor, and without good cause neglects or he refuses to send a child or any children under his care to school while such child(ren) are between the ages of six and 16.

B. The penalty for misdemeanor failure to send a minor to school shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code § 5.1105 (2009).

5.708. Contributing to the Delinquency of a Minor.

A. A person commits the offense of contributing to the delinquency of a minor when he intentionally, knowingly, recklessly or negligently contributes, encourages or causes a minor to:

1. Engage in any conduct which is prohibited by the GRIC Code;
2. Engage a minor in any act that is a violation of the Children's Code or any lawful order of the Children's Court;
3. Disobey the reasonable and lawful orders and directions of a parent, guardian, or custodian;
4. Be habitually truant from school or be a runaway from a parent, guardian, or custodian;
5. Accompany known criminals or other persons of disreputable character;
6. Frequent places or houses where alcohol, drugs, or other intoxicants are used or sold;
7. Use alcohol, drugs, narcotics, or other intoxicants, including tobacco; or
8. Engage in any act which tends to debase or injure the morals, health or welfare of a minor.

B. The penalty for misdemeanor contributing to the delinquency of a minor shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code § 5.1106 (2009).

5.709. Interference with Custody.

A. A person commits the offense of interference with custody if, with knowledge that he has no privilege or right to do so, he takes, entices, keeps from lawful custody, or harbors a minor child from the lawful custody of a parent, guardian or custodian, or incompetent entrusted by authority of law to the custody of another person or institution.

B. Interference with custody shall not include a taking of the minor child for a period of less than 24 hours when the defendant is unaware that the parent, guardian or custodian will object to the taking.

C. The penalty for misdemeanor interference with custody shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code § 5.405 (2009).

5.710. Domestic Violence.

A. Purpose. This chapter shall be liberally construed to carry out the following purposes:

1. The Community Council declares that the official response to matters of domestic violence in the Community shall be zero tolerance for violent and abusive behavior, which will not be tolerated or excused under any circumstance.
2. The Community Council promotes the end of all domestic violence in the Community and the healing of families and to eliminate future violence in all families through prevention, counseling, treatment and public education that promotes the cultural and traditional values of the Gila River Indian Community.
3. The Community Council seeks to ensure the safety of victims of domestic violence and guarantee victims the maximum protection from abuse and/or violence.
4. The Community Council seeks to hold perpetrators of domestic violence fully accountable for their conduct.
5. For these reasons, the Community Council hereby enacts this chapter of the GRIC Code to promote the safety, well-being, respect and honor of all elders, adults, children, and vulnerable adults throughout the Community.

B. Offense of Domestic Violence. Domestic violence means the commission or attempted commission of any the enumerated offenses in Section 5.710.B.1 and the victim is identified in Section 5.710.B.2. Domestic Violence shall not be prosecuted as a separate offense to the underlying offense, but shall augment the underlying offense with “-Domestic Violence” (e.g., Homicide – Domestic Violence, Assault-Domestic Violence).

1. Offenses of Domestic Violence:
 - a. Failure to Obey Restraining Order, Section 5.509, or violation of any order of the court;
 - b. Criminal Contempt of Court, Section 5.510;
 - c. Witness Tampering, Section 5.513;
 - d. Jury Tampering, Section 5.515;
 - e. Homicide, Section 5.601;
 - f. Assault, Section 5.602;
 - g. Aggravated Assault, Section 5.603;
 - h. Endangerment, Section 5.604;
 - i. Threatening, Section 5.605;
 - j. Unlawful Restraint, Section 5.606;
 - k. Kidnapping, Section 5.607;
 - l. Stalking, Section 5.608;
 - m. Harassment, Section 5.609;
 - n. Child Abuse, Section 5.705;
 - o. Elderly or Vulnerable Adult Abuse, Section 5.706;
 - p. Interference with Custody, Section 5.709;
 - q. Sexual Assault, Section 5.801;
 - r. Sexual Abuse, Section 5.802;
 - s. Sexual Conduct with a Minor, Section 5.803;
 - t. Molestation of a Child, Section 5.804;
 - u. Incest, Section 5.805;
 - v. Criminal Trespass, Section 5.901;
 - w. Criminal Damage to Property, Section 5.908;
 - x. Disorderly Conduct, Section 5.1002;
 - y. Cruelty to Animals, Section 5.1004;
 - z. Misconduct Involving Weapons, Section 5.1301;
 - aa. Misuse of Firearms, Section 5.1302.
2. Victim is any of the following to the defendant:
 - a. A current or former spouse;
 - b. An adult or minor who is dating or who has dated, or is engaged in or has engaged in a sexual relationship, with the defendant;
 - c. An adult or minor who is related or is formerly related to the defendant by marriage;
 - d. An adult or minor who is related to the defendant by blood;
 - e. A person who has a child in common with the defendant; or

f. A minor child of a person in a relationship as described above.

C. Sentence. A person convicted of an offense designated as domestic violence, as provided in 5.710.B, shall be sentenced according to Chapter Four, Sentencing, and subject to the following sentencing enhancements:

1. A person who is convicted of a first misdemeanor offense under this section may serve a minimum sentence at the discretion of the judge, however the defendant's sentence may have days suspended and the defendant may be eligible for commutation of sentence, probation, work release or release on any other basis. The judge may order in its discretion a domestic violence assessment and to follow recommendations, and may order any other reasonable terms that the judge finds appropriate.
2. A person who is convicted of a misdemeanor offense under this section and who within a period of five years has been convicted of one or more prior crimes of domestic violence or a same or comparable offense of domestic violence in any jurisdiction in the United States shall serve at least 15 days in custody, in which the defendant shall not have days suspended and shall not be eligible for suspension or commutation of sentence, probation, or release on any other basis until the minimum sentence is completed. The judge shall order the defendant to complete a domestic violence assessment and follow and successfully complete all recommendations, and may order any other reasonable terms that the judge finds appropriate.
3. A person who is convicted of a felony offense of domestic violence under this section shall serve at least 60 days in custody, in which the defendant shall not have days suspended and shall not be eligible for suspension or commutation of sentence, probation, or release on any other basis until the minimum sentence is completed. The judge shall order the defendant to complete a domestic violence assessment and follow and successfully complete all recommendations, and may order any other reasonable terms that the judge finds appropriate. If the defendant fails to complete the required domestic violence assessment and subsequent recommendations, as reported by either the Probation Department or the defendant's court ordered treatment program or service provider, the defendant's probation shall be violated and the defendant shall serve the remainder of the court ordered sentence in imprisonment, not to exceed the original sentence.
4. A person who is convicted of a felony offense under this section and who within a period of five years has been convicted of one or more prior crimes of domestic violence or a same or comparable offense of domestic violence in any jurisdiction in the United States shall serve at least 90 days in custody, in which the defendant shall not have days suspended and shall not be eligible for suspension or commutation of sentence, probation, or release on any other basis until the minimum sentence is completed. The judge shall order the defendant to complete a domestic violence assessment and follow and successfully complete all

recommendations, and may order any other reasonable terms that the judge finds appropriate. If the defendant fails to complete the required domestic violence assessment and subsequent recommendations, as reported by either the Probation Department or the defendant's court ordered treatment program or service provider, the defendant's probation shall be violated and the defendant shall serve the remainder of the court ordered sentence in imprisonment, not to exceed the original sentence.

5. The dates of the commission of the offenses are the determining factor in applying the five year provision in Sections 5.710.C.1-4 regardless of the sequence in which the offenses were committed. A second or subsequent violation for which a conviction occurs does not include a conviction for an offense arising out of the same series of acts.

D. Arrest; Determination of Predominant Aggressor; Required Report; Duty of the Prosecutor; 48 Hour Hold.

1. A law enforcement officer may, with or without a warrant, arrest a person if the officer has probable cause to believe that domestic violence has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the officer.
2. In cases of domestic violence involving the infliction of physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, the law enforcement officer shall arrest a person, with or without a warrant, if the officer has probable cause to believe that the offense has been committed and the officer has probable cause to believe that the person to be arrested has committed the offense, whether such offense was committed within or without the presence of the officer.
3. A law enforcement officer shall, with or without a warrant, arrest a person if the law enforcement officer has probable cause to believe the alleged perpetrator has violated a restraining order issued under Section 5.710.G., Special Court Rules, if the existence of the order can be verified by the officer. Violation of a restraining order, including any prohibition against entering a residence, is not excused by the consent or permission of the alleged victim or any other person.
4. Determination of Predominant Aggressor. If a law enforcement officer receives a report of domestic violence from two or more opposing persons, the officer shall separately evaluate each report to determine which party was the predominant aggressor. If the officer determines that one person was the predominant aggressor, the officer need not arrest the other person alleged to have committed domestic violence. The law enforcement officer shall make every attempt to consider the dynamics of domestic violence in determining which party to arrest.

5. Required Report. Whenever a law enforcement officer investigates an allegation of domestic violence, whether or not an arrest is made, the officer shall make a written incident report of the alleged abuse and file that report with the Gila River Police Department. A law enforcement officer who does not make an arrest after investigating a report of domestic violence shall set forth the grounds for not arresting in a written incident report. In instances where two or more persons are arrested for a crime involving domestic violence, the law enforcement officer shall describe how the determination was made that both parties acted as predominant aggressors and document both accounts of the incident within the written incident report.
6. Any law enforcement officer who enforces this section in good faith shall be immune from suit by any person alleging a violation of this subsection or any other section of the Code.
7. Within 24 hours of an arrest of an alleged perpetrator under this section, excluding weekends and holidays, the arresting law enforcement officer shall present a written report to the Office of the Prosecutor, who may file with the court a criminal complaint of the alleged incident. If the alleged incident occurred on a weekend or holiday, the officer shall report the incident to a prosecutor the following working day.
8. The Gila River Police Department, the Office of the Prosecutor, and the Community Court shall develop and maintain protocols for implementation of each respective department's obligations under this chapter. Additionally, the victim/witness advocacy program of the Tribal Social Services department shall adopt standards and procedures for the delivery of services to domestic violence victims under this chapter.
9. 48 Hour Hold. Any alleged perpetrator arrested under this section shall be held in custody of the Department of Rehabilitation and Services for a period not less than 48 hours as a mandatory "cooling off" period. During the "cooling off" period prior to arraignment, the alleged perpetrator shall not be released on bail or on his/her own recognizance.
- E. Pretrial Confiscation of Firearms.
 1. A law enforcement officer may question the persons who are present at the scene of the alleged domestic violence incident to determine if a firearm is present on the premises. On learning or observing that a firearm is present on the premises, the law enforcement officer may temporarily seize the firearm if the firearm is in plain view or was found pursuant to a consent to search and if the officer reasonably believes that the firearm would expose the victim or another person in the household to a risk of serious bodily injury or death. A firearm owned or possessed by the victim shall not be seized unless there is probable cause to believe that both parties independently have committed an act of domestic

violence. The forfeiture of confiscated weapons used, displayed or unlawfully possessed as part of the commission of the offense of domestic violence, as defined in Section 5.710.B., shall be subject to the provisions of Section 5.1530, Forfeiture of Weapons, Explosives, and Drugs.

2. If a firearm is seized pursuant to Section 5.710.D.2., the law enforcement officer shall give the owner or possessor of the firearm a receipt for each seized firearm. The receipt shall indicate the identification or serial number or other identifying characteristic of each seized firearm. Each seized firearm shall be held for at least 72 hours by the law enforcement agency that seized the firearm.
3. If a firearm is seized pursuant to Section 5.710.D.2., a law enforcement officer shall notify the victim before the firearm is released from temporary custody.
4. Each seized firearm pursuant to Section 5.710.D.2. that is not prohibited from release or subject to forfeiture as provided in Section 5.1530, Forfeiture of Weapons, Explosives, and Drugs, can be claimed upon showing proof of ownership and photo identification by the owner who is at least 18 years of age to the Gila River Police Department. However, if there is reasonable cause to believe that returning a firearm to the owner or possessor may endanger the victim, the person who reported the assault or threat or another person in the household, the prosecutor shall file a Notice of Intent to Retain the Firearm in the Community Court. The prosecutor shall serve notice on the owner or possessor of the firearm by certified mail. The notice shall state that the firearm will be retained for not more than six months following the date of seizure. On receipt of the notice, the owner or possessor may request a hearing for the return of the firearm, to dispute the grounds for seizure or to request an earlier return date. The court shall hold the hearing within 10 days after receiving the owner's or possessor's request for a hearing. At the hearing, unless the court determines that the return of the firearm may endanger the victim, the person who reported the assault or threat or another person in the household, the court shall order the return of the firearm to the owner or possessor.

F. Duties of Law Enforcement Officer to Victims of Domestic Violence; Required Notice to Victim. Immediately following a domestic violence arrest, the law enforcement officer shall advise all known victims of the availability of victim assistance programs and shall give the victims information describing their legal rights and available services. The law enforcement officer shall advise the victim(s) of the availability of an emergency order of protection as provided under Section 5.712, Emergency Order of Protection. A domestic violence advocate, shelter advocate, or behavioral health services may be called on behalf of the victim. Upon request of the victim, the law enforcement officer or crime victim advocate shall provide or arrange for transportation of the victim to a medical facility or a place of shelter.

1. A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and others present from further violence and has a duty to arrest, upon finding probable cause to believe

that domestic violence has occurred, subject to the provisions of Section 5.710.D., Arrest. A law enforcement officer need not obtain a search warrant in order to enter a residence where he has probable cause to believe an offense of domestic violence is occurring or has just occurred. Such means include but are not limited to:

- a. Taking the action necessary to provide for the safety of the victim and any family or household member as described in Section 5.710.B.;
 - b. Confiscating any weapon involved in the alleged domestic violence;
 - c. Transporting or obtaining transportation for the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility;
 - d. Assisting the victim in removing essential personal effects;
 - e. Assisting the victim and any child(ren) in obtaining medical treatment, including obtaining transportation to a medical facility;
 - f. Giving the victim immediate and adequate notice of the rights of victims and/or the remedies and services available to victims of domestic violence.
2. As part of the notice required by Section 5.710.F.1.f., the law enforcement officer shall give, in addition to verbal notification, written notice to the adult victim substantially as follows:

“If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety, including asking for an emergency order for protection that will provide for your immediate protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including, but not limited to, a shelter, a family member's or friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the police report at no cost from the law enforcement department.

Please be advised that the prosecutor may choose to file a criminal complaint against your assailant. You also have the right to file a petition at no cost requesting a civil order of protection and temporary order of protection from domestic violence, which may include, but is not limited to, any of the following orders:

- a. An order enjoining your abuser from threatening to commit or committing further acts of domestic violence;

- b. An order prohibiting your abuser from harassing, stalking, annoying, telephoning, contacting or otherwise communicating with you directly or indirectly through family members, relations by marriage, friends, and co-workers;
- c. An order removing your abuser from the residence regardless of ownership;
- d. An order directing your abuser to stay away from your or any other designated household/family member's place of residence, school, place of employment, or any other specified place frequented by you;
- e. An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;
- f. An order granting you possession and use of the automobile and other essential personal effects regardless of ownership;
- g. An order granting you custody of your child or children;
- h. An order denying your abuser visitation;
- i. An order specifying arrangements for visitation, including requiring supervised visitation; and
- j. An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney or advocate fees.

The forms required to obtain a civil order for protection are available from the Community Court and/or the clerk of court. A Crime Victim Advocate of the Tribal Social Services program is available to assist you in obtaining information relating to domestic violence, treatment of injuries, and places of safety and shelter, or a crime victim advocate of your choosing may help you. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings, or support and other expenses for injuries sustained and damage to your property. This can be done through the Community Court.”

- 3. The written notice required in Section 5.710.F.1.f.2. must not include the addresses or locations of shelters to protect the safety of the alleged victim from the alleged perpetrator. In addition, the written notice must be provided in the native language of the victim, if practicable, when the native language of the victim is not English.

4. The victim of domestic violence shall be provided a copy of the police report at no cost upon request to the Gila River Police Department.
5. Duty of the Office of the Prosecutor to the victim.
 - a. Restraining Orders or Civil Orders of Protection. The Prosecutor shall make reasonable and good faith efforts to confer with the victim regarding the need for a restraining order or civil order of protection in order to assure the safety of the victim and the victim's family and household members as described in Section 5.710.B.
 - b. Prior to a court hearing, the Office of the Prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to decline prosecution of the crime, to dismiss the criminal charges filed against the defendant, or to enter into a plea agreement.
 - c. Release of a defendant from custody shall not be delayed because of the requirements of Section 5.710.F.5.a.
6. Record of dismissal required in court file.
 - a. When the court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why any witnesses are unavailable and the reasons the case cannot be prosecuted.
 - b. Prosecution will not move to dismiss a domestic violence case without prior consultation, or reasonable efforts to consult, and review with the victim, or, in the discretion of the prosecutor, the victim's crime victim advocate.
7. The victim is prohibited from withdrawing charges. Prosecution under this chapter shall be pursued provided there is a reasonable likelihood of a successful prosecution showing the commission of a domestic violence offense.

G. Special Court Rules. In addition to the rules of court generally applicable to criminal proceedings, the court is authorized to take the following actions in a proceeding involving alleged domestic violence offenses:

1. At the arraignment hearing, if the alleged perpetrator is to be released from custody, the judge, in his or her discretion and as a condition of release, may issue a restraining order excluding the alleged perpetrator from the home of the alleged victim, restraining the alleged perpetrator from any contact with the alleged

victim, and/or enjoining the alleged perpetrator from committing any acts of domestic violence.

2. The use of alcohol or other intoxicating substance in the commission of domestic violence or any crime related to domestic violence shall not diminish the seriousness of domestic violence or take precedence over the offense of domestic violence. The use or abuse of alcohol and/or other chemicals by the alleged perpetrator shall be considered not only in relationship to the alleged crime but as alcohol and/or other chemicals relate to the alleged perpetrator's overall lifestyle, in the likelihood that alcohol and/or other chemicals greatly increases the likeliness or unlikeliness of a person to appear in court, potential for lethality, or enhances the possibility of further threats or injury to the victim or others. The fact that the perpetrator was under the influence at the time of the offense shall not be utilized by law enforcement, prosecution or the court to mitigate the severity of the violence.
3. The employment, economic, educational, social and political status of the alleged perpetrator shall not be considered in making a determination regarding release or process for release inconsistent with the provisions of this section.
4. Pursuant to Section 5.1525, Judgment, if the defendant pleads guilty, a pre-sentence report may be ordered at the discretion of the Community Court prior to sentencing.
5. If it appears to the Court that alcohol or drugs played a part in the abuse, a chemical dependency evaluation with a treatment plan may be ordered, at the discretion of the court, prior to sentencing.
6. Upon a guilty plea or conviction of domestic violence, pursuant to provisions contained in Section 5.710.C., a defendant ordered to participate in an appropriate domestic violence offenders treatment program or program offered to provide services to the defendant shall abide by the following conditions:
 - a. The defendant shall attend and cooperate in an intake session for evaluation;
 - b. The domestic violence offenders treatment program or program ordered to provide services to the defendant shall complete the evaluation not later than 10 calendar days after entry of the order requiring evaluation, unless the court extends that time period;
 - c. A copy of the evaluation and recommended treatment or service plan shall be provided to the court; and
 - d. A clerk of the court shall forward to the domestic violence offenders treatment program or program ordered to provide services to the defendant

the order requiring treatment within 48 hours excluding weekends and holidays after the court has issued such order.

7. Willful failure or refusal to comply with a court order requiring a defendant to attend and cooperate in evaluation and/or to undergo treatment or services as described in a treatment or services plan is subject to contempt of court punishable by a judge as provided in Section 5.510, Criminal Contempt of Court. Unless otherwise prohibited by Section 5.710.C., if the court has suspended execution of any penalty imposed under Section 5.710.C. on the condition that the defendant undergo court-ordered evaluation and/or treatment, the court may also order execution of any such suspended sentence or portion thereof.
8. The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member as described in Section 5.710.B. is the victim of an alleged crime involving domestic violence perpetrated by the other spouse:
 - a. The privilege of confidential communication between spouses,
 - b. The testimonial privilege of spouses.
9. A person charged with domestic violence may be eligible for diversionary prosecution as provided in Section 5.405, Diversionary Prosecution.

H. Copy to Law Enforcement Agency. A restraining order granted or continued pursuant to this section shall be registered by a clerk of the court within 24 hours to the Gila River Police Department. Registration of an order means that a certified copy of the restraining order and a copy of the affidavit or acceptance of service have been received by the Gila River Police Department. The Gila River Police Department shall maintain a central repository for restraining orders so that the existence and validity of the orders can be easily verified. The clerk of the court shall also send a copy of the order within 24 hours to the approved domestic violence offenders treatment program or service provider if the defendant has been ordered to attend such program or other ordered services.

I. Continuing Education and Training for Law Enforcement Officers, Office of the Prosecutor Personnel, Prosecutors, Defense Services Personnel, Defense Attorneys, Crime Victim Advocates of the Tribal Social Services program, Domestic Violence Offenders Treatment Providers, Judges, Probation Officers and Court Personnel.

1. Each affected department shall enact policies regarding training and education concerning domestic violence. Each department is responsible for the development and implementation of proper policies and procedures relating to domestic violence in their appropriate field of work.
2. The courses shall include, but are not limited to, the following topics:

- a. The nature, extent, and causes of domestic violence;
 - b. Practices designed to promote safety of the victim and other family and household members as described in Section 5.710.B., including safety plans;
 - c. Resources available for victims and perpetrators of domestic violence;
 - d. Sensitivity to gender bias and cultural, racial, and sexual issues;
 - e. The lethality of domestic violence; and
 - f. The provisions of Section 5.710, Domestic Violence, Section 5.711, Civil Order of Protection, and Section 5.712, Emergency Orders of Protection.
3. All law enforcement officers, Office of the Prosecutor personnel, prosecutors, Defense Services personnel, defense attorneys, crime victim advocates of the Tribal Social Services program, domestic violence offender treatment providers, judges, probation officers and court personnel shall be required to complete a minimum of four hours of continuing education per calendar year.
 4. For law enforcement officers, such training must include training in the recognition and determination of predominant aggressor in cases of domestic violence.

J. Data Collection and Reporting. Tribal Social Services, Office of the Prosecutor, Defense Services Office, Police Department, Probation Department, and the Community Court shall be responsible for maintaining yearly aggregate numerical data to determine the extent of domestic violence in the Gila River Indian Community, and to monitor long-term trends of such violence.

1. Law enforcement shall collect data concerning the total number of reports of domestic violence it receives each year. It shall also count the total number of arrests for domestic violence, and how many of these arrests are dual, i.e., two people arrested for the same report. Law enforcement shall also keep records of the relationships between alleged perpetrators and victims.
2. The Office of the Prosecutor shall collect data concerning the types of domestic violence offenses referred to them. It shall record the number of referrals, number of cases prosecuted and number of cases declined by the following categories:
 - a. Intimate partner domestic violence, defined as spousal, dating or sexual relationship between suspect and victim; and non-intimate partner domestic violence, defined as all other relationships included under this Chapter;

- b. Underlying offense categories; and
 - c. Reasons for declining cases.
3. The Community Court shall keep a record of the disposition of cases pled guilty or nolo contendere, or found guilty or not guilty. The record shall further reflect whether a conviction is the defendant's first, second, third, fourth, or fifth or higher conviction for domestic violence. The court shall maintain a record of penalties imposed according to number of convictions of the defendant. The Community Court shall share information in a timely manner regarding domestic violence criminal complaints, restraining orders, and orders or protection as requested by Tribal Social Services.
 4. The Probation Department shall record the total number of individuals it has supervised who were serving probation for domestic violence. It shall tally the number of repeat offenders and the number who violated one or more of the terms of their probation. The Probation Department shall also record what services or domestic violence offenders treatment programs the individuals are referred to, the number of defendants who are repeat offenders, and the number of defendants who successfully complete the required program or number of counseling sessions.
 5. Tribal Social Services shall, in cooperation and collaboration with the Office of the Prosecutor, Defense Services Office, Gila River Police Department, Probation Department, and the Community Court, summarize the above data on domestic violence in a single annual report to the Community Council, to be coordinated and presented by the Director of Tribal Social Services. This annual report shall detail the scope of domestic violence in the Gila River Indian Community during the preceding calendar year, and shall be submitted to the Community Council, through the Health and Social Standing Committee, no later than the first day of April of each year. The initial domestic violence report shall summarize data collected for 2013.
 6. The annual report shall include documentation of compliance with the continuing education requirements of this section.

K. Effective Dates: The effective date for Subsection 5.710.C.3, 5.710.C.4 and references in 5.710.C. to felony offenses or sentencing shall be May 1, 2014.

HISTORY: GRIC Code § 5.1109 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-3601; Ariz. Rev. Stat. § 13-3601.02.

5.711. Civil Order of Protection.

A. Civil Order of Protection. A person may file a petition with the court for a civil order of protection for the purpose of restraining a person from committing an act of domestic

violence as defined in Section 5.710. Domestic Violence. At the same time a petition is filed, a person may also file a motion for temporary protection order if an emergency exists.

