

TITLE 5
CRIMINAL CODE

Chapter 18. Special Domestic Violence Criminal Jurisdiction

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TITLE 5. CRIMINAL CODE

CHAPTER 18. SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION

5.1801. Authority.

A. This chapter implements the provisions of the Indian Civil Rights Act (25 U.S.C. § 1301, *et seq.*) as amended by the Violence Against Women Act of 2013 (Pub. L. 113-4, 127 Stat. 54) in order to exercise Special Domestic Violence Criminal Jurisdiction over non-Indians.

B. The Gila River Indian Community Court shall have Special Domestic Violence Criminal Jurisdiction over any non-Indian who commits an offense under this chapter, when the offense occurs within the boundaries of the Gila River Indian Reservation.

5.1802. Applicability.

This chapter applies only to arrests, court proceedings, detention and sentencing of non-Indians as authorized under this chapter.

5.1803. Conflict with Other Laws.

Where any conflict exists between this chapter and any other provision of the Code or the Rules of Criminal Procedure, this chapter shall prevail only regarding the exercise of Special Domestic Violence Criminal Jurisdiction over non-Indians. Where no conflict exists, the other provisions of the Code and the Rules of Criminal Procedure shall be applicable to the exercise of Special Domestic Violence Criminal Jurisdiction over non-Indians.

5.1804. Definitions Used in this Chapter.

A. *Non-Indian* means any person not defined as an Indian under Section 5.102.

B. *Special Domestic Violence Criminal Jurisdiction* means criminal jurisdiction exercised by the Gila River Indian Community Court over any non-Indian accused of committing an offense under this chapter.

5.1805. Special Domestic Violence.

A. A person commits the offense of special domestic violence if he commits an offense of violence against:

1. A person who is or has been in a social relationship of a romantic or intimate nature with the defendant, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship;
2. A current or former spouse or intimate partner;

3. A person with whom the defendant shares a child in common; or
4. A person who is cohabitating with or has cohabitated with the defendant as a spouse or intimate partner.

B. The underlying offense of violence means any criminal offense under the Code in which the defendant commits conduct, regardless of whether the conduct is stated as an element of the underlying offense, involving the intentional or reckless use, threatened use, or attempted use of force capable of doing injury to the victim or the victim's property. An offense of violence is not limited to the list of underlying offenses for domestic violence under Section 5.710.B.1. The elements of the underlying offense of violence are incorporated into, and considered elements of, the offense of special domestic violence.

C. Special domestic violence is considered an offense of domestic violence as provided under Section 5.710, and is therefore subject to the provisions of Section 5.710 that do not conflict with this chapter. In particular, sentencing based on a conviction of special domestic violence shall be carried out in accordance with the provisions of 5.710.C., that do not conflict with this chapter.

5.1806. Failure to Obey Protection Order.

- A. A person commits the offense of failure to obey protection order if:
 1. The defendant fails to obey a civil or criminal court ordered restraining order, temporary restraining order, civil restraining order, order of protection, emergency order of protection, or any similar order, whether a temporary or final order;
 2. The order was issued against the defendant by any tribal, state, county, or other court with jurisdiction over the defendant; and
 3. The defendant's conduct violates any portion of the order that prohibits or provides protection against violent or threatening acts of harassment against, sexual violence against, contact or communication with, or physical proximity to the person protected by the order; and
 4. The order is otherwise consistent with 18 U.S.C. § 2265(b).

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

5.1807. Jurisdictional Requirements.

A. A person shall only be charged with an offense under this chapter if at least one of the following is alleged in the criminal complaint and proven as an element of the offense:

1. The defendant resides within the boundaries of the Gila River Indian Reservation;
2. The defendant is employed within the boundaries of the Gila River Indian Reservation; or
3. The defendant is a spouse, intimate partner, or dating partner of:
 - a. A member of the Community; or
 - b. An Indian who resides within the boundaries of the Gila River Indian Reservation.

B. A person shall not be charged under this chapter for any offenses in which both the defendant and the victim are non-Indian.

1. A person charged with an offense under this chapter may raise the affirmative defense of Indian status of the defendant as defined under Section 5.102.A., or non-Indian status of the victim as defined under Section 5.1804.A. The burden of raising the issue of Indian or non-Indian status shall be upon the person claiming the exemption from jurisdiction, but the burden of proof of jurisdiction and status as an Indian or non-Indian remains with the prosecution. The defense of Indian or non-Indian status shall be raised by presenting some evidence that the person in question does or does not meet the definition of an Indian or non-Indian. Once the defense has been properly raised, the prosecution shall have the burden of proving an individual's Indian or non-Indian status beyond a reasonable doubt.

5.1808. Rights of Defendants.

A. In a criminal proceeding for an offense charged under this chapter, the defendant shall be provided with:

1. All applicable rights under the Indian Civil Rights Act (25 U.S.C. § 1301, *et. seq.*);
2. All rights enumerated under Section 5.1501.F., if the defendant is subject to any term of imprisonment;
3. The right to a trial by an impartial jury that is drawn from sources that:
 - a. Reflect a fair cross section of the Community; and

- b. Do not systematically exclude any distinctive group in the Community, including non-Indians; and
- 4. All other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the Community to exercise Special Domestic Violence Criminal Jurisdiction over the defendant.

