

## Chapter 8

### **SENTENCING**

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### **Sec. 8-1. General conditions of sentence.**

Any person convicted in the Community court for a violation of any provision of this Community Code of Ordinances for which a penalty may be imposed at the court's discretion, may be fined, sentenced to serve time in the Community jail, ordered to complete Community service, required to pay full or partial restitution, and/or placed on probation or any combination of such. The court should impose a jail term where such is needed to protect the person or the public at large. No fine or time served shall exceed the maximum period set for the offense in this Community Code of Ordinances. The terms and provisions of this chapter shall apply to all violations under this Community Code of Ordinances, provided the offense does not provide for any mandatory sentencing terms.

(Code 1981, § 8-1; Code 2012, § 8-1; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-1, 5-30-2012)

### **Sec. 8-2. Determining factors.**

In determining the character and duration of the sentence which shall be imposed, the court shall take into consideration the previous conduct of the defendant, the safety of the Community, the victim(s)' recommendations on the matter, the circumstances under which the offense was committed, whether the offense was malicious or willful, whether the offender has attempted to make amends, the extent of the offender's resources, and the needs of the offender's dependents.

(Code 1981, § 8-2; Code 2012, § 8-2; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-2, 5-30-2012)

### **Sec. 8-3. Sentencing classifications; restitution or alternative compensation; offense specific penalty or sentence.**

(a) *Sentencing classifications and terms.* The following are sentencing classifications and terms:

- (1) For a Class A offense, the maximum penalty that may be imposed upon any person convicted of the offense shall be no more than three years of incarceration,

and/or a fine up to \$15,000.00. In addition, the minimum sentence that may be imposed upon any person convicted of a Class A offense shall be one year of incarceration and a fine in the amount of \$1,000.00.

- (2) For a Class B offense, the maximum penalty that may be imposed upon any person convicted of the offense shall be no more than one year of incarceration, and/or a fine up to \$5,000.00.
- (3) For a Class C offense, the maximum penalty that may be imposed upon any person convicted of the offense shall be no more than six months of incarceration, and/or a fine up to \$1,000.00.
- (4) For a Class D offense, the maximum penalty that may be imposed upon any person convicted of the offense shall be no more than 30 days of incarceration, and/or a fine up to \$750.00.
- (5) For a Class E offense, the maximum penalty that may be imposed upon any person convicted of the offense shall be a fine up to \$500.00.

(b) *Restitution or alternative compensation.* In addition to any other penalty, the court may require a person convicted of an offense, who has injured a person(s), property of a person(s) and/or entity in that offense, to make restitution or to compensate for the injury through the surrender of property, the payment of money damages or the performance of any other act for the benefit of the injured, or any combination of such. Such restitution or compensation is wholly separate from any fine imposed.

(c) *Offense specific penalty or sentence.* In no event shall the court impose a sentence or penalty in excess than what is permitted by the specific offense, or for the class of sentence assigned to the offense. If in any matter in which the sentence permitted by this section for the class of offense is inconsistent with the specific sentencing mandate in a particular criminal offense of tribal code, the specific sentencing term for the tribal offense shall be applied.

(Code 1981, § 8-3; Code 2012, § 8-3; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-3, 5-30-2012; Ord. No. SRO-419-2013, § 8-3, 3-6-2013)

**Sec. 8-4. Failure to complete Community service; imprisonment or fine.**

Any convicted person who has been sentenced to Community service, and willfully fails to complete said Community service, may be, at the court's discretion, sentenced to any suspended term of imprisonment or applicable fine.

(Code 1981, § 8-4; Code 2012, § 8-4; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-4, 5-30-2012)

**Sec. 8-5. Deposit and disposition of fine.**

(a) All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. Such expenses shall include the payment of the fees provided for in this chapter. The fines assessed shall be paid over by the clerk of the court to the Community for deposit as court funds to the credit of the proper Community official. The proper official shall withdraw such funds in accordance with existing regulations upon the order of the clerk of the court signed by a judge of the court, for the payment of specified fees. The Community official and the clerk of the court shall keep an account of all such deposits and withdrawals for the inspection of any person interested.

(b) Whenever such funds shall exceed the amount necessary, with a reasonable reserve for the payment of the court expenses mentioned in subsection (a) of this section, the Community Council shall designate further expenses for the work of the court which shall be paid by those funds, such costs having been previously paid from other sources or transferred to the Community fund for the use of the Community Council.

(c) Whenever a fine is paid in commodities, the commodities shall be turned over, under the supervision of the clerk of the court, or if the court so directs, shall be disposed of in other ways for the benefit of the Community. The proceeds of any sale of such commodities shall be deposited by the proper official in the court fund and recorded upon the accounts.

(Code 1981, § 8-5; Code 2012, § 8-5; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-5, 5-30-2012)

**Sec. 8-6. Probation.**

(a) Probation shall be available for persons convicted of an offense provided the offense does not provide for mandatory incarceration. Probation is not mandatory. A person sentenced to probation may reject probation at any time, but upon rejection shall be ordered to serve the entire suspended sentence.

(b) Probation conditions shall be imposed to assist persons convicted to address the issues that may have contributed to the conviction. Conditions may include, but shall not be limited to:

- (1) Drug, alcohol, and/or other addiction abuse counseling;
- (2) Drug and alcohol monitoring and screening;
- (3) Domestic violence counseling;
- (4) Sex offender counseling; or
- (5) Any available counseling or treatment for any other issues that may affect criminal behaviors.

Probation conditions may also include any restitution and/or Community service ordered by the court. Probation conditions shall be reasonably related to the offender's conviction, the safety of the Community, and the rehabilitation of the offender.

(c) The length of probation may be for a period of time that exceeds the possible time for incarceration. The length of probation term shall be as long as necessary to address any of the issues that may have contributed to the conviction, but shall not exceed five years. For offenses that are sexual in nature and the named victim was a minor at the time of the offense, the court may sentence the person to probation for a period for up to 15 years. (Code 1981, § 8-6; Code 2012, § 8-6; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-6, 5-30-2012)

**Sec. 8-7. Violation of probation.**

Any person who is found to have violated the terms of probation after a hearing may be re-

quired to serve any original suspended sentence, or his or her sentence may be reinstated with amended terms of probation.

(Code 1981, § 8-7; Code 2012, § 8-7; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-399-2012, 6-1-2012; Ord. No. SRO-402-2012, § 8-7, 5-30-2012; Ord. No. SRO-419-2013, § 8-7, 3-6-2013)

#### **Sec. 8-8. Parole.**

(a) Any person sentenced to incarceration by the Community court who has served one-half of the sentence, without misconduct while incarcerated, may be eligible for parole.

(b) Parole shall be granted only by a judge of the Community court upon the signing of an order granting parole after a hearing. The Community and the victim shall have an opportunity to address the court prior to any grant of parole.

(c) Parole shall be supervised by a probation officer and conditions of parole shall be imposed consistent with section 8-6.

(d) Parole shall not be available to offenders who have been convicted and sentenced for an offense that requires mandatory incarceration by law.

(Code 1981, § 8-8; Code 2012, § 8-8; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-8, 5-30-2012; Ord. No. SRO-419-2013, § 8-8, 3-6-2013)

#### **Sec. 8-9. Violation of parole.**

Any person who is found to have violated any of the provisions or conditions of parole after a hearing shall be required to serve the remainder of the original sentence.

(Code 1981, § 8-9; Code 2012, § 8-9; Ord. No. SRO-324-08, 10-31-2007; Ord. No. SRO-402-2012, § 8-9, 5-30-2012; Ord. No. SRO-419-2013, § 8-9, 3-6-2013)