B. Jurisdiction. The Gila River Indian Community shall have jurisdiction over any petition for civil order of protection under the Code when the petitioner or respondent is domiciled or found within the boundaries of the Community or any act of domestic violence occurred within the boundaries of the Community or when the court is being asked to recognize and enforce a valid order of another competent jurisdiction. The court shall construe this section liberally to exercise maximum jurisdiction.

C. Who May File; Contents of Petition; Availability of Petition.

1. No civil order of protection may be granted unless the party who requests the order files a petition for an order.
2. A petition to obtain a civil order of protection under this section may be filed by:
 - a. Any person claiming to be the victim of domestic violence;
 - b. Any family member or household member as described in Section 5.710.B., Domestic Violence, of a person claimed to be the victim of domestic violence, on behalf of the alleged victim;
 - c. A parent, legal guardian or person with legal custody of a minor who is the alleged victim; or
 - d. A third party if the alleged victim is either temporarily or permanently unable to request an order; after the request, the court shall determine if the third party is an appropriate requesting party for the alleged victim.
3. The petition shall state the following:
 - a. The name and address of the petitioner for purposes of service. If the petitioner's address is unknown to the respondent, the petitioner may request that the address be protected. On the petitioner's request, the address shall not be listed on the petition. A protected address shall be maintained in a separate document or automated database and is not subject to release or disclosure by the court or any form of public access except as ordered by the court.
 - b. Name and address, if known, of the defendant.
 - c. Specific statement, including dates, of the domestic violence attempt(s).

- d. Relationship between the parties pursuant to Section 5.710, Domestic Violence, and whether there is a pending action for annulment, separation or divorce between the parties.
 - e. Name of the court in which any prior or pending proceeding or order was sought or issued concerning the conduct which is sought to be restrained.
 - f. Desired relief.
4. The petition shall be verified or supported by an affidavit made under oath.
 5. The remedies and procedure provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies. A petition may be filed, and an order may be granted, regardless of any other restraining order, order of protection, or any other order with restraint provisions, or the pendency of any other civil or criminal proceeding related to the allegations in the petition.
 6. The petitioner, or the victim on whose behalf a petition has been filed, is not required to file for annulment, separation, or divorce as a prerequisite to obtaining a civil order of protection.
 7. No filing fee shall be required for the filing of a petition under this section. If an alleged perpetrator has been arrested for the offense of domestic violence under Section 5.710, Domestic Violence, the arresting officer shall advise the alleged victim of the right to file a petition under this section without cost.
 8. The court shall provide standard, simplified petition forms with instructions for completion and provide clerical assistance to help with the writing and filing of a petition under this section. The court shall also provide that all petitions and forms developed and implemented under this section address and include all requirements for compliance with the full faith and credit provisions of the Violence Against Woman Act, 18 U.S.C. §§ 2262 and 2265.
- D. Temporary protection orders; ex parte.
1. Petition, motion and order. A motion for temporary protection order may be filed at the same time a petition for civil order of protection is filed. The motion for temporary protection order shall immediately be granted or denied by the court without a hearing or notice to the respondent. The court shall grant the motion if it determines that an emergency exists.
 2. A petitioner shall demonstrate an emergency exists by showing that:
 - a. The respondent recently committed acts of domestic abuse resulting in physical or emotional injury to the petitioner or another victim, or damage to property; or

- b. The petitioner or another victim is likely to suffer harm if the respondent is given notice before the issuance of a protection order.
 3. Evidence proving an emergency situation may be based on the petition and motion, police reports, affidavits, medical records, other written submissions, or the victim's statement.
 4. The temporary protection order may include any relief permitted by Section 5.711.F., and any other relief necessary to prevent further domestic violence.
 5. Upon issuing the temporary protection order, the court shall notify the Gila River Police Department and immediately provide for notice to the respondent under Section 5.711.G.
 6. The temporary protection order shall remain in effect until a court makes a determination whether to issue a civil order of protection under Section 5.711.E.
 7. If the court finds that an emergency does not exist, the court shall deny the petitioner's motion for temporary restraining order and shall proceed under Section 5.711.E.
 8. The court shall give a motion for temporary protection order priority over all other docketed matters and shall issue an order granting or denying the motion on the day it is filed.
- E. Procedure for Issuance of a Civil Order of Protection; Duration and Modification of a Civil Order of Protection; Mutual Orders of Protection Prohibited.
 1. Within 15 calendar days upon the filing of a petition for a civil order of protection, the judge shall review the petition, any other pleadings on file and any evidence offered by the petitioner, including any evidence of harassment by electronic contact or communication, to determine whether the order(s) requested should issue without further hearing. If the judge determines that there is reasonable cause to believe that the defendant may commit an act of domestic violence or that the defendant has committed an act of domestic violence, the court shall issue an order as provided in Section 5.711.F.
 2. If the judge denies a petition for a civil order for protection, or a petition to modify a civil order for protection, the court shall inform the petitioner, in person or by mail, of his or her right to request a hearing upon notice to the respondent, or the court in its discretion may schedule further hearing within 10 days with reasonable notice to the respondent. The court must state in the court record why the petition was denied.

3. If the petition for a civil order of protection is granted or modified, the court shall cause the order to be served on the respondent pursuant to Section 5.711.G. The respondent shall have 10 days to request a hearing upon being served the order of protection. An ex parte order issued under this section shall state on its face that the respondent is entitled to a hearing on written request within 10 days of being served and shall include the name and address of the Community Court where the request may be filed.
4. At any time during which the order is in effect, a party under an order of protection or restrained from contacting the other party is entitled to one hearing on written request in which the court may modify, revoke, or continue its order. A hearing requested by a party under an order of protection or restrained from contacting the other party shall be held within 10 days from the date requested unless the court finds good cause to continue the hearing. If exclusive use of the home is awarded, the hearing shall be held within five days from the date requested. The hearing shall be held at the earliest possible time.
5. Upon the request of the petitioner/victim, a crime victim advocate may be allowed to stay in the courtroom to support the victim.
6. The provisions of the order shall remain in effect for the period of time stated in the order, not to exceed one year unless extended by the court at the request of any party.
7. Mutual orders of protection are prohibited. If both parties allege injury, both parties must do so by separate verified petitions with separate case numbers. The Community Court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on the petition's individual merits. If the Community Court finds cause to grant both petitions, the Community Court shall do so by separate orders with specific findings justifying the issuance of each order.

F. Content of a Civil Order of Protection. A civil order of protection may include the following provisions:

1. Restraining the respondent from committing any acts of domestic violence.
2. Awarding temporary use and possession of property of the respondent, including the use and exclusive possession of the parties' residence, regardless of ownership of the house or lessee of record, on a showing that there is reasonable cause to believe that physical harm may otherwise result.
3. Restraining the respondent from any contact with the victim or other designated household or family member as described in Section 5.710.B., Domestic Violence, upon a showing that there is reasonable cause to believe that physical harm may otherwise result. An order may include directing the respondent to stay

away from the place of residence, school, or place of employment of the victim or any other designated household or family member as described in Section 5.710.B., Domestic Violence, or any other specified place frequented regularly by the victim or designated family or household member as described in Section 5.710.B, Domestic Violence.

4. Prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the victim directly or indirectly through family members, relations by marriage, friends, and co-workers.
5. Requiring the respondent to undergo a psychological evaluation.
6. Seizing and prohibiting the respondent from using or possessing a firearm or other weapon specified by the court if the court finds that the respondent is a credible threat to the physical safety of the petitioner or other specifically designated persons. The firearm or other weapon shall be immediately turned over to the Gila River Police Department after the respondent is served for the duration of the civil order of protection.
7. Awarding temporary custody or establishing temporary visitation rights with regard to minor children of the respondent on a basis which gives primary consideration to the safety of the claimed victim of domestic violence and the minor children.
 - a. If the court finds that the safety of the claimed victim or the minor children will be jeopardized by unsupervised or unrestricted visitation, the court shall set forth conditions or restrict visitation as to the time, place, duration, or supervision, or deny visitation entirely, as needed, to guard the safety of the claimed victim and the minor children. In specifying visitation arrangements, the judge shall consider the respondent's overall lifestyle, especially as it pertains to alcohol and other chemical use.
 - b. Any temporary custody order shall provide for child support and temporary support for the person having custody of the children, any amounts deemed proper by the court.
8. Ordering temporary guardianship with regard to an elderly or vulnerable adult victim of domestic violence if necessary for the safety of the elderly or vulnerable adult.
9. Ordering the respondent into an approved domestic violence treatment program at the cost of the respondent as necessary.
10. Restraining one or both parties from transferring, encumbering, concealing, or disposing of property except as authorized by the court and requiring that an

accounting shall be made to the court for all such transfers, encumbrances, dispositions, and expenditures.

11. Ordering the respondent to timely pay any existing debts of the respondent, including rental or mortgage payments, necessary to maintain the claimed victim in his or her residence, child support payments, as well as costs and fees of the petitioner, such as medical expenses, expenses for shelter, court costs, and attorney or advocate fees.
 12. Describing any prior orders of the court relating to domestic relation matters that are superseded or altered by the order of protection. If custody or support has already been adjudicated, the terms of a previous court order may be incorporated into a civil order of protection. Custody or visitation arrangements specified in an existing order may be modified in a civil order of protection upon a showing of changed circumstances and for the purpose of preventing further domestic violence.
 13. Notifying the respondent that the willful violation of any provision of the order constitutes contempt of court punishable by a fine or imprisonment or both, in addition to other applicable civil and criminal penalties available under the GRIC Code.
 14. Ordering, in the court's discretion, any other lawful relief as it deems necessary for the protection of the victim of domestic violence or other designated person, including orders or directives to the Gila River Police Department.
- G. Service of Civil Order of Protection; Copy to Law Enforcement Agency.
1. Orders of protection are to be served personally upon the respondent by a law enforcement officer, or an agent acting under authority of the court. If the respondent cannot be located, the order will be mailed by certified mail to the respondent's last known address, and upon application with the court, notice will be posted. An order is effective on the respondent upon service of a copy of the order and petition. An order expires one year after service on the defendant. A modified order is effective on service and expires one year after service of the initial order and petition.
 2. Within 24 hours after the affidavit or acceptance of service has been returned, excluding weekends and holidays, the clerk of the Court shall register a certified copy of the civil order of protection and a copy of the affidavit of service of process or acceptance of service with the Gila River Police Department. Registration of an order means that a certified copy of the civil order of protection and a copy of the affidavit or acceptance of service have been received by the Gila River Police Department. The Gila River Police Department shall maintain a central repository for orders of protection so that the existence and validity of the orders can be easily verified. The effectiveness of an order does not depend on its

registration and for enforcement purposes, a certified copy of an order of the Court, whether or not registered, is presumed to be a valid existing order of the Court for a period of one year from the date of service of the order on the respondent. Any changes or modifications of the order are effective upon entry of an order of the Court and shall be registered with the Gila River Police Department within 24 hours of entry of the order, excluding weekends and holidays.

H. Assistance of the Police Department in Service or Execution of Civil Order of Protection. When a civil order of protection is issued, upon request of the petitioner, the court shall order the police to accompany and assist any claimed victim of domestic violence in taking possession of the claimed victim's residence or otherwise to assist in execution of the order.

I. Right to Apply for Relief. A person's right to apply for relief under this section shall not be affected by leaving the residence or household to avoid abuse.

J. Violation of Court Orders -- Mandatory Arrest.

1. Willful violation of any order of protection shall constitute contempt of court punishable as provided in Section 5.510, Criminal Contempt of Court, of the Code.
2. A law enforcement officer shall arrest without a warrant and take into custody any person who the law enforcement officer has probable cause to believe has violated any order of protection.
3. All provisions of any order of protection shall remain in full force and effect until the order terminates or is modified by the court. Violation of any order of protection, including any prohibition against entering a residence, is not excused by the consent or permission of the alleged victim or any other person.
4. Any person, including a person who is not an Indian, who knowingly violates any order of protection may, after notice and hearing, be assessed a civil penalty in an amount not to exceed \$500.00. Any person under the criminal jurisdiction of the Community may further be subject to criminal prosecution, including prosecution under Section 5.508, Failure to Obey Court Order and/or Section 5.509, Failure to Obey Restraining Order. Any person who is not a member of the Community may also be subject to GRIC Code Title Eight, Chapter One, Removal or Exclusion of Non-Members.

K. Enforcement of Foreign Orders for Protection.

1. A copy of an order for protection issued by another tribal, state, county, or other court jurisdiction shall be given full faith and credit by Gila River Indian Community law enforcement authorities as having the same force and effect as one issued by the Community court. Copies of an order of protection issued by

another tribal, state, county, or other court jurisdiction may be filed at the Community Court, in which there shall be no filing fee. Within 24 hours a clerk of the court shall register each order received with the Gila River Police Department to be maintained in the central repository.

2. Law enforcement officers shall attempt to verify the existence and/or validity of any foreign order for protection; however, a law enforcement officer may presume the validity of and rely on a copy of an order of protection issued by another tribal, state, county, or other court jurisdiction if the order was given to the officer by any source and the officer may also rely on the statement of any person who is protected by the order that the order remains in effect. In the event that the victim does not have a copy of the order and the officer cannot verify the order or the copy is not clear enough to determine its validity, the officer should arrest the subject on an applicable violation of the GRIC Code and shall assist the victim in obtaining verification of the order and/or explaining the procedure for obtaining an Gila River Indian Community civil order for protection under this section or an emergency order of protection under Section 5.712, Emergency Orders of Protection. The law enforcement officer shall also offer other assistance as provided in Section 5.710.F., Duties of Law Enforcement Officer to Victims of Domestic Violence; Required Notice to Victim.

HISTORY: GRIC Code § 5.1109.H. (2009).

5.712. Emergency Orders of Protection.

A. Telephonic or facsimile applications and orders. An officer of the Gila River Police Department may apply for an emergency order of protection by telephone or facsimile ("fax") upon the request of an alleged victim or a third party if the alleged victim is temporarily or permanently unable to request an order. If a third party makes the request, the judge shall determine if the third party is an appropriate requesting party for the alleged victim.

1. The officer shall complete an application for an emergency order of protection, specifying his or her reasonable grounds to believe that a person is in immediate and present danger of domestic violence based on an allegation of a recent incident of actual domestic violence. The officer shall then contact a judge of the Community Court or Children's Court by telephone or fax. Any Community Court or Children's Court judge may receive and act upon such applications.
2. A judge may issue an emergency order of protection by telephone or fax upon a finding that:
 - a. A reasonable person would believe that an immediate and present danger of domestic violence exists; and
 - b. An emergency order of protection is necessary to prevent the occurrence or recurrence of domestic violence.

3. The emergency order of protection may include any relief permitted by this chapter and any other relief necessary to prevent further domestic violence.
4. The officer shall record the order on an emergency order of protection form and, by his or her signature, certify that the writing is a verbatim transcription of the judge's order. The certification of any such officer shall be prima facie evidence of the validity of the order.
5. The officer shall then give a copy of the order to the protected person(s) and serve a copy of the order on the restrained person.
6. If a person who is named in the order and who has not received personal service of the order but has received actual notice of the existence and substance of the order commits an act that violates the order, the person is subject to any penalty for the violation provided in this chapter.
7. The originals of the application and emergency order of protection shall be filed by the Gila River Police Department with the court no later than 9:00 a.m. the next working day.
8. The emergency order of protection shall expire no later than the close of judicial business five working days after its issuance, unless the issuing judge indicates otherwise. During the period following the issuance of the emergency order of protection, a petition may be filed pursuant to Section 5.711, Civil Order of Protection.

HISTORY: GRIC Code § 5.1109.H.5. (2009).

5.713. Definitions as Used in this Chapter.

A. *Bodily harm* mean physical pain, illness, or the impairment of a physical condition, which includes but is not limited to any skin bruising, bleeding, failure to thrive, malnutrition, burns, fracture, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition which imperils a person's health.

B. *Emotional abuse* means a pattern of ridiculing or demeaning an elderly or vulnerable adult, making derogatory remarks to an elderly or vulnerable adult, verbally harassing an elderly or vulnerable adult or threatening to inflict physical harm or emotional harm on an elderly or vulnerable adult.

C. *Mandatory arrest* means that the victim need not sign a complaint for an arrest to occur. A law enforcement officer shall arrest, subject to the provisions of Section 5.710, Domestic Violence, Section 5.711, Civil Order of Protection, and Section 5.712, Emergency Orders of Protection, if there is probable cause to believe the person to be arrested has committed

an offense as defined by this chapter, even though the arrest may be against the wishes of the victim.

D. *Mental harm* means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. Mental harm may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.

E. *Perpetrator* means the person who has committed an act of domestic violence on his or her family member or household member as described in Section 5.710.B, Domestic Violence.

HISTORY: GRIC Code § 5.1109 (2009).

CHAPTER 8. SEXUAL OFFENSES

5.801. Sexual Assault.

A. A person commits the offense of sexual assault if he intentionally or knowingly engages in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Without consent includes any of the following:

1. The victim is reasonably coerced with the immediate use or threatened use of force against a person or property; or
2. The victim is incapable of consent by reason of drugs, alcohol, sleep or any other similar impairment of awareness, or by reason of mental disorder where the victim is unable to comprehend the distinctly sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another, and such condition is known or should have been reasonably known to the defendant; or
3. The victim is intentionally deceived as to the nature of the act by the defendant, or the deception is known or should have been reasonably known to the defendant.

C. Any person found guilty of sexual assault shall not be eligible for deferred prosecution or commutation of sentence.

D. The penalty for felony sexual assault shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

E. The penalty for misdemeanor sexual assault shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

F. Effective Dates: The effective date for Subsection D shall be May 1, 2014. The effective dates for Subsection E shall be from January 1, 2014 through April 30, 2014.

HISTORY: GRIC Code § 5.406 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-1406.

5.802. Sexual Abuse.

A. A person commits the offense of sexual abuse if he intentionally or knowingly engages in sexual contact with any person without consent of that person.

B. Without consent includes any of the following:

1. The victim is reasonably coerced with the immediate use or threatened use of force against a person or property; or
2. The victim is incapable of consent by reason of mental disorder where the victim is unable to comprehend the distinctly sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another, drugs, alcohol, sleep or any other similar impairment of awareness, and such condition is known or should have been reasonably known to the defendant; or
3. The victim is intentionally deceived as to the nature of the act by the defendant, or the deception is known or should have been reasonably known to the defendant.

C. The penalty for felony sexual abuse shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

D. The penalty for misdemeanor sexual abuse shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. Effective Dates: The effective date for Subsection C shall be May 1, 2014. The effective dates for Subsection D shall be from January 1, 2014 through April 30, 2014.

HISTORY: GRIC Code § 5.817 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-1404.

5.803. Sexual Conduct with a Minor.

A. A person commits the offense of sexual conduct with a minor if he intentionally or knowingly engages in sexual intercourse, sexual contact or oral sexual contact with any person who is under 18 years of age and who is not his or her spouse.

B. It is a defense to a prosecution under this section in which the victim's lack of consent is based on incapacity to consent because he or she was 15, 16, or 17 years of age, if at the time the defendant engaged in the conduct constituting the offense he or she did not know and could not reasonably have known the age of the victim.

C. Any person found guilty of sexual conduct with a minor under 15 years of age shall not be eligible for deferred prosecution or commutation of sentence.

D. The penalty for felony sexual conduct with a minor shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

E. The penalty for misdemeanor sexual conduct with a minor shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

F. Effective Dates: The effective date for Subsection D shall be May 1, 2014. The effective dates for Subsection E shall be from January 1, 2014 through April 30, 2014.

HISTORY: GRIC Code § 5.818 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-1405.

5.804. Molestation of a Child.

A. A person commits the offense of molestation of a child if he knowingly engages in sexual contact with a minor under the age of 15 years of age, or knowingly causes a minor under the age of 15 years to directly or indirectly fondle or manipulate any part of the genitals, anus or female breasts of such person or another.

B. Any person found guilty of molestation of a child shall not be eligible for deferred prosecution or commutation of sentence.

C. The penalty for felony molestation of a child shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

D. The penalty for misdemeanor molestation of a child shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. Effective Dates: The effective date for Subsection C shall be May 1, 2014. The effective dates for Subsection D shall be from January 1, 2014 through April 30, 2014.

HISTORY: GRIC Code § 5.819 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-1410.

5.805. Incest.

A. A person commits the offense of incest if he knowingly engages in sexual intercourse with persons within the following degrees of consanguinity: parents and children including grandparents and grandchildren of every degree, brothers and sisters of the half as well as of the whole blood, uncles and nieces, aunts and nephews.

B. The penalty for felony incest shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

C. The penalty for misdemeanor incest shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

D. Effective Dates: The effective date for Subsection B shall be May 1, 2014. The effective dates for Subsection C shall be from January 1, 2014 through April 30, 2014.

HISTORY: GRIC Code § 5.1107 (2009).

Felony Comparability References: N.M. Stat. Ann. §30-10-3(2010).

5.806. Indecent Exposure.

A. A person commits the offense of indecent exposure if he or she exposes his or her genitals or anus, or she exposes the areola or nipple of her breast or breasts, and another person is present, and the defendant is reckless as to whether such other person, as a reasonable person, would be offended or alarmed by the act.

B. Indecent exposure does not include an act of breast-feeding by a mother.

C. The penalty for misdemeanor indecent exposure shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code § 5.816 (2009).

5.807. Prostitution.

A. A person commits the offense of prostitution if he engages in or agrees or offers to engage in sexual intercourse or oral sexual conduct with another person in exchange for money or anything of value.

B. The penalty for misdemeanor prostitution shall be imprisonment for a period not to exceed 90 days, or a fine not to exceed \$300.00, or both.

HISTORY: GRIC Code § 5.814 (2009).

5.808. Causing or Taking a Child for Purposes of Prostitution.

A. A person commits the offense of causing or taking a child for purposes of prostitution if he:

1. Takes away a minor from a parent, guardian or custodian, for the purpose of prostitution;
2. Causes or uses any minor for the purposes of prostitution;
3. Permits a minor under the person's custody or control to engage in prostitution; or
4. Receives any benefit for procuring or placing a minor in prostitution.

B. The penalty for misdemeanor causing or taking a child for purposes of prostitution shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

5.809. Promotion of Prostitution.

A. A person commits the offense of promotion of prostitution if he knowingly finances, compels, manages, supervises or controls, solicits or offers to provide the services of a prostitute.

B. The penalty for misdemeanor promotion of prostitution shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code § 5.815 (2009).

5.810. Admissibility of Evidence of Prior Sexual Conduct.

A. Opinion and reputation evidence of the victim's sexual conduct shall not be admitted in a prosecution under this title. Evidence of specific instances of the victim's sexual conduct shall be admissible in a prosecution under this title only to the extent that the following proposed evidence is relevant and material to a fact at issue and the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence by clear and convincing evidence:

1. Testimony establishing the victim's past sexual conduct with the defendant; or
2. Testimony which directly refutes physical or scientific evidence.

HISTORY: GRIC Code § 5.407 (2009).

5.811. Sexual Offense; Evidence of Similar Crimes.

A. If the defendant is charged with committing a sexual offense, the judge may admit evidence that the defendant committed past acts that would constitute a sexual offense and may consider the bearing this evidence has on any matter to which it is relevant. The judge shall on the record weigh the probative value of this evidence against the danger of unfair prejudice, confusion of issues, or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. Evidence which is substantially more prejudicial than probative shall be excluded.

B. This section does not limit the admission or consideration of evidence under any court rule.

C. For purposes of this section, sexual offense includes sexual assault, sexual abuse, sexual conduct with a minor, molestation of a child, or any similar offense if convicted by any jurisdiction.

HISTORY: New Section.

5.812. Admissibility of a Minor’s Statement.

A. Except as otherwise provided in the Children’s Code, a statement made by a minor who is under the age of 10 years describing any sexual offense or physical abuse performed with, on or witnessed by the minor, which is not otherwise admissible, is admissible in evidence in a criminal proceeding if both the following are true:

1. The judge finds, in an in camera hearing, that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
2. Either of the following is true:
 - a. The minor testifies at the proceeding; or
 - b. The minor is unavailable as a witness, provided that if the minor is unavailable as a witness, the statement may be admitted only if there is corroborative evidence of the statement.

B. A statement shall not be admitted under this section unless the proponent of the statement makes known, in writing, to the adverse party his intention to offer the statement and the particulars of the statement sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to prepare to meet the statement.

HISTORY: New Section.

CHAPTER 9. OFFENSES AGAINST PROPERTY

5.901. Criminal Trespass.

A. A person commits the offense of criminal trespass if he intentionally or knowingly, and without consent or permission of the owner, user, or person in lawful possession thereof:

1. Enters upon, remains or traverses upon private, allocated or allotted lands not his own;
2. Enters or remains unlawfully in or on any residential or nonresidential structure; or
3. Allows his livestock or livestock under his control to occupy or graze upon the lands of another, where notice of trespass is given by actual communication, posting, fencing, or other means calculated to give notice.

