



# **GILA RIVER INDIAN COMMUNITY**

**SACATON, AZ 85147**

## **ORDINANCE GR-006-23**

### **THE GILA RIVER INDIAN COMMUNITY COUNCIL HEREBY AMENDS TITLE 5, CRIMINAL CODE BY ADDING SECTION 5.1309 AND AMENDING SECTIONS 5.407, 5.1509 AND 5.1510**

**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 (Codified July 7, 2021) (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)(26) of the Constitution to enact criminal codes or ordinances governing the conduct of members of the Community and non-members on the Reservation; 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 Legislative Standing Committee ("LSC") recommends adding a new provision for the Unlawful Discharge of Firearms, Section 5.1309, if a person negligently discharges a firearm within the boundaries of the Reservation, with certain exceptions and justifications, and the first offense being a misdemeanor and any subsequent offense being either a misdemeanor or felony, Section 5.407; and

**WHEREAS,** LSC recommends revising release conditions to include the ability of a judge to prohibit the possession of a firearm, deadly weapon, or prohibited weapon while on release if the judge finds the prohibition is required for the safety of another person or the Community, Section 5.1509(D)(4); and

**WHEREAS,** LSC recommends adding Misuse of Firearms and Unlawful Discharge of Firearms as non-bailable offenses, 5.1510; and

**WHEREAS,** the proposed amendments have complied with pre-adoption notification procedures pursuant to Title Eight, Chapter Seven, Section 8.703 of the Community Code by publication in the Gila River Indian Community News ("GRIN") on September 15, 2023, held two public hearings on September 22, 2023, presented at District One on October 11, 2023, District 2 on September 18, 2023, District 3 on September 5, 2023, District 4 on October 2, 2023, District 5 on September 18, 2023, District 6 on October 2, 2023, and District 7 on October 16, 2023, and posting at all seven district service centers.

**NOW, THEREFORE, BE IT ENACTED,** that the Community Council hereby amends Title 5, Criminal Code by adding Section 5.1309 and amending Sections 5.407, 5.1509, and 5.1510, as attached.

**BE IT FURTHER ENACTED,** that the amendments to Title 5, Criminal Code, Sections 5.1309, 5.407, 5.1509, and 5.1510, as attached, shall be effective November 15, 2023.

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

**CERTIFICATION**

Pursuant to authority contained in Article XV, of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the Tribe January 22, 1960 and approved by the Secretary of the Interior on March 17, 1960, the foregoing Ordinance was enacted on the 15<sup>th</sup> day of November, 2023, at a Regular Community Council Meeting held at the Governance Center, Sacaton, AZ, at which a quorum of 10 members were present by a vote of: 10 FOR; 0 OPPOSE; 0 ABSTAIN; 7 ABSENT; 0 VACANCY.

GILA RIVER INDIAN COMMUNITY

  
GOVERNOR

ATTEST:

  
COMMUNITY COUNCIL SECRETARY



**Title 5**  
**CRIMINAL CODE**

**CHAPTER 4. SENTENCING**

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

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

B. Classification of Offenses.

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

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H. Felony Offense Categories.

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

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

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

- a. Bribery, 5.501.C;
- b. Perjury, 5.502.C;
- c. Obstructing a Criminal Investigation or Prosecution, 5.517.C;
- d. Possession of Contraband by a Jail Inmate, 5.518.C;
- e. Delivery of Contraband, 5.519.C;
- f. Stalking, 5.608.C;
- g. Incest, 5.805.B;
- h. Aggravated Burglary, 5.903.B;
- i. Robbery, 5.904.C;
- j. Arson, 5.909.B.1, B.3, or B.4;
- k. Theft by Extortion, 5.912.D;
- l. Receiving Stolen Property, 5.913.C;
- m. Forgery, 5.1101.D;
- n. Possession, Use or Manufacture of Controlled Substances, 5.1201.F;
- o. Endangering Human Life While Illegally Manufacturing Controlled Substances, 5.1202.C;
- p. Maintaining Drug-Involved Premises, 5.1203.C;
- q. Distribution of Controlled Substances to Persons Under Age 21, 5.1204.C;
- r. Employment or Use of Persons under 18 Years of Age in Drug Operations, 5.1205.C;
- s. Distribution or Manufacturing A Controlled Substance In or Near Schools or Playgrounds, 5.1206.C;
- t. Sale of Marijuana, 5.1207.1.C.2;
- u. Misconduct Involving Weapons, 5.1301.E;
- v. Misuse of Firearms, 5.1302.D;
- w. Unlawful Discharge of Firearms, 5.1309.D.