5.1809. Trial.

A. Cases under this chapter 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.

B. 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.

C. A jury shall consist of six members selected at random from the list of eligible jurors.

D. An eligible juror is any person, 18 years of age or older, who resides within the boundaries of Gila River Indian Reservation, in addition to any eligible juror according to 5.1522.C.; 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.

E. The following persons shall be exempt from jury service: employees of the Community Police Department, Office of the Prosecutor or Defense Services Office; 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, Court of Appeals judges, and members of the clergy or a religious order who are employed by a church or religious organization.

F. The Community Court shall prepare and maintain lists of eligible jurors from time to time.

G. The judge shall render the judgment in accordance with the verdict and the existing law.

H. The jury must reach a unanimous verdict.

5.1810. Notice of Right to File Petition in United States Court to Stay Detention.

A. The Community Court shall provide timely notice, not later than at the time of arraignment, to a person who has been ordered to any detention under this chapter of the following rights and privileges:

1. A person who has filed a petition for a writ of habeas corpus in a court of the United States under 25 U.S.C. § 1303 may petition that court to stay further detention of that person by the Community.
2. A court shall grant a stay described in paragraph (1) if the court:
 - a. Finds that there is a substantial likelihood that the habeas corpus petition will be granted; and
 - b. After giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the Community if released.

5.811. Fees and Costs.

A. Any defendant taken into custody under this chapter shall be solely responsible to pay for the costs of any and all medical services, other than standard evaluations conducted at the Department of Rehabilitation and Supervision, rendered to the defendant while in custody of the Gila River Police Department or the Department of Rehabilitation and Supervision. Unless the defendant is deemed indigent and unable to pay any medical expenses, all such medical expenses shall be billed to the defendant and not the Community or any of its departments. This provision shall not affect or supersede the ability of a defendant to receive necessary medical treatment. This section applies equally to defendants who remain in the custody of the Department of Rehabilitation and Supervision after conviction.

B. Any defendant charged or convicted under this chapter may be required to pay any reasonable Community Court or Probation Department costs as ordered by the Court.

5.1812. Sovereign Immunity.

Nothing in this chapter shall be deemed to constitute a waiver by the Community, including its departments and entities, of its sovereign immunity.

5.1813. Severability.

If any part, or parts, or the application of any part of this chapter is held invalid, such holding shall not affect the validity of the remaining parts of this chapter. The Community Council hereby declares that it would have passed the remaining parts of this chapter even if it had known that such part or parts or application of any part thereof would be declared invalid.

5.1814. Savings.

This chapter takes effect on the date approved by the Community Council and does not extinguish or modify any civil or criminal liability or enforcement of such penalty or forfeiture that existed on or prior to the effective date of this chapter and such code shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such civil or criminal action, enforcement of any penalty, forfeiture or liability.

TITLE 5 LEGISLATIVE HISTORY

Ordinances and resolutions appearing in boldface are, in whole or part, currently effective.

Previously Title 2, reserved in 1983 Compilation

Ordinance GR-02-86 enacted Criminal Code (adopted April 16, 1986); Bureau of Indian Affairs rescinded approval on August 8, 1986

Ordinance GR-03-86 amended Section 2.1004 (adopted November 19, 1986); Bureau of Indian Affairs declined to approve on December 2, 1986

Ordinance GR-02-88 added Section 2.1005 (adopted December 21, 1988)

Ordinance GR-02-90 enacted current Criminal Code (adopted May 16, 1990)

Ordinance GR-03-95 added Section 2.1109 (adopted March 15, 1995)

Resolution GR-90-96/Ordinance GR-06-96 enacted Pyramid Promotional Schemes Ordinance (effective July 17, 1996)*

* **Note:** Passed with both a resolution and an ordinance number.

Ordinance GR-01-01 added Section 2.1109 (effective September 30, 2001)

Ordinance GR-02-06 rescinded Section 2.814, Illicit Cohabitation (adopted March 1, 2006)

Ordinance GR-04-06 added Section 2.705 (adopted September 6, 2006)

Ordinance GR-07-06 enacted 2007 Controlled Substances Act (effective January 1, 2007)

Ordinance GR-03-07 enacted Victim's Rights Ordinance (adopted November 7, 2007) Ordinance GR-01-09 enacted Title 4, Chapter 5 and repealed prior Section 2.1326 (effective July 1, 2009)

Ordinance GR-06-09 revised sections 5.104 (J)(K)(R)(S) and moved them to section 5.900 and amended sections 5.901, 5.902, 5.1301 and added sections 5.281, 5.822, and 5.823 to address Gang Activity (enacted April 15, 2009)

Ordinance GR-15-09 enacted the 2009 GRIC Code (adopted October 7, 2009)

Ordinance GR-01-12 amended sections 5.821, 5.824, 5.825, and 5.826 (enacted July 18, 2012)

Ordinance GR-03-13 amends the 2009 GRIC Code by replacing Title 5 in its entirety (adopted May 15, 2013)

Resolution GR-71-14 delays the effective date of felony offenses, procedure related to felony offenses and mental competency in Ordinance GR-03-13 from May 1, 2014 until July 1, 2014 (adopted May 7, 2014)

Ordinance GR-01-15 amends Section 5.1403.A.14 (adopted January 7, 2015)