B. The penalty for misdemeanor criminal trespass shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code § 5.501 (2009).

5.902. Burglary.

A. A person commits the offense of burglary if he unlawfully enters a residential or non-residential structure with the intent to commit an offense inside.

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

HISTORY: GRIC Code § 5.502 (2009).

5.903. Aggravated Burglary.

A. A person commits the offense of aggravated burglary if he unlawfully enters a residential or non-residential structure with the intent to commit a theft or felony inside.

B. The penalty for felony aggravated burglary shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

C. The penalty for misdemeanor aggravated burglary shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

D. Effective Dates: The effective date for Subsection B shall be May 1, 2014. The effective dates for Subsection C shall be from January 1, 2014 through April 30, 2014.

HISTORY: New Offense.

Felony Comparability References: Ariz. Rev. Stat. § 13-1506, 1507; N.M. Stat. § 30-16-4; Cal. Penal Code § 458-464; Utah Code Ann. § 76-6-203.

5.904. Robbery.

A. A person commits the offense of robbery if by use of force, threat, coercion, or intimidation he takes property from the possession of another, from his person or immediate presence.

B. The penalty for misdemeanor robbery 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 robbery 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.

HISTORY: GRIC Code § 5.503 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-1902; N.M. Stat § 30-16-2; Cal. Penal Code § 211; Utah Code Ann. § 76-6-301; 18 U.S.C. § 2111.

5.905. Theft.

A. A person commits the offense of theft, if without lawful authority, he intentionally or knowingly:

1. Controls property of another with the intent to deprive him of its value or use;
2. Converts to any unauthorized use services or property of another entrusted to the defendant for a limited authorized use;
3. Obtains property or services of another by means of any material misrepresentation with intent to deprive him of its use or value;
4. Comes into control of lost, mislaid or misdelivered property of another under circumstances providing means of inquiry as to the true owner, and appropriates such property to his own or another's use without making reasonable efforts to notify the true owner;
5. Controls property of another knowing or having reason to know that the property was stolen; or

6. Obtains services known to the defendant to be available only for compensation without offering such compensation, or diverts another's services to his own or another's services to his own or another's benefit without authority to do so.
7. A person commits theft if, without lawful authority, the person knowingly takes control, title, use or management of a vulnerable adult's property while acting in a position of trust and confidence and with the intent to deprive the vulnerable adult of the property. Proof that a person took control, title, use or management of a vulnerable adult's property without adequate consideration to the vulnerable adult may give rise to an inference that the person intended to deprive the vulnerable adult of the property.
 - a. It is an affirmative defense to any prosecution under Section 5.905.A.7. that either:
 1. The property was given as a gift consistent with a pattern of gift giving to the person that existed before the adult became vulnerable;
 2. The property was given as a gift consistent with a pattern of gift giving to a class of individuals that existed before the adult became vulnerable; or
 3. The court approved the transaction before the transaction occurred.
 - B. A person commits the offense of felony theft if committed under Section 5.905.A., and:
 1. The crime involved theft of property with a value of \$1,000.00 or more; or
 2. The crime is committed against a cemetery or place of worship, regardless of the value of the property.
 - C. In determining the classification of the offense as a felony or misdemeanor, the prosecutor may aggregate in the complaint amounts taken in thefts committed pursuant to one scheme or course of conduct, whether the amounts were taken from one or several persons.
 - D. The penalty for misdemeanor theft shall be imprisonment for a period not to exceed one year, a fine not to exceed \$5,000.00, or both.
 - E. The penalty for felony theft shall be imprisonment for a period not to exceed three years, a fine not to exceed \$15,000.00, or both.

F. Effective Dates: The effective date for Subsections B, E and references to felony offenses in Subsection C shall be May 1, 2014.

HISTORY: GRIC Code § 5.504.

Felony Comparability References: Ariz. Rev. Stat § 13-1802; N.M. Stat § 30-16-1; Cal. Penal Code § 484; Utah Code Ann. § 76-6-404; 18 U.S.C. § 661.

5.906. Shoplifting.

A. A person commits the offense of shoplifting if he intentionally takes possession of any goods, wares or merchandise offered for sale by any store or other mercantile establishment with the intention of converting the same to his use without paying the purchase price of the property.

B. A merchant, or his agent or employee, upon probable cause, may detain on the premises for a reasonable time any person suspected of shoplifting for questioning or summoning a law enforcement officer. In no event shall such detention exceed one hour.

C. The penalty for misdemeanor shoplifting shall be imprisonment for a period not to exceed 60 days, or a fine not to exceed \$250.00, or both.

HISTORY: GRIC Code § 5.505 (2009).

5.907. Joyriding.

A. A person commits the offense of joyriding if, without intent to permanently deprive, he intentionally or knowingly takes unauthorized control of another's means of transportation.

B. The penalty for misdemeanor joyriding shall be imprisonment for a period not to exceed 60 days, or a fine not to exceed \$400.00, or both.

HISTORY: GRIC Code § 5.506 (2009).

5.908. Criminal Damage to Property.

A. A person commits the offense of criminal damage to property if he intentionally, knowingly, or recklessly:

1. Defaces or damages tangible property of another person;
2. Tampers with tangible property of another person so as to substantially impair its function or value; or

3. Drawing or inscribing a message, slogan, sign or symbol that is made on any public or private building, structure or surface, and that is made without permission of the owner.

B. A person commits the offense of felony criminal damage to property if committed under Section 5.908.A., and the damage to the property is valued at \$1,000.00 or more.

C. In determining the classification of the offense as a felony or misdemeanor, the prosecutor may aggregate in the complaint amounts of property damage committed pursuant to one scheme or course of conduct, whether the damage was caused to property belonging one or several persons.

D. The penalty for misdemeanor criminal damage to property shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony criminal damage to property shall be imprisonment for a period not to exceed three years, a fine not to exceed \$15,000.00, or both.

F. Effective Dates: The effective date for Subsections B, E and references to felony offenses in Subsection C shall be May 1, 2014.

HISTORY: GRIC Code § 5.507 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-1602; N.M. Stat § 30-15-1; Utah Code Ann. § 76-6-106.

5.909. Arson.

A. A person commits the offense of arson if, without legal right or justification, he knowingly sets fire to, burns or causes to be burned property of another or property of his own.

B. A person commits the offense of felony arson if arson is committed under 5.909.A. and damage is caused to:

1. A structure;
2. An occupied structure;
3. Property valuing more than \$100.00; or
4. An occupied prison or jail facility.

C. In addition to any civil liability, a person who is convicted of an act of arson that resulted in an appropriate emergency response or investigation may be liable in the form of restitution for the expenses that are incurred incident to the emergency response and the investigation of the commission of the offense.

D. The penalty for misdemeanor arson shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony arson 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 B and E shall be May 1, 2014.

HISTORY: GRIC Code § 5.508 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-1703, 13-1704; N.M. Stat § 30-17-5; Cal. Penal Code § 451; Utah Code Ann. § 76-6-103; 18 U.S.C. § 81.

5.910. Reckless Burning.

A. A person commits the offense of reckless burning if he recklessly damages property of another or a structure by causing a fire or explosion.

B. In addition to any civil liability, a person who is convicted of an act of reckless burning that resulted in an appropriate emergency response or investigation may be liable in the form of restitution for the expenses that are incurred incident to the emergency response and the investigation of the commission of the offense.

C. The penalty for misdemeanor reckless burning shall be imprisonment for a period not to exceed 30 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code § 5.509 (2009).

5.911. Setting Brush Fires.

A. A person commits the offense of setting brush fires if he intentionally, knowingly, or recklessly sets a brush fire without justification within the Reservation.

B. In addition to any civil liability, a person who is convicted of the offense of setting brush fires that resulted in an appropriate emergency response or investigation may be liable in the form of restitution for the expenses that are incurred incident to the emergency response and the investigation of the commission of the offense.

C. The penalty for misdemeanor setting brush fires shall be imprisonment for a period not to exceed 30 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code § 5.510 (2009).

5.912. Theft by Extortion.

A. A person commits the offense of theft by extortion if he unlawfully obtains the property of another or if he intentionally or knowingly obtains or seeks to obtain property of another by means of a threat to do in the future any of the following:

1. Cause physical injury to any person;
2. Cause damage to property;
3. Accuse anyone of a crime or brings criminal charges against anyone;
4. Expose a secret or asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule, or to impair his credit or business;
5. Take or withhold action as a public servant or cause a public servant to take or withhold action; or
6. Cause anyone to part with any property.

B. It is an affirmative defense to a prosecution under Sections 5.912.A.3., 5.912.A.4., and 5.912A.5. that the property obtained by threat of the accusation, exposure, lawsuit or other invocation of official action was lawfully claimed either as:

1. Restitution or indemnification for harm done under circumstances to which the accusation, exposure, lawsuit or other official action relates; or
2. Compensation for property that was lawfully obtained or for lawful services.

C. The penalty for misdemeanor theft by extortion shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

D. The penalty for felony theft by extortion shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

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

HISTORY: GRIC Code § 5.511 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-1804; N.M. Stat § 30-16-9; Cal. Penal Code § 518; Utah Code Ann. § 76-6-406.

5.913. Receiving Stolen Property.

A. A person commits the offense of receiving stolen property if he purchases, receives, conceals, or aids in the concealing of any property of another knowing or having reason to know that such property was obtained by theft, extortion, fraud, or other unlawful means.

B. The penalty for misdemeanor receiving stolen property 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 receiving stolen property 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.

HISTORY: GRIC Code § 5.512 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-2307; N.M. Stat § 30-16-11; Cal. Penal Code § 496; Utah Code Ann. § 76-6-408.

5.914. Criminal Littering.

A. A person commits the offense of criminal littering if he throws, places, drops, or permits to be dropped on public roadways, Community land or property of another, which is not a lawful dump, any litter, destructive or injurious material that he does not immediately remove.

B. The court, in addition or instead of a fine, may require the offender to pay actual damages, or perform community services.

C. The penalty for misdemeanor criminal littering shall be imprisonment for a period not to exceed 30 days, a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code § 5.513 (2009).

5.915. Criminal Polluting.

A. A person commits the offense of criminal polluting if he discharges or permits to be discharged any sewage, oil products or other harmful substances into any water or waterway, including any river, stream or canal whether containing water or not, within the Reservation, unless authorized to do so by the Community.

B. The penalty for misdemeanor criminal polluting shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code § 5.514 (2009).

5.916. Definitions as Used in this Chapter.

A. *Litter* means any rubbish, refuse, waste material, offal, paper, glass, cans, bottles, organic or inorganic trash, debris, filthy or odoriferous objects, dead animals or any foreign substance of whatever kind or description, including junked or abandoned vehicles, whether or not any of these items are of value.

B. *Property* means anything of value, tangible or intangible, including trade secrets.

C. *Structure* means any vending machine or any vault, safe, cash register, vending machine, product dispenser, money depository, deposit box, telephone coin box, building, object, vehicle, railroad car or place with sides and a floor that is separately securable from any other structure attached to it and that is used for lodging, business, transportation, recreation or storage.

D. *Value* means the fair market value of the property or services at the time of the theft. When property has an undeterminable value the trier of fact shall determine its value and, in reaching its decision, may consider all relevant evidence, including evidence of the property's value to its owner.

HISTORY: GRIC Code §5.104 (2009).

CHAPTER 10. OFFENSES AGAINST PUBLIC PEACE

5.1001. Riot.

A. A person commits the offense of riot if, with five or more persons acting together he intentionally, knowingly, or recklessly uses force or violence or threatens to use force or violence if such use or threat is accompanied by immediate power of execution, which disturbs the public peace.

B. The penalty for misdemeanor riot 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 riot 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.

HISTORY: GRIC Code § 5.810 (2009).

Felony Comparability References: Ariz. Rev. Stat. § 13-2903.

5.1002. Disorderly Conduct.

A. A person commits the offense of disorderly conduct if he:

1. With intent to cause public inconvenience, annoyance or alarm disturbs the peace or quiet of a neighborhood, family, public place, person, religious or public gathering;
2. Uses abusive, indecent, profane, or vulgar language in a public or private place that by its very utterance tends to incite violence, unlawful conduct, or breach of the peace by others;

3. Makes an offensive gesture or display in a public or private place that by its very nature tends to incite violence, unlawful conduct, or a breach of the peace by others;
4. Abuses or threatens a person in a public or private place in a manner calculated to place the threatened person in fear or bodily injury;
5. Makes unreasonable noise in a public place, or on or near private property which he has no right to occupy;
6. Fights or provokes a fight with another; or
7. Not being lawfully authorized to do so, displays a deadly weapon in a public or private place in a manner calculated to alarm.

B. The penalty for misdemeanor disorderly conduct shall be imprisonment for a period not to exceed 90 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code § 5.811 (2009).

5.1003. Criminal Nuisance.

- A. A person commits the offense of criminal nuisance:
 1. If, by conduct either unlawful in itself or unreasonable under the circumstances, he recklessly creates or maintains a condition which endangers the safety or health of others; or
 2. By knowingly conducting or maintaining any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

B. The penalty for misdemeanor criminal nuisance shall be imprisonment for a period not to exceed 30 days, or a fine not to exceed \$500.00, or both.

HISTORY: New Offense.

5.1004. Cruelty to Animals.

A. A person commits the offense of cruelty to animals if he intentionally, knowingly or negligently mistreats, abandons, neglects, kills or injures any animal without legal justification or authority.

B. A person found guilty of cruelty to animals shall be referred to Behavioral Health Services for evaluation and shall follow and successfully complete all recommendations.

C. The penalty for misdemeanor cruelty to animals shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code § 5.812 (2009).

5.1005. Participating in or Assisting a Criminal Street Gang.

A. A person commits the offense of participating in or assisting a criminal street gang if he does any of the following:

1. Intentionally organizes, manages, directs, supervises or finances a criminal street gang with the intent to promote or further the criminal objective(s) of the criminal street gang;
2. Knowingly incites or induces others to engage in violence or intimidation to promote or further the criminal objectives of a criminal street gang;
3. Furnishes advice or direction in the conduct, financing or management of a criminal street gang with the intent to promote or further the criminal objective(s) of a criminal street gang;
4. Hires, engages or uses a minor for any conduct preparatory to or in completion of any offense in this chapter; or
5. Commits any felony offense under this title, whether completed or preparatory for the benefit of, at the direction of or in association with any criminal street gang.

B. Definitions as used in this section:

1. *Community building or property* includes, but is not limited to, the Community Governance Center, all District service centers, any Community building housing the various departments performing Community governmental functions, and any other building or property owned and controlled by the Community, not being lawfully used as a private residence. Any driveways, parking lots, or curtilage of any of these buildings or properties shall constitute a *Community building or property*.
2. *Community event* means any event that is open to the public, or any Community sponsored event, or any event authorized by the Community to take place on the grounds of a Community building or property, including, but not limited to: funerals, memorials, wakes, dances, parades, pow wows, Community sporting events, Mul-Chu-Tha, and other cultural events.
3. *Criminal street gang* means an ongoing formal or informal association of persons whose members or associates, individually or collectively, engages in the

commission, attempted commission, facilitation or solicitation of any criminal offense and that has at least one individual who is a criminal street gang member.

4. *Criminal street gang member* means a person who meets two or more of the following criteria indicating membership:
 - a. Self-proclamation;
 - b. Witness testimony or official statement;
 - c. Written or electronic correspondence;
 - d. Paraphernalia or photographs;
 - e. Tattoos;
 - f. Clothing or colors;
 - g. Any other indicia of street gang membership.
5. *Graffiti* means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface.
6. *Graffiti material* means any can of spray paint, spray paint nozzle, broad tipped marker pen, paint pen, glass cutting tool, glass etching tool or instrument, or any implement commonly used for graffiti making.
 - a. *Broad tipped marker pen* means a felt-tipped marker, or similar implement containing fluid, which may or may not be water soluble, with a tip that exceeds one quarter (1/4) inch in width.
 - b. *Glass cutting tool* means a tool or instrument with the sole purpose of cutting glass or scratching a permanent design into glass.
 - c. *Glass etching tool or instrument* means acid products designed for the purpose of etching a permanent design into glass.
 - d. *Paint pen* means a tube, marker or other pen like instrument with a tip of one quarter (1/4) inch in diameter or greater that contains paint or similar fluid and an internal paint agitator.
 - e. *Spray paint* means any aerosol container that is made or adapted for the purpose of applying paint or other substance capable of defacing property.

f. *Spray paint nozzle* means a nozzle designed to deliver a spray of paint of particular width or flow from a can of spray paint.

C. Evidence concerning indicia of criminal street gang relating to paraphernalia, tattoos, clothing, colors, the use of common name(s), hand gestures or common sign(s) or symbol(s) may be submitted into evidence with the proper foundation in any case brought under this section.

D. Expert testimony with the proper foundation may be offered and admissible as proof of criminal street gang under this section.

E. A person convicted of an offense under this section may be ordered to participate in and successfully complete a gang offender education program.

F. Sentences or charges provided for in this section and Sections 5.1010, Drive-By Shooting, and 5.517, Obstructing a Criminal Investigation or Prosecution, shall be deemed as separate violations and may be served consecutively to each other and consecutive to any other sentences that arise from the same circumstances charged under this title.

G. Any person convicted of an offense under this section who is sentenced to any term of imprisonment shall not be eligible for reduction or commutation of sentence.

H. For the purposes of safety and protecting inmates or correctional staff the jail may appropriately classify and separate any inmate suspected of participating in or being a member of a criminal street gang from the general population.

I. Subsection 5.1005.A.4. is only chargeable as a misdemeanor offense.

J. The penalty for misdemeanor participating in or assisting a criminal street gang shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

K. The penalty for felony participating in or assisting a criminal street gang shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000, or both.

L. Effective Dates: The effective date for Subsection K shall be May 1, 2014.

HISTORY: GRIC Code §§ 5.821 (2009) and 5.825 (2012).

Felony Comparability References: Ariz. Rev. Stat. § 13-2321.

5.1006. Wearing or Displaying Criminal Street Gang Clothing or Attire.

A. A criminal street gang member, as defined by Subsection 5.1005.B.4, Participating in or Assisting a Criminal Street Gang, commits the offense of wearing or displaying criminal street gang clothing or attire if that person intentionally or knowingly wears

or displays criminal street gang clothing or attire that gives indication of street gang membership at a Community building or property, or at a Community event.

B. The penalty for misdemeanor wearing or displaying criminal street gang clothing or attire is imprisonment for a period not to exceed 30 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code §5.821 (2012).

5.1007. Defacement.

A. A person commits the offense of defacement if he intentionally or knowingly:

1. Applies graffiti to any public or private property not his own without permission of the owner; or
2. Applies graffiti affiliated with a criminal street gang to any property, regardless of the property owner's consent.

B. The court shall, when appropriate and feasible, in addition to any punishment authorized by this title, order the defendant to clean up, repair, or replace the damaged property. If the court finds that graffiti cleanup is inappropriate, the court shall consider other types of community service, where feasible.

C. The penalty for misdemeanor defacement shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code §5.824 (2012).

5.1008. Delivery of Graffiti Material to a Minor.

A. A person commits the offense of delivery of graffiti material to a minor if he intentionally or knowingly sells, furnishes, buys for, or knowingly assists in delivering graffiti material to a person under the age of 18 years, except under the direct supervision of a parent, legal guardian, teacher, or law enforcement officer in the performance of duty.

B. It shall be an affirmative defense to charges under this section that the minor possessing the material was:

1. Within their home or on property owned by the minor's parent or legal guardian; or
2. At their place of employment acting within their scope of employment.

C. The penalty for misdemeanor delivery of graffiti material to a minor shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code §5.825 (2012).

5.1009. Failure to Adequately Supervise Minor.

A. A parent(s), legal guardian(s) or other adult person(s) authorized to have the care and custody of a minor, commits the offense of failure to adequately supervise minor if he knowingly permits or allows the minor to violate Section 5.1005, Participating In or Assisting a Criminal Street Gang, or Section 5.1007, Defacement.

B. The penalty for misdemeanor failure to adequately supervise minor shall be imprisonment for a period not to exceed 90 days, or a fine not to exceed \$1,000.00, or both.

HISTORY: GRIC Code § 5.826 (2012).

5.1010. Drive-by Shooting.

A. A person commits the offense of drive-by shooting if he intentionally discharges a firearm from a motor vehicle at a person, another occupied motor vehicle, or an occupied structure.

B. A person convicted of the offense of drive-by shooting may be subject to forfeiture of any weapons and/or motor vehicle(s) used in connection with the commission of the crime.

C. Any person convicted of drive-by shooting shall not be eligible commutation of sentence.

D. The penalty for misdemeanor drive-by shooting shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony drive-by shooting 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 Subsection E shall be May 1, 2014.

HISTORY: GRIC Code § 5.822 (2009).

Felony Comparability References: Ariz. Rev. Stat. § 13-1209.

CHAPTER 11. FORGERY, FRAUDS AND RELATED OFFENSES

5.1101. Forgery.

- A. A person commits the offense of forgery if with the intent to defraud if he:
1. Falsely makes, completes, or alters a written instrument;
 2. Knowingly possesses a forged instrument; or
 3. Offers or presents, whether accepted or not, a forged instrument or one that contains false information.
- B. The possession of five or more forged instruments may give rise to an inference that the instruments are possessed with the intent to defraud.
- C. The penalty for misdemeanor forgery shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.
- D. The penalty for felony forgery shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.
- E. Effective Dates: The effective date for Subsection D shall be May 1, 2014.

HISTORY: GRIC Code § 5.601 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-2002.

5.1102. Obtaining Signature by Deception.

- A. A person commits the offense of obtaining a signature by deception if, with intent to defraud, he obtains the signature of another person to a written instrument by knowingly misrepresenting or omitting any fact material to the instrument or transaction.
- B. The penalty for obtaining a signature by deception shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code § 5.602 (2009).

5.1103. Fraud by Person Authorized to Provide Goods or Services.

- A. A person commits the offense of fraud by a person authorized to provide goods or services if he knowingly:
1. Furnishes money, goods, services or any other thing of value upon presentation of a credit card that such person knows is forged, expired, cancelled or revoked, or

2. Fails to furnish money, goods, services or any other thing of value which such person represents in writing to the issuer or a participating party that such person has furnished, and who receives any payment therefore.

B. If the payment received by the person for all money, goods, services or other things of value furnished in violation of Section 5.1103.A.1 exceeds \$100.00 in any consecutive six-month period, the crime is a felony.

C. If the difference between the value of all monies, goods, services or any other thing of value actually furnished and the payment or payments received by the person therefore upon such representation in violation of Section 5.1103.A.2 exceeds \$100.00 in any consecutive six-month period, the crime is a felony.

D. The penalty for misdemeanor fraud by a person authorized to provide goods or services is imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony fraud by a person authorized to provide goods or services is imprisonment for a period not to exceed two years, or a fine not to exceed \$10,000.00, or both.

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

HISTORY: New Section.

Felony Comparability References: Ariz. Rev. Stat § 13-2108.

5.1104. Fraudulent Use of Credit Card.

A. A person commits the offense of fraudulent use of a credit card if he:

1. With the intent to defraud, uses, for the purpose of obtaining or attempting to obtain money, goods, services or any other thing of value, a credit card or credit card number obtained or retained in violation of this chapter or a credit card or credit card number which the person knows is forged, expired, cancelled, or revoked; or
2. Obtains or attempts to obtain money, goods, services or any other thing of value by representing, without the consent of the cardholder, that the person is the holder to a specified card or by representing that the person is the holder of a credit card and the card has not in fact been issued.

B. If the value of all money, goods, services and other things of value obtained or attempted to be obtained in violation of this section is \$250.00 or more in any consecutive six-month period the crime is a felony.

C. The penalty for misdemeanor fraudulent use of a credit card shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$5,000.00, or both.

D. The penalty for felony fraudulent use of a credit card shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

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

HISTORY: GRIC Code § 5.604 (2009).

Felony Comparability References: Ariz. Rev. Stat § 13-2105.

5.1105. Reserved.

5.1106. Fraudulent Use of Per Capita Payments.

A. A person commits the offense of fraudulent use of per capita payments if he knowingly:

1. Uses, transfers, acquires, or possesses per capita payments by means of a false statement or representation, a material omission or the failure to disclose a change in circumstances, by any other fraudulent device or in any other manner not authorized by law;
2. Counterfeits, alters, uses, transfers, acquires or possesses counterfeited or altered per capita payments; or
3. Uses, after an unlawful transfer, the per capita payment of another person.