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

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

I. Misdemeanor Offense Categories.

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

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

- oo. Endangering Human Life While Illegally Manufacturing Controlled Substances, 5.1202.B;
- pp. Maintaining Drug-Involved Premises, 5.1203.B;
- qq. Distribution of Controlled Substances to Persons Under Age 21, 5.1204.B;
- rr. Employment or Use of Persons under 18 Years of Age in Drug Operations, 5.1205.B;
- ss. Distribution or Manufacturing a Controlled Substance In or Near Schools or Playgrounds, 5.1206.B;
- tt. Sale of Marijuana, 5.1207.1.B.1 and C.1;
- uu. Possession, Manufacture, Delivery, Advertisement of Drug Paraphernalia, 5.1208.E;
- vv. Unlawful Possession, Sale, Use of Vapor-Releasing Substances, 5.1209.D;
- ww. Furnishing Marijuana to a Minor, 5.1210.B;
- xx. Misconduct Involving Weapons, 5.1301.D;
- yy. Misuse of Firearms, 5.1302.C;
- zz. Negligent Use of a Deadly Weapon, 5.1303.C;
- aaa. Dangerous Use of Explosives, 5.1304.B;
- bbb. Misconduct Involving Explosives, 5.1306.C;
- ccc. Unlawful Discharge of Firearms, 5.1309.C;
- ddd. Unlawful Sale of Liquor, 5.1403.B;
- eee. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.1;
- fff. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.2;
- ggg. Aggravated Driving or Actual Physical Control While Under the Influence, 6.603.B.3;
- hhh. The following offenses have misdemeanor penalties effective January 1, 2014 through April 30, 2014 only: Homicide, 5.601.C; Kidnapping, 5.607.C; Aggravated Assault, 5.603.C; Sexual Assault, 5.801.E; Sexual Abuse, 5.802.D; Sexual Conduct with a Minor, 5.803.E; Molestation of a Child, 5.804.D; and Incest, 5.805.C.

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

- a. False Reporting, 5.503.D;
- b. Refusing to Aid Law Enforcement Officer, 5.505.C;
- c. Refusing to Assist in Fire Control, 5.507.C;
- d. Failure to Obey Court Order, 5.508.B;
- e. Failure to Obey Restraining Order, 5.509.B;
- f. Criminal Contempt of Court, 5.510.D;
- g. Tampering with Public Record, 5.511.B;
- h. Witness Tampering, 5.513.B;
- i. Receiving a Bribe as a Witness, 5.514.B;
- j. Receiving a Bribe by a Juror, 5.516.B;
- k. Tampering with Physical Evidence, 5.520.B;
- l. Impersonating a Law Enforcement Officer, 5.521.B;



- m. Endangerment, 5.604.B;
- n. Unlawful Restraint, 5.606.B;
- o. Abandonment of a Child, 5.704.B;
- p. Criminal Nuisance, 5.1003.B;
- q. Delivery of Graffiti Material to a Minor, 5.1008.C;
- r. Fraudulent Use of Per Capita Payments, 5.1106.B;
- s. Making or Permitting a False Claim for Reimbursement for Community Assistance Services, 5.1107.C;
- t. Fraudulent Schemes and Practices Against the Community, 5.1108.B;
- u. Telecommunication Fraud, 5.1109.C;
- v. Unlawful Pyramid Promotional Scheme, 5.1111.G;
- w. Possession, Use, or Production of Marijuana, 5.1207.B.3, E.3, and F.3;
- x. Sale of Marijuana, 5.1207.1.C.1;
- y. Delivery of Liquor to a Minor, 5.1402.B;
- z. Extreme Driving Under Influence or Actual Physical Control, 6.602.B;
- aa. Extreme Driving Under Influence or Actual Physical Control, 6.602.C.

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

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

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



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

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

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*HISTORY:* New Section.

#### **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. Misuse of Firearms;
10. Unlawful Discharge of Firearms;
11. Drive-by Shooting;
12. Incest;
13. Possession of two pounds or more of marijuana;
14. 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
15. 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. Strength
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.

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*HISTORY: GRIC Code §5.1310 (2009).*

### **5.1309. Unlawful Discharge of Firearms**

- A. A person commits unlawful discharge of firearms by negligently discharging a firearm within the boundaries of the Gila River Indian Community.
- B. Defense. This section does not apply if the firearm is discharged:
  - 1. As allowed pursuant to Title 15, Chapter 5- Hunting and Fishing of the Gila River Community Code.
  - 2. The offense of Unlawful Discharge 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.
  - 3. On a properly supervised range operated by the Gila River Indian Community Police Department, or any other unsupervised shooting range that meets the requirements of this subsection B.
  - 4. More than one mile from any occupied structure. "Occupied Structure" is defined for purposes of this section as any building, object, vehicle, or place with sides and a floor that is separately securable from any other structure attached to it, that is used for lodging, business, transportation, recreation or storage and in which one or more human beings either are or are likely to be present or so near as to be in equivalent danger at the time the discharge of a firearm occurs; including any dwelling house, whether occupied, unoccupied, or vacant.
  - 5. In self-defense or defense of another person against an animal attack if a reasonable person would believe that deadly physical force against the animal is immediately necessary and reasonable under the circumstances to protect oneself or the other person.
  - 6. With Justification as provided in 5.208. Justification for Use of Force.
- C. Penalty
  - 1. For the first offense, the penalty for unlawful discharge of firearms is a misdemeanor and shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.
  - 2. For a second or any subsequent offense, the penalty may be misdemeanor or felony:

- (a) The penalty for misdemeanor unlawful discharge of firearms shall be imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000.00, or both.
- (b) The penalty for felony unlawful discharge of firearms shall be imprisonment for a period not to exceed three years, or a fine not to exceed \$15,000.00, or both.

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*HISTORY:* New Offense.

Felony Comparability References: Ariz. Rev. Stat. §13-3107.

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

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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;
4. That the person is prohibited from possessing a firearm, deadly weapon, or prohibited weapon if the Judge finds the prohibition is required for the safety of any other person or the Community. Any firearm, deadly weapon, or prohibited weapon possessed by the person shall be immediately turned over to the Gila River Police Department for the duration of the criminal proceeding; and
5. 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 education 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 regular basis to the Pretrial Services Program;
7. Comply with a specified curfew;
8. Refrain from 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;
9. Undergo available medical, psychological, psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;
10. 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;
11. Return to custody for specified hours following release for employment, schooling, or other limited purposes; and/or
12. 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.