B. The penalty for misdemeanor fraudulent use of per capita payments shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

5.1107. Making or Permitting a False Claim for Reimbursement for Community Assistance Services.

A. A person commits the offense of making or permitting a false claim for reimbursement for Community assistance services if he knowingly makes, causes to be made or permits to be made a claim for reimbursement for services provided to a recipient of Community assistance for service not rendered or making a false material statement or forged signature upon any claim for services, with intent that the claim shall be relied upon for expenditure of Community money.

B. Community assistance services include, but are not limited to, assistance related to social welfare, housing, education, burial or medical assistance.

C. The penalty for misdemeanor making or permitting a false claim for reimbursement for Community assistance services shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

5.1108. Fraudulent Schemes and Practices Against the Community.

A. A person commits the offense of fraudulent schemes and practices against the Community if he, in any matter related to the business conducted by any department or entity of the Community or any political subdivision thereof, pursuant to a scheme or artifice to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry.

B. The penalty for misdemeanor fraudulent schemes and practices against the Community 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 fraudulent schemes and practices against the Community 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.

HISTORY: New Offense.

Felony Compatibility References: Ariz. Rev. Stat § 13-2311.

5.1109. Telecommunication Fraud.

A. A person commits the offense of telecommunication fraud if he:

1. With the intent to defraud another of the lawful charge for telecommunication service, obtains or attempts to obtain any telecommunication service by charging or attempting to charge such service to an existing electronic mail address, telephone number or credit card number without the authority of the person to whom issued or the subscriber to or the lawful holder of the address or number, or to a nonexistent, counterfeit, revoked or canceled credit card number, or by any method of code calling, or by installing, rearranging, or tampering with any facility or equipment, or by the use of any other fraudulent means, method, trick or device; or
2. With intent that the same be used or employed to evade a lawful charge for any telecommunication service, sells, rents, lends, gives or otherwise transfers or discloses or attempts to transfer or disclose to another, or offers or advertises for

sale or rental, the number or code of an existing, canceled, revoked or nonexistent electronic mail address, telephone number or credit card number or method of numbering or coding that is employed in the issuance of telephone numbers, account identification codes or credit card numbers; or

3. Knowingly makes, constructs, manufactures, fabricates, erects, assembles or possesses any software, instrument, apparatus, equipment, device, or any part thereof, that is designed, adapted or that can be used either:

a. To obtain telecommunication service by fraud in violation of this section; or

b. To conceal from any supplier of telecommunication service or from any lawful authority the existence or place of origin or of destination of any telecommunication in order to obtain telecommunication service by fraud in violation of this subsection; or

4. Knowingly sells, rents, lends, gives, or otherwise transfers or discloses or attempts to transfer or disclose to another, or offers or advertises for sale or rental: any software, instrument, apparatus, equipment, or device described in Section 5.1109.A.3; or plans, specification or instructions for making or assembling the same with the intent to use or employ such software, instrument, apparatus, equipment, device, or any part thereof, or to allow the same to be used or employed, for a purpose described in Section 5.1109.A.3. of this section; or that the plans, specifications or instructions are intended to be used for making or assembling such software, instrument, apparatus, equipment, device, or any part thereof.

B. As used in this section, the terms:

1. *Telecommunication services* includes electronic communication services, subscription computer services, telephone and telegraph services and all other services involving the transmission of information by wire, radio, cellular, wireless or satellite transmission or similar means. This section applies when the telecommunication service originates or terminates or both originates and terminates in this Reservation.

2. *Credit card number* means the card number appearing on a credit card or telephone calling card that is issued to a person by any supplier of telecommunication service and that permits the person to whom the card has been issued to obtain telecommunication service.

C. The penalty for misdemeanor telecommunication fraud shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code § 5.605 (2009).

5.1110. Tapping electrical or gas lines.

A. A person commits the offense of tapping electrical or gas lines if he does any of the following:

1. Connects with a main service line for electricity in such a way as to obtain electricity without it passing through the meter for registering and with the intent to avoid payment; or
2. Connects with a pipe or other instrument with a main service line for gas in such a way as to supply gas to a burner or stove without passing it through the meter for measuring and with the intent to avoid payment.

B. The penalty for misdemeanor tapping electrical or gas lines shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$5,000.00 or both.

HISTORY: New Offense.

5.1111. Unlawful Pyramid Promotional Scheme.

A. A person commits the offense of unlawful pyramid promotional scheme if he establishes, operates, advertises or promotes a pyramid promotional scheme.

B. A limitation as to the number of persons who may participate or the presence of additional conditions affecting eligibility for the opportunity to receive compensation under the plan or operation does not change the identity of the scheme as a pyramid promotional scheme.

C. It is not a defense under this section that a participant, on giving consideration, obtains any goods, services or intangible property in addition to the right to receive compensation.

D. Any purchaser in a pyramid promotional scheme may, notwithstanding any agreement to the contrary, declare the related sale or contract for sale void, and he or she may bring a separate action in a court of competent jurisdiction to recover the consideration he or she paid to participate in the scheme. In such action the court shall, in addition to any judgment awarded to the plaintiff, require the defendant to pay interest, reasonable attorney's fees and the costs of the action, less any money paid to the plaintiff as profit in the transaction.

E. The rights and remedies that this section grants to purchasers in pyramid promotional schemes are independent of and supplemental to any other right or remedy available to them in law or equity, and nothing contained herein shall be construed to diminish or to abrogate any such right or remedy.

F. Definitions as used in this section:

1. *Compensation* includes a payment based on a sale or distribution made to a person who either is a participant in a pyramid promotional scheme or has the right to become a participant upon payment.
2. *Consideration* includes earning the payment of cash or the purchase of goods, services or intangible property but does not include:
 - a. The purchase of goods or services furnished at cost to be used in making sales and not for resale.
 - b. Time and effort spent in pursuit of sales or recruiting activities.
3. *Person* for purposes of this section shall include individual persons, corporations and partnerships either formal or informal.
4. *Pyramid promotional scheme* means any plan or operation by which a participant gives consideration for the opportunity to receive compensation which is derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods, services or intangible property by the participant or other persons introduced into the plan or operation.

G. The penalty for misdemeanor unlawful pyramid promotional scheme shall include imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code § 5.606 (2009).

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 after 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.

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

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.

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.

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.

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.

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 of 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 of 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.

HISTORY: New Offense.

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

5.1207. Possession, Use, Production, Sale or Transportation of Marijuana.

A. A person commits the offense of possession, use, production, sale or transportation of marijuana if he:

1. Possesses or uses marijuana;
2. Possesses marijuana for sale;
3. Produces marijuana; or
4. Transports for sale, imports or offers to transport for sale or import into the Reservation, sells, transfers or offers to sell or transfer marijuana.

B. The penalty for misdemeanor possession, use, production, sale or transportation of marijuana shall be imprisonment not to exceed one year, or a fine not to exceed \$5,000.00, or both.

C. The penalty for felony possession, use production, sale or transportation of marijuana having a weight of one-half pound or greater shall be imprisonment 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.

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 a controlled substance or a listed chemical, whether or not there exists an agency relationship.

C. All drug paraphernalia 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 quantity of marijuana 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 quantity of marijuana or a vapor-releasing substance containing a toxic substance;

5. The presence of any residue of a controlled substance or quantity of marijuana (or burnt marijuana residue) 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.

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.

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 18 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.

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, 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.

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.

HISTORY: GRIC Code §5.701 (2009).

5.1213. 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. *Controlled substance analogue* means, except as provided in subparagraph (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.

C. *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 or any vapor-releasing substance that contains a toxic substance.

D. *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.

E. *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.

F. *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.

HISTORY: GRIC Code §5.701 (2009).

CHAPTER 13. WEAPONS AND EXPLOSIVES

5.1301. Misconduct Involving Weapons.

- A. A person commits the offense of misconduct involving weapons if he knowingly:
 - 1. Carries a deadly weapon except a pocket knife on his person or within his immediate control or in a means of transportation, in the furtherance of an offense that is chargeable as a felony;
 - 2. Sells or transfers a deadly weapon to a prohibited possessor;
 - 3. Possesses a deadly weapon or prohibited weapon if such person is a prohibited possessor;
 - 4. Defaces a deadly weapon;
 - 5. Manufactures, possesses, transports, sells or transfers a prohibited weapon;
 - 6. Possesses a defaced deadly weapon knowing the deadly weapon was defaced;
 - 7. Uses or possesses a deadly weapon during the commission of any felony offense included in Title 5, Chapter 12 entitled "Controlled Substances";
 - 8. Discharges a firearm at an occupied structure in order to assist, promote or further the interests of a criminal street gang, criminal syndicate or racketeering enterprise;
 - 9. Supplies, sells or gives possession or control of a firearm to another person if the person knows or has reason to know that the other person would use the firearm in the commission of any offense that is chargeable as a felony; or
 - 10. Carries a deadly weapon on school premises, including any buildings and grounds, playgrounds, playing fields, parking area, or any school bus.
- B. Defenses:

1. Section 5.1301.A.10 shall not apply to law enforcement officers in the performance of official duties;
2. Section 5.1301.A.5 and 6 shall not apply to:
 - a. A law enforcement officer in the performance of official duties or any person summoned by any law enforcement officer to assist and while actually assisting in the performance of official duties; or
 - b. A member of the military forces of the United States in the performance of official duties; or
 - c. A person specifically licensed pursuant to a statute of the United States or the Community; or
 - d. A Community Correctional Officer while in the performance of official duties; or
 - e. The regular and lawful transportation of weapons as merchandise.

C. If a law enforcement officer contacts a person who is in possession of a firearm, the law enforcement officer may take temporary custody of the firearm for the duration of that contact. Contact by a law enforcement officer means a lawful traffic or criminal investigation, arrest or detention or an investigatory stop by a law enforcement officer that is based on reasonable suspicion that an offense has been or is about to be committed.

D. The penalty for misdemeanor misconduct involving weapons shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

E. The penalty for felony misconduct involving weapons 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 Subsection E shall be May 1, 2014. Only the following language from Subsection A.1. shall be effective January 1, 2014 through April 30, 2014, "Carries a deadly weapon except a pocket knife on his person or within his immediate control or in a means of transportation." Subsection A.1. shall be effective in its entirety May 1, 2014.

HISTORY: GRIC Code §5.901(2009).

Felony Comparability References: Ariz. Rev. Stat §13-3102; NM Stat §30-7-2, §30-7-2.1.

5.1302. Misuse of Firearms.

A. A person commits the offense of misuse of firearms if he knowingly discharges a firearm at a residential structure.

B. Defense. The offense of misuse of firearms shall not apply to a law enforcement officer or other person required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or lawful employment.

C. The penalty for misdemeanor misuse of firearms shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

D. The penalty for felony misuse of firearms 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 Subsection D shall be May 1, 2014.

HISTORY: GRIC Code §5.902 (2009).

Felony Comparability References: Ariz. Rev. Stat §13-1211.

5.1303. Negligent use of a Deadly Weapon.

A. A person commits the offense of negligent use of a deadly weapon if he:

1. Carries a firearm on his person or within his immediate control or in a means of transportation while under the influence of an intoxicant or narcotic;
2. Carries a deadly weapon on his person or within his immediate control or in a means of transportation and when contacted by a law enforcement officer fails to accurately answer the officer if the officer asks whether the person is carrying a concealed deadly weapon;
3. Carries a deadly weapon concealed on his person or concealed within his immediate control or in a means of transportation if the person is under 21 years of age;
4. Enters an election polling place on the day of any election carrying a deadly weapon, unless specifically authorized by law;
5. Enters any Community building or property or attends any Community event and carries a deadly weapon on his person after a reasonable request by the operator of the building or property or the sponsor of the event to remove his weapon from the establishment or event; or
6. Endangers the safety of another by handling or using a firearm or other deadly weapon in a negligent manner.

B. Defenses. Section 5.1303.A.2-5 shall not apply to law enforcement officers while engaged in the performance of their official duties.

C. The penalty for misdemeanor negligent use of a deadly weapon shall be imprisonment for a period not to exceed 180 days, or a fine not to exceed \$5,000.00, or both.

HISTORY: New Offense.

5.1304. Dangerous Use of Explosives.

A. A person commits the offense of dangerous use of explosives if he deposits, explodes or attempts to explode, any explosive with the intent to injure, intimidate or terrify, or to damage another's property.

B. The penalty for misdemeanor dangerous use of explosives shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code §5.903 (2009).

5.1305. Unlawful Sale or Use of Fireworks.

A. A person commits the offense of unlawful sale or use of fireworks if he sells, offers or exposes for sale, uses, explodes or possesses any fireworks, except as otherwise provided by this section.

B. This section shall not be construed to prohibit or restrict the manufacture or possession, by a qualified pyrotechnic expert, of aerial set pieces designed for use in pyrotechnical displays, or the display of such set pieces in accordance with the terms of this section. The Community Council shall determine if the expert is qualified and may issue appropriate permits or licenses.

C. *Fireworks* means any combustible or explosive composition, substance or combination of substances, or any article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration or detonation, and toy cannons in which explosives are used, the type of balloon which requires fire underneath to propel it, firecrackers, torpedoes, skyrockets, roman candles, Dago bombs, or other fireworks of like construction, fireworks containing any explosive or combustible compound, and any tablet or other device containing any explosive substance. The term fireworks does not include toy pistols, toy canes, toy guns or other devices in which paper caps containing not more than 25 hundredths grains of explosive compound are used if constructed so that the hand cannot come in contact with the cap when in place for the explosion, or toy pistol paper caps which contain less than 20 hundredths grains of explosive mixture, or fixed ammunition or primers therefore.

D. Duly authorized law enforcement officials shall seize, remove, or cause to be removed, at the expense of the owner or possessor, all fireworks or combustibles offered or exposed for sale, stored or possessed in violation of this section.

E. The penalty for misdemeanor unlawful sale or use of fireworks shall be imprisonment for a period not to exceed 180 days, or a fine of \$500.00, or both.

HISTORY: GRIC Code §5.904 (2009).

5.1306. Misconduct Involving Explosives.

A. A person commits the offense of misconduct involving explosives if he knowingly:

1. Keeps or stores a greater quantity than 10 pounds of explosives in or upon any building or premises within a distance of one-half mile of the exterior limits of any village or house of any Community member, except in vessels, railroad cars or vehicles receiving and keeping them in the course of and for the purpose of transportation;
2. Keeps or stores percussion caps or any blasting powder within 200 feet of a building or premises where explosives are kept or stored; or
3. Sells, transports or possesses explosives without having plainly marked in a conspicuous place on the box or package containing the explosive, its name, explosive character, and date of manufacture.

B. This section shall not apply to any person who legally keeps, stores, or transports explosives, percussion caps, or blasting powder as a part of their business.

C. The penalty for misdemeanor misconduct involving explosives shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code §5.905 (2009).

5.1307. Forfeiture of Weapons and Explosives.

A. Upon the conviction of any person for any offense in which a deadly weapon, dangerous instrument, explosive, or drug as defined in this title was used, displayed or unlawfully possessed by the person in the commission of such offense, the judge shall order the deadly weapon, dangerous instrument, explosive or drug forfeited and sold, destroyed or transferred for the use of the Community in accordance with Section 5.1530, Forfeiture of Weapons, Explosives and Drugs.

B. If a judge finds pursuant to Section 5.209, Mental Competency, and 5.210, Determination of Mental Competency to Stand Trial, that a person who is charged with a violation of this title is incompetent, the judge shall order that any deadly weapon, dangerous instrument or explosive used, displayed or unlawfully possessed by the person during the commission of the alleged offense be forfeited pursuant to Section 5.1530, Forfeiture of Weapons, Explosives and Drugs.

HISTORY: GRIC Code §5.1209 (2009).

5.1308. Justification and Defensive Display of a Firearm.

A. The defensive display of a firearm by a person against another is justified when a reasonable person would believe that physical force is immediately necessary to protect himself against the use or attempted use of unlawful physical force or deadly physical force.

B. This section does not apply to a person who:

1. Intentionally provokes another person to use or attempt to use unlawful physical force; or
2. Uses a firearm during the commission of a serious or violent crime that results in the death or physical injury or any criminal use of a deadly weapon or dangerous instrument.

C. This section does not require the defensive display of a firearm before the use of physical force or the threat of physical force by a person who is otherwise justified in the use or threatened use of physical force.

D. For the purposes of this section, “defensive display of a firearm” includes:

1. Verbally informing another person that the person possesses or has available a firearm;
2. Exposing or displaying a firearm in a manner that a reasonable person would understand was meant to protect against another’s use or attempted use of unlawful physical force or deadly physical force; and
3. Placing the person’s hand on a firearm while the firearm is contained in a pocket, purse or other means of containment or transport.

HISTORY: New Offense.

CHAPTER 14. LIQUOR

5.1401. Underage Possession of Liquor.

A. Any person under the age of 21 years commits the offense of underage possession of liquor if he buys, receives, possesses or consumes, or attempts to buy, receive or possess any alcoholic beverage.

B. The penalty for misdemeanor underage possession of liquor shall be imprisonment for a period not to exceed 90 days, or a fine not to exceed \$300.00, or both.

HISTORY: GRIC Code §5.1001(2009).

5.1402. Delivery of Liquor to a Minor.

A. A person commits the offense of delivery of liquor to a minor if he sells, furnishes, buys for, or knowingly assists in delivering liquor to a person under the age of 21 years.

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

HISTORY: GRIC Code §5.1002 (2009).

5.1403. Unlawful Sale of Liquor.

A. A person commits the offense of unlawful sale of liquor if:

1. Any person, whether as principal or agent, clerk or employee, whether for himself, or for any other person, or for any body incorporated, or as officer, of any corporation, or as a member of any firm or co-partnership or otherwise to buy for resale, sell or deal in spirituous liquors on or within the exterior boundaries of the Gila River Indian Reservation, without first obtaining all necessary federal and tribal licenses to trade with the Indians issued pursuant to Title 25, Code of Federal Regulations, and a valid license issued by the Gila River Indian Community;
2. For a distiller, winer, brewer or wholesaler to sell, dispose of or give spirituous liquor to any persons other than a licensee, except in sampling wares as may be necessary in the ordinary course of business;
3. For a distiller, winer or brewer to require a wholesaler to offer or grant a discount to a retailer, unless the discount has also been offered and granted the wholesaler by distiller, winer or brewer;

4. For a distiller, a winer or brewer to use a vehicle for trucking or transportation of spirituous liquors unless there is affixed to both sides of the vehicle a sign showing the name and address of the licensee and the type and number of his license in letters not less than three and one-half inches in height;
5. For a person to take or solicit orders for spirituous liquors unless he is a registered salesman or solicitor of a licensed wholesaler or a registered sales man or solicitor of a distillery, winery, brewery, importer or broker;
6. For any retail licensee to purchase spirituous liquor from any person other than a registered solicitor or salesman of a wholesaler licensed by the Community;
7. For a retailer to acquire an interest in property owned, occupied or used by a wholesaler in his business, or in a license with respect to the premises of the wholesaler;
8. Except as provided in Sections 5.1403.A.9 and 5.1403.A.10, for a licensee or other person to sell, furnish, dispose of, give, or cause to be sold, furnished or given to a person under the legal drinking age, spirituous liquor. This paragraph shall not prohibit the employment by an off-site retailer of persons who are at least 16 years of age to check out, if supervised by a person on the premises who is at least 19 years of age, package or carry merchandise including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor;
9. For a licensee to employ a person under the age of 19 years to manufacture, sell or dispose of spirituous liquors. This paragraph shall not prohibit the employment by an off-site retailer of persons who are at least 16 years of age to check out, if supervised by a person on the premises who is at least 19 years of age, package or carry merchandise, including spirituous liquor, in unbroken packages, for the convenience of the customer of the employer, if the employer sells primarily merchandise other than spirituous liquor;
10. For an on-sale retailer to employ a person under the age of 19 years in any capacity connected with the handling of spirituous liquors. This paragraph does not prohibit the employment by an on-sale retailer of a person under the age of 19 years who cleans up the tables on the premises for reuse, removes dirty dishes, keeps a ready supply of needed items and helps clean up the premises;
11. For a licensee, when engaged in waiting on or serving customers, to consume spirituous liquor or remain on or about the premises while in an intoxicated or disorderly condition;

12. For an employee of a licensee, during that employee's working hours or in connection with such employment, to give to or purchase for any other person, accept a gift of, purchase for himself or consume spirituous liquor;
13. For a licensee or other person to serve, sell or furnish spirituous liquor to an intoxicated disorderly person, or for a licensee or employee of the licensee to allow or permit an intoxicated or disorderly person to come into or remain in or about the premises;
14. For an on-sale or off-sale retailer to sell, dispose of, deliver or give spirituous liquor to a person between the hours of 2:00 a.m., and 6:00 a.m., on weekdays, and 2:00 a.m., and 10:00 a.m. on Sundays;
15. For an on-sale retail licensee who sells liquor for consumption on the premises to employ a person for the purpose of soliciting the purchase of spirituous liquors by patrons of the establishment for themselves, on a percentage basis or otherwise, and no licensee shall serve employees to allow a patrol on the establishment to give spirituous liquor to, or to purchase liquor for or drink liquor with, any employee; or
16. For an on-sale retailer to sell spirituous liquors except in the original container, to permit spirituous liquor to be consumed on the premises, or to sell spirituous liquor in a container having a capacity of less than eight ounces, or for an on-sale retailer to sell spirituous liquor for consumption off the premises in container having a capacity of less than eight ounces.

B. Unless context provides otherwise, definitions provided in Title 14, Section 14.102 of GRIC Code shall be incorporated for purposes of this section

C. The penalty for misdemeanor unlawful sale of liquor shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.

HISTORY: GRIC Code §5.1003 (2009).

5.1404. Public Intoxication.

Any person who appears in a public place while under the influence of alcohol, narcotics, toxic vapors or any other drug to such a degree that he may endanger himself, other persons or property, may be taken into protective custody by the police without any charges being filed. Records shall be kept as to the circumstances surrounding the custody in the same manner as for an arrest. Any person taken into custody under this section shall be released as soon as the person is no longer a danger to self, others, or property, but in no event shall any person be held under this section for more than 24 hours.

HISTORY: GRIC Code §5.1004 (2009).

5.1405. Possession of Alcohol Near a Hospital, Medical Clinic, School or Church.

A. Any person commits the offense of possession of alcohol near a hospital, medical clinic, school or church if he possesses or consumes an alcoholic beverage or spirituous liquor within 300 feet of a hospital, medical clinic or medical facility, school or church, building or land area where religious services or events are being held.

B. The penalty for misdemeanor possession of alcohol near hospital, medical clinic, school or church shall be imprisonment for a period not to exceed 30 days, or a fine not to exceed \$500.00, or both.

HISTORY: GRIC Code §5.1005 (2009).

CHAPTER 15. CRIMINAL PROCEDURE

5.1501. Criminal Proceedings.

A. Criminal proceedings are commenced by filing a criminal complaint with the court.

B. The criminal complaint is a written statement of the essential facts constituting the crime charged, which shall include the name of the defendant, a description of the offense, and a list of Code provisions which prohibit the conduct. The complaint shall be signed and prosecuted by an authorized prosecutor, including but not limited to a special prosecutor or legal aide.

C. If it appears from the complaint that there is probable cause to believe the crime charged has been committed by the defendant, and the defendant is not already in custody, a judge shall have the discretion to either issue a summons for the defendant to appear at a specified date and time or issue a warrant for the defendant's arrest. If the defendant fails to appear in response to a summons, a warrant shall be issued.

1. Unless good cause exists for the issuance of a warrant, a summons shall be issued if the defendant is not in custody and the offense charged is bailable as a matter of right, and there is reason to believe that the defendant will appear. If a warrant is requested by the prosecutor, the prosecutor shall state the reasons for the issuance of the warrant rather than a summons.
2. An arrest warrant shall be issued if a defendant who has been summoned fails to appear, or there is good cause to believe that the defendant will fail to appear, or the summons cannot readily be served or delivered.
3. A judge may issue a warrant to secure the defendant's appearance if after the initial appearance and before disposition of the case, a defendant fails, following proper notice, to appear for a court appearance.

4. The summons may be served in the same manner as the summons in a civil action, except that service may not be by publication. In addition, a summons may be served by first class mail or by certified or registered mail, return receipt requested. Return of the receipt shall be prima facie evidence of service.

D. Warrants and summons may be served by Community law enforcement officials, Bureau of Indian Affairs law enforcement officials, or some other officer authorized by law or by the Community Council.

E. In a criminal proceeding in which a defendant is subject to no more than one year of imprisonment the defendant shall be entitled to the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense except that a Community member shall be entitled to assistance of counsel at the expense of the Community.

F. In a criminal proceeding in which a defendant is subject to more than one year of imprisonment the defendant shall be entitled to the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to the following additional rights:

1. The right to the effective assistance of counsel;
2. An indigent defendant or Community member defendant shall be entitled to the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States at the expense of the Community;
3. The judge presiding over any hearing in which a defendant has been charged with a felony level offense shall have sufficient legal training and be licensed to practice law by any jurisdiction in the United States;
4. To have publically available the criminal laws, rules of evidence, and rules of criminal procedure; and
5. The court shall maintain a record of all criminal proceedings, including an audio or other recording of the criminal proceedings.

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

HISTORY: GRIC Code §5.1302 (2009).

5.1502. Prosecutorial authority to initiate or dismiss offenses.

The decision to initiate or pursue criminal charges or to divert cases from the criminal justice system shall be within the discretion of the prosecutor. Within his or her discretion, the prosecutor shall determine whether charges should be filed or pursued; whether an offender should be diverted to other treatment alternatives; what charges should be filed; how many charges should be filed; how charges should be prosecuted; and shall have the discretion to recommend dismissal of charges.

HISTORY: New Section.

5.1503. Joinder of Offenses.

A. A defendant may be charged in separate counts of the same complaint with more than one crime if the crimes charged are of similar character, or are based on the same act or a series of act that are part of a single scheme.

B. If it appears that a defendant is prejudiced by a joinder of crimes or defendants, the court may order separate trials of separate crimes stated in one complaint or separate trials of defendants who are joined in one complaint.

HISTORY: GRIC Code §5.1303 (2009).

5.1504. Temporary Detention; Initial Hearing.

A. An arrested person shall be brought before the court no later than 48 hours after arrest, including Saturday, Sunday and legal holidays, for an initial appearance, unless a commitment order bearing the signature of a duly qualified judge of the court has been issued. The 48 hours commences at the time the person is booked into jail. If, at the end of 48 hours, no commitment order has been issued the person shall immediately be released.

B. If a criminal complaint has not been filed then the arrested person may be brought before any judge. If a criminal complaint has been filed and the defendant is subject to more than one year in jail, the defendant shall be brought before a judge that has sufficient legal training and is licensed to practice law by any jurisdiction in the United States.

C. If the person has been charged by a criminal complaint the judge may combine the initial hearing with the arraignment, Section 5.1507, Arraignment.

D. Following initial hearing, if the person is not released on his own recognizance or on bail the court may order the detention of the person pending trial.

HISTORY: GRIC Code §5.1306 (2009).

5.1505. Right to Counsel.

A. A defendant shall be entitled to be represented, at his own expense, by counsel in any criminal proceeding. The right to be represented shall include the right to consult in private with counsel or counsel's agent as soon as feasible after a defendant is taken into custody, at reasonable times thereafter and sufficiently in advance of a criminal proceeding to allow adequate preparation.

B. Appointment of counsel.

1. A defendant subject to less than one year of imprisonment per criminal proceeding shall be entitled to have the assistance of counsel at his own expense; however, if the defendant is a Community member, the court shall appoint counsel from Defense Services Office, or in the event of conflict from a list of eligible conflict attorneys or advocates.
2. A defendant subject to more than one year of imprisonment per criminal proceeding shall be entitled to have the assistance of counsel at his own expense; however, if a defendant is a Community member or is indigent, the court shall appoint a licensed attorney from Defense Services Office, or in the event of conflict from a list of eligible conflict licensed attorneys.
3. Whenever counsel is appointed, the court shall enter an order to that effect, a copy of which shall be given or sent to the defendant, the attorney appointed, and the Office of the Prosecutor within 24 hours of appointment.
4. The defendant may reject an appointed counsel and inform the judge of his intention to retain counsel at his own expense.
5. The trial court or court of appeals shall appoint new counsel for a defendant entitled to representation under Section 5.1505.B.2. on appeal, when prior counsel is permitted to withdraw.
6. In the event the Community Council approves appointment of counsel for individuals other than Community members or indigent defendants, those individuals shall be appointed counsel in the same manner as Sections 5.1505.B.1 and 5.1505.B.2.

C. Appointment of a conflict attorney. The court shall maintain a list of eligible contracted conflict attorney's for appointment as provided under Sections 5.1505.B.1. and 5.1505.B.2. For appointment under Section 5.1505.B.2. the attorney shall be a member in good standing with the State Bar of Arizona; shall have practiced in the area of criminal litigation for at least three years immediately preceding the appointment; and shall not have a conflict with the Community as a former Community prosecutor within five years prior to appointment.

D. Waiver of rights to counsel. A defendant may waive his right to counsel, in open court, after the judge has determined that the defendant knowingly, intelligently, and voluntarily desires to forego counsel. A defendant may withdraw a waiver of his right to counsel at any time. A subsequent retention of counsel shall not entitle the defendant to repeat any previous proceedings. If there is a question of a defendant's competency, defendant shall have appointed counsel until the defendant has been found to be competent. If a defendant appears without counsel at any proceeding having been given a reasonable opportunity to retain counsel, the court may proceed with the matter, with or without securing a waiver of counsel under this section.

E. Effective Dates: The effective date for Subsection B.2 shall be May 1, 2014.

HISTORY: New Section.

5.1506. Pleas and Plea Agreements..

A. The defendant may plead not guilty, guilty, or with the consent of the court, no contest.

B. A judge shall not accept a plea without first speaking with the defendant personally and determining that the plea is made voluntarily and with understanding of the nature of the charge and the consequences of the plea.

C. A judge may refuse to accept a plea of guilt, or if the defendant refuses to plead the judge shall enter a plea of not guilty. Before accepting a plea of guilty or no contest, the judge must address the defendant in open court and determine that the plea is voluntary and did not result from force, threat, or promises (other than the promise in a plea agreement). Before entering a judgment on a plea of guilty or no contest the judge must determine that there is a factual basis for the plea.

D. Plea Agreements:

1. The terms of a plea agreement shall be in writing; signed by the defendant, by the defendant's counsel or advocate if any, and by the prosecutor; and may be revoked by any party prior to its acceptance by a judge.
2. If as part of a written plea agreement both parties agree to amend the complaint with new, different or added charges, a new arraignment, preliminary hearing, or other hearing on the new, different or added charges is not required if waived by both parties on the record and after the judge determines the waiver by the defendant is made knowingly, voluntarily, and intelligently. Any new, different or added charges in an amended complaint must arise from the same course of conduct as the original complaint.
3. Plea agreements shall be entered on the record and in open court unless the judge finds good cause exists to seal the proceedings.

4. After making determinations that the defendant understands the terms of the plea agreement and the written document contains all the terms of the agreement, and after considering the victim's views, if provided, the judge shall either accept or reject the plea agreement. The judge shall not be bound by any provision in the plea agreement regarding the sentence or the term and conditions of probation to be imposed, if, after accepting the plea agreement and reviewing a presentence report, the judge rejects the provision as inappropriate.
5. If the judge rejects a plea agreement containing stipulations of the parties, the judge must do the following on the record and in open court unless the judge finds that good cause exists to seal the proceedings:
 - a. Inform the parties that the judge rejects the plea agreement;
 - b. Advise the defendant personally that the judge is not required to follow the plea agreement and give the defendant the opportunity to withdraw the plea;
 - c. Advise the defendant personally that if the plea is not withdrawn, the judge may dispose of the case less favorably toward the defendant than the plea agreement contemplated; and
 - d. Advise the parties of the right to reassignment of the case to another judge and if requested by either party, the case shall be reassigned to another judge.

E. If the judge rejects the plea agreement, the defendant may withdraw a plea of guilty or no contest plea. After the judge imposes sentence, the defendant may not withdraw a plea of guilty or no contest, and the plea may be set aside only on direct appeal. The judge may allow a defendant to withdraw his guilty or no contest plea prior to sentencing to correct a manifest injustice so long as the defendant's withdrawal of the plea does not prejudice the Community. If the defendant's guilty or no contest plea is withdrawn, all the original charges that existed before any changes or dismissals were made as part of the plea agreement shall be reinstated.

F. If a judge rejects the plea agreement, or the judgment is vacated or reversed, neither the plea discussions nor any statements made at a hearing on the plea shall be admissible against the defendant in any criminal or forfeiture proceedings.

G. Failure to satisfy any time frames provided in this section will not be grounds for dismissal if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

HISTORY: GRIC Code §5.1308 (2009).

5.1507. Arraignment.

A. Arraignment shall be conducted in open court for all defendants charged by a criminal complaint. The proceeding shall consist of reading the complaint to the defendant; informing him of his right to counsel and the right to court appointed counsel if eligible; the right to plead not guilty, to remain silent, to a jury trial, and to bail; and calling on him to plead to the charges.

B. The judge shall advise the defendant of the right to be present at all future proceedings, that if notified of a proceeding and the defendant fails to appear than the proceedings may be held in the defendant's absence, and that a warrant may be issued for defendant's arrest without further notice.

C. If the defendant is charged with misdemeanor only offenses that are not designated as non-bailable offenses and enters a plea of not guilty, the judge shall inform the parties of the date and time for the pretrial hearing, allowing reasonable time for the defendant to secure counsel, contact witnesses, and otherwise prepare his defense, but without unjustifiable delay.

D. If the defendant has been charged with only a misdemeanor offense(s) and the court has not previously considered release conditions the judge may consider and order the detention of the defendant pending trial or order release conditions pursuant to this chapter.

E. If the defendant is charged with a non-bailable offense and enters a plea of not guilty the judge shall inform the parties of the date and time for bail hearing as required under Section 5.1510, Bail Hearings, and shall order the defendant held in custody until the bail hearing; however, if the defendant is charged with both a non-bailable offense and a felony offense, as either separate offenses or the same offense, the judge shall inform the parties of the date and time for preliminary hearing as required under Section 5.1511, Preliminary Hearing, and shall order the defendant held in custody until the preliminary hearing.

F. If the defendant is charged with a felony offense and enters a plea of not guilty the judge shall inform the parties of the date and time for preliminary hearing as required under Section 5.1511.

G. Effective Dates: The effective date for references to felony offenses in Subsections E and F shall be May 1, 2014.

HISTORY: GRIC Code §5.1307 (2009).

5.1508. Judgment After Pleas.

When a defendant enters a plea of guilty or no contest and such plea is accepted by the judge, and the judge is satisfied that there is a factual basis for the plea, the judge shall find the defendant guilty and may proceed with sentencing.

HISTORY: GRIC Code §5.1309 (2009).

5.1509. Release, Revocation of Release, Forfeiture of Bond.

A. The purposes of bail and any conditions of release that are set by the court include:

1. Protecting the safety of the victim, any other person, or the Community;
2. Protecting against the intimidation of witnesses; and
3. Assuring the appearance of the person.

B. The provisions for Non-Bailable Offenses, Section 5.1510.B, notwithstanding, the presumption shall be that for all remaining offenses, the person may be released on his own recognizance unless the prosecution proves by preponderance of the evidence that such a release will not reasonably assure the person's appearance as required. Release determinations may be made based on evidence not admissible under the rules of evidence. In determining whether to release the person on his own recognizance or on bail, the judge shall consider all of the following:

1. The nature and circumstances of the alleged offense;
2. The person's record of arrests and convictions;
3. The person's record of appearance or non-appearance at court proceedings, avoidance of prosecution or compliance with any terms of probation;
4. Any victim(s) statements;
5. Whether the person is a danger to himself or to the Community; and
6. The person's family ties, employment, financial resources, character and mental condition.

C. The amount of bail set by the judge shall not exceed three times the statutory maximum fine for each criminal offense charged. The amount of bail may be set pursuant to the uniform bail schedule prescribed in the GRIC R. Crim. P., and shall be paid to the court in cash, cashier's check or money order. A decision to depart from the bail schedule is within the discretion of the judge. The full amount of bail shall be returned to the posting party at the

conclusion of the person's case, provided the person has not defaulted in the performance of the release conditions.

D. If a judge orders the release of a person on his own recognizance or on bail, the judge shall advise the person of the following mandatory release conditions:

1. That the person shall refrain from illegitimate contact with law enforcement, abide by the laws of the Community, and refrain from committing subsequent criminal offenses;
2. That the person shall appear at all future proceedings and abide by all orders of the court, including any orders of protection or temporary restraining orders;
3. That the person shall not use or possess any illegal drugs or illegal substances, or use alcohol; and
4. The court shall also have the power to impose additional conditions of release which further the purposes of bail or pretrial release.

E. A judge may order the pretrial release of a defendant subject to the least restrictive condition, or combination of conditions, that the judge determines will reasonably assure the appearance of the defendant as required and the safety of the Community and any Community member:

1. Remain in the custody of a designated person, who agrees to assume supervision and to report any violation(s) of release condition(s) to the pretrial services officer, if the designated person is reasonably able to assure the judge that the defendant will appear as required and will not pose a danger to the safety of the Community or any Community member;
2. Maintain employment, or, if unemployed, actively seek employment;
3. Maintain or commence an educational program;
4. Abide by specified restrictions on personal associations, place of abode, or travel;
5. Avoid all contact with an alleged victim(s) of the crime and with a potential witness(s) who may testify concerning the offense;
6. Report on a regular basis to the Pretrial Services Program;
7. Comply with a specified curfew;
8. Refrain from possessing a firearm, destructive device, or other dangerous weapon;

9. Refrain from the use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in Chapter 12, without a prescription by a licensed medical practitioner;
10. Undergo available medical, psychological, psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
11. Execute an agreement to forfeit any bail money upon failing to appear as required, as is reasonably necessary to assure the appearance of the defendant as required;
12. Return to custody for specified hours following release for employment, schooling, or other limited purposes; and/or
13. Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the Community and any Community member.

When conditions are imposed on a defendant charged with a felony offense the judge shall direct the Pretrial Service Program to monitor the defendant's compliance with the conditions of release and to make periodic reports to the court concerning the defendant's compliance with the conditions. The judge may at any time amend the order to impose additional or different conditions of release.

- F. Every court order setting or modifying conditions of release shall:
 1. Be in writing;
 2. Be provided to the defendant;
 3. Indicate the date, time and place for which the defendant should next appear in court;
 4. Include a written statement that sets forth all the conditions to which the release is subject to, in a manner sufficiently clear and specific to serve as a guide for the defendant's conduct;
 5. For criminal complaints containing a felony offense, direct the Pretrial Service Program to monitor the defendant's compliance with the conditions of release and to make periodic reports to the court concerning the defendant's compliance with the conditions; and
 6. Advise the defendant of:

- a. The consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest and possible criminal penalties;
- b. The prohibitions against threats, force, or intimidation of victims, witnesses and jurors, obstruction of criminal investigations and retaliation against a victim, witness or informant; and
- c. The prohibition against any criminal conduct during pretrial release.

G. Review of release conditions; revocation of release. The prosecutor or pretrial service officer may file a motion to revoke bail or pretrial release if the prosecutor or pretrial service officer believes that sufficient facts or circumstances exist to prove that the person breached the conditions of release previously set forth by the court. The judge may also on its own revisit the issue of the person's release status or issue of bail, if the judge believes it is proper to do so or upon motion of the prosecutor or pretrial service officer.

1. The defendant shall have the right to be present, be represented by counsel and if financially unable to obtain counsel to have counsel appointed pursuant to Section 5.1505, Right to Counsel, confront and cross examine prosecution witnesses, and testify and present witnesses on the defendant's own behalf.
 2. The hearing to revoke or modify conditions of release may proceed without the defendant or the person posting the bond if sufficient proof exists that the defendant and the person posting the bond were given notice of the hearing.
 3. The rules governing admissibility of evidence shall not apply and the judge shall receive all relevant information.
 4. After a hearing on the matter set forth in the motion, if the judge finds the person willfully violated the conditions of release, the judge may order any of the following:
 - a. Impose additional release conditions;
 - b. Order the person into custody;
 - c. If the person is not present issue a warrant; or
 - d. Forfeit all or part of the posted bail amount.
 5. Nothing in this section shall be construed to authorize the release of a person not bailable as a matter of right.
- H. Forfeiture of Bond.

1. Notice and Hearing. If at any time it appears to a judge that a defendant who has been released pending trial or sentencing has willfully violated a condition of an appearance bond, either by motion of the prosecutor or by the judge on his own, the judge shall set the matter for a hearing. The hearing may proceed without the defendant or the person posting the bond if sufficient proof exists that the defendant and the person posting the bond were given notice of the hearing. The forfeiture of bond hearing may be conducted at the same time as a hearing to revoke or modify conditions of release, provided the person posting the bond has been provided notice of the hearing.
2. Forfeiture. If at the hearing the violation is not explained or excused the judge may enter an appropriate order of judgment forfeiting all or part of the amount of bond, which shall be enforceable by the Community as any civil judgment.
 - a. A forfeiture of a bond under this subsection does not preclude a judge from setting new bond or other conditions of release.
 - b. The Office of the Prosecutor may be permitted to participate in the bond forfeiture hearing, but shall not be required to participate in the hearing.
 - c. The defendant or any person posting the bond may have counsel at their own expense at the bond forfeiture hearing.

I. Return of bond. If the defendant has complied with the conditions of release or the case is dismissed prior to trial, any bond shall be returned to the person who posted the bond.

J. Effective Dates: The effective date for references to felony offenses in Subsection F shall be May 1, 2014.

HISTORY: New Section.

5.1510. Bail Hearings.

A. The provisions relating to bail in Section 5.1504, Temporary Detention; Initial Hearing, do not apply to the non-bailable offenses listed in Section 5.1510.B.

B. Non-Bailable Offenses. Any person who is in custody shall not be entitled to bail at the initial appearance or arraignment and shall remain in custody until trial if proof is evident or presumption great that the person committed, attempted, solicited or conspired to commit at least one of the following offenses:

1. Criminal Homicide;
2. Sexual Assault;
3. Possession or Sale of Controlled Substances;

4. Escape from Lawful Custody;
5. Sexual Abuse;
6. Sexual Conduct with a Minor;
7. Molestation of a Child;
8. Misconduct Involving Weapons;
9. Drive-by Shooting;
10. Incest;
11. Possession of one-half pound or more of marijuana;
12. Any offense designated as Domestic Violence, either after the second misdemeanor conviction of any offense designated as Domestic Violence or after the first felony conviction of any offense designated as Domestic Violence, and within five years of the last misdemeanor or felony conviction; or
13. Any offense, if the person is on conditions of release in a separate pending case (e.g., released on own recognizance, released on bail) or is on probation.

C. A bail hearing for non-bailable offenses may be waived by written waiver, signed by the defendant, his or her counsel, and a prosecutor, or may be waived in open court by the defendant.

D. The court shall convene a bail hearing for non-bailable offenses to determine whether bail should be granted to the person.

1. The judge shall admit only such evidence as is material to the question whether to hold the defendant for trial.
2. The use of hearsay evidence shall be permitted and formal rules of evidence shall not apply.
3. If the prosecution proves that proof is evident or the presumption great that the person committed, attempted, solicited or conspired to commit at least one of the offenses listed in Section 5.1510.B., the judge shall order the defendant held in custody until trial. If the judge does not find the prosecution proved that proof is evident or the presumption great that the person committed, attempted, solicited or conspired to commit at least one of the offenses listed in Section 5.1510.B. the judge shall consider release under Section 5.1509.

E. In a bail hearing, proof that the person is a member of a criminal street gang may give rise to a rebuttable presumption that the person poses a substantial danger to another person or the Community, and that any condition(s) of release that may be imposed by the court will not reasonably assure the safety of the other person or Community.

F. At the conclusion, or after waiver or if not held, of the bail hearing the court shall set the matter for a pretrial hearing.

HISTORY: GRIC Code §5.1310 (2009).

5.1511. Preliminary Hearings.

A. When a complaint has been filed charging a defendant with the commission of a felony offense, a preliminary hearing shall be scheduled following arraignment.

B. A preliminary hearing may be waived by written waiver, signed by the defendant, his counsel, and the prosecutor.

C. The court shall issue process to secure the attendance of witnesses and shall provide verbatim record of proceedings, which may be by electronic or other means.

D. The judge shall admit only such evidence as is material to the question whether probable cause exists to hold the defendant for trial. All parties shall have the right to cross-examine witnesses and to review their previous written statements prior to such cross-examination. The judge shall determine and state for the record whether the prosecution's case establishes probable cause.

E. Rules or objections calling for the exclusion of evidence on the ground that it was obtained unlawfully shall be inapplicable in preliminary hearings.

F. If it appears from the evidence that there is probable cause to believe that an offense has been committed and the defendant committed, attempted, solicited or conspired to commit the offense, the judge shall enter an order holding the defendant to answer to the complaint and upon request, consider conditions of release unless charged with a non-bailable offense then the judge shall determine whether the proof is evident or presumption is great that the defendant committed, attempted, solicited or conspired to commit a non-bailable offense and should be held in custody without bail until trial.

G. The complaint may be amended at any time up to the conclusion of the preliminary hearing to conform to the evidence, but the judge shall not hold the defendant to answer for a offense different from that charged in the original complaint. The prosecutor shall not amend the complaint to add new or different charges after the termination of the initial preliminary hearing unless the defendant is provided a new arraignment and preliminary hearing on the new, different or added charges. The defendant's right to a speedy trial will be computed from the date of the filing of the initial charges, less any time tolled under Section 5.104, Speedy Trial, and shall not be recalculated by the filing of an amended complaint.

H. If it appears from the evidence that there is not probable cause to believe that an offense has been committed or that the defendant committed it, the judge shall dismiss the offense.

I. A judge's determination to hold over a defendant shall be reviewable by the court of appeals only by a motion for a new finding of probable cause alleging that the defendant was denied a substantial procedural right or that no credible evidence of guilt was adduced.

J. Effective Dates: The effective date for this Section shall be May 1, 2014.

HISTORY: New Section.

5.1512. Pretrial Hearings.

A. Prior to the pretrial hearing the parties shall explore the possibility of a negotiated plea; however, the prosecutor is not required to negotiate a plea.

B. At the pretrial hearing the judge shall either accept or reject the tendered plea agreement as provided in Sections 5.1506, Pleas and Plea Agreements.

C. If a plea agreement is not tendered or accepted by the judge, the judge shall inform the parties of the date and time set for trial and any trial deadlines.

HISTORY: New Section.

5.1513. Pretrial Motions.

A. A motion or issue previously determined by a judge shall not be reconsidered, except for good cause.

B. A defendant has the right to file a motion to suppress evidence which he contends has been obtained in an unlawful manner contrary to the GRIC Constitution, Article IV. The evidence in question may be tangible or intangible. The prosecutor shall have the burden of proving, by a preponderance of the evidence, the lawfulness of the acquisition of the evidence which the prosecutor intends to use at trial. If the judge decides that the evidence has been unlawfully obtained, he shall order the evidence suppressed. If the judge decides that the evidence was lawfully obtained, it may be used against the defendant.

C. Any motion, defense, objection, or request not timely raised as provided in this section shall be precluded, unless the basis was not then known, and by the exercise of reasonable diligence could not have been known, and the party raises it promptly upon learning of it.

HISTORY: New Section.

5.1514. Change of Judge.

A. For Cause. Any party may move the court for a change of judge based on any of the following grounds:

1. That the judge is interested in the action;
2. That the judge is a kin or related to either party;
3. That the judge is a material witness to the action; or
4. That the party making the motion has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge, he cannot obtain a fair and impartial trial.

B. A judge, other than the challenged judge, shall hear the motion for change of judge. If the hearing judge determines by a preponderance of the evidence that grounds exist for change of judge for cause, the matter shall be reassigned to another judge.

C. Entitlement. Each party has the right to a change of judge.

HISTORY: GRIC Code §5.1319 (2009).

5.1515. Motion for Judgment of Acquittal.

After the close of the evidence offered by the prosecutor during trial, the court, either on motion of the defendant or upon its own motion, shall order judgment for the defendant if the evidence is insufficient to support a conviction of the crime beyond a reasonable doubt. If the defendant's motion for acquittal is not allowed the defendant may offer his evidence. A motion for judgment of acquittal made before the verdict may be renewed by the defendant within 10 days after the verdict was returned.

HISTORY: GRIC Code §5.1322 (2009).

5.1516. Discharge of Defendant.

If the court finds for the defendant or the jury brings in a verdict of not guilty on all counts of the complaint, a judgment of acquittal shall be announced by the court and entered into the official records by the clerk, along with the names of the jurors in the case, if any, and the defendant shall be immediately discharged.

HISTORY: GRIC Code §5.1323 (2009).

5.1517. Dismissal.

The prosecution may with the consent of the court request a dismissal and the prosecution shall terminate.

HISTORY: GRIC Code §5.1321 (2009).

5.1518. Discovery and Inspection.

A. The prosecution shall permit the defendant to inspect, copy or photograph any books, papers, documents, or other objects in the possession of the prosecution, obtained from the defendant or elsewhere, if the items sought may be material to the defense and the request is reasonable. The defendant may make such motions to the court as are necessary to enforce the provisions of this section, after making a written request to the prosecutor and allowing reasonable time for response.

B. The defendant shall permit the prosecutor to inspect and to copy or photograph any books, papers, documents, or other objects in the possession of the defendant or his counsel that he will use at trial. The prosecution may make such motions to the court as are necessary to enforce the provisions of this section, after making a written request to the defendant and allowing reasonable time for response.

1. The prosecutor has an affirmative duty to disclose any exculpatory evidence in its possession or control relevant to issues of guilt or punishment. Failure to timely disclose evidence may result in appropriate sanctions, which may include exclusion of the evidence and/or dismissal of the complaint.

C. Discovery under this section shall apply the following:

1. The term “statement” shall mean:

- a. A writing signed or otherwise adopted or approved by a person;
- b. A mechanical, electrical or other recording of a person’s oral communications or a transcript thereof; and
- c. A writing containing a verbatim record or a summary of a person’s oral communications.

2. Materials not subject to disclosure:

- a. Work product. Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that the materials contain the opinions, theories or conclusions of the prosecutor, members of his legal or investigative staff, or of defense counsel or his legal or investigative staff.

- b. Informants. Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify shall not be required where disclosure would result in substantial risk to the informant or to his operational effectiveness, provided the failure to disclose will not infringe the constitutional rights of the accused.
- c. Failure to call a witness or to raise a defense. The fact that a witness name is on a list furnished under this rule, or that a matter contained in the notice of defenses is not raised, shall not be commented upon at trial, unless the court on motion of a party, allows such comment after finding that the inclusion of the witness name or defense constituted an abuse of the applicable disclosure rule.
- d. If at any time after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known such party shall promptly notify all other parties of the existence of such additional materials, and make an appropriate disclosure.
- e. The court upon the motion of any party establishing good cause may at any time order that disclosure of the identity of any witness or any other disclosures required by this section be denied, deferred or limited if the court finds:
 - 1. That the disclosure would result in a risk or harm outweighing any usefulness of the disclosure to any party; and
 - 2. That the risk cannot be eliminated by a less substantial restriction of discovery rights.

D. Any materials disclosed pursuant to this section shall not be disclosed to the public, but only to others to the extent necessary for the proper conduct of the case.

E. If at any time after a disclosure has been made any party discovers additional information or material which would be subject to disclosure had it then been known, such party shall promptly notify all other parties of the existence of such additional material, and make an appropriate disclosure.

F. A judge shall have the discretion to impose any sanction it finds just under the circumstances for failure to comply with disclosure. The severity of the sanction should be proportional to the severity of the violation and only in rare circumstances should a case be dismissed for a discovery violation.

HISTORY: GRIC Code §5.1312 (2009).

5.1519. Deposition of Witnesses.

A. When a material witness for the defendant or the Community is so sick or infirm as to afford reasonable grounds to believe that he will be unable to attend the trial, or on official military orders to deploy before the date of trial, the defendant or the Community may file a motion for an order that the witness be examined conditionally.

B. The motion shall be made upon affidavit stating:

1. The nature of the offense charged;
2. The name and residence of the witness;
3. That his testimony is material to the defense or prosecution of the action and describing the necessity of the testimony;
4. That the witness is so sick or infirm as to afford reasonable grounds to believe that he will not be able to attend the trial; and
5. That the witness has been issued official orders for military deployment before the date of trial.

C. If the judge is satisfied that the examination of the witness is necessary, an order shall be issued that the witness be examined conditionally at a specified time and place, and that a copy of the order be served on the opposite party at least two days before the deposition.

D. The order shall direct that the deposition be taken before a court reporter. If, after proof of service of a copy of the order upon the opposite party, and the opposite party does not appear for the deposition, the examination may proceed.

E. The attendance of the witness may be enforced by subpoena.

F. A defendant shall have the right to be present at any deposition under this section. If a defendant is in custody, the officer having custody shall be notified by the moving party of the time and place set for the examination and shall, unless the defendant waives, in writing, the right to be present, produce the defendant at the examination and remain with him or her during the deposition.

G. The court reporter shall seal the transcribed deposition and transmit it to the clerk of the court. The party requesting the deposition shall provide a copy of the transcribed deposition to the opposite party.

H. The deposition may be read in evidence by either party at the trial, when it appears that the witness is unable to attend, by reason of death, insanity, sickness or infirmity, or has been deployed under official military orders, and subject to the same objections to a question or answer therein as if the witness were examined in court.

HISTORY: New Section.

5.1520. Disclosure by Defendant.

A. At any time after the filing of a criminal complaint in the court, upon the written request of the prosecutor, the defendant shall submit to any of the following:

1. Appear in a line-up;
2. Speak for identification by witnesses;
3. Be fingerprinted, palm-printed, foot-printed, or voice printed;
4. Pose for photographs not involving re-enactment of an event;
5. Try on clothing;
6. Permit the taking of samples of his hair, blood, saliva, urine, or other specified materials which involve no reasonable intrusions of his body;
7. Provide specimens of his handwriting; or
8. Submit to reasonable physical or medical inspections of his body, provided such inspection does not include psychiatric or psychological examination.

B. In connection with the particular crime with which he is charged, defendant shall be entitled to the presence of counsel at the taking of such evidence. This law shall supplement and not limit any other procedures established by law.

HISTORY: GRIC Code §5.1313 (2009).

5.1521. Trial, General Provisions.

A. Irregularities, mistakes, or omissions have no legal effect unless actually prejudicial. Neither the departure from the form or mode prescribed in this chapter in respect to any pleading or proceeding, nor any error or mistake therein renders it invalid, unless it has prejudiced the defendant.

B. Cases shall be tried by a judge unless the defendant files with the clerk of court a written request for a jury trial, or makes an oral request in a court proceeding on the record, not

less than two weeks prior to the date of the trial. A judge may waive the two week deadline for good cause.

C. In any criminal prosecution brought by the Community, a confession shall be admissible in evidence if it is voluntarily given.

1. Before such confession is received in evidence, the trial judge shall, out of the presence of any jury, determine any issue as to voluntariness. If the trial judge determines that the confession was voluntarily made it shall be admitted in evidence and the trial judge shall permit the jury to hear relevant evidence on the issue of voluntariness and shall instruct the jury to give such weight to the confession as the jury feels it deserved under all the circumstances.
2. A trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession, including but not limited to:
 - a. The time elapsing between arrest and arraignment of the defendant making the confession, if it was made after arrest but before arraignment;
 - b. Whether the defendant knew the nature of the offense with which he was charged or of which he was suspected at the time of making the confession;
 - c. Whether the defendant was advised or knew that he was not required to make any statement and that any such statement could be used against him;
 - d. Whether the defendant had been advised prior to questioning of his right to the assistance of counsel;
 - e. Whether the defendant was without assistance of counsel when questioned and when giving such confession; and
 - f. The presence or absence of any of the factors indicated in paragraphs a.- e. of this subsection which are taken into consideration by the judge need not be conclusive on the issue of voluntariness of the confession.
3. Nothing contained in this section shall bar the admission of evidence of any confession made or given voluntarily by any person to any person without interrogation by anyone, or at any time at which the person who made or gave such confession was not under arrest or other detention. As used in this section, the term "confession" means any confession of guilt of any criminal offense or any self-incriminating statement made or given orally or in writing.

D. The testimony of a witness that he saw the accused commit or participate in the commission of the crime for which the accused is being tried shall be admissible in evidence in a criminal prosecution subject only to the rules of admissibility of such testimony.

E. The records and recordings of 911 emergency telephone calls are admissible in evidence in any action without testimony from a custodian of records if the records and recordings are accompanied by a form designated by the court stating the form authenticates the (number) tapes, the report number, call receipt date and time, caller name if known, call origination location address if known, dispatch time, arrival time, and signed by the custodian of records. 911 emergency records and recordings and any copies of the records and recordings that comply with this section are deemed to be authorized pursuant to the rules of evidence. Nothing in this section affects the confidentiality of medical records.

F. The defendant shall be present at every stage of the proceedings, including trial, impaneling of a jury, and the return of the verdict; however, a defendant may waive the privilege to be present at any proceeding by voluntarily absenting himself from it or engaging in disruptive or disorderly conduct.

1. The court may infer that an absence is voluntary if the defendant had personal notice of the proceeding, had notice of his privilege to appear, and was provided a warning that the proceeding would go forward in his absence.
2. If a defendant fails to appear for a proceeding and a judge determines the defendant's absence is voluntary and that conducting the proceeding in the absence of the defendant would be in the best interest of justice, the proceeding may occur in the defendant's absence.
3. The defendant shall not be sentenced in his absence without the defendant's written consent.

G. If, after the commencement of the trial or of a criminal proceeding, the judge presiding at such trial shall die, become ill, or for any other reason be unable to proceed with and finish the trial, another judge may proceed with and finish the trial. The judge authorized by the provisions of this section to proceed with and complete the trial shall have the same power, authority, and jurisdiction as if the trial had been commenced before such judge.

HISTORY: New Section.

5.1522. Jury.

A. A jury trial shall be granted whenever requested by the defendant in a criminal case where imprisonment is a possible penalty for the offense charged.

B. A jury shall consist of six members selected at random from the list of eligible jurors composed of a compilation of all the district rosters.

C. An eligible juror is any person who is duly enrolled with the Gila River Indian Community; is 18 years of age or older; resides within 100 miles of the boundaries of the Reservation; and is not a person incapable, by reasons of a physical or mental disability, of rendering service. A medical note from a qualified practitioner must state that the physical or mental condition prevents a person from serving as a juror.

D. The following persons shall be exempt from jury service: employees of the Community Police Department; Community Council representatives; the Governor, the Lieutenant Governor, the Secretary, the Treasurer; employees of the Community Court, the Chief Judge, Associate Judges, Judges Pro Tempore, and Court of Appeals judges.

E. The Community Court shall prepare and maintain lists of eligible jurors from time to time.

F. The judge shall render the judgment in accordance with the verdict and the existing law.

G. The jury must reach a unanimous verdict.

HISTORY: GRIC Code §5.1317 (2009).

5.1523. Witnesses.

The process by which attendance of a witness before the court is required is a subpoena.

A. The subpoena may be signed and issued by any of the following:

1. By the clerk of court either on behalf of the Community or the defendant;
2. By the prosecutor for the Community; or
3. By the clerk of court on application of the defendant, and without charge, shall issue as many blank subpoenas, subscribed by the clerk as clerk, for witnesses as the defendant requires. Blank subpoenas shall not be used to procure discovery in a criminal case, including access to the records of a victim. The victim shall be given notice of and the right to be heard at any proceeding involving a subpoena for records of the victim from a third party.

B. A subpoena may be served by any of the following methods:

1. Personal Service. Personal service of a subpoena is made by showing the original to the witness personally, informing him of the contents and delivering a copy of the subpoena to the witness. Written return of service of the original subpoena must be filed with the court within five days of service, stating the time and place of service and by affidavit of the person serving the subpoena; or

2. Certified mail. Subpoenas may be served by certified mail for delivery to the witness only. The subpoena shall be registered and mailed, postage and registry fee prepaid, to the witness with a request endorsed envelope in the usual form for the return of the letter to the sender if not delivered within five days. The receipt of such certified letter by the witness is deemed valid service upon him and the return receipt signed by the witness named in the subpoena is prima facie evidence of notification.

C. A law enforcement officer may serve any subpoena delivered to him for service, either on behalf of the Community or the defendant.

D. Disobedience to a subpoena, or refusal to be sworn to testify as a witness, may be punished by the judge as contempt.

E. When a witness has been subpoenaed in a criminal action, the witness shall attend and be present in the court before which he has been summoned at the time named in the subpoena and from time to time without further subpoena, until discharged by the court.

F. Every person is competent to be a witness.

HISTORY: GRIC Code §5.1316 (2009).

5.1524. Child or Developmentally Disabled Witnesses.

A. This section applies to the testimony or statements of a minor under 15 years of age, or a person who has a developmental disability and who has a tested intelligence quotient score below 75, in criminal proceedings involving acts committed against the minor or developmentally disabled person or involving acts witnessed by the minor or developmentally disabled person whether or not those acts are charged and in civil proceedings.

B. The recording of an oral statement of a minor or developmentally disabled person made before a criminal proceeding begins is admissible into evidence if all of the following are true:

1. No attorney or advocate for either party was present when the statement was made;
2. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
3. Every voice on the recording is identified;
4. The person conducting the interview of the minor or developmentally disabled person in the recording is present at the proceeding and available to testify or be cross-examined by either party;

5. The defendant or the attorney or advocate for the defendant is afforded an opportunity to view the recording before it is offered into evidence;
6. The minor or developmentally disabled person is available to testify;
7. The recording equipment was capable of making an accurate recording, the operator of the equipment was competent and the recording is accurate and has not been altered; and
8. The statement was not made in response to questioning calculated to lead the minor or developmentally disabled person to make a particular statement.

C. If the electronic recording of the oral statement of a minor or developmentally disabled person is admitted into evidence under this section, either party may call the minor or developmentally disabled person to testify, and the opposing party may cross-examine the minor or developmentally disabled person.

D. The court, on motion of the prosecution, may order that the testimony of the minor or developmentally disabled person be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the court and the finder of fact in the proceeding.

1. Only the attorney or advocate for the defendant and the prosecutor, persons necessary to operate the equipment and any person whose presence would contribute to the welfare and well-being of the minor may be present in the room with the minor during his testimony.
2. Only the attorney or advocate for the defendant and the prosecutor may question the minor or developmentally disabled person.
3. The court shall permit the defendant to observe and hear the testimony of the minor in person but shall ensure that the minor or developmentally disabled person cannot hear or see the defendant.
4. The court shall also ensure that:
 - a. The recording is both visual and aural and is recorded on film or videotape or by other electronic means;
 - b. The recording equipment was capable of making an accurate recording, the operator was competent and the recording is accurate and is not altered;
 - c. Each voice on the recording is identified; and

- d. Each party is afforded an opportunity to view the recording before it is shown in the courtroom.
5. If the judge orders the testimony of a minor or developmentally disabled person to be taken pursuant to this subsection, the minor or developmentally disabled person shall not be required to testify in court at the proceeding for which the testimony was taken.

HISTORY: New Section.

5.1525. Judgment.

A. Upon a plea of guilty or a verdict of guilty, the judge may immediately proceed to sentencing or may set a time for pronouncing judgment within a reasonable time after the verdict is rendered.

1. Prior to pronouncing the judgment, the judge may order a presentence investigation report by pretrial services program or Probation Department, which should include all of the following:
 - a. Any prior criminal record (tribal, federal or state) of the defendant;
 - b. The defendant's financial condition;
 - c. Any circumstances affecting the defendant's behavior that may be helpful in imposing sentence or in correctional treatment;
 - d. Verified information that assesses the financial, social, psychological, and medical impact on any individual against whom the offense has been committed;
 - e. When appropriate, the nature and extent of non-prison programs and resources available to the defendant;
 - f. When the law provides for restitution, information sufficient for a restitution order; and
 - g. Any other information that the judge requires.

B. A judge may vacate the judgment no later than 60 days after the entry of judgment and sentence on any of the following grounds:

1. That it was without jurisdiction of the action;
2. That newly discovered material facts exist; or

3. That the conviction was obtained in violation of the Community Constitution or laws or the Indian Civil Rights Act.

C. A judge may correct any unlawful sentence or one imposed in an unlawful manner within 30 days after entry of judgment and sentence but before appeal, if any, after giving notice to the parties. Clerical errors or mistakes in judgment or other parts of the record and errors in the record from oversight or omission may be corrected by a judge at any time, with or without notice.

D. The defendant must be personally present when judgment is pronounced, unless the defendant waives his presence in writing.

E. Where a judgment or sentence, or both, have been set aside on appeal or on a post-trial motion, a judge may not impose a sentence for the same offense, or a different offense based on the same conduct, which is more severe than the prior sentence unless:

1. The judge concludes, on the basis of evidence concerning conduct by the defendant occurring after the original sentencing proceeding, that the prior sentence is inappropriate; or
2. The original sentence was unlawful and on remand it is corrected and a lawful sentence imposed; or
3. Other circumstances exist under which there is no reasonable likelihood that the increase in the sentence is the product of actual vindictiveness by the sentencing judge.

F. The judgment of conviction and sentence shall be complete and valid as of the time of oral pronouncement in open court.

HISTORY: New Section.

5.1526. New Trial.

A. The court, on application from the defendant, or on its own motion, may grant a new trial based on any of the following cause or causes:

1. The verdict is contrary to the law or to the weight of evidence;
2. A juror(s) has been guilty of misconduct by:
 - a. Receiving evidence not properly admitted during trial;
 - b. Deciding verdict by lot;

- c. Perjuring himself, or willfully failing to respond fully to a direct question posed during the voir dire examination;
 - d. Receiving a bribe or pledging his vote in any way;
 - e. Becoming intoxicated during the trial or deliberations; or
 - f. Conversing before the verdict with any interested party about the outcome of the case;
3. The judge has erred in the decision of a matter of law, or in the instruction of the jury on a matter of law to the substantial prejudice of a party;
 4. The prosecutor was guilty of misconduct;
 5. Newly discovered evidence, which shall meet the following test:
 - a. The evidence is newly discovered;
 - b. In the exercise of due diligence, the defendant did not acquire the evidence prior to trial;
 - c. The evidence is material to issues at trial;
 - d. The evidence is neither cumulative or merely impeaching; and
 - e. The evidence indicates the defendant would probably be acquitted in a new trial; or
 6. When for any reason the defendant has not received a fair and impartial trial.

B. A motion for new trial shall be filed not later than 10 days after the verdict or judgment of the court excluding Saturdays, Sundays and holidays. A motion for a new trial based on newly discovered evidence must be filed at any time.

C. A motion for new trial may be filed at the same time that the defendant files a petition for appeal. Filing a motion for new trial does not extend the time during which a petition for appeal must be filed.

HISTORY: GRIC Code §5.1325 (2009).

5.1527. Appeal Bond.

A. After a person has been convicted of any offense for which he has or may suffer a sentence of imprisonment, he shall not be released on bail or his own recognizance unless it is established that there are reasonable grounds to believe the conviction may be set aside on a

motion for new trial, reversed on appeal, or vacated in any post-conviction proceeding, the release of a person pending appeal shall be revoked if he fails to prosecute his appeal diligently. However, a person convicted of a non-bailable offense as defined under this chapter shall not be eligible for release under an appeal bond if at the time of petitioning for appeal bond his remaining sentence is greater than 195 days.

B. Eligibility for bond on appeal under this section shall be determined by preponderance of the evidence. The defendant shall bear the burden of proof under this section.

C. An appeal bond under this section is an appearance bond secured by deposit with the clerk of court of security equal to the full amount thereof. The judge shall establish the terms and conditions of release under this subsection.

D. If at any time it appears to the judge that a condition of an appearance bond has been violated, the judge shall require the parties and any surety to show cause why the bond should not be forfeited, setting a hearing thereon within 10 days. If at the hearing, the violation is not explained or excused, the judge may enter an appropriate order of judgment forfeiting all or part of the amount of the bond, which shall be enforceable by the prosecutor as any civil judgment.

HISTORY: GRIC Code §5.1326 (2009).

5.1528. Appeals.

Appeals are governed by the provisions and procedures in Title 4: Courts and Procedure, Chapter 5: Court of Appeals and Appellate Procedure of the GRIC Code.

HISTORY: New Section.

5.1529. Habeas Corpus.

Petitions for writ of Habeas Corpus are governed by the provisions and procedures in Title 4: Courts and Procedure, Chapter 5: Court of Appeals and Appellate Procedure of the GRIC Code.

HISTORY: New Section.

5.1530. Forfeiture of Weapons, Explosives, and Drugs.

A. Upon the conviction of any person for any offense in which a deadly weapon, dangerous instrument, explosive, or drug as defined in this title, (collectively or individually referred to as “Items”) was used, displayed or unlawfully possessed by the person in the commission of such offense, the judge shall order the item forfeited and sold, destroyed or transferred for the use of the Community in accordance with this section.

B. Any items under this section will not be disposed if it relates to any of the following:

1. An ongoing tribal, federal, or state investigation or case;
2. Any investigation where the statute of limitations has not expired for the crime in which the investigation involves;
3. A cold case for 50 years or until a person is convicted of the crime and that person is no longer serving a detention sentence or supervised release; or
4. A case in which a person was convicted will not be destroyed until the convicted person is no longer serving a detention sentence, including supervised release, resulting from such case.

C. An item may not be released if it is any of the following:

1. An illegal drug or weapon;
2. Any other item that carries a criminal penalty for possession of such item by the claimant;
3. A deadly weapon, dangerous instrument or explosive used in the commission of an offense, as described in Section 5.1307, Forfeiture of Weapons and Explosives;
4. Relates to an ongoing tribal, federal, or state investigation or case;
5. Relates to a case in which a person was convicted until the convicted person is no longer serving a detention sentence, including supervised release, resulting from such case;
6. Relates to any investigation where the statute of limitations has not expired for the crime in which the investigation involves; however, this does not apply to items if all tribal, state and federal cases related to the item have been dismissed with prejudice;
7. Relates to a cold case for 50 years or until a person is convicted of the crime and that person is no longer serving detention sentence or supervised release; or
8. Biological evidence.

D. Items that are not prohibited from release as provided in this section can be claimed upon showing proof of ownership and photo identification by the owner who is at least 18 years of age to the Gila River Police Department.

E. All property, including interest in such property, for which forfeiture is authorized under this title, is subject to forfeiture; however:

1. No vehicle may be forfeited under this title for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the Community or of the United States.
2. No owner's or interest holder's interest may be forfeited under this title if the owner or interest holder establishes all of the following:
 - a. He acquired the interest before or during the conduct giving rise to the forfeiture.
 - b. He did not empower any person whose act or omission gives rise to forfeiture with legal or equitable power to convey the interest, as to a bona fide purchaser for value, and he was not married to any such person or if married to such person, held the property as separate property.
 - c. He did not know and could not reasonably know of the act or omission or that it was likely to occur.
3. No owner's or interest holder's interest may be forfeited under this title if the owner or interest holder establishes all of the following:
 - a. He acquired the interest after the conduct giving rise to forfeiture;
 - b. He is a bona fide purchaser for value not knowingly taking part in an illegal transaction; and
 - c. At the time of purchase and at all times after purchase and before the filing of criminal proceeding under this title, he was reasonably without notice of the act or omission giving rise to forfeiture and reasonably without cause to believe that the property was subject to forfeiture.

F. If forfeiture is authorized by this title the prosecutor may file a complaint for forfeiture. The prosecutor shall serve the complaint in the matter provided by Title 8 of the GRIC Code (Civil Code).

1. An owner of or interest holder ("claimant") in the property may file a claim against the property within 30 days after notice of the complaint for forfeiture.
2. The claim shall be signed by the claimant under penalty of perjury and shall state the mailing address of the claimant; the nature and extent of the claimant's interest in the property; the date, the identity of the transferor and the circumstances of the claimant's acquisition of the property; the specific provisions of this chapter relied on in asserting the property is not subject to forfeiture; all facts supporting each such assertion; any additional facts supporting the claimant's claim; the precise relief sought.

3. The court shall set the matter for a forfeiture hearing within 90 days of filing the complaint for forfeiture.

G. In any forfeiture hearing the claimant must establish by a preponderance of the evidence that he is an owner of or interest holder in the property seized for forfeiture.

1. The claimant or party raising the claim of exemption has the burden of proving the standing to make the claim and the existence of an applicable exemption to forfeiture.
2. The rules of evidence relating to civil actions apply equally to all parties, and no evidence may be suppressed in any hearing pursuant to this chapter on the ground that its acquisition by search or seizure violated protections applicable in criminal cases relating to unreasonable searches or seizures.
3. In accordance with the findings at the hearing and the provisions under this section, the judge shall either order the property forfeited to the Community or order an interest in the property returned or conveyed to the claimant.

H. All property declared forfeited under this title vests with the Community and may be sold, leased, transferred or destroyed.

HISTORY: GRIC Code §5.1209 (2009).

5.1531. Rules of Court.

The GRIC R. Crim. P. shall govern all criminal proceedings. The GRIC R. Crim. P. may be amended by order of the Chief Judge after notice and opportunity for comment by Community members and review and analysis by an advisory committee on rules. The advisory committee on rules shall be comprised of the following members: interested Community members, at least one representative from the Office of the Prosecutor, at least one representative from the Defense Services Office, Chief Judge, Associate Judges, and others designated by the Chief Judge. The advisory committee on rules shall, when there is representation from at least the Office of the Prosecutor, Defense Services Office, and Judicial, review all proposed amendments and recommend revisions and additional rules as the committee deems appropriate; draft amendments, submit any proposed amendment for public notice and comment; and submit any proposed amendment to the Chief Judge for adoption or rejection.

HISTORY: New Section.

5.1532. Court Fees and Fines.

A. The Chief Judge shall recommend reasonable court fees, fine schedules, and jury compensation rates, which shall be posted at the court, provided that the court shall adopt a rule and procedure for waiving and reducing fees for eligible persons.

B. Any judge may, for good cause shown, extend the time for paying any fees or fines required by law, or may relieve a default caused by non-payment of a fee or fine within the time provided by the law. Any fees or fines paid will not be refunded.

C. All money fines collected by the court shall be set apart as a separate fund for the payment of designated court expenses. The fines shall be paid to the clerk of the court, who shall turn them over to the Treasurer of the Community Council for deposit in a special account. Withdrawal of funds for payment of authorized expenses of the court shall be made upon order of the clerk of court, signed by the Chief Judge of the court. Any payment not specifically provided for in the Community ordinances shall be approved by the Community Council. The clerk shall keep an accurate accounting of all deposits and withdrawals.

D. Filing and court fees shall not be charged to the Community.

HISTORY: GRIC Code §5.1329 (2009).

5.1533. Duties of an attorney and advocate.

A. An attorney or advocate shall immediately upon appointment or at his first appearance on behalf of a defendant, whichever occurs first, whether privately retained or appointed by the court, file a notice of appearance with the clerk of court and simultaneously provide a copy to the Office of the Prosecutor.

B. No attorney or advocate shall make an appearance without first being authorized to practice in the Community Court. With the court's permission, an attorney or advocate who has not yet been authorized to practice in the Community, may make a limited appearance on behalf of the defendant upon submission of an application.

C. An attorney or advocate shall inform the clerk of court and the Office of the Prosecutor, or its designee, all contact information including, but not limited to, mailing address, email address, telephone number, and fax number.

D. No attorney or advocate shall be permitted to withdraw after a case has been set for trial except upon motion accompanied by the name and address of another attorney or advocate, together with a signed statement by the substituting attorney or advocate that he is advised of the trial date and will be prepared for trial, or upon written motion by the defendant waiving his right to counsel.

E. An attorney or advocate representing a defendant at any proceeding shall continue to represent the defendant in all further proceedings in the court including filing the notice of

appeal unless the court permits the attorney or advocate to withdraw from representation of the defendant. The attorney or advocate's duty to represent the defendant shall continue until either a notice of appeal is filed or written notice to withdraw is granted. Whenever an advocate or attorney has filed a notice of appearance or once appeared in court to represent a criminal defendant, he will be held responsible for the conduct of the action until he has been relieved from the case by court order.

HISTORY: New Section.

5.1534. Communications with the Court.

A. No party shall communicate, or cause another to communicate, as to the merits of a criminal case with a judge or other official before whom the proceeding is or may be pending, except in any of the following circumstances:

1. In the course of official proceedings in the action;
2. In writing, if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented;
3. Orally upon adequate notice to the opposing counsel or party; or
4. As otherwise authorized by law.

HISTORY: GRIC Code §5.1328 (2009).

5.1535. Compliance with Victim's Rights.

At every criminal proceeding held before the court the judge shall inquire with the prosecutor, or in the event of an initial hearing with the jail, to ensure compliance with the Victim's Rights provisions of this title.

HISTORY: New Section.

5.1536. Retention of Records.

The clerk of the court shall receive and maintain all papers, documents and records filed and all evidence admitted in criminal cases. The clerk shall also maintain a photographic or electronic reproduction or image of the original record in a place and manner as will reasonably assure its permanent preservation.

HISTORY: New Section.

5.1537. Confidentiality of Certain Information.

A. Information identifying victims of sexual offenses, the name of victim`s under 18 years of age, victim`s address and phone number in domestic violence actions, social security numbers, and bank account numbers shall be filed under seal or redacted. If redacted, documents may include only the year of the victim`s birth, the minor`s initials, the city and state of the home address, and the last four digits of a social security number or bank account number.

B. Juror questionnaires shall be disclosed to the defendant or defense counsel and prosecutor but otherwise excluded from public access.

C. Internal court records such as notes, memoranda, or draft opinions by a judge or judicial staff member in the course of performing official duties may be excluded from public access.

D. Upon motion of a party, or a judge`s own motion, the following court records may be sealed upon a showing of good cause:

1. Medical records, including information used or generated by health care providers, including records relating to emergency room treatment, rehabilitation therapy, or counseling.
2. Petitions, orders, testimony, records, documents or physical evidence for immunity or grants of immunity.
3. Search warrants and affidavits for search warrants if a judge finds suppression is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness.
4. Expunged records.

E. Any person having standing may file a motion to unseal a court record. Upon a showing of good cause, a judge may cause a record to be unsealed.

HISTORY: New Section.

5.1538. Juvenile Transfers.

A criminal prosecution brought against a juvenile 13 years of age or older and transferred to the Community Court pursuant to the Children`s Code shall be brought against the juvenile in the same manner as an adult, and shall be sentenced in the same manner as an adult for any offense for which the person is convicted.

HISTORY: New Section.

5.1539. Applicable Law.

In all criminal cases the court shall apply the Constitution, laws and ordinances of the Community, and the Indian Civil Rights Act. The court may, but is not required to, apply the traditional customs of the Community if the traditional customs are not in conflict with the laws and ordinances of the Community. Where any doubt arises as to the customs and usages of the Community, the court may request the advice of those familiar with those customs and usages. In deciding any matter that is not covered by Community precedent regarding laws, ordinances or traditional customs and usages of the Community, the court may be persuaded by other tribal, federal or state case law.

CHAPTER 16. LAW ENFORCEMENT

5.1601. Enforcement of Community Law and Ordinances.

A. All lawful resolutions, laws and ordinances of the Community Council shall be faithfully enforced by the officers of the Community, including the judges, regardless of their personal opinions as to the wisdom of such resolutions, laws or ordinances.

B. Duly authorized law enforcement officers of the Gila River Indian Community and law enforcement officers of other law enforcement agencies duly recognized and authorized by the Community law enforcement officers may execute all lawful orders of the court and enforce all laws, ordinances, and resolutions of the Community Council.

HISTORY: GRIC Code §5.1206 (2009).

5.1602. Enforcement of State and Federal Law.

A. Law enforcement officers of the Community shall have authority to investigate any violation by any person of federal or Arizona law occurring within the Gila River Indian Reservation, and may take offenders into custody and turn them over to the proper authorities.

B. Any non-Indian or non-member of the Community who, within the Gila River Indian Reservation, commits any act which is a crime under federal or Arizona law, or which is an offense under the ordinances of the Community, may be forcibly ejected from the Reservation.

HISTORY: GRIC Code §5.1207 (2009).

5.1603. Extradition.

A. Any person found within the boundaries of the Reservation who is wanted by authorities of a state of the United States or another Indian tribe for a violation of state or tribal law committed outside the jurisdiction of the court, and a warrant of arrest having been issued by a tribal, state or federal court, may be arrested and taken into custody by Community law

enforcement personnel for prompt transfer to the appropriate enforcement agency, subject to the procedures in Section 5.1603.B.

B. The arrest and removal of the fugitive will be accomplished in accordance with the following procedures:

1. Copies of state or tribal warrants or indictments may be presented to the Community law enforcement agency where the copies will be recorded as to date and time received. The warrant will be promptly presented to the Community Court for a review as to date, charge and person named on the warrant.
2. Any person being taken into custody under a warrant issued pursuant to the above paragraph shall be taken by Community law enforcement officials to the Community Court, which shall hold a hearing to determine only whether the person in custody and before the court is the same person charged on the face of the warrant.
3. A person may waive such hearing after appearing in person and advising the judge of his waiver of removal hearing, and he will be promptly turned over to the custody of the appropriate state or tribal official.
4. After a hearing, if the judge is satisfied the fugitive is the same person named in the warrant, the judge shall issue an appropriate order to that effect that will authorize the state or tribal officials to remove the fugitive from the Gila River Indian Reservation.
5. Any admission that the person before the court is the person identified in the warrant shall not be considered as an admission of guilt as to any element of the offense underlying the warrant.

C. A person in custody for a Community offense who is found to be wanted by state or tribal authorities for a violation of state or tribal law may be released to state or tribal officials pursuant to the hearing requirements of this section. The court may delay the release until such time as the Community offense is adjudicated and any sentence served.

HISTORY: GRIC Code §5.1201 (2009).

5.1604. Search Warrants.

A. The court shall have the authority to issue warrants for search and seizure of personal property or persons.

B. A search warrant may be issued upon any of the following grounds:

1. When the property to be seized was stolen or embezzled;

2. When the property or things to be seized were used as a means of committing a public offense;
3. When the property or things to be seized are in the possession of a person having the intent to use them as a means of committing a public offense or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing it from being discovered;
4. When property or things to be seized consist of any item or constitutes any evidence which tends to show that a particular public offense has been committed, or tends to show that a particular person has committed the public offense;
5. When the property is to be searched and inspected by an appropriate official in the interest of public health, safety or welfare as part of an inspection program authorized by law; or
6. When the person sought is subject of an outstanding arrest warrant.

C. No search warrant shall be issued except upon probable cause that an offense has been committed, supported by an affidavit naming or describing the person, and particularly describing the property to be seized and the place to be searched, except as provided in Section 5.1604.D, and under other judicially recognized exceptions.

D. A law enforcement officer may make written application upon oath or affirmation to a judge for an order authorizing the temporary detention of not more than three hours for the purpose of obtaining evidence of identifying physical characteristics of an identified or particularly described individual. The order shall require the presence of the identified or particularly described individual at such time and place as the judge shall direct for obtaining the identifying physical characteristic evidence.

1. A judge may issue an order upon a showing of all the following:
 - a. Reasonable cause for belief that a criminal offense has been committed;
 - b. Procurement of evidence of identifying physical characteristics from an identified or particularly described individual may contribute to the identification of the individual who committed such offense; and
 - c. The evidence cannot otherwise be obtained by the law enforcement officer.
2. Any order issued pursuant to Section 5.1604.D. shall specify the following:
 - a. The alleged criminal offense that is the subject of the warrant;

- b. The specific type of identifying physical characteristic evidence that is sought;
 - c. That the evidence would likely be relevant to the particular investigation;
 - d. The identity or description of the individual who is to be detained for obtaining evidence;
 - e. The place at which the evidence will be obtained;
 - f. The time that the evidence shall be taken, except that no person may be detained for a period of more than three hours for the purpose of taking evidence; and
 - g. The period of time, not exceeding 15 days, during which the order shall continue in force and effect. If the order is not executed within fifteen days and is not extended by a judge, a new order may be issued pursuant to this section. A judge may extend the time for execution of the order for no longer than 15 days.
3. An order issued pursuant to Section 5.1604.D. shall be returned to the court not later than 30 days after date of issuance and shall be accompanied by a sworn statement of the law enforcement officer indicating the type of evidence taken. The court shall give to the person from whom the evidence was taken a copy of the order and a copy of the sworn statement indicating what type of evidence was taken, if any.
4. In lieu of, or in addition to, a written application as provided in Section 5.1604.D. a judge may take an oral statement under oath, which shall be recorded on a tape or wire or by other comparable method. The statement may be given in person to a judge by telephone, radio or other means of electronic communication. This statement is deemed an application for the purpose of issuance of an order authorizing the temporary detention for the purpose of obtaining evidence of identifying physical characteristics. If a recording of the sworn statement is made, the statement shall be transcribed at the request and cost of the party making the request, certified by the judge and filed with the court.
5. A judge may orally authorize the law enforcement officer to sign the judge's name on an application if the law enforcement officer applying for the application and order is not in the actual presence of the judge. The application shall be called a duplicate original application and shall be deemed an application for the purpose of Section 5.1604.D. In such cases the judge shall cause to be made an original application and shall enter the exact time of the issuance of the duplicate application on the face of the original application. On return of the duplicate original application, the judge shall file the original application and the duplicate original application with the court.

6. A judge may affix his signature on a fax of an original application. The fax of the original application is deemed to be an application for the purposes of Section 5.1604.D. On return of the fax of the original application, the judge shall file the original application and the fax of the original application with the court.

7. For the purposes of Section 5.1604.D. "identifying physical characteristics" includes, but is not limited to, the fingerprints, palm prints, footprints, measurements, handwriting, handprinting, sound of voice, blood samples, urine samples, saliva samples, hair samples, comparative personal appearances or photographs of an individual.

E. If a judge is satisfied that probable cause for the issuance of the warrant exists, the judge shall issue a search warrant commanding a search by a law enforcement officer of the person or place specified, for the items described.

1. On reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the judge shall authorize an unannounced entry.

2. The judge may orally authorize the law enforcement officer to sign the judge's name on a search warrant if the law enforcement officer is not in the actual presence of the judge. This warrant shall be called a duplicate original search warrant and shall be deemed a search warrant for the purposes of Section 5.1604.E. The judge shall sign an original warrant and shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant. On the return of the duplicate original warrant the judge shall file the original warrant and the duplicate original warrant with the court.

3. A judge may affix his signature on a fax of an original warrant. The fax of the original warrant is deemed to be a search warrant for the purposes of Section 5.1604.E. On return of the fax of the original warrant, the judge shall file the original warrant and the fax of the original warrant with the court.

F. A law enforcement officer executing a search warrant may seize any property discovered in the course of the execution of such warrant if he has probable cause to believe that such item is subject to seizure even if such property is not enumerated in the warrant. The law enforcement officer may search any building, structure, or container reasonably permitted to be searched by the plain language and scope of the search warrant.

G. The law enforcement officer shall return the warrant to the judge and at the same time deliver a written inventory of the property taken. The inventory shall be made publicly, or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present. The written inventory shall be verified by affidavit of the law enforcement officer and shall recite that the inventory contains a true and detailed account of all the property taken.

H. Unless explicitly stated and due to extraordinary circumstances all warrants shall be executed any time of the day or night unless the judge finds sufficient reasons to limit the time in which the warrant may be served and so endorses the warrant.

I. A search warrant shall be executed and returned to the issuing judge within five days after its date. Upon expiration of that time, the warrant, unless executed is void.

J. All reasonable searches and seizures which are incidental to a legal arrest are valid.

K. All evidence unlawfully obtained shall be inadmissible.

L. Failure to satisfy any time frames provided in this section will not be grounds for dismissal if the judge finds that the delay is indispensable to the interests of justice and enters a written order detailing the reason(s) for the change in the time frame.

HISTORY: GRIC Code §5.1208 (2009).

5.1605. Arrests.

A. Arrest, Under a Warrant. A Community law enforcement officer or other peace officer acting under the authority of the Community may arrest a person for a criminal offense when the officer is authorized by a warrant to apprehend the person. An arrest warrant will be issued when based upon probable cause to believe that an offense has been committed and that the person to be arrested has committed the offense a judge reasonably believes that the warrant is necessary. A warrant for arrest does not expire. The warrant shall be delivered to the defendant at the time of his arrest or no later than the initial appearance of the defendant. When the arresting officer is not in possession of the arrest warrant at the time of the arrest, the officer shall inform the defendant that such a warrant has been issued, that the officer is acting pursuant to the arrest warrant and that a copy of the warrant will be delivered to the defendant no later than at his initial appearance.

1. Form of arrest warrant. An arrest warrant must contain the name of the person to be arrested, information by which the person to be arrested may be identified with reasonable certainty, and a description of the offense(s) charged in the underlying criminal complaint. The arrest warrant must be signed by a judge. An arrest warrant shall neither be invalidated, nor shall any person in custody be discharged, because the arrest warrant contains technical or clerical errors. The arrest warrant may be amended by any judge to remedy the defect.

2. Execution of an arrest warrant. An arrest warrant is executed by arresting the person named in the warrant. Upon the person's arrest, the arresting officer shall notify the person of the existence of the arrest warrant and of the offense(s) charged. Only officers authorized by the Gila River Indian GRIC Code to make arrests may arrest a person pursuant to a Community arrest warrant. The arresting

officer must complete all required information on the arrest warrant, including the date, time and location of the execution of the arrest warrant, as well as the legibly printed name, signature and badge number of the arresting officer. Execution of the arrest warrant is completed only upon the return of the completed arrest warrant to the court, which must occur at or prior to the defendant's initial appearance.

B. Arrest, Without a Warrant. A Community law enforcement officer or other peace officer acting under authority of the Gila River Indian Community may arrest a person for a criminal offense without a warrant if the criminal offense occurs in the presence of the arresting officer, or if he has probable cause to believe that an offense has been committed and that the person to be arrested has committed the offense. If a person is arrested without an arrest warrant, the arresting officer shall, without unreasonable delay, prepare a written statement of probable cause which shall be delivered without delay to the court, with a copy simultaneously to the Office of the Prosecutor. A copy of the statement of probable cause shall be provided to the person arrested at the person's initial appearance. If a probable cause statement is issued but the person is not detained at the time the probable cause to arrest statement is issued the officer shall either reduce the probable cause statement to a warrant for arrest by the next business day or request the Office of the Prosecutor file charges and request a summons for the person to appear.

C. Any law enforcement officer having authority to make an arrest may break open an outer or inner door or window of a dwelling house or other structure in which the person to be arrested is or is reasonably believed to be for the purpose of making the arrest if, after he has announced his authority and purpose, he is refused admittance.

D. Any person arrested for a violation of this title shall be finger printed and such fingerprints shall be kept on file by law enforcement officials.

HISTORY: GRIC Code §5.1305 (2009).

CHAPTER 17. VICTIMS' RIGHTS

5.1701. Victims' Rights.

A. These rights shall be construed to preserve and protect a victim's rights to justice and due process. Notwithstanding the provisions of any other section in the Rules of Criminal Procedure, or Section 5.710, Domestic Violence, a victim shall have and be entitled to assert each of the following rights:

1. The right to be treated with fairness, respect, and dignity, throughout the criminal proceedings.
2. The right to be free from intimidation, harassment, or abuse, throughout the criminal proceedings.

3. The right to be given reasonable, accurate, and timely notice of the date, time, and place of any criminal proceeding.
4. The right to be present at all criminal proceedings.
5. The right to be informed of any release or proposed release of the defendant, whether that release is before expiration of the sentence or by expiration of the sentence, and whether the release is permanent or temporary in nature.
6. The right to be immediately notified of any escape of the defendant.
7. The right to confer with the prosecutor, prior to trial when applicable, in connection with any decision involving pre-conviction release of the defendant, a plea bargain, a decision not to proceed with a criminal prosecution, dismissal of charges, or other disposition prior to trial, and the right to be informed of the reasons for any decisions made.
8. The right to be reasonably heard at any proceeding involving pre-conviction release, plea, sentencing, post-conviction release, or any probation proceeding.
 - a. The victim's right to be heard is not exercised in the capacity of a witness, and therefore the victim is not subject to cross-examination.
 - b. The victim's statement is not subject to disclosure, except in relation to proving the guilt of the defendant at trial.
 - c. The prosecutor and defense shall be afforded the opportunity to explain, support, or deny the victim's statement.
 - d. The victim's statement shall be relevant to the purpose of the hearing.
 - e. The victim's right to be heard may be exercised, at the victim's discretion, through oral statement, submission of a written statement, or submission of a statement through an audiotape or videotape or other electronic means.
9. The right to require the prosecutor to withhold, during discovery and other proceedings, the home address, and telephone numbers of the victim, the name, address, and telephone number of the victim's place of employment; provided, however, that for good cause shown by the defendant, the court may order that such information be disclosed to defense counsel and may impose such further restrictions as are appropriate, including a provision that the information shall not be disclosed by defense counsel to any other person than defense counsel's staff, and shall not be disclosed to the defendant.

10. The right to refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney or advocate, or other person acting on behalf of the defendant.
 - a. After charges are filed all defense requests to contact, interview, or depose the victim shall be initiated through the prosecutor.
 - b. The victim's response to any defense request for interviews shall be communicated through the prosecutor.
 - c. The prosecutor shall not be required to forward any correspondence from the defendant, the defendant's attorney, or defendant's advocate to the victim or the victim's representative, but is required to make a reasonable and good faith effort to inform the victim of a request for an interview or statement.
 - d. If there is any comment or evidence at trial regarding the victim's refusal to be interviewed, the court shall instruct the jury that the victim has the right to refuse an interview under the Code.
 - e. For purposes of a pretrial interview, a law enforcement officer shall not be considered a victim if the act that would have made him a victim occurs while the law enforcement officer is acting in the scope of his or her official duties.
 - f. The right to condition any defense counsel interview or deposition on any of the following: specification of a reasonable date, time, duration, and location of interview or deposition; the right of the prosecutor and crime victim advocate to attend the interview or deposition; the right to specify the manner, if any, in which the interview or deposition is recorded; and the right to terminate the interview or deposition if it is not conducted in a dignified and professional manner.
11. The right to view any pre-sentence report relating to the crime against the victim, except those parts excised by the court or made confidential by law. If the court excises any portion of the pre-sentence report the court shall inform the parties and shall state on the record its reasons for the excision.
12. The right to view a probation status report relating to the crime of domestic violence against the victim upon the offender's completion of court ordered domestic violence services or treatment, however the victim may not view those parts excised by the court or made confidential by law. If the court excises any portion of the probation status report the court shall inform the parties and shall state on the records its reason for excision.

13. The right to proceedings free from unreasonable delay, and prompt and final conclusion of the case after conviction and sentence.
 14. The right to be informed of the disposition of the case.
 15. The right to full and timely restitution from the defendant(s) convicted of criminal conduct that caused the victim's loss or injury.
 - a. Any order of restitution shall be as fair as possible to the victim or the victim's estate without unduly complicating or prolonging the sentencing process.
 - b. If the court does not order restitution, or orders only partial restitution, the court shall state on record the reason(s) for that action.
 - c. The court may order restitution for the value of property on the date of the damage, loss or destruction; for medical expenses; for income loss suffered as a result of the offense; for funeral expenses.
 - d. Restitution shall be made immediately, however, the court may require restitution be made in specific installments.
- B. Notice.
1. Notice must be reasonable, which means it must be likely to provide actual notice to a victim or permit meaningful opportunity for a victim to exercise his rights.
 2. Notice should be given as soon as practicable to allow victims the greatest opportunity to exercise their rights. The Office of the Prosecutor shall, in consultation with Community Court, Probation Department, Department of Rehabilitation and Supervision, Police Department and Crime Victim Services, promulgate a protocol without further approval by Community Council to ensure reasonable notice.
- C. Assistance and Representation.
1. After an arrest, or upon citation and release, the law enforcement officer shall provide the victim with written notification of the victim's rights under this chapter.
 2. If there is no arrest the prosecutor, after charges are filed, shall provide the victim with written notification of the victim's rights provided under this chapter.
 3. The prosecutor shall have standing in any judicial proceeding, upon the victim's request, to assert any rights to which the victim is entitled.

D. Victim's Duty to Implement Rights. Any victim desiring to claim notification rights provided by this chapter must provide his or her full name, address, and telephone number to the Office of the Prosecutor.

E. Waiver of Victim's Rights. The victim's rights and privileges enumerated in this Chapter may be waived by the victim, upon a judge's determination and acceptance that the victim has waived his/her rights voluntarily, knowingly and intelligently.

1. A waiver may be express or may be implied from conduct by the victim which is inconsistent with any of the rights guaranteed by this chapter.
2. Failure to keep the address and telephone number current with the Office of the Prosecutor or failure to respond within a reasonable amount of time to correspondence or attempted contact by the Office of the Prosecutor may constitute a waiver by the victim to rights of notification of criminal proceedings or other case events.
3. A victim may assert or reassert any right or privilege enumerated in this chapter at any time.

HISTORY: GRIC Code §5.1403 (2009).

5.1702. Minimizing Victim Contact.

Before, during, and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that occurs between the victim, the victim's immediate family, and the victim's witnesses and the defendant, the defendant's immediate family and defense witnesses.

HISTORY: GRIC Code §5.1404 (2009).

5.1703. Privilege Between Crime Victim Advocate and Victim.

A. Unless a victim consents in writing to disclosure, a victim or victim's representative has a privilege to prevent a crime victim advocate from disclosing any communication made by the victim or victim's representative in any criminal proceeding, interview, deposition, or other discovery request.

B. A communication is not privileged if the crime victim advocate knows that the victim will give or has given perjured testimony, or if a communication contains exculpatory material. The crime victim advocate must disclose exculpatory material to the prosecutor.

C. A defendant may make a motion for disclosure of privileged information. If, upon a showing of materiality by the defendant, the court finds there is reasonable cause to believe a crime victim advocate has knowledge of exculpatory evidence, the court shall hold a

hearing in the judge's chambers. Information that the court finds exculpatory shall be disclosed to the defendant.

D. If, with consent of the victim, the crime victim advocate discloses to the prosecutor or law enforcement officer any communication between the victim and the crime victim advocate or any records, notes, documents, correspondence, reports, or memoranda, the prosecutor shall disclose such material to the defendant's attorney or advocate, only if such information is otherwise discoverable.

E. Privilege under this section shall not relieve a crime victim advocate of any duty as a mandatory reporter under the GRIC Code.

HISTORY: GRIC Code §5.1405 (2009).

5.1704. Limited Rights of a Legal Entity.

A. A business, corporation, partnership, association, government, or its subdivisions or departments, except for its status as an artificial entity, may be considered a victim against whom a criminal offense has been allegedly committed, and shall be afforded the following rights:

1. The prosecutor shall notify the designated representative of the legal entity of the right to appear and be heard at any proceeding relating to sentencing or restitution of the person convicted of committing the criminal offense against the legal entity.
2. The prosecutor shall notify the designated representative of the legal entity of the right to submit to the court a written statement containing information, documentation and/or opinions on restitution and sentencing in its case.
3. A lawful representative of the legal entity shall have the right, if present, to be heard at any proceeding relating to sentencing or restitution of the person convicted of committing the criminal offense against the legal entity.

HISTORY: GRIC Code §5.1406 (2009).

5.1705. Failure to Comply.

The failure to use reasonable efforts to perform a duty or provide a right provided under this chapter is not cause to seek to set aside a conviction or sentence.

HISTORY: GRIC Code §5.1407 (2009).

Legislative History for the Criminal Code (2013)

On July 6, 2011, the Gila River Indian Community Council passed a motion directing implementation of enhanced sentencing under the Tribal Law and Order Act of 2010 (“TLOA”). Thereafter, the TLOA Workgroup was formed to revise the Criminal Code, draft rules of criminal procedure, rules of evidence, and sentencing guidelines. The TLOA Workgroup included representatives from several Community departments and other entities: Office of the General Counsel, Office of the Prosecutor, Defense Services Office, Community Court, Police Department, Probation Department, Department of Rehabilitation and Supervision, Behavioral Health, Four Rivers Indian Legal Services, Legislative Standing Committee (“LSC”), and a tribal court advocate.

On May 15, 2013 the Community Council enacted the revised Criminal Code. The revised Criminal Code was originally submitted for consideration to the Community Council with an effective date of June 1, 2013, except any felony offense, procedures specifically relating to felony offenses, and mental competency, which would not be effective until January 1, 2014. The Community Council, by oral motion and interlineations, amended the effective date to January 1, 2014, except any felony offense, procedures specifically relating to felony offenses, and mental competency, which would not be effective until May 1, 2014.

General editorial notes:

1. When a reference is made to another section, if the reference is in the same section then the name of the section is not included, if the reference is to a separate section the name of the section is included. This was done in anticipation of any typographical errors.
2. At the end of every offense there is a reference to the prior GRIC Code section or if it is a new section and there is a reference for felony compatibility references. The felony compatibility references are included for purposes of fulfilling the requirements in 25 U.S.C. § 1302(B)(2). The felony compatibility references should only be used to locate persuasive supplemental case law when interpreting the offense and is not intended to be binding on the Community Court.

Chapter 1 (General Provisions)

Indian Defined (5.102) was expanded to reflect current federal definition of Indian. Statute of Limitations (5.103) and Speedy Trial (5.104) were revised to include clarifications and exceptions to time limits. It is intended that the procedures for granting continuances provided in 5.104.A.7 are to only be applied if a continuance is requested that may delay the trial date, thereby necessitating a tolling of the speedy trial time frame. It is intended that any continuance that will not delay the trial date may be granted at the judge’s discretion, and is not governed by 5.104.A.7. Rules of Evidence (5.105) was revised to reflect reference to Community Rules of Evidence, or in their absence reference to Arizona’s Rules of Evidence.

Chapter 2 (Criminal Liability)

In October, 2011, LSC directed that intoxication (5.206) should not be a defense to a criminal offense. LSC also directed that the burden of proof under Justification for Use of Force

(5.208.E) should be by the prosecution to rebut beyond a reasonable doubt after presentation of evidence of justification by the defendant; LSC rejected that the burden of proof should be proven by the defendant beyond a preponderance of the evidence.

Proposed incompetency and insanity provisions were presented at a special LSC meeting in January, 2012, and again at a joint LSC and Government and Management Standing Committee (“G&MSC”) meeting in February, 2012. The committees requested Gila River Health Care’s Behavioral Health explore rehabilitative options and present a report of their findings. In June, 2012, the Behavioral Health report was presented to G&MSC and LSC. The committees directed that the Criminal Code revisions include a rehabilitative option, which includes providing for competency evaluations, hearing provisions, restoration options, and the option to refer for guardianship if unrestorable. The detailed competency procedures were included in the Rules of Criminal Procedure.

Chapter 3 (Preparatory Offenses)

Attempt (5.301), Solicitation (5.302), Conspiracy (5.303) and Facilitation (5.304) offense language were updated so that the preparatory offenses are compatible with a state jurisdiction.

Attempt (5.301) was amended to include that factual impossibility is not a defense to the crime and that legal impossibility will be a defense if the crime is legally impossible to commit since that is consistent with other jurisdictions.

Attempt (5.301) and Facilitation (5.304) were amended to include voluntary renunciation to keep consistency between the preparatory offenses and since that is consistent with other jurisdictions. In addition, “timely warning” regarding the time frame for a defendant to withdraw from committing the offense is clarified in Attempt (5.301), Solicitation (5.302), Conspiracy (5.303), and Facilitation (5.304). Specifically, “timely” is defined in that a timely warning must give a reasonable amount of time for law enforcement authorities to prevent the intended crime or result.

The possible penalties were revised to make the preparatory offense sentencing uniform and consistent within this chapter as well as with other parts of the revised Criminal Code. If a defendant commits Attempt (5.301), Solicitation (5.302), Conspiracy (5.303), or Facilitation (5.304) the defendant is subject to one half the maximum penalties for a misdemeanor (one year) or felony (three years); however, the penalty for a preparatory offense will never exceed the maximum penalty allowed in the underlying offense.

Chapter 4 (Sentencing)

Revisions to Chapter 4, Sentencing, included the addition of several sections including: Pretrial Services (5.402); Inmate Work Crew requirements(5.403); clarification of restitution process and procedure (5.404); clarification of diversionary prosecution for defendants that meet certain criteria (5.405); clarification of probation procedures, probation discovery and violation hearings (5.406); creation of a simplified sentencing scheme (5.407); provisions for work release (5.408);

expungement (5.409); funeral release (5.410); clarification allowing concurrent prosecutions(5.403); and clarification for eligibility of commutation (5.411).

In October, 2011, LSC directed that sentencing should include presumptive sentences, including (1) a sentence range that takes into consideration the severity of the offense and the defendant's criminal history; (2) allowing the sentencing judge to deviate from the presumptive range with written justification for departure, stating why the sentence imposed is more appropriate or fair than the presumptive sentence (typically based on mitigating and aggravating factors); and (3) providing for appellate review when the sentencing judge departs from the presumptive range.

In January, 2012, LSC directed that the Criminal Code revisions include separate sentencing guidelines.

In May, 2012, LSC approved the drafting of misdemeanor and felony offenses chargeable as either misdemeanor or felony offenses. In November, 2012 LSC reaffirmed under 5.407.A that when an offense is punishable as either a misdemeanor or felony the offense would be considered a misdemeanor except that it may be charged as a felony offense if either (1) charged with one or more aggravating factors identified in 5.407.C.7(a)-(aa) or (2) charged with an additional element in the offense that would not be present if it had been charged as a misdemeanor (the additional element would be identified in the body of the offense; e.g., under 5.1103.B. payment received exceeds \$100 in any consecutive 6 months), and proving either the aggravating factor or additional element beyond a reasonable doubt or admitted by the defendant. The purpose of this approach was to have the Office of the Prosecutor review and intentionally decide whether to charge an offense as a felony by determining and charging any aggravating factors or including an additional element included in the offense, which would result in more efficient use of Community resources and would preserve aspects of the judicial system that the Community has traditionally operated under with Community Court elected judges, and avoiding any violation of due process or equal protection rights for defendants.

Under 5.407.A, for an offense that is punishable as either a misdemeanor or felony offense, one of two factors as described in 5.407.A. must be present and alleged on the criminal complaint. To allege a felony offense under 5.407.A. either an aggravating factor as identified in 5.407.C.7(a)-(aa) is alleged on the criminal complaint or there is an additional element which is described in the offense and charged on the criminal complaint. While 5.407.C.7 prohibits the use of evidence necessary to prove an element of an offense and the use of that same evidence to prove any factor in aggravation for sentencing consideration, it is intended that if a defendant has two prior criminal convictions (5.407.C.7.e) or probation revocations (5.407.C.7.v), then under 5.407.A. one of the prior convictions or revocations can be used to charge the offense as a felony offense and a different prior conviction or revocation can be used as a factor in aggravation for sentencing. Also in May, 2012, LSC directed the formation of a separate sub-committee within the TLOA Workgroup to develop sentencing guidelines (which included representatives from the Community Court, Office of the Prosecutor, Defense Services Office, and Office of the General Counsel) and further directed that the guidelines should be less mandatory, allowing the judge to depart from the presumptive sentence upon providing written justification of compelling reasons, and that defendants would not be allowed to appeal their sentence based on a judge's decision to order a presumptive sentence or a sentence in excess of the presumptive sentence.

In November, 2012 LSC directed that policies and procedures which might be created as a result of the revised Criminal Code do not need to be approved by Community Council but should be reviewed prior to implementation of the policies and procedures by the LSC; that the ratio for credit for inmate work credited towards early release should be revised as they considered that 8 hours work credited for one 24 hour day of incarceration was too generous and they were concerned about the victims; they directed that diversionary prosecution should not be allowed for felony offenses; and they directed that for probation violations (5.460.H.2.) time should be tolled from the date of the violation or when the offense occurs.

For clarification of Inmate Work Crew Requirements (5.403) in conjunction with Commutation (5.411): The accrual of credit for inmate work crews accrues at a rate of 24 hours of work (three 8 hour days) for one 24 hour day of incarceration and may be considered after an inmate has served three-fourths of his sentence and meets the other criteria in 5.403.E. An inmate incarcerated for a misdemeanor offense may apply for commutation at any time, having met the requirements in 5.411.A; however, any work credit should not be considered until after the inmate has served three-fourths of his sentence as provided under 5.403.E. An inmate incarcerated for a felony offense may apply for commutation after serving half of his sentence, having met the requirements in 5.411.B; however, any work credit should not be considered until after the inmate has served three-fourths of his sentence as provided under 5.403.E.

Given the direction by Community Council for misdemeanor offenses to become effective January 1, 2014 and felony offenses to become effective May 1, 2014, the following revisions were made to allow different effective dates:

1. For those offenses (homicide, aggravated assault, kidnapping, sexual assault, sexual abuse, sexual conduct with a minor, molestation of a child, incest, and aggravated burglary), which will only be chargeable as felony offenses starting on May 1, 2014, a new subsection was added prescribing a misdemeanor penalty effective only during the period of January 1, 2014 through April 30, 2014, and the felony offenses would then become effective May 1, 2014. Effective May 1, 2014, there will no longer be misdemeanor penalties for said list of offenses. These offense sections intentionally do not follow the typical formatting of other offense sections (misdemeanor penalty section followed by felony penalty section) to maintain consistency in the cross-references in sentencing sections.
2. Sentences exceeding one year, as regulated in Section 5.412.F, will not be authorized until May 1, 2014 in order to allow the jail to obtain approvals from BIA for long term incarceration as required under the TLOA.

Chapter 5 (Interference with the Administration of Justice)

The offense of Failure to Obey Restraining Order (5.509) was added after comments from the TLOA Workgroup noting the lack of protection for victims. Criminal Contempt of Court (5.510) was revised to clarify procedures for failures to pay fines and restitution. Possession of Contraband by a Jail Inmate (5.518) and Delivery of Contraband (5.519) were included due to concerns raised by the Department of Rehabilitation and Supervision. Several other new offenses were added to address increased incentive of criminal defendants facing enhanced

sentencing and possible interference with the judicial process: Witness Tampering (5.513), Receiving a Bribe as a Witness (5.514), Jury Tampering (5.515), Receiving a Bribe by a Juror (5.516).

Chapter 6 (Offenses Against Persons)

Homicide (5.601) was revised to include negligently causing the death of another and was drafted as felony only offense (i.e., it cannot be charged as a misdemeanor). Aggravated Assault (5.603) was drafted to include more serious assaults and is a felony only offense (i.e., it cannot be charged as a misdemeanor). Stalking (5.608) and Harassment (5.609) were included as new offenses at the request of the TLOA Workgroup to meet changes in the Community.

Chapter 7 (Offenses Against the Family)

The TLOA Workgroup initially questioned whether Adultery (5.702) should continue to be a criminal offense and whether other jurisdictions include this offense; other states and tribal jurisdictions do have this as an offense. On November 8, 2012, the LSC directed that the offense of Adultery will remain in the Criminal Code. Adultery (5.702) was revised to remove the ability for a husband or wife to initiate a prosecution since that language conflicted with Section 5.1502, Prosecutorial authority to initiate or dismiss offenses.

Criminal Nonsupport (5.703) was revised to clarify the unavailability of certain defenses including no defense for failure to provide support to a spouse or child(ren), and was also revised to include an affirmative defense that the person was unable to provide for the child. The ability for an individual, other than a representative of the prosecutor's office, to initiate a prosecution under Criminal Nonsupport (5.703) was revised and removed since that language conflicts with Section 5.1502, Prosecutorial authority to initiate or dismiss offenses.

Child Abuse (5.705) was amended from the 2009 Criminal Code to include an additional two mental states (recklessly or negligently) of child abuse, as found in Arizona and other states. Other revisions included a requirement that felony child abuse occurs under circumstances likely to produce death or serious bodily injury, similar to language found in Arizona and California child abuse statutes; however, the exception to this requirement is mental harm to a child. Harm to a child's mental health has been a form of child abuse in the Community since at least the adoption of the 1990 Criminal Code. Mental harm to a child was included as a form of child abuse and can be charged as either a misdemeanor or felony. For felony compatibility purposes, mental harm to a child was included in the Community's Code as a standalone offense within child abuse and was revised to be comparable with Wisconsin's statute because the Wisconsin offense, while a felony, does not include criminal elements found in either Arizona or California child abuse statutes, which were used as the basis for the revised Community offense of child abuse.

Elderly or Vulnerable Adult Abuse (5.706) was drafted as a new offense that includes four mental states (intentionally, knowingly, recklessly or negligently) of abuse towards an elderly or vulnerable adult. Emotional abuse is included in the offense of Elderly or Vulnerable Adult

Abuse (5.706), which is similar to Child Abuse (5.705). Felony emotional abuse of an elderly or vulnerable adult occurs if the abuse occurs under circumstances likely to produce death or serious bodily injury, and this is a similar requirement found in California and Wisconsin statutes pertaining to emotional abuse of an elderly or vulnerable adult.

On November 8, 2012, LSC directed Failure to Send Minor to School (5.707) keep the age limits between six and 16. The Education Standing Committee previously motioned to increase the age to 18; however, this presented several possible problems, particularly for children who live within the Community but attend school off of the Reservation where the State of Arizona's laws limit mandatory education until the age of 16.

Additional provisions were included in the offense of Contributing to Delinquency of Minor (5.708) to include eight situations where a person could contribute to or encourage the delinquency of a minor.

Domestic Violence (5.710) was amended from the 2009 Criminal Code and language was either struck or added to conform with the policy that the Community is a zero tolerance community. The offense of domestic violence, Section 5.710.B. is no longer a standalone offense; however, domestic violence 'augments' a specified underlying offense. Section 5.710.B. specifies the underlying offenses of domestic violence and, instead of defining "family or household member," Section 5.710.B describes who may be a victim of domestic violence. Additional changes included a slightly more limiting description of who may be a victim of the offense of domestic violence, which is similar to several state descriptions, such as Arizona, and at least one other tribal code. On November 8, 2012, LSC directed that the sentencing for domestic violence offenders should allow for more rehabilitative measures for defendants charged with a first time misdemeanor (diversionary prosecution) and also for offenders convicted of their first misdemeanor. Diversionary Prosecution (5.405) is allowed for a first misdemeanor charge, as found in Section 5.710.G.9. Further, Section 5.710.C. outlines the sentencing enhancements for offenses augmented by domestic violence, which includes progressive enhancements via mandatory minimums depending on whether the offense is a second or subsequent misdemeanor offense within five years, a first time felony, or a second or subsequent felony offense within five years of a first conviction. Police Officers, referred to in the Code as Law Enforcement Officers (Law Enforcement Officers include both Police Officers and Rangers), are now required to determine the predominant aggressor before making an arrest. Duties of the probation department were struck from the Domestic Violence section and moved to Probation (5.406.C.). Section 5.710.I. was revised to clarify that copies of court ordered restraining orders issued from a criminal proceeding are registered with the Gila River Police Department. Under Section 5.710.K. the Tribal Social Services Department is required to present an annual report on domestic violence trends to Community Council each year in working with several other departments.

Civil Order of Protection (5.711) was drafted as a new section; however, much of the language is from the 2009 Criminal Code domestic violence section. This section was separated from the criminal offense section to ensure that civil cases are not confused with criminal cases. Section 5.711 was kept in the Criminal Code so that a person can easily locate all information on domestic violence in the Community Code. Additionally, Section 5.711 includes additional

information on petitions for an order of protection, as well as a new section for temporary orders of protection pending a judge issuing a civil order of protection. To expedite the issuance of an order of protection, the court will issue an ex parte order of protection; a hearing will no longer be held, unless under the circumstances provided in Section 5.711. Orders of protection are valid for a year as opposed to six months. Additional language prohibiting the court from issuing mutual orders of protection was added (5.711.E.7) at the direction of LSC. Section 5.711.F, Content of Civil Order of Protection, includes several additional court orders not previously included in this section, some to match the same orders that are provided for a criminal restraining order for consistency. In addition, Section 5.712.F.12., adapted from Navajo Nation's orders of protection statute, was included with the intent to help the court from unknowingly modifying another court's decision and to promote consistency in custody and visitation orders between courts for the benefit of families.

Emergency Orders of Protection (5.712) was drafted as a new section; however, much of the language is from the 2009 Criminal Code domestic violence section. Section 5.712 was separated from its previous section so that a person can easily determine and locate all information on domestic violence in the Community Code. Additionally, Section 5.712 includes additional language that a third party may make a request on behalf of an alleged victim who is not able to request such an order.

Chapter 8 (Sexual Offenses)

Sexual Assault (5.801) and Sexual Abuse (5.802) were revised to remove the spousal exception. In November, 2012 LSC directed that certain sex offenses be drafted as felony only: sexual Assault (5.801), Sexual Abuse (5.802), Sexual Conduct with a Minor (5.803), Molestation of a Child (5.804), and Incest (5.805). The admissibility of Evidence of Prior Sexual Conduct (5.810) was not revised from the 2009 Criminal Code.

Chapter 9 (Offenses Against Property)

Arson (5.909) was revised pursuant to comments from the TLOA Workgroup to remove the "fraudulent purposes" requirement when damage is caused to one's own property. While Arson (5.909) is classified as a class II felony under 5.407.H.2.j., Arson of an occupied structure was added under 5.909.B.2 and classified as a Class I felony under 5.407.H.1.j. The offenses of Arson (5.909), Reckless Burning (5.910), and Setting Brush Fires (5.911) were revised to allow the offender to be held liable for restitution to the emergency response agency that responds to a fire set in violation of one of these offenses.

Chapter 10 (Offenses Against Public Peace)

Cruelty to Animals (5.1004) was revised at the suggestion of the TLOA Workgroup to include referrals to Behavioral Health based on general evidence that cruelty to animals is a precursor to committing violence against family or other individuals. The gang offenses were included in this chapter and were not substantively revised from their July 18, 2012 revision and enactment by Community Council.

Chapter 11 (Forgery, Fraud and Related Offenses)

Fraud (previously 5.603), as a general offense, was struck from this chapter since general fraud is encompassed under Theft (5.905.A.3.). Additionally, several offenses were added as specific fraudulent crimes, including: Fraud by Person Authorized to Provide Goods or Services (5.1103), Fraudulent Use of Per Capita Payments (5.1106), Making or Permitting a False Claim for Reimbursement for Community Assistance Services (5.1107), Fraudulent Schemes and Practices Against the Community (5.1108) and Tapping Electrical or Gas Lines (5.1110). Crimes such as larceny, embezzlement, black mail, receiving stolen property, obtaining money or property by false pretenses, and misappropriation of public funds are covered in the general theft statute (5.905).

Section 5.1105 was originally drafted as Fraudulent Use of Food Stamps; however, was removed and may be reconsidered at a later date for inclusion.

Chapter 12 (Controlled Substances)

The definitions and exceptions were excised from the first offense and moved to the end of the chapter since they could be applicable to any of the offenses in the chapter.

Chapter 13 (Weapons and Explosives)

The offenses contain minor revisions to comply with the comparability requirement under 25 U.S.C. §1302(b). Justification and Defensive Display of Firearms (5.1308) was drafted as a new defense.

Chapter 14 (Liquor)

Unlawful Sale of Liquor (5.1403) was revised for consistency with Section 14.408 of the Community Code, entitled “Unlawful Acts.” Additionally, the definitions provided in Section 14.102, entitled “Definitions,” were incorporated for purposes of interpreting the offense of Unlawful Sale of Liquor (5.1403.B.).

Chapter 15 (Criminal Procedure)

Criminal Proceeding (5.1501) was drafted to clarify criminal proceedings and requirements for criminal proceedings under 25 U.S.C. §1302. Temporary Detention; Initial Hearing (5.1504) was revised to clarify initial detainment for an initial 48 hours in order to be seen by a judge, then after that initial hearing by the judge the defendant may be detained for an additional 72 hours for the filing of a criminal complaint. Right to Counsel (5.1505) was drafted to: (1) clarify requirements under 25 U.S.C. §1302 for appointment of a licensed attorney if an indigent defendant is subject to more than one year of incarceration per criminal proceeding, regardless if a Community member; or if charged with a misdemeanor offense the right to counsel at his own expense, however if a Community member is eligible for appointment of an attorney from Defense Services Office regardless of the offense; (2) clarify conflict attorneys should not have prior conflict as a former Community prosecutor for the prior 5 years from appointment; and (3)

create indigency standards (which are contained in the Rules of Criminal Procedure). Section 5.505.B.6 was added in the event Community Council approves appointment of counsel for individuals other than Community member or indigent defendants; then those defendants would be appointed counsel in the same manner. The ability to amend criminal complaints in Section 5.1506.D.2 was drafted at the request of the practitioners and is intended to allow amendment only when both parties are in agreement. Release, Revocation or Release, Forfeiture of Bond (5.1509) was revised to include bail considerations, release conditions, and the process and procedure if release conditions are violated. Release conditions under Section 5.1509.E.9 are not intended to include medical marijuana since marijuana is an illegal substance under Section 5.1207 and is not considered a controlled substance subject to exceptions under Section 5.1212. Bail Hearings (5.1510) was revised to include, at the direction of LSC, conditions of release and is on probation in a separate pending case and is alleged to commit a new offense the defendant would be subject to bail hearing on the new offense based on the fact that he was on probation at the time he was alleged to have committed the new offense. Discovery and Inspection (5.1518) was revised to include the requirement to submit a written request for discovery to the opposing party and allow reasonable time for response before submitting a motion to the court for an order compelling discovery. Jury (5.1522) was revised at the direction of LSC to include an exemption for jury service to include Community Council representatives, Governor, Lieutenant Governor, Community Secretary and Treasurer, employees of the Court, Chief Judge, Associate Judges, Judges Pro Tempore, and Court of Appeals judges. Juvenile Transfer (5.1538) was drafted to clarify that after a criminal complaint is filed in Community Court against a juvenile 13 years of age or older the Community Court shall treat the case in the same manner as an adult, and shall be sentenced in the same manner as an adult.

Chapter 16 (Law Enforcement)

Search Warrants (5.1604) was revised to include procedures for obtaining search warrants through telephone and fax.

Chapter 17 (Victims' Rights)

Victims' Rights (5.1701.A.12) was revised to include the right of victims to review probation status reports relating to crimes of domestic violence. Section 5.1701.B. was revised to clarify notice to the victim, recognizing that specific time frames and requirements could be difficult or impossible, yet recognizing the need to provide some guidance for the Office of the Prosecutor and opportunities for the victim.

On February 25, 2013, at a regularly scheduled G&MSC meeting, G&MSC considered the creation of a special fund for victim compensation. G&MSC did not approve the creation of a special fund for victim compensation; however, the G&MSC directed to maintain the current system of utilizing restitution orders issued by the court. On February 26, 2013, LSC concurred with G&MSC's official motion.

Traffic Code

Permitted Use and Proof of Prior Offenses (6.604) was created its own section, rather than as a subsection of Driving or Actual Physical Control While Under the Influence (6.601), to clearly make the provisions applicable to all categories of DUI. The offenses of Extreme Driving Under the Influence or Actual Physical Control (6.602) and Aggravated Driving or Actual Physical Control While Under the Influence of Alcohol (6.603) were revised to prohibit suspended or commuted sentences for violations of these offenses. Based on comments from the Office of the Prosecutor, Possession of Alcoholic Beverage in a Motor Vehicle (6.607) was added as a new offense to prohibit open alcoholic beverage containers in motor vehicles.

On February 25, 2013, at a regularly scheduled G&MSC meeting, G&MSC considered the creation of a special fund for DUI fines. G&MSC did not approve the creation of a special fund for DUI fines; however, the G&MSC directed to maintain the current system of utilizing restitution orders issued by the court. On February 26, 2013, LSC concurred with G&MSC's official motion.